

VARIATION #1 TO SYSTEM OPERATOR SERVICE PROVIDER AGREEMENT

between

ELECTRICITY AUTHORITY

and

TRANSPower NEW ZEALAND LIMITED

VARIATION #1 TO SYSTEM OPERATOR SERVICE PROVIDER AGREEMENT

DATED: 15 December 2020

BETWEEN:

- (1) **Electricity Authority** of Level 7, ASB Bank Tower, 2 Hunter Street, Wellington (the **Authority**); and
- (2) **Transpower New Zealand Limited**, New Zealand Business Number: 9429039514226 (the **Provider**) in its capacity as the system operator.

BACKGROUND:

- (A) The **Authority** entered into the **SOSPA** with the **Provider** on 22 February 2016 for the market operation service provider role of System Operator.
- (B) Clause 3 of the **SOSPA** provide for a regular review of the **SOSPA**. This variation #1 records the changes to the **SOSPA** agreed as a result of that review.
- (C) This variation to the **SOSPA** is made pursuant to clause 32.1 of the **SOSPA** and deletes, adds or amends various definitions, clauses, subclauses and schedules of the **SOSPA**. The parties have agreed to amend the **SOSPA** on the terms of this **agreement**.

IT IS AGREED:

1. Interpretation

In this **agreement** unless the context indicates otherwise:

- 1.1 words or phrases appearing in this **agreement** (including in the background) in bold type are defined terms and have the meanings given to them in this **agreement**, or, if not defined in this **agreement**, have the meanings given to them in the **SOSPA**, or, if not defined in either this **agreement** or the **SOSPA**, have the meanings given to them in Part 1 of the **Code**;
- 1.2 the following words and phrases have the following meanings:
 - (a) **agreement** means this variation to the **SOSPA** and includes the attached Appendix;
 - (b) **Code** means the Electricity Industry Participation Code 2010;
 - (c) **SOSPA** means the System Operator Service Provider Agreement between the parties dated 22 February 2016;
- 1.3 headings are for ease of reference only and will not affect the interpretation of this **agreement**;
- 1.4 the rule of construction known as the contra proferentem rule does not apply to this **agreement**;

- 1.5 words importing the singular number include the plural and vice versa; and
- 1.6 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.

2. **SOSPA amendments**

- 2.1 The parties agree to amend the **SOSPA** as set out in the attached Appendix with effect as and from 1 July 2021.

3. **Publication**

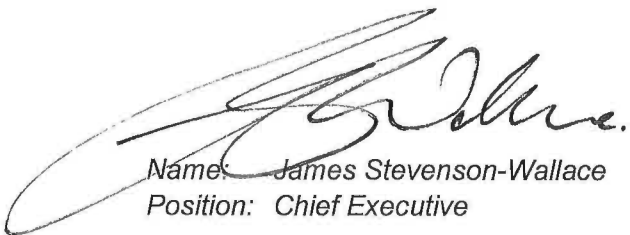
- 3.1 On or as soon as reasonably practicable after this **agreement** is signed, the **Authority** will publish this agreement and the amended **SOSPA** on the **Authority's** website.

4. **General**

- 4.1 No variation, modification, or waiver of any provision of this **agreement** will be of any force or effect unless it is in writing and signed by both parties.
- 4.2 If any clause or provision of this **agreement** is held illegal or unenforceable by any judgement or award of any arbitrator, court or tribunal having competent jurisdiction, such judgment or award will not affect the remaining provisions of this **agreement** which will remain in full force and effect (to the extent permitted by law) as if such clause or provision held illegal or unenforceable had not been included in this **agreement**.
- 4.3 This **agreement**, its validity, interpretation, and performance is to be construed and interpreted in accordance with the law of New Zealand.
- 4.4 Each party acknowledges that it has not been induced to enter into this **agreement** by any representation made by or on behalf of the other party that is not repeated in this **agreement**.
- 4.5 This **agreement** may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.
- 4.6 In the event of a dispute relating to this **agreement**, the provisions of clause 26 (Dispute Resolution) of the **SOSPA** shall apply.

