



FINAL DECISION CitiPower distribution determination 2016 to 2020

Attachment 17 – Negotiated services framework and criteria

May 2016

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Note

This attachment forms part of the AER's final decision on CitiPower's distribution determination for 2016–20. It should be read with all other parts of the final decision.

The final decision includes the following documents:

Overview

Attachment 1 - Annual revenue requirement

Attachment 2 - Regulatory asset base

Attachment 3 - Rate of return

Attachment 4 - Value of imputation credits

Attachment 5 - Regulatory depreciation

Attachment 6 - Capital expenditure

Attachment 7 - Operating expenditure

Attachment 8 - Corporate income tax

Attachment 9 - Efficiency benefit sharing scheme

Attachment 10 - Capital expenditure sharing scheme

Attachment 11 - Service target performance incentive scheme

Attachment 12 - Demand management incentive scheme

Attachment 13 - Classification of services

Attachment 14 - Control mechanism

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Shortened forms

Shortened form	Extended form
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AMI	advanced metering infrastructure
augex	augmentation expenditure
capex	capital expenditure
CCP	Consumer Challenge Panel
CESS	capital expenditure sharing scheme
CPI	consumer price index
DRP	debt risk premium
DMIA	demand management innovation allowance
DMIS	demand management incentive scheme
distributor	distribution network service provider
DUoS	distribution use of system
EBSS	efficiency benefit sharing scheme
ERP	equity risk premium
Expenditure Assessment Guideline	Expenditure Forecast Assessment Guideline for electricity distribution
F&A	framework and approach
MRP	market risk premium
NEL	national electricity law
NEM	national electricity market
NEO	national electricity objective
NER	national electricity rules
NSP	network service provider
opex	operating expenditure
PPI	partial performance indicators
PTRM	post-tax revenue model
RAB	regulatory asset base
RBA	Reserve Bank of Australia
repex	replacement expenditure

Shortened form	Extended form
RFM	roll forward model
RIN	regulatory information notice
RPP	revenue and pricing principles
SAIDI	system average interruption duration index
SAIFI	system average interruption frequency index
SLCAPM	Sharpe-Lintner capital asset pricing model
STPIS	service target performance incentive scheme
WACC	weighted average cost of capital

17 Negotiated services framework and criteria

The NER requires us to make constituent decisions on:

- the negotiating framework that is to apply to CitiPower (which may be as proposed by the distributor, some variant of it, or a framework substituted by us),¹ and
- a decision on the negotiated distribution service criteria (NDSC) for the distributor.²

CitiPower submitted a negotiating framework as part of its initial regulatory proposal for our consideration.³

The NDSC set out criteria that a distributor must apply in negotiating terms and conditions including the prices for negotiated distribution services. They also contain the criteria that a commercial arbitrator must apply to resolve disputes about such terms and conditions and/or prices. This section sets out our final decision on CitiPower's negotiating framework and NDSC.

17.1 Final decision

Negotiating framework

We approve CitiPower's proposed negotiating framework as it meets the requirements of the NER.⁴ In its revised proposal, CitiPower noted our preliminary decision to accept its proposed negotiating framework, as submitted with its initial regulatory proposal, and apply it in the next regulatory control period.⁵ Therefore, our final decision is to accept the negotiating framework submitted by CitiPower for the 2016–20 regulatory control period.⁶

Negotiated distribution service criteria

Our final decision is to retain the NDSC that we published for CitiPower in May 2015⁷ for the 2016–20 regulatory control period. The NDSC give effect to the negotiated distribution service principles.⁸

¹ NER, cl. 6.12.1(15).

² NER, cl. 6.12.1(16).

³ CitiPower, *Proposed negotiating framework, Regulatory control period commencing 1 January 2016*, April 2015.

⁴ NER, cl. 6.7.5.

⁵ CitiPower, *Revised regulatory proposal*, January 2016, p. 464.

⁶ NER, cl. 6.12.1(15).

⁷ AER, *Proposed Negotiated Distribution Service Criteria for Victorian distributors – period commencing 1 January 2016*, May 2015.

