

ELECTRICITY COMMISSION

AND

TRANSPower NEW ZEALAND LIMITED

TECHNICAL ADVISORY SERVICE CONTRACT

PARTIES

ELECTRICITY COMMISSION, a body corporate continued under subpart 1 of Part 15 of the Electricity Act 1992 ("**the Commission**"); and

TRANSPower NEW ZEALAND LIMITED, Level 7, Transpower House, 96 The Terrace, Wellington ("**the Advisor**").

BACKGROUND

- A The Commission requires the Advisor to provide the Advisory Services.
- B The Advisor agrees to provide the Advisory Services on the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION:

- 1.1 **Definitions:** In this Agreement the following expressions have the following meanings:

Expression	Meaning
Advisory Resources	has the meaning given in clause 3.2 of this Agreement
Advisory Services	the services to be provided and performed by the Advisor, as described in Schedule B;
Agreement	means this agreement including the Schedules;
Business Day	means any day other than a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington;
Commission Intellectual Property	means the intellectual property referred to as being the property of the Commission in clause 10.1 of this Agreement;
Confidential Information	means any information (including Commission papers) provided to a Party by, or on behalf of, the other Party in connection with the provision of the Advisory Services, where that information is designated as confidential or is, by its nature, clearly confidential, but excludes information that is already known to the receiving Party or that is in the public domain;
Conflict of Interest	any situation which might compromise the Advisor's or the Commission's standing or integrity, or reflect adversely on the Commission, or the Commission's relationships with Government, or the general public, including, but not limited to, any action, situation or transaction in which the Advisor, or any person used by the Advisor in the performance of the Advisory Services, or any parent, child or spouse of that person, that will or may derive any financial benefit, or any competitive or commercial advantage;

CPI Index	means the all groups Consumer Price Index for New Zealand published quarterly by the New Zealand Department of Statistics;
Extra FTEs	has the meaning given in clause 3.1 of this Agreement;
FTEs	has the meaning given in clause 3.1 of this Agreement;
GST	goods and services tax within the meaning of the Goods and Services Tax Act 1985;
Interest Rate	means the bank bill bid rate (as defined in Part A of the Electricity Governance Rules 2003) plus a margin of 1 percent per annum;
Manager	the Commission manager responsible for the performance of the Advisory Services by the Advisor;
Parties	the parties to this Agreement and their respective successors and permitted assigns;
Quarterly Fee	means the fee for a 3 month period specified in, and adjusted in accordance with, Schedule A;
Rebate Amount	means the amount of the rebate specified in, and adjusted in accordance with, Schedule A;
SOSPA	the System Operator Service Provider Agreement between the Commission and the Advisor dated 12 August 2009;
System Operator	means the service provider for the time being who is appointed as system operator pursuant to regulation 30 (2) of Part 2 of the Electricity Governance Regulations 2003; and
Variable Rate	means the hourly rate specified in, and adjusted in accordance with, Schedule A.

1.2 Interpretation: In this Agreement:

- (a) references to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships;
- (b) the headings in this Agreement are for convenience only and have no legal effect;
- (c) the singular includes the plural and vice versa;
- (d) the Schedule to this Agreement forms part of this Agreement;
- (e) if there is any conflict of meaning between the Schedules and the body of this Agreement, the body of this Agreement will prevail;

- (f) unless stated otherwise, all amounts referred to in this Agreement are denominated in New Zealand dollars; and
- (g) references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. JOINT INTENTIONS

2.1 The Parties' intentions in entering into this Agreement (the "**Joint Intentions**") are that the Advisor will:

- (a) increase its System Operator staff numbers to provide a pool of staff (rather than specific individuals) from which appropriately qualified staff can be drawn to perform the Advisory Services while continuing to allow the Advisor to perform the System Operator role;
- (b) manage the arrangements under this Agreement in a professional and commercial manner;
- (c) have additional resources to deploy to provide required Advisory Services, when required;
- (d) have an enhanced ability to develop and present advice at a senior, professional level;
- (e) be able to deploy subject-matter experts to provide the Advisory Services;
- (f) have a materially enhanced ability to agree to and meet reasonable delivery timetables for the Advisory Services; and
- (g) reduce the likelihood of the Commission carrying unnecessary overhead due to the ability of the Advisor to use the additional staff for its System Operator role when those staff are not required for Advisory Services.

2.2 Subject to the express provisions of this Agreement, in performing its obligations and exercising its rights under this Agreement the Advisor will act in a manner which is consistent with the Joint Intentions.

3. PROVISION OF ADVISORY RESOURCES

3.1 **Additional FTEs:** For the duration of this Agreement, the Advisor will engage 2 full time equivalent staff ("**FTEs**") more than it would otherwise engage to perform the System Operator role. In particular, the Advisor will:

- (a) use reasonable endeavours to engage 2 extra FTEs (the "**Extra FTEs**") with the following expertise at a senior level:
 - (i) power systems engineering;
 - (ii) modelling and analysis; and
 - (iii) project management and report writing.

