

**DEED RELATING TO RCP4 INDEPENDENT
VERIFICATION**

PARTIES:

1. **TRANSPOWER NEW ZEALAND LIMITED** of Waikoukou, 22 Boulcott Street, Wellington Central, Wellington 6011 (**Transpower**);
2. **COMMERCE COMMISSION** of Level 9, 44 The Terrace, Wellington Central, Wellington 6011 (**Commission**); and
3. **GHD LIMITED** of Level 1, Grant Thornton House, 215 Lambton Quay, Wellington Central, Wellington 6011 (**Verifier**),

each a **Party** and together referred to as the **Parties**.

BACKGROUND:

- A. As part of the process for resetting Transpower's individual price-quality path for its regulatory control period 4 (**RCP4** and **RCP4 reset**), Transpower and the Commission have agreed that Transpower will have its base capex and opex proposal for RCP4 independently verified and that Transpower will submit a verification report with its proposal.
- B. Transpower and the Commission have agreed on the terms of reference for the verification.
- C. Transpower has, in consultation with the Commission, engaged Verifier to carry out the verification and prepare the verification report.
- D. This Deed sets out certain undertakings of the Parties relating to the verification.

THE PARTIES AGREE THAT:

1. **DEFINITIONS AND INTERPRETATION**
 - 1.1 **Definitions:** In this Deed, unless the context requires otherwise:

Engagement Agreement means the General Services Agreement between Transpower and Verifier, dated 31 January 2023, relating to the Verification, which is attached in Appendix 1;

Good Independent Verification Practice means the exercise of a degree of skill, diligence, prudence and foresight that would reasonably be expected from a skilled and experienced professional engaged in the independent verification of an expenditure proposal by an operator of an electricity transmission network of similar size and complexity to Transpower's network (the national grid) taking into account domestic and international best practice and recognised independent verification standards;

Key Personnel means the key personnel specified in clause 6 of Schedule 3 of the Engagement Agreement.

RCP and **RCP4 Reset** have the meanings given to those terms in recital A;

Terms of Reference means the terms of reference for the Verification attached to the Engagement Agreement and attached as Appendix 2;

Verification means the verification of Transpower's base capex and opex proposal for RCP4 by Verifier;

Verification Information has the meaning given to that term in clause 3.3; and

Verification Report means the final report prepared by Verifier in respect of the Verification.

1.2 **Interpretation:** In this Deed, unless the context otherwise requires:

- (a) a capitalised term used but not defined in this Deed has the meaning given to it in the Engagement Agreement;
- (b) a derivative expression of any defined expression will be construed in accordance with the relevant definition;
- (c) clause and other headings are for ease of reference only and will not affect this Deed's interpretation;
- (d) reference to a Party includes that Party's successors and permitted assigns;
- (e) reference to the singular includes the plural and vice versa;
- (f) reference to clauses and any appendix are to clauses in, and any appendix to, this Deed; and

(g) reference to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

1.3 **Conflict:** Verifier's and Transpower's obligations in favour of the Commission in this Deed must be complied with even where they conflict with any rights or obligations of Verifier and Transpower in the Engagement Agreement.

2. ***DUTY TO COMMISSION***

2.1 **Duty of care:** Verifier acknowledges that, in carrying out the Verification, it owes an overriding duty of care to the Commission to act reasonably and as an independent expert in a manner consistent with the standard of Good Independent Verification Practice.

2.2 Subject to the overriding duty owed to the Commission, the Verifier also acknowledges that it owes a duty of care to Transpower, under the terms of the Engagement Agreement.

2.3 **Commission's enforcement rights:**

- (a) The Commission acknowledges that it does not have any rights to enforce Verifier's obligations under the Engagement Agreement under the Contract and Commercial Law Act 2017 or otherwise.
- (b) For the avoidance of doubt, the Commission may enforce Verifier's and Transpower's obligations under this Deed.

3. ***DEALINGS WITH COMMISSION***

3.1 **Terms of Reference:** In carrying out the Verification, Verifier must communicate with, attend meetings with, and provide reports to the Commission as set out in the Terms of Reference.

3.2 **Other communications with the Commission:** In addition to the meetings referred to in the Terms of Reference, either or both of Verifier and Transpower at the Commission's reasonable request must attend meetings with the Commission in order to keep the Commission informed of progress on the Verification Report and to assist the Commission's planning for how it will evaluate the Verification Report and Transpower's base capex and opex proposal for RCP4.

3.3 **Confidential Information:** Transpower consents to Verifier disclosing any of Transpower's Confidential Information to the Commission where such information was provided by Transpower to Verifier for purposes of the Verification (Verification Information).

3.4 **Preservation of records:** Transpower must keep copies of all communications between it and Verifier relating to the Verification and

preserve those records for a period of at least 1 year after the Verification Report is delivered to the Commission.

4. *ENGAGEMENT AGREEMENT*

- 4.1 **Terms of Reference:** Transpower and Verifier must not amend the Terms of Reference without the Commission's prior written consent.
- 4.2 **Key Personnel:** Verifier must use the Key Personnel to perform the Verification. Transpower and Verifier must not change the Key Personnel without the Commission's prior written consent.
- 4.3 **Assignment:** Transpower must not consent to an assignment of Verifier's interest in the Engagement Agreement without the Commission's prior written consent. Any such assignment will be of no effect unless the assignee also takes an assignment of Verifier's Interest in this Deed.

5. *CONFIDENTIALITY*

- 5.1 **Obligation to keep confidential:** Subject to clause 5.2, the Commission must keep confidential all Transpower Confidential Information disclosed to it by Transpower or Verifier (the disclosing Party) relating to the Verification (including the Verification Information) and not disclose it in any form to any third party without Transpower's prior written consent.
- 5.2 **Exceptions:** Clause 5.1 does not apply to any Confidential Information:
- (a) that is in the public domain or becomes publicly known otherwise than by breach of this Deed by the Commission or breach of the Engagement Agreement by Verifier;
 - (b) that the Commission can show by its written records was in its possession prior to receiving it from the disclosing Party;
 - (c) that is or was acquired by the Commission from someone other than the disclosing Party who was entitled to disclose the Confidential Information to the Commission without imposing an obligation of confidence;
 - (d) that is required to be disclosed by any law or any court of competent jurisdiction, provided that:
 - (i) the Commission gives Transpower at least 10 Business Days' notice of such required disclosure wherever practicable, which must include an explanation of the requirement to disclose; and
 - (ii) the Confidential Information is only disclosed to the extent of the requirement to disclose;
 - (e) that is contained in the Verification Report; or
 - (f) if the Commission reasonably considers the disclosure of that Confidential Information to be necessary for the purposes of

carrying out its functions in respect of the RCP4 Reset, provided that

- (i) the Commission gives Transpower at least 10 Business Days' notice of such disclosure, which must include an explanation of why the disclosure is necessary; and
- (ii) the Confidential Information is only disclosed to the extent stated in the notice.

If Transpower notifies the Commission that it disputes the necessity to disclose any Confidential Information under subclause (f) before the Commission discloses it, the Commission must not disclose the Confidential Information if Transpower commences legal proceedings to injunct the disclosure within a further 10 Business Days from the end of notice period in subclause (f)(i). The Commission may disclose the Confidential Information if Transpower's application for an injunction is not successful or is not progressed by the court on an urgent basis.

6. LIABILITY

- 6.1 **Verifier's and Transpower's Liability:** Verifier's and Transpower's liability for breach of this Deed or (in the case of Verifier) the duty of care referred to in clause 2.1 is subject to the exclusions and limitations of liability in the Engagement Agreement as if the breach were a breach of the Engagement Agreement by the relevant Party.

7. NOTICES

- 7.1 **Writing:** Any notice required or permitted to be given under this Deed will be of no effect unless given in writing and signed by the Party giving or making it.
- 7.2 **Addresses:** In proving service of any notice it is sufficient to prove that the notice was in writing and delivered by hand or email to the applicable address and contact person set out in this clause (as that address or contact person may be updated from time to time, by notice to the other Parties). The Parties' addresses for notices at the date of this Deed are:

Transpower

As set out in Engagement Agreement

Commission

Commerce Commission
Level 9, 44 The Terrace
Wellington 6011 New
Zealand



Verifier

As set out in Engagement Agreement

- 7.3 **When given:** Any notice is deemed to be given:
- (a) if delivered by hand, at the time it was actually delivered, but if after 5pm or on a day that is not a Business Day the notice is deemed to be given the next Business Day;
 - (b) if emailed, no later than 1 Business Day after sending, unless within that time the sender receives an automated notification that the message has not been delivered, and in any case if sent after 5pm or on day that is not a Business Day the notice is treated as having been emailed at 9am on the next Business Day.

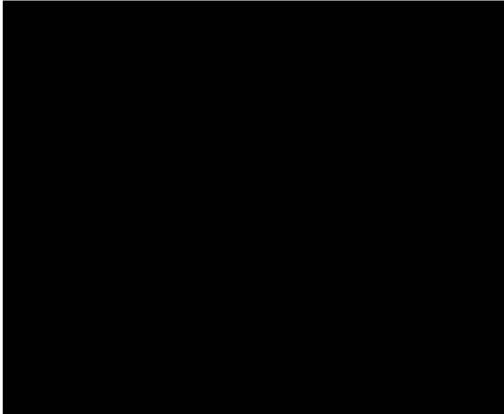
8. GENERAL

- 8.1 **Third party rights:** Subject to the rights of any successor or permitted assigns of the Parties, no provision of this Deed creates any rights enforceable by a third party. All third party rights enforceable or implied by law are, to the extent permissible by law, excluded from this Deed.
- 8.2 **Partial invalidity/severance:** If any provision of this Deed is or becomes invalid or unenforceable, that provision will be deemed deleted from this Deed. The invalidity or unenforceability of that provision will not affect the other provisions of this Deed, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 8.3 **Assignment:** No Party may assign any of its rights or obligations under this Deed without the prior written consent of the other Parties.
- 8.4 **Waiver:** Any waiver by a Party of any of its rights or remedies under this Deed will be effective only if recorded in writing and signed by that Party. If the waiver relates to a breach of any provision of this Deed, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this Deed at any time by any Party will in any way affect limit or waive that Party's right to subsequently require strict compliance with this Deed.
- 8.5 **Amendment:** Any amendment to this Deed (including the appendices) must be in writing and signed by all Parties.
- 8.6 **Entire agreement:** This Deed records the entire understanding and agreement of the Parties relating to the matters dealt with in this Deed. This Deed supersedes all previous understandings or agreements (whether written, oral or both) between the Parties relating to these matters.

