

**VARIATION AGREEMENT**  
**between**  
**ELECTRICITY AUTHORITY**  
**ENERGY CLEARING HOUSE LIMITED**  
**and**  
**NZX LIMITED**

## VARIATION AGREEMENT

**DATED:**

**BETWEEN:**

- (1) **Electricity Authority** of a Crown entity established under section 12 of the Electricity Industry Act 2010 (**Authority**); and
- (2) **Energy Clearing House Limited** (company number 871481) of Level 2, 11 Cable Street, Wellington (**Provider**).
- (3) **NZX Limited** (company number 1266120) of Level 2, 11 Cable Street, Wellington (**Guarantor**).

**BACKGROUND:**

- (A) The parties to this agreement have been working together to implement the changes required for RTP and have agreed that the role of Pricing Manager will end on the Effective Date, but that certain residual elements of the PMSPA will continue to be performed by the Clearing Manager.
- (B) Some elements of the PMSPA will be required for RTP. These are of two types, those services that will be continuing under RTP, and those that may only be required to implement possible outcomes of the high court (or subsequent courts) decisions in relation to appeals (**Appeals**) of the Authority's decisions on a UTS and a PEC that arose out of the events of 9 August 2021.
- (C) The Authority has implemented various changes to the Code to facilitate the implementation of RTP, and now wishes to terminate the PMSPA, and amend the CMSPA, RMSPA, and WITSSPA.
- (D) The parties note that there may be changes required to the Code and further variations required relating to continuing residual elements of the PMSPA that only become evident in implementing and operating RTP or following the final court decision in the Appeals.
- (E) The parties have agreed to terminate the PMSPA, and amend the agreements noted above, on the terms of this variation agreement, effective on and from 1 November 2022.

**IT IS AGREED:**

### **1. Interpretation**

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

- 1.1 words or phrases (including in the Background):
  - (a) have the meanings given to them in this agreement, or
  - (b) if not defined in this agreement, have the meanings given to them in the RMSPA, WITSSPA, CMSPA, or PMSPA, or

- (c) if not defined in those documents, have the meanings given to them in Part 1 of the Code (and in relation to those words or phrases deleted in the Code by the Electricity Industry Participation Code Amendment (Real Time Pricing) 2022 (EIPCA (RTP) 2022, the meaning given to those words or phrases in the Code immediately prior to the commencement of the EIPCA (RTP) 2022);

1.2 the following words and phrases have the following meanings:

- (a) **Act** means the Electricity Industry Act 2010;
- (b) **agreement** means this variation agreement;
- (c) **Effective Date** means the date that RTP went live, being 1 November 2022;
- (d) **Clearing Manager** means the clearing manager, as defined under the Act;
- (e) **CMSPA** means the Clearing Manager Service Provider Agreement between the parties dated 30 October 2015 (as amended);
- (f) **Parties** means the parties to this agreement;
- (g) **PEC** means a claim in relation to a “pricing error” as defined in the Code;
- (h) **PMSPA** means the Pricing Manager Service Provider Agreement between the Authority and Guarantor dated 30 October 2015 (as amended);
- (i) **Pricing Manager** means the pricing manager, as defined in the Code immediately before the Effective Date;
- (j) **RMSPA** means the Reconciliation Manager Service Provider Agreement between the Authority and Guarantor dated 30 October 2015 (as amended);
- (k) **RTP** means real time pricing, and the RTP project, and encompasses the various changes to move to real time pricing for the electricity market;
- (l) **SPD software** means the description of “Software” under Item 2 of Schedule 1 (Licensed Programs) under the pricing services agreement between the System Operator and the Guarantor dated 9 October 2009 (as amended);
- (m) **System Operator** means the system operator, as defined under the Act;
- (n) **Code** means the Electricity Industry Participation Code 2010;
- (o) **UTS** means an undesirable trading situation as defined in the Code;
- (p) **WITSSPA** means the WITS Manager Service Provider Agreement between the Authority and Guarantor dated 30 October 2015 (as amended);

1.3 headings are for ease of reference only and will not affect this agreement’s interpretation;

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. Termination of the PMSPA**

2.1 The Parties agree that the:

- (a) PMSPA is terminated as of the Effective Date;
- (b) Authority will pay all fees and other costs due under the PMSPA up to the Effective Date;
- (c) Authority will pay a termination fee calculated in accordance with clause 8 of Schedule 1 of the PMPSA as follows, which may be invoiced at any time following the execution of this Agreement and will be payable by the Authority in accordance with the provisions of the PMSPA:
  - (i) an Enhancement Termination Fee of \$40,000 (plus GST, if any)
  - (ii) a Services Termination Fee of \$47,258 (plus GST, if any).

