

Dated 18 June 2024

**FTR MANAGER
SERVICE PROVIDER AGREEMENT**

Electricity Authority

and

Transpower New Zealand Limited

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This **FTR Manager Service Provider Agreement** is made on 13 June 2024

- between** (1) **Electricity Authority**, a Crown entity established under section 12 of the Electricity Industry Act 2010 ("**Authority**");
- and** (2) **Transpower New Zealand Limited**, company number 372941 trading as "Energy Market Services" ("**Provider**")

INTRODUCTION

- A. The Electricity Industry Act 2010 (**Act**), the Electricity Industry (Enforcement) Regulations 2010 made under section 112 of the **Act** (**regulations**) and the Electricity Industry Participation Code 2010 administered by the **Authority** under subpart 3 of Part 2 of the **Act** (**Code**) govern the electricity industry in New Zealand, including the operation of a wholesale electricity market.
- B. The **Authority** was established as an independent Crown entity under section 12 of the **Act**, which came into effect on 1 November 2010.
- C. Pursuant to section 16(1)(h) of the **Act**, the **Authority** has the power to contract for market operation services.
- D. Clause 3.1 of Part 3 of the **Code** provides for the **Authority** to appoint market operation service providers (**service providers**), including a **FTR manager**.
- E. The **Authority** wishes to appoint the **Provider** as, and the **Provider** has agreed to undertake the role of, **FTR manager** in accordance with the **Act**, on the terms set out in the **regulations**, the **Code** and this **agreement**.

THE PARTIES AGREE as follows:

1. DEFINITIONS

In this **agreement** (including the Introduction), unless the context requires otherwise:

"**Act**" has the meaning set out in paragraph A of the Introduction;

"**additional requirements**" means the requirements set out in Schedule 4 and are deemed to include the **FTR allocation plan**;

"**agreement**" means this **FTR Manager** service provider agreement and includes the schedules;

"**Code**" has the meaning set out in paragraph A of the Introduction;

"business day" means a day other than a Saturday, Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington;

"commencement date" means 1 July 2024;

"confidential data" means **data** which is either:

- (a) marked or designated as being confidential; or
- (b) by its nature clearly confidential to the supplying party,

but excluding:

- (c) information which, at the time it was received was, or thereafter without breach of the **Act**, the **regulations**, **Code** or this **agreement** by the **Provider** becomes, in the public domain;
- (d) information that was, independently of the **Act**, the **regulations**, **the Code** or this **agreement**, acquired or developed by the **Provider**; and
- (e) information that was at the time of disclosure already in the **Provider's** possession, provided such possession did not occur as a result of a breach of the **Act**, the **regulations**, **the Code** or this **agreement**;

"data" means any information (including information in electronic form or transferred into electronic form by the **Provider**) which the **Provider**:

- (a) holds in accordance with this **agreement**; or
- (b) directly or indirectly receives from or provides to **participants** or the **Authority** in relation to this **agreement**;

"data transfer plan" has the meaning set out in clause 13.4;

"documentation" means:

- (a) the user and technical documentation supplied, or to be developed, by the **Provider** for the **System**, or provided to the **Authority** by a third party provider of third party software forming part of the **System**, to enable **participants** to properly use the **System**, and the **Authority** and third party **service providers** to properly use, maintain and operate the **System**; and
- (b) the **user manual**, **the data transfer plan** and any other documents to be supplied pursuant to this **agreement**, and

includes any update of the **documentation**;

"equipment" means equipment forming part of the **System**;

"existing intellectual property rights" means:

(a) all **intellectual property rights** of a party or any of its third party licensors that existed as at the **commencement date** and are not developed, commissioned or created under or in connection with this Agreement; and

(b) in the **Authority's** case, includes the **FTR rental IP**;

"fees" means the fees set out in schedule 1, as varied from time to time in accordance with this **agreement**;

"financial year" means the **Authority's** financial year, being the twelve-month period beginning on 1 July and ending on 30 June in the following year;

"force majeure event" has the meaning set out in Part 1 of the **Code**;

"FTR" means financial transmission right;

"FTR allocation plan" means the plan for the creation and allocation of **FTRs** prepared and approved in accordance with the **Code** and schedule 4;

"FTR rental IP" means the **intellectual property rights** in the **FTR rental materials**;

"FTR rental materials" means the **Authority's** **FTR** rental calculation source code and methodologies described in schedule 5;

"functional specification" means the functional specification in schedule 3, provided that where such document is amended under this **agreement** pursuant to clause 7, the **functional specification** is the current version of such document;

"GST" means goods and services tax payable pursuant to the Goods and Services Tax Act 1985;

"hourly rate(s)" means the hourly rate(s) set out in schedule 1;

"intellectual property rights" includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks, registered and unregistered designs, circuit layouts, confidential information, know-how, and all other rights resulting from intellectual activity in any field, together with all right, interest or licence in or to any of the foregoing;

"interest rate" means the 90 day commercial bill rate as published on page BKBM of Reuters monitor service and applying at 10.30am on the relevant day, plus 2%;

"Law" means any rules of common law, statute, regulation, order-in-council, by-law, ordinance or other subordinate or secondary legislation in force from time to time;

"non-functional specification" means the non-functional specification in schedule 2, provided that where such document is amended under this **agreement** pursuant

to clause 7, the **non-functional specification** is the current version of such document;

"**participant**" has the meaning given to it in section 5 of the **Act**;

"**performance standards**" means the performance standards set out in Appendix 2 of the **non-functional specification**;

"**processed data**" means **data** which has, by use of the **software** or otherwise, been processed by the **Provider** pursuant to this **agreement**, the **regulations**, or the **Code**;

"**regulations**" has the meaning set out in paragraph A of the Introduction;

"**Rulings Panel**" has the meaning set out in Part 1 of the **Code**;

"**services**" means the services referred to in clause 3.2.1;

"**software**" means the software forming part of the **System**, including object code and source code, but excluding object code and source code of **Third Party Software**;

"**Software License Agreement**" means the Software License Agreement between the **Provider** and Nexant Inc (now Resource Innovations Inc) dated 16 July 2012 in respect of the i-HEDGE Software and FTR Auction Portal (each as defined in that Software License Agreement);

"**Software Provider**" means Resource Innovations Inc;

"**specifications**" means:

- (a) the **non-functional specification**, the **functional specification**, the **additional requirements**, the **performance standards**, and the **FTR allocation plan**; and
- (b) all third party product descriptions and specifications to the extent that they are not inconsistent with the **specifications** under paragraph (a) of this definition;

"**System**" means the system (including **software**) required for delivery of the **services** as modified from time to time in accordance with this **agreement**;

"**System Delivery Agreement**" means the FTR System Delivery Agreement between the parties dated 2 April 2012;

"**Term**" has the meaning given to that term in clause 4.1;

"**Third Party Software**" means any third party-owned software to be licensed to the **Provider** for the purpose of the **Provider's** performance of the services, including all fixes, modifications, revisions, releases and versions of that software licensed to

the **Provider** but excludes the **software** and other intellectual property provided under the **Software License Agreement**;

"**update**" means the object code and source code of all fixes, modifications, revisions, releases and versions of the **software**;

"**user manual**" means the concise software documentation to be provided by the **Provider** to enable **participants** to properly use the **System**; and

"**year**" means a period of 12 consecutive months.

2. CONSTRUCTION

2.1 The following rules of interpretation apply in this **agreement** unless the context requires otherwise:

clauses, schedules and paragraphs: a reference to a clause or a schedule is to a clause or schedule of this **agreement**, a reference in a schedule to a paragraph is to a paragraph in that schedule, the schedules to this **agreement** form part of this **agreement** and a reference to a schedule includes a reference to that schedule as amended or replaced from time to time;

defined terms: words or phrases appearing in this **agreement** 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 **Act**, the **regulations** or Part 1 of the **Code** (as the case may be);

documents: a reference to any document, including this **agreement**, includes a reference to that document as amended or replaced from time to time;

headings: headings are included for convenience only and do not affect the construction of this **agreement**;

inclusions: references to inclusions do not imply any limitation;

joint and several liability: any provision of this **agreement** to be performed or observed by two or more persons binds those persons jointly and severally;

negative obligations: a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;

no contra proferentem construction: the rule of construction known as the *contra proferentem* rule does not apply to this **agreement**;

number and gender: words importing the singular include the plural and vice versa, and words importing one gender include the other genders;

parties: a reference to a party to this **agreement** or any other document includes that party's personal representatives, successors and permitted assigns;

person: a reference to a person includes an individual, a body of persons, whether corporate or unincorporated and a state or agency of state;

related terms: 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; and

statutes, regulations, rules and codes: references to a statute, regulation, rule or code include reference to regulations, orders, directions or notices made under or pursuant to such statute, regulation, rule or code and all amendments to that statute, regulation, rule or code whether by subsequent statute, regulation, rule, code amendment or otherwise and a statute, regulation, rule or code amendment passed in substitution for the statute, regulation, rule or code provision referred to or incorporating the relevant provisions.

2.2 Conflict

If there is a conflict between any of this **agreement**, the schedules to this **agreement**, the **regulations** or the **Code**, the following order of priority will prevail (in descending priority) unless otherwise expressly provided:

2.2.1 the **Act**;

2.2.2 the **regulations**;

2.2.3 the **Code**;

2.2.4 this **agreement**; and

2.2.5 the schedules to this **agreement**.

3. APPOINTMENT

3.1 **Appointment:** The **Authority** appoints the **Provider** as **FTR manager** from the **commencement date** (appointed pursuant to clause 3.1 of the **Code**) on the terms and conditions set out in this **agreement**, and in accordance with the **Act**, the **regulations** and the **Code**, and the **Provider** accepts such appointment.

3.2 **Services:** The **Provider** agrees to:

3.2.1 undertake the following services in accordance with the **Act**, the **regulations**, the **Code** (as applicable) and this **agreement**:

(a) from the **commencement date**:

- (i) the duties and obligations to be undertaken by the **FTR manager** under the **Code**;
- (ii) the services contemplated in the **non-functional specification** and the **functional specification**;

- (iii) the services, duties and obligations contemplated in the **additional requirements**; and
 - (iv) all other duties of the **Provider** under this **agreement**;
- 3.2.2 promptly perform the **services** with diligence, efficiency and skill, and to a standard reasonably expected of a properly qualified, resourced and experienced provider of services of a similar nature, scope and complexity to the **services**;
- 3.2.3 comply with all applicable **Law** and obtain, maintain and comply with all consents, permits and licences (whether statutory, regulatory, contractual or otherwise) necessary for the provision and receipt of the **services**;
- 3.2.4 provide the **services** in accordance with the **performance standards** and such additional or substitute **performance standards** as are agreed between the parties:
 - (a) at the beginning of each **financial year** in accordance with clause 3.12 of the **Code**; or
 - (b) at any other time during a **financial year** following a request by the **Authority** to alter the **performance standards**.
- Agreement to additional or substitute **performance standards** may not be unreasonably withheld. If the parties cannot agree on **performance standards** within 20 **business days** of the beginning of each **financial year** or a request by the **Authority**, the matter may be referred to dispute resolution under clause 16;
- 3.2.5 promptly inform the **Authority** if:
 - (a) the **Provider** breaches the **regulations** or the **Code** or any requirement of the **non-functional specification**, the **functional specification**, schedule 4 or the **FTR allocation plan**; or
 - (b) the **Provider** becomes aware of any error or ambiguity in or in respect of the **non-functional specification** or the **functional specification**;
- 3.2.6 co-operate with the **Authority's** other service providers and **participants** to facilitate effective provision of the **services** and all other services to the **Authority**;
- 3.2.7 throughout the **Term** of this **agreement**:
 - (a) provide the **services** from New Zealand; and
 - (b) maintain a substantial presence and office in New Zealand; and
- 3.2.8 ensure that the **System**, on a continuing basis:

- (a) functions, operates and performs so that the services are provided in accordance with this **agreement**;
- (b) meets and satisfies the **specifications**; and
- (c) is free from:
 - (i) viruses, to the extent reasonably possible (which includes the **Provider** using its best endeavours to protect against and eliminate viruses); and
 - (ii) material defects and errors.