- 8.7 **Governing law and jurisdiction:** This Deed is governed by, and is to be construed in accordance with, the laws of New Zealand. The Parties submit to the exclusive jurisdiction of the courts of New Zealand with respect to any claim, dispute or other matter arising out of or relating to this Deed.
- 8.8 **Counterparts:** This Deed may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart will be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties. Delivery of a counterpart of this Deed by e-mail attachment shall be an effective mode of delivery.
- 8.9 **Electronic Signature:** This document may be signed electronically. If this document is signed electronically, the relevant signers intend for their signature to appear on a printed copy of the document and the printed copy will be deemed an original document and the signatures appearing on it original signatures.

EXECUTED AS A DEED:

**Signed by Transpower New
Zealand Limited**



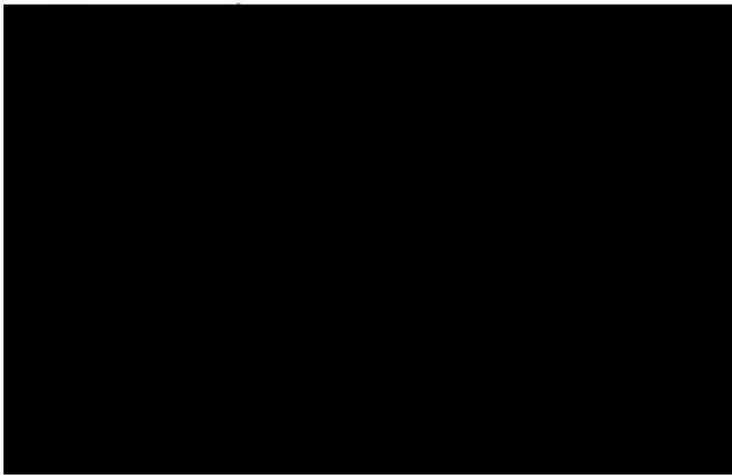
in the presence of:



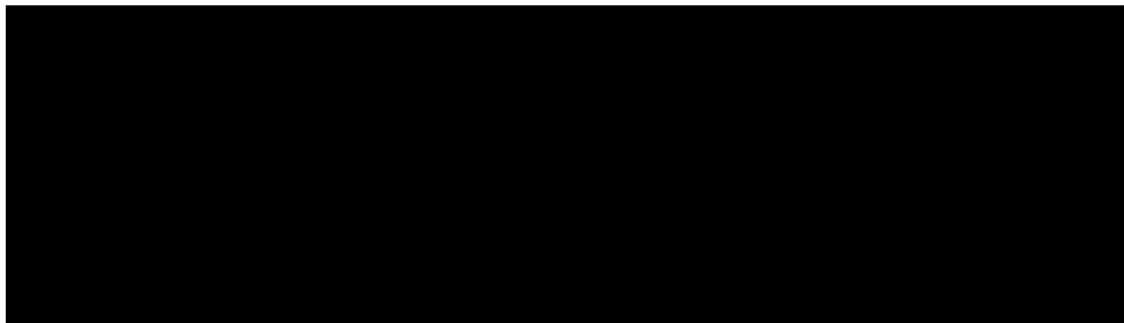
**Signed by Commerce
Commission**



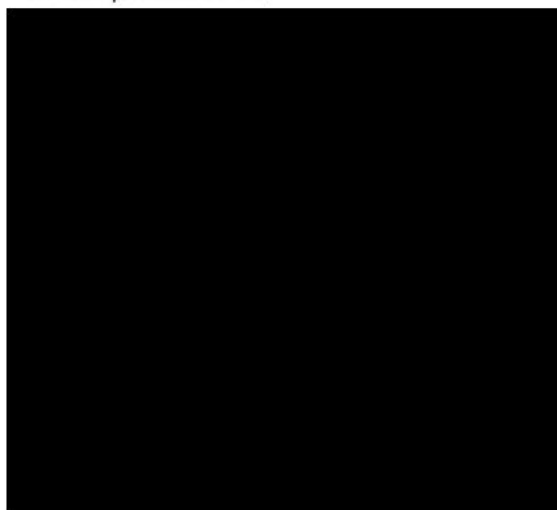
in the presence of:



Signed by GHD Limited



in the presence of:



Appendix 1 – Engagement Agreement

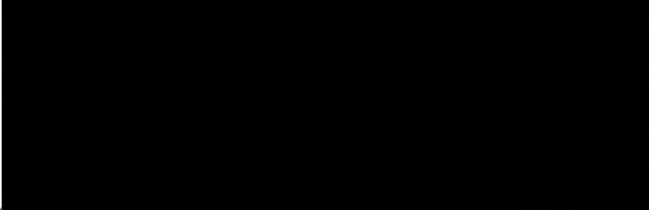
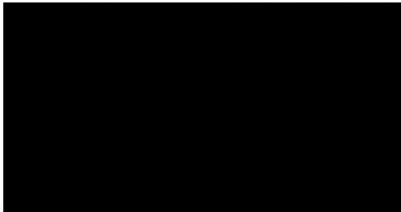

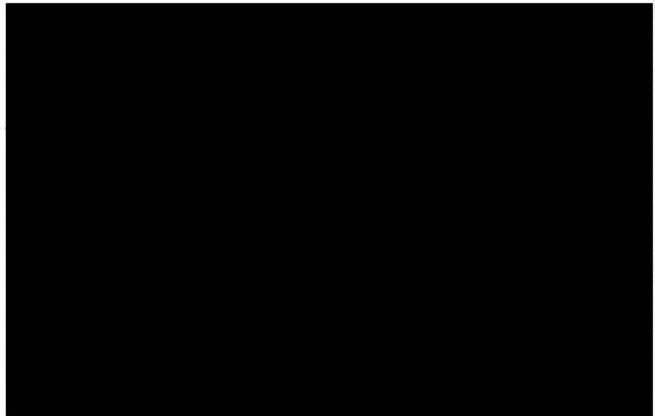


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GENERAL SERVICES AGREEMENT (SINGLE USE)

CONTRACT REFERENCE:

SCHEDULE 1 – THE PARTIES & SIGNATURE BLOCK	
1. Parties:	
1A. Contractor Details: Legal name: GHD Limited Trading name (if different): Street Address: Level 1, Grant Thornton House, 215 Lambton Quay, Wellington 6011 Postal Address: PO Box 1746, Wellington 6140 	1B. Transpower Details: Transpower New Zealand Limited Waikoukou, 22 Boulcott Street, PO Box 1021, Wellington Central, Wellington 6011 
2. Commencement Date: 9 February 2023	3. Expiry Date: 31 May 2024
Transpower engages the Contractor to provide the Services, and the Contractor accepts the engagement and will provide the Services to Transpower on the terms of this Agreement.	
Signature Block for the Contractor Signed for the Contractor by an authorised representative: 	Signature Block for Transpower Signed for Transpower by an authorised representative: 



SCHEDULE 2 - SERVICES & DELIVERABLES

4. Description of Services:

To objectively review and verify Transpower's RCP4 base capex and opex regulatory proposals to the New Zealand Commerce Commission (the Commission) in accordance with the Terms of Reference (ToR) attached as Appendix A and the Agreed Proposal Content attached as Appendix B.

5. Description of Deliverables & Delivery Dates:

5A. Deliverables: & 5B. Delivery Dates:

<i>Programme Area</i>	<i>Dates*</i>
Verifier and TP meet on ICT benchmarking approach discussed and agreed (timing to be agreed)	9 February 2023
Inception Meeting (timing to be agreed)	Late February
Majority of documents finalised for Verifier (may stage some documents)	28 February 2023
Proposed Verifier start review	1 March 2023
Kick-off meeting (Transpower's offices) - (timing to be agreed)	Early March
Verifier workshops and interviews - (timing to be agreed)	15 March to 23 May 2023
Review and ongoing engagement between TP and the IV	15 March to 18 August 2023
Draft Verifier report issued to TP for review/feedback	15 June 2023
Transpower review and provides feedback to GHD on Draft report	14 July 2023
Final Verifier report issued to TP	18 August 2023
Verifier remain available for additional questions from the Commission following RCP4 submission	Until 31 March 2024

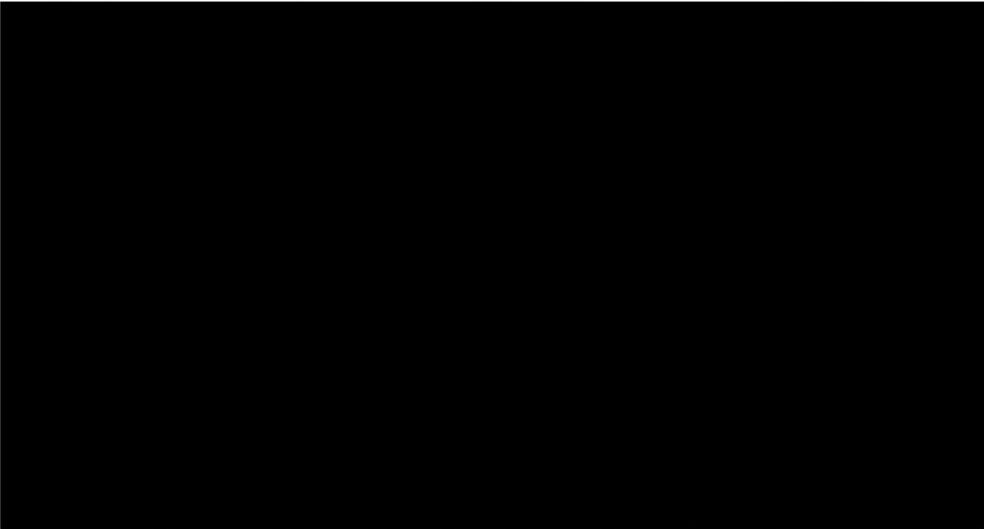
*The delivery dates are indicative and may be subject to change.