- (b) engage replacement or additional staff (as applicable) if any person engaged as part of the Extra FTEs leaves their job (temporarily or permanently) and/or reduces their hours of work.
 - (c) subject to clauses 3.4 and 3.5, ensure that it retains sufficient staff to perform the System Operator role without the Extra FTEs.
- 3.2 **Advisory Resources:** For the duration of this Agreement, the Advisor will make available (during normal business hours) staff from the Advisor's pool of System Operator staff (including but not limited to the Extra FTEs) to provide an average (calculated annually with the first year starting from the date that the Extra FTEs are employed) of 36.6 days of Advisory Services per month (the "**Advisory Resources**"). Notwithstanding that the Advisory Resources will be made available on an average basis (assessed annually), the Advisor acknowledges that the number of hours of Advisory Resources provided by the Advisor each month will be consistent across each month, to the extent reasonably practicable allowing for staff absences due to, for example, training, annual leave and sick leave. To avoid doubt, the Advisory Resources are not solely the Extra FTEs and System Operator staff are not specifically allocated to provide Advisory Services. Instead, the Advisor will, in consultation with the Commission and acting reasonably, determine which of its staff are appropriate to provide Advisory Services in any particular situation.
- 3.3 **Right to request specific staff:** The Commission may request that particular Advisor staff be allocated to provide particular aspects of the Advisory Services and the Advisor will accommodate such request if practicable.
- 3.4 **Non-exclusive:** The Commission and the Advisor acknowledge that the Advisory Resources are not available exclusively to the Commission for the provision of the Advisory Services. To the extent that the provision of the Advisory Services does not fully utilise the Advisory Resources, the Advisory Resources will be applied to System Operator work.
- 3.5 **Priority:**
- (a) The Commission acknowledges that an emergency situation may arise where the Advisor has insufficient resources to perform both its obligations as System Operator and the Advisory Services. In that event, the Advisor's obligations as System Operator will take priority and the Advisor may use the Advisory Resources to perform its obligations as System Operator.
 - (b) The Advisor acknowledges that the situation in paragraph (a) above will be rare and that normally the Advisor will manage its resources so that the Advisory Resources are available to provide the Advisory Services when required.
 - (c) The Advisor will promptly notify the Commission if the circumstances contemplated by this clause 3.5 arise.
- 3.6 **Rebate:** If the full Advisory Resources of 36.6 days of Advisory Services per month (when calculated on an annual average basis) are not available to the Commission in any month (e.g. because of priority use of the Advisory Resources for System Operator work under clause 3.5 or because of a delay in employing any of the Extra FTEs following the entry into this Agreement or because any person engaged as part of the Extra FTEs leaves their job), the fees under clause 5 will be reduced by the Rebate Amount for each whole day less than 36.6 days per month that the Advisory Resources were not available (pro rata per part day).

For the avoidance of doubt, the Commission will not be entitled to a reduction in the fees payable under clause 5 in circumstances where Advisory Resources are utilised by the

Advisor for System Operator work (in accordance with clause 3.4) when not being fully utilised by the Commission.

3.7 **Option to require engagement of additional FTE:** The Commission may require the Advisor to engage 1 FTE in addition to the Extra FTEs described in clause 3.1 (the "Additional FTE"). The Advisor shall comply with such a requirement as soon as reasonably practicable. Where the Commission makes such a requirement:

- (a) all references in this Agreement to 2 FTEs and similar references shall be read as referring to 3 FTEs, and this Agreement shall be read with all other consequential changes necessary to reflect the change. Without limitation, this Agreement will be read as if the Additional FTE was an Extra FTE, "2 extra FTEs" in clause 3.1 will be read as "3 extra FTEs" and "2 FTEs" in clause 3.2 will be read as "3 FTEs"; and
- (b) the Quarterly Fee and references to 36.6 hours will be increased by one half to reflect the engagement of the Additional FTE (pro-rata for any part quarter and month during which the Additional FTE is engaged).

3.8 **Additional resources:** If resources in addition to the Advisory Resources are required to provide Advisory Services, the Advisor will use reasonable endeavours to make such additional resources available. The Commission will pay for such additional resources at the Variable Rate, provided that the Commission will not be liable to pay for such additional resources quoted unless the Commission has agreed in writing to the total cost of such additional resources prior to their use.

4. PROVISION OF ADVISORY SERVICES

4.1 **Contract management:** The Parties will undertake a work planning process to reflect item B.3 of Schedule 8 and Schedule C.

4.2 **Provision of Advisory Services:** The Commission may from time to time request the Advisor to provide, and the Advisor will provide, Advisory Services in accordance with the requirements and process outlined in Schedule C

4.3 **Subcontracting:** The Advisor engages subcontractors to perform aspects of the System Operator role and, where the Advisor considers it appropriate, such subcontractor resources may be utilised to provide aspects of the Advisory Services. The use of subcontractors will not relieve the Advisor from liability for the performance of any obligations under this Agreement and the Advisor is liable to the Commission for the acts and omissions of each of its subcontractors as fully as if they were acts or omissions of the Advisor.

