

Draft Transpower Works Agreement

Key stakeholder consultation, November 2015

Part 1 – Guide to our intentions and process

The review - our intention

We are in the process of updating our customer contracts such as Customer Investment Contracts (CICs), Line Deviation Agreements (LDAs), Detailed Solution Design Agreement (DSDs), Minor Works Agreements, and other work performed by Transpower for customers.

Our intention is to combine all these contracts into one document with schedules that can be swapped in and out as appropriate. This will be called the *Transpower Works Agreement*.

The first step is to prepare a base document to replace the current CIC. Once we have finalised the base *Transpower Works Agreement* we can add in the flexibility to incorporate the other contract structures.

Our overarching intention is to modernise our customer contracts, and to achieve clarity and reduce customisation so all parties find the contract process more streamlined and useful.

Our intended process and timeframe is as follows:

1.	Prepare base <i>Transpower Works Agreement</i> – without pricing. Consult key stakeholders	completed
2.	Consider key stakeholder feedback and make any necessary revisions	completed
3.	Undertake internal pricing review	completed
4.	Release base <i>Transpower Works Agreement</i> – with pricing – for broad customer constitution	November 2015
5.	Consider customer feedback and make any necessary revisions	February/March 2016
6.	Seek Transpower General Management Team and then Board approval for base <i>Transpower Works Agreement</i>	March/April 2016
7.	Communicate to customers and Transpower	April 2016
8.	Use new contract for all new investment projects	April 2016
9.	Stage 2: Review Line Deviation Agreements (LDAs), Minor Works Agreements, Detailed Solutions Development (DSDs) and any other agreement relating solely to where Transpower carries out work for Customers, to consolidate these into the <i>Transpower Works Agreement</i> .	Project starting in May 2016.

Request for feedback

We seek your feedback about the attached draft base *Transpower Works Agreement* (to replace the current CIC) document by 28 February 2016. Please respond to your Customer Solutions Manager

directly. The format is up to you and we are open to you commenting directly into the draft using track changes, or providing a separate email/table response.

We have already received, and incorporated, feedback from the key stakeholders who will use this agreement most frequently. We significantly changed the draft *Transpower Works Agreement* as a result of their feedback and continue to be open to ideas to improve it.

Once the *Transpower Works Agreement* has the approval of the Transpower Board, we will expect a minimum level of customisation or negotiation.

Part 2 – Guide to terms and conditions

Background

The attached draft *Transpower Works Agreement* replaces the current CIC but we've expanded it in this document to make it multipurpose. We can now use it when Transpower carries out work for customers whether or not that work is an "investment in the grid". It will become even more multipurpose when we build in the LDA and other contract work structures later.

For work that has traditionally been under a CIC, we will use schedule 7 (although this may change following the EA's TPM review in 2016). For non-grid investment work we will replace schedule 7 with a simpler schedule like the one we currently use in the Minor Works and other agreements.

We have changed the structure of the agreement:

- Schedules are at the end, will be customised, and contain everything that is likely to interest customers.
- Terms and conditions are at the front, are more generic, and may only interest the lawyers. Definitions are at the end of this part.

We have made the deliverables more flexible to accommodate changing needs and developing solutions. Transpower's key obligation is to deliver agreed Project Outcomes, and this also applies when Transpower updates any componentry it considers needs repair or replacement.

One significant change is that we've replaced WACC with a finance rate agreed at the outset by the parties. This reflects changes in the way that we price commercial service across all our contracts.

We have added some new schedules in recognition that projects may involve property and environmental considerations – sometimes as preconditions to the agreement preceding. We have been inserting these on a case by case basis for some time, but now include them as a standard part of the template. We can remove them if not required.

Text in blue is optional.

The table on the following page gives a step by step explanation of each clause and relevant changes to substance. We have made substantial changes to language to modernise the agreement but don't consider that these changes require explanation unless customers have a specific query.

Please see the following table and feel free to contact your Customer Solutions Manager with any queries necessary before you provide your feedback.

If you would like to see the changes we made as a result of the first round of consultation with key stakeholders please ask and we can send you a version with these changes marked up.