And as set out in the Agreed Proposal Content.



SCHEDULE 3 – SPECIFIC TERMS

6. Key Personnel:



Any changes to the agreed nominated personnel (as shown in the table above) must be discussed and agreed with the Transpower's Contact Person. Full disclosure of CV and experience is required.

7. Capped Services Fee:

A capped service fee of [REDACTED] (exclusive of GST) and disbursements for the period February to August 2023 as set out in part 7.1 of the Agreed Proposal Content.

This Fixed Services Fee includes:

- o All Services as required by the ToR and set out in the Contractor's proposal.
 - o The GHD team will remain available for ad-hoc service from September 2023 to March 2024 to answer questions from the Commission. In accordance with RFP Section 4. These services are included in the Fixed Services Fee up to an amount of [REDACTED]
- The Contractor will only charge based on actual time incurred up to the capped fee.
- Transpower will pay upon successful completion of each milestone, where the services have been acceptable to Transpower. Each payment will only be paid on invoice with attached supporting detailed breakdown on time/work and resources (any T&M items being claimed where receipts are required must be attached also).
- The Fixed Services Fee is based on the following assumptions and limitations:
- o The pricing has built in a reasonable amount of lag time between communications;
 - o All information provided by Transpower is genuine, complete, up-to-date, and accurate as reasonably practicable and contains no material errors or omissions;
 - o All documentation or information that may be required or requested during this engagement is received in a timely manner, complete and free from error in a format readily accessed using Microsoft Office 2016 or PDF reader software;
 - o All responsible Transpower and the Commission staff are available for meeting and discussion and promptly respond to the independent verification team for request of information and for conducting discussion/interviews;
 - o Transpower's Project Manager will be responsible for collecting and collating any comments on the preliminary and draft versions of the deliverable, and for providing a single consolidated set of comments to us for efficient finalisation.

-Variations to the scope of work will be either be on a charge up rate using the schedule in 8A or on an agreed fixed price. This must be discussed and agreed (in writing) with Transpower's Contact Person before undertaking any work.



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7A. Milestones: Payment is on completion of each milestone and is acceptable to Transpower's Contact Person.			7B. Part of Fixed Services Fee Payable (exclusive of GST):
Milestone Names	% Claimable	Amount Claimable	
Inception Payment			
Site Visit			
Draft Report			
Final Report			
Availability for the Commission after report delivered			

8. T&M Services Fee:

Transpower has reviewed the assumptions and only these are accepted:

Disbursements for travel and accommodation will be paid on actual receipts up to [REDACTED] excluding GST (*this excludes 5 trips too Wellington for [REDACTED]*)

Travel is to Transpower's Wellington office and upon prior approval by Transpower. GHD will seek agreement from Transpower on the need to travel prior to incurring the following type of expenses, which will be billed at cost (except for meals and incidentals, which is a flat nightly rate), including any GST:

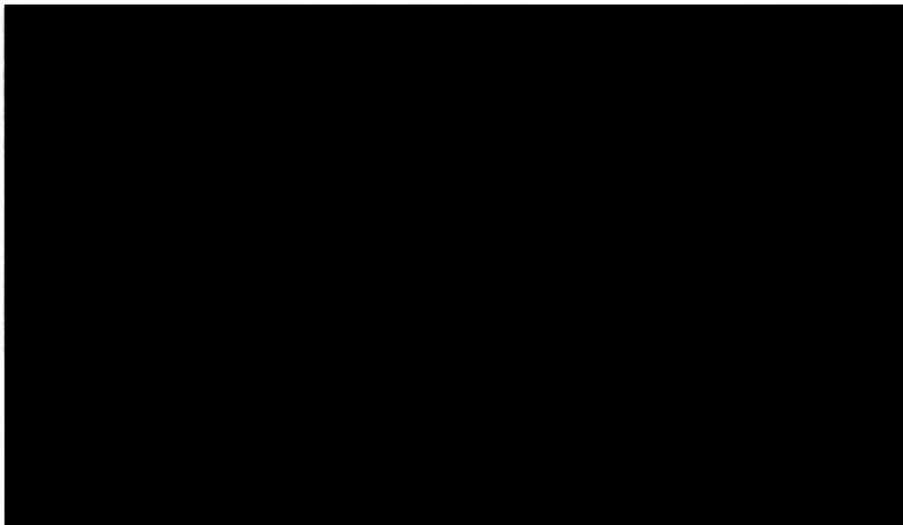
- Economy flights to/from Wellington.
- Ground transport to/from Melbourne/Sydney/Auckland and Wellington airports.
- Accommodation near Transpower Wellington office to avoid ground transportation cost while in Wellington.
- Meals and incidentals per diem at a flat rate of [REDACTED] (incl GST) per person per night away from their home office.

The service provision on how the Terms of Reference (ToR) are to be delivered and the need to ensure that all disciplines (Economic, Engineering and ICT) are assessed meet Transpower's and Commission's satisfaction. No caveats connected are acceptable to the final report.

Key Personnel - any changes to the agreed nominated personnel (as shown in 6. Key Personnel above) must be discussed and agreed with the Transpower's Contact Person. Full disclosure of CV and experience is required.

8A. Personnel & T&M Rates (exclusive of GST):

For the purposes of variations only (which must be agreed in advance by Transpower):





9. Insurance:

Public Liability: \$10 million

Professional Indemnity: \$2 million

10. Transpower Standards and Service Specifications:

- Health & Safety standard TP.HSW 01.02
- Code of Ethics and Conduct Policy CP.B.PP.004
- Drug & Alcohol Policy CP.CE.PP 003 - the Contractor acknowledges that random testing for drugs and alcohol applies under this policy
- Security awareness and appropriate usage policy CP.CE.PP.024

SCHEDULE 4 – SPECIAL TERMS

9.2 Limitation of Liability

Replace clause 9.2 paragraph (a) with the following:

- (a) Subject to clauses 9.2(c) and 9.3, each party's liability to the other party for any breach of this Agreement, or otherwise in connection with the Services or this Agreement, is limited in aggregate to the greater of:
- (i) two times the Services Fee paid and payable; and
 - (ii) \$2,000,000,
- in each case whether such liability arises in contract, tort or equity, under an indemnity or by any other legal theory.

Insert new paragraphs (d) and (e) as follows:

- (d) Without limiting any defences a party may have under the Limitation Act 2010, neither party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a party within 6 years from completion of the Services.
- (e) if either party is found liable to the other (whether in contract, tort or otherwise), and the claiming party has contributed to the loss or damage, the liable party shall only be liable to the proportional extent of its own contribution

9.3 Indemnity

Replace clause 9.3 with the following:

- (a) The Contractor will indemnify Transpower against any losses, costs (including reasonable legal costs), damages, liabilities or demands incurred by Transpower arising from:
- (i) loss of or damage to Transpower's or a third party's property caused by any breach of this Agreement, or wrongful (including negligent) act or omission by the Contractor or its Subcontractors or Personnel in the course of providing the Services;
 - (ii) subject to clause 9.4, any claim that Transpower's use of a Deliverable infringes any third party's IPR ("infringement claim");
 - (iii) any breach by the Contractor of the Security Obligations.
- (b) Subject to clause 9.2(c), the Contractor's liability under this indemnity is limited in aggregate to \$10,000,000. The limitation of liability in clause 9.2(a) does not apply to this indemnity

15.7 Electronic Reproduction and Counterparts

Rename clause 15.7 'Electronic Reproduction and Counterparts' and replace with the following:

This Agreement may be executed in two counterparts each of which will be deemed an original, but both of which together will constitute one and the same document. A party may enter into this Agreement by signing any counterpart. This Agreement may be executed by email attachment or other reliable method of electronic reproduction, and each executed reproduction will be deemed an original.



SCHEDULE 5 – GENERAL TERMS

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1. Interpretation

1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

“**ADR**” means any form of non-judicial alternative dispute resolution involving a third party, including expert determination, mediation and arbitration;

an “**Affiliate**” of a party means:

- (a) the party’s employees, directors, officers, Related Companies, customers, suppliers and other contractors; and
- (b) the employees, directors and officers of the party’s Related Companies, customers, suppliers and other contractors,

and for the Contractor includes the Personnel and Subcontractors;

“**Agreement**” means this General Services Agreement, comprising the Schedules and any referenced documents;

“**Business Day**” means any day apart from Saturdays, Sundays and public holidays in Wellington. A Business Day begins at 9.00 a.m. and ends at 5.30 p.m;

“**Commencement Date**” means the date specified in clause 2 of Schedule 1;

“**Completion**” means the completion of all Services;

the “**Confidential Information**” of a party (the “**disclosing party**”) means all information:



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- (a) obtained by the other party (the “receiving party”) as a result of entering into or performing this Agreement; and
- (b) that relates to the disclosing party or its Affiliates,
except to the extent such information:
 - (c) is in the public domain;
 - (d) was developed independently by the receiving party before it was obtained by the receiving party as a result of entering into or performing this Agreement; or
 - (e) was or is disclosed to the receiving party by a third party other than in breach of confidence by the third party and in circumstances not importing an on-going obligation of confidence in respect of the information.