4.4 **Status of Advisor:** The Advisor and the Commission agree that:

- (a) the Advisor is engaged to provide Advisory Services under a contract for services as an independent contractor and that neither the Advisor nor any person used by the Advisor to provide the Advisory Services to the Commission is an employee of the Commission;
- (b) this Agreement must not be construed to create an employment, joint venture, agency, trust or partnership relationship between the Advisor (or any person associated with the Advisor) and the Commission;
- (c) except as required to perform the Advisory Services, the Advisor will not either directly or indirectly hold itself out as an agent of the Commission, commit staff or

resources of the Commission, or incur any debt or obligation in the name of the Commission, without the Commission's prior written consent; and

- (d) except as otherwise specified in this Agreement or agreed from time to time between the Advisor and the Commission, the Advisor, or any person used by the Advisor to provide the Advisory Services to the Commission, will not be under the day to day control or supervision of the Commission in respect of the performance of the Advisor's obligations under this Agreement.

4.5 **Compliance with policies and procedures:** The Advisor will, to the extent reasonable, comply with the Commission's policies and procedures that are applicable to the performance of this Agreement and of which the Commission makes the Advisor aware. In particular, the Advisor will comply with the Commission's health and safety policies and procedures, and protected disclosures procedures, which the Commission will provide on request.

5. CONSIDERATION

5.1 **Consideration:** In consideration of the Advisor providing the Advisory Resources and Advisory Services in accordance with the terms of this Agreement, the Commission will pay the Advisor:

- (a) subject to clause 5.2, the Quarterly Fee each quarter (less any rebate to which the Commission is entitled in accordance with clause 3.6 in respect of the relevant quarter), plus GST (if any); plus
- (b) for any resources in addition to the Advisory Resources agreed in a scope of work under clause 4.2, at the Variable Rate.

5.2 **Commencement of the Quarterly Fee:** The Commission shall only be required to pay the Quarterly Fee from the date on which the Advisor has employed one of the 2 Extra FTEs (but, to avoid doubt, if only one extra FTE has been employed and as a result the full Advisory Resources are not available, the Quarterly Fee will be rebated in accordance with clause 3.6).

5.3 **Reimbursement for disbursements:** In addition to the sum set out in clause 5.1 above, the Commission agrees to reimburse the Advisor at cost for any actual and reasonable disbursements incurred directly by the Advisor in the performance of the Advisory Services, provided that those disbursements have been approved by the Commission in writing prior to being incurred.

6. INVOICING

6.1 **Invoicing:** The Advisor will provide an invoice to the Commission by the 5th Business Day of each April, July, October and January each year during the term of this Agreement for the amounts due in respect of the previous quarter (or part quarter, as applicable). The invoice will accurately state:

- (a) the name and address of the Advisor;
- (b) the Advisory Services provided in the previous quarter, including by whom and the amount of time spent;
- (c) the sum due in respect of the previous quarter, showing:

- (i) the hours worked by the System Operator staff on each matter;
 - (ii) the calculation of the rebate (if any) in respect of the Quarterly Fee;
 - (iii) disbursements (if any);
 - (iv) additional resources (if any); and
 - (v) any other information reasonably requested by the Commission; and
- (d) the GST number of the Advisor, if registered for GST.

If required by the Commission, the Advisor will provide such supporting documentation and calculations in respect of the amounts in the invoice as necessary to enable the Commission to satisfy itself (acting reasonably) that the invoice is correct.

- 6.2 **Payment not due until invoice received:** The Commission is not under any obligation to make any payment under this Agreement until an invoice has been received from the Advisor.
- 6.3 **Payment of invoice:** The Commission will pay the sum set out in the invoice by the twentieth (20th) of the month following receipt of the invoice unless the Commission has notified the Advisor, after receipt of the invoice, that the sum claimed is in dispute in which case the Commission will pay any undisputed portion of the invoice and the disputed portion of the invoice will be dealt with under clause 13 (dispute resolution).
- 6.4 **Penalty interest:** If a Party fails to make any properly due payment by or on the due date for payment then that Party will be liable to pay the other Party default interest on the unpaid sum at the Interest Rate, calculated daily from the date on which payment was due until the date on which payment in full is made.
- 6.5 **Set off by Commission:** The Commission is entitled to set off any amount owed to it by the Advisor against any payments due to the Advisor from the Commission.

7. TAXATION AND LEVIES

- 7.1 **GST registration:** The Advisor will register for GST with the Inland Revenue Department if required to do so under the Goods and Services Tax Act 1985.
- 7.2 **Commission not liable for taxes/levies:** At no time and under no circumstances will the Commission have any liability to meet any of the Advisor's obligations under the Health and Safety in Employment Act 1992 or pay or be called upon by the Advisor to pay to the Advisor any sum or sums by way of:
- (a) holiday pay; or
 - (b) sick pay; or
 - (c) redundancy or any other form of severance pay; or
 - (d) levies under the Injury Prevention, Rehabilitation, and Compensation Act 2001.
- 7.3 **Indemnification of the Commission:** The Advisor will indemnify the Commission against any tax which the Commission may be liable to withhold from the payments to be made under this Agreement to the Advisor by reason of any person used by the Advisor to

provide the Advisory Services to the Commission being held by any court, tribunal or authority to be an employee of the Commission. The Commission will use reasonable endeavours to assist the Advisor in recovering any tax payments which have been made by the Advisor in relation to such person which are subsequently duplicated by payments made by the Commission.

8. TERM

8.1 **Term:** The term of this Agreement will commence from the date of this Agreement and will continue for a period of 36 months, unless terminated earlier in accordance with this Agreement.

