Flexibility Services Participation Agreement

[Note: the Commencement Date and Initial Expiry Date must be inserted in Clause 2]

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:

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 and the Provider's officers, employees, authorised agents and subcontractors.

Availability Fee means the monthly payment made for each Block Hour during the Call Season.

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

Block Hours means the number of hours that the Provider agrees to deliver the Flexibility for each Block as specified in Appendix 1.

Block Capacity means, for a Block, the expected kW or MW capacity of the Block, as set out in Appendix 1. The sum of the MW capacities of all Sources allocated to the Block may exceed the Block Capacity.

Business Day means any day other than Saturdays, Sundays and public holidays in [GXP region] or Wellington.

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

Call Notice Period means, for a Call, the minimum period of notice that Transpower must give before the start of a Call Period, as set out in Appendix 1.

Call Period means, for a Call, the period for which the Flexibility of a Called Block is to be delivered.

Call Season means the period defined in Schedule 1 during which a Block will be eligible for the Availability Fee, and during which a Block may be Called.

Called Block Hour refers to the hour/s in a Call for a Block, or defined Block Hour/s to be delivered. This could be less for any one Block than the Block Hours defined in Appendix 1, but will not be less than 50% of the total Block Hours.

Code means the Electricity Industry Participation Code 2010.

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Concurrent Commitment means any arrangement, contract, bid, offer or obligation under which the Provider has committed the same Flexibility capacity (or any part of it) from the same resource to any other party for the same or overlapping Block Availability.

Delivery Point means the point at which Flexibility for a Block is deemed to be delivered, as set out in Appendix 1, which may be an ICP, GXP or other location agreed by the parties.

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

Event refers to when Transpower gives notice that a Block is required and does not cancel that notice with the effect that a Block is required to be delivered by the Provider under this Agreement.

Flex ID is the name (usually a combination of letters and numbers) given to a defined Block (as set out in the Appendix 1 of this Agreement).

Flexibility Services means the Flexibility required to be delivered by the Provider as described in this Agreement.

Flexibility Fees means Availability Fees and Event Fees payable under this Agreement.

Event Fees means the amount payable by Transpower to the Provider for each Called Block Hour where Transpower makes a Determination that the Called Block Hour has been delivered (as set out in Appendix 1).

Expiry Date means the expiry date of this agreement specified in clause 2(b).

Flexibility means the modification of electricity use and/or generation occurring at a premise for the purpose of supporting the electricity transmission grid in providing electricity transmission services.

ICP has the definition in the Electricity Industry Participation Code 2010.

Invoice means a buyer created tax invoice under the Goods and Services Act 1985 for Flexibility 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.

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

RFP means Transpower's Request for Proposals for

Source means a source of Flexibility allocated by the Provider to a Block, and which may or may not be utilised to provide some or all of the of the Block when it is Called. Every Source for a Flexibility Block must be behind the same GXP.

Subsequent Expiry Date means an anniversary of the Expiry Date that occurs before this Agreement:

(a) is terminated; or

(b) expires in accordance with clause 2(b).

Verification Data means data about the change in electricity offtake or injection at a Delivery Point in response to a Call on the Block to which the Delivery Point relates as described in Appendix 3.

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.

2. Term of agreement

(a) This agreement commences at 0000 (NZT) on [XXX] ("Commencement Date") and, subject to subparagraph (b), or paragraph13 ends at 2359 (NZT) on the Expiry Date.

(b) At 2359 on [insert Expiry Date] ("the **Expiry Date**"), and on each Subsequent Expiry Date, this agreement will renew for a further term of one year if, not less than 3 months before the Expiry Date or a Subsequent Expiry Date, Transpower gives the Provider written notice that this Agreement will be renewed.

3. Flexibility Calls

3.1 Transpower may make a Call at any time during the Call Season.

3.2 Each Call must:

(a) be made by Transpower with notice being given that is at least the Notice Period for that Block; and

(b) state the Block to which the Call relates; and

(c) state the start and finish times of the Call Period; and

(d) state whether the Call is for the total Block Hours or state the hours for which the Block must be delivered (stated hours in the Call must be between 50% to 100% of the Block Hours that are set out in Appendix 1).