SIGNED:

For and on behalf of the **Electricity Authority** by:



Name: *James Stevenson-Wallace*
Position: *Chief Executive*

For and on behalf of **Transpower New Zealand Limited** by:

A handwritten signature in blue ink, appearing to read 'Alison Andrew'. The signature is fluid and cursive, with the first letter 'A' being particularly large and stylized.

Name: Alison Andrew
Position: Chief Executive

1. The definition of “**approved development project**” in clause 1.1 (‘Definitions’) of the agreement is deleted.
2. The following new defined term is added to clause 1.1 (‘Definitions’) of the agreement:

“**base technical advisory rates**” means the rates set out in clause 15.8(m).”
3. The definition of “**capex change threshold**” in clause 1.1 (‘Definitions’) of the agreement is deleted.
4. The definition of “**development work**” in clause 1.1 (‘Definitions’) of the agreement is deleted and all subsequent references in the agreement to the term “**development work**” are deleted (and where the term “**development work**” is followed in the agreement by a comma (“,”) or by the words “or” or “and”, those are also deleted). For the avoidance of doubt, there is no change to the term “**SOS/EM development work**”.
5. The definition of “**historic system operator asset**” in clause 1.1 (‘Definitions’) of the agreement is deleted and replaced with the following:

“**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
 - (a) in respect of each **reset date**, 1 July of the **financial year** immediately preceding the relevant **reset date**.”
6. The definition of “**in-flight system operator asset**” in clause 1.1 (‘Definitions’) of the agreement is deleted and replaced with the following:

“**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 is **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**.”
7. The definition of “**material change**” in clause 1.1 (‘Definitions’) of the agreement is amended by deleting the following words from paragraph (c) of the definition:

“of more than the **capex change threshold**”
8. The following new defined term is added to clause 1.1 (‘Definitions’) of the agreement:

“**monthly technical advisory fee**” means the fee set out in clause 15.8(p).”
9. The term “**quarterly technical advisory fee**”, as defined in clause 1.1 (‘Definitions’) of the agreement, is deleted. All subsequent references to the term “**quarterly technical advisory fee**” in the agreement are deleted and replaced with the term “**monthly technical advisory fee**”.
10. The definition of “**reset settings**” in clause 1.1 (‘Definitions’) of the agreement is amended by deleting paragraph (k) of the definition (the “**technical advisory carry-over cap**”).

11. The definition of “**technical advisory carry-over cap**” in clause 1.1 (‘Definitions’) of the agreement is deleted.
12. The definition of “**technical advisory hours**” in clause 1.1 (‘Definitions’) of the agreement is amended by deleting the words “or quarter”
13. The definition of “**technical advisory fee**” in clause 1.1 (‘Definitions’) of the agreement is amended by deleting paragraph (b) of the definition (“any variable technical advisory fee”).
14. The definition of “**technical advisory hours allowance**” in clause 1.1 (‘Definitions’) of the agreement is deleted.
15. The definition of “**variable technical advisory fee**” is deleted.
16. Clause 5.1 (‘Assist the Authority’) of the agreement is amended by including the following words at the end of the clause:

*“and consider the impact on **participants** in the **Provider’s** decision making.”*

17. Clause 7.11 (‘Charging participants’) of the agreement is deleted and replaced with the following:

*“**Charging participants:** The **Provider** must not charge any **participant** for the **services**.”*

18. Clause 12.6 (‘Cost-of-services reporting’) of the agreement is deleted and replaced with the following:

*“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.”*

19. Clause 13.1 (‘Meetings’) of the agreement is deleted and replaced with the following:

*“**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**.”*

20. The first paragraph of clause 15.8(b)(i) (‘Technical advisory services’) of the agreement is amended by replacing the words “two **FTEs**” with “one **FTE**”.