9. TERMINATION

9.1 **Termination for cause:** Either Party (the non-defaulting party) may terminate this Agreement immediately by giving notice in writing to the other Party (the defaulting party), if:

- (a) the defaulting party commits any serious breach of its obligations under this Agreement and fails to remedy such breach within 10 Business Days of notice from the non-defaulting party; or
- (b) the defaulting party repeats or continues, after having been given notice of such breach by the non-defaulting party, any breach of its obligations under this Agreement; or
- (c) the defaulting party engages in any conduct which, in the non-defaulting party's reasonable opinion causes or is likely to cause material damage to the business or reputation of the non-defaulting party.

9.2 **Termination for insolvency:** Either Party (the non-defaulting party) may terminate this Agreement with immediate effect on written notice to the other Party (the defaulting party):

- (a) in the event of the defaulting party's insolvency;
- (b) if a resolution is passed for the liquidation of the defaulting party or proceedings are commenced for the liquidation of the defaulting party and are not stayed or withdrawn within 5 Business Days;
- (c) if the defaulting party makes any arrangement for the benefit of its creditors; or
- (d) if a receiver, trustee, administrator, statutory or official manager or similar officer is appointed to the whole or a material part of the property of the other party.

9.3 **Date of termination:** Termination of this Agreement in accordance with clause 9.1 will be effective from the date of service of the notice of termination on the defaulting party.

9.4 **Termination of the SOSPA:** This Agreement shall automatically terminate on expiry or termination of the SOSPA.

9.5 **Effect of termination:** Upon the termination of this Agreement pursuant to clause 9:

- (a) the Commission will pay the Advisor up to the date of termination, and will not be obliged to make any other payment as a result of the termination (for example, loss of goodwill or anticipated profits); and

(b) the Advisor will not be obliged to provide further services under this Agreement.

9.6 **Survival:** The provisions of this Agreement relating to intellectual property (clause 10), confidentiality (clause 11), and indemnification and limitation of liability (clauses 7.3 and 12) will continue after the termination of this Agreement.

10. INTELLECTUAL PROPERTY

10.1 **Commission Intellectual Property:** Subject to clause 10.2, all rights to any intellectual property conceived or produced by the Advisor for the Commission in the course of performing the Advisory Services and all information (including information that is in electronic form), working papers, reports or other papers collected or produced by the Advisor for the purpose of providing the Advisory Services are the property of the Commission from the date that property is created or developed and the Advisor waives in favour of the Commission any moral rights that the Advisor may have.

10.2 **Existing intellectual property:** Despite anything to the contrary contained in this Agreement, it is understood and agreed that the Advisor shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by the Advisor prior to, or acquired by the Advisor during, the performance of this Agreement and the Advisor will not be restricted in any way with respect to the same.

10.3 **Licence:** The Commission grants the Advisor a non-exclusive, royalty-free, perpetual, non-transferable licence to use the Commission Intellectual Property for the Advisor's and its related companies' (within the meaning in section 2(3) of the Companies Act 1993) internal business purposes only (and to avoid doubt the Advisor shall not sub-license the Commission Intellectual Property to any third party or otherwise commercialise the Commission Intellectual Property). The Advisor shall maintain the confidentiality of the Commission Intellectual Property in accordance with clause 11.

10.4 **Independent Publishing:** Notwithstanding clause 10.1 the Advisor will have the right to independently publish any work or advice provided to the Commission as part of the Advisory Services, but:

- (a) the Advisor shall record the Commission Intellectual Property rights, where relevant, in relation to such material; and
- (b) the Advisor must remove any material that is Confidential Information or which is otherwise held by the Advisor confidentially pursuant to its role as System Operator.

10.5 **On termination or completion:** Following termination of this Agreement (for whatever reason) or completion of the Advisory Services, the Advisor will, if requested in writing by the Commission within a reasonable period of time:

- (a) promptly deliver to the Commission from the documents described in clause 10.1 any reports which have not been provided to the Commission at the date of termination, whether or not those reports are complete, and to the extent reasonably requested by the Commission, the latest version of any other material working papers; and
- (b) promptly deliver to the Commission (or, where the Advisor reasonably considers delivery is impractical, destroy) all Confidential Information that is the property of the Commission.

10.6 **Retention of Information:** Notwithstanding clause 10.5, the Advisor shall be entitled to retain such hard copies of any Confidential Information as are required solely to enable the Advisor to comply with any law or regulation or the Advisor's reasonable internal governance procedures, and any electronic copies of any Confidential Information to the extent they are generated automatically as part of a back-up procedure, provided that such Confidential Information must continue to be held by the Advisor on a private and confidential basis.

10.7 **IP Indemnity:**

(a) Subject to clause 10.7(b), the Advisor indemnifies and keeps indemnified the Commission against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs on a solicitor own client basis) in connection with the infringement or alleged infringement of any third party's intellectual property rights arising out of or in connection with the provision by the Advisor or the use by the Commission of the Advisory Services in accordance with this Agreement.

