

VARIATION TO FTR MANAGER SERVICE PROVIDER AGREEMENT

Between

ELECTRICITY AUTHORITY

And

TRANSPower NEW ZEALAND LIMITED

VARIATION TO FTR MANAGER SERVICE PROVIDER AGREEMENT

DATED: 18 December 2014

BETWEEN:

- (1) **Electricity Authority** of Level 7, ASB Bank Tower, 2 Hunter Street, Wellington ("the **Authority**"); and
- (2) **Transpower New Zealand Limited** company number 372941 trading as "Energy Market Services" ("the **Provider**").

BACKGROUND:

- (A) The **Authority** entered into the **SPA** with the **Provider** on 2 April 2012 for the market operation service provider role of FTR manager, and at the same time contracted the **Provider** to deliver the systems and market implementation services required to be able to meet the **Authority's** requirements under the **SPA**.
- (B) The implementation of change request FM CR-07 (implementation FTR Allocation Plan 2014), issued under clause 7 of the **SPA**, has resulted in a change of the monthly fees.
- (C) This variation to the **SPA** is made pursuant to clause 7 of the **SPA** and amends paragraph 2 of Schedule 1 of the **SPA**. The parties have agreed to amend the **SPA** on the terms of this agreement.

IT IS AGREED:

1. Interpretation

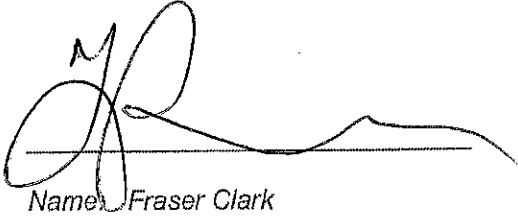
In this agreement unless the context indicates otherwise:

- 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 **SPA**, or, if not defined in either this agreement or the **SPA**, 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 **SPA** and includes the attached Appendix;
 - (b) **code** means the Electricity Industry Participation Code 2010;
 - (c) **SPA** means the FTR Manager Service Provider Agreement between the parties dated 2 April 2012;
- 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. SPA amendments**
- 2.1 The parties agree to amend the **SPA** as set out in the attached Appendix with effect as and from the date of this **agreement**.
- 3. Publication**
- 3.1 On or as soon as reasonably practicable after this **agreement** is signed, the **Authority** will publish the amended Schedule of the **SPA** 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 judgement 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 16 (Dispute Resolution) of the **SPA** shall apply.

SIGNED:

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

A handwritten signature in black ink, appearing to be 'Fraser Clark', written over a horizontal line.

Name: *Fraser Clark*

Position: *General Manager Market Services*

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

A handwritten signature in black ink, appearing to be 'Richard Rowell', written over a horizontal line.

Name: *RICHARD ROWELL*

Position: *MANAGER EMS.*

Appendix

Replace paragraphs 2 and 3 of Schedule 1 with:

2 The monthly fee comprises the following components:

2.1 The base fee which

- a) for each of the first 6 full months commencing with the month in which the first FTR auction is held, is \$81,960.85;
- b) for each of the following 30 months, is \$63,215.49;
- c) for each of the remaining months to the expiry of the **Initial Term**, is \$68,215.49;
- d) if the Authority renews this agreement for a further term under clause 4.2, is \$57,672.50;
and

2.2 the FTR Allocation Plan 2014 fee, agreed under change request FM CR-07, which from 1 November 2014 is \$2,008.75.

3 The fees (other than the costs in paragraph 6), the hourly rates and the indicative prices in paragraph 9 will be adjusted on and from 1 July of each year, starting on 1 July 2013 (each a "review date") in accordance with the following formula:

$$d = a * b/c$$

where:

- d = the adjusted fees, hourly rates or indicative prices
- a = the unadjusted fees, hourly rates or indicative prices (i.e. the relevant fee amount actually stated in this schedule as at the date of this agreement); and
- b = the March CPI figure for All Groups most recently published before that review date; and
- c = for the
- base fee, the CPI figure for All Groups published for March 2012
 - FTR Allocation Plan 2014 fee, the CPI figure for All Groups published for March 2014.

provided that the fees, hourly rates and indicative prices will never be less than the relevant fee or indicative price amount actually stated in this schedule as at the date of this agreement.