3.3 **Provider's representative:**

- 3.3.1 The **Provider** will at all times during the **Term** of this **agreement** provide a representative approved by the **Authority** (such approval not to be unreasonably withheld) to be the **Provider's** representative. The representative will:
 - (a) be authorised to receive all directions and instructions in connection with provision of the **services** on behalf of the **Provider**;
 - (b) monitor the performance of the **services**;
 - (c) proactively identify and resolve any issues that may affect the provision of the **services**; and
 - (d) review risks and agree risk management actions.
- 3.3.2 The representative (or a delegate appointed by the representative) will be contactable by the **Authority** from 8.30am to 5.00pm on **business days** (including by mobile telephone and email).
- 3.3.3 The representative (or a delegate appointed by the representative) will be contactable by the **Authority** at any time outside the hours in clause 3.3.2 in the event of any situation which the **Authority** reasonably considers requires immediate action by the **Provider**.
- 3.3.4 The **Provider** may appoint a replacement representative with the **Authority's** prior written consent, such consent not to be unreasonably withheld.
- 3.3.5 The **Authority** may at any time by notice to the **Provider** object on reasonable grounds to any representative (or any delegate appointed by the representative). The **Authority's** notice will state the grounds upon which the objection is based. As soon as practicable the **Provider** will, subject to clause 3.3.1, appoint a replacement representative (or delegate as applicable).

3.4 Records, reviews and reporting:

3.4.1 The **Provider** shall keep full, accurate and up-to-date records relating to the performance of the **services**, and shall provide the **Authority** with copies of such records as reasonably requested by the **Authority**. These records include, but are not limited to:

- (a) the **Provider's** risk framework and risk management including a risk register, risk mitigation processes, controls and testing;
- (b) cyber-security protocols, which include all material system testing, and changes or mitigations relating to cybersecurity; and
- (c) strategic outlook for the remainder of the term of this agreement (e.g., perceived market challenges, growth opportunities, changes to the FTR market)..

3.4.2 The **Provider** will review its performance of the services in accordance with clause 3.13 of the **Code** and provide reports to the **Authority** in accordance with clause 3.14 of the **Code**. Such reports will include such other information as the **Authority** reasonably requests.

3.4.3 The **Provider** will provide the reports required by the **specifications**.

3.4.4 The **Provider** will provide any ad hoc reports to the **Authority** at the **Authority's** reasonable request, such reports to be paid for at the relevant **hourly rates**.

3.4.5 The **Provider** will provide to the **Authority** the strategic outlook referred to in clause 3.4.1(c) at the **Authority's** reasonable request.

3.4.6 All reports provided under this clause 3.4 must be presented in a format that can be reproduced on the Authority's website or in such other format as may be reasonably requested by the Authority from time to time.

3.5 **Meetings:** The **Provider** will ensure that the representative appointed in accordance with clause 3.3 of this **agreement** attends monthly meetings with the **Authority** (and additional meetings as reasonably required by the **Authority**), to discuss matters relating to the **services**. Meetings will be held at venues and times reasonably specified by the **Authority**. The **Provider** representative may also be required to attend Market Operation Committee meetings, which are held quarterly. The **Authority** will provide reasonable notice for attendance.

3.6 Audits:

3.6.1 The **Authority** may conduct (and the **Provider** must co-operate with) audits of the **Provider's** performance of the **services** in accordance with this clause 3.6.1:

- (a) Audits (including, without limitation, of the **Provider's** compliance with the Act, the Code, regulations, and all other applicable laws and regulations) may be held annually or at a greater frequency as required in good faith by the **Authority**.
- (b) Any such audit will be conducted by an auditor independent of the **Authority** and the **Provider**, unless otherwise agreed by the parties in writing.
- (c) The **Authority** will give the **Provider** reasonable prior notice of any audit, unless the circumstances are such that it is unreasonable for the **Authority** to be required to give prior notice.
- (d) Any audit will be conducted in a manner that does not unreasonably disrupt the **Provider's** business or staff.
- (e) The costs of conducting audits will be borne by the **Authority** (except the **Provider's** costs of co-operating with any audit in connection with clause 3.6.1) unless any material non-compliance with this **agreement** is disclosed, in which case the **Provider** must reimburse the **Authority** for the reasonable cost of the audit.
- (f) The **Authority** will keep all information obtained from the **Provider** as a result of an audit confidential, except as required by **Law**.
- (g) The **Authority** will provide the **Provider** with a copy of the draft audit report and give the **Provider** a reasonable opportunity to comment on the draft before the audit report is finalised.
- (h) The **Authority** will provide the **Provider** with a copy of the final audit report once the audit report is finalised.
- (i) To avoid doubt, audits under this clause 3.6 are in addition to the software audit required by clause 3.17 of the **Code**.
- (j) The parties will work together to agree on how to implement any changes (including any changes to **Provider** charges as a result of the agreed implementation) necessary to give effect to any reasonable recommendations made by an auditor, with the objective of improving the **services**.

3.6.2 During the **Term** of this **agreement**, the **Provider** must, at its own cost conduct an audit(s) of its systems and processes in accordance with this

clause 3.6.2. The audit must be conducted, and the audit report finalised, between 30 April 2025 and 30 October 2025.

- (a) The auditor must be independent from the part of the **Provider's** business that provides the **services**, and must be approved by the **Authority**;
- (b) **Provider** initiated audits are to cover the full end to end scope of the **services**. The scope brief to the auditor is to be agreed with the **Authority** prior to the audit commencing, such agreement not to be unreasonably withheld;
- (c) If the **Provider** has annual business assurance audits that cover part or all of the scope, then the **Provider** may include the results of these business assurance audits in place of auditing that part of the **services**, subject to the **Authority** confirming those business assurance audits may be used in relation to the process audit set out in this clause 3.6.2;
- (d) The **Provider** will provide a copy of the audit report to the **Authority** within five **business days** of the audit report being finalised.
- (e) The **Provider** will provide, as soon as reasonably practicable, a proposal for resolution and completion timeframes for all non-compliances, conditions and recommendations made by the auditor; and
- (f) The **Authority** may, at its sole discretion and cost, meet the auditor to discuss the audit results. The **Authority** may at its sole discretion hold such meetings without the **Provider** being present and without reporting the results of such meetings to the **Provider**.

3.6.3 The **Provider** will conduct an annual software audit and software change audits as required by clause 3.17 of the **Code**.

4. TERM

4.1 This **agreement** will come into effect on the **commencement date** and, unless otherwise terminated under this **agreement**, or the **Code**, will expire on 30 June 2027 ("**Term**").

