

Dated

SYSTEM OPERATOR SERVICE PROVIDER AGREEMENT

THE ELECTRICITY AUTHORITY

TRANSPower NEW ZEALAND LIMITED

Version	Date	Annotation
1.0		Original, as agreed 20 February 2016
2.0	01/06/2021	Various updates as a result of Variation #1 resulting from the 2020 5-year reset
3.0	30/06/2025	Various updates as a result of Variation #2 resulting from the 2025 3-year reset

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PARTIES

The Electricity Authority (the "**Authority**")

Transpower New Zealand Limited in its capacity as the **system operator** (the "**Provider**")

INTRODUCTION

- A. The Electricity Industry Act 2010 (the "**Act**"), the Electricity Industry (Enforcement) Regulations 2010 made under section 112 of the **Act** (the "**enforcement regulations**") and the Electricity Industry Participation Code 2010 made under section 36 of the **Act** (the "**Code**") govern the **electricity industry**.
- B. Section 12 of the **Act** established the **Authority** as an independent Crown entity. The **Act**, which came into effect on 1 November 2010, provides that one of the functions of the **Authority** is to contract for **system operator services**.
- C. Under sections 5 and 8 of the **Act**, the **Provider** is designated as the **system operator** to ensure the real-time coordination of the electricity system, provide information and short to medium term forecasting on all aspects of security of supply, and to manage supply emergencies.
- D. The **Act** provides that the **Code** must specify the functions of the **Provider**, specify how those functions are to be performed, and set requirements relating to transparency and performance.
- E. This **agreement** sets out the consideration the **Authority** must provide to the **Provider** in return for the **Provider** carrying out its role as the **system operator** in accordance with the **Code** and performing its obligations in accordance with this **agreement**.

AGREEMENT

1. INTERPRETATION

1.1 **Definitions:** In this **agreement** unless the context otherwise requires:

ΔCPI is, for **financial year** n (ΔCPI_n), calculated as follows:

$$\Delta\text{CPI}_n = \max\left(0, \frac{\text{CPI}_{n-1} - \text{CPI}_{n-2}}{\text{CPI}_{n-2}}\right)$$

where:

CPI_{n-1} is **CPI** for the quarter ending 31 March in **financial year** $n-1$; and

CPI_{n-2} is **CPI** for the quarter ending 31 March in **financial year** $n-2$.

$\Delta\text{CPI-X}$ is, for **financial year** n ($\Delta\text{CPI-X}_n$), calculated as follows:

$$\Delta\text{CPI-X}_n = \max\left(0, \left(\frac{\text{CPI}_{n-1} - \text{CPI}_{n-2}}{\text{CPI}_{n-2}} - X\right)\right)$$

where:

CPI_{n-1} is **CPI** for the quarter ending 31 March in **financial year** $n-1$;

CPI_{n-2} is **CPI** for the quarter ending 31 March in **financial year** n-2; and

X is 0.005.

"2009 agreement" means the System Operator Service Provider Agreement between the Electricity Commission (now the **Authority**) and the **Provider**, dated 12 August 2009.

"abandoned" means:

- (a) for a **forecast fixed fee system operator asset** or part of it, that the part of the **fixed fee capex project** that is forecast to create the **forecast fixed fee system operator asset** or part of it, or the whole **fixed fee capex project**, is stopped by the **Provider** before the **forecast fixed fee system operator asset** or part of it is **commissioned**; and
- (b) for a **fixed fee capex project**, that the **fixed fee capex project** has been partly or entirely stopped by the **Provider** before all **forecast fixed fee system operator assets** that are forecast to be created from it are fully **commissioned**.

"abandonment date" means:

- (a) for a **forecast fixed fee system operator asset** or part of it, the date the **forecast fixed fee system operator asset** or part of it is **abandoned**; and
- (b) for a **fixed fee capex project**, the date the **fixed fee capex project** is partly or entirely **abandoned**.

"Act" has the meaning given to that term in paragraph A of the Introduction.

"actual fixed fee system operator asset base" means the asset base described in paragraph 4.2 of schedule 2.

"actual in-flight system operator asset base" means the asset base described in paragraph 3.2 of schedule 2.

"actual service enhancement system operator asset base" means the asset base described in paragraph 5.2 of schedule 2.

"actual market design system operator asset base" means the asset base described in paragraph 6.2 of schedule 2.

"agreed auditor" means, for a **performance audit**:

- (a) a suitably qualified employee of the **Authority**;
- (b) any of:
 - (i) KPMG;
 - (ii) PwC;
 - (iii) Ernst & Young; or
 - (iv) Deloitte; or

- (c) any other suitably qualified person proposed by the **Authority** and agreed by the **Provider** that is not a competitor of Transpower New Zealand Limited for any **market operation service provider** role, such agreement not to be unreasonably withheld.

"**agreement**" means this System Operator Service Provider Agreement.

"**ancillary services**" has the meaning given to that term in clause 1.1(1) of the **Code**.

"**appropriation**" means an appropriation of public money, reimbursed by levies paid by levy payers in accordance with sections 128 and 129 of the **Act**, for the purposes of funding the **Authority's** activities, including paying the **fees**, during a **financial year**.

"**appropriation consultation**" means a consultation by the **Authority** under section 129 of the **Act**.

"**approved service enhancement capex project**" means a **service enhancement capex project** of a type described in clause 17.5.

"**audit information**" means:

- (a) **software audit, performance audit and business assurance audit** reports; and
- (b) any information disclosed by the **Provider** to an **agreed auditor** for the purposes of a **performance audit**.

"**auditable software**" means:

- (a) the Reserve Management Tool **software**;
- (b) the Scheduling, Pricing and Dispatch **software**; and
- (c) any other **system operator software** that is agreed or determined to be **auditable software**, including any modifications or upgrades to, or replacements of, such **system operator software**.

"**auditable software fee**" means the part of the **direct services fee** set out at paragraph 7.3 of schedule 1.

"**auditable software specification**" means a **software specification** for **auditable software**.

"**Authority confidential information**" means any information about the **Authority**, its business, customers or suppliers (including information in electronic form or transferred into electronic form by the **Provider**) received by the **Provider** from the **Authority** in the course of:

- (a) the negotiation of this **agreement**;
- (b) the **Provider's** provision of the **services** or services under the **2009 agreement** or **TASC**; or
- (c) otherwise under or in connection with this **agreement**, the **2009 agreement** or the **TASC**,
that:
 - (d) has not been **published** in accordance with a **Code** requirement and is not otherwise in the public domain; or
 - (e) is in the public domain but only due to a breach of **law**, this **agreement**, the **2009 agreement** or the **TASC** by the **Provider**.

"Authority's statutory objective" means the **Authority's** objective under section 15(1) of the **Act**.

"average corporate tax rate" means, for a **regulatory period**:

- (a) the average corporate tax rate referred to in the **WACC determination** for the **regulatory period**; or
- (b) if the **WACC determination** for the **regulatory period** does not refer to an average corporate tax rate, the average corporate tax rate determined by the **Commerce Commission** under Part 2 of the **Transpower IM** for the first disclosure year of the **regulatory period**.

"benefits realisation review" means a review of the extent to which a **high value capex project** has provided the expected **electricity industry** net benefit in the **final business case** for the **high value capex project**.

"business assurance audit" has the meaning given to that term in clause 14.2(c).

"business auditable service" means any system, process or **operational procedure** that:

- (a) is initiated as a result of, or has an objective to fulfil, the **Provider's** obligations under the **Code** or this **agreement**;
- (b) provides an input used by the **auditable software**;
- (c) enables or supports the **Provider's** real-time operations as part of the **services**; or
- (d) enables or supports the **Provider's** invoicing of the **fees**,

including direct management support for that system, process or **operational procedure**, but excluding any system, process or **operational procedure** that:

- (e) is already required to be audited under the **Code**;
- (f) relates to corporate, strategic, governance, administrative, **ICT** or general management support for the **services** (other than as expressly included above);
- (g) enables or supports **capex projects** only;
- (h) enables or supports **Provider** staff training only; or
- (i) enables or supports the **services** set out in clause 15 only.

"business day" has the meaning given to that term in paragraph (b) of the definition of "business day" in clause 1.1(1) of the **Code**.

"capex" means costs that have been or are intended to be included in a **value of commissioned asset**.

"capex classification" means a classification for a **capex project** set out at paragraph 7 of schedule 2.

"capex programme" means a programme of **capex** comprised of several **capex projects**, which may be described at a high level and without reference to specific **forecast system operator assets**.

"**capex project**" means a capital project or a project relating to a **SaaS asset** undertaken or intended to be undertaken by the **Provider** to create or modify a **system operator asset**.

"**capex return**" means the **Provider's** financial return on a **system operator asset base**, determined in accordance with paragraph 1 of schedule 2.

"**capex roadmap**" has the meaning given to that term in clause 17.1(a), and includes any change to the **capex roadmap** under clause 17.2.

"**Code**" has the meaning given to that term in paragraph A of the Introduction.

"**Code liability**" means any liability of the **Provider** to any person for breach of the **Act**, **regulations** or **Code**, including liability for compensation and pecuniary penalties.

"**Commerce Commission**" has the meaning given to that term in section 2(1) of the Commerce Act 1986.

"**commissioned**" means, for a **system operator asset**, **forecast system operator asset** or part of it, that the **system operator asset**, **forecast system operator asset** or part of it is commissioned in accordance with **GAAP**.

"**commissioning date**" means, for a **system operator asset** or part of it, the date the **system operator asset** or part of it is first **commissioned**.

"**communication**" has the meaning given to that term in clause 30.1.

"**confidential data**" means **data** or **processed data**:

- (a) from which, or from other publicly available information, it is reasonably possible to determine the specific **participant** or **participants** the **data** or **processed data** relates to; and
- (b) that:
 - (i) has not been **published** in accordance with a **Code** requirement and is not otherwise in the public domain; or
 - (ii) is in the public domain but only due to a breach of **law**, this **agreement**, the **2009 agreement** or the **TASC** by the **Provider**.

"**continuing services**" has the meaning given to that term in clause 24.15(b).

"**core services**" means the **services** other than the **technical advisory services**.

"**CPI**" means the all groups Consumers Price Index published by Statistics New Zealand.

"**CPI adjustment factor**" means, for **financial year** n, $1 + \Delta\text{CPI-X}$ for **financial year** n.

"**cost-of-services reporting**" means reporting of the direct and indirect costs incurred by the **Provider** in providing specific **services** categories.

"**data**" means any information (including information in electronic form or transferred into electronic form by the **Provider**) received by the **Provider** from **participants** in the provision of the **services** or services under the **2009 agreement** or **TASC**.

"data transfer plan" has the meaning given to that term in clause 24.10.

"defaulting party" has the meaning given to that term in clause 24.3.

"delivery incentive value" means, for a **forecast high value system operator asset** and the corresponding **high value system operator asset**, an amount of up to 10% of the **forecast value of commissioned asset** for the **forecast high value system operator asset** agreed by the parties as an incentive for the **Provider** to **commission** the **forecast high value system operator asset** in a timely way.

"delivery incentives" means, for a **high value system operator asset**:

- (a) a payment by the **Authority** to the **Provider** of:
 - (i) the **delivery incentive value** for the **high value system operator asset** if the **high value system operator asset's commissioning date** is on or before its **early delivery incentive date**; or
 - (ii) a percentage of the **delivery incentive value** determined on a pro rata basis (between 100% on the **early delivery incentive date** and 0% on the **high value system operator asset's no delivery incentive date**) if the **high value system operator asset's commissioning date** is after the **early delivery incentive date** and before the **no delivery incentive date**; and
- (b) a payment by the **Provider** to the **Authority** of:
 - (i) the **delivery incentive value** for the **high value system operator asset** if the **high value system operator asset's commissioning date** is on or after its **late delivery incentive date**; or
 - (ii) a percentage of the **delivery incentive value** determined on a pro rata basis (between 0% on the **high value system operator asset's no delivery incentive date** and 100% on the **late delivery incentive date**) if the **high value system operator asset's commissioning date** is after the **no delivery incentive date** and before the **late delivery incentive date**.

"development fee" means the part of the **direct services fee** set out in paragraph 7.4 of schedule 1.

"direct services fee" means the part of the **fees** set out in paragraph 7 of schedule 1.

"dispose" includes any direct or indirect alienation, sale, grant, assignment, exchange, transfer, concession, loan, lease, bailment, licence, reservation, surrender, discharge, release, gift, dealing with, parting with possession of, or the granting of any option, right of first refusal or other right or interest, or any agreement to do any of those things.

"dispute" means any failure of the parties to agree on a matter arising between them under or in connection with this **agreement**, the **2009 agreement** or the **TASC**.

"dispute notice" has the meaning given to that term in clause 26.1.

"documentation" means any:

- (a) reference manuals, user guides, technical documents, programmes, plans, or other information material (whether in electronic form or hardcopy) containing user directions relating to, or for assisting the use, application, maintenance or operation of, any aspect of the **system** or **services**; and
- (b) document required to be produced by the **Provider** as part of the **services**.

"**early delivery incentive date**" means, for a **forecast high value system operator asset** and the corresponding **high value system operator asset**, a date agreed by the parties that is before the corresponding **forecast high value system operator asset's** first **forecast commissioning date** in the first **capex roadmap** in which the relevant **high value capex project** appears.

"**education and engagement plan**" has the meaning given to that term in clause 15.4(a).

"**education and engagement fee**" means the part of the **direct services fee** set out in paragraph 7.8 of schedule 1.

"**education and engagement forum**" means a meeting for the purposes of educating and engaging **stakeholders** on an aspect of the **services** or **wholesale market**.

"**educational visual tool**" means an animation, video or other web-based tool that is **published** by the **Provider** and designed to educate **stakeholders** as to how an aspect of the **services** or **wholesale market** is designed or operates.

"**electricity industry**" means the New Zealand electricity industry, including the **system operator**, and the **wholesale market**.

"**electricity industry advice or assistance**" means investigations, power system studies, data collection, analysis, processing or publication, research or other advice or assistance relating to the **electricity industry** that:

- (a) are not part of a **capex project**, and the **Provider's** costs of providing such advice or assistance are not otherwise **capex**;
- (b) the **Authority** engages the **Provider** to provide as **SOS/EM development work** or **technical advisory services**; and
- (c) are not **services** the **Provider** would otherwise be obliged to provide under the **Act**, the **Code**, the **regulations** or this **agreement**.

"**emergency management policy**" has the meaning given to that term in clause 1.1(1) of the **Code**.

"**emergency measure**" means:

- (a) an emergency measure set out in the **emergency management policy**, including the commencement of an **official conservation campaign** and the making of a **supply shortage declaration**; and
- (b) any other reasonable security of supply emergency measure the **Provider** implements.

"**enforcement regulations**" has the meaning given to that term in paragraph A of the Introduction.

"emergency measures fee" means the part of the **direct services fee** set out in paragraph 7.9 of schedule 1.

"excluded services" means:

- (a) any functions, duties and obligations to be undertaken by Transpower New Zealand Limited other than in its capacity as the **system operator** under the **Act, Code, or regulations**;
- (b) any contractual duties and obligations of Transpower New Zealand Limited under a contract other than this **agreement**, including under:
 - (i) **grid** support contracts, **investment contracts**, and **transmission agreements** (which are entered into by Transpower New Zealand Limited in its role as a **grid owner**); and
 - (ii) **market operation service provider agreements** other than this **agreement**;
- (c) any functions performed by the **Provider** to assist Transpower New Zealand Limited to perform, or make decisions about entering into, the contracts referred to in paragraph (b) of this definition, to the extent those functions are not duties or obligations of the **Provider** under the **Act**, the **Code**, the **regulations** or this **agreement**; and
- (d) the functions, duties and obligations set out in schedule 4, to the extent those functions are not duties or obligations of the **Provider** under the **Act**, the **Code**, the **regulations** or this **agreement**.

"existing intellectual property" means all **intellectual property** of a party or any of its third party licensors that existed at the **final commencement date** and that was not developed, commissioned, or created under or in connection with this **agreement**.

"fee change event" means an event of a type described in clause 8.2.

"fee change implementation date" means:

- (a) for a **settled fee change** that increases the **fees**, the earlier of:
 - (i) a date specified by the **Authority**, which must be the first day of a month;
 - (ii) the start of the first **financial year** after the relevant **fee change settlement date**; and
 - (iii) the date on which this **agreement** terminates; and
- (b) for a **settled fee change** that reduces the **fees**, the first day of the month after the month during which the relevant **fee change settlement date** occurs.

"fee change request" means a notice from one party to the other requesting a change to the **fees**.

"fee change settlement date" means, for a **fee change request**, the first date that both the **settled fee change** and **settled effective date** for the **fee change request** are agreed or determined.

"fees" means the fees set out in schedule 1 and the **hourly rates**.

"final business case" means, for a **capex project**, a document containing:

- (a) a detailed description of the **capex project** and the **forecast system operator assets** forecast to be created from it, including the milestones for the **capex project**;

- (b) an **electricity industry** need registration for the **capex project**;
- (c) an expected **electricity industry** net benefit analysis for the **capex project**, including a detailed description of estimated total **capex** for the **capex project**; and
- (d) assumptions and risks for the **capex project**.

"final commencement date" means 1 July 2016.

"financial year" means a period commencing on 1 July of a year and ending on 30 June of the next year. The first **financial year** (**financial year 1**) commences on the **final commencement date**. **Financial years** are numbered independently of **funding periods**, so that **financial year 1** is the first **financial year** of the first **funding period**, **financial year 6** is the first **financial year** of the second **funding period**, and so on.

"first year capex return" means, for a **system operator asset** or **forecast system operator asset**, the **capex return** attributable to the **system operator asset** or **forecast system operator asset** in the **financial year** during which:

- (a) the **system operator asset's commissioning date** falls; or
- (b) the **forecast system operator asset's forecast commissioning date** falls.

"fixed fee" means the part of the **fees** set out in paragraph 4 of schedule 1.

"fixed fee cap and collar" means the maximum amounts by which the **fixed fee** may increase or reduce on a **reset date** compared to the **fixed fee** for the previous **financial year**, being:

- (a) a maximum increase of 10%; and
- (b) a maximum reduction of 10%.

"fixed fee capex component" means, for a **financial year** or **funding period**, the part of the **fixed fee** for the **financial year** or over the **funding period** that is attributable to **capex returns** on the **forecast fixed fee system operator asset base** with the **fixed fee capex component** for **financial year 10** as set out in the table at paragraph 4.1 of schedule 1, and as updated for that and subsequent **financial years** in accordance with that schedule.

"fixed fee capex project" means a **capex project** with a **capex classification** of TP ACAM, Building and Equipment or Service Maintenance.

"fixed fee system operator asset" means a **system operator asset** created from a **fixed fee capex project**, not being an **historic system operator asset** or **in-flight system operator asset**.

"forecast commissioning date" means, for a **forecast system operator asset** or part of it, the date the **forecast system operator asset** or part of it is forecast to be first **commissioned**. Where this **agreement** requires a **forecast commissioning date** to be used for a calculation or other purpose, the date to be used is the relevant **forecast commissioning date** in the most recent **capex roadmap** at the time the **forecast commissioning date** is required to be used.

"forecast fixed fee system operator asset" means a **forecast system operator asset** forecast to be created from a **fixed fee capex project**, not being an **in-flight system operator asset**.

"forecast fixed fee system operator asset base" means the asset base described in paragraph 4.1 of schedule 2.

"forecast high value system operator asset" means a **forecast system operator asset** forecast to be created from a **high value capex project**.

"forecast in-flight system operator asset base" means the asset base described in paragraph 3.1 of schedule 2.

"forecast market design system operator asset" means a **forecast system operator asset** forecast to be created from a **market design capex project**.

"forecast market design system operator asset base" means the asset base described in paragraph 6.1 of schedule 2.

"forecast replacement fixed fee system operator asset" means a **forecast system operator asset** forecast to be created from a **replacement fixed fee capex project**, and, for the avoidance of doubt, is a type of **forecast fixed fee system operator asset**.

"forecast service enhancement system operator asset" means a **forecast system operator asset** forecast to be created from a **service enhancement capex project**.

"forecast service enhancement system operator asset base" means the asset base described in paragraph 5.1 of schedule 2.

"forecast system operator asset" means:

- (a) an asset the **Provider** intends to use to provide the **services**; and
- (b) in the context of a **capex project**, such an asset forecast to be created from the **capex project**.

"forecast value of commissioned asset" means, for a **forecast system operator asset**, the forecast value of the **forecast system operator asset** on its **forecast commissioning date** in accordance with **GAAP**. Where this **agreement** requires a **forecast value of commissioned asset** to be used for a calculation or other purpose, the value to be used is the relevant **forecast value of commissioned asset** in the most recent **capex roadmap** at the time the **forecast value of commissioned asset** is required to be used.

"force majeure event" has the meaning given to that term in clause 1.1(1) of the **Code**.

"funding period" means:

- (a) the period of five consecutive **financial years** starting on the **final commencement date**, which is the first **funding period** (being **funding period 1**);
- (b) the period of four consecutive **financial years** starting on the first **reset date**, which is the second **funding period** (being **funding period 2**);
- (c) the period of three consecutive **financial years** starting on the second **reset date**, which is the third **funding period** (being **funding period 3**); and
- (d) starting on each subsequent **reset date**, a period to be agreed by the parties under clause 3, which must not be less than three consecutive **financial years** (being **funding period n**).

"**GAAP**" means generally accepted accounting practice in New Zealand, subject to clause 1.2(q).

"**grid**" has the meaning given to that term in clause 1.1(1) of the **Code**.

"**grid owner**" has the meaning given to that term in clause 1.1(1) of the **Code**.

"**GST**" means goods and services tax payable pursuant to the Goods and Services Tax Act 1985.

"**hard transferable item**" means **system operator hardware** that is used by the **Provider** exclusively to provide the **services** and:

- (a) is owned by the **Provider**; or
- (b) is owned by a third party supplier to the **Provider** and where the relevant **licence agreement** permits the **Provider** to provide access to, or ownership or possession of, the **system operator hardware** to the **Authority** or **incoming provider** in accordance with clause 24.13.

"**high value capex project**" means:

- (a) a **market design capex project**; and
- (b) any other **capex project** the parties agree to treat as "high value" on the basis that the **capex project** has a highly positive expected **electricity industry** net benefit demonstrated in the **final business case** for the **capex project**.

"**high value system operator asset**" means a **system operator asset** created from a **high value capex project**.

"**historic capex component**" means, for a **financial year** or **funding period**, the part of the **fixed fee** for the **financial year** or over the **funding period** that is attributable to **capex returns** on the **historic system operator asset base**, with the levelised **historic capex component** for each financial year during the current **funding period** as set out in the table at paragraph 4.1 of schedule 1.

"**historic system operator asset**" means a **system operator asset** with a **commissioning date** before:

- (a) in respect of the commencement of this **agreement**, 30 June 2015; and
- (b) in respect of each **reset date**, 1 July of the **financial year** immediately preceding the relevant **reset date**.

"**historic system operator asset base**" means the asset base described in paragraph 2.1 of schedule 2.

"**hourly rates**" means the hourly rates set out in paragraph 9 of schedule 1.

"**ICT**" means information and communications technology.

"**identification costs**" has the meaning given to that term in clause 1.1(1) of the **Code**.

"**identification fee**" means the part of the **direct services fee** set out in paragraph 7.2 of schedule 1.

"**impartiality policies and procedures**" means the **Provider's** policies, procedures, guidelines and materials pertaining to impartiality and the management of conflicts of interest, as primarily set out

in the **Provider's Conflict of Interest Guideline** (GL-SD-004) (as may be updated or replaced from time to time by the **Provider**), and may include related materials and documents.

"incoming provider" means any person appointed by the **Authority** to replace the **Provider** as **system operator**.

"independent review" has the meaning given to that term in clause 14.5.

"in-flight capex component" means, for a **financial year** or **funding period**, the part of the **fixed fee** for the **financial year** or over the **funding period** that is attributable to **capex returns** on the **forecast in-flight system operator asset base**, with the levelised **in-flight capex component** for each **financial year** during the current **funding period** as set out in the table at paragraph 4.1 of schedule 1.

"in-flight system operator asset" means a **system operator asset** or **forecast system operator asset commissioned** between:

- (a) in respect of the commencement of the agreement, 1 July 2015 and 30 June 2016 (whether or not it was **commissioned** on or before the **transitional commencement date** or **final commencement date**); and
- (b) in respect of each **reset date**, 1 July and 30 June of the **financial year** immediately preceding the relevant **reset date**.

"information system" has the meaning given to that term in clause 1.1(1) of the **Code**.

"infringement claim" means a claim by a third party that, if made out, would cause the **Provider** to be in breach of a representation and warranty in clause 21.8.

"insolvency event" means an event by which the **insolvent party**:

- (a) is, becomes or is deemed to be bankrupt or insolvent;
- (b) is placed in or under receivership, receivership and management, liquidation or official management or administration;
- (c) is liquidated or wound up, or a resolution is made for the liquidation or winding up of the **insolvent party**;
- (d) is made subject to any arrangement, assignment, or composition (otherwise than as a result of voluntary corporate reconstruction); or
- (e) is subject to any other event that has similar effect to any of the events described in paragraphs (a) to (d) in this definition.

"insolvent party" has the meaning given to that term in clause 24.2.

"integrated project lifecycle process" means the document *Integrated Project Life Cycle – A Guide for Managers and Project Managers*, version 2.2, agreed by the parties and dated 23 August 2017, as may be updated or replaced from time to time by agreement between the parties.