The remaining sub-paragraphs of clause 15.8(b)(i) remain unaltered. All subsequent references to the term “**extra FTEs**” in the agreement are deleted and replaced with the term “**extra FTE**”.

21. Clause 15.8(g) (‘Technical advisory services’) of the agreement is deleted.
22. Clause 15.8(h) (‘Technical advisory services’) of the agreement is deleted and replaced with the following:

*“The **Authority** must, by 30 April of each **financial year**, provide the **Provider** with a draft forecast of the type, timing and quantity of **technical advisory services** the **Authority** expects to require during the next **financial year**. The **Authority** shall notify the **Provider** of any update to the forecast for the relevant **financial year**.”*
23. The first paragraph of clause 15.8(i) (‘Technical advisory services’) of the agreement is deleted and replaced with the following:

*“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**) from the start of a **financial year** by giving the*

Provider at least three months' notice (i.e. by 1 April of the previous **financial year**), in which case the following subclauses will apply:"

24. Clause 15.8(i)(ii)(2) ('Technical advisory services') of the agreement is amended by deleting the terms "quarterly technical advisory fee" and "rebate".
25. Clause 15.8(k) ('Technical advisory services') of the agreement is deleted and replaced with the following:

"The base technical advisory hours are

- (i) *for a month, 146.5 hours;*
- (ii) *[deleted];*
- (iii) *for a financial year, 1758 hours,*

each as adjusted in accordance with subclause (i)(ii)(2)."

26. Clause 15.8(l) ('Technical advisory services') of the agreement is deleted.

27. Clause 15.8(m) ('Technical advisory services') of the agreement is deleted and replaced with the following:

*"The **base technical advisory rate** and the **technical advisory rebate rate** is \$140 per hour, adjusted at the start of each **financial year** after **financial year 1**, as follows:*

$$BR_n = BR_{n-1} \times \text{CPI adjustment factor}_n$$

where:

*BR_n is the **base technical advisory rate** or **technical advisory rebate rate** for **financial year n**;
BR_{n-1} is the **base technical advisory rate** or **technical advisory rebate rate** for **financial year n-1**;
and
CPI adjustment factor_n is the **CPI adjustment factor** for **financial year n**."*

28. Clause 15.8(n) ('Technical advisory services') of the agreement is deleted.

29. 15.8(o) ('Technical advisory services') of the agreement is amended by deleting the term "**variable rate**" and replacing it with "**variable technical advisory rate**".

30. Clause 15.8(p) ('Technical advisory services') of the agreement is deleted and replaced with the following:

*"The **monthly technical advisory fee** is the sum of:*

- (i) *a fee per month determined by multiplying the **base technical advisory rates** by the **technical advisory hours** worked for the month up to a maximum of the **base technical advisory hours** for a month; plus*
- (ii) *a fee per month determined by multiplying the **variable technical advisory rates** by the **technical advisory hours** worked for the month that are in excess of the monthly **base technical advisory hours** for a month."*

31. Clause 15.8(q) ('Technical advisory services') of the agreement is amended by deleting the term "**variable technical advisory fee**" and replacing it with "component of the **monthly technical advisory fee** set out in clause 15.8(p)(ii)".

32. A new clause 15.8(s) is included in the agreement as follows:

*"If the **technical advisory hours** invoiced by the **Provider** for a **financial year** (the relevant **financial year**) are less than the **base technical advisory hours** for the relevant **financial year** as updated from time to time, then the **Provider** or **Authority** must pay to the other, as the case may be, as part of the **wash up and incentives fee** for the relevant **financial year**, an amount calculated as follows:*

$$((BTAH - IBH) * BR) - (\min(BTAH - IBH, BTAH * 25\%, IVH)) * VR$$

where:

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

*IBH is the actual **based technical advisory hours** invoiced by the **Provider** in the relevant **financial year**;*

*BR is the relevant rate for the **base technical advisory hours**;*

*IVH is the actual hours invoiced by the **Provider** in the relevant **financial year** at the **variable technical advisory rate**; and*