5. WARRANTIES

5.1 **Warranties:** The **Provider** warrants that:

5.1.1 All information provided by the **Provider** to the **Authority** under or in connection with the **services** or this **agreement** is:

- (a) if prepared or generated by the **Provider**, true, accurate and not misleading in any material respect (including by omission); and

- (b) if prepared for or on behalf of the **Provider** by a third party, or provided to the **Provider** by a third party, to the best of the **Provider's** knowledge and belief true, accurate and not misleading in any material respect (including by omission);
- 5.1.2 its employees, contractors and agents have the suitable skills, training and experience for, and are properly supervised in, the provision of the **services**;
- 5.1.3 it is not aware as at the **commencement date** of anything within its reasonable control which might or will adversely affect its ability to perform its obligations under this **agreement**, the **regulations**, the **Act**, or the **Code**; and
- 5.1.4 each such warranty will be deemed to be repeated continuously by the **Provider** during the **Term** of this **agreement**.
- 5.2 Without limiting the **Authority's** remedies, the **Provider** acknowledges that if, whilst performing the **services**, it omits to include all data made available to it at the relevant time in accordance with this **agreement**, the **regulations** and the **Code**, then it will re-perform the **services** in respect of all of that data, at no cost to the **Authority** or the **participants**.
- 5.3 **Personnel:** If the **Authority** is at any time dissatisfied on reasonable grounds with the performance of a particular person providing the **services**, the **Authority** may, after consulting with the **Provider**, require the person to be replaced at the **Provider's** cost.
- 5.4 **Use of the System:** The **Provider** shall use the **System** as required to provide the **services** to the **Authority** in accordance with this **agreement**.

6. FEES

- 6.1 The **Provider** will provide the **Authority** with a valid tax invoice for the relevant **fees** for the **services** by the 5th **business day** of the month following provision of the relevant **services**.
- 6.2 The **Authority** will pay the **Provider** the **fees** for the **services** monthly in arrears by:
 - 6.2.1 the 20th of the month, or if that is not a **business day** the next **business day**, provided that the **Provider** has complied with clause 6.1; or
 - 6.2.2 if the **Provider** does not comply with clause 6.1, the 10th **business day** following receipt of a valid tax invoice from the **Provider**.
- 6.3 If the **Authority** does not comply with clause 6.2, the **Provider** will be entitled to charge, and the **Authority** will be liable to pay, interest on the relevant **fees** at the **interest rate** from the due date until payment.
- 6.4 In addition to any payments specified in this **agreement** the **Authority** will pay the **Provider** any **GST** payable in respect of those payments. Such **GST** will be payable

to the **Provider** at the same time as the payment in respect of which the **GST** is payable.

- 6.5 The **Authority** will pay the **fees** for the **services** by means of direct credit of immediately available funds to the **Provider's** bank account as notified by the **Provider** to the **Authority**, or in such other manner as may be mutually agreed in writing from time to time.
- 6.6 Subject to clause 7, the **fees** are fixed and will not change unless agreed in writing between the parties. The **Authority** will not be liable to pay the **Provider** any fees or charges for the **services** other than the **fees**.
- 6.7 If the **Authority** disputes any invoice provided under clause 6.1 and such dispute is not resolved by agreement between the **Authority** and the **Provider** by the due date for payment of the invoice (as specified in clause 6.2), the **Authority** must pay the **Provider** any undisputed portion of the invoice and the dispute will be referred to dispute resolution under clause 16.
- 6.8 If as a result of the determination of such a dispute either party has to pay money to the other then, in addition to such payment, interest will be payable on the amount of that payment from the due date for payment of the invoice until actual payment at the **interest rate**.
- 6.9 If it is found at any time that the **Authority** has been overcharged for any reason and the **Authority** has actually paid the invoice containing such overcharge then, within 10 **business days** after such error has been discovered and the amount has been agreed to by the parties or determined in accordance with clause 16, the **Provider** must refund to the **Authority** the amount of any such overcharge. The **Provider** will issue a **GST** credit note in accordance with the Goods and Services Tax Act 1985 in order to correct the incorrect invoice. In addition, the **Provider** will pay interest on the overcharged amount at the **interest rate** calculated from the date of payment of the invoice to the date of repayment of the overcharged amount.
- 6.10 If the **Authority** is required to withhold any taxes from any payment required to be made under this **agreement**, such payments will be deemed to have been made if the **Authority** makes payment of the sum less the taxes required to be withheld.
- 6.11 The **Provider** may not charge any **participant** for the **services** except as approved by the **Authority**.

7. CHANGES

- 7.1 The **Authority** may, by notice to the **Provider**, require a variation to the terms of this **agreement**, the **services**, or the **System** as required to meet:
 - 7.1.1 changes to the **Act**, the **regulations** or the **Code** or making of new regulations under the **Act**; or
 - 7.1.2 changes to the **FTR allocation plan**; or

- 7.1.3 material changes to the **performance standards** under clause 3.2.4; or
- 7.1.4 the **Authority's** reasonable requirements in connection with the **FTR manager** role.

The **Authority** will carry out the change control process in the **non-functional specification** for variations to the **services** notified under this clause 7.1 (if applicable given the nature of the variation).

- 7.2 If the **Authority** requires a variation in accordance with clause 7.1, the parties will negotiate in good faith to try to reach agreement on the terms of the variation, and the process and plan for implementation of the variation, including any appropriate increase or decrease in the **fees** to reflect such variation.
- 7.3 If the parties cannot reach agreement on any matter under clause 7.2 within 10 **business days** of the Authority's notice under clause 7.1 then the matter will be resolved under clause 16, such resolution to reflect the following in respect of an inability to reach agreement on a variation to the **fees**:

7.3.1 The **fees** will be increased or decreased to allow for:

- (a) the reasonable increase or decrease in the **Provider's** costs or potential liability to the **Authority** or **participants** in its role as **FTR manager** as a result of the variation; and
- (b) reasonable profit,

provided that in the case of new equipment or third party software the adjustment to the **fees** shall reflect paragraph 6 of schedule 1.

7.3.2 The costs and profit referred to in clause 7.3.1 will be assessed on a fully transparent open book basis and the **Provider** will make available to the **Authority** and any mediator, expert or arbitrator appointed under clause 16 all information required for this purpose.

7.4 To avoid doubt, the **fees** as at the **commencement date** are the total fees payable by the **Authority** in respect of the **services**.

