

VARIATION TO FTR MANAGER SERVICE PROVIDER AGREEMENT

Between

ELECTRICITY AUTHORITY

And

TRANSPower NEW ZEALAND LIMITED

VARIATION TO FTR MANAGER SERVICE PROVIDER AGREEMENT

DATED: 17 November 2020

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) In 2018 the Authority exercised its right to renew the SPA for the Second Term. The Second Term is due to expire 1 May 2021. The parties have mutually agreed to extend the SPA for a further term from 1 May 2021 until 30 June 2024 (the **Third Term**).
- (C) The parties wish to record the extension of the SPA for the Third Term and other contractual amendments to the SPA on the terms of this variation 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, such amendments to be binding from the date of this agreement and take effect as at the date specified or, if no date is specified for a particular amendment, then on 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 SPA and Schedules on the Authority's website.

4. Renewal

4.1 Consistent with new clause 4.3 of the SPA, the parties record their mutual agreement to renew the SPA for a Third Term, from **1 May 2021** until **30 June 2024**.

5. General

5.1 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.

5.2 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.

5.3 This agreement, its validity, interpretation, and performance is to be construed and interpreted in accordance with the law of New Zealand.

5.4 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.

5.5 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.

5.6 In the event of a dispute relating to this agreement, the provisions of clause 16 (Dispute Resolution) of the SPA shall apply.

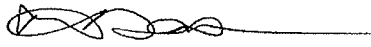
SIGNED as an agreement:

For and on behalf of the Electricity Authority by



Name: **J. J. WHITTLE**
Position: Chief Executive

For and on behalf of Transpower New Zealand Limited by:

A handwritten signature in black ink, consisting of several loops and a long horizontal tail.

Name: Richard Rowell
Position: Manager EMS Delivery

Appendix

Amendments to clause 4 of the SPA

After existing subclause 4.2 add the following subclause 4.3

- 4.3** At any time during the Second Term, the parties can mutually agree to renew the SPA for a further term, such term to commence on expiry of the Second Term and expire on 30 June 2024 (the **Third Term**).

Amendments to Schedule 1 Fees of the SPA

On and from **1 July 2021**, paragraphs 2, 3 and 4 of Schedule 1 will be replaced with the following:

- 2** The monthly base fee will be \$67,300 excluding GST.
- 3** The fees (other than the costs in paragraph 6) and the hourly rates will be adjusted on and from 1 July of each year, (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 = the CPI figure for All Groups published for March 2020,

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.

4 The hourly rates are as follows:

Resource	Hourly rate
FTR manager	\$249.42
FTR analyst	\$133.02
Business analyst	\$133.02
FTR grid engineer	\$249.42
IT Operations Manager	\$149.65
Service delivery manager	\$249.42
Allocation plan consultant	\$249.42
Project manager	\$182.91
Nexant: short term senior consultant (less than 300 hours)	\$304.85
Nexant: long term senior consultant (more than 300 hours)	\$249.42
Nexant: short term senior analyst (less than 300 hours)	\$277.13
Nexant: long term senior analyst (more than 300 hours)	\$221.71
Nexant: computer systems analyst	\$193.99
Senior IT analyst	\$182.91
Database administrator	\$182.91

On and from 1 July 2021, paragraph 9 of Schedule 1 will be deleted.

Amendments to Schedule 2 Non- Functional Specification of the SPA

Schedule 2 of the SPA is amended on and from the date of this variation agreement, as set out in the attached mark-up of Schedule 2 Non- Functional Specification

Amendments to Schedule 3 Functional Specification of the SPA

Schedule 3 of the SPA is amended on and from the date of this variation agreement, as set out in the attached mark-up of Schedule 3 Functional Specification