3.3 Transpower may cancel a Call by advising the Provider of the cancellation at any time up until 30 minutes before the start of the Call Period.

4. Compliance with Calls

4.1 The Provider must deliver Flexibility in accordance with the Call provided;

(a) Transpower complies with clause 3.2 for that Call; and

(b) The communications for that Call comply with the method set out in clause 15.1

5. Availability Fee Payments

5.1 Transpower must pay the Provider **the Availability Fee for each Block as set out in Appendix 2 for each month during the Call Season, provided that;**

(a) At least 80% of the Block Capacity Called is provided by the Provider during every Call made in that month; and

(b) If the Provider fails to deliver at least 80% of the Block Capacity Called during a Call in any one month, no further Availability Fees will be payable until Transpower, acting reasonably, is satisfied that the Provider has demonstrated that it is capable of providing the Block Capacity.

6. Event Payments

6.1 Transpower must pay the Event Payment set out in Appendix 2 for each Hour of Block Capacity delivered by the Provider during an Event, provided that;

(a) more than 80% of the Block Capacity Called is delivered during each Event; and

(b) if more than 80% but less than 100% of the Block Capacity Called is delivered by the Provider during an Event, Transpower may reduce the Event Payment in proportion to the amount of Flexibility actually delivered (subject to (c) below); and

(c) if less than 80% of the Block Capacity Called is delivered by the Provider during an Event, then no Event Payment is payable for that Event and Liquidated Damages will be payable each time this occurs in the amount set out in Appendix 2 and on the terms set out in Clause 7 below.

7. Liquidated Damages

7.1 If Liquidated Damages are incurred under Clause 6.1 (c) then;

(a) The Liquidated Damages sum set out in Appendix 2 must be paid by the Provider to Transpower for each Called Block Hour (for example: if 2 Block hours are Called the sum payable is 2x the Liquidated Damages for each Called Block Hour and the amount of Flexibility delivered by the Supplier is irrelevant to this sum provided 6.1 c) applies) ; and

(b) The Provider acknowledges that these Liquidated Damages represent a genuine pre-estimate of the minimum Loss or costs that Transpower expects to incur or suffer (including internal costs) in connection with failure to deliver a Block when Called and they are fair and reasonable in the circumstances.

(c) Any Liquidated Damages payable may be set off against the next invoiced Fees (if any). However, Transpower may, at its discretion, choose to invoice the Provider for all or part of the Liquidated Damages at any time, in which case the Provider must pay the invoiced Liquidated Damages to Transpower within one month of Transpower's Invoice.

8. Concurrent commitment

8.1 The Provider must notify Transpower in writing, as soon as reasonably practicable that it has entered into or is proposing to enter into any Concurrent Commitment, or agreed to a change or variation to any Concurrent Commitment.

8.2 If the Provider fails to deliver 80% or more of the Called Block Capacity during an Event, and the reason for that failure is due at least in part to the Provider's delivery of Flexibility to a Concurrent Commitment then this will amount to a breach of this contract **however** if the Provider has notified Transpower of the Concurrent Commitment in accordance with 8.1 above at least 30 days before the relevant Event, then the total Liquidated Damages payable will be reduced by 50% from the set out in Appendix 2.

8.3 Other than as set out in 8.2 above, notification by the Provider under 8.2 will not relieve the Provider of any contractual obligations under this Agreement.

9. Subcontracting

The Provider must not subcontract any part of the Flexibility Services (other than provision of the Sources) without Transpower's prior approval. The Provider must ensure that any subcontractor of the Flexibility 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 Flexibility Services.

10. Post Event Verification and audit

10.1 The Provider must deliver Transpower with Verification Data for each Call within 10 Business Days after the end of the Event. The Verification Data must cover the entire Call Period and any other periods required in order for Transpower to apply the relevant Verification Methodology.

10.2 If the Provider does not deliver 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.

10.3 The Provider must promptly provide Transpower with additional information reasonably requested by Transpower about the provision or non-provision of Flexibility under this agreement.