The terms of this Agreement are the Confidential Information of both parties, except to the extent they are in the public domain;

“**Conflict Obligations**” means the Contractor’s obligations under clause 7 and under clause 6.5 in respect of Subcontractor and Personnel compliance with the former obligations;

“**Contractor**” means the contractor specified in clause 1A of Schedule 1;

“**Contact Person**” means the contact person for a party specified in clause 1 of Schedule 1;

“**Deliverables**” means the deliverables specified in clause 5A of Schedule 2 (if any) and any other items provided by the Contractor in the course of the relevant Services;

“**Delivery Dates**” means the delivery dates for the Deliverables specified in a clause 5B of Schedule 2 (if any);

“**Embedded Personnel**” means Personnel whose regular attendance at Transpower’s or a third party’s premises is required as part of the Services (if any);

“**Estimated T&M Services Fee**” means the estimated T&M Services Fee specified in clause 8 of Schedule 3 (if any);

“**Expiry Date**” means the date specified in clause 3 of Schedule 1, or if no date is specified, 12 months after the Commencement Date;

“**Fixed Services Fee**” means the fixed fee for Services specified in clause 7 of Schedule 3;

a “**Force Majeure Event**” affecting a party means a circumstance or event beyond the control of the party, but excludes:

- (a) the party’s or its Affiliates’ internal labour disputes;
- (b) illness, accident or physical incapacity affecting the party or its Affiliates; and
- (c) the party’s or its Affiliates’ lack of financial means;

“**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence, foresight and economic management that would reasonably be expected from a skilled and experienced provider of the Services;

“**GST**” means goods and services tax under the Goods and Services Tax Act 1985 (or any similar tax levied in substitution);

“**Health and Safety Law**” means the Health and Safety at Work Act 2015;

“**IPR**” means patents, trade marks, copyright, moral rights, design rights, database rights, goodwill, rights to protect personal images, rights to protect confidential information and all other intellectual property rights whether or not registered or capable of registration and whether existing, or coming into existence, in New Zealand or any other part of the world;

“**Key Personnel**” means the key personnel specified in clause 6 of Schedule 3 (if any). If the Contractor is an individual, he/she is deemed to be Key Personnel even if the Contractor is not specified as such in clause 6 of Schedule 3;

“**Law**” means any law, including any statute, regulation, deemed regulation, Order in Council, ordinance, by-law, judgment, binding ADR ruling, rule of common law or equity and rule of an applicable stock exchange;

“**Milestones**” means:

- (a) for a Fixed Services Fee, the milestones for payment of the Fixed Services Fee specified in clause 7A of Schedule 3 or, if no milestones are specified in clause 7A of Schedule 3, Completion; and
- (b) for a T&M Services Fee (in arrears), the first day of each month and Completion;



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"Personnel" means all employees of the Contractor and Subcontractors that are assigned to perform the Services. If the Contractor or a Subcontractor is an individual, he/she is deemed to be Personnel;

"Security Obligations" means the Contractor's obligations under clauses 6.1(c), 6.1(d), 6.3, 6.4, 10 and 11 and under clause 6.5 in respect of Subcontractor and Personnel compliance with the former obligations;

"Services" means:

- (a) the services specified in clause 4 of Schedule 2; and
- (b) the provision of the Deliverables to Transpower before Completion and on or before the Delivery Dates;

"Services Fee" means the fee for the Services, which may be either a T&M Services Fee or a Fixed Services Fee;

"Subcontractors" means all of the Contractor's subcontractors for the provision of the Services;

"T&M Rates" means the hourly, daily or other rates for the Personnel specified in clause 8B of Schedule 3;

"T&M Services Fee" means a fee for Services calculated in accordance with the T&M Rates on a pro rata basis;

"Transpower" means Transpower New Zealand Limited;

"Wilful Default" means any intentional or reckless default under any provision of this Agreement by the relevant party the consequence of which is other than minor (but shall not include any mistake by the relevant party in the exercise, in good faith and in accordance with Good Industry Practice, of the directions of any relevant governmental or territorial authority or any discretion conferred on the relevant party under this Agreement); and

"Workplace" means a workplace as defined by the Health and Safety at Work Act 2015.

1.2 General Interpretation:

- (a) Unless the context otherwise requires, references in this Agreement to clauses are to clauses in this Schedule 5, and references to Schedules are to Schedules to this Agreement.
- (b) The clause and Schedule headings in this Agreement are for convenience only and are not to affect this Agreement's interpretation.
- (c) References in this Agreement to legislation include:
 - (i) all subordinate legislation under that legislation; and
 - (ii) that legislation and subordinate legislation as amended and in force from time to time and any legislation that consolidates or re-enacts it.
- (d) References in this Agreement to a party include the permitted assignees and novatees of that party's rights or obligations under this Agreement.
- (e) Any conflict between the parts of this Agreement will be resolved by applying the following descending order of precedence:
 - (i) Schedule 4;
 - (ii) Schedules 1, 2 and 3;
 - (iii) this Schedule 5.

2. Term

This Agreement commences on the Commencement Date and continues until midnight on the Expiry Date, unless this Agreement is terminated earlier in accordance with clause 13.

3. Payment

3.1 **Services Fee and Disbursements:** Provided the Contractor has met its obligations under this Agreement, and subject to clause 3.2, Transpower will:

- (a) pay to the Contractor each Services Fee; and
- (b) reimburse the Contractor for any Transpower pre-approved disbursements incurred by the Contractor directly related to the provision of the Services,

in accordance with this clause 3.

3.2 **Exclusions:** Transpower is not obliged to:

- (a) pay any part of a T&M Services Fee that exceeds the relevant Estimated T&M Services Fee; or



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(b) reimburse the Contractor for disbursements that Transpower has not pre-approved or that are not passed on at actual and reasonable cost.

3.3 **GST:** If GST is payable on the supply of the Services, the invoice issued by the Contractor under clause 3.6 must be a valid GST tax invoice and specify the amount of GST payable. Transpower will pay such GST when it pays the relevant Services Fee. All Services Fees and other rates of payment or reimbursement in this Agreement are GST exclusive.

3.4 **Other Taxes:** Except as provided in clause 3.3, the Contractor is solely responsible for the payment of all taxes, duties and levies (including but not limited to income tax and accident compensation contributions) that may be payable in connection with payments made by Transpower under this Agreement or otherwise in relation to the Services or this Agreement. Transpower is not liable for any income or other tax, duty or levy payable by the Contractor, Subcontractors or Personnel.

3.5 **Withholding Tax:** Without limiting the generality of clause 3.4, Transpower may deduct from any payment to be made by Transpower under this Agreement any applicable withholding tax. Transpower's making of such payment less such withholding tax will fully discharge Transpower's obligation to make the payment.

3.6 **Invoicing:** The Contractor will invoice Transpower:

- (a) for the relevant parts of each Services Fee; and
- (b) in arrears for disbursements,

when the relevant Milestones occur or are met. In addition to complying with clause 3.3, each invoice must:

- (c) specify that it is an invoice issued under this Agreement and identify the Transpower purchase order (if any) to which the invoice relates;
- (d) specify the Milestone that has occurred or been met for the part of the Services Fee invoiced;
- (e) if a T&M Services Fee is invoiced, specify the Personnel who have performed the Services, the hours worked by each and their T&M Rates for the T&M Services Fee invoiced;
- (f) specify each disbursement invoiced and its amount; and
- (g) be accompanied by an invoice or receipt as evidence for each disbursement invoiced.

3.7 **Payment:** Subject to clauses 3.8 and 3.9, Transpower will pay the full amount of each valid invoice on or before the 20th day of the month following the month the invoice is received.

3.8 **Disputes:** If Transpower disputes an invoice, Transpower will pay the undisputed amount of the invoice in accordance with clause 3.7 but may withhold the disputed amount of the invoice until the dispute is resolved.

3.9 **Set Off:** Transpower may set off any amount owed by it to the Contractor under or in connection with this Agreement (including under any settlement of a dispute and any court, tribunal or arbitrator award) against any amount owed by the Contractor to Transpower under or in connection with this Agreement, under or in connection with any other contract between the parties or otherwise.

3.10 **Rate Increases by Agreement Only:** For the avoidance of doubt, the Contractor is not entitled to increase the T&M Rates without Transpower's prior written agreement.

4. Quality of Work

4.1 **Performance Standards:** The Contractor must:

- (a) provide the Services on time in accordance with Good Industry Practice;
- (b) comply with Transpower's reasonable instructions in relation to the provision of the Services;
- (c) comply with all Laws relevant to the provision of the Services;
- (d) ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services; and
- (e) provide all equipment and resources necessary to deliver the Services.

4.2 **Exclusion of representations, warranties, etc:** To the extent permitted by law, all guarantees, conditions and warranties relating to the Services, including any that may otherwise be implied by statute or common law, are excluded, except those expressly set out in this Agreement. Without limiting the generality of this clause, the parties agree that the Services are required for the purposes of a business and that the provisions of the Consumer Guarantees Act 1993 are excluded for the Services.

4.3 **Substandard Work:** The Contractor must, if required by Transpower, promptly and at the Contractor's own cost:



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- (a) remedy any work that, in Transpower's reasonable opinion, does not meet the performance standards in clause 4.1; and
- (b) provide Transpower with a written plan for how the remedy is to be effected.

4.4 **Policies:** The Contractor must ensure it is familiar and complies with any Transpower standards and service specifications identified in clause 10 of Schedule 3 (including any updates to them that Transpower provides to the Contractor) in the provision of the Services:

4.5 **Time:** Time is of the essence for the provision of the Services by the Contractor.

5. Health and Safety

5.1 **Contractor's Obligations:** The Contractor must:

- (a) perform its, and ensure that its Personnel perform their, obligations under the Contract in compliance with their obligations under the Health and Safety at Work Act 2015;
- (b) ensure, so far as is reasonably practicable, the health and safety of Personnel while they are performing the Services;
- (c) ensure, so far as is reasonably practicable, the health and safety of other persons is not put at risk from work carried out as part of the Services;
- (d) comply with all reasonable directions of Transpower and Transpower's Workplace health and safety rules and procedures when providing the Services at a Transpower Workplace; and
- (e) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to Transpower to the extent that it relates to, or affects, the Agreement.