2.2 The Authority has made changes to the Code to reflect the move to RTP. All actions carried out by the Pricing Manager prior to the Effective Date will either not be required following the Effective Date, or will be assumed by the Clearing Manager from the Effective Date. To the extent that any provisions of the Code may still require action by, or transitional support from, the Pricing Manager after the Effective Date the parties will work together in good faith to ensure these are managed in a timely and practical manner, and to agree any charges that may be payable in respect of this.

### **Amendments to continuing contracts (functional specifications)**

2.3 The parties agree that the CMSPA will be amended by deleting Schedule 3 of the CMSPA and replacing it with the new Schedule 3 attached to this agreement as Appendix B.

2.4 The Parties agree that the RMSPA and WITSPA will be amended as follows:

- (a) the RMPSA is amended by deleting Schedule 3 of the RMSPA and replacing it with the new Schedule 3 attached to this agreement as Appendix A and
- (b) the WITSSPA is amended by deleting Schedule 3 of the WITSSPA and replacing it with the new Schedule 3 attached to this agreement as Appendix C.

## **3. Revised Clearing Manager fees**

3.1 The parties agree that some services that were performed under the PMSPA will continue under RTP (**continuing services**) and that those services are reflected in the new Schedule 3 inserted into the CMSPA as noted in clause 3 above. In consideration of the continuing services, the parties agree that the Monthly Fee under the CMSPA will increase by \$18,800 (plus GST, if any) and that accordingly the new Monthly Fee table set out below is inserted in Schedule 1 of the CMSPA:

| Monthly Fee   |                     | Starting CPI Index |
|---|---------------------|--------------------|
| Infrastructure,   | \$2,430.00          | 979                |
| Systems   | \$14,777.00         | 979                |
| Services  | \$164,582.00        | 979                |
| Additional costs (due to Real Time Pricing, as of 1 Nov 2022) | \$18,800.00         | 979                |
| <b>Total</b>  | <b>\$200,535.00</b> |                    |

#### 4. SPD licence

The parties acknowledge that the Clearing Manager may need occasional access to the SPD software, which prior to the Effective Date was provided to the Guarantor under licence from the System Operator. The Authority acknowledges that the Provider, the Guarantor, and the System Operator are discussing the terms on which such occasional access may occur. The Parties acknowledge that the approach they are considering is that any ad hoc access will be charged on a pass through basis reflecting costs charged to the Guarantor by the System Operator. Following the outcome of those discussions, it may be necessary to enter into additional amendment agreement.

#### 5. General

- 5.1 This agreement is effective on and from the Effective Date.
- 5.2 As soon as reasonably practicable after this agreement is signed, the Authority will publish the amendments to the CMSPA, RMSPA, WITSSPA, and notice of the termination of the PMSPA on the Authority's website.
- 5.3 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 the parties.
- 5.4 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.
- 5.5 This agreement, its validity, interpretation and performance is to be construed and interpreted in accordance with the law of New Zealand.
- 5.6 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.

- 5.7 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.
- 5.8 In the event of a dispute relating to this agreement, the provisions of clause 16 (Dispute Resolution) of the CMSPA apply.

**SIGNED:**

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



---

*Sarah Gillies*  
*Chief Executive Officer*

For and on behalf of **Energy Clearing House Limited** by:



---

*Mark Peterson*  
*Chief Executive Officer*

For and on behalf of **NZX Limited** by:



---

*Mark Peterson*  
*Chief Executive Officer*

**APPENDIX A – Reconciliation Manager Functional Specification v15.0**

**APPENDIX B – Clearing Manager Functional Specification v30.0**

**APPENDIX C – WITS Functional Specification v12.0**