10.4 Transpower must use:

(a) the Verification Data;

(b) Information provided by the Provider under clauses 10.2 and 10.3;

(c) Information from an audit of the Verification Data under clause 10.6; 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.

10.5 If Transpower disputes the Verification Data for a Call, Transpower must notify the Provider of the dispute within 20 Business Days after Transpower receives the Verification Data. Pending resolution of the dispute, the Provider will be deemed not to have delivered any Flexibility in response to the Call. Transpower will be deemed to have accepted the Verification Data if Transpower does not dispute it within that time.

10.6 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 (including Flexibility response data for any Metered Source, to the extent the Provider has that data or can reasonably obtain it) and all personnel of the Provider engaged in the provision of the Flexibility Services.

10.7 If Metering Equipment allows for Transpower to access Verification Data recorded by it directly, the Provider:

(a) consents to Transpower accessing the Verification Data directly; and

(b) must provide with such assistance as Transpower may reasonably request to allow Transpower to access the Verification Data directly.

11. Provider to provide resources

11.1 The Provider must provide and maintain (or if the relevant Metering Equipment is Revenue Grade under the Code, must take all reasonable steps to ensure the Meter Equipment Provider (MEP) provides and maintains) the Metering Equipment, which must be:

(a) located at, or as near as is practical to, the Delivery Points; and

(b) sufficient for Flexibility 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.

12. Invoicing and payment

12.1 Within 5 Business Days after the later of:

(a) the end of a month; and

(b) the day Transpower makes all Determinations for Events made in the month,

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

12.2 If the Provider disputes an Invoice, the Provider must notify Transpower in writing 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.

12.3 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.

12.4 The Provider must not issue a tax invoice for the Flexibility Fees.

13. Liability

13.1 This clause 13 applies to the parties' and their Associates' liabilities arising under or in connection with this agreement or the Flexibility Services. It does not apply to any other liabilities of the parties or their Associates. However, nothing in this clause 13 excludes or limits the parties' or their Associates' liability under, or for breaches of, the Code.

13.2 In clauses 13.3 to 13.6, 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. Each party's Associates may enforce those clauses by way of defence to a claim against them by the other party.

13.3 Subject to clause 13.6, 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.

13.4 Subject to clause 13.6, 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 for the other party's liability to third parties.

13.5 Subject to clause 13.6, the combined maximum liability of a party to the other party under or in connection with the Agreement, whether in contract, equity or tort (including negligence) or otherwise will under no circumstances exceed, in aggregate, the sum of [a sum to be negotiated, but based on per MW of Flexibility Capacity offered of approximately $100,000 per MW] .

13.6 Clauses 13.3, 13.4 and 13.5 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, Flexibility Fees under this agreement; or

(c) The Provider's obligations to pay Liquidated Damages under this agreement.

14. Termination

14.1 Transpower may terminate this Agreement immediately by advising the Provider in writing if the Provider fails to deliver at least 80% or more of a Block when Called on two or more occasions. No Availability Fee will be payable for any month in which this Agreement is terminated under this clause.

14.2 A party may terminate this Agreement immediately upon notice to the other party if;

(a) The other party assigns, pledges or transfers its rights or obligations under the Agreement other than under clause 18.2;

(b) The other party enters into, or proposes, any arrangement, compromise or composition with its creditors;

(c) The other party goes into liquidation or has a receiver, administrator, statutory manager or similar officer appointed in respect of it (other than solely for the purpose of solvent amalgamation or solvent restructuring);

(d) The other party ceases to carry on its business or threatens to cease trading in a normal manner;

(e) The other party is unable to pay its debts as they become due as defined by the Companies Act 1993 or as determined under the general law.

15. Communications

15.1 The following communications between the parties must be carried out through Transpower's Distributed Energy Resource Management System (DERMS):

(a) the communications under clause 3 (Call notices); and

(b) the provision of Verification Data under clause 10.1.

