

VARIATION TO FTR MANAGER SERVICE PROVIDER AGREEMENT

Between

ELECTRICITY AUTHORITY

And

TRANSPower NEW ZEALAND LIMITED

VARIATION TO FTR MANAGER SERVICE PROVIDER AGREEMENT

DATED: 28 August 2018

BETWEEN:

- (1) Electricity Authority of Level 7, Harbour 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-26 (FTR Allocation Plan 2018) and FM-CR27 (Annual upgrade), 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 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 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 16 (Dispute Resolution) of the **SPA** shall apply.

SIGNED:


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



Name: Grant Benvenuti

Position: Acting General Manager Market Performance

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



Name: Richard Rowell
Position: Manager EMS Delivery

Appendix

Replace paragraphs 2, 3 and 4 of Schedule 1 (Fees) with:

"2 The monthly fee comprises the following components:

2.1 the base fee:

- 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; and

2.3 the 2018 support cost increase, which from 1 October 2018 is \$1,666.67

28/08/2018 – Clause 2.1 added by 2018 Variation

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
- 2018 support cost increase, the CPI figure for All Groups published for September 2018,

28/08/2018 – Clause 3 amended by 2018 Variation

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.

- 9 If the **Provider** is requested by the **Authority**, under clause 7, to provide costs for a **System** change for any of the following **FTR** developments, the **Provider** must base any proposed changes to the **fees** on the following indicative prices. If any charges or prices proposed for such a **System** change are materially greater than the applicable indicative prices set out below, the **Provider** must provide justification for the price difference to the reasonable satisfaction of the **Authority**. Indicative prices shown are for the Nexant licence fees (unless otherwise specified) and do not include any system testing that may be required with respect to these additional features.

Item	Indicative price
Additional nodes/hub (in a radial system) per block of 5 in excess of the initial 4 nodes/hubs, up to a total of 130 nodes/hubs	\$20,000 per block of 5 hubs
FTR product reflecting losses endogenously	\$263,000
Resale of FTRs into Variation Auctions (system development only)	\$7,500
3 month contracts (assuming this means 3 month FTRs)	\$15,000
Strips of contracts (assuming this means FTRs of any duration)	\$15,000
Long dated contracts (assuming this means FTRs for a year or more)	\$15,000
List FTR months to 36 months	\$15,000
Day/night product (assuming this means time of use FTR products)	\$10,000
Business/non-business day product (assuming these are variations of the FTR product)	\$15,000
Bid curves as well as stepped bids	\$7,500

28/08/2018 – Line 3 describing costs for delivery of variation auctions removed by 2018 Variation”