"intellectual property" includes copyright, all rights conferred under statute, common law, or equity in relation to inventions (including patents) registered and unregistered trade marks, registered and unregistered designs, circuit layouts, know-how, and all other proprietary rights resulting from

intellectual activity in any field, together with all rights, interests, or licences in or to any of the foregoing.

"interest rate" means the 90 day commercial bill rate (expressed as a percentage) as published on page BKBM of Reuters monitor service (or any successor page) and applying at or about 10.30am on the relevant date, plus 2% per annum.

"investment contract" has the meaning given to that term in clause 1.1(1) of the **Code**.

"joint development programme" means the development programme required to be agreed by the parties under clause 7.7 of the **Code**.

"joint work planning terms of reference" means the document *Joint Work Planning Terms of Reference* agreed by the parties and dated 15 June 2021, as may be updated or replaced from time to time by agreement between the parties.

"JWPT" means the Joint Work Planning Team, a group of **Authority** and **Provider** representatives established under and in accordance with the **joint work planning terms of reference**, to fulfil the functions set out in schedule 7.

"late delivery incentive date" means, for a **forecast high value system operator asset** and the corresponding **high value system operator asset**, a date agreed by the parties that is after the corresponding **forecast high value system operator asset's** first **forecast commissioning date** in the first **capex roadmap** in which the relevant **high value capex project** appears.

"law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, or other legislative measure, in each case of any jurisdiction, and includes the **Act**, **Code** and **regulations**.

"licence agreement" means an agreement between a third party licensor and the **Provider** under which the **Provider** is licensed to use all or part of the **system** or **documentation**.

"market design capex project" means a **capex project** with a **capex classification** of Market Design.

"market design fee" means the part of the **fees** set out in paragraph 6 of schedule 1;

"market design initiative" means a development to, or change to the design of, the **wholesale market**.

"market design investigation" means a feasibility study and expected **electricity industry** net benefit analysis of a potential **market design initiative**.

"market design investigation proposal" has the meaning given to that term in clause 15.2(b).

"market design system operator asset" means a **system operator asset** created from a **market design capex project**, not being an **historic system operator asset** or **in-flight system operator asset**.

"market operation service provider" has the meaning given to that term in section 5 of the **Act**.

"market operation service provider agreement" has the meaning given to that term in clause 1.1(1) of the **Code**.

"material change" means, for a **capex roadmap**:

- (a) the addition of a new **service enhancement capex project** or **market design capex project** to the **capex roadmap**;
- (b) the removal of a **service enhancement capex project** or **market design capex project** from the **capex roadmap**; or
- (c) an increase in the **forecast value of commissioned asset** for a **forecast service enhancement system operator asset** or **forecast market design system operator asset** forecast to be created from a **capex project** in the **capex roadmap**.

"Minister" has the meaning given to that term in section 5 of the **Act**.

"MOC" has the meaning given to that term in clause 13.2.

"monthly direct services fee component" means the component of the **monthly fee** set out in paragraph 3.9 of schedule 1.

"monthly fee" has the meaning given to that term in paragraph 2.2 of schedule 1.

"monthly fixed fee component" means the component of the **monthly fee** set out in paragraphs 3.2 to 3.6 of schedule 1.

"monthly market design fee component" means the component of the **monthly fee** set out in paragraph 3.8 of schedule 1.

"monthly service enhancement fee component" means the component of the **monthly fee** set out in paragraph 3.7 of schedule 1.

"new auditable software" means **auditable software** other than the Reserve Management Tool and Scheduling, Pricing and Dispatch **software**.

"no delivery incentive date" means, for a **forecast high value system operator asset** and the corresponding **high value system operator asset**, a date agreed by the parties as the date that, if the corresponding **forecast high value system operator asset's commissioning date** is on that date, no **delivery incentive** for the **high value system operator asset** will be payable by either party.

"non-defaulting party" has the meaning given to that term in clause 24.3.

"non-indexed fee increase" means any increase in, or bringing forward of, the **fees** that is not attributable to indexation of a part of the **fixed fee** by applying the **CPI adjustment factor**, including a **settled fee change** or an increase in, or bringing forward of, the **fees** that is attributable to a **capex return** or **stranding costs**.

"official conservation campaign" has the meaning given to that term in clause 1.1(1) of the **Code**.

"operational control site" means one of the **Provider's** National Co-ordination Centre sites, which at the **transitional commencement date** are located in Wellington and Hamilton.

"operational policies" means the **Provider's** written plans and policies for the provision of the **services**, including the **policy statement**, **procurement plan**, **emergency management policy**,

security of supply forecasting and information policy, and **system operator rolling outage plan**.

"operational procedures" means the **Provider's** written procedures to give effect to **operational policy**.

"opex component" means the component of the **fixed fee** that is the total allowance for the **Provider's** operational expenditure and that consists of allowances for the **Provider's**:

- (a) base operating costs;
- (b) IT operations costs;
- (c) market **system** support costs;
- (d) security of supply costs; and
- (e) **business assurance audit** costs,

with the **opex component** for **financial year 10** set out in the table at paragraph 4.1 of schedule 1, and as updated for that and subsequent **financial years** in accordance with that schedule.

"participant" has the meaning given to that term in section 5 of the **Act**.

"participant survey" has the meaning given to that term in clause 15.6(a).

"performance audit" has the meaning given to that term in clause 14.1(a).

"performance incentive" means:

- (a) a payment by the **Authority** to the **Provider** for the **Provider** achieving a certain level of performance against a **performance metric**; or
- (b) a payment by the **Provider** to the **Authority** for failing to achieve a certain level of performance against a **performance metric**.

"performance metric" means an objective measure of the quality of the **Provider's** provision of the **services**.

"permitted constraint" means a constraint on the **Provider's** ability to use the **system** to provide the **services** that:

- (a) arises:
 - (i) from a **licence agreement**; and
 - (ii) due to a change to the **law** or this **agreement** after the **transitional commencement date**; and
- (b) the **Provider** has:
 - (i) notified to the **Authority**; and
 - (ii) used **reasonable endeavours** to avoid.

"personnel" means a party's officers, employees, contractors, agents and professional advisors, and for the **Authority** includes each **agreed auditor**.

"policy statement" has the meaning given to that term in clause 1.1(1) of the **Code**.

"post-tax WACC" means, for a **regulatory period**, the post-tax weighted average cost of capital derived from the **vanilla WACC** and **average corporate tax rate** for the **regulatory period**.

"processed data" means information (including information in electronic form or transferred into electronic form by the **Provider**) that is the result of **data** being processed by the **Provider** in the provision of the **services** or services under the **2009 agreement** or the **TASC**.

"procurement plan" has the meaning given to that term in clause 1.1(1) of the **Code**.

"Provider confidential information" means any information about Transpower New Zealand Limited, its business, customers or suppliers (including information in electronic form or transferred into electronic form by the **Authority**) received by the **Authority** or an **agreed auditor** from the **Provider** in the course of:

- (a) the negotiation of this **agreement**;
- (b) the **Authority's** receipt of the **services** or services under the **2009 agreement** or the **TASC**;
or
- (c) otherwise under or in connection with this **agreement** or the **2009 agreement** or the **TASC**,
that:
- (d) has not been **published** in accordance with a **Code** requirement and is not otherwise in the public domain; or
- (e) is in the public domain but only due to a breach of **law**, this **agreement**, the **2009 agreement** or the **TASC** by the **Authority**,

including (to the extent paragraph (d) or (e) of this definition applies to it) **audit information**.

"Provider deliverable" means any **software** (including website) or **documentation** developed by the **Provider** in the course of providing the **services**.

"Provider system" means an **ICT** system (including **SaaS**) used by the **Provider** to store or process **Authority confidential information**, **data** or **processed data**;

"publish" has the meaning given to that term in clause 1.1(1) of the **Code**.

"reasonable and prudent system operator" means the system operation standard in clause 7.1A(1) of the **Code**.

"reasonable endeavours" in relation to any person includes the prompt and diligent use by that person of all reasonable resources and powers of, or available to, that person to effect the intended outcome as soon as reasonably possible.

"regulations" means the **enforcement regulations** and any other regulations made under subpart 1 of Part 5 of the **Act**.

"regulatory period" has the meaning given to that term in clause 1.1.4(2) of the Transpower Input Methodologies Determination [2012] NZCC 17.

"relevant fee change event" has the meaning given to that term in clause 8.4(b).

"replacement fixed fee capex project" has the meaning given to that term in clause 18.1(c)(i), and, for the avoidance of doubt, is a type of **fixed fee capex project**.

"replacement fixed fee system operator asset" means a **system operator asset** created from a **replacement fixed fee capex project**, and, for the avoidance of doubt, is a type of **fixed fee system operator asset**.

"reset date" means:

- (a) 1 July 2021, which is the first **reset date**;
- (b) 1 July 2025, which is the second **reset date**;
- (c) 1 July 2028, which is the third **reset date**; and
- (d) each subsequent **reset date** agreed by the parties under clause 3, with each **reset date** to commence on 1 July of the relevant **financial year**.

"reset settings" means:

- (a) the **opex component** for the first **financial year** of the new **funding period**;
- (b) the **historic capex component**, **in-flight capex component** and **fixed fee capex component** for the new **funding period**;
- (c) the limits in the definition of **fixed fee cap and collar**;
- (d) whether the **fixed fee cap and collar** remain appropriate;
- (e) the calculation of X in $\Delta\text{CPI-X}$;
- (f) the **hourly rates**;
- (g) the limits in the definitions of **delivery incentives** and **delivery incentive value**;
- (h) [deleted];
- (i) any new methodologies to be applied to assessment of aspects of the **system operator's** performance of the **services**; and
- (j) the duration of the new **funding period**, and the associated **reset date** immediately after the end of the new **funding period**.

"residual value" means, for an **abandoned fixed fee capex project**:

- (a) the sum of the **forecast values of commissioned asset** for the **abandoned forecast fixed fee system operator assets** that were forecast to be created from the **abandoned fixed fee capex project**; less
- (b) **capex** for the **abandoned fixed fee capex project**,

as at the **abandonment date** for the **abandoned fixed fee capex project**.

"review period" means each period starting on 1 July of the last **financial year** before a **reset date** and ending on 30 September of that **financial year** (or such later date before the start of the next **financial year** as may be agreed by the parties).

"Rulings Panel" has the meaning given to that term in section 5 of the **Act**.

"SaaS" means a type of cloud-based software delivery model where access to applications is over the internet, commonly known as software-as-a-service.

"SaaS asset" means a **system operator asset** comprised of the costs incurred by the **Provider** to procure and implement a **SaaS** arrangement that the **Provider** uses or intends to use to provide the **services**.

"security of supply and emergency management services" means the **services** to be provided by the **Provider** under the following parts of the **Code**:

- (a) part 7, apart from those clauses in part 7 that existed immediately before 1 November 2010 in the Electricity Governance Regulations 2003 or part C of the Electricity Governance Rules 2003; and
- (b) part 9.

"security of supply forecasting and information policy" has the meaning given to that term in clause 1.1(1) of the **Code**.

"service enhancement capex project" means a **capex project** with a **capex classification** of Service Enhancement.

"service enhancement fee" means that part of the **fees** set out in paragraph 5 of schedule 1;

"service enhancement system operator asset" means a **system operator asset** created from a **service enhancement capex project**, not being an **historic system operator asset** or **in-flight system operator asset**.

"services" means:

- (a) any functions, duties and obligations to be undertaken by the **Provider** under the **Act**, **Code**, or **regulations**; and
- (b) any other functions, duties and obligations to be undertaken by the **Provider** under this **agreement**,

including **transitional assistance** and the functions, duties and obligations to be undertaken by the **Provider** under the **transitional provisions** but, for the avoidance of doubt, excluding the **excluded services**.

"settled effective date" means the effective date of a **settled fee change** agreed or determined following a **fee change request** in accordance with clause 8.

"settled fee change" means a change to the **fixed fee** agreed or determined following a **fee change request** in accordance with clause 8.

"SFT software" means the **system operator software** known as the Simultaneous Feasibility Test **software**, including any modifications or updates to, or replacements of, such **system operator software**.

"SOC" has the meaning given to that term in clause 13.2.

"soft transferable item" means **system operator software** or **documentation**:

- (a) in which the **intellectual property** is owned by the **Provider**; or
- (b) in which the **intellectual property** is owned by a third party licensor to the **Provider** and where the relevant **licence agreement** permits the **Provider** to sublicense and provide the **system operator software** or **documentation** to the **Authority** or **incoming provider** in accordance with clause 24.11,

but excluding the **documentation** described in subclauses (iii) and (iv) of clause 21.4(b).

"software" has the meaning given to that term in clause 1.1(1) of the **Code**.

"software audit" means an audit of **software** under clause 3.17 of the **Code**.

"software specification" has the meaning given to that term in clause 1.1(1) of the **Code**.

"SOS/EM analysis fee" means the part of the **direct services fee** set out in paragraph 7.6 of schedule 1.

"SOS/EM development fee" means the part of the **direct services fee** set out in paragraph 7.5 of schedule 1.

"SOS/EM development work" means **electricity industry advice or assistance** relating to the development of **security of supply and emergency management services**:

- (a) for which the **Provider** is reasonably likely to incur costs in excess of \$100,000; and
- (b) that the parties agree is to be provided as **SOS/EM development work** and not as **technical advisory services**.

"specified work" means analysis, and gathering, preparing and publishing information.

"specified situation" means any circumstance or event that the **Provider** reasonably considers:

- (a) causes or may cause the energy security of supply standard or capacity security of supply standard in clause 7.3(2) of the **Code** to not be met;
- (b) causes or may cause the status of an energy risk meter determined under the **security of supply forecasting and information policy** to change from a lower status to "Watch", "Alert" or "Emergency"; or
- (c) requires or may require the **Provider** to implement an **emergency measure**.

"stakeholders" means:

- (a) the **Authority**, the **Commerce Commission** and any other statutory regulator of the **Provider**;
- (b) the **Rulings Panel** and any other body with specific arbitral functions in relation to the **Provider**;
- (c) the Energy Efficiency and Conservation Authority and any other Crown entity with specific functions in relation to the **electricity industry**;
- (d) **participants** and any organisation that represents the interests of **participants**; and

(e) the Government.

"statement of work" means a statement of work entered into by the parties for the provision of **technical advisory services**, in accordance with the **TAS guideline**.

"statutory objective work plan" has the meaning given to that term in clause 5.5.

"stranded" means:

- (a) for a **forecast service enhancement system operator asset** or **forecast market design system operator asset**, or part of it, that the part of the **capex project** that is forecast to create the **forecast system operator asset** or part of it, or the whole **capex project**, is stopped by the **Authority** before the **forecast system operator asset** or part of it is **commissioned**; and
- (b) for a **service enhancement capex project** or **market design capex project**, that the **capex project** has been partly or entirely stopped by the **Authority** before all **forecast system operator assets** that are forecast to be created from it are fully **commissioned**.

"stranding costs" means, for a **stranded service enhancement capex project** or **stranded market design capex project**:

- (a) **capex** for the **stranded forecast system operator assets** that were forecast to be created from the **stranded capex project**:
 - (i) including **capex** to which the **Provider** reasonably committed itself:
 - (1) before the **stranding date** for the **stranded capex project**; or
 - (2) on the **stranding date** and before the time the **Provider** receives the **Authority's** notice under clause 18.2(b); but
 - (ii) excluding **capex** to which the **Provider** is not reasonably committed at the time the **Provider** receives the **Authority's** notice under clause 18.2(b); and
- (b) the **Provider's** costs of stopping work on the **stranded capex project** to the extent the **Provider** could not have reasonably avoided them.

"stranding date" means:

- (a) for a **forecast service enhancement system operator asset** or **forecast market design system operator asset**, or part of it, the date the **forecast system operator asset** or part of it is **stranded**; and
- (b) for a **service enhancement capex project** or **market design capex project**, the date the **capex project** is partly or entirely **stranded**.

"supply shortage declaration" has the meaning given to that term in clause 1.1(1) of the **Code**.

"system" has the meaning given to that term in clause 10.1.

"system operator" has the meaning given to that term in section 5 of the **Act**.

"system operator asset":

- (a) means an asset the **Provider** uses or intends to use to provide the **services**;

- (b) in the context of a **capex project**, means such an asset created from the **capex project**; and
- (c) includes a **SaaS asset**.

"system operator asset bases" means:

- (a) the **historic system operator asset base**;
- (b) the **forecast in-flight system operator asset base**;
- (c) the **actual in-flight system operator asset base**;
- (d) the **forecast fixed fee system operator asset base**;
- (e) the **actual fixed fee system operator asset base**;
- (f) the **forecast service enhancement system operator asset base**;
- (g) the **actual service enhancement system operator asset base**;
- (h) the **forecast market design system operator asset base**; and
- (i) the **actual market design system operator asset base**.

"system operator business plan" has the meaning given to that term in clause 16.5(a).

"system operator hardware" means the computer hardware the **Provider** is required to use to provide the **services** under clause 10.1.

"system operator rolling outage plan" has the meaning given to that term in clause 1.1(1) of the **Code**.

"system operator software" means the **software** the **Provider** is required to use under clause 10.1 to provide the **services**.

"system operator strategy" has the meaning given to that term in clause 16.1.

"TAS guideline" means the document *TASC Guideline* agreed by the parties and dated 1 May 2015, as may be updated or replaced from time to time by agreement between the parties.

"TASC" means the Technical Advisory Service Contract between the parties dated 22 September 2009.

"technical advisory services" means **electricity industry advice or assistance** that the parties agree is to be provided as **technical advisory services** and not as **SOS/EM development work**.

"total capex component" means, for a **financial year** or **funding period**, the part of the **fixed fee** for the **financial year** or over the **funding period** that is the sum of the **fixed fee capex component**, **in-flight capex component** and **historic capex component**, with the **total capex component** for **financial year 10** as set out in the table at paragraph 4.1 of schedule 1, and as updated for subsequent **financial years** in accordance with that schedule.

"transitional assistance" means the functions, duties and obligations to be undertaken by the **Provider** under clause 24.15.

"transitional commencement date" means the date of this **agreement**.

"transitional provisions" means the provisions in schedule 5 and all other provisions of this **agreement** necessary to give effect to the provisions in schedule 5 (but only to the extent necessary to give effect to the provisions in schedule 5).

"transmission agreement" has the meaning given to that term in clause 1.1(1) of the **Code**.

"Transpower IM" means the Transpower Input Methodologies Determination [2012] NZCC 17.

"unplanned capex" means, for a **service enhancement system operator asset** or **market design system operator asset**:

- (a) all **capex** for the creation of the **system operator asset** if the most recent **capex roadmap** covering the **financial year** during which the **system operator asset's commissioning date** occurred does not include a **capex project** from which the **system operator asset** is forecast to be created;
- (b) any part of the **capex** for the creation of the **system operator asset** that is above 110% (or such other threshold that the parties may agree in writing for the **system operator asset**) of the **forecast value of commissioned asset** for the corresponding **forecast system operator asset** in the most recent **capex roadmap** covering the **financial year** during which the **system operator asset's commissioning date** occurred; and
- (c) in the case of a **service enhancement system operator asset**, all **capex** for the creation of the **service enhancement system operator asset** if the relevant **service enhancement capex project** was not an **approved service enhancement capex project**.

"value of commissioned asset" means, for a **system operator asset**, the value of the **system operator asset** on its **commissioning date** in accordance with **GAAP**.

"vanilla WACC" means, for a **regulatory period**, the vanilla weighted average cost of capital that is required to be used for setting Transpower New Zealand Limited's price path for the **regulatory period** under Part 4 of the Commerce Act 1986.

"variation 2 commencement date" means 1 July 2025.

"WACC determination" means, for a **regulatory period**, the **Commerce Commission's** determination of the **vanilla WACC** for the **regulatory period** under Part 3 of the **Transpower IM**.

"wash up and incentives fee component" means the component of the **monthly fee** set out in paragraph 3.10 of schedule 1.

"wash up and incentives fee" means the part of the **fees** set out in paragraph 8 of schedule 1.

"wholesale market" has the meaning given to it in clause 1.1(1) of the **Code**.

"write off" means, for a **service enhancement system operator asset** or **market design system operator asset**, to write off all or part of the remaining value of the **system operator asset** in accordance with **GAAP** due to impairment or stranding of the **system operator asset** as a result of a **law** change or other event outside of the **Provider's** reasonable control.

1.2 **Construction:** In this **agreement** unless the context otherwise requires:

- (a) **Clauses, paragraphs and schedules:** A reference to a clause or schedule is to a clause or schedule of this **agreement**, a reference in a schedule to a paragraph is to a paragraph in that schedule, and the schedules to this **agreement** form part of this **agreement**.
- (b) **Defined terms:** Words or phrases appearing in this **agreement** in bold type are defined terms and have the meanings given to them in clause 1.1 or a schedule.
- (c) **Documents:** A reference to any document, including any **documentation** and this **agreement**, includes a reference to that document as amended or replaced.
- (d) **Headings:** Headings are included for convenience only and do not affect the construction of this **agreement**.
- (e) **Inclusions:** References to inclusions or to anything of a particular nature following upon a general statement does not derogate from the general statement or imply any limitation.
- (f) **Negative obligations:** A reference to a prohibition against doing anything includes a reference to not permitting, suffering, or causing that thing to be done.
- (g) **No contra proferentem construction:** The rule of construction known as the *contra proferentem* rule does not apply to this **agreement**.
- (h) **Number and gender:** Words importing the singular include the plural and vice versa, and words importing one gender include the other genders.
- (i) **Parties:** A reference to a party to this **agreement** includes that party's personal representatives, successors, and permitted assigns.
- (j) **Person:** A reference to a person includes an individual, a body of persons, whether corporate or unincorporated, and a state or agency of state.
- (k) **Provider:** A reference to the **Provider** means Transpower New Zealand Limited in its capacity as the **system operator** only. A reference to Transpower New Zealand Limited means Transpower New Zealand Limited in all of its capacities, including as the **system operator**, other **market operation service provider** and a **grid owner**.
- (l) **Related terms:** Where a word or expression is defined in this **agreement**, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- (m) **Statutes, regulations, rules, and codes:** References to a statute, regulation, rule, or code include reference to regulations, orders, directions or notices made under or pursuant to such statute, regulation, rule, or code and all amendments to that statute, regulation, rule or code whether by subsequent statute, regulation, rule or code amendment or a statute, regulation, rule or code passed in substitution for the statute, regulation, rule or code provision referred to or incorporating the relevant provisions.
- (n) **Currency:** A reference to any monetary amount is to New Zealand dollars.
- (o) **Months, quarters and years:** Reference to "month" or "monthly" means calendar month or calendar monthly, reference to "quarter" means a period of three months commencing on 1

July, 1 October, 1 January or 1 April, and reference to “year”, “yearly” or “annually” means calendar year or calendar yearly.

(p) **Partial commissioning, abandonment and stranding:** If:

(i) a **forecast system operator asset** is partially **commissioned**:

- (1) the **commissioned** part of the **forecast system operator asset** will be treated as a separate **system operator asset**; and
- (2) the other part of the **forecast system operator asset** will be treated as a separate **forecast system operator asset**,

for the purposes of applying the provisions of this **agreement**;

(ii) a **forecast fixed fee system operator asset** is partially **abandoned**:

- (1) the **abandoned** part of the **forecast fixed fee system operator asset** will be treated as a separate **forecast fixed fee system operator asset** that has been **abandoned**; and
- (2) the other part of the **forecast fixed fee system operator asset** will be treated as a separate **forecast fixed fee system operator asset**,

for the purposes of applying the provisions of this **agreement**;

(iii) a **forecast service enhancement system operator asset** or **forecast market design system operator asset** is partially **stranded**:

- (1) the **stranded** part of the **forecast system operator asset** will be treated as a separate **forecast system operator asset** that has been **stranded**; and
- (2) the other part of the **forecast system operator asset** will be treated as a separate **forecast system operator asset**,

for the purposes of applying the provisions of this **agreement**;

(iv) a **fixed fee capex project** is partially **abandoned**, the **abandoned** part of the **fixed fee capex project** and the other part of the **fixed fee capex project** will be treated as separate **fixed fee capex projects** for the purposes of applying the provisions of this **agreement**; and

(v) a **service enhancement capex project** or **market design capex project** is partially **stranded**, the **stranded** part of the **capex project** and the other part of the **capex project** will be treated as separate **capex projects** for the purposes of applying the provisions of this **agreement**.

(q) **GAAP and SaaS assets:** If the **Provider** creates a **SaaS asset** then, for the purposes of this **agreement**:

- (i) the creation of the **SaaS asset** with a **value of commissioned asset** equal to the costs incurred by the **Provider** to procure and implement the corresponding **SaaS** arrangement is deemed to be in accordance with **GAAP**;

- (ii) the depreciation of the **SaaS asset** as if it were a software asset is deemed to be in accordance with **GAAP**;
 - (iii) the inclusion of the **SaaS asset** in a **system operator asset base** on the above basis is deemed to be in accordance with **GAAP**; and
 - (iv) the costs incurred by the **Provider** to procure and implement the corresponding **SaaS** arrangement are deemed to be **capex**.
- (r) **Consultation:** A party's obligation to consult the other party under this **agreement** includes an obligation to have regard to the other party's response to the consultation.
- 1.3 **Conflict:** If there is any conflict between any of this **agreement**, the schedules to this **agreement**, any **statement of work**, the **Act**, the **regulations**, or the **Code**, the following order of priority will apply (in descending priority) unless otherwise expressly provided in this **agreement**:
- (a) the **Act**;
 - (b) the **regulations**;
 - (c) the **Code**;
 - (d) the body of this **agreement**;
 - (e) the schedules to this **agreement**; and
 - (f) any **statement of work**.