⁸ NER, cl. 6.7.1.

17.2 AER's assessment approach

Negotiating framework

To be approved, a proposed negotiating framework must specify the obligations in clause 6.7.5(c) of the NER. We examined whether CitiPower's proposed negotiating framework has done that.

Negotiated distribution services criteria

We consider NDSC that reflect the negotiated distribution service principles would satisfy the NER. Therefore we assessed whether our proposed NDSC reflect the negotiated distribution service principles in clause 6.7.1 of the NER.

17.3 Reasons for final decision

Negotiating framework

We approve CitiPower's proposed negotiating framework because it specifies the minimum requirements of the NER.⁹ Those requirements include, among other things, a statement that a distributor will negotiate in good faith and a process for dealing with disputes.

Table 17.1 summarises our assessment of CitiPower's proposed negotiating framework. It indicates where in CitiPower's negotiating framework the relevant NER requirements are addressed. Our view is that each of the NER requirements for a negotiated framework is satisfactorily addressed.

⁹ NER, cl. 6.7.5(c).

Table 17.1 AER's assessment of CitiPower's proposed negotiating framework

NER requirements	Requirement addressed in CitiPower's negotiating framework
Requirement for a distributor and applicant ¹⁰ to negotiate in good faith— cl. 6.7.5(c)(1)	Section 2 of CitiPower's framework
Requirement for a distributor to provide all such commercial information reasonably required to enable the applicant of a negotiated distribution service to engage in effective negotiations— cl. 6.7.5(c)(2)	Section 3 of CitiPower's framework
Requirement for a distributor to identify and inform the applicant of the reasonable costs of providing the negotiated service; demonstrate the charges reflect costs and have appropriate arrangements for assessment and review of the charges and the basis on which they are made— cl. 6.7.5(c)(3)	Section 3 of CitiPower's framework
Requirement for the applicant to provide all such commercial information reasonably required for a distributor to engage in effective negotiation— cl. 6.7.5(c)(4)	Section 4 of CitiPower's framework
Requirement to specify a period of time for commencing, progressing and finalising negotiations; and a requirement for each party to use their reasonable endeavours to adhere to those time periods during the negotiation— cl. 6.7.5(c)(5)	Section 6 of CitiPower's framework
Requirement to specify a process for dispute resolution in accordance with the relevant provisions for dispute resolution— cl. 6.7.5(c)(6)	Section 9 of CitiPower's framework
Requirements to specify arrangements for the payment of a distributor's reasonable direct expenses incurred in processing the application to provide the negotiated distribution service— cl. 6.7.5(c)(7)	Section 10 of CitiPower's framework
Requirement for a distributor to determine the potential impact of the provision of a negotiated distribution service on other distribution network users— cl. 6.7.5(c)(8)	Section 5 of CitiPower's framework
Requirement for a distributor to notify and consult with any affected distribution network user and ensure that the provision of the negotiation distribution service does not result in noncompliance with obligations in relation to other network users under the NER— cl. 6.7.5(c)(9)	Section 5 of CitiPower's framework
Requirement that the distributor publish the results of negotiations on its website – cl. 6.7.5(c)(10)	Section 3 of CitiPower's framework

Source: AER analysis.

A copy of CitiPower's framework is at appendix A.

Negotiated distribution services criteria

In May 2015, we published an invitation for submissions on our proposed NDSC for the Victorian distributors including CitiPower. We did not receive any submissions in response to our proposed NDSC. The NDSC we have decided to apply to CitiPower follow:

¹⁰ An applicant or service applicant is the person who wishes to receive a negotiated distribution service. NER, ch. 10.

National Electricity Objective

1. The terms and conditions of access for a negotiated distribution service, including the price that is to be charged for the provision of that service and any access charges, should promote the achievement of the national electricity objective.