(b) The indemnity in clause 10.7(a) will not apply to the extent that:

(i) the Advisor advises the Commission in writing in reasonable detail of any constraints which apply to the Advisor (and which will therefore apply to the Commission) in the use of third party intellectual property that is provided to the Commission in the performance of the Advisory Services either:

(aa) as part of the scope of work (under clause C2 of Schedule C) for a project; or

(bb) where the Advisor does not know, and cannot reasonably have been expected to know, of such constraints at the time the scope of work is completed, as soon as practicable after the Advisor becomes aware of such constraints; and

(ii) the Commission subsequently uses the third party intellectual property in breach of such constraint.

Where the Commission uses third party intellectual property in breach of such notified constraints, the Commission indemnifies and keeps indemnified the Advisor against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs on a solicitor own client basis) in connection with such breach.

11. **CONFIDENTIALITY AND CONFLICTS OF INTEREST**

11.1 **Confidentiality:** Each Party accepts that in performing the Agreement it, or any person used by it in connection with the Agreement, may acquire Confidential Information. Therefore each Party warrants that it will, in relation to the Confidential Information received by it:

(a) keep absolutely secret and confidential at all times all Confidential Information of which it becomes aware;

(b) not use, nor copy, nor communicate, nor divulge, to any person, either before or after the completion of the Advisory Services, any Confidential Information without the prior written permission of the other Party; and

- (c) safeguard the Confidential Information from access or use by unauthorised persons and keep the Confidential Information under its control.

11.2 **Exceptions:** The following are exceptions to the restrictions contained in clause 11.1:

- (a) where the use or communication of the Confidential Information is reasonably necessary to enable the Party to perform its obligations under this Agreement;
- (b) where the Party shows it already knew at the time of disclosure (to the Party) of the Confidential Information and which came into the Party's possession other than as a result of breach or non-performance of any confidentiality obligation owed to the other Party;
- (c) where the Party shows that the Confidential Information was public knowledge at the relevant time other than as a result of breach or non-performance of any confidentiality obligation owed to the other Party; and
- (d) where disclosure of the Confidential Information is required by law, or by governmental or judicial authority. In that event, the Party will use reasonable efforts to give the other Party notice of such authority immediately, and will not take any action to interfere with any efforts by the other Party to pursue legal remedies preventing disclosure.

11.3 **Conflicts of Interest:** The Advisor accepts that in performing the Advisory Services it, or any person used by it to perform the Advisory Services may enter into a situation which gives rise to a Conflict of Interest. Therefore the Advisor warrants that it shall:

- (a) operate in accordance with its Conflict of Interest protocols contained in the System Operator Policy Statement (which is included as Schedule C4 of the Electricity Governance Rules);
- (b) advise the Commission in writing of any actual or potential Conflicts of Interest that might arise in the performance of the Advisory Services;
- (c) assist the Commission to address or avoid any actual or potential Conflicts of Interest notified to the Commission under clause 11.3(b) above; and
- (d) if requested by the Commission, provide the Advisory Services independently of the views of Transpower New Zealand as grid owner. By way of example, the Advisor will:
 - (i) provide separate System Operator commentary from that of the grid owner on any Commission or industry proposal (for example a rule change proposal) on which public consultation is being carried out (provided that such commentary will be limited to discussing the impact a proposal would have on the System Operator's ability to meet its regulatory obligations and the principal performance obligations;
 - (ii) advise on impacts of any grid upgrade proposal by the grid owner, provided such advice will be limited to consideration of the impact a proposal would have on the System Operator's ability to meet its regulatory obligations and the principal performance obligations.

11.4 **Advisor Obligations:** The Advisor will ensure all of its employees, or any other person used by the Advisor to perform the Advisory Services, are aware of, and complies with, the warranties given by the Advisor under this clause 11.

12. LIMITATION OF LIABILITY

12.1 **No liability for indirect or consequential loss:** Subject to clause 12.4, neither Party will be liable for any indirect, consequential or special loss or damage resulting from or connected with the performance of its obligations under this Agreement.

12.2 **Limit on liability:** Subject to clause 12.4, the maximum liability of a Party to the other Party (whether in contract, tort (including negligence) or otherwise) in respect of any breach or breaches of this Agreement in any calendar year will not exceed \$775,000.

12.3 **SOSPA:** Subject to clause 12.4:

(a) where any breach of this Agreement by the Advisor is also a breach of:

- (i) the SOSPA; and/or
- (ii) the System Operator's obligations under the Electricity Governance Rules 2003 and/or the Electricity Governance Regulations 2003,

(an "**SO breach**"), the Parties agree that the Advisor's aggregate liability under this Agreement, the SOSPA, the Electricity Governance Rules 2003 and/or the Electricity Governance Regulations 2003 (as the case may be) shall be limited to the amounts set out in the SOSPA and such regulations.

(b) Accordingly:

- (i) the Advisor shall not be required to pay damages to the Commission under this Agreement for an SO breach to the extent it would cause the Advisor to incur liability in excess of such limits; and
- (ii) if the Advisor pays damages to the Commission under this Agreement for an SO breach and as a result incurs liability in excess of such limits, the Commission will refund all or the relevant part of such damages payment.

12.4 **No limit:** Clauses 12.1, 12.2 and 12.3 shall not limit either Party's liability for wilful default, a breach of clause 11, or under the indemnities in clauses 7.3 and 10.7.