5.2 **Concurrent Obligations:** Where both parties have a duty under a health and safety Law in relation to the Services, the Contractor must, so far as is reasonably practicable:

- (a) ensure the health and safety of workers and other persons to the extent of its influence and control; and
- (b) to that end, consult, co-operate with and coordinate activities with Transpower. This includes hazard and incident identification, communication, evaluation, response and notification.

6. Subcontractors and Personnel

6.1 **Personnel:** The Contractor must:

- (a) use the relevant Key Personnel to perform the Services;
- (b) not replace or remove from performing the Services the relevant Key Personnel without Transpower's prior written approval;
- (c) promptly replace or remove from performing the Services any Subcontractor or Personnel, including any Key Personnel, if required by Transpower; and
- (d) if required by Transpower, ensure that any Subcontractor or Personnel completes and returns to Transpower a civil and criminal background check authorisation in a form reasonably required by Transpower.

6.2 **Absences of Embedded Personnel:** The following sub-clauses apply to absences of Embedded Personnel:

- (a) Subject to clause 6.2(b), the Contractor or relevant Embedded Personnel must request all absences. All absence requests must be notified at least 20 Business Days before the first day of the anticipated absence.
- (b) Absence requests are not required for absences occasioned by unanticipated or urgent family needs, accident or illness.

6.3 **Network Access:** The following provisions apply if Personnel have access to any of Transpower's electronic networks:

- (a) The Contractor must ensure all Personnel with remote access to any of Transpower's electronic networks have signed a VPN token use agreement in a form reasonably required by Transpower.
- (b) The Contractor must notify Transpower immediately any Personnel with remote access to any of Transpower's electronic networks ceases to require access to any such network for the purposes of performing the Services.
- (c) The Contractor must maintain a register of all Personnel with access to any of Transpower's electronic networks and provide the register to Transpower on request.
- (d) Transpower may monitor and record the details of any Personnel access to Transpower's electronic networks.



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- (e) The Contractor must co-operate fully with any Transpower audit of or investigation into the activity of any Personnel with access to any of Transpower's electronic networks.
- (f) Transpower may immediately and without notice terminate or suspend any Personnel access to a Transpower electronic network or part of such network, and the Contractor must co-operate fully with Transpower in effecting any such termination or suspension.

The Contractor must obtain all necessary Personnel consents (including under the Privacy Act 2020) to give effect to this clause 6.3.

6.4 **Subcontractors:** The Contractor may not subcontract any of its obligations under this Agreement without the prior written consent of Transpower. The Contractor will retain primary responsibility for the proper performance of all of its obligations under this Agreement that it subcontracts.

6.5 **Compliance with Obligations:** The Contractor must ensure Subcontractors and Personnel comply with this Agreement as if they were party to this Agreement in place of the Contractor.

7. Conflicts of Interest

7.1 **Avoid Conflicts of Interest:** The Contractor must not provide any services to a third party during the term of this Agreement that would represent a conflict of interest in respect of the Contractor's obligations under this Agreement or otherwise be likely to adversely affect the provision of the Services in accordance with this Agreement.

7.2 **Recommendations:** The Contractor must disclose to Transpower any interest or association it has in or with any third party the Contractor recommends to Transpower as a potential supplier of goods or services to Transpower.

8. Property Rights

8.1 **Title:** Title to each Deliverable passes to Transpower:

- (a) on its delivery to Transpower; or
 - (b) when Transpower has paid the Contractor for it,
- whichever is earlier.

8.2 **Transpower Background IPR:** Transpower retains ownership of all IPR in information and material provided by Transpower to the Contractor, including developments to that information and material.

8.3 **Contractor Background IPR:** The Contractor retains ownership of all IPR in information and material already owned by the Contractor at the Commencement Date, or otherwise developed by the Contractor other than in the course of the Services. The Contractor grants to Transpower a perpetual, royalty-free, non-exclusive licence to use as part of the Deliverables any such information or material that is incorporated in the Deliverables.

8.4 **Foreground IPR:** Subject to clause 8.3, Transpower owns all IPR in the Deliverables.

8.5 **Meaning of Use:** In clauses 8.3 and 9.3(b), to "use" includes to possess, copy, modify, distribute to third parties, make available to the public and otherwise exploit.

9. Insurance, Liability and Indemnity

9.1 **Insurance:** The Contractor must maintain professional indemnity and public liability insurance during the term of this Agreement for the amount specified in clause 9 of Schedule 3. If no amounts are specified then for the amounts that, in Transpower's reasonable opinion, are sufficient to cover the Contractor's potential gross liabilities to Transpower and third parties arising from the provision of the Services. The Contractor must provide Transpower with written evidence of such insurance on request.

9.2 **Limitation of Liability:**

- (a) Subject to clauses 9.2(c) and 9.3, each party's liability to the other party for any breach of this Agreement, or otherwise in connection with the Services or this Agreement, is limited in aggregate to the greater of:
 - (i) two times the Services Fee paid and payable; and
 - (ii) \$5,000,000,

in each case whether such liability arises in contract, tort or equity, under an indemnity or by any other legal theory.

- (b) Subject to clause 9.3, neither party will be liable to the other party for any special, indirect or consequential loss or damage, or for any loss of production, profit, revenue, business, contract or anticipated saving, or for any financing costs or increase in operating costs for any breach of this Agreement or otherwise in connection with the Services or this Agreement.



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- (c) The liability limits set out in clause 9.2(a) and 9.3 do not apply to the Contractor where the event or circumstance giving rise to liability for the Contractor is:
- (i) determined to have resulted by the Contractor's fraud or Wilful Default;
 - (ii) determined to have resulted by damage to physical property (excluding any works constructed in relation to, or any rectification work arising from, any design or advice provided by the Contractor in connection with the Services); or
 - (iii) in relation to any unauthorised use by the Contractor of Transpower's IPR or confidential information in breach of this Agreement.

9.3 Indemnity:

- (a) The Contractor will indemnify Transpower against any losses, costs (including reasonable legal costs), damages, liabilities or demands incurred by Transpower arising from:
- (i) loss of or damage to Transpower's or a third party's property caused by any breach of this Agreement, or wrongful (including negligent) act or omission by the Contractor or its Subcontractors or Personnel in the course of providing the Services;
 - (ii) subject to clause 9.4, any claim that Transpower's use of a Deliverable infringes any third party's IPR ("infringement claim");
 - (iii) any breach by the Contractor of the Security Obligations; or
 - (iv) any proceeding, action, claim or demand brought by a third party as a result of any breach of this Agreement, or wrongful (including negligent) act or omission by the Contractor or its Subcontractors or Personnel in the course of providing the Services.
- (b) Subject to clause 9.2(c), the Contractor's liability under this indemnity is limited in aggregate to \$10,000,000. The limitation of liability in clause 9.2(a) does not apply to this indemnity.

9.4 Infringement Claims: The indemnity in clause 9.3(a)(ii) does not apply to the extent an infringement claim relates to any development or modification to a Deliverable not made by the Contractor, a Subcontractor or Personnel, in accordance with the Contractor's, a Subcontractor's or Personnel's instructions or with the Contractor's, a Subcontractor's or Personnel's approval. Transpower will:

- (a) notify the Contractor of any infringement claim as soon as reasonably practicable after Transpower becomes aware of it;
- (b) not make any admission of liability or agree to any settlement of any infringement claim without the prior consent of the Contractor, which consent must not be unreasonably withheld; and
- (c) at the Contractor's expense, provide the Contractor with reasonable assistance to conduct any negotiations or litigation arising from an infringement claim.

The Contractor, on notice to Transpower and at its own expense, is entitled to conduct all negotiations and litigation arising from any infringement claim. The Contractor must keep Transpower continuously informed of the progress of the negotiations or litigation, and must not enter into any settlement of the infringement claim without first consulting with Transpower.

10. Nature of Relationship

The relationship of the Contractor to Transpower is that of an independent contractor. Nothing in this Agreement, and no action taken by either party under or in connection with this Agreement, creates or will create any joint venture, partnership, principal/agent relationship or other analogous co-operative entity or relationship between the parties. Neither party is authorised to bind or represent the other by any conduct or statement, and neither party may hold itself out as being so authorised.

11. Confidentiality

11.1 Disclosure of Confidential Information: A receiving party must not disclose Confidential Information of the disclosing party other than:

- (a) to its Affiliates who need to know the Confidential Information to provide the Services or otherwise exercise or perform rights or obligations under this Agreement;
- (b) to its professional advisers, auditors and bankers;
- (c) as required by law or for the purposes of judicial proceedings;



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- (d) as required by any securities exchange or regulatory or governmental body to which the receiving party is subject or submits;
- (e) as authorised in writing by the disclosing party; or
- (f) as permitted by this Agreement.

This clause 11.1 is subject to clause 11.2.

- 11.2 **Undertakings and Notice:** A receiving party must not disclose Confidential Information of the disclosing party under clause 11.1(a), (b), (e) or (f) unless the receiving party obtains a confidentiality undertaking from the person to whom the Confidential Information is to be disclosed on terms no less onerous than those set out in this clause 11 before disclosing the Confidential Information. Any information to be disclosed in the circumstances set out in clause 11.1(c) or (d) may only be disclosed after notice to the disclosing party, unless the receiving party is prevented from notifying the disclosing party by Law.
- 11.3 **Use of Confidential Information:** A receiving party must not use Confidential Information of the disclosing party for any purpose other than to provide the Services or otherwise exercise or perform rights or obligations under this Agreement.
- 11.4 **Security of Confidential Information:** A receiving party must implement reasonable security safeguards against the unauthorised use or disclosure of Confidential Information of the disclosing party.
- 11.5 **Return or Destruction:** Subject to clause 11.6, a receiving party must promptly return to the disclosing party, or destroy:
 - (a) all Confidential Information of the disclosing party in the receiving party's possession on termination or expiry of this Agreement; and
 - (b) all Confidential Information of the disclosing party that the disclosing party requires the receiving party to return or destroy at any time,and use reasonable endeavours to ensure that any third party to whom the receiving party has disclosed Confidential Information of the disclosing party does the same.
- 11.6 **Right to Retain:** A receiving party may retain Confidential Information of the disclosing party that has been archived electronically in accordance with the receiving party's ordinary business processes. The confidentiality obligations in this clause 11 will continue to apply to such Confidential Information for as long as it is retained.