2. TERM

- 2.1 **Term of this agreement:** Except for certain transitional provisions, this **agreement** commenced on the **final commencement date**. This **agreement** ends on the date termination of this **agreement** takes effect in accordance with clause 24.
- 2.2 **Termination of 2009 agreement and TASC:** The **2009 agreement** and **TASC** terminated on the **final commencement date** by agreement between the parties (and, for the avoidance of doubt, not by the exercise by either party of a right to terminate under the **2009 agreement** or **TASC**).

3. AGREEMENT REVIEW

- 3.1 **Timing:**
- (a) During each **review period** the parties must review this **agreement** in accordance with this clause 3.
 - (b) The **Provider** will use reasonable endeavours to advise the **Authority** as soon as reasonably practicable (which may be before the start of the next **review period**) if the **Provider** considers that there is likely to be a significant increase in the **Provider's** costs of providing the **services** during the next **funding period**, for the purpose of enabling the **Authority** to give early warning to the **Minister** of such information to support the process relating to **appropriations** under clause 9. For the purposes of this clause 3.1(b) a significant increase includes an increase in the **Provider's** costs of providing the **services** during the next **funding period**:

- (i) that is likely to increase the **fixed fee** for the next **funding period** by an amount exceeding the higher of:
 - (1) \$250,000; and
 - (2) the **fixed fee** for the current funding period multiplied by the most recent ΔCPI ; or
- (ii) that is likely to mean the **Provider** will seek the **Authority's** agreement to exceed the **fixed fee cap and collar** under clause 3.4.

3.2 Purpose of review: The purpose of the review is to:

- (a) assess whether, during the current **funding period**:
 - (i) the **Provider's** performance of its obligations under clauses 12, 16 and 17 has provided a reasonable degree of transparency for the **Authority** as to the **Provider's** planning and operations;
 - (ii) the **Provider's** performance of its obligations under clause 5 has assisted the **Authority** to give effect to the **Authority's statutory objective**; and
 - (iii) the **performance incentives** and **delivery incentives** have effectively, efficiently and positively incentivised the **Provider** in its performance of the **services**;
- (b) set the **reset settings** for the next **funding period** so that they adequately:
 - (i) enable the **Provider** to meet its costs of providing the **services** and attain a reasonable profit margin in doing so; and
 - (ii) incentivise investment and efficiency by the **Provider**; and
- (c) review any other aspect of the **services** or operation of this **agreement** during the current **funding period** that is agreed by the parties before the start of the **review period**.

3.3 Information to be taken into account: In carrying out the review the parties must take into account:

- (a) the **Provider's** revenue under this **agreement** and its costs of providing the **services** during the current **funding period**;
- (b) the efficiencies achieved by the **Provider** during the current **funding period** and the extent to which the **Provider** has realised profits from those efficiencies, taking into account the value of X in $\Delta\text{CPI-X}$;
- (c) **capex roadmaps** provided by the **Provider** to the **Authority** during the current **funding period**;
- (d) the **Provider's** performance against the **performance metrics**, and the **performance incentives** that accrued or did not accrue during the current **funding period**;
- (e) reports provided by the **Provider** to the **Authority** under clauses 3.14 and 7.11 of the **Code** and clauses 12.2 to 12.5 during the current **funding period**;

- (f) outcomes of **performance audits** and **business assurance audits** during the current **funding period**;
- (g) responses to **appropriation consultations** during the current **funding period** relevant to the **services**;
- (h) reports on the responses to **participant surveys** provided by the **Provider** to the **Authority** during the current **funding period**;
- (i) any international benchmarking reports published during the current **funding period** in which electricity transmission services are a comparator; and
- (j) the findings of the most recent **independent review**.

3.4 **Fixed fee cap and collar:** Unless the parties agree otherwise in writing (as contemplated in clause 3.1(b)(ii)), any increase or reduction of the **fixed fee** for the next **funding period** as a result of the review must comply with the **fixed fee cap and collar** (being, for the avoidance of doubt, the **fixed fee cap and collar** applying before any change to it as a result of the review).

3.5 **Access to information:**

- (a) Subject to subclause (b), if either party reasonably requests information from the other party that is relevant to anything that must be taken into account under clause 3.3 for the review, the other party must provide the information within a reasonable timeframe agreed by the parties.
- (b) The party requested to provide the information is not required to comply with subclause (a) to the extent it:
 - (i) reasonably considers, and is able to demonstrate, that its provision of the information would cause it to be in breach of an obligation of confidence owed to a third party; and
 - (ii) has not obtained the third party's consent on reasonable conditions to provide the information to the other party, having used **reasonable endeavours** to do so.

3.6 **Expert determination:** If any of the **reset settings** for the next **funding period** (other than those referred to in paragraphs (d) and (i) of the definition of **reset settings**) are not agreed by the end of the **review period**, the **dispute** must be referred directly to expert determination under clause 26.2.

3.7 **Changes to agreement:** The parties must negotiate in good faith to agree by the end of the current **funding period** any changes to this **agreement** that are necessary to record the agreed or determined outcomes of the review.

3.8 **Post-tax WACC:** For the avoidance of doubt, although the **post-tax WACC** is not itself a **reset setting**, the parties acknowledge that:

- (a) the **Commerce Commission** may change the **post-tax WACC** between **regulatory periods** and, in exceptional circumstances, within a **regulatory period**; and
- (b) the parties must apply the value for **post-tax WACC** that exists at the time **post-tax WACC** is required to be applied for a purpose under this **agreement**.

4. SERVICES

4.1 Obligation to provide services: The **Provider** must:

- (a) provide the **services** in accordance with the **Act**, the **Code**, the **regulations** and this **agreement**;
- (b) comply with all other **laws** applicable to the provision of the **services**; and
- (c) to the extent the **services** to be provided under this **agreement** are not covered by the **Code**, provide the **services** to the standard of a **reasonable and prudent system operator**.

5. STATUTORY OBJECTIVE ASSISTANCE

5.1 **Assist the Authority:** Subject to clause 5.3, the **Provider** must provide the **services** in a manner that complies with clause 3.2A of the **Code**.

5.2 [Deleted]

5.3 **Exception for real time operations:** The **system operator** is not required to comply with clause 5.1 when exercising discretion in real-time operations, except to the extent it is already provided for in the relevant **operational policies** and **operational procedures**.

5.4 **System operator's other obligations:** Nothing in this clause 5 permits or requires the **Provider** to act in a manner that is inconsistent with any of the **Provider's** obligations under the **Act**, the **regulations**, the **Code** or elsewhere in this **agreement**.

5.5 **Statutory objective work plan:** As part of the **system operator business plan** and subject to clause 16.5(d), the **Provider** must prepare a plan setting out the reasonable steps the **Provider** will take during each **financial year** to comply with clause 5.1 (a "**statutory objective work plan**"), being:

- (a) the parts of the **operational policies** and **operational procedures** that relate directly to the **Provider's** obligations under the **Code** that the **Provider** must review during the **financial year** for consistency with the **Authority's statutory objective**; and
- (b) any other tasks to be undertaken by the **Provider** during the **financial year** to assist the **Authority** to give effect to the **Authority's statutory objective**.

5.6 **Changes to statutory objective work plan:** The parties may agree to change the **statutory objective work plan** at any time during the **financial year** to which it relates. Neither party will unreasonably withhold its agreement to any change proposed by the other party.

5.7 **Compliance with statutory objective work plan:**

The **Provider** must comply with the **statutory objective work plan**.

6. PERFORMANCE METRICS AND INCENTIVES

6.1 **Agreed annually:** The parties must negotiate in good faith to agree by the end of each **financial year**:

- (a) the **performance metrics**; and

(b) any **performance incentives** relating to those **performance metrics**,
for the next **financial year**. If the **performance metrics** and **performance incentives** are not agreed by that time, the **dispute** must be referred directly to expert determination under clause 26.2.

6.2 **Monitoring and reporting on performance:** The **Provider** must:

- (a) monitor its performance against the **performance metrics** for each **financial year**; and
- (b) report on its performance against the **performance metrics** for each **financial year** in accordance with clause 12.4(a)(i).

6.3 **Provision of performance incentive:** If a **performance incentive** accrues then the **performance incentive** must be paid through the **wash up and incentives fee**.

6.4 **Performance standards:** The **performance metrics** and **performance incentives** for a **financial year** are the “performance standards” for the **services** for that **financial year** referred to in clause 7.8(2)(c) of the **Code**.

7. FEES

7.1 **Invoices:** The **Provider** must provide the **Authority** with valid tax invoice(s) (in accordance with the Goods and Services Tax Act 1985) for each **monthly fee** by the tenth **business day** of the month following the month to which the **monthly fee** relates.

7.2 **Invoice layout:** The **Provider’s** invoice(s) for a **monthly fee** must set out separately the following components of the **monthly fee** to which the invoice(s) relate:

- (a) the **monthly fixed fee component**, broken down into the parts of it attributable to:
 - (i) the **opex component**; and
 - (ii) the **fixed fee capex component**, including any **first year capex return**:
 - (1) for a **forecast fixed fee system operator asset** with a **forecast commissioning date** during or before the month to which the invoice relates but that is not included in the invoice because the **forecast fixed fee system operator asset** was not **commissioned** during or before that month; and
 - (2) that is included in the invoice because the **commissioning date** or **abandonment date** for a **fixed fee system operator asset** or **forecast fixed fee system operator asset** occurred during or before the month to which the invoice relates;
- (b) the **monthly market design fee component**;
- (c) the **monthly service enhancement fee component**;
- (d) the **monthly direct services fee component**, broken down into the parts of it set out in paragraph 7.1 of schedule 1; and
- (e) any **wash up and incentives fee component** comprised in the **monthly fee**.

7.3 **Partial commissioning and abandonment:** Each of the **Provider's** invoices for a **monthly fee** that includes a **first year capex return** for a partially **commissioned** or partially **abandoned forecast fixed fee system operator asset** must:

- (a) specify that it includes a **first year capex return** for the **forecast fixed fee system operator asset**;
- (b) specify the part of the **forecast fixed fee system operator asset** that was **commissioned** or **abandoned** and any part of it that has not yet been **commissioned** or **abandoned**; and
- (c) specify:
 - (i) total **capex** for the part of the **forecast fixed fee system operator asset** that was **commissioned** or **abandoned**;
 - (ii) forecast total **capex** for any part of the **forecast fixed fee system operator asset** that has not yet been **commissioned** or **abandoned**; and
 - (iii) the **forecast value of commissioned asset** for the **forecast fixed fee system operator asset** if it had not been partially **commissioned** or **abandoned**.

7.4 **Additional information:** If requested by the **Authority**, the **Provider** must provide to the **Authority** such additional supporting documentation and calculations in respect of the amounts set out in any invoice that are reasonably necessary to enable the **Authority** to satisfy itself that the invoice is correct.

7.5 **Payment:** The **Authority** must pay the **Provider** each **monthly fee** in arrears by:

- (a) If the **Provider** has complied with clauses 7.1 to 7.4 for the **monthly fee**, the 20th day, or if that day is not a **business day** the next **business day**, of the month following the month to which the **monthly fee** relates; or
- (b) otherwise, the 10th **business day** after the **Provider** has complied with clauses 7.1 to 7.4 for the **monthly fee**.

7.6 **Unpaid monthly fees:** If the **Authority** fails to pay any undisputed part of a **monthly fee** by its due date for payment then, in addition to the unpaid part of the **monthly fee**, the **Authority** will be liable to pay interest on the unpaid part of the **monthly fee** at the **interest rate** on the due date for the period from that date until payment.

7.7 **Disputed invoices:** If the **Authority** disputes any invoice for a **monthly fee** and such **dispute** is not resolved by agreement between the **Authority** and the **Provider** by the due date for payment of the disputed invoice, the **Authority** must:

- (a) pay any undisputed portion of the invoice to the **Provider** (provided the **Provider** complies with the **Authority's** reasonable administrative requirements to enable payment of the undisputed portion of the invoice); and
- (b) refer the **dispute** to **dispute** resolution under clause 26.

If the **dispute** is resolved and:

- (c) it is agreed or determined that the **Authority** has overpaid the **Provider**, the **Provider** must repay the overpaid amount to the **Authority**, together with interest on the overpaid amount at the **interest rate** on the due date for payment of the disputed invoice for the period from that date until repayment in full. The **Provider** must issue to the **Authority** a credit note in accordance with the Goods and Services Tax Act 1985 for the overpaid amount; or
 - (d) it is agreed or determined that the **Authority** has underpaid the **Provider**, clause 7.6 will apply as if the underpaid amount had not been disputed.
- 7.8 **GST:** In addition to any payments under this **agreement** the **Authority** must pay the **Provider** any **GST** payable in respect of those payments. Such **GST** will be payable to the **Provider** at the same time as the payment in respect of which the **GST** is payable.
- 7.9 **Withholding tax:** If the **Authority** is required to withhold any taxes from any payment under this **agreement**, such payment will be deemed to have been made if the **Authority** makes payment of the amount payable less the taxes required to be withheld and such payment will be a complete and final discharge by the **Authority** of its obligation to make the relevant payment.
- 7.10 **Method of payment:** The **Authority** must pay any payment under this **agreement** and any **GST** in respect of the payment by means of direct credit to the **Provider's** bank account as notified by the **Provider** to the **Authority**, or in such other manner as the parties may agree.
- 7.11 **Charging participants:** The **Provider** must not charge any **participant** for the **services**.

8. FIXED FEE VARIATIONS

- 8.1 **Variation of the fixed fee:** The **fixed fee** may be varied if there is a **fee change event**, in accordance with this clause 8.
- 8.2 **Fee change event:** A **fee change event** occurs if there is a change to the **services** (including the number, quality, or complexity of the **services**) or the obligations or liabilities of, or cost to, the **Provider** in providing the **services** as a result of:
- (a) a **law** change;
 - (b) a decision or exercise of a power or discretion by the **Authority**, the **Rulings Panel** or a court under or in connection with any **law** or this **agreement** (including agreeing to change any other **market operation service provider agreement**);
 - (c) a change in the operational complexity of the **electricity industry** (for example, a change in the structure or number of **participants**, a change in the activities carried out by **participants**, or a change in the **ICT** employed within the **wholesale market**) that is outside the reasonable control of the **Provider**;
 - (d) a change to an **operational policy** or **operational procedure** that is required to be made for the **Provider** to comply with its obligations under clause 5;
 - (e) a change in the methodology set by the **Commerce Commission** and used by the **Provider** to allocate the costs incurred by Transpower New Zealand Limited between its role as the **system operator** and its role as a **grid owner**; or

(f) a change to **GAAP**.

8.3 **Basis of variation to fixed fee:** The basis of any change to the **fixed fee** under this clause 8 or otherwise is to enable the **Provider** to properly provide the **services** and to meet its costs and attain a reasonable profit margin in doing so. To give effect to this:

- (a) where the **Provider** is or becomes aware of circumstances that, in the **Provider's** reasonable opinion, prima facie give rise to a **fee change event** that would lead to a reduction in the **fixed fee**, the **Provider** must notify the **Authority**; and
- (b) where the **Authority** is or becomes aware of circumstances that, in the **Authority's** reasonable opinion, prima facie give rise to a **fee change event** that would lead to an increase in the **fixed fee**, the **Authority** must notify the **Provider**.

8.4 **Commencement of fixed fee variation process:** If either party considers at any time that:

- (a) a **fee change event** has occurred or will occur; and
- (b) the net impact of the **fee change event** together with any other **fee change events** that have occurred since the later of the **variation 2 commencement date** and the date of the party's last **fee change request** (each a "**relevant fee change event**") is sufficiently significant that it warrants an increase or reduction in the **fixed fee** over the remainder of the **funding period** of at least \$250,000, and which may relate to operating expenditure or **capex**),

that party may give a **fee change request** to the other party, provided that a **fee change request** may not be given later than 12 months after the occurrence of any of the **relevant fee change events**. For the avoidance of doubt, if a **fee change event** relates to a one-off cost increase (being a cost increase that will not persist for more than one **financial year**), the **Provider** is not entitled to an ongoing increase in the **fixed fee** in respect of that cost.

8.5 **Fee change request:** A **fee change request** must contain the following information:

- (a) the events claimed to be the **relevant fee change events**, including any relevant changes to the **services** or the obligations or liabilities of, or costs to, the **Provider** in providing the **services**;
- (b) the proposed change to the **fixed fee** to take into account the **relevant fee change events**, together with reasonable supporting information, including (if the **Provider** is giving the **fee change request**) the **Provider's** additional costs to be recovered through the change and any margins on those costs; and
- (c) the proposed effective date for the change to the **fixed fee**.

8.6 **Initial response to fee change request:** Within 20 **business days** of receipt of a **fee change request** the recipient must notify the party that gave the **fee change request** whether it:

- (a) agrees to the **fee change request**, in which case the proposed change to the **fixed fee** will be the **settled fee change** and the proposed effective date will be the **settled effective date**;
or
- (b) does not agree to the **fee change request**, in which case:
 - (i) the parties must meet to discuss the **fee change request** in good faith to endeavour to reach agreement as to whether the claimed **relevant fee change events** have occurred or will occur, and if so:
 - (1) the amount (if any) by which the **fixed fee** will change as a result; and
 - (2) the date on which any such change to the **fixed fee** will be effective.
 - If the parties reach agreement, the agreed change to the **fixed fee** (if any) will be the **settled fee change** and the agreed effective date will be the **settled effective date**;
and
 - (ii) if the parties cannot reach agreement under clause 8.6(b)(i) within 40 **business days** of the date the **fee change request** was received by the recipient, the party that gave the **fee change request** may refer the **dispute** to **dispute** resolution under clause 26 and clause 8.7 will apply.
- (c) Any failure by the recipient of the **fee change request** to respond to the **fee change request** in accordance with this clause 8.6 will be deemed to be a rejection of the **fee change request** by the recipient and subclause (b) will apply.

For the purposes of clause 8.6(b)(i), each party acknowledges and agrees to take an active role in discussing the **fee change request**, including to determine and agree whether a **relevant fee change event** has occurred, by applying the criteria in clauses 8.2 and 8.4, and otherwise considering any information provided as part of the **relevant fee change request** in accordance with clause 8.5.

8.7 **Fee change request dispute resolution:** If a **fee change request dispute** is referred to **dispute** resolution under clause 8.6(b)(ii) the scope of the **dispute** resolution will solely be to resolve:

- (a) whether the claimed **relevant fee change events** have occurred or will occur;
- (b) if so, the amount (if any) by which the **fixed fee** will change as a result (which, when resolved, will be the **settled fee change**); and
- (c) the date on which any such change to the **fixed fee** will be effective (which, when resolved, will be the **settled effective date**),

provided that, if the parties have reached agreement on any of the matters in subclauses (a) to (c), the scope of the **dispute** resolution will be limited to those matters in those subclauses that have not been agreed.

8.8 **Fee increases:** If the effect of a **settled fee change** is that the **fixed fee** is increased, the increase will take effect from the **settled effective date**. However, the **Authority** must continue to pay **monthly fees** at the unadjusted rate until the **fee change implementation date**, and:

- (a) from the **fee change implementation date** the **monthly fees** will be increased to take into account the **settled fee change**, except where this **agreement** has been terminated and no further **monthly fees** are payable; and
- (b) on the **fee change implementation date** the **Authority** must make a lump sum payment to the **Provider** to cover:
 - (i) the amount of the increase attributable to the period from the **settled effective date** to the **fee change implementation date** (if any); plus
 - (ii) interest on that amount at the **interest rate** on the **settled effective date** for the period from the **settled effective date** to the **fee change implementation date**.

8.9 **Fee reduction:** If the effect of a **settled fee change** is that the **fixed fee** is reduced, the reduction will take effect from the **settled effective date** and:

- (a) from the **fee change implementation date** the **monthly fees** will be reduced to take into account the **settled fee change**; and
- (b) on the **fee change implementation date** the **Provider** must make a lump sum payment to the **Authority** to cover:
 - (i) the amount of the reduction attributable to the period from the **settled effective date** to the **fee change implementation date** (if any); plus
 - (ii) interest on that amount at the **interest rate** on the **settled effective date** for the period from the **settled effective date** to the **fee change implementation date**.

8.10 **Termination prior to repayment:** If this **agreement** terminates prior to the **Provider** repaying any overpaid **fixed fee** plus interest in full in accordance with clause 8.9(b), the **Provider** must repay the outstanding amount on the date of termination.

9. APPROPRIATIONS

9.1 **Non-indexed fee increases:** The **Provider** acknowledges that:

- (a) any **non-indexed fee increase** is subject to the **Authority** having a sufficient **appropriation** to pay the **non-indexed fee increase**; and
- (b) obtaining an **appropriation** is subject to:
 - (i) **appropriation consultation**, which the **Provider** must support under clause 15.9; and
 - (ii) approval by the **Minister** of the **appropriation**.

9.2 **Authority to ensure it has sufficient appropriation:**

- (a) To the extent the **Authority** does not already have a sufficient **appropriation** to pay a **non-indexed fee increase**, the **Authority** must use **reasonable endeavours** to obtain a sufficient **appropriation** to pay the **non-indexed fee increase**.

- (b) Before the **Authority**:
- (i) changes the **Code**;
 - (ii) makes a decision or exercises a power or discretion under or in connection with any **law** or this **agreement** (including agreeing to change any other **market operation service provider agreement**); or
 - (iii) requests a change to this **agreement**,
- the **Authority** must ensure it has a sufficient **appropriation** to meet any **non-indexed fee increase** that may arise from the change, decision, exercise of power or discretion, or request in the current **financial year**.

9.3 **Appropriation shortfall:** If the **Authority** does not have or obtain a sufficient **appropriation** to pay a **non-indexed fee increase**:

- (a) the **non-indexed fee increase** will not occur;
- (b) the **Authority** must notify the **Provider** as soon as reasonably practicable; and
- (c) the parties must negotiate in good faith to agree a commensurate reduction in the **services** or scope of **capex projects**, with the intent that the **Provider** must not be commercially disadvantaged as a result of the **Authority** not having or obtaining a sufficient **appropriation**. The reduction may be the **Provider** ceasing to be obliged, or not becoming obliged, to provide the additional **services** or carry out the additional **capex projects** (or part of them) that gave rise to the **non-indexed fee increase**.

10. USE OF AND ACCESS TO SYSTEMS

- 10.1 **Use of the system:** The **Provider** must use such of its **software** and computer hardware as is necessary for the **Provider** to provide the **services** in accordance with this **agreement** (the "**system**"). For the avoidance of doubt, the **Provider** may use any part of the **system** for any other purpose, provided that the use of the **system** for that purpose must not adversely affect the **Provider's** provision of the **services**.
- 10.2 **Access to information system:** The **Authority** must ensure that the **Provider** has access, at no cost to the **Provider** and otherwise on reasonable commercial terms, to all elements of the **information system** required by the **Provider** to provide the **services**.
- 10.3 **Provider to make information system available:** The **Provider** must provide other **market operation service providers** with access, at no cost to the **market operation service providers** and otherwise on reasonable commercial terms, to any elements of the **information system** that are provided by the **Provider** and that those **market operation service providers** require access

to in order to carry out their functions under the **Code** and their **market operation service provider agreements**.

11. SOFTWARE AUDITS AND SPECIFICATIONS

11.1 Required software audits and specifications:

- (a) The only **system operator software** for which **software audits** are required is the **auditable software**.
- (b) The only **system operator software** for which **software specifications** are required is the **auditable software**.

11.2 Publication of auditable software specifications: The **Provider** must **publish** the **auditable software specifications**. For the avoidance of doubt, the **auditable software specifications** are not part of this **agreement**.

11.3 Publication of changes to auditable software specifications: When the **Provider** modifies or replaces the **auditable software**, the **Provider** must **publish** as soon as reasonably practicable, and in any event no later than 5 **business days** after the modified or replacement **auditable software** goes live:

- (a) a description of the modification to or replacement of the **auditable software**;
- (b) if applicable, a modified or replacement **auditable software specification** for the **auditable software**; and
- (c) in the case of a modified **auditable software specification**, a version of the modified **auditable software specification** showing changes against the previous version of the **auditable software specification**.

11.4 Obligation to correct inaccurate auditable software specifications: If the **Authority** notifies the **Provider** that the **Authority** considers an **auditable software specification** to be inaccurate and provides reasonable grounds for its opinion, the **Provider** must, as soon as reasonably practicable (and in accordance with any timeframe agreed by the parties):

- (a) review the relevant parts of the **auditable software specification** to determine if they are correct;
- (b) notify the **Authority** of the outcome of the review; and
- (c) without limiting its obligation under regulation 7 of the **enforcement regulations** to self-report breaches of the **Code**, if the **Provider** reasonably considers that the **auditable software specification** is inaccurate:
 - (i) cease **publishing** the inaccurate **auditable software specification**;
 - (ii) correct the inaccuracies identified in the **auditable software specification**; and
 - (iii) re-publish the corrected **auditable software specification**.

11.5 **Request for new auditable software:** The **Authority** may request that **system operator software** that is not already **auditable software** become **auditable software**, in which case the **Provider**:

- (a) must not unreasonably withhold its agreement to the **system operator software** becoming **auditable software**; and
- (b) may withhold its agreement if:
 - (i) the **Authority** does not agree to pay any costs that may be incurred by the **Provider** to any third party licensor of the **system operator software** as a consequence of it becoming **auditable software**; and
 - (ii) the **Provider** has used **reasonable endeavours** to avoid incurring those costs.