7.5 Notwithstanding clauses 7.2 and 7.3, where there is a variation to the **services** or the **System** under clause 7.1 that requires the **Provider** to carry out additional work, the **Authority** may (at the **Authority's** sole discretion) elect to pay for such additional work at the applicable **hourly rates**. Where the **Provider** is providing **services** at the **hourly rates** (under this or any other clause):

7.5.1 the **Provider** will keep proper records of the hours worked by its personnel and provide such records to the **Authority** on request; and

7.5.2 the number of hours worked by its personnel must be reasonable in the circumstances.

- 7.6 The terms for implementation of a variation agreed or determined under clause 7.2 or 7.3 (respectively) which will result in a change to the **System**, will include the **Provider** using best practice change control procedures to implement the **System** change.
- 7.7 Notwithstanding anything else in this **agreement**, any change to the **Act**, **regulations** (including the making of new regulations under the **Act**), the **Code**, and/or **specifications** after the date of this **agreement** will not affect the **Provider's** obligations or liability under this **agreement**, except to the extent required by a variation to the terms of this **agreement** implemented in accordance with this clause 7.
- 7.8 The **Provider** may, by notice to the **Authority**, request a variation to the terms of this **agreement**, the **services**, or the **System**. The Authority will consider any such request in good faith, provided that the Authority shall not be obliged to accept such variation request. If the Authority accepts a variation request under this clause then clauses 7.2 to 7.6 will apply as if the **Authority** had required the variation.

8. FORCE MAJEURE

- 8.1 The force majeure provisions in clauses 3.7 to 3.10 of the **Code** inclusive apply in respect of the parties' obligations under this **agreement** as if those provisions were set out in full in this **agreement** (with such changes as are necessary to make them applicable to the parties' obligations under this **agreement**, rather than under the **regulations** and the **Code**).
- 8.2 To the extent that the **Provider** does not perform any of the **services** as a result of a **force majeure event**, the **Authority** is relieved of its obligation to pay the **Provider** any **fees** in respect of any such **services**.

9. INTELLECTUAL PROPERTY

- 9.1 The **Provider** warrants that:
- 9.1.1 any material provided as part of the **services** does not and will not infringe any **intellectual property rights** of any third party; and
 - 9.1.2 the provision of the **services** and the use of the **services** by the **Authority** and the **participants** does not and will not infringe any third party's **intellectual property rights**,
- provided that this warranty shall not apply to **data** which the **Provider** received pursuant to the **Code** or **FTR allocation plan**.
- 9.2 The **Provider** indemnifies the **Authority** in respect of any costs (including legal costs on a solicitor-client basis), expenses, claims, liabilities, damages or losses incurred by the **Authority** as a result of a breach of any of the warranties in clause 9.1.

9.3 All **existing intellectual property rights** will be owned and remain owned by the relevant party or its third party licensors. The parties agree that the **FTR rental IP** is and shall remain at all times **existing intellectual property rights** of the **Authority**.

9.4 Except as set out in this clause, all new **intellectual property rights** that are developed, commissioned or created for the purposes of this **agreement** or the **services**, including all new **intellectual property rights** in:

9.4.1 any website created for the **FTR** market;

9.4.2 the **FTR allocation plan**, the form of any agreement with **participants** relating to **FTRs**, the design of the **FTRs** and the schedules to this **agreement**, together with all modifications, adaptations and additions to the same;

9.4.3 the **FTR rental materials**;

9.4.4 the **documentation**; and

9.4.5 modifications, adaptations and additions to a party's **existing intellectual property rights** that are developed, commissioned or created for the purposes of this **agreement** or the **services**,

whether produced by the **Software Provider**, or other party, will be owned by the **Authority** as such rights arise. To the extent such rights vest in the **Provider** or **Software Provider** from time to time, the **Provider** shall, upon request of the **Authority** and on termination or expiry of this Agreement, assign, or procure the assignment by the **Software Provider** (or other party) of, such rights to the **Authority** or its nominee for nominal consideration. Except in relation to the **FTR rental IP**, this clause:

9.4.6 is subject to the terms of the **Software License Agreement** that relate to ownership of **intellectual property rights** in the **software** and **documentation**; and

9.4.7 does not apply to:

(a) the **Provider's** corporate publications or the **Provider's** business planning documents; or

(b) the parties' know-how developed in the course of this **agreement** or the **services**.

- 9.5 The **parties** agree that:
- 9.5.1 the **intellectual property rights** in any and all trade marks used in relation to the **services, FTRs** or the **FTR** market shall be the absolute property of the **Authority** as such rights arise, other than:
- (a) third party trade marks; and
 - (b) the **Provider's** trade marks in general use by the **Provider** before the date of this Agreement; and
- 9.5.2 the **Provider** must not apply its own or a third party's trade marks to the **services, FTRs** or the **FTR** market.
- 9.6 The **Authority** grants to the **Provider** a royalty free, non-exclusive licence (for the **Term** of this agreement) to use the **FTR rental IP** solely to the extent necessary to perform the **services** in accordance with this agreement and to sub-licence the **FTR rental IP** to the **Software Provider** solely to the extent necessary for the **Provider** to perform the **services** in accordance with this agreement.
- 9.7 The **Authority** has rights under the **System Delivery Agreement** and the **Software License Agreement**. The **Provider** will use its reasonable endeavours to ensure that the **Authority** is able to exercise its rights during the **Term** of this agreement and (where appropriate) after the **Term** of this agreement, including ensuring that:
- 9.7.1 notices of Termination for Default under Article 8.b. of the **Software License Agreement** are provided to the **Authority**;
 - 9.7.2 the **Authority** succeeds to all of **Provider's** rights and obligations under the **Software Licence Agreement** (but excluding any accrued obligations or liabilities) as provided for under Article 8.c. of the **System Delivery Agreement**; and
 - 9.7.3 it provides assistance to affect the availability of the **Provider's** rights as noted in this clause 9.7.
- 9.8 The **Provider** acknowledges that it will not:
- 9.8.1 obtain any rights to, interest in or ownership of any **data**, or any **processed data** derived from that **data**; and
 - 9.8.2 except with the **Authority's** prior written consent, use **data** or **processed data** as described in clause 9.7.1 for any purpose other than for providing the **services**, provided that no written consent will be required if such **data** or **processed data** has entered the public domain (that is, the data is able to be obtained by any member of the public without charge, such as from a website).
- 9.9 The **Provider** shall ensure that its agreements with the **Software Provider** for the delivery of the **software** and **documentation** are consistent with this clause 9.