12. Force Majeure

- 12.1 **Force Majeure:** Neither party will be liable for any delay in meeting or failure to meet its obligations under this Agreement to the extent that:
 - (a) such delay or failure is caused by a Force Majeure Event affecting the party; and
 - (b) the party could not have prevented the delay or failure by the exercise of reasonable care.
- 12.2 **Notification and Reasonable Endeavours to Perform:** If a party is delayed or prevented from meeting its obligations under this Agreement for any reason (whether or not a Force Majeure Event) it must notify the other party of those circumstances as soon as reasonably practicable and take all reasonable steps to resume performance of its obligations at the earliest opportunity, including in the case of the Contractor by engaging or employing alternative Subcontractors (subject to clause 6.4) or Personnel.

13. Termination

- 13.1 **Termination for Convenience:** Transpower may terminate this Agreement by giving at least 10 Business Days notice to the Contractor.
- 13.2 **Termination for Security Reasons or Conflict:** Subject to clause 13.6, Transpower may immediately terminate this Agreement by giving notice to the Contractor if:
 - (a) the Contractor has a criminal record or has been dismissed from any previous employment or engagement for dishonesty, breach of confidence or other serious disciplinary offence;
 - (b) the Contractor breaches any Security Obligation or Conflict Obligation;
 - (c) Transpower reasonably believes that the Contractor otherwise poses a security risk to Transpower; or
 - (d) sub-clause (a) or (c) of this clause applies to any Subcontractor or Personnel.
- 13.3 **Termination for Breach or Insolvency:** Subject to clause 13.6, a party (the "terminating party") may immediately terminate this Agreement by giving notice to the other party (the "defaulting party") if:
 - (a) the defaulting party breaches this Agreement and that breach cannot be remedied, or where the breach can be remedied, the defaulting party does not remedy the breach within 10 Business Days after the terminating party notifies the defaulting party of the breach; or



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- (b) the defaulting party becomes or is deemed to become insolvent, bankrupt or unable to pay its debts in the ordinary course of business, goes into liquidation, has a receiver or statutory manager appointed in respect of it or any material part of its assets, or makes any assignment to, or enters into an arrangement for the benefit of, its creditors.

13.4 **Termination for Force Majeure etc:** Subject to clause 13.6, if by reason of any:

- (a) Force Majeure Event or Events affecting the Contractor; or
- (b) circumstance or circumstances set out in paragraphs (a), (b) and (c) of the definition of Force Majeure Event in clause 1.1 affecting the Contractor or its Affiliates,

the Contractor is unable, or in Transpower's reasonable opinion will not be able, to provide the Services in accordance with this Agreement for a continuous period of at least 20 Business Days, Transpower may immediately terminate this Agreement by giving notice to the Contractor.

13.5 **Termination Rights Exhaustive:** Neither party may terminate this Agreement except as set out in this clause 13.

13.6 **Consequences of Termination or Expiry:** When this Agreement expires or is terminated:

- (a) Transpower will pay the Contractor for all Services provided in accordance with this Agreement up to the time of termination or expiry. Clause 3 applies to the invoicing and payment of any amount payable under this clause 13.6(a), provided that Transpower will not be obliged to pay if the Contractor does not invoice Transpower within 20 Business Days of termination or expiry;
- (b) the Contractor must immediately refund to Transpower any part of the Services Fee Transpower may have paid in advance for Services that have not been provided in accordance with this Agreement before termination or expiry; and
- (c) all the parties' rights and obligations under this Agreement will cease immediately, except for the parties' rights and obligations under those provisions of this Agreement expressly or implicitly intended to survive termination or expiry.

13.7 **Continuing Rights, Liabilities and Remedies:** Termination or expiry of this Agreement will be without prejudice to any rights, liabilities or remedies of either party at the time of termination or expiry.

13.8 **Survival:** Clauses 3.7 to 3.9, 4.3, 6.5, 9.2, 9.3, 10, 11, 13.6 and 14 will survive termination or expiry of this Agreement.

14. Dispute Resolution

14.1 **Disputes to be Negotiated:** Except to the extent a provision of this Agreement requires a different process for a dispute, if a dispute about the Services or this Agreement arises between the parties then the following process applies:

- (a) Either party may give notice of the dispute to the other party (such notice being a "Dispute Notice").
- (b) The Dispute Notice must set out the basis for the dispute.
- (c) The parties must, within 5 Business Days after the non-notifying party receives the Dispute Notice, meet for the purpose of resolving the dispute.
- (d) If:
 - (i) the parties cannot resolve the dispute within 15 Business Days of the first meeting or such longer period as the parties may agree (the "Negotiation Period"); and
 - (ii) the parties have not agreed to refer the dispute to ADR,either party may commence court proceedings in respect of the dispute.

14.2 **Court Proceedings:** Neither party will commence any court proceedings in respect of a dispute:

- (a) if a Dispute Notice for the dispute has not been given;
- (b) before the end of the Negotiation Period for the dispute; or
- (c) before the end of any ADR process the dispute has been referred to, other than to seek urgent interim relief.

14.3 **Negotiations to Continue:** The parties must continue to seek to resolve a dispute by negotiation whether or not the dispute has been referred to ADR.

14.4 **Continued Performance:** Pending resolution of a dispute, the parties must continue to perform their obligations under this agreement.



15. General Provisions

- 15.1 **Not Exclusive and No Minimum:** The Contractor's appointment to provide the Services is not exclusive or preferred either as to the specific Services or services of the same type as the Services. Transpower does not undertake to engage the Contractor to provide any minimum quantity of services or any particular services.
- 15.2 **Assignment:** Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.
- 15.3 **Partial Invalidity:** If any provision of this Agreement is invalid, illegal or unenforceable for any reason, that provision will be severed from this Agreement and the remaining provisions of this Agreement will continue in full force and effect as if the severed provision had never been included.
- 15.4 **Waiver:** Delay or omission by a party in enforcing any provision of this Agreement (in whole or in part) will not be deemed to be a waiver of any of that party's rights or remedies. No waiver of a party's rights or remedies under or in connection with this Agreement will be enforceable against that party unless the waiver is in writing and signed by that party.
- 15.5 **Amendment:** Amendments to this Agreement will not be effective unless they are in writing and are signed by a duly authorised representative of each party.
- 15.6 **Notices:** Any notice or other communication under this Agreement must be in writing and hand delivered or sent by pre-paid post or email to the recipient's Contact Person at the relevant address specified in clause 1 of Schedule 1. A notice or other communication is deemed to have been given and received:
- (a) if hand delivered, on the day of delivery;
 - (b) if sent by pre-paid post, two Business Days after posting;
 - (c) if sent by email, on the date generated by the sender's machine as the date of sending of the email (provided there is no manifest error in such date).
- If the date a notice or other communication is deemed to have been given and received under clause 15.6(a) or (c) is not a Business Day, the notice or other communication will be deemed to have been given and received at the start of the next Business Day.
- 15.7 **Fax and Counterparts:** This Agreement may be executed in two counterparts each of which will be deemed an original, but both of which together will constitute one and the same document. A party may enter into this Agreement by signing any counterpart. This Agreement may be executed by facsimile or other reliable method of electronic reproduction, and each executed reproduction will be deemed an original.
- 15.8 **Entire Agreement:** This Agreement is the whole and only agreement between the parties relating to its subject matter. Each party acknowledges that it has not been induced to enter into this Agreement by any representation made by or on behalf of the other party that is not repeated in this Agreement.
- 15.9 **Governing Law and Jurisdiction:** This Agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters relating to this Agreement.



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Appendix A – Terms of Reference

Appendix 2 – Terms of Reference

Terms of reference for verification of Transpower’s RCP4 proposal

Purpose of this document

1. The purpose of this document is to set out the terms of reference for a Verifier to verify Transpower’s RCP4 proposal.¹
2. Note:
 - 2.1 These terms of reference have been prepared based on the Transpower Capital Expenditure Input Methodology Determination 2012 (Principal Determination), as consolidated on the 29 January 2020 (**Capex IM**) and the Transpower Input Methodologies Determination 2010, as consolidated on 29 January 2020 (**Transpower IMs**).²
 - 2.2 The Commerce Commission (the **Commission**) is currently reviewing the Capex IM and Transpower IMs and will make its final determination in December 2023. The Verifier should have regard to any draft decisions made by the Commission as part of the IM Review 2023.

The Verifier’s role and obligations

3. At a high level, the Verifier’s role and obligations will be:
 - 3.1 engaging with Transpower in an independent manner in accordance with the tripartite deed;
 - 3.2 evaluating whether Transpower’s RCP4 proposed base capex, proposed opex, proposed service measures (including grid output measures as apply under the Capex IM and Transpower IMs) and key assumptions are consistent with an expenditure outcome which represents the efficient costs of a prudent electricity transmission services supplier, having regard to:

¹ Transpower’s RCP4 proposal will cover both its forecast capital expenditure (**capex**) and operating expenditure (**opex**). The requirements for the base capex proposal are governed by the Capex IM, and must include a proposed base capex allowance, proposed listed projects, and proposed grid output measures. Proposed enhancement and development capex over a **base capex threshold** (currently set at \$20m) ‘major capex projects’ is excluded from the verification as it has a separate assessment process; all other capex should be included in the base capex proposal. Capex related to **new investment contracts** is also excluded. The requirements for Transpower’s opex proposal will be set out in an information gathering notice from the Commission to Transpower, likely in February 2023. However, if this is not issued before the verification begins, the Verifier will rely on the RCP3 opex proposal requirements.

² The current Transpower IMs and Capex IM are available at Commerce Commission – Transpower input methodologies (comcom.govt.nz).