11.6 **Obligations for new auditable software:** The **Provider** must comply with clause 11.2 for any **new auditable software** within 6 months of it becoming **auditable software**. The parties agree that:

- (a) no **software audit** is required for the **new auditable software** until its **auditable software specification** is finalised;
- (b) the first **software audit** of the **new auditable software** must be completed within six months of the **new auditable software's auditable software specification** being finalised;
- (c) clause 11.3 will not apply to the **new auditable software** until its **auditable software specification** has been **published** under clause 11.2; and
- (d) clause 3.17(1)(a) of the **Code** does not apply to the **new auditable software** (or its **auditable software specification**) if it is already being used by the **Provider** at the time of the **Authority's** request under clause 11.5.

11.7 **Current auditable software specifications:** For the avoidance of doubt, the **auditable software specifications** at the **variation 2 commencement date** are:

- (a) the Scheduling, Pricing and Dispatch Software Model Formulation Version 15.0 dated 20 March 2025; and
- (b) the Reserve Management Tool Function Specification Version 10.0 issued March 2025.

11.8 **Not performance audits or business assurance audits:** For the avoidance of doubt, **software audits** are not **performance audits** or **business assurance audits**.

12. RECORDS AND REPORTS

12.1 **Records:** The **Provider** must keep full, accurate, and up-to-date records relating to the provision of the **services**.

12.2 **Monthly reports:** The **Provider** must provide to the **Authority**, with each self-review report under clause 3.14 of the **Code**:

- (a) a report on the progress of any **service enhancement capex project** or **market design capex project** that has commenced and has either not been completed or was completed during the month to which the report relates, including:
 - (i) any actual or expected variance from the **capex roadmap** in relation to that **capex project**; and
 - (ii) the reasons for the variance;
- (b) a report on the **technical advisory services** in accordance with the **TAS guideline**;
- (c) the actions taken by the **Provider** during the previous month:
 - (i) to give effect to the **system operator business plan**, including to comply with the **statutory objective work plan**;
 - (ii) in response to **participant** responses to any **participant survey**; and
 - (iii) to comply with any remedial plan agreed by the parties under clause 14.1(i);
- (d) the **technical advisory hours** for the previous month and a summary of **technical advisory services** to which those **technical advisory hours** related; and
- (e) in the report relating to the last month of each quarter, the **Provider's** performance against the **performance metrics** for the **financial year** during the previous quarter.

12.3 [Deleted]

12.4 **Annual reports:** The **Provider** must provide to the **Authority**:

- (a) with each self-review report under clause 7.11 of the **Code**, a report on:
 - (i) the **Provider's** performance against the **performance metrics** during the previous **financial year**;
 - (ii) the actions taken by the **Provider** during the previous **financial year** to comply with any remedial plan agreed by the parties under clause 14.1(i); and
 - (iii) the outcomes of the business continuity testing referred to in clause 27.2 in the previous **financial year**; and
- (b) the information relating to **system operator services** Transpower New Zealand Limited is required to publicly disclose under the Transpower Information Disclosure Determination

[2014] NZCC 5 at the same time as Transpower New Zealand Limited publicly discloses that information under that Determination.

- 12.5 **Ad hoc reports:** The **Provider** must provide to the **Authority** any ad hoc reports relating to the **services** reasonably requested by the **Authority**.
- 12.6 **Cost-of-services reporting:** For each **financial year** the **Provider** will provide **cost-of-services** reporting to the **Authority** for the categories of **services** set out in schedule 6.
- 12.7 **Format:** All reports the **Provider** provides to the **Authority** under clauses 3.14 and 7.11 of the **Code** and clauses 12.2 and 12.4 must be in a format that can be published on the **Authority's** website.

13. MEETINGS

- 13.1 **Meetings:** The parties must meet on a monthly basis, unless otherwise agreed, at both a senior managerial and operational level to discuss the **Provider's** performance of, and any other matters relating to, the **services**.
- 13.2 **SOC and MOC meetings:** In addition to the meetings described in clause 13.1, the parties must use **reasonable endeavours** to ensure the System Operator Committee (a sub-committee of the Board) of the **Provider** ("**SOC**") and the Market Operations Committee (a sub-committee of the Board) of the **Authority** ("**MOC**") meet with each other at least once in each **financial year** to discuss the **Provider's** performance of, planning for, and any other matters relating to, the **services, including the Provider's** strategic focus areas for the next **financial year**. This clause 13.2 will apply to any equivalent or replacement body of the **SOC** or **MOC** from time to time (as applicable).
- 13.3 **JWPT:** In addition to the meetings described in clause 13.1, the parties must use **reasonable endeavours** to ensure the **JWPT** meets in accordance with the **joint work planning terms of reference**. The functions of the **JWPT** are the functions set out in schedule 7.
- 13.4 **Venue and timing:** Meetings will be held at venues and times agreed by the parties.

14. PERFORMANCE, BUSINESS ASSURANCE AUDITS AND INDEPENDENT REVIEW

14.1 Performance audits:

- (a) The **Authority** may appoint an **agreed auditor** to carry out an audit of the **Provider's** provision of specific **services** (a "**performance audit**") if the **Authority** reasonably believes:
 - (i) the **Provider** has provided those **services** in a manner that has resulted in a breach or breaches of the **Code** or this **agreement**; or
 - (ii) the **Provider** is providing those **services** in a manner that will result in a breach or breaches of the **Code** or this **agreement**.
- (b) The purpose of the **performance audit** is to:

- (i) determine whether the **Provider** has provided the relevant **services** in a manner that has resulted in, or is providing the relevant **services** in a manner that will result in, a breach or breaches of the **Code** or this **agreement**; and
 - (ii) if so, enable the **Provider** to remedy or prevent the breach or breaches in a manner agreed by the parties.
- (c) The **Authority** must give the **Provider** reasonable notice of the **performance audit**, which notice must include the identity of the **agreed auditor** and the grounds for carrying out the **performance audit**.
- (d) The **Provider** must cooperate with the **agreed auditor** and participate in the **performance audit**, including by providing the **agreed auditor** with reasonable access to the **Provider's** facilities, premises and systems and the **documentation** and other records that relate to the provision of the relevant **services**.
- (e) The **agreed auditor** may take copies of the **documentation** and other records that relate to the provision of the relevant **services**.
- (f) The **Authority** must ensure that the **performance audit** is conducted in a manner that does not unreasonably disrupt Transpower New Zealand Limited's business or **personnel**.
- (g) The **Authority** must bear the costs of the **performance audit**, except that the **Provider** must:
 - (i) bear its own costs of cooperating with the **agreed auditor** and participating in the **performance audit**; and
 - (ii) if the **performance audit** determines that the **Provider** has provided the **services** in a manner that has resulted in a material breach of the **Code** or this **agreement**, reimburse the **Authority** for its reasonable costs of the **performance audit**.
- (h) The **Authority** must:
 - (i) provide the **Provider** with a draft of the **performance audit** report;
 - (ii) give the **Provider** a reasonable opportunity to comment on the draft **performance audit** report before the **performance audit** report is finalised;
 - (iii) ensure the **agreed auditor** has regard to the **Provider's** comments on the draft **performance audit** report before finalising the **performance audit** report; and
 - (iv) provide the **Provider** with the final **performance audit** report.
- (i) If:
 - (i) the final **performance audit** report contains an opinion that the **Provider** has breached or will breach the **Code** or this **agreement**; and
 - (ii) the **Provider** reasonably considers it has committed or will commit the breach,
 then, without limiting the **Provider's** obligation under regulation 7 of the **enforcement regulations** to self-report breaches of the **Code**, the parties must negotiate in good faith to

agree a remedial plan that sets out the manner in which the **Provider** must remedy the breach or prevent the potential breach.

14.2 **Business assurance audits:**

- (a) Before the start of each **financial year**:
 - (i) the parties must negotiate in good faith to agree the **business auditable services** to be audited during the **financial year**; and
 - (ii) the **system operator** must provide the **Authority** with an indication of the **business auditable services** that may be audited during the following two **financial years**.
- (b) For the purposes of agreeing the **business auditable services** that will be audited during any **financial year**, the parties acknowledge and agree that:
 - (i) the **Provider** will not be required to audit more than five **business auditable services** during a **financial year**; and
 - (ii) the number of **business auditable services** to be audited during a **financial year** will be agreed taking into account the likely audit cost, availability of **Provider** expert resources, and size and scope of each audit.
- (c) The **Provider** must, during a **financial year**, carry out an audit (a “**business assurance audit**”) of each **business auditable service** agreed to be audited during that **financial year** under subclause (a)(i).
- (d) The purpose of the **business assurance audit** is to:
 - (i) determine whether the relevant **business auditable service**:
 - (1) is, and is capable of, providing materially accurate, consistent and repeatable results that comply with the **Code** and this **agreement**;
 - (2) does not involve processes that are obviously inefficient; and
 - (3) has an effective control framework for managing the risks associated with the **business auditable service**; and
 - (ii) if not, enable the **Provider** to remedy the issues.
- (e) The scope of the **business assurance audit** may include consideration of the sufficiency of and the **system operator’s** compliance with, the **impartiality policies and procedures** in the context of the relevant **business auditable service**.
- (f) The auditor for the **business assurance audit** must be a suitably qualified employee of the **Provider** or a suitably qualified independent third party engaged by the **Provider**.
- (g) The **Provider** must provide the **Authority** with a copy of the final **business assurance audit** report as soon as reasonably practicable after the **business assurance audit** is completed.
- (h) The **Authority** may, at its cost and following receipt of the final **business assurance audit** report, meet with the auditor to discuss the final **business assurance audit** report. The **Authority** may meet with the auditor with or without representatives of the **Provider** being

present and is not obliged to report the details or outcomes of the discussions to the **Provider**.

14.3 [Deleted]

14.4 **Not software audits:** For the avoidance of doubt:

- (a) **performance audits** and **business assurance audits** are not **software audits**; but
- (b) the scope of a **performance audit** or **business audit** may include **system operator software**.

14.5 **Independent review:** The **Authority** may, at its cost and no more frequently than once per **funding period**, appoint an independent third party to undertake a review of the **Provider's** performance of this **agreement** ("**independent review**"). The **independent review** will be performed as follows:

- (a) The scope of the **independent review** will be determined by the **Authority** in consultation with the **Provider**. The parties acknowledge that the **independent review** will not be a forward-looking assessment of the **Provider's** likely costs of providing the **services**.
- (b) The **independent review** must be completed no later than 18 months before the end of the **funding period** during which it is carried out.
- (c) The **Provider** must provide all reasonable assistance and information to the independent third party engaged by the **Authority** to enable the independent third party to perform the **independent review**, including providing access to **Provider** documents, personnel and premises for the purposes of the **independent review**, provided that the **Provider** is not obliged to:
 - (i) provide any assistance to the independent third party that would unreasonably interfere with the **Provider's** performance of the **services**;
 - (ii) provide the independent third party with access to any information that is subject to legal privilege; or
 - (iii) allow the independent third party to access any **Provider system** unless the independent third party agrees to comply with the **Provider's** reasonable **ICT** security requirements.
- (d) The **Authority** must:
 - (i) allow the **Provider** a reasonable period to review and provide feedback on the draft **independent review** report before it is finalised, disclosed or published, including as to any of its content the **Provider** considers should not be disclosed or published;
 - (ii) have regard to, and ensure the independent third party has regard to, the **Provider's** feedback on the draft **independent review** report; and
 - (iii) provide the **Provider** with a copy of the final **independent review** report at least 5 **business days** before it is disclosed or published.

15. SYSTEM OPERATOR SUPPORT

15.1 SOS/EM development work:

- (a) The **Provider** must carry out the **SOS/EM development work** in accordance with the terms on which it is engaged by the **Authority** to do so.
- (b) The **Authority** may request that the **Provider** carry out **SOS/EM development work** at any time. Each request must include sufficient information to enable the **Provider** to understand the nature and scope of the **SOS/EM development work** being requested.

15.2 Market design investigations:

- (a) The **Authority** must, by 28 February of each **financial year**, notify the **Provider** of the **Authority's** indicative requirements for **market design investigations** for the next **financial year**.
- (b) The parties must negotiate in good faith to agree by 31 March of each **financial year** the proposals the **Provider** must develop for **market design investigations** to be carried out during the next **financial year** (if any) (each a "**market design investigation proposal**").
- (c) By 30 April of each **financial year** the **Provider** must provide the **Authority** with the agreed **market design investigation proposals** for the next **financial year**.
- (d) Each **market design investigation proposal** must be in writing, be no more than six pages and contain:
 - (i) a high-level description of the **market design initiative** that would be the subject of the **market design investigation** being proposed;
 - (ii) a high-level description of the potential **electricity industry** benefits of the **market design initiative**;
 - (iii) a project plan for the **market design investigation**, which must include the delivery of the report described in subclause (h); and
 - (iv) the maximum cost of the **market design investigation**, which must be based on the **hourly rates**, together with reasonable supporting information for how the maximum cost was derived.
- (e) The **Provider** must provide the **Authority** with any further information about a **market design investigation proposal** that is reasonably requested by the **Authority**.
- (f) By 31 May of each **financial year** the **Authority** must notify the **Provider** of the **market design investigations** the **Provider** must carry out during the next **financial year** (if any). The **Authority** must not require the **Provider** to carry out a **market design investigation** during a **financial year** unless it was proposed in a **market design investigation proposal** for that **financial year**.
- (g) The **Provider** must carry out each **market design investigation** notified by the **Authority** under subclause (f) in accordance with the project plan in the relevant **market design investigation proposal**.

- (h) For each **market design investigation** notified by the **Authority** under subclause (f) the **Provider** must provide the **Authority** with a report:
 - (i) describing one or more options for implementing the **market design initiative** that is the subject of the **market design investigation**;
 - (ii) describing how each option could be achieved if the **market design initiative** is pursued; and
 - (iii) estimating the expected **electricity industry** net benefit of each option if the **market design initiative** is pursued, including estimating total **capex** for the **market design capex project** using the methodology for initial (rough order of magnitude) estimates in the **integrated project lifecycle process**.

15.3 Market design capex projects:

- (a) The **Authority** must, by 28 February of each **financial year**, notify the **Provider** of the **Authority's** indicative requirements for **market design capex projects** for the next **financial year**.
- (b) If the **Authority** notifies the **Provider** that it wishes the **Provider** to carry out a **market design capex project**:
 - (i) the **Provider** must support the **Authority** by:
 - (1) in advance of a **final business case** for the **market design capex project**, providing an estimate of total **capex** for the **market design capex project** derived using the methodology for initial business case estimates in the **integrated project lifecycle process**;
 - (2) if requested by the **Authority**, providing a **final business case** for the **market design capex project** that includes an estimate of total **capex** for the **market design capex project** derived using the methodology for **final business case** estimates in the **integrated project lifecycle process**; and
 - (3) providing any additional information about the **market design capex project** reasonably requested by the **Authority**;
 - (ii) the parties must follow the processes in the **integrated project lifecycle process** to agree the project deliverables and project artefacts for the **market design capex project**; and
 - (iii) the **Provider's** estimate of total **capex** for the **market design capex project** in the **final business case** must, once agreed by the parties, be the basis for the initial **forecast values of commissioned asset** for the **forecast market design system operator assets** forecast to be created from the **market design capex project**. For the avoidance of doubt, the **forecast value of commissioned asset** for a **forecast market design system operator asset** in the **capex roadmap** cannot be changed except in accordance with clause 17.2.

15.4 **Stakeholder education and engagement:**

- (a) As part of the **system operator business plan** and subject to clause 16.5(d), the **Provider** must prepare a plan for the **Provider's stakeholder** education and engagement activities for the next **financial year** (an "**education and engagement plan**").
- (b) The **education and engagement plan** must include between two and four **education and engagement fora**. For the avoidance of doubt:
 - (i) an **education and engagement forum** with the same scope but in different locations constitutes multiple **education and engagement fora**; and
 - (ii) an **education and engagement forum** is not required to address matters of interest to all **stakeholders**.
- (c) **Changes to education and engagement plan:** The parties may agree to change the **education and engagement plan** at any time during the **financial year** to which it relates. Neither party will unreasonably withhold its agreement to any change proposed by the other party.
- (d) The **Provider** must comply with the **education and engagement plan**.
- (e) If:
 - (i) the **Authority**, for a **market design capex project**, notifies the **Provider** that it considers; or
 - (ii) the **Provider**, for any other **capex project**, considers,
a new **educational visual tool** would be useful in relation to a **forecast system operator asset** forecast to be created from the **capex project**, the **Provider** must:
 - (iii) include the development of the **educational visual tool** in the **capex project**; and
 - (iv) consult with the **Authority** as to the need for, and expected **electricity industry** net benefit of, the **educational visual tool** before commencing development of the **educational visual tool**.
- (f) If the **Provider** intends to stop **publishing** any existing **educational visual tool**, the **Provider** must consult with the **Authority** before making a final decision whether or not to stop **publishing** the **educational visual tool**.

15.5 **Assisting participants:** If the **Provider** changes an **operational policy** or **operational procedure** in a manner that requires some or all **participants** to carry out any of their obligations under the **Code** in a materially different manner, the **Provider** must:

- (a) notify the **Authority** of the change; and
- (b) assist the **Authority** to ensure the affected **participants** receive reasonable information and support to enable them to continue to comply with the obligations under the **Code**.

15.6 Participant surveys:

- (a) At least once during each **financial year** the **Provider** must survey **participants** for their feedback on the **Provider's** performance of the **services**, including:
 - (i) how the **Provider** educates and engages with **participants**; and
 - (ii) possible improvements in the way the **Provider** performs the **services**, (a “**participant survey**”).
- (b) The **Provider** must provide to the **Authority** a report on the responses to the **participant survey**.

15.7 Information about electricity industry behaviour:

- (a) Subject to subclause (b), if the **Provider** observes an **electricity industry** practice or circumstance it reasonably considers the **Authority** may wish to monitor or investigate in accordance with its powers under the **Act**, **regulations** or **Code**, the **Provider** must, as soon as reasonably practicable, notify the **Authority** of:
 - (i) the **electricity industry** practice or circumstance and the grounds on which the **Provider** considers the **Authority** may wish to monitor or investigate it; and
 - (ii) any supporting information, which may include **data** or **processed data**.
- (b) The **Provider** is not required to comply with subclause (a)(ii) to the extent the **Provider** reasonably considers its provision of the supporting information would cause the **Provider** to be in breach of an obligation of confidence owed to a **participant**, but must notify the **Authority** of the existence of the withheld supporting information to the extent the **Provider** reasonably considers it can do so without breaching the obligation of confidence.
- (c) For the avoidance of doubt, the **Provider's** obligations under subclause (a) are in addition to, and not in substitution for, its obligations to report and self-report potential **Code** breaches under regulations 7 and 8 of the **enforcement regulations** and clause 3.14 of the **Code**.

15.8 **Technical advisory services:** The **Provider** must provide the **technical advisory services** to the **Authority** subject to, and in accordance with the terms of, schedule 8 and the **statements of work**.

15.9 **Support for appropriation consultations:** The **Provider** must support the **Authority** to carry out each **appropriation consultation** that includes a **non-indexed fee increase** in a transparent manner by:

- (a) providing reasonable information about the rationale for the **non-indexed fee increase**, including:
 - (i) information about the expected **electricity industry** net benefit of the new or changed **services** or **forecast system operator assets** to which the **non-indexed fee increase** relates; and
 - (ii) a summary of responses to any **participant** consultation carried out by the **Provider** relating to the new or changed **services** or **forecast system operator assets**; and

- (b) providing any additional supporting information about the **non-indexed fee increase** reasonably requested by the **Authority**.

15.10 **Other services provided under the fixed fee:** The **Provider** must, when reasonably requested by the **Authority**, provide the **Authority** with analysis and advice:

- (a) on any **stakeholder** proposal on which public consultation is being carried out, but limited to the impact the proposal would have on the **Provider's** ability to provide the **services**;
- (b) in respect of alleged breaches of the **Code** (whether alleged by the **Provider**, the **Authority** or a third party); and
- (c) in respect of applications for exemptions from the **Code** (whether applied for by the **Provider** or another **participant**).

15.11 **Annual industry exercise collaboration:** If requested by the **Authority**, the **Provider** must collaborate with the **Authority** to jointly lead and undertake an industry exercise. Any such industry exercise must occur no more frequently than once per **financial year**, and the scope and timing of any such industry exercise must be agreed by the parties. Any such industry exercise must not unreasonably interfere with the **Provider's** performance of the **services**.

16. SYSTEM OPERATOR STRATEGY AND PLANNING

16.1 **System operator strategy:** Before the date that is 18 months prior to the end of each **funding period**, the **Provider** must provide to the **Authority** (and at the same time **publish**) a document setting out the strategy and principles according to which the **Provider** intends to provide the **services** and to develop the **system operator software** during the remainder of the current **funding period** and the next **funding period** and beyond out to 10 **financial years** (a “**system operator strategy**”). The parts of the **system operator strategy** relating to **ICT** must include information to show how the **system operator strategy** is consistent with the **Provider's** corporate strategy relating to **ICT**.

16.2 **Consultation on system operator strategy:** The **Provider** must consult with the **Authority** before providing a **system operator strategy** to the **Authority**, as follows:

- (a) No later than 3.5 months before the **system operator strategy** is to be provided to the **Authority** under clause 16.1 (or such other date as agreed by the parties), the **Provider** must provide to the **Authority** a draft **system operator strategy**.
- (b) Within 6 weeks of receiving the draft **system operator strategy**, the **Authority** must provide to the **Provider** any feedback it may have on the draft **system operator strategy**.
- (c) The **Provider** must prepare the **system operator strategy** having regard to any feedback from the **Authority** on the draft **system operator strategy**.

16.3 **System operator strategic focus areas:** The **Provider** must, by 30 November in each **financial year**, notify the **Authority** of the **Provider's** strategic focus areas for the next **financial year**. The **Authority** must provide any feedback on the **Provider's** strategic focus areas by 31 January of the **financial year**. The **Provider** must have regard to the **Authority's** feedback. The **Provider** must

notify the **Authority** if the **Provider** does not make changes to its strategic focus areas to reflect the **Authority's** feedback, including providing its associated rationale for not reflecting such feedback.

16.4 **Joint development programme:** In undertaking the development and monitoring of the **joint development programme** as required by clause 7.7 of the **Code**, the parties must comply with the **joint work planning terms of reference**.

16.5 **System operator business plans:**

- (a) By the end of each **financial year** the **Provider** must provide to the **Authority** the **Provider's** business plan for the next **financial year** (a "**system operator business plan**").
- (b) In preparing the **system operator business plan** the **Provider** must have regard to the current **system operator strategy**.
- (c) The **system operator business plan** for a **financial year** must include the **statutory objective work plan** and **education and engagement plan** for the **financial year**.
- (d) The parties must negotiate in good faith to agree the **statutory objective work plan** and **education and engagement plan** before the start of the **financial year** to which they relate. The **system operator business plan** does not otherwise require the **Authority's** agreement.
- (e) The parties may agree to change the **statutory objective work plan** or **education and engagement plan** at any time during the **financial year** to which it relates. Neither party will unreasonably withhold its agreement to any change proposed by the other party.

17. **SYSTEM OPERATOR CAPITAL PLANNING**

17.1 **Capex roadmap:**

- (a) By the end of each **financial year** the **Provider** must provide to the **Authority** a document (a "**capex roadmap**") containing a high level plan for **capex projects** and **capex programmes** for the next four **financial years**. The **capex roadmap** constitutes the **Provider's** capital expenditure plan for the purposes of clause 7.7 of the **Code**.
- (b) Each **capex roadmap** must:
 - (i) describe the **capex projects** and **capex programmes** in the **capex roadmap**, including:
 - (1) each **capex project's** name;
 - (2) each **capex project's capex classification**; and
 - (3) a high level description of each **capex project** and **capex programme**, including how it is consistent with the **system operator business plan** (if relevant) and **system operator strategy**;
 - (ii) for each **forecast system operator asset** forecast to be **commissioned** in the first two **financial years** to which the **capex roadmap** relates, include the **forecast commissioning date** and **forecast value of commissioned asset** for the **forecast system operator asset**;

- (iii) estimate, for each **forecast system operator asset** forecast to be **commissioned** in the last two **financial years** to which the **capex roadmap** relates:
 - (1) the **financial year** in which the **forecast system operator asset's forecast commissioning date** will fall; and
 - (2) the **forecast system operator asset's forecast value of commissioned asset**, in the following bands:
 - (A) **forecast value of commissioned asset** \leq \$500,000;
 - (B) $\$500,000 < \text{forecast value of commissioned asset} \leq \$1,000,000$;
 - (C) $\$1,000,000 < \text{forecast value of commissioned asset} \leq \$1,500,000$;
 - (D) $\$1,500,000 < \text{forecast value of commissioned asset} \leq \$2,000,000$;
 - (E) $\$2,000,000 < \text{forecast value of commissioned asset} \leq \$2,500,000$;
 - (F) $\$2,500,000 < \text{forecast value of commissioned asset} \leq \$3,000,000$;
 - (G) $\$3,500,000 < \text{forecast value of commissioned asset} \leq \$4,000,000$;
 - and
 - (H) **forecast value of commissioned asset** $> \$4,000,000$; and
 - (iv) be written in a way that **stakeholders** are likely to be able to understand easily.
- (c) When providing the **capex roadmap** to the **Authority**, the **Provider** must provide to the **Authority** the following information:
- (i) a summary of the key points of interest for the **electricity industry** arising from the **capex roadmap**;
 - (ii) an explanation of any material differences between the **capex roadmap** and the previous **capex roadmap**;
 - (iii) for any **service enhancement capex project** or **market design capex project** in the first two **financial years** of the **capex roadmap** (unless previously provided):
 - (1) the **final business case** for the **capex project**; and
 - (2) in the case of a **service enhancement capex project**, if the **Provider** has consulted **participants** about the **service enhancement capex project**, a summary of the responses to that consultation;
 - (iv) a summary of the **Provider's electricity industry** need registration for any **fixed fee capex project** in the first two **financial years** of the **capex roadmap** (unless previously provided); and
 - (v) the **Provider's** recommendation as to whether or not any **capex project** in the first two **financial years** of the **capex roadmap** should be a **high value capex project** and, if so, the basis for the recommendation (unless previously provided).
- (d) The **Authority** may only challenge the **Provider's capex classification** of a **capex project** if:

- (i) the **capex project** is in the second or a subsequent **financial year** of a **capex roadmap**;
- (ii) the **Authority** reasonably considers the **capex project** is a **service enhancement capex project** but the **Provider** has not classified it as one in the **capex roadmap**; and
- (iii) the **Authority** has not previously challenged the **capex classification** of the **capex roadmap**.