10. CONFIDENTIALITY AND STORAGE OF INFORMATION

10.1 The **Provider** must:

10.1.1 maintain such arrangements with its officers, employees, agents, auditors and professional advisors as are reasonably necessary to protect the confidentiality of **confidential data**;

10.1.2 ensure that **confidential data** is only used for the purposes of this **agreement** and is not disclosed except:

- (a) to such of its officers, employees, agents, auditors and professional advisors as need to know such **confidential data** for the purpose of providing the **services**;
- (b) as required under the **regulations**, the **Code** or at law; or
- (c) as permitted by the **Authority**; and

10.1.3 except to the extent it is transferred under clause 10.2 or 13.2, at its own expense store all **data** and **processed data** held by the **Provider** as **FTR manager**.

10.2 The **Authority** may at any time during the **Term** of this **agreement** request that the **Provider**, at the **Provider's** own cost, either transfer to the **Authority** copies of, or grant the **Authority** access to, the **data** or **processed data**. Upon receipt of such a request from the **Authority**, the **Provider** will promptly transfer copies of the **data** and **processed data** to the **Authority** or grant the **Authority** access to the **data** and **processed data** at reasonable times.

10.3 The **Provider** must not make or release public or media statements, or publish material related to this **agreement** or the **services**, without the **Authority's** prior written approval (such approval not to be unreasonably withheld).

10.4 The **Authority** will be entitled to publicise this **agreement** as required by clause 3.5 of the **Code**.

11. DISASTER RECOVERY PLANS

11.1 The **Provider** must have in place at the **commencement date** and maintain throughout the **Term** of this **agreement** **data** and **processed data** back up arrangements, and a disaster recovery system, that will enable the **Provider**, on a continuing basis, to fulfil its obligations under this **agreement** with the minimum disruption practicable to the electricity market. The back-up policy and data recovery plan must comply with the **non-functional specification**.

11.2 Without limiting clause 11.1, the **Provider** must perform and comply with the requirements set out in this **agreement**, including the **non-functional specification**, in respect of:

11.2.1 back-up of all **data** and **processed data** and the **software** (including complying with the back-up policy agreed in accordance with the **non-functional specification**); and

11.2.2 disaster recovery (including comply with the disaster recovery plan agreed in accordance with the **non-functional specification**).

12. TERMINATION

12.1 The **Authority** may terminate this **agreement** with immediate effect on written notice to the **Provider** if:

12.1.1 the **Provider** ceases, or it becomes apparent that the **Provider** intends to cease, to carry on its business;

12.1.2 a receiver, administrator or similar officer is appointed over the **Provider's** assets or undertakings;

12.1.3 the **Provider** makes any arrangement for the benefit of its creditors;

12.1.4 at any time the limit on the **Provider's** liability to the **Authority** specified in clause 14.2 is exceeded;

12.1.5 the **Provider** goes into liquidation other than for the purposes of a genuine amalgamation or reconstruction; or

12.1.6 the **Software License Agreement** is terminated.

12.2 The **Authority** may terminate this **agreement** by giving not less than 15 **business days'** notice to the **Provider** if the **Provider** commits a material breach, or a series of breaches that when taken together constitute a material breach, of this **agreement**, the **regulations**, the **Act**, or the **Code**, and the **Provider** does not within 15 **business days** of the **Authority** requiring it to do so rectify the breach(es).

12.3 The **Provider** may terminate this **agreement** by giving not less than 15 **business days'** notice to the **Authority** if the **Authority** has not paid the **Provider** the relevant **fees** within one month after the due date for those **fees** provided that:

12.3.1 the **Provider** is not in material breach of this **agreement**, the **regulations** or the **Code** which breach remains unremedied;

12.3.2 the **Provider** notified the **Authority** within 8 **business days** after the due date that the **Authority** had not paid the **Provider** the relevant **fees**;

12.3.3 the unpaid amount is not disputed by the **Authority**; and

12.3.4 such notice will not be effective if the **Authority** pays the outstanding amount, plus interest in accordance with clause 6.3, before expiry of the 15 **business days'** notice period.

- 12.4 Except as otherwise provided in this **agreement**, on expiry or termination of this **agreement**, all the rights of both parties under this **agreement** will immediately cease, but without releasing the parties from liability for any breach of this **agreement** or for any pre-existing obligations.
- 12.5 Expiry or termination of this **agreement** does not affect rights and obligations which by their nature survive expiry or termination including those contained in clauses 5, 9, 10, 12.4, 12.5, 13, 14, 15, 16 and 17.

13. DISENGAGEMENT SERVICES

13.1 On expiry or termination of this **agreement** the **Provider** must provide all disengagement services requested by the **Authority** and/or specified in the **non-functional specification** for up to 18 months after expiry or termination, and will reasonably co-operate with the **Authority** or the **Authority's** nominated new provider (as the case may be) to ensure an orderly transition of the **services** to the **Authority's** new provider in a timely fashion with minimal disruption to the **Authority's** business and to **participants'** respective businesses. Those disengagement services will include, if requested by the **Authority**:

13.1.1 the continued provision of the **services**, or part of the **services**, being provided to the **Authority** prior to termination as requested by the **Authority** in accordance with this **agreement**. The **Authority** must continue to pay the **fees** for such **services** in accordance with this **agreement** (or a reasonable proportion of those **fees** if only part of the **services** are required). To avoid doubt, the **fees** payable are the **fees** applicable for the year in which the disengagement services are provided;

13.1.2 the supply to the **Authority** for its ongoing use of up to date copies of the **documentation**; and

13.1.3 training for the **Authority** and the new provider's personnel in respect of the relevant **services** provided by the **Provider** under this **agreement**.

The **Authority** will pay the **Provider** for any disengagement services that are in addition to the **services** being provided to the **Authority** prior to termination at the **hourly rates**.

13.2 Subject to clause 13.1, the **Provider** will, at the **Provider's** own cost, transfer all **data** and **processed data** (in a form reasonably required by the **Authority** and in accordance with the **data transfer plan**) that the **Provider** holds as **FTR manager** to the **Authority** or if the **Authority** requests, to the incoming **FTR manager**, and will provide a certificate to the **Authority** confirming that the **data** it has transferred is all the **data** and **processed data** it is required to transfer under this clause 13.2.