13. DISPUTE RESOLUTION

13.1 **Discussion by Parties:** If there is any dispute between the Parties arising out of or in connection with this Agreement, and that dispute cannot be resolved by discussion within 10 Business Days of the issue being raised by a Party, the Parties will attempt to resolve the dispute in good faith using mediation or some other form of alternative dispute resolution (if agreed upon).

13.2 **Mediation:** If the Parties do not reach agreement within 10 days (or such further period as they may agree in writing) as to the dispute resolution procedure or timetable, then the Parties will attempt to resolve the dispute by mediation.

13.3 **Equitable relief:** Nothing in this clause will preclude either Party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

14. NOTICES

- 14.1 **Notices:** Any notice to be given under this Agreement will be in writing and will be hand delivered or sent by registered post to the Parties' respective addresses as set out in clause 14.3.
- 14.2 **Notices deemed served:** Any notice will be deemed to be served on the date of delivery or the Business Day next following the date of posting as the case may be.
- 14.3 **Addresses:** The address for the service of notices:

- (a) on the Commission is:

Electricity Commission
Level 7
ASB Bank Tower
2 Hunter Street
PO Box 10041
WELLINGTON

Attention: Director, System Operations and Common Quality

- (b) on the Advisor is:

Transpower New Zealand Limited
Level 7
Transpower House
96 The Terrace
WELLINGTON

Attention: Risk and Performance Manager

15. GENERAL

- 15.1 **Variations:** This Agreement cannot be varied in any manner except by way of agreement in writing signed by the Parties.
- 15.2 **Waiver:** No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.
- A waiver by either Party of any rights arising from any breach of any term of this Agreement will not constitute a waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement.
- 15.3 **Severability:** If any part or provision of this Agreement is deemed by a Court or other tribunal to be invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.
- 15.4 **Entire Agreement:** The Parties acknowledge that this Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

- 15.5 **No Assignment:** The obligations of the Advisor under this Agreement are personal to the Advisor and may only be assigned, delegated or transferred with the prior approval in writing of the Commission.
- 15.6 **Time of the Essence:** Any time, date or period mentioned in this Agreement, or any subsequent agreement, may be extended by mutual agreement in writing between the Parties but as regards any time, date or period originally fixed or any time, date or period so extended, time will be of the essence.
- 15.7 **Force Majeure:** Neither Party will be liable to the other for any loss or damage which may be suffered by the other as a direct or indirect result of its failure to perform its obligations under this Agreement by reason of an event of force majeure, being any cause or circumstance beyond the Party's control including, but not limited to, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement.
- Unless otherwise agreed, during the continuance of an event of force majeure each Party's obligations under this Agreement will be suspended and will resume as soon as possible after the cause or circumstance has ceased to have effect.
- 15.8 **Counterparts:** This Agreement may be signed in any number of counterparts (including facsimile copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.
- 15.9 **New Zealand Law:** This Agreement will be governed by and construed in accordance with the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the Courts of New Zealand.
- 15.10 **Priority:** In the event of conflict between the body of this Agreement and the Schedules to this Agreement, the following order of priority shall prevail (in descending priority) unless otherwise expressly provided:
- (a) the body of this Agreement; and
 - (b) the Schedules to this Agreement.

Signed for and on behalf of
the ELECTRICITY COMMISSION by

J. Hoyle
Signature

Name _____

21.9.09
Date

in the presence of:

[Signature]
Signature

KEVIN LAMPEN-SMITH
Name

MANAGER
Occupation

WELLINGTON
Address

Signed for and on behalf of
TRANSPower NEW ZEALAND LIMITED by

[Signature]
Signature
ARRECK C BRANDE
Name

22.09.09
Date

in the presence of:

SI

Tereza Zajack
Name

Executive Assistant
Occupation

Wellington
Address

SCHEDULE A: QUARTERLY FEE

A. Quarterly Fee

- (a) The Quarterly Fee is \$129,166.66 (pro-rata for any part quarter during the term of this Agreement), subject to adjustment in accordance with paragraph (d) of this Schedule.
- (b) The Rebate Amount is \$1176, subject to adjustment in accordance with paragraph (d) of this Schedule.
- (c) The Variable Rate is \$157 per hour, subject to adjustment in accordance with paragraph (d) of this Schedule.
- (d) The Quarterly Fee, Rebate Amount and Variable Rate will be adjusted on and from each anniversary of this Agreement (each a Review Date) in accordance with the following formula:

$$d = a * b / c$$

d = the adjusted Quarterly Fee, Rebate Amount or Variable Rate (as applicable)

a = the unadjusted Quarterly Fee, Rebate Amount or Variable Rate, i.e. the Quarterly Fee, Rebate Amount or Variable Rate actually stated in paragraph (a), (b) or (c) above (as applicable) at the date of this Agreement; and

b = the CPI Index most recently published before that Review Date;

c = 1045, being the CPI Index published in June 2009,

provided that if the result of the formula is that the adjusted Quarterly Fee, Rebate Amount or Variable Rate would be less than the amount of that Quarterly Fee, Rebate Amount or Variable Rate immediately prior to the relevant Review Date, the Quarterly Fee Rebate Amount or Variable Rate will not change.