- 3.2.1 Good Electricity Industry Practice (**GEIP**) as reflecting the appropriate planning and performance standards for a prudent supplier;³ and
- 3.2.2 the evaluation criteria in Attachment A: Evaluation criteria; and
- 3.3 producing a verification report that meets the requirements in these terms of reference.

Content of verification report

- 4. In the verification report, the Verifier will:
 - 4.1 provide an opinion on whether Transpower's proposed base capex, proposed opex, proposed grid output measures, and key assumptions are consistent with the expenditure outcome described in paragraph 3.2;
 - 4.2 provide an opinion on the extent to which Transpower's relevant policies and governance processes (including Transpower's approach to, and use of, asset health modelling) are consistent with good asset management practice and are directed towards the expenditure outcome described in paragraph 3.2;
 - 4.3 provide an opinion on the extent to which Transpower's relevant policies and governance processes (including those described at paragraph 4.2), on which the proposal or its implementation depend, have been effectively implemented in Transpower's development of its RCP4 proposal;
 - 4.4 provide an opinion on the extent to which Transpower's asset health and network risk modelling informs the expenditure and grid output measures forecasts, consistent with the expenditure outcome described in paragraph 3.2. The Verifier will provide its opinion having regard to the GHD Advisory Expert Opinion Progress Review – Report on asset health and risk modelling, dated 21 October 2022 (required by the section 53ZD notice dated 11 December 2019);
 - 4.5 provide an opinion on the extent to which Transpower has adequately addressed in its proposal its ability to deliver against its proposed base capex and proposed opex during RCP4, taking into account the expected

³ 'Good electricity industry practice' is defined in Part 1 of the Electricity Industry Participation Code 2010 as: **good electricity industry practice** in relation to transmission, means the exercise of that degree of skill, diligence, prudence, foresight and economic management, as determined by reference to good international practice, which would reasonably be expected from a skilled and experienced asset owner engaged in the management of a transmission network under conditions comparable to those applicable to the **grid** consistent with applicable law, safety and environmental protection. The determination is to take into account factors such as the relative size, duty, age and technological status of the relevant transmission network and the applicable law [bold terms in original].

availability of Transpower and external resources required to deliver the proposed work;

- 4.6 provide an opinion on the extent and effectiveness of Transpower's consultation with its stakeholders;
- 4.7 provide an opinion on the extent to which Transpower has considered stakeholder feedback in developing its proposal;
- 4.8 provide a list of the key issues and areas that it considers the Commission should focus on when the Commission evaluates Transpower's RCP4 proposal;
- 4.9 provide an opinion on whether Transpower provided the Verifier with the type and depth of information it needed to provide its verification report; and
- 4.10 identify any other information not included in the RCP4 proposal that the Verifier reasonably believes would:
 - 4.10.1 be available to Transpower; and
 - 4.10.2 assist the Commission's evaluation of Transpower's RCP4 proposal.

Key process matters

5. The Verifier will carry out its role under a tripartite deed between the Verifier, Transpower and the Commission. This will allow the Commission to communicate with the Verifier during the verification process.
6. Transpower will provide the Verifier with information on its RCP4 expenditure and quality proposal at the beginning of the verification process. Transpower will endeavour to have the majority of information available to the Verifier at the beginning of the verification process.
7. Within one month of the beginning of the verification process, the Verifier will assess the information, and identify any areas of material expenditure or grid output measures where further information will be required from Transpower and/or any areas where it considers it may provide a conditional opinion based on its expertise. The Verifier will then report these initial findings to Transpower and the Commission so there can be timely further provision of information and the Commission can consider if an additional subject matter expert should be engaged.
8. Information may be provided subsequently as it is completed by Transpower or at the Verifier's request.
9. As soon as reasonably practicable after the engagement of the Verifier, Transpower and the Verifier will agree a timeline for the verification process.

This will set out what information Transpower will provide to the Verifier and when.

10. In carrying out its verification work, the Verifier will engage with Transpower on an ongoing basis.
11. In preparing the verification report, the Verifier will follow the process below:
 - 11.1 the Verifier will first produce a draft verification report.
 - 11.2 the draft verification report will be provided to Transpower, to give Transpower the opportunity to comment on the draft report and take account of the Verifier's draft comments prior to submitting its RCP4 proposal to the Verifier for final verification.
 - 11.3 the draft verification report will also be made available to the Commission to assist the Commission in planning for how it will evaluate the RCP4 proposal. The Commission may provide comments on the draft report (with a view to ensuring the final report meets the Commission's needs for its later evaluation of Transpower's RCP4 proposal) but the Commission does not intend to provide comments on Transpower's RCP4 proposal at this point.
12. The Verifier may update its draft report to take account of any responses or further information provided by Transpower or any changes Transpower may make to its RCP4 proposal.
13. The Verifier will provide Transpower with its final verification report so that Transpower can submit it to the Commission with Transpower's RCP4 proposal. Transpower must submit its proposal to the Commission no later than 1 December 2023.
14. Transpower will highlight any matters in its RCP4 proposal where it maintains a different view from that of the Verifier.
15. It is anticipated that the Commission will meet with and/or ask questions of the Verifier after Transpower submits its RCP4 proposal to confirm the Commission's understanding of the verification report and to inform the Commission's plan for its evaluation of Transpower's RCP4 proposal.
16. It is anticipated that the Verifier's findings will help inform a process and issues paper that the Commission will publish to invite stakeholder comment on Transpower's RCP4 proposal. As part of this paper the Commission anticipates consulting on the extent to which it should rely in its evaluation of the RCP4 proposal on the Verifier's findings.
17. It is anticipated that the weight that the Commission attaches to the verification report will depend (amongst other things) on the level of engagement of the Verifier at each stage of the RCP4 proposal development and the robustness of

the analysis and information on which the Verifier relied in preparing the report, taking account of the evaluation criteria (specified in Attachment A).

What the Verifier will review (scope of work)

18. In preparing its verification report, the Verifier will review:
 - 18.1 Transpower's proposed opex and base capex, with emphasis on identified programmes (as defined in the Capex IM), broken down into the following expenditure types or such further agreed types:
 - 18.1.1 opex;
 - 18.1.2 replacement and refurbishment capex;
 - 18.1.3 enhancement and development (E&D) capex;
 - 18.1.4 information system and technology assets opex and capex; and
 - 18.1.5 business support capex;
 - 18.2 Transpower's proposed grid output measures;
 - 18.3 to the extent that Transpower proposes the inclusion of listed projects, whether its proposed listed projects meet the criteria specified in clause 2.2.2(7) of the Capex IM;
 - 18.4 to the extent that Transpower includes low incentive rate base capex projects (as defined in the Capex IM) in its RCP4 proposal, whether those projects should be specified by the Commission as low incentive rate base capex projects;
 - 18.5 the extent to which Transpower adequately demonstrates that its RCP4 proposal is consistent with the relevant Input Methodologies;
 - 18.6 the extent of Transpower's stakeholder engagement (including on grid output measures) and how Transpower has incorporated stakeholder feedback;
 - 18.7 whether any E&D base capex projects or programmes included in Transpower's RCP4 proposal are subject to such uncertainty of timing or amount that the Verifier recommends to the Commission that it should not include them in the base capex allowance, with the view that Transpower would apply for reconsideration of the IPP for eligible E&D projects during RCP4 in accordance with the Transpower IM determination. For any such projects or programmes, the Verifier should also provide its view on Transpower's proposed arrangements for the E&D base capex projects or programmes; and

- 18.8 whether any base capex projects or base capex programmes included in Transpower's RCP4 proposal are subject to uncertainty such that the Commission should consider making those projects or programmes subject to an uncertainty mechanism.
19. The Verifier will not review issues relating to the form of control (eg, smoothed price path and reopener provisions, application of the listed projects mechanism, processes for annual forecast MAR updates).

How the Verifier will perform the review (process of work)

20. In preparing its verification report, the Verifier will have regard to the identified evaluation criteria specified in Attachment A and the following as relevant:
 - 20.1 Transpower's policies and processes;
 - 20.2 Transpower's application of its policies and processes;
 - 20.3 Transpower's strategic documents (including Transmission Tomorrow, Whakamana i Te Mauri Hiko and Electrification Roadmap);
 - 20.4 the consistency of Transpower's RCP4 proposal with the strategies set out in the strategic documents;
 - 20.5 information supplied by Transpower to the Verifier in the course of the verification process;
 - 20.6 the proportionate scrutiny principle;⁴
 - 20.7 Schedule F of the Capex IM, which specifies the qualitative information Transpower must provide as part of its base capex proposal;
 - 20.8 Transpower's performance in RCP1, RCP2 and RCP3; and
 - 20.9 international best practices where appropriate in a New Zealand context.
21. For the avoidance of doubt, the Verifier is not required to audit the quantitative information in Transpower's RCP4 proposal. But it is expected that the Verifier will ascertain and conclude on the effectiveness of the process used to assemble the quantitative information that informs the RCP4 proposal (consistent with paragraph 4.4 above).
22. Identified evaluation criteria are specified in Attachment A to these terms of reference to provide both Transpower and the Commission with more certainty about how the Verifier will evaluate Transpower's RCP4 proposal.

⁴ The principle that the level of scrutiny applied should generally be commensurate with the price and quality impact on consumers of the aspect of the proposal being scrutinised.

23. The Verifier and Transpower will agree directly the communication protocols regarding the sourcing and use of information from Transpower by the Verifier.

Attachment A: Evaluation criteria

Purpose

This attachment provides more detail on the evaluation criteria that the Verifier is to apply in undertaking the verification.

The evaluation criteria for the **base capex proposal** largely reflect the evaluation criteria in Schedule A of the Capex IM, which the Commission must apply when assessing Transpower's **base capex proposal**.

The Verifier should have regard to the requirements in Schedule F of the Capex IM, which sets out the qualitative information the **base capex proposal** and **opex proposal** must contain.

The evaluation criteria for the **opex proposal** are likely to be consistent with those for the **base capex proposal** where appropriate and include further criteria that are specific to assessing opex proposals. While some of the criteria below apply just to base capex, others just to opex, and some to both, the Verifier should, where relevant, consider opex and base capex together, given the potential cost trade-offs between opex and base capex.