13.3 Notwithstanding any obligation on the **Provider** under this **agreement** to transfer **data** and **processed data**, the **Provider** will be entitled to retain a copy of such **data** to comply with any obligations it has at law.

- 13.4 The parties will negotiate in good faith to agree a data transfer plan (the "**data transfer plan**") which sets out the timing and other requirements for the transfer of **data** and **processed data** in accordance with clause 13.2. When determining timing, the parties will take into account the volume of **data** and **processed data** to be transferred.
- 13.5 If the parties are not able to agree a **data transfer plan** within 20 **business days** after the expiry or termination of this **agreement**, either party may refer the matter to expert determination under clause 16.2 (which determination, notwithstanding clause 16.3, shall be final).
- 13.6 The **Provider** agrees to work in good faith with any incoming **service provider** in relation to the transfer of **data** and **processed data** under clause 13.2, in accordance with the **data transfer plan**.

14. LIMITATION OF LIABILITY

- 14.1 The **Provider's** obligations and duties under this **agreement** are obligations and duties owed solely to the **Authority** and are not obligations or duties for the benefit of any other person.
- 14.2 The **Provider's** liability under or in connection with this **agreement** (with the exception of liability arising from any wilful breach or fraud on the part of the **Provider** or for liability arising under clauses 9.2 or 10) shall not exceed \$2,000,000 in respect of all events occurring in any **financial year**.
- 14.3 It is intended that the total liability of the **Provider** for all breaches of the **regulations** and the **Code** in its capacity as **FTR manager**, and under or in connection with this **agreement**, (with the exception of liability arising from any wilful breach or fraud on the part of the **Provider** or for liability arising under clauses 9.2 or 10 of this **agreement**) in respect of all events occurring in any **financial year** will be limited to the amount set out in clause 14.2. To the extent that the **Provider** incurs any liability in excess of such limit for all events in any **financial year** the liability of the **Provider** under this **agreement** will be reduced accordingly (and the **Authority** will refund any payments already made by the **Provider** to the **Authority** in respect of liability under this **agreement** to the extent required to give effect to this).
- 14.4 In no circumstances will the **Authority** be liable to the **Provider**, whether in contract, tort (including negligence) or otherwise, for any loss of profit, loss of revenue or for any indirect or consequential loss arising out of a breach of this **agreement**, or otherwise in connection with this **agreement** (provided that this clause will not limit the **Authority's** obligation to pay any **fees** for the **services** which are properly due).
- 14.5 The maximum aggregate liability of the **Authority** in respect of all claims or liability of the **Authority** to the **Provider** for any matter arising under or in connection with this **agreement** (whether based on any action or claim in contract, equity, tort, including negligence or otherwise) in any year will not exceed an amount equal to the total **fees** payable by the **Authority** in the first 12 months of this **agreement** (and

if the liability arises within that first 12 months the total will be calculated on the basis of the average monthly charges multiplied by the balance of the 12 months). This clause 14.5 will not apply to:

- (a) any liability arising for wilful breach or fraud by the **Authority**;
- (b) the **Authority's** obligation to refund any payments to the **Provider** under clause 14.3; and
- (c) the **Authority's** obligation to pay the **fees** for the **services** under clause 6.

15. INSURANCE

15.1 The **Provider** will, from the **commencement date** until at least 2 years following expiry or termination of this **agreement**, maintain adequate insurance cover (in respect of this **agreement**, its own business, the **equipment** and the supply of the **services**) for all normal commercial risks and in respect of any potential liability it may incur under this **agreement** or under the **regulations**, the **Act** or the **Code**, to ensure that any problems encountered by the **Provider** will not result in the disruption of the efficient performance of this **agreement** (except to the extent such cover is not reasonably available in the market).

15.2 In respect of the **commencement date** and each anniversary of the **commencement date**, the **Provider** must:

15.2.1 obtain a certificate from its insurer to establish compliance with clause 15.1; and

15.2.2 provide to the **Authority** either:

- (a) a copy of the certificate; or
- (b) a letter from the insurer (or an authorised representative) confirming insurance cover has been obtained,

at least 5 **business days** prior to the relevant date (or, in the case of the **commencement date**, within 5 **business days** after that date). Where a letter is provided under clause 15.2.2(b) a copy of the certificate must be provided as soon as practicable thereafter.

16. DISPUTE RESOLUTION

16.1 Subject to clause 16.4, if any dispute or difference (a **dispute**) arises under this **agreement**:

16.1.1 the party claiming the **dispute** will give notice to the other party; and

16.1.2 the parties to the **dispute** will first endeavour to resolve the dispute amicably by bona fide discussion between them.

- 16.2 If any **dispute** is not resolved by written agreement between the parties within 15 **business days** from the date of a notice under clause 16.1.1, then either party may refer the **dispute** to mediation or, if agreed between the parties, to expert determination (the expert or mediator to be agreed between the parties within 10 **business days** or otherwise determined by the chair (or his/her nominee) of LEADR New Zealand Inc. (LEADR)). Any mediation shall be conducted under the terms of the standard mediation agreement of LEADR.
- 16.3 Any **dispute** not resolved within 60 **business days** of referral to expert determination or mediation, and any unresolved **dispute** not referred to expert determination or mediation within 25 **business days** of a notice under clause 16.1.1, will be resolved by the arbitration of a single arbitrator to be agreed upon by the parties or, failing agreement, to an arbitrator appointed:
- 16.3.1 in the case of a **dispute** as to **fees**, operating costs or accounting matters, by the President for the time being of the Institute of Chartered Accountants of New Zealand; or
- 16.3.2 in all other cases or if the parties do not agree that the **dispute** relates to **fees**, operating costs or accounting matters, by the President for the time being of the New Zealand Law Society,
- and every arbitration will otherwise be conducted under and in accordance with the provisions of the Arbitration Act 1996.
- 16.4 Any breach of the **regulations** or the **Code** will be dealt with in accordance with the procedures under the **regulations** or the **Code**, as applicable.

17. MISCELLANEOUS

17.1 No assignment

17.1.1 The **Provider** must not assign any of its rights or obligations under this **agreement** without the prior written consent of the **Authority** (such consent not to be unreasonably withheld).