*VR is the relevant **variable technical advisory rate**.*

Where the result is a:

*negative amount, the **Provider** pays the **Authority**;*

*positive amount, the **Authority** pays the **Provider**."*

33. Clause 16.2(a) ('Consultation on system operator strategies') of the agreement is deleted and replaced with the following:

*"By 18 January before the **system operator strategic plan** or **system operator ICT strategic roadmap** is provided to the **Authority** (or such other date as agreed by the parties) the **Provider** must provide to the **Authority** a draft **system operator strategic plan** or draft **system operator ICT strategic roadmap**."*

34. Clause 16.2(b) ('Consultation on system operator strategies') of the agreement is amended by deleting the date "31 January" and replacing it with the following words: "1 May (or such other date as agreed by the parties)."

35. Clause 17.1(f) ('Capex plan and capex roadmap') of the agreement is amended by deleting the following words from the clause:

*"by more than the **capex change threshold**"*

36. The Provider's physical address in clause 30.5 ('Addresses') of the agreement is deleted and replaced with the following:

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

37. Clause 31.4 ('Development work') of the agreement is deleted.

38. The table in paragraph 4.1 of Schedule 1 is deleted and replaced with:

		SOSPA 2				Later funding periods
		Financial year 1 (Commencing 1 July 2021)	Financial year 2 (Commencing 1 July 2022)	Financial year 3 (Commencing 1 July 2023)	Financial year 4 (Commencing 1 July 2024)	Financial year n (Commencing 1 July in subsequent years)
Opex components (\$)	Gross opex component (A)	27,162,641	Determined in accordance with paragraph 4.2	Determined in accordance with paragraph 4.2	Determined in accordance with paragraph 4.2	Determined in accordance with clause 3 and paragraph 4.2
	Pricing manager fee adjustment (B)	(275,000)	Pricing manager fee at start of financial year 2	Pricing manager fee at start of financial year 3	Pricing manager fee at start of financial year 4	Pricing manager fee at start of financial year 6
	Net opex component (C)	26,887,641	A – B, subject to paragraph 4.3	A – B, subject to paragraph 4.3	A – B, subject to paragraph 4.3	A – B, subject to paragraph 4.3
Capex components (\$)	Historic capex component (D)	5,440,463	3,931,746	2,591,719	1,668,594	Determined in accordance with clause 3
	In-flight capex component (E)	4,341,317	5,178,046	5,478,137	5,509,903	Determined in accordance with clause 3
	Fixed fee capex component (F)	949,398	2,575,240	5,155,423	7,779,856	Determined in accordance with clause 3
	Total capex component (G, levelised in accordance with paragraph 4.4)	12,576,513	12,576,513	12,576,513	12,576,513	D + E + F, levelised in accordance with paragraph 4.4
	Fixed fee (\$)	39,464,153	C + 12,576,513	C + 12,576,513	C + 12,576,513	C + G

39. Paragraph 7.4(b) ('Direct Services Fee') of schedule 1 ('Fees') of the agreement is deleted.

40. The capex classification for 'Service Enhancement' set out in paragraph 7 of schedule 2 ('Capex Methodologies') of the agreement is deleted and replaced with the following:

<i>Service Enhancement</i>	<p><i>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:</i></p> <ul style="list-style-type: none"> <i>a) improving wholesale market and/or operational efficiency or encouraging competition that impacts participants;</i> <i>b) responding to technical developments;</i> <i>c) responding to changes in demand for the services; or</i> <i>d) responding to developments in wholesale market design, whether as a result of international or local practice,</i> <p><i>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.</i></p>
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41. A new Schedule 6 ("Cost-of-services reporting") is included in the agreement as follows:

Categories of **services** for **cost-of-services** reporting:

- (a) Planning and readiness
- (b) Market operations
- (c) Power system operations
- (d) SO support services
- (e) IST support services
- (f) ACAM share