Table of changes

Clause	Explanation	Relevant change (compared to the current CIC agreement)
1. Scope of Agreement	“Works” means the services and plant set out in schedule 1	The agreement now includes services provided by Transpower as well as “plant”
2.1 Works	Transpower will use reasonable endeavours to achieve the Project Outcomes, meet the delivery timeframe and perform the works within the Budget.	<p><i>(Old clause 3.1)</i> Transpower’s previous obligation was to install the plant in the manner, configuration and service levels set out in the schedules. This didn’t provide any flexibility if things changed. The change introduces more flexibility and encourages the parties to reach agreed outcomes.</p> <p>Secondly, Transpower was previously required to meet the project timeframe. But there weren’t any consequences if it didn’t. The new wording is more transparent. We would only take responsibility for timing in exceptional circumstances where there is a clear need for a unique solution. But we have increased our reporting responsibilities and consider this an improvement. There is more about budget and reporting in schedule 4.</p>
2.2 Replacement Works	Transpower has discretion in deciding how to respond to failed componentry but must use reasonable endeavours to continue to achieve the Project Outcomes.	<p><i>(Old clause 3.7)</i> The old replacement clause only covered major plant. We have extended it to cover all plant. (Note this discussion isn’t about Transpower enhancing/upgrading assets under its own project or opex work to which TPM charges apply.)</p> <p>The old clause also had different processes for replacement depending whether plant expired before or after 90% of its life expectancy. On review this seemed arbitrary. The reality was that Transpower replaced any plant, major or not and regardless of lifecycle, where outcomes required this. The new clause more transparently reflects this reality.</p> <p>If Transpower prefers not to replace a component, there is still a process for the parties to try to agree an alternative, and an option for the customer to terminate if it doesn’t agree.</p> <p>The effect of this clause is that Transpower takes on the risk of replacing faulty plant over the whole term of the agreement well beyond the period of any manufacturers’ warranty.</p> <p>One of the messages from key stakeholders is that they wanted Transpower to continue to replace components at no cost to the customer. In reality, this would</p>

		mean all NZ consumers paying to replace the customer’s asset. This is not acceptable going forward. Our suggested solution is to factor into the Finance Rate the risk of replacing faulty plant effectively meaning that the Customer insures against this at a lower rate that takes into account the likelihood of this occurring, and that is negotiable before the agreement is signed.
3 Customer Obligations	New clause, self-explanatory	The Customer had no explicit obligations under the CIC although the obligations in clauses 3.1(a), (b) and 3.2(a) would have been implied. 3.2(c) is a signpost to an existing obligation in the Benchmark Agreement that is often overlooked. The other two obligations only arise where there are particular property or environmental considerations.
4 Health and Safety	New clause, self-explanatory	Health and Safety will have an increased focus under the new laws, with how we achieve safety in practise being the key focus.
5 Works Part of Grid	No change to substance	<i>(Old clauses 3.5 and 3.6)</i> If a customer specifically requests ownership of particular assets then we would detail this here. This is rarely used and we do not propose to draft provisions for this now. The second part of clause 5.2(d) is a signpost to an existing obligation in the current TPM.
6 Charges and Payment	Invoicing and Payment is now as per the Benchmark Agreement.	<i>(Old clause 5)</i> Stakeholders suggested that we align the invoicing and payment processes with those in the Benchmark Agreement. We agree and have incorporated the relevant provisions here.
7 Variation	There are several different types of change, all treated slightly differently: <ul style="list-style-type: none"> - Regulatory change - Change in budget - Change in finance rate - Change in Details of Works in Schedule 1 - Other change to agreement - Change to timeframe 	7.2 compares to <i>old clause 8</i> . We have deleted a related provision, clause 2.3(l), as we think that the risk is not material enough to warrant inclusion. There are specific variation processes for regulatory change (clause 7.2 and para 3.2 of Schedule 7), change in finance rate (para 3 of Schedule 4), and change in budget (para 1 and 2.3 of schedule 4). The process for regulatory change should be easier to follow without changing the substance of how these variations used to work. Changes to the budget of 10% or more require a variation. Changes less than this require detailed consultation. Changes to the Works in Schedule 1 require a variation with the timeframe in paragraph 4 of Schedule 4 to ensure these important changes occur promptly. A change to the indicative timeframe does not require a variation but is subject to reporting obligations and requires detailed consultation. All other changes to the agreement require written agreement.

<p>8 Termination</p>	<p>The termination clauses are generally similar except that we have expanded on what happens after early termination.</p> <p>The “Accelerated Payment Charge” is the old Early Expiration Charge. We think the new name is more transparent given that it is a charge for the full amount of the payments that would be due over the life of the agreement.</p>	<p>Compare <i>old clauses 6 and 7</i>.</p> <p>Clause 8.1 is old clause 6.1 and unchanged in substance. The only change in 8.2, 8.3 and 8.4 (as compared to old clause 7.1) is 8.2(a), which is not controversial.</p> <p>Clause 8.5 is based on the old clause 7.1(i) but expanded to be transparent about costs, although cost arrangements did occur under the old contract.</p> <p>Clause 6 is based on the old paragraph 2.1 of Schedule 4, and the circumstances in which the charge would be payable are generally the same. The key difference is the change around the Customer satisfying Transpower that the charge would be unreasonable. Previously whether it applied or not was arbitrary. The effect of clause 8.6 is that if the agreement ends early, the customer must generally pay any outstanding charges and the “Accelerated Payment Charge”. The Customer won’t have to pay the Accelerated Payment Charge if:</p> <ul style="list-style-type: none"> - the agreement ends before the commissioning date - the customer satisfies Transpower that it would be unreasonable to pay the full Accelerated Payment Charge (eg if the parties can’t reach agreement on overcoming an illegality, due to force majeure, or if the parties can’t reach agreement on what to do about failed equipment.) <p>If the Customer doesn’t have to pay the Accelerated Payment Charge it will still have to pay Transpower’s accrued costs, which Transpower must mitigate.</p> <p>Payment of the Accelerated Payment Charge was <i>previously in clause 2 of schedule 4</i> and is now in Schedule 8. The changes include incorporating costs for dismantling or remediation if required (previously implied, not explicit), preventing any double dipping, and requiring Transpower to mitigate its costs.</p>
<p>9 Consumer Guarantees Act</p>	<p>The Consumer Guarantees Act does not apply because the Works are supplied for a business purpose.</p>	<p>This is a new clause.</p>
<p>10 Conditions</p>	<p>If there are any conditions, they will be set out in schedule 3.</p>	<p><i>Old clause 3.4</i> only had one condition precedent relating to all consents being obtained and current. The change expands the list of possible conditions which the parties may choose to use, depending on the specific facts. The consequence of non-satisfaction of a condition is largely unchanged.</p>