If the **Authority** challenges a **capex classification** under this subclause (d), the **Provider** must consider the **Authority's** challenge in good faith and either:

- (iv) change the **capex classification** of the **capex project**; or
 - (v) notify the **Authority** of its reasons for not changing the **capex classification** of the **capex project**.
- (e) The **Provider** must not include any **market design capex project** in the first two **financial years** of a **capex roadmap** without the **Authority's** approval. Once the **Authority** has approved a **market design capex project** for inclusion in a **capex roadmap**, the **Authority's** approval for that **market design capex project's** inclusion in any subsequent **capex roadmap** is not required unless the **forecast value of commissioned asset** for a **forecast market design system operator asset** forecast to be created from the **market design capex project** has increased since the **Authority's** previous approval.

17.2 Changes to capex roadmap:

- (a) Subject to subclause (b), the **Provider** may change a **capex roadmap** by notifying the **Authority** of the change, provided the change has first been discussed by the **JWPT** if the change is in the first two **financial years** of the **capex roadmap**.
- (b) Any **material change** to the first two **financial years** of a **capex roadmap** must be approved by the **Authority**, which approval:
 - (i) must not be unreasonably withheld; and
 - (ii) will not be given if the **Authority** does not have a sufficient **appropriation** to meet any of its additional costs associated with the **material change** in the current **financial year**.
- (c) An application by the **Provider** for approval of a **material change** to a **capex roadmap** under subclause (b) must include supporting information for the **material change**. The **Authority** must decide whether or not to approve the application within 40 **business days** of receiving it from the **Provider**.
- (d) If a **material change** to a **capex roadmap** has an impact on the **joint development programme**, the **Provider** must comply with the requirements of the **joint work planning terms of reference** relating to **joint development programme** change management.

17.3 Information about capex returns:

- (a) At the same time as the **Provider** provides a **capex roadmap** to the **Authority** the **Provider** must provide the **Authority** with:
 - (i) a forecast of the **capex returns** on the **forecast service enhancement system operator asset base** and **forecast market design system operator asset base** in each of the first two **financial years** to which the **capex roadmap** relates; and
 - (ii) a forecast of the **historic capex component**, **in-flight capex component** and **fixed fee capex component** for each of the first two **financial years** to which the **capex roadmap** relates that are not in the current **funding period**.
- (b) At the same time as the **Provider** provides a **capex roadmap** to the **Authority** the **Provider** must provide the **Authority** with:
 - (i) a forecast of each **first year capex return** in the first **financial year** to which the **capex roadmap** relates;
 - (ii) a forecast of the **capex returns** on the **forecast service enhancement system operator asset base** and **forecast market design system operator asset base** in each of the first two **financial years** to which the **capex roadmap** relates; and
 - (iii) a forecast of the **historic capex component**, **in-flight capex component** and **fixed fee capex component** for each of the first two **financial years** to which the **capex roadmap** relates that are not in the current **funding period**.
- (c) At the same time as the **Provider** provides a **capex roadmap** to the **Authority** the **Provider** must provide the **Authority** with an estimate of the **capex returns** on the **forecast service enhancement system operator asset base** and **forecast market design system operator asset base** in the final two **financial years** to which the **capex roadmap** relates.
- (d) The **Provider** must immediately notify the **Authority** if:
 - (i) any circumstance arises where the **Provider** reasonably considers the **forecast commissioning date** for a **forecast fixed fee system operator asset** has moved from one **financial year** to a later **financial year**; or
 - (ii) the **Provider** changes its accounting policy or approach in a way that the **Provider** reasonably considers will have a material impact on:
 - (1) the **capex return** on the **forecast fixed fee system operator asset base** in the next **funding period**; or
 - (2) the **wash-up and incentives fee component** for the next **financial year** by reason of impacting on the **capex return** on the **actual service enhancement system operator asset base** or **actual market design system operator asset base** in the current **financial year**.
- (e) The **Provider** must:

- (i) consult with the **Authority** before **writing off a service enhancement system operator asset** or **market design system operator asset**; and
- (ii) immediately notify the **Authority** if the **Provider writes off a service enhancement system operator asset** or **market design system operator asset**, including the reason for **writing off the system operator asset**.

17.4 Final business cases for fixed fee capex projects:

- (a) The **Provider** must provide to the **Authority** a summary of the **final business case** for each new **fixed fee capex project** in the first two **financial years** to which a **capex roadmap** relates as soon as reasonably practicable after the **final business case** is finalised.
- (b) The parties must negotiate in good faith to agree on a template and the content for the summaries of **final business cases** referred to in subclause (a).

17.5 Approved service enhancement capex projects: A **service enhancement capex project** is only an **approved service enhancement capex project** if, before the **Provider** commences the **service enhancement capex project**:

- (a) the **service enhancement capex project** is in the most recent **capex roadmap**; and
- (b) the **service enhancement capex project** has been approved by the **Authority**, which approval:
 - (i) must not be unreasonably withheld; and
 - (ii) will not be given unless:
 - (1) the **service enhancement capex project** has been the subject of an **appropriation consultation** and the **Authority** has sufficient **appropriation** to pay any **capex return** in the current **financial year** attributable to each **forecast service enhancement system operator asset** forecast to be created from the **service enhancement capex project**; and
 - (2) the **Authority** is reasonably satisfied that:
 - (A) there is an **electricity industry** need for the **service enhancement capex project**;
 - (B) the **service enhancement capex project** has a positive expected **electricity industry** net benefit; and
 - (C) the **service enhancement capex project** is consistent with the **system operator strategy**.

17.6 Appropriation consultations:

- (a) Subject to subclause (b), the information provided by the **Provider** to the **Authority** under this clause 17 is not required to be, and must not be, made the subject of **appropriation consultations** or distributed with **appropriation consultation** papers.
- (b) The **Authority** may distribute the information provided by the **Provider** under clauses 17.1(c)(i) and 17.1(c)(ii), or a summary of it approved by the **Provider**, with

appropriation consultation papers, but the **Authority** must not seek or receive submissions on that information as part of the **appropriation consultation**.

18. ABANDONMENT AND STRANDING

18.1 Abandonment:

- (a) Only the **Provider** can decide to **abandon a fixed fee capex project or forecast fixed fee system operator asset**. However:
 - (i) the **Provider** must consult with the **Authority** before making any **abandonment** decision; and
 - (ii) the **Provider** must act reasonably in making any **abandonment** decision.
- (b) The **Provider** must notify the **Authority** as soon as reasonably practicable after **abandoning a fixed fee capex project or forecast fixed fee system operator asset**, which must include the **abandonment date** and the reasons for **abandonment**.
- (c) If the **Provider** **abandons a fixed fee capex project**, the **Provider** must:
 - (i) use **reasonable endeavours** to, within six months of **abandoning the fixed fee capex project**, replace the **abandoned fixed fee capex project** with another **fixed fee capex project**:
 - (1) with a value that is the same as or lower than the **residual value** for the **abandoned fixed fee capex project**; and
 - (2) which may be a new or existing but brought forward **fixed fee capex project**, (a “**replacement fixed fee capex project**”); and
 - (ii) if the **Provider** does not replace the **abandoned fixed fee capex project** with a **replacement fixed fee capex project**, immediately notify the **Authority** including of the reasons for not replacing the **abandoned fixed fee capex project**.
- (d) For the avoidance of doubt, the **Provider** will recover all or part of the **capex** (if any) for an **abandoned fixed fee capex project** through the **fixed fee**.

18.2 Stranding:

- (a) Only the **Authority** can decide to **strand a service enhancement capex project, market design capex project, forecast service enhancement system operator asset or forecast market design system operator asset**. However:
 - (i) the **Authority** must consult with the **Provider** before making any **stranding** decision; and
 - (ii) the **Authority** must act reasonably in making any **stranding** decision.
- (b) The **Authority** must notify the **Provider** of the **Authority’s** decision to **strand a service enhancement capex project, market design capex project, forecast service enhancement system operator asset or forecast market design system operator asset**,

which must include the reasons for **stranding**. The **stranding date** will be the date the **Provider** receives the notice.

- (c) As soon as reasonably practicable after the **stranding date** for a **service enhancement capex project** or **market design capex project** the **Provider** must:
 - (i) stop work on the **stranded capex project**; and
 - (ii) notify the **Authority** of the **Provider's** reasonable estimate of the **stranding costs** for the **stranded capex project**.
- (d) For the avoidance of doubt, the **Provider** will recover all or part of the **stranding costs** for a **stranded capex project** through the **wash up and incentives fee**, but will not recover a **capex return** on any **stranded forecast service enhancement system operator asset** or **stranded forecast market design system operator asset**.

19. HIGH VALUE CAPEX PROJECTS

19.1 Delivery incentives:

- (a) The parties must negotiate in good faith to agree before the **Provider** commences a **high value capex project** the **delivery incentive value**, **no delivery incentive date**, **early delivery incentive date** and **late delivery incentive date** for each **forecast high value system operator asset** forecast to be created from the **high value capex project**.
- (b) If a **delivery incentive** accrues to a party then the **delivery incentive** must be paid to that party through the **wash up and incentives fee**.

19.2 **Full commissioning required:** For the purposes of determining the **delivery incentive** for a **high value system operator asset**, the **high value system operator asset** will only be deemed to have been **commissioned** if and when it is fully **commissioned**.

19.3 **Benefits realisation reviews:** The parties must negotiate in good faith to agree by the end of each **financial year** the **high value capex projects** (other than **market design capex projects**) for which the **Provider** must carry out a **benefits realisation review** during the next **financial year**. The **Provider** must carry out each agreed **benefits realisation review** during that **financial year** and provide to the **Authority** a report on the outcome of the **benefits realisation review** as soon as reasonably practicable after the **benefits realisation review** is completed.

20. GENERAL REPRESENTATIONS AND WARRANTIES

20.1 **Provider representations and warranties:** The **Provider** represents and warrants to the **Authority** that:

- (a) all information provided by the **Provider** to the **Authority** under or in connection with the **services** or this **agreement** is:
 - (i) if prepared or generated by the **Provider**, true accurate, and not misleading in any respect (including by omission); and

- (ii) if prepared or generated for the **Provider** by a third party, or provided to the **Provider** by a third party, to the best of the **Provider's** knowledge and belief, true, accurate and not misleading in any respect (including by omission);
- (b) its **personnel** have the suitable skills, training, and experience for the provision of the **services**, provided that this warranty does not apply to **personnel** who the **Authority** requires the **Provider** to engage to provide **services**;
- (c) its **personnel** will be properly supervised in the provision of the **services**; and
- (d) it will not engage in any activity that will or is likely to compromise its ability to provide the **services** fairly and independently.

20.2 **Authority representations and warranties:** The **Authority** represents and warrants to the **Provider** that all information provided by the **Authority** to the **Provider** under or in connection with the **services** or this **agreement** is:

- (a) if prepared or generated by the **Authority**, true accurate, and not misleading in any respect (including by omission); and
- (b) if prepared or generated for the **Authority** by a third party, or provided to the **Authority** by a third party, to the best of the **Authority's** knowledge and belief, true, accurate and not misleading in any respect (including by omission).

20.3 **Warranties repeated:** The representations and warranties in clauses 20.1 and 20.2 will be deemed to be repeated continuously by the **Provider** or **Authority** (as appropriate) during the term of this **agreement** and the period for which the **Provider** provides **transitional assistance**.

21. INTELLECTUAL PROPERTY

21.1 **No rights:** Nothing in this **agreement** confers on a party any right or interest in, or licence to use, or permit to be used, any of the other party's or any third party's **intellectual property** except as expressly provided for in this **agreement**.

21.2 **Existing intellectual property:** All **existing intellectual property** will remain owned exclusively by the relevant party or its third party licensors.

21.3 **New intellectual property:** Except as set out in clause 21.4, all new **intellectual property** that is developed, commissioned or created for the purposes of this **agreement** or the **services**, including all:

- (a) new **intellectual property** in **Provider deliverables**; and
- (b) modifications, adaptations and additions to a party's **existing intellectual property** that are developed, commissioned or created for the purposes of this **agreement** or the **services**,

will be owned by the **Authority** as such rights arise. To the extent such rights vest in the **Provider**, the **Provider** must, upon request of the **Authority**, assign such rights to the **Authority** or its nominee.

21.4 **Exceptions to clause 21.3:** Clause 21.3:

- (a) is subject to the terms of any **licence agreement** that relate to ownership of **intellectual property** in the **system** or **documentation**; and
- (b) does not apply to:
 - (i) **intellectual property** developed, commissioned or created under any other agreement between the parties, the ownership of which will be determined in accordance with that agreement or **laws**;
 - (ii) **intellectual property** in computer hardware, which will be owned by the third party manufacturer or supplier of the computer hardware;
 - (iii) **intellectual property** in **operational policies** and **operational procedures** (other than **operational policies** and **operational procedures** that are in, or incorporated by reference in, the **Code**), which will be owned by the **Provider** or its third party licensors;
 - (iv) **intellectual property** in Transpower New Zealand Limited's corporate publications, which will be owned by Transpower New Zealand Limited or its third party licensors; or
 - (v) the parties' know-how developed in the course of providing or receiving the **services**, which will be owned (to the extent capable of ownership) by the party with the know-how.

21.5 **Licence to Provider:** The **Authority** grants to the **Provider**, and the **Provider** accepts from the **Authority**, a non-exclusive, non-transferrable, royalty free licence during the term of this **agreement** to use the **Authority's intellectual property** for the sole purpose of exercising its rights and performing its obligations under the **Act**, the **Code**, the **regulations** and this **agreement**.

21.6 **Licence to Authority:** The **Provider** grants to the **Authority**, and the **Authority** accepts from the **Provider**, a non-exclusive, non-transferrable, royalty free licence to use the **Provider's intellectual property** for the sole purpose of exercising its rights and performing its obligations under the **Act**, the **Code**, the **regulations** in respect of the **Provider** or this **agreement**.

21.7 **Trade marks:** All **intellectual property** in any trade marks used in relation to the **services** will be the property of the **Authority** as such rights arise, other than:

- (a) third party trade marks; and
- (b) the **Provider's** trade marks in general use by the **Provider** before the **variation 2 commencement date**, including EMS, ENERGY MARKET SERVICES, EMSTRADEPOINT, EM6, TRANSPOWER and associated logos.

The **Provider** must not apply its own or a third party's trade marks (other than TRANSPOWER and associated logos) to any part of the **services** except with the **Authority's** prior approval.

21.8 Intellectual Property representations and warranties: The **Provider** represents and warrants to the **Authority** that:

- (a) subject to any **permitted constraints**, it has all requisite ownership rights and licences to fully perform its obligations under this **agreement** and to grant all rights granted to the **Authority** under this **agreement** free and clear of any and all agreements, liens, adverse claims, encumbrances, and interests of any third party; and
- (b) the provision of the **services** (including the **Provider's** use of the **system** to provide the **services**) and the receipt of the **services** by the **Authority** in accordance with this **agreement** will not infringe the **intellectual property** of any third party.

21.9 Intellectual property indemnity: Subject to clauses 21.10 and 21.11, the **Provider** indemnifies and must keep indemnified the **Authority** against all actions, proceedings, losses, liabilities, damages, claims, demands, costs, and expenses (including all legal costs and expenses on a solicitor and own client basis) suffered or incurred by the **Authority** arising out of a breach of a representation and warranty in clause 21.8.

21.10 No admission: The indemnity in clause 21.9 is conditional on the **Authority** making no admission of the relevant **infringement claim** without the **Provider's** prior approval.

21.11 Fault of participant or Authority: The indemnity in clause 21.9 does not apply to the extent a breach of the representation and warranty is caused by:

- (a) the **Provider's** processing or other use of **data** in accordance with the **Act**, the **Code**, the **regulations** and this **agreement** where the **Provider** had no knowledge, and could not reasonably be expected to have known, of any infringement of third party **intellectual property** in respect of the **data**; or
- (b) a **participant's** or the **Authority's** breach of **law** or this **agreement** or a **permitted constraint**.

21.12 Handling of infringement claims:

- (a) The **Authority** must notify the **Provider** of any **infringement claim** or potential **infringement claim** as soon as reasonably practicable after becoming aware of it.
- (b) At the **Provider's** request and expense, the **Authority** must allow the **Provider** to conduct and/or settle all negotiations and litigation in relation to an **infringement claim**, provided that the **Authority** will be entitled to be represented at, and must be consulted on, all such negotiations and litigation.
- (c) The **Authority** must give the **Provider** all reasonable assistance with negotiations and litigation in relation to an **infringement claim**. The **Provider** must meet the **Authority's** reasonable costs associated with providing such assistance.
- (d) Any costs recovered in negotiations or litigation in relation to an **infringement claim** are for the **Provider's** account.

21.13 New licence agreements: If the **Provider** enters into a **licence agreement** after the **transitional commencement date**, the **Provider** must use **reasonable endeavours** to ensure that the part of

the **system** or **documentation** to which the **licence agreement** relates is a **soft transferable item** or **hard transferable item** (as the case may be). The **Provider** will not be in breach of this clause 21.13 if:

- (a) the part of the **system** or **documentation** is not a **soft transferable item** or **hard transferable item** because the **Provider** would have incurred a fee to the third party licensor for the necessary rights that the **Provider** determined, having consulted with the **Authority**, it would not have recovered in full from the **Authority**; and
- (b) the **Provider** has used **reasonable endeavours** to avoid incurring that fee.

22. LIMITATION AND EXCLUSION OF LIABILITY

- 22.1 **Obligations owed to Authority:** The **Provider's** obligations under this **agreement** are obligations owed solely to the **Authority** and are not obligations for the benefit of any other person.
- 22.2 **Provider limitation of liability:** The **Provider's** aggregate liability to the **Authority** for all claims under or in connection with this **agreement** or the **services** (whether in contract (including under a contractual indemnity), equity, tort (including negligence) or otherwise) is limited to the limits of the **system operator's** liability set out in regulation 53 of the **enforcement regulations**.
- 22.3 **Provider breach of Act, Code or regulations:** Where any act or omission by the **Provider** under or in connection with this **agreement** or the **services** constitutes a breach of the **Act, Code** or **regulations**, the **Authority's** sole remedy will be as provided for in the **Act, Code** and **regulations**, and the **Provider** will have no liability under or in connection with this **agreement**.
- 22.4 **Relationship to liability for Code breach:** It is intended that the aggregate liability of the **Provider** to all persons for all claims under or in connection with this **agreement** or the **services** (including **Code liability**) will be limited as set out in clause 22.2 (with the exception of liability arising from fraudulent or wilful acts or omissions by the **Provider**). If the **Provider** incurs any **Code liability** (other than **Code liability** arising from fraudulent or wilful acts or omissions by the **Provider**):
- (a) the **Code liability** will be set off against the **Provider's** liability limits referred to in clause 22.2, and those limits will reduce accordingly; and
 - (b) the **Authority** must refund to the **Provider** any payments already made by the **Provider** to the **Authority** in respect of liability under or in connection with this **agreement** as may be necessary to ensure the reduced limits are not exceeded.
- 22.5 **Authority limitation of liability:** The **Authority's** aggregate liability to the **Provider** for all claims under or in connection with this **agreement** or the **services** (whether in contract (including under a contractual indemnity), equity, tort (including negligence) or otherwise) is limited to the limits of the **system operator's** liability set out in regulation 53 of the **enforcement regulations**
- 22.6 **Exclusion of liability:** Neither party is liable to the other party in respect of any claim under or in connection with this **agreement** or the **services** (whether in contract (including under a contractual indemnity), equity, tort (including negligence) or otherwise) for any indirect or consequential loss or for any loss of revenue, profits, goodwill, business, anticipated business or anticipated savings, or

for any business interruption, whether or not that loss was, or ought to have been, contemplated by the other party.

22.7 **Unlimited liability:** The limitations on and exclusion of liability in clauses 22.2, 22.5 and 22.6 do not apply to any claim under or in connection with this **agreement** or the **services** (whether in contract (including under a contractual indemnity), equity, tort (including negligence) or otherwise) that arises as a result of any:

- (a) fraudulent or wilful act or omission by the liable party; or
- (b) failure by the **Authority** to pay any **fees** to the **Provider** in accordance with this **agreement**.

23. INSURANCE

23.1 **Insurance cover:** The **Provider** must, for the term of this **agreement** plus two years after its termination or two years after the end of the period for which the **Provider** provides the **transitional assistance** referred to in clause 24.15(b) (whichever is later), maintain adequate insurance cover (in respect of the provision of the **services**) for all normal commercial risks and in respect of any reasonably foreseeable liability it may incur (including to the **Authority**) under this **agreement** or the **Act**, **Code** or **regulations**, to ensure that any problems encountered by the **Provider** will not result in the disruption of the efficient performance of this **agreement**.

23.2 **Self-insurance:** The **Provider** may comply with clause 23.1 by self-insuring, including through a captive insurer.

23.3 **Proof of insurance:** The **Provider** must provide to the **Authority** all information reasonably requested by the **Authority** to establish the **Provider's** compliance with clause 23.1. This may include:

- (a) information about the extent to which the **Provider** has self-insured, how this has been achieved and why the **Provider** chose to self-insure; and
- (b) evidence from the **Provider's** external insurers (or an authorised representative) confirming the extent of the **Provider's** external insurance.

24. TERMINATION

24.1 **Termination for convenience:** The **Authority** may terminate this **agreement** by giving the **Provider** at least three years' notice of the termination, such notice not to be given before the start of **financial year 3**.

24.2 **Termination for insolvency:** A party may terminate this **agreement** immediately on notice to the other party (the "**insolvent party**") if the **insolvent party** is subject to an **insolvency event**.

24.3 **Termination for material breach:** A party (the "**non-defaulting party**") may terminate this **agreement** immediately on notice to the other party (the "**defaulting party**") if the **defaulting party** commits a material breach of this **agreement** that:

- (a) cannot be remedied by the **defaulting party**; or

- (b) can be remedied by the **defaulting party** and that the **defaulting party** fails to remedy to the **non-defaulting party's** reasonable satisfaction within 10 **business days** of the **defaulting party** receiving notice from the **non-defaulting party** specifying the breach and requiring it to be remedied,

24.4 **Meaning of material breach:** For the purposes of clause 24.3:

- (a) a series of breaches that, taken individually, may not constitute a material breach may, when taken together, constitute a material breach; and
- (b) a breach by the **Provider** that is material only because it has adverse cost implications to **participants** will not be a material breach unless those cost implications (in total) are in excess of \$50 million.

24.5 **Termination if system operator role dis-established:** If the **Act**, **Code**, or **regulations** are revoked, repealed, or amended such that the **system operator** role ceases to exist, the **Authority** may terminate this **agreement** immediately on notice to the **Provider**.

24.6 **Termination payment:** If the **Authority** terminates this **agreement** under clause 24.1 or 24.5 the **Authority** must pay a termination payment to the **Provider**. The termination payment must be of an amount that reasonably compensates the **Provider** for those costs the **Provider** has incurred, or will incur after the termination date:

- (a) in relation to its provision of the **services**; and
- (b) that the **Provider**:
 - (i) has not already been compensated for through the **fees**;
 - (ii) has not been, and cannot reasonably expect to be, compensated for by any third party; and
 - (iii) has used **reasonable endeavours** to avoid.

Such costs may include:

- (c) unrecovered costs incurred by the **system operator** in procuring **ancillary services**;
- (d) unrecovered **capex returns** attributable to **system operator assets** to the extent the **Provider** would have recovered those **capex returns** if this **agreement** had continued indefinitely;
- (e) unrecovered **capex** for **abandoned** or **stranded forecast system operator assets** (including **system operator assets** that are **abandoned** or **stranded** as a consequence of the termination of this **agreement**) to the extent the **Provider** would have recovered that **capex** if this **agreement** had continued indefinitely;
- (f) redundancy and other termination costs for **personnel** employed or engaged by the **Provider** to perform the **services**; and
- (g) fees payable to third party contractors and licensors.

The parties must negotiate in good faith to agree the amount of the termination payment within 40 **business days** of the date of termination. If the amount of the termination payment is not agreed by that time, the **dispute** must be referred directly to expert determination under clause 26.2.