If the CPI Index ceases to be published (or the basis of its calculation is changed), a substitute index (or an adjustment to the formula to take account of the change in the basis of the calculation) which approximates the purpose and composition of the CPI Index shall be agreed by the parties (such agreement not to be unreasonably withheld or delayed).

Where the parties fail to agree, a substitute index (or adjusted formula) is to be determined by the President for the time being of the New Zealand Institute of Chartered Accountants.

SCHEDULE B: SERVICES

B.1 Outline of Advisory Services

The Advisor will provide the following Advisory Services regarding matters within the ambit of the System Operator's knowledge and experience as a reasonable and prudent System Operator, as requested by the Commission:

- (a) Technical advice and related services that fall outside the scope of the System Operator's obligations under the SOSPA (i.e. the System Operator would not carry out these tasks except at the request of the Commission);
- (b) Technical advice and related activities that extends the scope of work being carried out for its own purposes as System Operator under the SOSPA; and
- (c) Technical advice and related activities that materially advance the timeframe of work being carried out under the SOSPA relative to timeframes that would reasonably be expected of the System Operator when fulfilling its obligations under the SOSPA.

Section B.2 of Schedule B provides a more detailed description of such services.

B.2 Description of Advisory Services

The Advisory Services will primarily consist of power system studies, investigations and research though it is expected that system operator staff (including contractors employed by the System Operator from time to time) providing the services will also have and will use as required, relevant project management, technical writing, and data analysis skills.

A more detailed description of the Advisory Services is given in the table below by way of an indicative delineation of the services between the SOSPA and the TASC. To avoid doubt, nothing in this table limits the obligations of the Advisor under the SOSPA.

<i>SOSPA</i>	<i>TASC</i>
Acting as Reasonable and Prudent Operator (" RPO ") by reviewing published Commission & other consultation papers (only completed papers & those relevant to System Operator ("the SO ")).	Writing and/or contributing to rule-change or policy consultation papers prior to consultation. Providing any commentary/input to a consultation where the SO is not directly involved through its RPO activities.
Rule change proposals by SO (arising from RPO activities, settlement agreements etc). These are high level proposals & do not include development work in relation to policy papers or consultation papers to develop & gain support for rule changes.	
Technical advice, technical papers relevant to RPO activities	Technical advice- backgrounders, preliminary work for a matter that may later become a policy or rule change matter.
Reporting on matters of operational significance.	
Planning activities, e.g. regional and national forums. drv year planning.	

<i>SOSPA</i>	<i>TASC</i>
Communications activities including advisory group appearances, SO workshops, newsletters, SO website.	Additional reports not reasonably expected to be provided under the SOSPA.
RPO changes to market systems (signalled in the SO's annual SOSPA capex plan).	RPO technical work (incl. data analysis, research etc) that falls under the TASC as described in Schedule B.1.
Rule-required or general Commission-initiated development changes to market systems.	Advice on market design & implementation matters that falls under the TASC as described in Schedule B.1.
Implementation of Policy Statement / Procurement Plan changes initiated by the SO.	
Implementation of Policy Statement & Procurement Plan changes initiated by the Commission or other participants (and adopted by Commission).	
Dispensation and equivalence arrangements.	
Exemption applications (Parts C&G)- excluding applications by the SO.	
Identification work.	
Software audits and performance audits.	
Data collection and retention under normal operational arrangements and as determined by the SO for operational purposes.	Data analysis, data collection and retention beyond what is collected and retained under normal operational requirements or in materially different format.
Compliance work including settlement attendances and implementation of settlement outcomes, breach investigations against the system operator or against other parties.	

