

Demand Response Participation Agreement

Parties

Transpower New Zealand Limited, in its capacity under the Code as a Grid Owner (**Transpower**)

[] (**Provider**)

It is agreed

1. Interpretation

1.1 In this agreement unless the context otherwise requires:

AMS Meter means a meter or data logger owned or operated by Advanced Metering Services Limited.

Associate means:

- (a) for Transpower, Transpower New Zealand Limited's capacity under the Code as System Operator, and Transpower's and the System Operator's directors, officers, employees, authorised agents and subcontractors; and
- (b) for the Provider, the Sources, and the Provider's and each Source's directors, officers, employees, authorised agents and subcontractors.

Availability Period means, for a Block, the period(s) the Block is available, as set out in Appendix 1.

Bid means a bid by the Provider to fulfil an Offer.

a **Bid Default** occurs for a Block when:

- (a) Transpower makes an Offer to the Provider for which:
 - (i) the deadline for Bids to fulfil the Offer is at least 30 minutes after Transpower makes the Offer;
 - (ii) the Call Period is entirely within the Availability Period for the Block; and
 - (iii) the maximum Strike Fee is equal to or greater than the Indicative Strike Fee for the Block; and
- (b) the Provider does not make a Bid to fulfil the Offer:
 - (i) at a Strike Fee equal to or less than the maximum Strike Fee in the Offer; or
 - (ii) with an Expected Delivery at least 50% of the Block Capacity of the Block.

Block means a discrete and indivisible unit of DR specified in Appendix 1.

Block Capacity means, for a Block, the expected kW capacity of the Block, as set out in Appendix 1.

Business Day means any day other than Saturdays, Sundays and public holidays in Auckland or Wellington.

Call means a call by Transpower for the provision of DR under this agreement, and **Called** has a corresponding meaning.

Call Notice Period means, for a Block and a Call on the Block, the minimum period of time between the Call and the start of the Call Period, as set out in Appendix 1.

Call Period means, for a Call, the period for which the Called Block is to be provided.

Code means the Electricity Industry Participation Code 2010.

Default Call means a Call in respect of which:

- (a) the Provider breaches clause 5.1; or
- (b) the Provider fails to provide at least 100% of the Expected Delivery of the Called Block.

Default Month means, for a Block, an Availability Month during which:

- (a) a Call on the Block is a Default Call; or
- (b) there are 3 or more Bid Defaults for the Block.

Determination means, for a Call, Transpower's determination of the quantity of DR provided in response to the Call.

DR means demand-side response by way of the reduction of gross demand and/or the provision of non-market generation when called.

DR Fees means the Establishment Fees, Availability Fees and Strike Fees.

DR Services means the DR and related services described in this agreement and to be provided by the Provider.

Establishment Fee means a one-off fee for a Block, as set out in Appendix 2. If an Establishment Fee applies to a group of Blocks then, in all provisions of this agreement relating to that Establishment Fee, "Block" means that group of Blocks.

Expected Delivery means, for a Block, the quantity of DR in kW the Provider expects to provide if the Block is Called, which may be more or less than the Block's Block Capacity.

Indicative Strike Fee means, for a Block, the indicative Strike Fee for the Block, as set out in Appendix 2.

Invoice means a buyer created tax invoice for DR Fees.

Loss means any direct, indirect or consequential loss, injury, damage or expense that may be suffered by a party.

Metering Equipment means equipment installed or to be installed to measure and record the Verification Data. The primary Metering Equipment for each Block is described in Appendix 3.

Offer means a Transpower requirement for specific DR that is offered to one or more DR providers for fulfilment.

Proposal means the Provider's proposal in response to the RFP, including revisions to, and clarifications and presentations of, it.

RFP means Transpower's *Request for Proposal – Demand Response Programme*, dated August 2015, including revisions to, and clarifications and presentations of, it.

Source means a source of DR allocated by the Provider to a Block, and which may or may not be utilised to provide some or all of the Expected Delivery of the Block when it is Called.

Strike Fee means a fee per MWh of DR.

Verification Data means data about the electricity supplied or received at a Source in response to a Call on a Block to which the Source is allocated.

Verification Methodology means, for a Block, the methodology to be used by Transpower to make Determinations for Calls on the Block, as set out in Appendix 3 and described in the RFP.

2. Term of agreement

This agreement commences at 0000 (NZT) on the day after the last party signs this agreement and ends at 2359 (NZT) on 30 June 2016, unless the parties agree in writing to extend it. Transpower may terminate this agreement at any time on at least 10 Business Days' notice to the Provider.

3. Offers and Bids

3.1 From time to time Transpower may (but is not obliged to) make Offers to the Provider. Each Offer must specify:

- (a) the Call Period for the Offer, which must start and finish on the hour or half-hour; and
- (b) the maximum Strike Fee for the Offer.