Criteria for terms and conditions of access

Terms and Conditions of Access

2. The terms and conditions of access for a negotiated distribution service must be fair and reasonable and consistent with the safe and reliable operation of the power system in accordance with the NER.
3. The terms and conditions of access for a negotiated distribution service (including in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between a distributor and any other party, the price for the negotiated distribution service and the costs to a distributor of providing the negotiated distribution service.
4. The terms and conditions of access for a negotiated distribution service must take into account the need for the service to be provided in a manner that does not adversely affect the safe and reliable operation of the power system in accordance with the NER.

Price of Services

5. The price for a negotiated distribution service must reflect the costs that a distributor has incurred or incurs in providing that service, and must be determined in accordance with the principles and policies set out in the relevant Cost Allocation Method.
6. Subject to criteria 7 and 8, the price for a negotiated distribution service must be at least equal to the cost that would be avoided by not providing that service but no more than the cost of providing it on a stand-alone basis.
7. If a negotiated distribution service is a shared distribution service that:
 - i. exceeds any network performance requirements which it is required to meet under any relevant electricity legislation: or
 - ii. exceeds the network performance requirements set out in schedule 5.1a and 5.1 of the NER,

then the difference between the price for that service and the price for the shared distribution service which meets network performance requirements must reflect a distributor's incremental cost of providing that service (as appropriate).

8. If a negotiated distribution service is the provision of a shared distribution service that does not meet or exceed the network performance requirements, the difference between the price for that service and the price for the shared distribution service which meets, but does not exceed, the network performance

requirements should reflect the cost a distributor would avoid by not providing that service (as appropriate).

9. The price for a negotiated distribution service must be the same for all Distribution Network Users unless there is a material difference in the costs of providing the negotiated distribution service to different Distribution Network Users or classes of Distribution Network Users.
10. The price for a negotiated distribution service must be subject to adjustment over time to the extent that the assets used to provide that service are subsequently used to provide services to another person, in which case such adjustment must reflect the extent to which the costs of that asset are being recovered through charges to that other person.
11. The price for a negotiated distribution service must be such as to enable a DNSP to recover the efficient costs of complying with all regulatory obligations or requirements associated with the provision of the negotiated service.

Criteria for access charges

Access Charges

12. Any charges must be based on costs reasonably incurred by a distributor in providing distribution network user access, and, in the case of compensation referred to in clauses 5.5(f)(4)(ii) and (iii) of the NER, on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs (as appropriate).
13. Any charges must be based on costs reasonably incurred by a distributor in providing transmission network user access to services deemed to be negotiated distribution services by clause 6.24.2(c) of the NER, and, in the case of compensation referred to in clauses 5.4A(h) to (j) of the NER, on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs (as appropriate).

This attachment therefore sets out our constituent decisions on the negotiating framework and NDSC to apply to CitiPower for the 2016–20 regulatory control period.

A CitiPower's negotiating framework



CitiPower Pty

Proposed negotiating framework

**Regulatory control period
Commencing 1 January 2016**

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Background

- A. Clause 6.7.5 of the National Electricity Rules (NER) provides that a *Distribution Network Service Provider (DNSP)* must prepare a document (the *negotiating framework*) setting out the procedure to be followed during negotiations between that DNSP and any person (the *Service Applicant* or applicant) who wishes to receive a *negotiated distribution service* from the DNSP, as to the *terms and conditions of access* for the provision of the service.
- B. The *negotiating framework* must comply with and be consistent with:
 - (a) the applicable requirements of the relevant distribution determination; and
 - (b) paragraph 6.7.5(c) of the NER, which sets out the minimum requirements for a *negotiating framework*.
- C. This document sets out the proposed *negotiating framework* of CitiPower Pty (CitiPower), which has been prepared by CitiPower in accordance with clause 6.7.5 of the NER.