24.7 **Consequences of termination:** Except as otherwise provided in this **agreement**, on termination of this **agreement** all rights and obligations of the parties under this **agreement** will immediately cease. However, termination of this **agreement** will not affect:

- (a) any liability of either party under or in connection with this **agreement** or the **services** that arose before termination; or
- (b) the right of either party to recover any amount that became properly due to it under the **Act**, the **Code**, the **regulations** or this **agreement** before or on termination.

24.8 **Access to data and processed data:** Subject to clause 24.9, after termination of this **agreement** the **Provider** must, if requested by the **Authority** and at the **Authority's** reasonable cost:

- (a) provide to the **Authority** or **incoming provider** reasonable access to the **data** and **processed data** held by the **Provider**; or
- (b) transfer to the **Authority** or **incoming provider** the **data** and **processed data** held by the **Provider**, in accordance with the **data transfer plan**.

24.9 **Exceptions:**

- (a) The **Provider's** obligations under clause 24.8 only apply during the period the **Provider** is required to store **data** and **processed data** under clause 25.6.
- (b) The **Provider** is not required to comply with clause 24.8 to the extent that the **data** or **processed data** is to be provided to the **Authority** and the **Provider** reasonably considers its provision of access to, or transfer of, the **data** or **processed data** would cause the **Provider** to be in breach of an obligation of confidence owed to a **participant**.

24.10 **Data transfer plan:** If the **Authority** requests the transfer of **data** and **processed data** under clause 24.8(b), the parties must negotiate in good faith to agree within 15 **business days** of the **Authority's** request a plan setting out the timing and other requirements for the transfer of the **data** and **processed data** (a "**data transfer plan**"). If the **data transfer plan** is not agreed by that time, the **dispute** must be referred directly to expert determination under clause 26.2.

24.11 **Soft transferable items:** If this **agreement** is terminated by the **Authority**, the **Provider** must, if requested by the **Authority**, as soon as reasonably practicable following the notice of termination:

- (a) grant the **Authority** or, if requested by the **Authority**, the **incoming provider** a perpetual, irrevocable, non-exclusive licence to use, copy and modify the **soft transferable items** for the purposes of:
 - (i) if the licence is to the **Authority**, performing the **system operator** role including the right to sublicense on the same terms to any third party **system operator**; and
 - (ii) if the licence is to the **incoming provider**, performing the **system operator** role; and

- (b) provide to the **Authority** or **incoming provider** (whichever is the licensee) copies of the **soft transferable items**, including, in the case of **system operator software**, the source code.

24.12 Commercial terms for software and documentation transfer: The parties must negotiate in good faith to agree the commercial terms of the licence to be granted under clause 24.11(a) within **15 business days** of the notice of termination. The commercial terms must include the following obligations on the **Authority** or the **incoming provider** (whichever is the licensee):

- (a) the **Authority** or **incoming provider** must indemnify and keep indemnified the **Provider** against all actions, proceedings, losses, liabilities, damages, claims, demands, costs, and expenses (including all legal costs and expenses on a solicitor and own client basis) suffered or incurred by the **Provider** arising out of the **Authority's** or **incoming provider's** misuse of any **soft transferable item**; and
- (b) the **Authority** or **incoming provider** must pay the **Provider** on a monthly basis:
 - (i) that part of the **fees** agreed by the parties as relating to the **Provider's** provision of the **soft transferable items** at the date of termination;
 - (ii) the ongoing fees payable by the **Provider** to its third party licensors in respect of the **soft transferable items** (to the extent not covered by subclause (i)); and
 - (iii) if the licensee is the **Authority**, 75% of all sublicense fees received by the **Authority** for any sublicences by the **Authority** of the **soft transferable items**.

If the commercial terms are not agreed by that time, the **dispute** must be referred directly to expert determination under clause 26.2.

24.13 Hard transferable items: If this **agreement** is terminated by the **Authority**, the **Provider** must, if requested by the **Authority**, as soon as reasonably practicable following the notice of termination:

- (a) provide to the **Authority** or **incoming provider** access to any **hard transferable item** for the sole purpose of performing the **system operator** role; or
- (b) transfer ownership or possession of any **hard transferable item** to the **Authority** or **incoming provider**.

24.14 Commercial terms for hardware transfer: The parties must negotiate in good faith to agree the commercial terms of the access, ownership or possession to be provided under clause 24.13 within **15 business days** of the notice of termination. If the commercial terms are not agreed by that time, the **dispute** must be referred directly to expert determination under clause 26.2.

24.15 Transitional assistance: If this **agreement** is terminated by the **Authority**, the **Provider** must, if requested by the **Authority**:

- (a) co-operate with and provide reasonable assistance to the **Authority** or **incoming provider** to ensure an orderly transition of the **services** to the **Authority** or **incoming provider** with the minimum practical disruption to the **electricity industry**, which may include the provision of training; and

- (b) for a period of up to three years after the date of termination, continue to provide the whole or any part of the **services** as reasonably required by the **Authority** (the “**continuing services**”), in which case:
 - (i) the **Authority** must continue to pay all or a reasonable part of the **fees** to the **Provider** for the **Provider’s** provision of the **continuing services** plus any additional costs reasonably incurred by the **Provider** to provide the **continuing services** above the costs incurred before the termination (for example, retention costs for **personnel** needed to perform the **continuing services**); and
 - (ii) this **agreement** will continue to apply in respect of the **continuing services** for as long as they are provided by the **Provider**.

If the **Authority** has terminated this **agreement** under clause 24.1 or 24.5, the **Authority** must pay the **Provider** the total reasonable internal and external costs incurred by the **Provider** (at the **hourly rates** where applicable) for providing the **transitional assistance** referred to in subclause (a), provided such costs are approved by the **Authority** before they are incurred, such approval not be unreasonably withheld.

25. CONFIDENTIALITY, DATA STORAGE AND CYBER SECURITY

25.1 **Provider’s confidentiality obligations:** The **Provider** must:

- (a) maintain such arrangements with its **personnel** as are reasonably necessary to protect the confidentiality of **confidential data** and **Authority confidential information**;
- (b) use **confidential data** and **Authority confidential information** only for the purposes of providing the **services** and exercising its rights and performing its obligations under this **agreement**; and
- (c) not disclose **confidential data** and **Authority confidential information** except:
 - (i) to its **personnel** who need to know the **confidential data** or **Authority confidential information** for the purposes set out in subclause (b);
 - (ii) subject to clause 25.3, as required by **law**;
 - (iii) subject to clause 25.3, for the purposes of legal proceedings, including **Rulings Panel** proceedings;
 - (iv) in the case of **confidential data**:
 - (1) as permitted by all **participants** the **confidential data** relates to; or
 - (2) as required under clause 15.7 or 24.8; or
 - (v) in the case of **Authority confidential information**, as permitted by the **Authority**.

25.2 **Authority’s confidentiality obligations:** The **Authority** must:

- (a) maintain such arrangements with its **personnel** as are reasonably necessary to protect the confidentiality of **Provider confidential information**;

- (b) use **Provider confidential information** only for the purposes of receiving the **services** and exercising its rights and performing its obligations under this **agreement**;
- (c) not disclose **Provider confidential information** except:
 - (i) to its **personnel** who need to know the **Provider confidential information** for the purposes described in subclause (b);
 - (ii) subject to clause 25.3, as required by **law**, including for the purposes of public consultation;
 - (iii) subject to clause 25.3, for the purposes of legal proceedings, including **Rulings Panel** proceedings; or
 - (iv) as permitted by the **Provider**; and
- (d) ensure each **agreed auditor** uses **Provider confidential information** only for the purposes of the relevant **performance audit** and does not disclose it except:
 - (i) to the **Authority**; or
 - (ii) in a circumstance described in subclause (c)(ii), (c)(iii) or (c)(iv) (and as if the reference to the **Authority** in clause 25.3(a)(iii) were to the **agreed auditor**).

25.3 Disclosure required by law or for legal proceedings:

- (a) If:
 - (i) the **Provider** intends to disclose **confidential data** under clause 25.1(c)(ii) or 25.1(c)(iii) (other than for the purposes of legal proceedings against, or instigated by, a **participant** to whom the **confidential data** relates);
 - (ii) the **Provider** intends to disclose **Authority confidential information** under clause 25.1(c)(ii) or 25.1(c)(iii) (other than for the purposes of legal proceedings against, or instigated by, the **Authority**); or
 - (iii) the **Authority** intends to disclose **Provider confidential information** under clause 25.2(c)(ii) or 25.2(c)(iii) (other than for the purposes of legal proceedings against, or instigated by, the **Provider**),

the disclosing party must:

 - (iv) consult with the other party before disclosing the information (unless prevented by **law** from doing so) as to the need for, and extent and form of, disclosure of the information; and
 - (v) if required by the other party, and at the other party's cost, seek to prevent the on-disclosure of the information by obtaining whatever confidentiality undertakings, orders or other protections as may reasonably be available.
- (b) The **Authority** must not disclose any **audit information** that is **Provider confidential information** for the purposes of public consultation without the **Provider's** prior approval.

- 25.4 **Publicity:** Neither party may make or release publicity or media statements relating to the **services** or this **agreement** except as required by **law** or with the other party's prior approval, such approval not to be unreasonably withheld except to the extent that the publicity or media statements contain confidential information (**Provider confidential information** or **Authority confidential information**) of the approving party.
- 25.5 **No surprises:** Without limiting any of the **Provider's** other obligations in this **agreement** (including under clause 25.4), the **Provider** must:
- (a) use **reasonable endeavours** to give the **Authority** a minimum of 24 hours' notice in advance of the **Provider** undertaking any engagement or communication with any Minister, government department or government agency relating to the **services** or the performance of this **agreement**; and
 - (b) give the **Authority** a minimum of 24 hours' notice in advance of the **Provider** undertaking any public or other engagement or communication that may cause reputational harm to the **Authority**.
- 25.6 **Data storage:** Except to the extent it is transferred to the **Authority** under clause 24.8(b), the **Provider** must store all **data** and **processed data** for at least three years from the time the **Provider** acquires or processes the **data** (whichever is later) or creates the **processed data**.
- 25.7 **Provider's cyber security obligations:** In performing the **services**, the **Provider** must take such reasonable steps that are consistent with the standard expected of a **reasonable and prudent system operator** (including maintaining and following controls and procedures), to:
- (a) secure the **Provider systems** against unauthorised access (whether electronic or physical) or ensure the **Provider systems** are so secured; and
 - (b) protect against the introduction of security vulnerabilities or malicious code into the **Provider systems** or ensure the **Provider systems** are so protected,
- and the **Provider** will, where requested by the **Authority**, provide reasonable information to the **Authority** summarising the security measures in place for the **Provider** to meet its obligations under this clause. The **Authority** acknowledges that, for third party **Provider systems**, the **Provider** may meet its obligations under this clause by ensuring that appropriate obligations are included in its contracts with the third parties pertaining to the matters specified in subclauses (a) and (b) of this clause 25.7.

26. DISPUTE RESOLUTION

- 26.1 **Notice of disputes and negotiation:** Either party may notify the other party of a **dispute** that the notifying party considers to have arisen (a "**dispute notice**"). The notifying party must, in the **dispute notice**, designate a representative to attend meetings to discuss the **dispute**, who must be a person with authority to settle the **dispute** for the notifying party. Within five **business days** of receiving the **dispute notice** the receiving party must notify the notifying party of the receiving party's representative to attend meetings to discuss the **dispute**, who must be a person with authority to settle the **dispute** for the receiving party. The parties' representatives must meet

promptly and as many times as necessary to discuss the **dispute** and endeavour to resolve it by negotiation and agreement.

26.2 **Mediation or expert determination:** A **dispute** that is not resolved by negotiation and agreement between the parties within 15 **business days** of the relevant **dispute notice** may be referred by either party (by notice to the other party) to non-binding mediation or, if agreed by the parties, expert determination. Unless the parties agree otherwise, any mediation or expert determination must be conducted in accordance with the relevant standard agreement of Resolution Institute or its successor. If the parties do not agree the identity of the mediator or expert within 10 **business days** of the referral to mediation or expert determination, the mediator or expert will be appointed at the request of either party by the Chairperson (or equivalent) of Resolution Institute or its successor (or their nominee). The mediator's or expert's costs must be borne equally by the parties. Nothing in this clause 26.2 obliges either party to mediate a **dispute** for a period exceeding 10 **business days** from the date on which the mediation commenced.

26.3 **Arbitration:** Any **dispute** that is not resolved in accordance with clauses 26.1 and 26.2 within 60 **business days** of the relevant **dispute notice** may (subject to clause 26.7) be submitted by either party (by notice to the other party) to arbitration to be held in Wellington under the Arbitration Act 1996 before a single arbitrator. If the parties do not agree the identity of the arbitrator within 10 **business days** of the referral to arbitration, the arbitrator will be appointed at the request of either party by:

- (a) in the case of a **dispute** that relates solely to the **fees**, costs or financial matters, the President (or equivalent) of Chartered Accountants Australia and New Zealand or its successor (or their nominee); or
- (b) in all other cases, the President (or equivalent) of the New Zealand Law Society or its successor (or their nominee).

The arbitrator's costs must be borne equally by the parties.

26.4 **Continued performance:** Pending resolution of a **dispute**, the parties must continue to perform their obligations under this **agreement** as far as reasonably possible as if the **dispute** had not arisen.

26.5 **Final and binding:** For the avoidance of doubt, the decision of any expert appointed under clause 26.2 or arbitrator appointed under clause 26.3 will be final and binding.

26.6 **Restriction on use of information and offers:** The parties acknowledge that the purpose of any exchange of information or the making of any offer of settlement during negotiation or mediation of a **dispute** is to attempt to settle the **dispute**. No party may use any information or offer obtained solely during negotiation or mediation of a **dispute** for any purpose other than to attempt to settle the **dispute**.

26.7 **Restriction on proceedings:** Except as provided in clause 26.8, neither party may commence arbitration or litigation in relation to a **dispute** unless:

- (a) the **dispute** is the subject of a **dispute notice**;

- (b) the parties have endeavoured to resolve the **dispute** in accordance with clauses 26.1 and 26.2 but failed to do so; and
- (c) the party commencing the arbitration or litigation has first invited the chief executive (or equivalent) of the other party to meet with its own chief executive (or equivalent) for the purposes of endeavouring to resolve the **dispute** by negotiation and agreement.

26.8 **Urgent relief:** Nothing in this clause 26 precludes either party from taking immediate steps to seek urgent equitable relief before a New Zealand court.

26.9 **Breach of Act, regulations or Code:** Any breach of the **Act, regulations** or **Code** must be dealt with in accordance with the relevant procedures under the **Act, regulations** or **Code**.

27. BUSINESS CONTINUITY AND BACK-UP

27.1 **Business continuity plan and back-up procedures:** The **Provider** must maintain and comply with:

- (a) a written business continuity plan enabling the **Provider** to fulfil its obligations under this **agreement** with the minimum practical disruption to the **electricity industry** in the event of any unplanned interruption to the **Provider's** ability to provide the **services**; and
- (b) written back-up procedures for all **data** and **processed data** held by the **Provider**.

27.2 **Annual testing of business continuity plan:** Each **financial year** the **Provider** must carry out simulation testing of the effectiveness of its business continuity plan to deal with an unplanned interruption to the **Provider's** ability to provide the **services**.

27.3 **Invoking the business continuity plan:** If the business continuity plan is invoked then (subject to clause 27.4) the **Provider** must:

- (a) notify the **Authority** as soon as possible, with such notification to include the time and reason for invoking the business continuity plan and the estimated time of restoration to business-as-usual **services**;
- (b) provide regular updates to the **Authority**, at least once a day, of progress towards restoration while the business continuity plan is invoked; and
- (c) notify the **Authority** as soon as possible after business-as-usual **services** are restored.

27.4 **Switching between operational control sites:** The **Provider** is not required to notify the **Authority** when it switches operational control between **operational control sites** in real-time in accordance with an **operational policy**, an **operational procedure** or the business continuity plan.

27.5 **Back-up copies:** Without limiting clause 27.1, the **Provider** must ensure that back-up copies of the **auditable software** are kept in a location at least 100 kilometres from the **operational control site** in Wellington.

27.6 **Provide to Authority:** The **Provider** must provide to the **Authority**:

- (a) copies of the **Provider's** current business continuity plan and back-up procedures; and

- (b) copies of all updates to the **Provider's** business continuity plan and back-up procedures as soon as reasonably practicable after updating them.

28. FORCE MAJEURE

- 28.1 **Code provisions to apply:** The force majeure provisions in clauses 3.7 to 3.10 of the **Code** apply in respect of each party's obligations under this **agreement** as if those provisions were set out in full in this **agreement** (with such changes as necessary to make them applicable to the party's obligations under this **agreement**, rather than under the **Code** and **enforcement regulations**).
- 28.2 **Mutual relief:** To the extent the **Provider** does not perform any of the **services** as a result of a **force majeure event**, the **Authority** is relieved of its obligation to pay the **Provider** the **fees** in respect of those **services**.

29. SUBCONTRACTING

- 29.1 **Subcontracting:** The **Provider** must not subcontract any third party to provide all or any substantial part of the **services** or perform all or any substantial part of its obligations under this **agreement** unless the subcontractor and subcontract have received the **Authority's** prior approval, such approval not to be unreasonably withheld. For the avoidance of doubt, this does not prevent the **Provider** engaging contractors to carry out routine **Provider** work or to carry out **Provider** work within the **Provider's** organisation.
- 29.2 **Liability:** The entry by the **Provider** into a subcontract will not relieve the **Provider** of responsibility or liability for the provision of the **services** or performance of its obligations under this **agreement**, and the **Provider** is liable to the **Authority** for the acts and omissions of any of the **Provider's** subcontractors in connection with the **services** or this **agreement**.

30. COMMUNICATIONS

- 30.1 **Notice:** Every notice, request, report or other communication between the parties ("**communication**") for the purposes of this **agreement**, the **2009 agreement** or the **TASC** must:
 - (a) be in writing; and
 - (b) be given in accordance with clause 30.2.
- 30.2 **Method of service:** A **communication** may be given by:
 - (a) delivery to the physical address of the relevant party; or
 - (b) posting it by pre-paid post to the postal address of the relevant party; or
 - (c) sending it by email to the email address of the relevant party, so long as clause 30.4 is complied with.
- 30.3 **Time of receipt:** A **communication** given in the manner:
 - (a) specified in clause 30.2(a) is deemed received at the time of delivery;
 - (b) specified in clause 30.2(b) is deemed received three **business days** after (but exclusive of) the date of posting;

- (c) specified in clause 30.2(c) is deemed (subject to clause 30.4) received:
 - (i) if sent between the hours of 9am and 5pm on a **business day**, at the time of transmission; or
 - (ii) if subclause (i) does not apply, at 9am on the **business day** immediately after the time of sending.

30.4 **Email communications:** A **communication** given by email is not deemed received unless (if receipt is disputed) the party giving the **communication** produces a printed copy of the email that evidences that the email was sent to the email address of the party given the **communication**.

30.5 **Addresses:** For the purposes of this clause 30 the address details of each party are:

- (a) the details set out below; or
- (b) such other details as the party may notify to the other party.

Authority:

Physical address: Level 7, AON Centre, 1 Willis Street, Wellington, New Zealand

Postal address: PO Box 10041, Wellington 6143, New Zealand

Email address: info@ea.govt.nz

Provider:

Physical address: Waikoukou, 22 Boulcott Street, Wellington, New Zealand

Postal address: PO Box 1021, Wellington 6140, New Zealand

Email address: system.operator@transpower.co.nz

31. TRANSITION FROM 2009 AGREEMENT AND TASC

31.1 **2009 agreement provisions ceasing to apply:** Despite clause 13.5.2 of the **2009 agreement**, from the **final commencement date**:

- (a) the parties have no further rights or obligations under clauses 6.2, 7, 8, 13.6, 17, 19, 20.1 or 20.6 of the **2009 agreement**;
- (b) the **Provider** ceases to give the warranties in clause 6.1 in the **2009 agreement**;
- (c) subject to any binding waiver or settlement and **laws** relating to time limitation, any claim the **Authority** may have against the **Provider** for breach of a warranty in clause 6.1 of the **2009 agreement** based on events or circumstances that occurred before the **final commencement date**:
 - (i) may only be brought against the **Provider** to the extent the events or circumstances would also have constituted a breach of a representation and warranty in clause 21.8 had it applied at the relevant time; and
 - (ii) may be brought against the **Provider** under the indemnity in clause 21.9; and

- (d) each party's liability to the other party under or in connection with the **2009 agreement** is limited and excluded in accordance with clause 22 and not clause 15 of the **2009 agreement**.

31.2 **TASC provisions ceasing to apply:** Despite clause 9.6 of the **TASC**, from the **final commencement date**:

- (a) the parties have no further rights or obligations under clauses 7.3, 10.5, 10.7 or 11 of the **TASC**; and
- (b) each party's liability to the other party under or in connection with the **TASC** is limited and excluded in accordance with clause 22 and not clause 12 of the **TASC**.

32. MISCELLANEOUS

32.1 **Amendments, subsequent agreements and approvals:** No:

- (a) amendment to this **agreement**;
 - (b) agreement between the parties for the purposes of, or referred to in, this **agreement**; or
 - (c) consent or approval for the purposes of, or referred to in, this **agreement**,
- is effective unless it is in writing and signed (if subclause (a) or (b) applies) by both parties or (if subclause (c) applies) by the party giving the consent or approval.

32.2 **Costs:** Each party must pay its own costs of negotiating and entering into this **agreement**.

32.3 **Counterparts:** This **agreement** is deemed to be signed by a party if that party has signed or attached that party's signatures to any of the following formats of this **agreement**:

- (a) an original;
- (b) a photocopy; or
- (c) a PDF or email image copy,

and if each party has signed or attached that party's signatures to any such format and delivered it to the other party, the executed formats will together constitute a binding agreement between the parties.

32.4 **Entire agreement:** This **agreement** constitutes the entire agreement between the parties relating to the matters dealt with in it and from the **final commencement date** supersedes and extinguishes all prior agreements, understandings, or arrangements between the parties relating to the matters

dealt with in this **agreement**, including for the avoidance of doubt the **2009 agreement** and the **TASC**.

- 32.5 **Further assurances:** Each party must, at its own expense, promptly sign and deliver any documents and do all things that are reasonably required to give full effect to the provisions of this **agreement**.
- 32.6 **No disposal without consent:** Neither party may **dispose** of any of its rights or interests in, or any of its obligations or liabilities under or in connection with, this **agreement**, except with the prior approval of the other party, such approval not to be unreasonably withheld.
- 32.7 **No merger:** The provisions of this **agreement**, and anything done under or in connection with this **agreement**, will not operate as a merger of any of the rights, powers, or remedies of either party under or in connection with this **agreement** or at **law**, and those rights, powers, and remedies will survive and continue in full force and effect to the extent that they are unfulfilled.
- 32.8 **No third party benefits:**
- (a) Only the parties to this **agreement** may pursue any remedies or redress under this **agreement** in the event of the other party breaching this **agreement**.
 - (b) However, despite subclause (a) and clause 22.1, nothing in this **agreement** will prevent any **participant** or the **Rulings Panel** from pursuing any remedies provided for in the **Act, Code**, or **regulations** in connection with a breach of the **Act, Code**, or **regulations** by the **Provider**.
- 32.9 **Non-solicitation:** During the term of this **agreement**, neither party will approach the other party's **personnel** who are directly involved in the provision or receipt of the **services** with an unsolicited offer of employment or engagement. For the avoidance of doubt, this clause 32.9 does not:
- (a) apply to any approach by the **Provider** to an **agreed auditor** who is not an employee of the **Authority**; or
 - (b) prevent either party from publicly advertising employment positions or contract work and then offering employment or engagement to employees or contractors of the other party as a result of such public advertising.
- 32.10 **Relationship:** Nothing in this **agreement** will create or evidence any partnership, joint venture, agency, trust, or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party does not have authority to act for or to incur any obligation on behalf of the other party except as expressly provided in this **agreement**.
- 32.11 **Reliance:** Each party acknowledges that it has entered into this **agreement** in reliance entirely on its own judgment and not on any representation or warranty made or information provided by the

other party, any of its **personnel** or any other person in the negotiation of this **agreement** that is not repeated in this **agreement**.

32.12 **Rights and powers cumulative:** The rights, powers, and remedies provided in this **agreement** are cumulative with, and are not exclusive of, any rights, powers, or remedies at **law** unless expressly provided otherwise in this **agreement**.

32.13 **Severability:** If any provision of this **agreement** is or becomes unenforceable, illegal, or invalid for any reason it will be deemed to be severed from this **agreement** without affecting the validity of the remainder of the **agreement**, and will not affect the enforceability, legality, validity, or application of any other provision of this **agreement**.

32.14 **Survival:** The provisions of clauses 7, 20 to 23, 24.6 to 24.15, 25, 26 and 28 to 32 will survive the termination of this **agreement**.

32.15 **Waiver:** No failure or forbearance by a party to exercise, or delay in exercising, (in whole or in part) any right, power, or remedy under or in connection with this **agreement** will operate as a waiver of that right, power or remedy and will not prevent that party from subsequently exercising any rights, powers or remedies or treating any breach by the other party as a repudiation of this **agreement**. A waiver of any breach of this **agreement** will not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach of this **agreement** will not be, or be deemed to be, a waiver of any other or subsequent breach of this **agreement**.

32.16 **Governing law:** This **agreement** is governed by the **laws** of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any **dispute** or proceeding arising under or in connection with this **agreement**.