3.2 The Provider may (but is not obliged to) make Bids in response to Offers made to it. Each Bid must specify:

- (a) the Offer and Block to which the Bid relates;
- (b) the Expected Delivery of the Block; and
- (c) the Strike Fee for the Bid, which must not be more than the maximum Strike Fee in the Offer.

3.3 Transpower may accept a Bid by making a Call on the Block to which the Bid relates in accordance with clause 4. Transpower may accept the Bid even if it was received by Transpower after the Bid deadline in the relevant Offer. If Transpower does not make a Call on the Block in accordance with clause 4 then the Bid is not accepted.

3.4 Transpower is not obliged to accept any particular Bid or any minimum quantity of Bids. Transpower may choose not to accept a Bid even if it accepts a comparable bid from another DR provider that has a higher Strike Fee than the Bid.

4. Calls

4.1 Transpower may make a Call at any time before the start of the Call Period.

4.2 Each Call must specify:

- (a) the time of the Call;
- (b) the Block and Bid to which the Call relates; and
- (c) the start and finish times of the Call Period, which must be the same as the Call Period in the Offer to which the Bid relates.

4.3 Transpower may cancel a Call by advising the Provider of the cancellation at any time before the start of the Call Period.

5. Compliance with Calls

5.1 If Transpower makes a Call:

- (a) at least as far in advance of the start of the Call Period as the Call Notice Period for the Call; and
- (b) that complies with clauses 4 and 13.1,

the Provider must provide DR in accordance with the Call, except that the Provider need not provide the entire Block Capacity or Expected Delivery for the Called Block.

5.2 If the Provider fails to provide at least 100% of the Expected Delivery for a Block in response to 3 or more Calls on the Block (which comply with clause 5.1), Transpower may remove the Block from this agreement on notice to the Provider.

6. DR Fees

6.1 Transpower must pay the Provider:

- (a) half of the Establishment Fee for each Block, which will accrue on the commencement of this agreement;

- (b) subject to clause 6.2, the other half of the Establishment Fee for each Block, which will accrue (if payable) when this agreement expires or is terminated or, if earlier, on 30 June 2016;
- (c) the Strike Fee for DR provided in accordance with this agreement in response to each Call, disregarding any DR:
 - (i) in excess of the Expected Delivery of the Called Block; or
 - (ii) provided outside the relevant Call Period.

The Strike Fee (if payable) will accrue when the Call is made.

- 6.2 No part of an Establishment Fee for a Block is payable under clause 6.1(b) if there were 3 or more Default Months for the Block during the term of this agreement.

7. Subcontracting

The Provider must not subcontract any part of the DR Services (other than provision of the Sources) without Transpower's prior approval. The Provider must ensure that any subcontractor of the DR Services observes the provisions of this agreement so far as they apply to the subcontract. The Provider is responsible for the acts and omissions of any subcontractor of the DR Services.

8. No double offering

The Provider must ensure that the DR Services do not include any DR that the Provider has simultaneously offered as, or otherwise knowingly committed to, any other demand-side product or obligation (such as interruptible load or extended reserve).

9. Verification and audit

- 9.1 The Provider must provide Transpower with Verification Data for each Call within 20 Business Days after the end of the Call Period. The Verification Data must cover the entire Call Period and any other periods required in order for Transpower to apply the relevant Verification Methodology.
- 9.2 If the Provider does not provide at least 100% of the Expected Delivery of a Called Block, the Provider must provide Transpower with details of the cause of the failure, including the Sources affected.
- 9.3 The Provider must promptly provide Transpower with additional information reasonably requested by Transpower about the provision or non-provision of DR under this agreement.
- 9.4 Transpower must use:
 - (a) the Verification Data;
 - (b) Information provided by the Provider under clauses 9.2 and 9.3;
 - (c) Information from an audit of the Verification Data under clause 9.6; and
 - (d) the relevant Verification Methodology,

to make a Determination for the Call. Transpower must make the Determination promptly and advise the Provider of the Determination in the Invoice for the Call.

- 9.5 If Transpower disputes the Verification Data for a Call, Transpower must notify the Provider of the dispute within 5 Business Days after Transpower receives the Verification Data. Pending resolution of the dispute, the Provider will be deemed not to have provided any DR in response to the Call. Transpower will be deemed to have accepted the Verification Data if Transpower does not dispute it within that time.
- 9.6 Transpower may, at its cost and from time to time, conduct an audit of the accuracy of any Verification Data. For the purposes of the audit the Provider must provide Transpower with access to all relevant documents and data and all personnel of the Provider engaged in the provision of the DR Services.
- 9.7 The Provider consents to Transpower accessing directly Verification Data measured or stored by any of the Provider's AMS Meters for the term of this agreement.

10. Provider to provide resources

The Provider must provide and maintain the Metering Equipment, which must be:

- (a) located at, or as near as is practical to, the Sources; and
- (b) sufficient for DR verification, including by having a sufficient frequency of data capture and data loggers sufficient to capture data for the periods for which Verification Data is required.