1 Application of *negotiating framework*

- 1.1 CitiPower and any *Service Applicant* who is negotiating for the provision of a *negotiated distribution service* by CitiPower must comply with the requirements of this *negotiating framework* in accordance with its terms.
- 1.2 The requirements set out in this document are additional to any requirements or obligations:
 - (a) contained in clauses 5.3 and 5.5 of the NER insofar as the *negotiating framework* applies to *negotiated distribution services* which would have been *negotiated distribution services* regardless of the operation of clause 6.24.2(c) of the NER;
 - (b) contained in clauses 5.3 and 5.4A of the NER insofar as the *negotiating framework* applies to *negotiated distribution services* which would have been treated as *negotiated transmission services* were it not for the operation of clause 6.24.2(c) of the NER; and
 - (c) contained in any other relevant provisions of Chapter 6 of the NER.

In the event of any inconsistency between this document and the requirements of the NER, the requirements of the NER will prevail to the minimum extent of the inconsistency.
- 1.3 Nothing in this document will be taken as imposing an obligation on CitiPower to provide any service to the *Service Applicant*.

2 Obligation to negotiate in good faith

- 2.1 CitiPower and the *Service Applicant* must negotiate in good faith the *terms and conditions of access to a negotiated distribution service*.
- 2.2 The obligation to negotiate in good faith under clause 2.1 does not:
- (a) create any fiduciary rights or obligations between the parties; or
 - (b) require a party to act contrary to its own commercial interests.

3 Provision of commercial information by CitiPower

- 3.1 The *Service Applicant* may give notice to CitiPower requesting commercial information that the *Service Applicant* reasonably requires to enable it to engage in effective negotiation with CitiPower for the provision of the *negotiated distribution service*.
- 3.2 CitiPower must provide all such commercial information a *Service Applicant* requests in accordance with clause 3.1, being commercial information the *Service Applicant* reasonably requires to enable that applicant to engage in effective negotiation with CitiPower for the provision of the *negotiated distribution service*.
- 3.3 CitiPower must provide to the *Service Applicant*, regardless of whether it is requested by the *Service Applicant* in accordance with clause 3.1:
- (a) the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the *negotiated distribution service*;
 - (b) how the charges for providing the *negotiated distribution service* reflect those costs and/or the cost increment or decrement (as appropriate); and
 - (c) the appropriate arrangements for assessment and review of the charges and the basis on which they are made.
- 3.4 Commercial information to be provided to a *Service Applicant* pursuant to this clause 3 does not include:
- (a) *confidential information* provided to CitiPower by another person; or
 - (b) information that CitiPower is prohibited, by law, from disclosing to the *Service Applicant*.
- 3.5 Commercial information provided to a *Service Applicant* pursuant to this clause 3 may be provided subject to conditions including:
- (a) a condition that the *Service Applicant* must not disclose any part of that commercial information to any other person without the prior written consent of CitiPower; and/or

- (b) a condition that the *Service Applicant* (or any other person to whom the *Service Applicant* seeks to disclose the commercial information) must enter into a confidentiality agreement with CitiPower, on terms reasonably acceptable to both parties before disclosure of the commercial information to that person.

4 Provision of commercial information by Service Applicant

- 4.1 CitiPower may give notice to the *Service Applicant* requesting commercial information that CitiPower reasonably requires to enable CitiPower to engage in effective negotiation with that applicant for the provision of the *negotiated distribution service*.
- 4.2 The *Service Applicant* must provide all commercial information CitiPower requests in accordance with clause 4.1, being commercial information CitiPower reasonably requires to enable the provider to engage in effective negotiation with that applicant for the provision of the *negotiated distribution service*.
- 4.3 Subject to clause 4.5, the *Service Applicant* must use its reasonable endeavours to provide CitiPower with the commercial information requested under clause 4.1 within 10 business days of that request, or within such other time period as agreed by the parties.
- 4.4 The *Service Applicant* must use its reasonable endeavours to provide to CitiPower within 10 business days of the application being provided to CitiPower, and regardless of whether it is requested by CitiPower in accordance with clause 4.1:
 - (a) details of the corporate structure of the *Service Applicant*, financial details relevant to credit worthiness and credit risk and ownership of assets;
 - (b) technical information relevant to the application for a *negotiated distribution service*;
 - (c) financial information relevant to the application for a *negotiated distribution service*;
 - (d) details of the compliance of the *Service Applicant's* application with any law, standard, NER or guideline.
- 4.5 Commercial information to be provided to CitiPower pursuant to this clause 4 does not include:
 - (a) *confidential information* provided to the *Service Applicant* by another person; or
 - (b) information that the *Service Applicant* is prohibited, by law, from disclosing to CitiPower.
- 4.6 Commercial information provided to CitiPower pursuant to this clause 4 may be provided subject to conditions including:

- (a) a condition that CitiPower must not disclose any part of that commercial information to any other person without the prior written consent of the *Service Applicant*, and/or
- (b) a condition that CitiPower (or any other person to whom CitiPower seeks to disclose the commercial information) must enter into a confidentiality agreement with the *Service Applicant*, on terms reasonably acceptable to both parties before the disclosure of the confidential information to that person.

5 Determination of impact on other *Distribution Network Users*

- 5.1 CitiPower must determine the potential impact on *Distribution Network Users*, other than the *Service Applicant*, of the provision of the *negotiated distribution service* to the *Service Applicant*.
- 5.2 CitiPower must notify and consult with any affected *Distribution Network Users* and ensure that the provision of the *negotiated distribution service* to which access is sought by the *Service Applicant* does not result in non-compliance with obligations in relation to other *Distribution Network Users* under the NER.

6 Timeframe for negotiations

- 6.1 The target timeframe for commencing, progressing and finalising negotiations for the supply of a *negotiated distribution service*, as to the *terms and conditions of access* for the provision of the service, is set out in Table 1.
- 6.2 The timeframe set out in Table 1 will not apply where a timeframe is specified in Chapter 5 of the NER in relation to an application for a *negotiated distribution service*.
- 6.3 CitiPower and the *Service Applicant* must use reasonable endeavours to adhere to the timeframe set out in Table 1, as well as to any preliminary program finalised under D. in Table 1, including as amended from time to time in accordance with this clause 6.
- 6.4 The timeframe set out in Table 1 may be suspended in accordance with clause 7.
- 6.5 The timeframe set out in Table 1 may be varied by agreement between CitiPower and the *Service Applicant*, where such agreement must not be unreasonably withheld or delayed.
- 6.6 Any preliminary program finalised under D. in Table 1 may be modified from time to time by further agreement between CitiPower and the *Service Applicant*, where such agreement must not be unreasonably withheld or delayed.

Table 1 - Target timeframe for negotiations

Event		Target timeframe
A.	CitiPower receives written application for a <i>negotiated distribution service</i> from the <i>Service Applicant</i>	X
B.	The <i>Service Applicant</i> provides to CitiPower the commercial information set out in clause 4.4	X + 10 business days
C.	CitiPower and the <i>Service Applicant</i> may meet to discuss a preliminary program setting out a reasonable period of time for commencing, progressing and finalising negotiations	X + 10 business days
D.	CitiPower and the <i>Service Applicant</i> finalise the preliminary program for commencing, progressing and finalising negotiations. The program may include milestones relating to: <ul style="list-style-type: none"> the provision of information by CitiPower pursuant to clause 3; the provision of information by the <i>Service Applicant</i> pursuant to clause 4; the notification and consultation with any affected <i>Distribution Network Users</i> in accordance with clause 5.2; and/or the notification by CitiPower of the reasonable direct expenses incurred in processing the application to provide the <i>negotiated distribution service</i> pursuant to clause 10.1. 	X + 25 business days
E.	CitiPower provides the <i>Service Applicant</i> with an offer for the <i>negotiated distribution service</i>	In accordance with agreed program
F.	CitiPower and the <i>Service Applicant</i> finalise negotiations	In accordance with agreed program

7 Suspension of timeframe for negotiations

7.1 The timeframes for negotiation of provision of a *negotiated distribution service* in Table 1 or agreed between the parties are suspended if:

- (a) a dispute in relation to the *negotiated distribution service* is notified to the Australian Energy Regulator (AER) under Part 10 of the National Electricity Law (NEL), from the date of the notification of that dispute to the AER until:

- the withdrawal of the dispute under section 126 of the NEL;
 - the termination of the dispute by the AER under section 131 or section 132 of the NEL; or
 - a determination is made in respect of the dispute by the AER in accordance with section 128 of the NEL;
- (b) after 15 business days of CitiPower requesting commercial information under clause 4.1, or, where an alternative timeframe for the provision of the commercial information has been agreed pursuant to clause 4.3, after 5 business days after the date agreed for the provision of the requested commercial information, the *Service Applicant* has not provided that information;
- (c) after 15 business days of providing the application to CitiPower, the *Service Applicant* fails to provide the information commercial information set out in clause 4.4;
- (d) the *Service Applicant* fails to pay the reasonable direct expenses incurred in processing the application to provide the *negotiated distribution service* in accordance with clause 10, from the next business day after the amount is due until such time as the *Service Applicant* has paid the outstanding amount; and/or
- (e) where CitiPower has been required to notify and consult with any affected *Distribution Network Users* in accordance with clause 5.2, from the date of the notification to the affected *Distribution Network User* until the end of the time limit specified by CitiPower for any affected *Distribution Network Users* to provide to CitiPower information regarding the impact of the provision of the *negotiated distribution service*, or the date on which CitiPower receives such information from the affected *Distribution Network Users*, whichever is the later.

7.2 Each party will notify the other party if it considers that the timeframe has been suspended, within 5 business days of the date that the party considers the suspension took effect.

8 Publication of the results of negotiations

8.1 CitiPower will publish on its website the results of negotiations for access to a *negotiated distribution service*.

9 Dispute resolution

9.1 All disputes as to the *terms and conditions of access* for the provision of *negotiated distribution services* are to be dealt with in accordance with Part 10 of the NEL and Part L of Chapter 6 of the NER.

- the withdrawal of the dispute under section 126 of the NEL;
 - the termination of the dispute by the AER under section 131 or section 132 of the NEL; or
 - a determination is made in respect of the dispute by the AER in accordance with section 128 of the NEL;
- (b) after 15 business days of CitiPower requesting commercial information under clause 4.1, or, where an alternative timeframe for the provision of the commercial information has been agreed pursuant to clause 4.3, after 5 business days after the date agreed for the provision of the requested commercial information, the *Service Applicant* has not provided that information;
- (c) after 15 business days of providing the application to CitiPower, the *Service Applicant* fails to provide the information commercial information set out in clause 4.4;
- (d) the *Service Applicant* fails to pay the reasonable direct expenses incurred in processing the application to provide the *negotiated distribution service* in accordance with clause 10, from the next business day after the amount is due until such time as the *Service Applicant* has paid the outstanding amount; and/or
- (e) where CitiPower has been required to notify and consult with any affected *Distribution Network Users* in accordance with clause 5.2, from the date of the notification to the affected *Distribution Network User* until the end of the time limit specified by CitiPower for any affected *Distribution Network Users* to provide to CitiPower information regarding the impact of the provision of the *negotiated distribution service*, or the date on which CitiPower receives such information from the affected *Distribution Network Users*, whichever is the later.

7.2 Each party will notify the other party if it considers that the timeframe has been suspended, within 5 business days of the date that the party considers the suspension took effect.

8 Publication of the results of negotiations

8.1 CitiPower will publish on its website the results of negotiations for access to a *negotiated distribution service*.

9 Dispute resolution

9.1 All disputes as to the *terms and conditions of access* for the provision of *negotiated distribution services* are to be dealt with in accordance with Part 10 of the NEL and Part L of Chapter 6 of the NER.

10 Payment of CitiPower's reasonable direct expenses

- 10.1 From time to time, CitiPower may give the *Service Applicant* a notice setting out the reasonable direct expenses incurred in processing the application to provide the *negotiated distribution service*.
- 10.2 The *Service Applicant* must, within 20 business days of the notice given pursuant to clause 10.1, pay to CitiPower the amount set out in the notice in the manner set out in the notice.
- 10.3 If the *Service Applicant* fails to pay any sum due for payment under this clause 10 on the due date, the *Service Applicant* must pay interest on that sum from the due date until the date of actual payment at the Default Rate. Interest is to be calculated on a daily basis and capitalised monthly.