B.3 Contract management

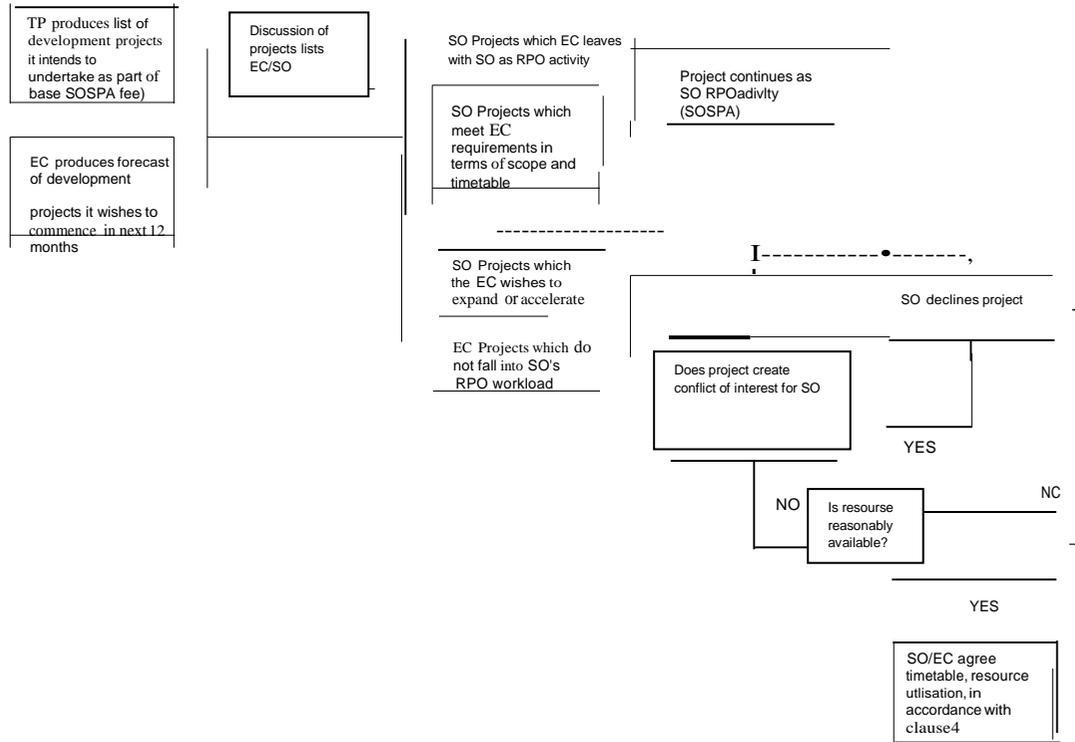


Figure 1: Process to Agree TASC Workplan Items

SCHEDULE C: CONTRACT MANAGEMENT

C.1 General

The System Operator and the Commission will:

- (a) nominate points of contact within the System Operator and the Commission for discussions regarding the TASC;
- (b) agree to communicate/co-ordinate work programmes to the extent reasonable, and at the latest shall be agreed on a six-monthly basis from the date of this Agreement (see Schedule B.3);
- (c) agree a process for initiating and processing work requests, including the information to be included in the Project Scope provided by the System Operator in response to a work request from the Commission, an agreed approach to estimating requirements and timetable, and an agreed approach to requesting information;
- (d) agree a process for amending Project Scope, timetables, or project priorities, and for resolving issues or disputes;
- (e) agree appropriate means of communicating progress, issues, and other matters during the course of undertaking a project;
- (f) agree to consult in regard to upcoming events which may affect work flows/disrupt provision of the Advisory Services;

The System Operator will:

- (g) allocate from the 2 FTEs a dedicated (part) resource for project management of TASC work programme, including day-to-day project management, project administration, and reporting. This person should not be the same person responsible for relationship management for day-to-day operations and compliance.

C.2 Scoping of Advisory Services

- (a) The Commission may from time to time request the Advisor to provide Advisory Services in accordance with the following process:
 - (i) the Commission will advise the Advisor of the details of the Advisory Services required and the required timeframe;
 - (ii) the Advisor will provide a scope of work to the Commission within 10 Business Days, or as otherwise agreed between the Parties, of receiving the request from the Commission for Advisory Services. The scope of work shall confirm that the Advisory Services will be provided under this Agreement, include details of intended resourcing (including identified contacts and team members), deliverables and timetabling, and any resources which the Advisor considers are required in addition to the Advisory Resources;
 - (iii) if the Commission accepts the Advisor's scope of work, the Advisor will carry out the Advisory Services in accordance with the accepted scope of work; and

- (iv) if the Commission does not accept the Advisor's scope of work, the Parties will meet within 5 Business Days or as otherwise agreed between the Parties to agree on those matters at issue, such agreement not to be unreasonably withheld.
- (b) If the Advisor has concerns about its ability to provide any Advisory Services requested by the Commission due to a conflict of interest, the Advisor will promptly notify the Commission and the parties will meet within 5 Business Days or as otherwise agreed between the Parties to agree on how the conflict should be avoided or managed, such agreement not to be unreasonably withheld.

C.3 Provision of Advisory Services

The Advisor agrees to:

- (a) perform the Advisory Services with reasonable skill and care, in accordance with the relevant scope of work and also comply with the reporting requirements set out in this Schedule C;
- (b) ensure that outputs are of an acceptable standard, including ensuring that written reports are suitable for an audience, prepared with due care and diligence to good business standard, of a quality commensurate with what would be expected of a reasonable and prudent System Operator, as defined in Part A of the Electricity Governance Rules;
- (c) notify the Commission immediately if it believes there could be a delay in performing the Advisory Services, or if it identifies a problem while performing the Advisory Services;
- (d) comply with all reasonable instructions given by the Commission's authorised personnel;
- (e) ensure that the Advisory Services are performed diligently and efficiently with a view to optimising the work output of the FTEs funded by the Commission;
- (f) follow any health and safety, security and other procedures applicable if on the Commission's premises, or those of its associates;
- (g) comply with the provisions of all statutes, regulations and rules that may be applicable to the provision of the Advisory Services.

C.4 Project reporting

The Advisor will report to the Director, System Operations and Common Quality on a monthly basis and will provide the Commission with a written summary at the end of each month setting out:

- (a) Services completed in the previous month relative to the scope of work and timetable for each project, including:
 - Project Name
 - Description of work
 - Names of personnel working on project
 - Hours worked

- Deliverables provided
- Progress against agreed timetable
- Explanation of any variances from the agreed Scope, personnel, or timetable
- Revised estimated timetables (if relevant)
-

(b) Services to be completed in the next month.

(c) In the event the System Operator has become aware during that month that they will be unable to complete a task according to the agreed timetable or scope, advice regarding how it intends to manage the situation.