EXECUTED as an **agreement**:

Signed for and on behalf of the **Electricity**

Authority by:

Name:

in the presence of:

Name:

Occupation:

Address:

Signed for and on behalf of **Transpower New**

Zealand Limited by:

Name:

in the presence of:

Name:

Occupation:

Address:

SCHEDULE 1 - FEES

1. INTERPRETATION

In this schedule the different parts of the **fees** and **monthly fees** are described in the paragraphs that are referred to in brackets after those parts are first referred to.

2. ANNUAL FEES

2.1 The **fees** for a **financial year** are:

- (a) the **fixed fee** (paragraph 4);
- (b) the **service enhancement fee** (paragraph 5);
- (c) the **market design fee** (paragraph 6);
- (d) the **direct services fee** (paragraph 7); and
- (e) the **wash up and incentives fee** (paragraph 8),

for that **financial year**.

2.2 The **fees** for a **financial year** are payable in monthly instalments (each a “**monthly fee**”). The parties acknowledge that the sum of the **monthly fees** in a **financial year** may be more or less than the total **fees** for the **financial year** if the **forecast commissioning date** for a **forecast system operator asset** and the **commissioning date** for the corresponding **system operator asset** are in different **financial years**.

3. MONTHLY FEES

3.1 The **monthly fee** for month *m* of **financial year** *n* (MF_{nm}) is calculated as follows:

$$MF_{nm} = FF_{nm} + SEF_{nm} + MDF_{nm} + DSF_{nm} + WUI_{nm}$$

where:

FF_{nm} is the **monthly fixed fee component** for month *m* of **financial year** *n* (paragraphs 3.2 to 3.6);

SEF_{nm} is the **monthly service enhancement fee component** for month *m* of **financial year** *n* (paragraph 3.7);

MDF_{nm} is the **monthly market design fee component** for month *m* of **financial year** *n* (paragraph 3.8);

DSF_{nm} is the **monthly direct services fee component** for month *m* of **financial year** *n* (paragraph 3.9); and

WUI_{nm} is the **wash up and incentives fee component** for month *m* of **financial year** *n* (paragraph 3.10).

3.2 Subject to paragraphs 3.3 and 3.4, the **monthly fixed fee component** for month *m* of **financial year** *n* (FF_m) is calculated as follows:

$$FF_{nm} = \frac{FF_n - FYCR_{FF \text{ total } n}}{12} + \sum_i \left(\frac{FYCR_{FF i}}{13 - M_i} \right)$$

where:

FF_n is the **fixed fee** for **financial year** n;

$FYCR_{FF \text{ total } n}$ is the sum of all **first year capex returns** in **financial year** n attributable to **forecast fixed fee system operator assets**;

$FYCR_{FF i}$ is, subject to paragraph 3.5, for each **fixed fee system operator asset** i with a **commissioning date** during **financial year** n and during or before month m, the **first year capex return** attributable to corresponding **forecast fixed fee system operator asset** i (and regardless of whether the **forecast commissioning date** for **forecast fixed fee system operator asset** i was in **financial year** n or a different **financial year**); and

M_i is the month of **financial year** n during which the **commissioning date** for **fixed fee system operator asset** i fell.

- 3.3 Subject to paragraph 3.4, the **monthly fixed fee component** for the last month of a **financial year** (FF_{nm}) is calculated as follows:

$$FF_{nm} = FF_{3.2} + \sum_j FYCR_{FF j}$$

where:

$FF_{3.2}$ is the **monthly fixed fee component** for the month calculated under paragraph 3.2; and

$FYCR_{FF j}$ is the **first year capex return** attributable to **forecast fixed fee system operator asset** j with an **abandonment date** during **financial year** n (and regardless of whether the **forecast commissioning date** for **forecast fixed fee system operator asset** j was in the **financial year** or a different **financial year**).

- 3.4 The **monthly fixed fee component** for the last month of the last **financial year** of a **funding period** (FF_{nm}) is calculated as follows:

$$FF_{nm} = FF_{3.3} + \sum_k FYCR_{FF k}$$

where:

$FF_{3.3}$ is the **monthly fixed fee component** for the month calculated under paragraph 3.3; and

$FYCR_{FF k}$ is the **first year capex return** attributable to **forecast fixed fee system operator asset** k that:

- (a) had a **forecast commissioning date** during the **funding period**; and
- (b) was not **commissioned** or **abandoned** during the **funding period**.

- 3.5 The **first year capex return** for a **forecast replacement system operator asset** is deemed to be zero.

3.6 By way of example, the following table shows the **monthly fixed fee components** for a **financial year**, assuming:

- (a) the **fixed fee** for the **financial year** is \$1000, incorporating the following **first year capex returns**:
 - (i) \$100 for **forecast fixed fee system operator asset 1**, with a **forecast commissioning date** in August; and
 - (ii) \$60 for **forecast fixed fee system operator asset 2**, with a **forecast commissioning date** in March;
- (b) the **commissioning date** for **fixed fee system operator asset 1** is in September;
- (c) **forecast fixed fee system operator asset 2** is **abandoned** during the **financial year** and, in accordance with clause 18.1(c)(i), replaced with **forecast replacement fixed fee system operator asset 3** with a **forecast commissioning date** in May and a **first year capex return** of \$40; and
- (d) the **commissioning date** for **replacement fixed fee system operator asset 3** is in May.

	Monthly fixed fee capex components (\$)												Annual (\$)
	(Figures in brackets are the monthly fixed fee capex components if the starting forecast had been correct. Where there are no brackets the starting forecast and actual figures are the same.)												
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Fixed fee excluding first year capex returns	70	70	70	70	70	70	70	70	70	70	70	70	840
First year capex return on forecast fixed fee system operator asset 1	0	0 (9.1)	10 (9.1)	10 (9.1)	10 (9.1)	10 (9.1)	10 (9.1)	10 (9.1)	10 (9.1)	10 (9.1)	10 (9.1)	10 (9.1)	100
First year capex return on forecast fixed fee system operator asset 2	0	0	0	0	0	0	0	0	0 (15)	0 (15)	0 (15)	60* (15)	60
First year capex return on forecast replacement fixed fee system operator asset 3	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	70	70 (79.1)	80 (79.1)	80 (79.1)	80 (79.1)	80 (79.1)	80 (79.1)	80 (79.1)	80 (94.1)	80 (94.1)	80 (94.1)	140 (94.1)	1000

* This is the variable FYCR_{FF} for **forecast fixed fee system operator asset 2**. If **forecast fixed fee system operator asset 2** had been delayed instead of **abandoned**, this value would be 0 and the **first year capex return for forecast fixed fee system operator asset 2** (\$60), would not be paid until the subsequent **financial year** in which its **commissioning date** or **abandonment date** falls. If

this were the last **financial year** of a **funding period** and **forecast fixed fee system operator asset 2** had been delayed until a subsequent **funding period**, this value would also be \$60 (being the variable $FYCR_{FF\ k}$ for **forecast fixed fee system operator asset 2**).

** But for paragraph 3.5 both of these values would have been \$20, being the **first year capex return** for **forecast replacement fixed fee system operator asset 3** (\$40) spread over the last two months of the **financial year**.

- 3.7 The **monthly service enhancement fee component** for month m of **financial year n** (SEF_{nm}) is calculated as follows:

$$SEF_{nm} = \frac{SEF_n - FYCR_{SE\ total\ n}}{12} + \sum_i \left(\frac{FYCR_{SE\ i}}{13 - M_i} \right)$$

where:

SEF_n is the **service enhancement fee** for **financial year n**;

$FYCR_{SE\ total\ n}$ is the sum of all **first year capex returns** in **financial year n** attributable to **forecast service enhancement system operator assets**; and

$FYCR_{SE\ i}$ is the **first year capex return** attributable to **forecast service enhancement system operator asset i** with a **forecast commissioning date** during **financial year n** and during or before month m; and

M_i is the month of **financial year n** during which the **commissioning date** for corresponding **service enhancement system operator asset i** falls.

- 3.8 The **monthly market design fee component** for month m of **financial year n** (MDF_{nm}) is calculated as follows:

$$MDF_{nm} = \frac{MDF_n - FYCR_{MD\ total\ n}}{12} + \sum_i \left(\frac{FYCR_{MD\ i}}{13 - M_i} \right)$$

where:

MDF_n is the **market design fee** for **financial year n**;

$FYCR_{MD\ total\ n}$ is the sum of all **first year capex returns** in **financial year n** attributable to **forecast market design system operator assets**; and

$FYCR_{MD\ i}$ is the **first year capex return** attributable to **forecast market design system operator asset i** with a **forecast commissioning date** during **financial year n** and during or before month m; and

M_i is the month of **financial year n** during which the **commissioning date** for corresponding **market design system operator asset i** falls.

- 3.9 The **monthly direct services fee component** for month m of **financial year n** (DSF_{nm}) is the amount of the **direct services fee** accruing in month m of **financial year n**.

- 3.10 The **wash up and incentives fee component** for month m of **financial year n** (WUI_{nm}) is:

- (a) for the month of **financial year n** during which the **wash up and incentives fee** for **financial year n-1** is determined, the **wash up and incentives fee** for **financial year n-1** (which may be positive or negative); and
- (b) 0 for all other months of **financial year n**.

4. FIXED FEE

- 4.1 The **fixed fee** and its components for each **financial year** of **funding period 3** are set out in, or determined in accordance with, the following table:

		SOSPA 3			Later funding periods
		Financial year 10	Financial year 11	Financial year 12	Financial year n
		(Commencing 1 July 2025)	(Commencing 1 July 2026)	(Commencing 1 July 2027)	(Commencing 1 July in subsequent years)
Opex component (\$)	Opex component (A)	35,252,496	Determined in accordance with paragraph 4.2	Determined in accordance with paragraph 4.2	Determined in accordance with clause 3 and paragraph 4.2
Capex components (\$)	Historic capex component (B)	4,632,820	4,632,820	4,632,820	Determined in accordance with clause 3, levelised in accordance with paragraph 4.6
	In- flight capex component (C)	5,181,212	5,181,212	5,181,212	Determined in accordance with clause 3, levelised in accordance with paragraph 4.6
	Fixed fee capex component (D)	5,393,882	Determined in accordance with paragraph 4.3, levelised in accordance with paragraph 4.6	Determined in accordance with paragraph 4.3, levelised in accordance with paragraph 4.6	Determined in accordance with clause 3, levelised in accordance with paragraph 4.6
	Total capex component (E, levelised in accordance with paragraph 4.4)	15,207,914	B + C + D, levelised in accordance with paragraph 4.6	B + C + D, levelised in accordance with paragraph 4.6	B + C + D, levelised in accordance with paragraph 4.6
	Fixed fee (\$)	50,460,410	A + E	A + E	A + E

- 4.2 Subject to paragraph 4.3, the **opex component** for **financial year 2** and each subsequent **financial year** (GOC_n) is calculated as follows:

$$GOC_n = GOC_{n-1} \times CPI \text{ adjustment factor}_n$$

where:

GOC_{n-1} is the **opex component** for **financial year n-1**; and

$CPI \text{ adjustment factor}_n$ is the **CPI adjustment factor** for **financial year n**.

- 4.3 The parties acknowledge that:

- (a) The **opex component** and **fixed fee capex component** (for which a **CPI** adjustment is calculated to reflect the **forecast fixed fee system operator asset base** adjusted for **CPI** in accordance with paragraph 4.1 of schedule 2) set out in the table in paragraph 4.1 are based on a forecast **CPI** rate.
- (b) The **opex component** and the **fixed fee capex component** amounts payable by the **Authority** in each **financial year** (including **financial year 10**) will be recalculated to reflect the actual **CPI** for the quarter ending 31 March prior to the start of that **financial year**.
- (c) The adjusted **opex component** will then be used as the baseline value to calculate the **opex component CPI** adjustments to be made for the subsequent **financial year**.
- (d) The **forecast fixed fee system operator asset base**, adjusted for **financial year 10** by applying the **CPI adjustment factor** as described in paragraph 4.1 of schedule 2, will be used as the baseline for the **CPI** adjustment to the **forecast fixed fee system operator asset base** in the subsequent **financial year** (which is used to calculate the **fixed fee capex component**).
- (e) Any change in the **fixed fee** relating to **financial year 10** (or the first **financial year** of a subsequent **funding period**) due to the above **CPI** recalculation (the **difference payment**) is payable by the **Authority** subject to the **Authority** obtaining a sufficient **appropriation** for the **difference payment**. The **Authority** agrees to use **reasonable endeavours** to obtain an **appropriation** to cover the **difference payment**.
- (f) If the **Authority** does not have or obtain a sufficient **appropriation** to pay the **difference payment**, the parties must negotiate in good faith to agree a commensurate reduction in the **services** or scope of **capex projects**, with the intent that the **Provider** must not be commercially disadvantaged as a result of the **Authority** not having or obtaining a sufficient **appropriation**.

- 4.4 The parties agree that the **difference payment** that would otherwise be payable by the **Authority** in **financial year 10** will be instead payable in **financial year 11**. The **Provider** will invoice the **Authority** for the **difference payment** in equal **monthly** amounts, which will be included on the **Provider's** invoices for the **monthly fee** and payable by the **Authority** in accordance with clause 7.5.

- 4.5 The parties agree that the **CPI** recalculation above and **difference payment** mechanism in paragraph 4.3 will apply to future **funding periods**.

- 4.6 The **total capex component, historic capex component, in-flight capex component and fixed fee capex component** are levelised across all **financial years** of each **funding period**.

5. SERVICE ENHANCEMENT FEE

The **service enhancement fee** for a **financial year** is the **capex return** on the **forecast service enhancement system operator asset base** in that **financial year**.

6. MARKET DESIGN FEE

The **market design fee** for a **financial year** is the **capex return** on the **forecast market design system operator asset base** in that **financial year**.

7. DIRECT SERVICES FEE

- 7.1 The **direct services fee** for **financial year** n (DSF_n) is calculated as follows:

$$DSF_n = TAF_n + IF_n + ASF_n + DF_n + SOSEMDF_n + SOSEMAF_n + EEF_n + EMF_n$$

where:

TAF_n is the **technical advisory fee** accruing in **financial year** n ;

IF_n is the **identification fee** (paragraph 7.2) accruing in **financial year** n ;

ASF_n is the **auditable software fee** (paragraph 7.3) accruing in **financial year** n ;

DF_n is the **development fee** (paragraph 7.4) accruing in **financial year** n ;

$SOSEMDF_n$ is the **SOS/EM development fee** (paragraph 7.5) accruing in **financial year** n ;

$SOSEMAF_n$ is the **SOS/EM analysis fee** (paragraph 7.6) accruing in **financial year** n ;

EEF_n is the **education and engagement fee** (paragraph 7.8) accruing in **financial year** n ; and

EMF_n is the **emergency measures fee** (paragraph 7.9) accruing in **financial year** n .

- 7.2 The **identification fee** is the total **identification costs** incurred by the **Provider**.

- 7.3 The **auditable software fee** is the total reasonable costs incurred by the **Provider** to third parties for:

- (a) **software audits**, other than **software audits** that are required under clause 3.17(1)(a) or (c) of the **Code** for **auditable software**, or a modification to **auditable software**, created from a **capex project** that is not a **market design capex project** (the reasonable costs of which must be included in the **value of commissioned asset** for that **auditable software** or modification); and
- (b) preparing or modifying **auditable software specifications**, other than for **auditable software**, or a modification to **auditable software**, created from a **capex project** that is not a **market design capex project** (the reasonable costs of which must be included in the **value of commissioned asset** for that **auditable software** or modification).

- 7.4 The **development fee** is the estimate referred to in clause 15.2(d)(iv) of the cost of any **market design investigation** the **Provider** is required to carry out under clause 15.2(g).
- 7.5 The **SOS/EM development fee** is the total reasonable external costs incurred by the **Provider** (at the **hourly rates** where applicable) for **SOS/EM development work**, provided that the costs are within the budget approved by the **Authority** for the **SOS/EM development work**.
- 7.6 The **SOS/EM analysis fee** is the total reasonable external costs incurred by the **Provider** (at the **hourly rates** where applicable) for the **specified work** in a **specified situation**.
- 7.7 The **Provider** must advise the **Authority** as soon as reasonably practicable if it appears that the **SOS/EM analysis fee** is likely to exceed \$50,000 in any **financial year**.
- 7.8 The **education and engagement fee** is the total reasonable external costs incurred by the **Provider** (at the **hourly rates** where applicable) for providing **education and engagement fora** in accordance with an **education and engagement plan**.
- 7.9 The **emergency measures fee** is the total reasonable external costs incurred by the **Provider** (at the **hourly rates** where applicable) for implementing **emergency measures**, provided that (subject to paragraph 7.10) such costs are approved by the **Authority** before they are incurred, such approval not to be unreasonably withheld.
- 7.10 The **Provider** may incur up to \$300,000 (excluding **GST**) of external costs for implementing a package of related **emergency measures** without the **Authority's** prior approval, and such costs will be part of the **emergency measures fee** whether or not the costs are later approved by the **Authority**.
- 7.11 The **Authority** must pay approved external costs for implementing **official conservation campaigns** direct to the relevant third parties if required to do so by the **Provider**. For the avoidance of doubt, this paragraph does not apply to costs incurred by the **Provider** under paragraph 7.10 that are required to be paid before those costs are approved by the **Authority**.

8. WASH UP AND INCENTIVES FEE

- 8.1 The **wash up and incentives fee** for **financial year n** (WUI_n) may be positive or negative and is calculated as follows:

$$WUI_n = SECRWU_{n-1} + MDCRWU_{n-1} + INC_{n-1} + SEMDS_{n-1} + TWP_{n-1} + FFWU_{n-1} + INT_n$$

where:

$SECRWU_{n-1}$ is calculated as follows:

$$SECRWU_{n-1} = \sum_{m=1}^{12} \left(SECRD_m \times \left(1 + \frac{R_{n-1} \times (12 - m)}{12} \right) \right)$$

where:

$SECRD_m$ is calculated as follows for each month m in **financial year n-1**:

$$SECRD_m = SECR_{actual\ m} - SECR_{forecast\ m}$$

where:

SECR_{actual m} is the **capex return** on the **actual service enhancement system operator asset base** in **financial year n-1** attributable to month m; and

SECR_{forecast m} is the **capex return** on the **forecast service enhancement system operator asset base** in **financial year n-1** attributable to month m; and

R_{n-1} is the **interest rate** at the start of **financial year n-1**;

MDCRWU_{n-1} is calculated as follows:

$$MDCRWU_{n-1} = \sum_{m=1}^{12} \left(MDCRD_m \times \left(1 + \frac{R_{n-1} \times (12 - m)}{12} \right) \right)$$

where:

MDCRD_m is calculated as follows for each month m in **financial year n-1**:

$$MDCRD_m = MDCR_{actual\ m} - MDCR_{forecast\ m}$$

where:

MDCR_{actual m} is the **capex return** on the **actual market design system operator asset base** in **financial year n-1** attributable to month m; and

MDCR_{forecast m} is the **capex return** on the **forecast market design system operator asset base** in **financial year n-1** attributable to month m; and

R_{n-1} is the **interest rate** at the start of **financial year n-1**;

INC_{n-1} is the sum of all **performance incentives** and **delivery incentives** accruing in **financial year n-1**;

SEMDS_{n-1} is calculated as follows:

$$SEMDS_{n-1} = \sum_i \min(SC_i, V_i)$$

where:

SC_i are the **stranding costs** for **stranded service enhancement capex project i** or **stranded market design capex project i** with a **stranding date** during **financial year n-1**; and

V_i is the sum of the **forecast values of commissioned asset** for the **stranded forecast system operator assets** that were forecast to be created from **stranded service enhancement capex project i** or **stranded market design capex project i**;

TWP_{n-1} is the **TAS wash-up payment** for **financial year n-1** calculated under paragraph 8.1 of schedule 8; and

FFWU_{n-1} is:

- (a) if **post-tax WACC** changed during **financial year n-1** or any previous **financial year** of the **funding period**, calculated in accordance with paragraph 8.2; or
- (b) 0 for all other **financial years**; and

INT_n is calculated as follows:

$$INT_n = (SECRWU_{n-1} + MDCRWU_{n-1} + INC_{n-1} + SEMDS_{n-1} + TWP_{n-1} + FFWU_{n-1}) \times \frac{R_n \times M}{12}$$

where:

R_n is the **interest rate** at the start of **financial year n**; and

M is the month of **financial year n** during which the **wash up and incentives fee** for **financial year n** is determined.

- 8.2 The parties acknowledge that the **fixed fee** for each **funding period** is agreed on the basis of **capex returns** on the relevant **system operator asset bases** in every **financial year** calculated using the **post-tax WACC** for the **regulatory period** during which the **reset date** falls. If the **post-tax WACC** changes during **financial year x** of a **funding period**, $FFWU_n$ will be calculated as follows for **financial year x** and each subsequent **financial year** in the **funding period** (**financial year n**):

$$FFWU_n = FF_{n \text{ reset}} - FF_n$$

where:

$FF_{n \text{ reset}}$ is what the **fixed fee** for **financial year n** would have been if it had been agreed on the basis of **capex returns** on the relevant **system operator asset bases** in **financial year n** calculated using the new **post-tax WACC**; and

FF_n is the **fixed fee** for **financial year n**.

9. HOURLY RATES

- 9.1 The **hourly rates** are:

	Financial year 10 (commencing 1 July 2025)	Financial year n (commencing 1 July in subsequent years)
Provider officers and employees (\$). This is also the base technical advisory rate .	171.43	To be determined in accordance with paragraph 9.2
Technical advisory project management rate (\$) (subject to paragraph 9.3 if other personnel)	124.44	To be determined in accordance with paragraph 9.2
Other personnel (\$)	To be determined in accordance with paragraph 9.3	To be determined in accordance with paragraph 9.3

- 9.2 Each **hourly rate** for each **financial year** after **financial year 1** (HR_n) is calculated as follows:

$$HR_n = HR_{n-1} \times CPI \text{ adjustment factor}_n$$

where:

HR_{n-1} is the corresponding **hourly rate** for **financial year n-1**; and

CPI adjustment factor_n is the **CPI adjustment factor** for **financial year n**.

- 9.3 Other **personnel**, being **personnel** other than the **Provider's** officers and employees, and their **hourly rates** will be agreed by the parties prior to the other **personnel** being engaged. Where the other **personnel** conduct:
- (a) 25% or more of the relevant **services** on the **Provider's** premises, a handling fee of 12% may be added to the agreed **hourly rate**; and
 - (b) less than 25% of the relevant **services** on the **Provider's** premises, no handling fee may be added to the agreed **hourly rate**.

SCHEDULE 2 - CAPEX METHODOLOGIES

1. CAPEX RETURNS

1.1 Subject to paragraphs 1.2 to 1.5, the **capex return** on a **system operator asset base** in a period is the sum of:

- (a) accounting depreciation of the **system operator asset base** over the period in accordance with **GAAP**;
- (b) the average of the opening and closing values of the **system operator asset base** over the period multiplied by the **post-tax WACC** for the period; and
- (c) an amount to offset the **Provider's** tax benefit or cost from depreciation of the **system operator asset base** over the period, comprised of:
 - (i) a gross-up of the **capex return** component described in subparagraph (b) for the period using the **post-tax WACC** for the period; and
 - (ii) a depreciation tax shield derived from timing differences between tax and accounting depreciation of the **system operator asset base** over the period.

1.2 The **capex returns** on the:

- (a) **historic system operator asset base**;
- (b) **forecast in-flight system operator asset base**;
- (c) **forecast fixed fee system operator asset base**;
- (d) **forecast market design system operator asset base**; and
- (e) **forecast service enhancement system operator asset base**,

are ex ante **capex returns** that use the depreciation and tax rates and **post-tax WACC** applying at the start of the period for which each **capex return** is being calculated.

1.3 The **capex returns** on the:

- (a) **actual market design system operator asset base**; and
- (b) **actual service enhancement system operator asset base**,

are ex post **capex returns** that use the depreciation and tax rates and **post-tax WACC** that applied over the period for which each **capex return** is being calculated.

1.4 The **capex returns** on the:

- (a) **forecast service enhancement system operator asset base**;
- (b) **actual service enhancement system operator asset base**;
- (c) **forecast market design system operator asset base**; and
- (d) **actual market design system operator asset base**,

are levelised on a per **forecast system operator asset** or **system operator asset** basis according to:

- (e) the **forecast commissioning date** or **commissioning date** of each **forecast system operator asset** or **system operator asset** comprised in the **system operator asset base**;
- (f) the life of each **forecast system operator asset** or **system operator asset** comprised in the **system operator asset base**, as determined by **Transpower** for accounting and tax purposes; and
- (g) the annual payment for a standard table mortgage of a loan:
 - (i) of an amount equal to the net present value (using a discount rate equal to the **post-tax WACC**) of the total **capex return** on each **forecast system operator asset** or **system operator asset** comprised in the **system operator asset base**; and
 - (ii) with a term equal to the life of the each **forecast system operator asset** or **system operator asset** comprised in the **system operator asset base**.

1.5 If a **service enhancement system operator asset** or **market design system operator asset** is **written off** then, for the purposes of calculating the **capex return** on a **system operator asset base** that includes the **system operator asset**, the **system operator asset** will be deemed not to have been impaired or stranded.

2. HISTORIC SYSTEM OPERATOR ASSET BASE

- 2.1 The **historic system operator asset base** is, over a **funding period**, the accounting depreciated value (in accordance with **GAAP**) of the **values of commissioned asset** for all **historic system operator assets**.
- 2.2 For the avoidance of doubt, the **historic system operator asset base** does not include any values of **forecast system operator assets** that have not been **commissioned**.