11 Termination of negotiations

- 11.1 The *Service Applicant* may elect not to continue with its application for a *negotiated distribution service* and may terminate negotiations by giving CitiPower written notice of its decision to do so.
- 11.2 CitiPower may terminate negotiations under this *negotiating framework* by giving the *Service Applicant* written notice of its decision to do so where:
- (a) CitiPower believes on reasonable grounds that the *Service Applicant* is not conducting the negotiations under this *negotiating framework* in good faith;
 - (b) after 30 business days from the date of a notice issued under clause 10.1, the *Service Applicant* has failed to pay to CitiPower the amount set out in the notice;
 - (c) there are multiple or recurring failures by the *Service Applicant* to comply with the requirements of the *negotiating framework*;
 - (d) the *Service Applicant* fails to comply with an obligation in this *negotiating framework* to undertake or complete an action within a specified or agreed timeframe, and does not complete the relevant action to the reasonable satisfaction of CitiPower within 20 business days of a written request from CitiPower; or
 - (e) an act of Solvency Default occurs in relation to the *Service Applicant*.
- 11.3 For the avoidance of doubt, in the event negotiations are terminated pursuant to this clause 11:
- (a) CitiPower may nonetheless give notice under clause 10.1 for the recovery of the reasonable direct expenses incurred in processing the application to provide the *negotiated distribution service* and the *Service Applicant* must pay the amount set out in the notice in accordance with clause 10.2, along with any applicable interest payable under clause 10.3; and

- (b) A party must return all commercial information provided to it by or on behalf of the other party in respect of this *negotiating framework* or, if requested by the other party, destroy all copies of the commercial information in its possession or control, in either case within 5 business days' of request.

12 GST

- 12.1 Any reference to costs, expenses, consideration and other amounts in this *negotiating framework* or provided under or in connection with it are exclusive of GST, unless expressed to be GST-inclusive.
- 12.2 Where CitiPower makes a taxable supply to the *Service Applicant* under or in connection with this *negotiating framework*, the *Service Applicant* must pay to CitiPower an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the *Service Applicant* at the later of the following:
- 12.2.1 The date when any consideration for the taxable supply is first paid or provided.
- 12.2.2 The date when CitiPower issues a tax invoice to the *Service Applicant*.
- 12.3 If, under or in connection with this *negotiating framework*, CitiPower has an adjustment for a supply under the GST Act which varies the amount of GST payable by CitiPower, CitiPower will adjust the amount payable by the *Service Applicant* to take account of the varied GST amount. CitiPower must issue an adjustment note to the *Service Applicant* within 28 days of becoming aware of the adjustment.
- 12.4 If a party is entitled to be reimbursed or indemnified under or in connection with this *negotiating framework*, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity. The reduction is to be made before any increase under clause 12.2. An entity is assumed to be entitled to a full input tax credit on an acquisition associated with the reimbursement or indemnity unless it demonstrates otherwise before the date the reimbursement or indemnity is made.
- 12.5 This clause 12 will not merge on completion and will survive the termination of this document by any party (including for the avoidance of doubt termination of negotiations under this *negotiating framework*).
- 12.6 Terms used in this clause that are not otherwise defined in this *negotiating framework* have the meanings given to them in the GST Act.

13 Notices

Giving notices

13.1 Any notice or communication given to CitiPower under this *negotiating framework* is only given if it is in writing and sent in one of the following ways:

- (a) delivered or posted to CitiPower at its address and marked for the attention of the relevant officer set out below;
- (b) faxed to CitiPower at its fax number and marked for the attention of the relevant officer set out below.

Name: CitiPower Pty
Address: Locked Bag 14090 Melbourne 8001
Fax number: 9683-4499
Attention: Manager Customer Connections

13.2 Any notice, consent, information or request given or made under this document is only given or made to the *Service Applicant* if it is in writing and delivered to the *Service Applicant* at the address or fax number specified in the *Service Applicant's* application and marked for the attention of the relevant officer specified in the application.