11. Invoicing and payment

- 11.1 Within 5 Business Days after the later of:

- (a) the end of a month; and
- (b) the day Transpower makes all Determinations for Calls made in the month,

Transpower must prepare an Invoice for the DR Fees that accrued during the month and provide the Invoice to the Provider.

- 11.2 If the Provider disputes an Invoice, the Provider must notify Transpower of the dispute within 5 Business Days after the Provider receives the Invoice. The Provider will be deemed to have accepted the Invoice if the Provider does not dispute it within that time.

11.3 Transpower must pay to the Provider the full undisputed amount of each Invoice, plus GST, within 20 Business Days after providing the Invoice to the Provider.

11.4 The Provider must not issue a tax invoice for the DR Fees.

12. Liability

12.1 This clause 12 applies to the parties' and their Associates' liabilities arising under or in connection with this agreement or the DR Services. It does not apply to any other liabilities of the parties or their Associates. However, nothing in this clause 12 excludes or limits the parties' or their Associates' liability under, or for breaches of, the Code.

12.2 In clauses 12.4 to 12.7, references to a party include the party's Associates, with the intent that the Associates enjoy the same exclusions, limits and caps of their liability to the other party as the first party enjoys under those clauses.

12.3 A party must indemnify the other party against any liability the other party incurs to an Associate of the first party in connection with this agreement or the DR Services.

12.4 Except for liability under the indemnity in clause 12.3 and subject to clause 12.7, a party will only be liable to the other party for Loss suffered by that party if the Loss is caused by an act or omission of the first party that constitutes a failure by the first party to comply with this agreement.

12.5 Except for liability under the indemnity in clause 12.3 and subject to clause 12.7, if a party is liable to the other party, the first party will not be liable to the other party for any Loss that is not direct Loss, or for loss of use revenue or profit or liability to third parties (whether or not direct Loss).

12.6 Subject to clause 12.7, the combined maximum liability of a party to the other party (including under the indemnity in clause 12.3) will be, in any 12 month period, the sum of all DR Fees that accrued during that period.

12.7 Clauses 12.4, 12.5 and 12.6 do not exclude or cap:

- (a) a party's liability to the other party for wilful misconduct by the first party or its Associates; or
- (b) Transpower's obligations to pay, or rights not to pay, DR Fees under this agreement.

13. Communications

13.1 The following communications between the parties must be carried out through Transpower's Demand Response Management System (DRMS):

- (a) the communications under clauses 3 and 4; and
- (b) the provision of Verification Data under clause 9.1.

13.2 Subject to clause 13.1, all notices or other communications required by this agreement must be in writing and must be forwarded by personal delivery, post or email to the address of the recipient party set out in Appendix 4. Any such notice or other communication will be deemed to have been received:

- (a) if personally delivered, when delivered at the recipient's address;
- (b) if sent by post, at 0900 (NZT) on the second Business Day after posting; or
- (c) if sent by email to the recipient's address, on the date generated on the sender's machine as the date of sending (provided there is no manifest error in such date).

If that time is not on a Business Day or is after 1700 (NZT) on a Business Day, the notice or other communication will be deemed to have been received at 0900 (NZT) on the next Business Day.

14. General provisions

14.1 Termination or expiry of this agreement for any reason will not affect the parties' rights and remedies that accrued before expiry or termination (including the Provider's right to be paid DR Fees) or clauses 9, 12, 13 and 14.

14.2 The Provider represents and warrants to Transpower as at the date of this agreement that the Proposal is true and not misleading in any respect (including by way of omission).

14.3 Neither party may assign or otherwise dispose of the whole or any part of its interest under this agreement without the other party's prior written consent, not to be unreasonably withheld.

14.4 This agreement does not constitute the Provider as an agent or employee of Transpower and does not establish a joint venture or partnership.

14.5 Except as expressly provided in this agreement:

- (a) no variation to this agreement will be effective unless it is in writing and signed by both parties; and
- (b) no waiver or other forbearance will arise under this agreement unless it is in writing and signed by the party providing it.

14.6 Except as expressly provided in this agreement, the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this agreement.

14.7 This agreement is the entire agreement between the parties relating to the DR Services, and supersedes all prior negotiations, representations, understandings and agreements between the parties relating to that subject matter. 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.

14.8 The Provider warrants that it carries on a taxable activity and is registered for GST purposes.

Signed

For **Transpower** by its authorised representative:

For the **Provider** by its authorised representative:

Name:

Position:

Date:

Name:

Position:

Date:

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Appendix 1: Blocks

Block ID	ICP/GXP	Block Capacity (kW)	Availability Period	Call Notice Period

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Appendix 2: DR Fees

Block ID	Establishment Fee (one-off)	Indicative Strike Fee

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Appendix 3: Metering Equipment and Verification Methodology

Block ID	Metering Equipment <i>Type of meters and data loggers</i>	Verification Methodology

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Appendix 4: Contact details

Transpower

Quintin Tahau, Demand Response Manager

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Provider



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