17.1.2 For the purposes of clause 17.1.1, a change in the beneficial ownership of 40% or more of the voting shares of the **Provider** from the ownership at the date of this **agreement**, or any change in the effective control of the **Provider** from the ownership at the date of this **agreement** will be deemed to be an assignment by the **Provider**, however a change in the **Provider's** shareholding Ministers will not be deemed to be an assignment by the **Provider**.

17.2 Non-solicitation

The **Authority** and the **Provider** agree that, during the **Term** of this **agreement**, neither party will approach the other's employees or contractors who are directly involved in the provision or receipt of the **services** with an unsolicited offer of

employment. For the avoidance of doubt, this clause does not prevent either party from publicly advertising employment positions or contract work and then offering employment or contracts to employees or contractors of the other party as a result of such public advertising.

17.3 Relationship

The relationship between the **Provider** and the **Authority** is that of independent contractor and nothing in this **agreement** will be taken as constituting the **Provider**, or its agents or employees, as agents, employees, joint venturers or partners of the **Authority**.

17.4 Reliance

The **Provider** acknowledges that:

17.4.1 it has entered into this **agreement** in reliance entirely on its own judgment and not on any representation or warranty made or information provided by the **Authority** or by any of its officers, employees or agents or any other person in the negotiation of this **agreement**; and

17.4.2 the **Authority** has entered into this **agreement** in reliance on the representations in the **Provider's** proposals provided as part of the two stage procurement process (ROI and RFP stages) in the third quarter of 2023 and all other representations in writing made by the **Provider** or its officers, employees or agents relating to such proposals or this **agreement**.

17.5 No third party benefits

17.5.1 Only the parties to this **agreement** may pursue any remedies or redress under this **agreement** in the event of the other party breaching this **agreement**.

17.5.2 However, notwithstanding clause 17.5.1, nothing in this **agreement** will prevent any **participant** or the **Rulings Panel** from pursuing any remedies provided for in the **regulations** or the **Code** in connection with a breach of the **regulations** or the **Code** by the **Provider**.

17.6 Waiver

Any failure or delay by any person in exercising any of its rights under this **agreement** will not operate as a waiver of its rights and will not prevent such party from subsequently enforcing such rights or treating any breach by the other party as a repudiation of this **agreement**.

17.7 No amendments

Except as expressly set out in this **agreement**, the **regulations** or the **Code**, this **agreement** may only be amended in writing and signed by both parties.

17.8 Entire Agreement

This **agreement** constitutes the entire understanding and agreement of the parties relating to the matters dealt within it and supersedes and extinguishes all prior agreements between the parties relating to the matters dealt with in this **agreement**. To avoid doubt, this clause does not limit clause 17.4.2.

17.9 Notices

Any notice relating to this **agreement** must be in writing, delivered to the designated address of the person to whom the notice is to be given by hand, pre-paid mail or email to the relevant person at the addresses set out below, or such other address as is specifically designated by a party by notice to the other party in substitution for it. Any such notice is deemed to have been given as soon as it is personally delivered, two **business days** following posting or, if sent by email, when actually received in readable form by the recipient.

Authority:

Electricity Authority

Postal Address: PO Box 10041, Wellington 6143

Level 7, AON Centre

1 Willis Street

Wellington 6011

Email: matt.carnihan@ea.govt.nz

Attention: Matt Carnihan, Commercial Contract Manager

Energy Market Services:

Waikoukou

22 Boulcott Street

Wellington 6011

Email: ftmanager@ems.co.nz

Attention: Cobus Nel / Nick Warren

17.10 Severability

If any clause or provision of this **agreement** is held illegal or unenforceable by any judgment 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 as if such clause or provision held illegal or unenforceable had not been included in this **agreement**, to the extent permitted by law.

17.11 Further assurances

Each party shall, at its own expense, promptly sign and deliver any documents and do all things, which are reasonably required to give full effect to the provisions of this **agreement**.

17.12 Governing law

This **agreement** is governed by New Zealand law and New Zealand courts have jurisdiction.

EXECUTED as an agreement:

Signed for and on behalf of the **Electricity Authority** by:



Sarah Gillies - CEO **Electricity Authority**

in the presence of:

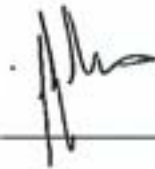


Name: *Aileen Gallagher*

Occupation: *EA*

Address: *Wellington*

Signed for and on behalf of Transpower
New Zealand Limited by: Cobus Nel, EGM IST



13 June 2024

SCHEDULE 1

FEES

- 1 The **fees** (exclusive of GST) are:
 - 1.1 the monthly fee in paragraph 2; and
 - 1.2 the fees under this **agreement** that are to be calculated in accordance with the **hourly rates** in paragraph 4.
- 2 The monthly base fee will be \$88,366.00 excluding GST.
- 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 2025 and on and from 1 July of each year during the Term thereafter, 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);
- 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 of each year,

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 (excl GST)
FTR Manager	\$250.00
FTR Analyst	\$140.00
Business Analyst	\$140.00
FTR Grid Engineer	\$250.00
IT Operations Manager	\$200.00
Service Delivery Manager	\$250.00
Allocation Plan Consultant	\$250.00
Project Manager	\$180.00
Resource Innovations: Senior Consultant	\$400.00
Resource Innovations: Senior Analyst	\$350.00
Resource Innovations: Computer Systems Analyst	\$250.00
Senior IT Analyst	\$200.00
Database Administrator	\$200.00

- 5 To avoid doubt, the **fees** cover all third-party software maintenance and support costs for the **System** (to the extent that those costs are required for the **Provider** to perform its obligations under this **agreement**).
- 6 The fees for new equipment or third party software including updates, provided by the **Provider** pursuant to a change under clause 7 shall be passed through to the Authority at cost.
- 7 The **Authority** may, at its discretion, set **FTR** market growth targets for a **year** linked to additional payments to the **Provider**. If the **Authority** elects to provide such incentives for a **year** the growth targets and additional payments will be agreed at the annual review as part of the **performance standards**. If the

Provider achieves or exceeds a growth target then the **Provider** will be entitled to be paid the corresponding additional payment.

- 8 No additional fee shall be payable for the addition through clause 7 of this **agreement** of one or two nodes/hubs to the **System/FTR** market, up to a total of eight nodes/hubs.