In applying these evaluation criteria, the Verifier should exercise its professional judgement about the relative consideration to give to each criterion, having regard to the proportionate scrutiny principle described at paragraph 20.6 above.

Where reasonable, within the verification timeline, the Verifier should take account of any draft or final amendments to the Transpower IMs or Capex IM proposed or made by the Commission as part of the IM Review 2023.

Definitions

Terms in bold are defined in the Capex IM.

Evaluation criteria

A1 General evaluation of the base capex proposal and the opex proposal

The Verifier will have regard to the following factors when evaluating the **base capex proposal and the opex proposal**:

- (a) the reasonableness of the **key assumptions** relied upon, including-
 - (i) the method and information used to develop them;
 - (ii) how they were applied;
 - (iii) their effect on the proposed **base capex** and their effect on **proposed opex**.
- (b) whether **policies** regarding the need for, and prioritisation of, **projects** and **programmes** demonstrate a risk-based approach

consistent with good asset management practice and are directed towards achieving cost-effective and efficient solutions;

- (c) the dependencies between the proposed **grid output measures** and the proposed **base capex** and proposed opex at the level of the **grid** and for each **base capex category and opex category**;
- (d) the dependencies between the proposed **grid output targets** and the proposed **base capex** and proposed opex at the level of the **grid** and for each **base capex category and opex category**;
- (e) the extent to which the **grid output targets** were met in the previous **regulatory period**;
- (f) the overall deliverability of the proposed **base capex and opex** during the current **regulatory period**;
- (g) the reasonableness and adequacy of any models used, including but not limited to asset replacement models, to prepare the proposed **base capex and proposed opex** including-
 - (i) inputs to the model; and
 - (ii) the methods used to check the reasonableness of the forecasts and related expenditure;
- (h) the reasonableness of the **key assumptions**, key input data and forecasting methods used in determining demand forecasts;
- (i) the appropriateness of using those demand forecasts and **other key assumptions** in determining the proposed **base capex and proposed opex**;
- (j) the extent to which Transpower has demonstrated the type of efficiency improvements obtained in the current and previous **regulatory periods**; and
- (k) the extent to which Transpower has demonstrated the scope for efficiency improvements during the **regulatory period** in question.

A2 Specific evaluation of the opex proposal

In addition to the criteria provided above in clause A1, when evaluating the **opex proposal**, the **Verifier** will review and assess:

- (a) any other opex drivers not covered by the key assumptions that have contributed to the proposed opex, and whether the opex associated with these drivers is consistent with the expenditure outcome described in paragraph 3.2;
- (b) the reasonableness of the methodologies used in establishing the proposed opex (such as cost benchmarking or internal historic cost trending), including the relationship between the proposed opex and the proposed **base capex**;

- (c) the reasonableness of any opex reduction initiatives undertaken or planned during the current **regulatory period** or RCP4; and
- (d) the reasonableness of any efficiencies built into the proposed opex including as a result of the investment programme carried out under RCP1, RCP2 and RCP3.

A3 Evaluation of identified programmes

In evaluating the **base capex proposal** and the **opex proposal**, the Verifier will undertake a review of each identified programme (as determined in accordance with the identified programmes criteria agreed by the Commission and Transpower by 28 February 2023 in accordance with clause 2.2.1(1)(b) of the Capex IM), and such a review may include evaluation of at least-

- (a) whether **policies** regarding the need for the **identified programme** and its priority demonstrate a risk-based approach consistent with good asset management practice and were applied appropriately;
- (b) whether other relevant **policies** and planning standards were applied appropriately;
- (c) **Transpower's** process to determine the **identified programme's** reasonableness and cost-effectiveness;
- (d) **Transpower's** internal processes for challenging a need for an **identified programme** and the possible alternative solutions;
- (e) how **grid outputs**, key drivers, assumptions, and cost modelling were used to determine its forecast **capital expenditure**;
- (f) the capital costing methodology and formulation, including unit rate sources and the quantum of included contingencies;
- (g) the effect of its forecast **capital expenditure** on other cost categories, including the relationship with **operating expenditure**;
- (h) the effect of its forecast **operating expenditure** on other cost categories, including the relationship with **capital expenditure**;
- (i) links with other **projects** or **programmes**, whether proposed or in progress; and
- (j) the proposed approach to procurement of associated goods and services.

A4 Evaluation techniques

In undertaking its evaluations, the Verifier may employ one or more of the following techniques:

- (a) process benchmarking;
- (b) process or functional modelling;
- (c) trending or time-series analysis;

- (d) high level governance and process reviews;
- (e) internal benchmarking of forecast costs against costs in the current period;
- (f) project and programme sampling;
- (g) critiques or independent development of-
 - (i) demand forecasts;
 - (ii) labour unit cost forecasts;
 - (iii) materials forecasts;
 - (iv) plant forecasts; and
 - (v) equipment unit cost forecasts; and
- (h) any other technique or approach that the **Verifier** considers appropriate in the circumstances.

A5 Criteria for considering proposed grid output measures

The **Verifier** will take into account at least the following criteria in considering **grid output measures**:

- (a) the extent to which a measure is a recognised measure of either or both of the following things:
 - (i) risk in the **supply of electricity transmission services**; and
 - (ii) performance of the **supply of electricity transmission services**;
- (b) the relationship between a measure, **base capex, major capex and operating expenditure** including the extent to which the relationship can be quantified; and
- (c) the extent to which the measure aligns with the business processes used by **Transpower** in its **supply of electricity transmission services**.

A6 Criteria for considering proposed revenue-linked grid output measures

In addition to the criteria specified in clause 5, the **Verifier** will take into account at least the following criteria in considering **revenue-linked grid output measures**:

- (a) the extent to which a measure is a recognised measure of **grid outputs** that are valued by **consumers**;
- (b) the strength of the relationship between a measure and **base capex**; and
- (c) whether a measure is quantifiable, controllable by **Transpower**, auditable and replicable over time.

A7 Criteria for considering matters relating to **revenue-linked grid output measures**

The **Verifier** will take into account at least the following criteria in considering **caps, collars, the grid output incentive rate and grid output targets** in respect of each **revenue-linked grid output measure**:

- (a) the value that **consumers** place on that **grid output measure** and the relationship between this value and the proposed **grid output incentive rate**;
- (b) quantification of relationship between **base capex** and the **grid output** both-
 - (i) within the **regulatory period** in question; and
 - (ii) over the longer term;
- (c) the extent of the likely effect of factors unrelated to investment that may affect the **grid output**, such as-
 - (i) natural degradation in asset condition;
 - (ii) impact of changes in loading of the **grid**; and
 - (iii) extreme weather events;
- (d) the plausible range of **grid outputs** likely to be delivered taking into account factors described in paragraphs (b) and (c);
- (e) the relationship between the range described in paragraph (d) and the proposed **caps and collars**; and
- (f) the impact on return on capital implied by both the range described in paragraph (d) and the application of the proposed **cap, collars and grid output incentive rate**.

A8 Criteria for considering **low incentive rate base capex**

Where the **Verifier** considers that a **base capex project or base capex programme** proposed by **Transpower** as a **low incentive rate base capex project** is likely to require **capital expenditure** greater than the **base capex threshold**, it will take into account at least the following criteria in evaluating whether the **base capex project or base capex programme** should be specified by the Commission as a **low incentive rate base capex project**:

- (a) whether there are viable alternatives that meet the same **investment need**; and
- (b) the magnitude of cost uncertainty of the **base capex project or base capex programme**.

A9 Criteria for considering **base capex allowance adjustment mechanism**

Where the **Verifier** evaluates whether any **E & D base capex projects or E & D base capex programmes** are subject to uncertainty such that a **base capex allowance adjustment mechanism** should be specified by the Commission in

respect of such projects or programmes, the Verifier will take into account at least one of the following criteria:

- (a) the cost and timing uncertainties of any individual **E & D base capex project** or **E & D base capex programme**;
- (b) the extent to which any timing uncertainties of an **E & D base capex project** or **E & D base capex programme** are linked to a certain level of demand or connecting new generation;
- (c) any other relevant drivers of **E & D base capex** that may influence **project** or **programme** need or uncertainty.

A10 Criteria for considering listed projects

Where the Verifier evaluates whether a **base capex project** or **base capex programme** meets the criteria specified to qualify as a **listed project**, the Verifier will assess whether it is a **base capex project** or **base capex programme** that meets all of the following criteria in accordance with clause 2.2.2(7) of the Capex IM:

- (a) will require **capital expenditure** greater than the **base capex threshold**;
- (b) is reasonably required by **Transpower**;
- (c) has at least one asset that is likely to be **commissioned** in the **regulatory period**;
- (d) for which the **base capex** forecast to be incurred is in relation to **asset replacement**, **asset refurbishment**, or both **asset replacement** and **asset refurbishment**;
- (e) has an anticipated commencement date within the **regulatory period** but that cannot be forecast with specificity; and
- (f) is not already accommodated in the proposed **base capex** for the **regulatory period**.

A11 Evaluation of other uncertainty mechanisms

To the extent a **base capex project**, a **base capex programme**, or **base opex** is subject to uncertainty and where Transpower proposes new uncertainty mechanisms that are not currently identified in the Transpower IMs or the Capex IM, the Verifier should evaluate whether:

- (a) having applied the general and specific evaluation criteria, the expenditure is sufficiently uncertain at the time of the RCP4 proposal that it requires a separate uncertainty mechanism;
- (b) the proposed allocation of risk between Transpower and its customers is appropriate;
- (c) the proposed mechanism is suitable;

- (d) the proposed mechanism is proportionate in regard to the materiality, administrative burden, and ease of implementation; and
- (e) the proposed expenditure is sufficiently separable from other expenditure areas and/or uncertainty mechanisms.

After an initial review of the proposed mechanisms by the Verifier and taking into account consultation with the Commission and with Transpower, the Verifier should also have regard to any additional criteria as specified by the Commission.