

**2016 VARIATION #1 TO WHOLESALE INFORMATION AND TRADING SYSTEM
MANAGER MARKET OPERATION SERVICE PROVIDER AGREEMENT**

between

ELECTRICITY AUTHORITY

and

NZX LIMITED

**VARIATION TO WHOLESALE INFORMATION AND TRADING SYSTEM MANAGER MARKET
OPERATION SERVICE PROVIDER AGREEMENT**

DATED: 29 April 2016

BETWEEN:

- (1) **Electricity Authority** of Level 7, ASB Bank Tower, 2 Hunter Street, Wellington (the **Authority**); and
- (2) **NZX Limited**, company number 1266120 (the **Provider**).

BACKGROUND:

- (A) The **Authority** entered into the **SPA** with the **Provider** on 30 October 2015 for the market operation service provider role of Wholesale Information and Trading System (**WITS**) manager.
- (B) The sale of the computer hardware and associated licenses and support contracts to the Provider, has resulted in a change to the monthly fees.
- (C) This variation to the **SPA** is made pursuant to clause 7 of the **SPA** and amends paragraph 2 of Schedule 1 of the **SPA**. The parties have agreed to amend the **SPA** on the terms of this **agreement**.

IT IS AGREED:

1. Interpretation

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

- 1.1 words or phrases appearing in this **agreement** (including in the background) in bold type are defined terms and have the meanings given to them in this **agreement**, or, if not defined in this **agreement**, have the meanings given to them in the **SPA**, or, if not defined in either this **agreement** or the **SPA**, have the meanings given to them in Part 1 of the **Code**;
- 1.2 the following words and phrases have the following meanings:
 - (a) **agreement** means this variation to the SPA and includes the attached Appendix;
 - (b) **Code** means the Electricity Industry Participation Code 2010;
 - (c) **SPA** means the Wholesale Information and Trading System Manager Market Operation Service Provider Agreement between the parties dated 30 October 2015;
- 1.3 headings are for ease of reference only and will not affect the interpretation of this **agreement**;
- 1.4 the rule of construction known as the contra proferentem rule does not apply to this **agreement**;

- 1.5 words importing the singular number include the plural and vice versa; and
- 1.6 where a word or expression is defined in this **agreement**, other parts of speech and grammatical forms of that word or expression have corresponding meanings.

2. **SPA amendments**

- 2.1 The parties agree to amend the **SPA** as set out in the attached Appendix with effect as and from 1 May 2016.

3. **Publication**

- 3.1 On or as soon as reasonably practicable after this **agreement** is signed, the **Authority** will publish the amended schedule of the **SPA** on the **Authority's** website.

4. **General**

- 4.1 No variation, modification, or waiver of any provision of this **agreement** will be of any force or effect unless it is in writing and signed by both parties.
- 4.2 If any clause or provision of this **agreement** is held illegal or unenforceable by any judgement or award of any arbitrator, court or tribunal having competent jurisdiction, such judgment or award will not affect the remaining provisions of this **agreement** which will remain in full force and effect (to the extent permitted by law) as if such clause or provision held illegal or unenforceable had not been included in this **agreement**.
- 4.3 This **agreement**, its validity, interpretation, and performance is to be construed and interpreted in accordance with the law of New Zealand.
- 4.4 Each party acknowledges that it has not been induced to enter into this **agreement** by any representation made by or on behalf of the other party that is not repeated in this **agreement**.
- 4.5 This **agreement** may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.
- 4.6 In the event of a dispute relating to this **agreement**, the provisions of clause 16 (Dispute Resolution) of the **SPA** shall apply.

SIGNED:

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



Name: Carl Hansen

Position: Chief Executive

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



Name: Timothy Oliver Bennett
Position: Chief Executive Officer

APPENDIX – AMENDMENTS TO SPA

Replace paragraph 2.1 of Schedule 1 of the SPA with:

2.1. The monthly fee is as follows (the "**Monthly Fee**"):

Monthly Fee		Starting CPI Index	
Infrastructure	from 1 May 2016 to 31 June 2016	\$2,083	1200
	from 1 July 2016 to 30 June 2018	\$13,536	
	from 1 July 2018	$\$2,083 \times (CPI_{2018}/CPI_{2016})$	
System		\$34,750	1200
Services		\$91,375	1200

Where:

CPI_{2018} = the CPI index for March 2018

CPI_{2016} = the CPI index for March 2016