15.2 Subject to clause 15.1, all notices or other communications required by this agreement must be in writing and must be forwarded by personal delivery or email to the address of the recipient party set out in Appendix 3. Any such notice or other communication will be deemed to have been received: [Please note that before this agreement is signed it is likely we will update the communication/Notice requirements to include proposed new communications channels]

(a) if personally delivered, when delivered at the recipient's address;

(b) 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.

16. Provider warranties

16.1 The Provider warrants to Transpower that:

(a) the Proposal is true and not misleading in any respect (including by way of omission); and

(b) it carries on a taxable activity and is registered for GST purposes.

These warranties are repeated continuously throughout the term of this agreement.

17. Role of Transpower

17.1 Dual roles: The Provider acknowledges that Transpower is both a Grid Owner and the System Operator and is entering into this Agreement solely in its capacity as a Grid Owner. The Provider acknowledges that nothing Transpower does solely as the System Operator is to be treated as an action of Transpower in its capacity as a Grid Owner, and vice versa.

17.2 Communication: Without limiting clause 17.1, if a communication has to be given by the Provider to Transpower and the System Operator under or in relation to this Agreement, the Provider must communicate separately with each.

17.3 Disclosure: The Provider authorises:

the System Operator to disclose to Transpower all information Transpower reasonably requires to monitor the performance of the Provider under this Agreement, including whether or not the Provider has complied with the Calls; and

Transpower to disclose to the System Operator such details of this Agreement as are reasonably required by the System Operator to make Calls on behalf of Transpower.

18. General provisions

18.1 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 Flexibility Fees) or clauses 10, 13, 14 and 6.

18.2 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.

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

18.4 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.

18.5 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.

18.6 This agreement is the entire agreement between the parties relating to the Flexibility 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.

Signed

For **Transpower** by its authorised representative:

_____

Name:

Position:

Date:

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

_____

Name:

Position:

Date:

Appendix 1: Blocks

	GXP [XXX}	GXP [XXX]
Call Season	Eg. 1200, 6 June – 1200, 6 October	
Flex ID		
Delivery Point ICP, GXP or other		
Block Hours **(No. of Hours Block is Offered)** State total hours that capacity will be offered for	Eg. 4 Hours	
Block Capacity (kW or MW)	Eg. 5MW	
Type of Flexibility Service (Generation, Distributed generation, demand response)	Eg. Demand Response	
Call Notice Period	Eg. 6 Hours	
Block Availability	Eg. 24/7 or specified hours (Monday-Friday) or (0600- 1100 Monday-Friday)	

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Appendix 2: Flexibility Fees

Flex ID	Availability Fee (per Month during the Call Season)	Event Fee (per Called Block Hour)	Liquidated Damages for each Called Block Hour

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Appendix 3: Metering Equipment and Verification Methodology

Metering Equipment and Verification Data:

1. For a Block associated with a single site location with one or more ICPs and or associated shadow metering which is measured locally the following is required:

    a) Smart revenue grade meter data recorded at half hourly intervals (HHR 30min) and delivered in either of the two standard formats of EIEP3 or EIEP13a.

2. For a single GXP the Flexibility Service Providers (FSPs) that have aggregated Block capacity under following is required:

    a) Half hourly (HHR) shadow meter data at 30min intervals

3. In addtion to the requirements in 1 or 2 above, all Providers must provide the day of Event meter data files which will also include the last 45 days of historic meter reads.

Verification Methodology

A Custom Baseline (CBL) is a proxy for determining what the load would have been absent the load reduction. The provision of Flexibility Services will be verified by Transpower by applying the CBL as follows;

The difference between CBL and interval metering data (as in previous column) will be measured to determine whether the volume was delivered as contracted.

The CBL Transpower will apply is called a 3 Day Symmetric Additive Adjustments (SAA) – 3 Day SAA

The following inputs to this calculation include:

- HHR Meter Data
- Look-Back Window
- Day Types
- Basis Days
- Symmetric Additive Adjustments
- Load Reduction

Appendix 4: contact details

Transpower contact details:

Michael Richardson, Flexibility Services Manager

Waikoukou, 22 Boulcott Street, Wellington 6011

PO Box 1021, Wellington 6140

DemandResponse@transpower.co.nz

Provider contact details:

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