Change of address or facsimile number

13.3 If a party gives the other party three business days notice of a change of its address or facsimile number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

Time notices are given

13.4 Any notice or communication is to be treated as given at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, two business days after it is posted;
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

13.5 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

14 Miscellaneous

Governing law and jurisdiction

- 14.1 This document is governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

Rights cumulative

- 14.2 The rights and remedies of a party under this document are in addition to and do not replace or limit any other rights or remedies that the party may have.

Severability

- 14.3 Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Interpretation

- 14.4 In this document the following definitions apply:

Bill Rate means the 90 day bank bill swap reference rate (source: Bloomberg) as quoted in the Australian Financial Review (or some equivalent rate if quotation or the rate ceases) on the first business day following the due date.

CitiPower means CitiPower Pty (ABN 76 064 651 056) of 40 Market Street Melbourne 8001.

Control means, in relation to an entity, the power to directly or indirectly:

- (a) control the membership of the board of directors or other governing body of the entity;
- (b) control the entity applying section 50AA of the Corporations Act 2001;
- (c) where the entity is trustee of a trust, to appoint, remove or replace the trustee or direct the trustee as to decisions to be made in relation to the trust; or
- (d) direct the management and policies of that entity, whether by means of trusts, agreements, arrangements, undertakings, practices, the ownership of any interest in shares or in any other way.

Default Rate means the Bill Rate applicable at the time of the default plus 4%.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Solvency Default means the occurrence of any of the following events in relation to the *Service Applicant*:

- (a) A step being taken to wind up the *Service Applicant*;
- (b) A receiver, receiver and manager or administrator is appointed in respect of all or any part of the assets of the *Service Applicant*, or a provisional liquidator is appointed to the *Service Applicant*;
- (c) A mortgagee, charge or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the *Service Applicant*;
- (d) A mortgage, charge or other security is enforced by its holder or becomes enforceable or can become enforceable with the giving of notice, lapse of time or fulfilment of a condition;
- (e) The *Service Applicant* stops payment of, or admits in writing its inability to pay, its debts as they fall due;
- (f) The *Service Applicant* applies for, consents to, or acquiesces in the appointment of a trustee or receiver of the *Service Applicant* or any of its property;
- (g) A court appoints a liquidator, provisional liquidator, receiver or trustee, whether permanent or temporary, of all or any part of the *Service Applicant's* property;
- (h) The *Service Applicant* takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the Corporations Act 2001), in respect of the *Service Applicant* or any part of its property;
- (i) Except to reconstruct or amalgamate while solvent, the *Service Applicant* enters into or resolves to enter into a scheme of arrangement, compromise or reconstruction proposed with its creditors (or any class of them) or with its members (or any class of them) or proposes re-organisation, re-arrangement moratorium or other administration of the *Service Applicant's* affairs;
- (j) The *Service Applicant* is the subject of an event described in section 459C(2)(b) of the Corporations Act 2001;
- (k) The *Service Applicant* ceases or threatens to cease to carry on its main business;
- (l) Anything analogous or having substantially similar effect to any of the events specified above happens in relation to the *Service Applicant*;
- (m) Anything else occurs that reasonably indicates that there is a significant risk that the *Service Applicant* is or will become unable to pay its debts as they fall due; or

(n) Any of the above happens to an entity that Controls the *Service Applicant*.

14.5 In the interpretation of this document, the following provisions apply unless the context otherwise requires:

- (a) In this *negotiating framework* the words in italics have the meaning given to them in the NEL and the NER.
- (b) Headings are inserted for convenience only and do not affect the interpretation of this document.
- (c) A reference in this document to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne, Victoria.
- (d) If the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day.
- (e) A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this document to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- (g) Unless otherwise stated, a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other gender.
- (k) A reference to the word 'include' or 'including' is to be interpreted without limitation.