3. IN-FLIGHT SYSTEM OPERATOR ASSET BASES

- 3.1 The **forecast in-flight system operator asset base** is, over a **funding period**, the forecast accounting depreciated value (in accordance with **GAAP**) of:
 - (a) the **actual in-flight system operator asset base** at the end of the previous **funding period** (if any); adjusted for
 - (b) the **forecast values of commissioned asset** for all **in-flight system operator assets** with **forecast commissioning dates** during the **funding period**, determined at the start of the **funding period**.
- 3.2 The **actual in-flight system operator asset base** is, at the end of a **funding period**, the accounting depreciated value (in accordance with **GAAP**) of:
 - (a) the **actual in-flight system operator asset base** at the end of the previous **funding period** (if any); adjusted for
 - (b) the **values of commissioned asset** for all **in-flight system operator assets** with **commissioning dates** during the **funding period**.

- 3.3 For the avoidance of doubt, the **actual in-flight system operator asset base** does not include any values of **forecast system operator assets** that have not been **commissioned**.

4. FIXED FEE SYSTEM OPERATOR ASSET BASES

- 4.1 The **forecast fixed fee system operator asset base** is, over a **funding period**, the forecast accounting depreciated value (in accordance with **GAAP**) of:
- (a) the **actual fixed fee system operator asset base** at the end of the previous **funding period** (if any); adjusted for
 - (b) the **forecast values of commissioned asset** for all **forecast fixed fee system operator assets** with **forecast commissioning dates** during the **funding period**, determined at the start of the **funding period**,
- and, subject to paragraph 4.3(d) of schedule 1. adjusted annually at the start of each **financial year** after the first **financial year** of the third **funding period** (**financial year 10**) by applying a forecast **CPI adjustment factor** for the **financial year**.

- 4.2 The **actual fixed fee system operator asset base** is, at the end of a **funding period**, the accounting depreciated value (in accordance with **GAAP**) of:
- (a) the **actual fixed fee system operator asset base** at the end of the previous **funding period** (if any); adjusted for
 - (b) the **values of commissioned asset** for all **fixed fee system operator assets** with **commissioning dates** during the **funding period**.
- 4.3 For the avoidance of doubt the **actual fixed fee system operator asset base** does not include any values of **forecast system operator assets** that have not been **commissioned**.

5. SERVICE ENHANCEMENT SYSTEM OPERATOR ASSET BASES

- 5.1 The **forecast service enhancement system operator asset base** is, over a **financial year**, the forecast accounting depreciated value (in accordance with **GAAP**) of:
- (a) the **actual service enhancement system operator asset base** at the end of the previous **financial year** (if any); adjusted for
 - (b) the **forecast values of commissioned asset** for all **forecast service enhancement system operator assets** with **forecast commissioning dates** during the **financial year**, determined at the start of the **financial year**.
- 5.2 The **actual service enhancement system operator asset base** is, over a **financial year**, the accounting depreciated value (in accordance with **GAAP**) of:
- (a) the **actual service enhancement system operator asset base** at the end of the previous **financial year** (if any); adjusted for
 - (b) the **values of commissioned asset** for all **service enhancement system operator assets** with **commissioning dates** during the **financial year**, excluding any **unplanned capex** for the **service enhancement system operator assets**.

5.3 For the avoidance of doubt:

- (a) the **actual service enhancement system operator asset base** does not include any values of **forecast system operator assets** that have not been **commissioned**; and
- (b) the **Provider** will not recover **unplanned capex** for a **service enhancement system operator asset** by any mechanism under this **agreement**.

6. MARKET DESIGN SYSTEM OPERATOR ASSET BASES

6.1 The **forecast market design system operator asset base** is, over a **financial year**, the forecast accounting depreciated value (in accordance with **GAAP**) of:

- (a) the **actual market design system operator asset base** at the end of the previous **financial year** (if any); adjusted for
- (b) the **forecast values of commissioned asset** for all **forecast market design system operator assets** with **forecast commissioning dates** during the **financial year**, determined at the start of the **financial year**.

6.2 The **actual market design system operator asset base** is, over a **financial year**, the accounting depreciated value (in accordance with **GAAP**) of:

- (a) the **actual market design system operator asset base** at the end of the previous **financial year** (if any); adjusted for
- (b) the **values of commissioned asset** for all **market design system operator assets** with **commissioning dates** during the **financial year**, excluding any **unplanned capex** for the **market design system operator assets**.

6.3 For the avoidance of doubt:

- (a) the **actual market design system operator asset base** does not include any values of **forecast system operator assets** that have not been **commissioned**; and
- (b) the **Provider** will not recover **unplanned capex** for a **market design system operator asset** by any mechanism under this **agreement**.

7. CAPEX CLASSIFICATIONS

Capex classification	Description
TP ACAM	The capex project is initiated by Transpower New Zealand Limited in its capacity as a grid owner (or in another capacity other than as system operator) and incremental capex under the capex project is attributable to the Provider under the avoidable cost allocation methodology (ACAM).
Building and Equipment	The capex project is initiated by the Provider and the capex under the capex project is primarily (but not necessarily solely) for buildings, fittings, associated equipment and fixed assets such as motor vehicles

	(excluding, for the avoidance of doubt, market systems and associated ICT).
Service Maintenance	<p>The capex project is initiated by the Provider and the capex under the capex project is primarily (but not necessarily solely) to maintain rather than enhance the services. For example:</p> <ul style="list-style-type: none"> (c) lifecycle work including system operator software and system operator hardware upgrades, re-platforming, and replacement of a tool with a modern tool that has substantially equivalent functionality because the current tool has reached the end of its economic life; or (d) maintenance, modification or replacement, and subsequent testing, of existing tools, infrastructure, interfaces or ICT environments of the market systems to ensure: <ul style="list-style-type: none"> (i) continuing operation or support; (ii) resolution of defects; (iii) maintenance of acceptable levels of operating risk and security; (iv) sufficient resilience and reliability; (v) alignment of existing services with good international practice; (vi) existing services respond to electricity industry dynamics (not resulting in service enhancement); (vii) delivery of operational efficiencies and improved performance; or (viii) existing Code and contractual obligations are met, including the Provider's principal performance obligations in clause 7.2 of the Code.
Service Enhancement	<p>The capex project is initiated by the Provider and the capex under the capex project is primarily (but not necessarily solely) to change, enhance or introduce new services, market system tools and/or interfaces that will be directly available to participants for the purposes of:</p> <ul style="list-style-type: none"> a) improving wholesale market and/or operational efficiency or encouraging competition that impacts participants; b) responding to technical developments; c) responding to changes in demand for the services; or d) responding to developments in wholesale market design, whether as a result of international or local practice,

	<p>provided that once a service enhancement capex project is commissioned any subsequent maintenance to the new services, market system tools and/or interfaces developed under the service enhancement capex project will be considered a fixed fee capex project.</p>
Market Design	<p>The capex project is initiated by the Authority and the capex under the capex project is primarily (but not necessarily solely) for facilitating a development to, or change to the design of, the wholesale market (including the dispatch, buying and selling of wholesale electricity and management of security of supply).</p>

SCHEDULE 3 - DELETED

SCHEDULE 4 - EXCLUDED SERVICES

- (a) Outage planning services to support a **grid owner** in the performance of its obligations under the **Code**.
- (b) Services to support services provided by any other **participant**, including:
 - (i) the demand response programmes carried out by Transpower New Zealand Limited in its capacity as a **grid owner**; and
 - (ii) services provided by any other **market operation service provider**.
- (c) Services to support the negotiation of this **agreement** or any amendment to or replacement of this **agreement**.
- (d) Services of the **Provider** that are not regulated by the **Authority** or the **Commerce Commission**.

SCHEDULE 5 - TRANSITIONAL ARRANGEMENTS

References in this schedule 5 to “**SOSPA version 2.0**” mean the version of this **agreement** in force prior to the **variation 2 commencement date**. In respect of the obligations in paragraphs (a), (b), (c) and (d) below, the parties agree that these activities will be carried out in accordance with the timeframes set out in those paragraphs, instead of by 30 June 2025 (as contemplated by **SOSPA version 2.0**).

- (a) For the purposes of clause 16.5(a) (and the **Provider’s** compliance with clause 16.4 of **SOSPA version 2.0**), the **Provider** must provide the **system operator business plan** applying to the first **financial year** of **funding period 3** by 31 July 2025, subject to the **Provider** and the **Authority** reaching agreement on the content of the **statutory objective work plan** and the **education and engagement plan** by 24 July 2025.
- (b) For the purposes of clause 14.2(a) (and the **Provider’s** compliance with clause 14.2(a) of **SOSPA version 2.0**), by 31 July 2025:
 - (i) the parties must negotiate in good faith to agree the **business auditable services** to be audited during the **financial year**; and
 - (ii) the **system operator** must provide the **Authority** with an indication of the **business auditable services** that may be audited during the following two **financial years**.
- (c) For the purposes of clause 6.1 (and the **Provider’s** compliance with clause 6.1 of **SOSPA version 2.0**), the parties will agree the “performance metrics and incentives agreement” applying to the first **financial year** of **funding period 3** by 31 July 2025.
- (d) The parties have agreed that in lieu of the **Provider** providing the 2025 annual update to the System Operator’s Strategic Plan and ICT Strategic Roadmap as required by clauses 16.1 and 16.2 of **SOSPA version 2.0**, the **Provider** will conduct a strategy refresh during the first **financial year** of the **funding period**, as described in the document entitled “Refreshing the SO Strategy 2025”, which has already been given to the **Authority**.
- (e) For the purposes of paragraph 2.3 of schedule 8, the parties agree that the **extra FTE** required for the first **financial year** of **funding period 3** is 1.565 **FTE**, which equates to 2,691.8 **base technical advisory hours** (and that this paragraph (e) constitutes the **FTE change notice** from the **Authority** for the first **financial year** of **funding period 3** for the purposes of paragraph 2.3 of schedule 8).
- (f) For the purposes of paragraph 3.2 of schedule 8, the **Authority** will provide its forecast of the type and timing of **technical advisory services** the **Authority** expects to require:
 - (i) during quarter 1 of the first **financial year** of **funding period 3** by 30 June 2025; and
 - (ii) during quarters 2, 3 and 4 of the first **financial year** of **funding period 3** by 31 July 2025.
- (g) The parties acknowledge and agree to work together in good faith to agree an updated version of the **joint work planning terms of reference** by 30 September 2025.
- (h) The parties acknowledge and agree to work together in good faith to agree an updated version of the **TAS guideline** by 30 September 2025.

SCHEDULE 6 - COST OF SERVICES REPORTING

(a) Categories of **services** for **cost-of-services** reporting:

- (i) Planning and readiness
- (ii) Market operations
- (iii) Power system operations
- (iv) SO support services
- (v) IST support services
- (vi) ACAM share.

SCHEDULE 7 - JWPT FUNCTIONS

The parties acknowledge and agree that the functions of the JWPT are:

- (a) Reviewing and making recommendations on the **integrated project lifecycle process**.
- (b) Reviewing and making recommendations to update the **TAS guideline**.
- (c) Reviewing and tracking the **Provider's** progress against the **capex roadmap**, and making recommendations on the **capex roadmap**.
- (d) Reviewing and tracking the parties' progress against the **joint development programme**, and making recommendations on the **joint development programme**.
- (e) Discussing any updates from the **Authority** on its work programme, which may impact on the **Provider**, including with respect to **market design investigations, technical advisory services** and **SO/EM development work**.
- (f) Discussing any updates from the **Provider** on its work programme or any other activities, which may inform the **Authority's** work programme and appropriation planning.
- (g) Discussing any updates from the **Authority** on its **Code** change programme that relate to the provision of the **services**.
- (h) Delivery of joint work planning, project oversight, governance and frameworks for **technical advisory services, market design capex projects** and **service enhancement capex projects**.
- (i) Reviewing and discussing forecasting for TAS resourcing.
- (j) Regular TAS programme re-planning conversations, including discussing and agreeing any proposed change to the **quarterly base technical advisory hours** that is raised by either party.
- (k) Any other functions of the **JWPT** expressly set out in the **joint work planning terms of reference**.

SCHEDULE 8 - TECHNICAL ADVISORY SERVICES

1. INTERPRETATION

In this schedule 8, unless the context otherwise requires:

“approved additional technical advisory hours” has the meaning given to that term in paragraph 4.2(b)(i).

“base technical advisory hours” means, for a **financial year**, 1720 hours if the **extra FTE** for the **financial year** comprises one **FTE**, pro rated up or down if the **Authority** requires a different number of **FTEs** to comprise the **extra FTE** for the **financial year** by issuing an **FTE change notice**;

“extra FTE” has the meaning given to that term in paragraph 2.1.

“FTE” means full time equivalent staff.

“FTE change notice” has the meaning given to that term in paragraph 2.3.

“monthly technical advisory fee” means the fee set out in paragraph 7.1.

“monthly technical advisory project management fee” means the fee set out in paragraph 7.2.

“quarterly base technical advisory hours” has the meaning given to that term in paragraph 3.2.

“quarterly hour change notice” has the meaning given to that term in paragraph 3.3.

“statement of work” means a statement of work entered into by the parties for the provision of **technical advisory services**, in accordance with the **TAS guideline**.

“technical advisory disbursements” has the meaning given to that term in paragraph 7.3.

“technical advisory fee” means:

- (a) the **monthly technical advisory fees**;
- (b) the **monthly technical advisory project management fees**; and
- (c) any **technical advisory disbursements**.

“technical advisory hours” means the number of hours of **technical advisory services** provided during a specified period of time, excluding **technical advisory project management hours**.

“technical advisory project management hours” means the number of hours of project management of **technical advisory services** provided during a specified period of time.

“technical advisory resource” has the meaning given to that term in paragraph 5.1.

“TAS quarter” means a three month period ending on 30 September, 31 December, 31 March or 30 June of a **financial year**.

“TAS wash-up payment” means the payment calculated in accordance with paragraph 8.1.

2. PROVIDER RESOURCING

- 2.1 In order to have the capability and capacity to provide the **technical advisory services**, the **Provider** must use **reasonable endeavours** to engage or employ one **FTE** more than it reasonably considers necessary to provide the **core services** (the “**extra FTE**”), with the following expertise at a senior level:
- (a) power systems engineering;
 - (b) modelling and analysis; and
 - (c) project management and report writing.
- 2.2 The **Provider** must use **reasonable endeavours** to engage or employ a replacement **FTE** (or part thereof) if all or part of the **FTE** engaged or employed as the **extra FTE** ceases to be so engaged or employed, or reduces their hours of engagement or employment (whether temporarily or permanently).
- 2.3 The **Authority** may require the **Provider** to change the number of **FTEs** comprising the **extra FTE** (including by adding all or part of one or more **FTEs**) for a **financial year** by notifying the **Provider** of the change by 1 April of the previous **financial year** (“**FTE change notice**”). Where the Authority provides an **FTE change notice**:
- (a) the **Provider** must use **reasonable endeavours** to comply with the requirements of the **FTE change notice**;
 - (b) all references in this **agreement** to the **extra FTE** for the **financial year** will mean the number of **FTEs** required by the Authority for the **financial year**, as set out in the **FTE change notice**; and
 - (c) the **base technical advisory hours** for the relevant **TAS year** will be calculated accordingly, and pro rated up or down if the **Authority** requires a different number of **FTEs** to comprise the **extra FTE** for the **financial year**.
- 2.4 For the avoidance of doubt, the **technical advisory services** are not necessarily provided solely by the **extra FTE** and no **Provider** staff are exclusively or specifically assigned to provide **technical advisory services**. Instead, the **Provider** must, in consultation with the **Authority** and acting reasonably, determine which of its staff will provide the particular **technical advisory services** requested. The **Authority** may request that particular **Provider** staff be allocated to provide particular **technical advisory services**, and the **Provider** must use **reasonable endeavours** to accommodate the request.

3. PLANNING AND SETTING THE QUARTERLY BASE TECHNICAL ADVISORY HOURS

- 3.1 The **Authority** must, by 28 February of each **financial year**, notify the **Provider** of the **Authority’s** indicative requirements for **technical advisory services** for the next **financial year**.
- 3.2 The **Authority** must, by 31 May of each **financial year**, provide the **Provider** with a forecast of the type and timing of **technical advisory services** the **Authority** expects to require during the next **financial year**, having regard to any **Provider** feedback on:

- (a) the indicative requirements for the **financial year** notified by the **Authority** under paragraph 3.1; and
- (b) any **FTE change notice** for the **financial year**.

Such forecast must include the forecast allocation of the **base technical advisory hours** over each **TAS quarter** of the next **financial year**, such allocation to a **TAS quarter** being the “**quarterly base technical advisory hours**” for the **TAS quarter**, as may be updated in accordance with paragraphs 3.3 and 3.4 below. The **quarterly base technical advisory hours** may vary between **TAS quarters** but in total must not exceed the **base technical advisory hours** for the **financial year**.

- 3.3 The **Authority** may, no later than the 30 November of each **financial year**, notify the **Provider** of proposed changes to the forecast provided under paragraph 3.2, including changes to the **quarterly base technical advisory hours** applying to **TAS quarter 3** and **TAS quarter 4** of the same **financial year**, which, where agreed by the parties in accordance with this paragraph 3.3, may include a carry-over of unused **quarterly base technical advisory hours** between **TAS quarter 2** and **TAS quarter 3** of that same **financial year** in excess of the 10% cap under paragraph 4.1 (“**quarterly hour change notice**”). On issuing of a **quarterly hour change notice**, the parties will negotiate in good faith to discuss and agree the changes outlined in the **quarterly hour change notice**. The **Provider**, must no later than 10 **business days** after receipt of the **quarterly hour change notice**, respond and confirm if it agrees to the changes outlined in the **quarterly change hour change notice**, such agreement not to be unreasonably withheld.
- 3.4 The parties may otherwise agree to update a forecast for a **financial year** provided under paragraph 3.2 at any time. A party must not unreasonably withhold its agreement to a change to the forecast requested by the other party.

4. QUARTERLY TECHNICAL ADVISORY HOURS

- 4.1 If the **technical advisory hours** for a **TAS quarter** (quarter n) are less than the **quarterly base technical advisory hours** for quarter n, the unused **quarterly base technical advisory hours** in quarter n will be carried over to the next **TAS quarter** (quarter n+1) up to a maximum of 10% of the **quarterly base technical advisory hours** in quarter n (except as otherwise agreed under paragraph 3.3), provided that no unused **quarterly base technical advisory hours** will be carried over between **financial years**.
- 4.2 The parties intend that the **technical advisory hours** for a **TAS quarter** will not exceed the **quarterly base technical advisory hours** for the **TAS quarter** (plus any hours carried over from the previous **TAS quarter** in accordance with paragraph 4.1). If the **Provider** becomes aware that the **technical advisory hours** for a **TAS quarter** are likely to exceed, or have exceeded, the **quarterly base technical advisory hours** (plus any hours carried over from the previous **TAS quarter** in accordance with paragraph 4.1):
 - (a) the parties will discuss and use **reasonable endeavours** to agree amendments to the relevant **statements of work** such that the excess hours are moved to be provided during the next **TAS quarter** instead (to the extent reasonably practicable in the circumstances); and

- (b) to the extent the parties do not agree to move the excess hours to be provided during the next **TAS quarter**, the **Provider** may request the ability to charge for additional **technical advisory hours** for the **TAS quarter**, in which case:
 - (i) if the request is approved, the **Provider** will be entitled to charge for additional **technical advisory hours** for the **TAS quarter** up to the number of additional **technical advisory hours** approved by the **Authority** (the “**approved additional technical advisory hours**” for the **TAS quarter**); or
 - (ii) if the request is declined, the **Provider** will not be obliged to provide **technical advisory hours** during the **TAS quarter** in excess of the **quarterly base technical advisory hours** for the **TAS quarter** (plus any hours carried over from the previous **TAS quarter** in accordance with paragraph 4.1).

5. PROVISION OF TECHNICAL ADVISORY SERVICES

- 5.1 The **Provider** must make available, between the hours of 9am and 5pm on **business days**, staff (including but not limited to the **extra FTE**) to provide **technical advisory services** in the amount of at least:
 - (a) during each **TAS quarter**, the **quarterly base technical advisory hours** for the **TAS quarter**; and
 - (b) during each **financial year**, the **base technical advisory hours** for the **financial year**, (the “**technical advisory resource**”).
- 5.2 The **Authority** may request that the **Provider** provide **technical advisory services** at any time during a **financial year**. Each request must include sufficient information to enable the **Provider** to understand the nature and scope of the **technical advisory services** being requested. The **Authority** must endeavour to ensure the request is consistent with the forecast for the **financial year** provided by the **Authority** under paragraph 3.2 as it may have been updated by agreement between the parties under paragraph 3.3 and 3.4. The parties must comply with the process in the **TAS guideline** for engaging, monitoring and closing out the **technical advisory services**, including entering into **statements of work**.
- 5.3 If there is a conflict between the terms of a **statement of work** and the terms of this schedule 8:
 - (a) the terms of the **statement of work** will take precedence, but only to the extent that the relevant term of the **statement of work** is expressly stated to be a variation to, and to take precedence over, the conflicting term in schedule 8; and
 - (b) otherwise, the terms of this schedule 8 will take precedence.
- 5.4 The **Provider** acknowledges and agrees that when estimating the number of hours to perform the scope of any **technical advisory services** requested by the **Authority** that are included by the **Provider** in any **statement of work**, any contingency hours included in such estimation will be separately itemised.

6. USE OF TECHNICAL ADVISORY RESOURCE FOR CORE SERVICES

- 6.1 To the extent that the **technical advisory services** do not fully utilise the **technical advisory resource**, the **Provider** must use the **technical advisory resource** to provide the **core services**.
- 6.2 If an exceptional or emergency situation arises where the **Provider** has insufficient staff to provide both the **technical advisory services** and the **core services**:
- (a) the **Provider's** obligation to provide the **core services** will take priority and the **Provider** must use the **technical advisory resource** to provide the **core services** instead of the **technical advisory services**; and
 - (b) the **Provider** must notify the **Authority** of the situation as soon as reasonably practicable.

The **Provider** acknowledges that the situation described in this paragraph 6.2 will be rare and that in normal circumstances the **Provider** must manage its staff so that the **technical advisory resource** is available to provide the **technical advisory services**.

7. PAYMENT

- 7.1 The **monthly technical advisory fee** is the sum of:
- (a) a fee per month calculated by multiplying the **base technical advisory rate** by the **technical advisory hours** for the month, provided that any such **technical advisory hours** are within the **quarterly base technical advisory hours** for the **TAS quarter** in which the month falls (taking into account the **technical advisory hours** for previous months in the **TAS quarter**); plus
 - (b) if there are **approved additional technical advisory hours** for the relevant **TAS quarter**, a fee per month calculated by multiplying the **base technical advisory rate** by the **technical advisory hours** for the month that are in excess of the **quarterly base technical advisory hours** for the **TAS quarter** in which the month falls (taking into account the **technical advisory hours** for previous months in the **TAS quarter**), up to a maximum of the **approved additional technical advisory hours** for the **TAS quarter** (across all months in the **TAS quarter**).
- 7.2 The **monthly technical advisory project management fee** is a fee per month calculated by multiplying the **technical advisory project management rate** by the **technical advisory project management hours** for the month, provided that the total **technical advisory project management hours** across the **TAS quarter** (in which the month falls) must not exceed 15% of the **base technical advisory hours** and **approved additional technical advisory hours** for the **TAS quarter**. To avoid doubt, the total **technical advisory project management hours** of up to 15% of **base technical advisory hours** is in addition to the number of **base technical advisory hours**, meaning that the number of **technical advisory project management hours** is not included within the **base technical advisory hours**.
- 7.3 The **Authority** must reimburse the **Provider** at cost for any pre-approved disbursements incurred directly by the **Provider** in providing the **technical advisory services** plus a 12% handling fee ("**technical advisory disbursements**").

8. END OF FINANCIAL YEAR WASH-UP PAYMENT

- 8.1 If the **technical advisory hours** validly invoiced by the **Provider** for a **financial year** are less than the **base technical advisory hours** for the **financial year**, then the **Authority** must pay the **Provider** a **TAS wash-up payment** calculated as follows:

$$(BTAH - IBH - UH) \times BR$$

where:

BTAH is the **base technical advisory hours** for the **financial year**;

IBH is the **technical advisory hours** validly invoiced by the **Provider** for the **financial year**;

UH is the **unavailable hours** for the **financial year**. For the purpose of this calculation, “**unavailable hours**” means, where the **Provider** has been unable to fulfil any **statement of work(s)** that the **Authority** has issued to the **Provider** during the **financial year** for the provision of **technical advisory services** (including failing to make **technical advisory resource** available to the Authority with the expertise set out in paragraph 2.1), the total estimated number of hours in such draft **statement(s) of work** that are not provided by the Provider.

Hours not fulfilled by the Provider will not be considered to be unavailable if:

- they are in excess of the **quarterly base technical advisory hours** applying to the relevant **TAS quarter** in which the request for the **statement of work** was made;
- paragraph 6.2 applies; or
- the **Authority** cancels or defers the **technical advisory services** to be provided under that **statement of work** or a different **statement of work**.

BR is the **base technical advisory rate**.

For the avoidance of doubt, to the extent that the calculation above results in a zero or negative amount, the **Authority** will not be required to make any **TAS wash-up payment** to the **Provider** for the relevant **financial year**.