11 Other Agreements	Clause (a) is self-explanatory. Clause (b) is a Commerce Commission requirement which we need to retain. Clause (c) is an option if a customer wants to commute charges in another agreement eg a DSD.	<i>(Old clause 9.2)</i> No change.
12.1 Benchmark Agreement terms	To keep this agreement simple we have incorporated a number of provisions from the Benchmark Agreement which are generally understood by most parties to our investment contracts.	We also used this approach in the old contract, but have added the invoicing and payment provisions and deleted the credit provisions (considering them unnecessary).
12.2 Defined terms	Self explanatory	<p>The key change here is the replacement of WACC with the new concept “Finance Rate” as a result of our current reviewing of the way we price commercial service.</p> <p>The actual rate will be agreed between the parties prior to execution and inserted here. 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). The Finance Rate 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.</p> <p>The Rate may be changed in accordance with schedule 4.</p>
Schedule 1	<p>Part 1 sets out the project’s specific details, i.e. site, works, project outcomes, configuration and delay events.</p> <p>Part 2 sets out the agreement’s specific details, i.e. key dates and addresses</p>	<p>Our intent is that this covers the key practical matters. It is similar to the <i>old schedule 1</i> but more streamlined and split into these two parts.</p> <p>There is a specific process for varying the things in part 1.</p> <p>We have deleted the facsimile option for notices, replacing it with email.</p>
Schedule 2	Budget and timeframe	<p><i>Old appendix 3 and Schedule 2</i></p> <p>We have updated the contents of both tables to match our project managers’ software which will make these systems more efficient while providing customers with more information.</p>

Schedule 3	Conditions (optional)	This schedule is optional. See earlier discussion about clause 10.
Schedule 4	Transpower will provide monthly reports and more information on updated costs than it currently does.	<p><i>Old clause 3.1(d).</i></p> <p>Clause 1.1 has minor changes. Transpower’s obligation to explain and resolve delays is also moved to a separate clause and expanded to more closely involve the customer in developing strategies.</p> <p>Clauses 2.1 and 2.2 are additional reporting options which would only be used if the customer desires them.</p> <p>Clause 2.3 is similar to the old provision (clause 3.2) but the budget variation threshold has increased to 10%. Our experience suggests this is more efficient.</p> <p>Clause 3 is new and sets out the process for varying the Finance Rate if required, including dispute resolution.</p> <p>Clause 4 is new and sets out a process for varying the Works in schedule 1. We have put a timeframe on this specific category of variation as we believe these changes are so significant that they need to be resolved promptly. General changes to the agreement do not have timing constraints.</p>
Schedule 5	Property considerations	New: Optional if the agreement needs to include property issues – this will be specific to the project.
Schedule 6	Environmental considerations	New: Optional if the agreement needs to include environmental issues – this will be specific to the project.
Schedule 7	Charges	<i>Old Schedule 3.</i> This Schedule is only for investment contracts. It is largely unchanged, but replacement of WACC with the “Finance Rate” is significant. We have also added an option to include estimated dismantling /remediation costs in the calculation of Total Costs. This is one of the outcomes of our review of the way we price commercial service. Transpower increasingly faces these costs well after investment contracts have ended and believes these costs should be attributed to the new investment project rather than to all customers.
Schedule 8	Accelerated Payment Charge	<p><i>Old Schedule 4.</i> This Schedule is only for investment contracts. It is largely unchanged, but also introduces the “Finance Rate”. We have added an option to expressly include estimated dismantling /remediation costs in the calculation under (b) (previously implied only).</p> <p>We have added a component (e) to ensure that the customer only pays once if another contract covers the same subject matter.</p> <p>We have also added a duty for Transpower to mitigate its costs (para 1.2(e)).</p>

<p>Other deleted terms</p>	<p>Fixed Charge, Variable Charge Service levels in Transmission Agreement (3.8) Commissioning and testing (clause 4) Limitation of liability in old clause 9.5(b)</p>	<p>These charges were seldom used, so we've renamed the New Investment Charge the "Charge". Service levels are gone – the focus is now on agreed Project Outcomes. We considered the commissioning and testing provisions operational and unnecessary in an agreement that is focussed on payment for the works so have removed the whole section. The usual processes will still apply but it doesn't need to be set out in the contract. Customers didn't understand the limitation of liability provision and often renegotiated it. We consider the better position on liability is to apply the Benchmark Agreement position.</p>
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