

REQUEST FOR INFORMATION

Commercial Market Making Scheme

RFI released:
20 January 2021

Deadline for Response:
5:00 pm 12 March 2021

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1 INTRODUCTION

1.1 Purpose of this Request for Information

The New Zealand (NZ) Electricity Authority (the Authority) is seeking information and feedback from potential providers as it establishes a commercial market making scheme (the Scheme) for the electricity futures market in NZ.

This Request for Information (RFI) has the following purposes:

1. The Authority is informing potential providers of the draft Scheme's features; and
2. The Authority seeks feedback on assumptions and aspects requiring further development.

The Authority will use the information provided by respondents to further develop the Scheme's operation. The Authority will then commence a Registration of Interest (ROI) procurement process starting in mid-2021, with the intention of appointing at least one service provider for commercial market making in Q1 2022.

1.2 Who should respond

The Authority wants to hear from parties interested in providing commercial market making services under the Scheme. Please note that responding to this RFI does not create any obligations on the respondent, however the information provided will be used to further develop the Scheme, so information provided should be as accurate as possible.

1.3 Why a response is important

The Authority seeks to ensure that market making services enable efficient risk management and support a robust forward price curve. The respondents' input will contribute to providing a market making scheme that efficiently meets the needs of the Authority for the long-term benefit of NZ electricity consumers.

Stakeholder views, analysis, and feedback have already had a significant influence over the direction of the Authority's approach to the design of this Scheme.

Feedback to this RFI will further assist in ensuring the design is fit for purpose and works for potential providers.

A response to the RFI from potential Scheme participants is critical to enabling the Authority to continue to design the Scheme. This is a great opportunity for you to contribute to that design and to help the Authority identify the best way of procuring these services.

In addition to contributing to the Scheme design, robust cost information will enable the Authority to expedite the required processes to approve funding for the cost of the commercial market making scheme.

1.4 About the Electricity Authority

The Authority's role is to regulate the NZ electricity market. The Authority's statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.

The Authority is an Independent Crown Entity and is accountable to Parliament and has oversight provided by the responsible Minister. The Cabinet Minister responsible for the Authority is the Minister of Energy and Resources. As an Independent Crown Entity, the Authority provides regulatory oversight of the electricity sector. In fulfilling its obligations, the Authority undertakes the following roles:

- develop, administer and enforce the Electricity Industry Participation Code (the Code), which is a set of rules that govern nearly every aspect of NZ's electricity industry including generation, transmission, system operation, security of supply, market arrangements, metering, distribution and retail;
- support the development of the industry through education, guidelines, information and model arrangements;
- monitor the industry and make information available through the EMI website;
- contract service providers to operate the electricity market and system as set out in the Code.

The Authority is funded through appropriations approved by Parliament each financial year. The appropriations are funded through a levy on industry participants. The levy is collected in accordance with detailed formulae set out in regulations.¹

¹ Available at <http://www.legislation.govt.nz/regulation/public/2010/0457/latest/DLM3420901.html>

2 KEY INFORMATION

2.1 Context

This RFI is seeking information and feedback from potential providers of market making services to assist the Authority to decide the Scheme's design and key commercial/contractual factors.

The information received in response to this RFI will be used to inform further Scheme design. The Authority may also use this information to inform competitive processes it intends to undertake to select one or more participants to provide market making services as part of the Scheme.

This RFI is not a formal procurement process and, as such, respondents are not asked to provide detailed proposals (and the Authority is not obliged to consider any proposals). This document deals only with the RFI process.

This RFI is subject to the terms and conditions (shortened to RFI-Terms) detailed in Appendix 1.

If, after publishing the RFI, the Authority needs to change anything about the RFI, or the RFI process, or wants to provide suppliers with additional information, the Authority will let all suppliers know by placing a notice on GETS.² If you downloaded the RFI from GETS, you will automatically be sent notifications of any changes through GETS by email.

2.2 The timeline for this RFI:

RFI opens:	20 Jan 2021
Joint supplier briefings:	9.00 am 1 Feb 2021
	12.00 pm 3 Feb 2021
	3.00 pm 4 Feb 2021
Individual supplier briefings (by request):	8 to 19 Feb 2021
Clarification questions close:	5.00 pm 26 Feb 2021
Responses to clarification questions close:	5.00 pm 5 Mar 2021
Deadline for responses:	5.00 pm 12 Mar 2021

All are NZ dates and times.

2.3 How to contact us

The Authority's point of contact for this RFI is:
commercialmarketmaking@ea.govt.nz

2.4 Developing and submitting your information

Please take time to read the RFI and develop an understanding of the information requested. The Authority will run a series of joint supplier briefings in the week commencing Monday 1 February 2021.

Please contact the Authority on
commercialmarketmaking@ea.govt.nz
to register for one of these sessions.

The Authority may decide to undertake one-to-one briefings, in the two weeks commencing 8 February 2021, please contact the Authority to register for these.

If you have a question, please submit your question through GETS. Questions must be submitted no later than 5.00pm 26 February 2021.

Responses must be submitted electronically to GETS using the Response Form in Appendix 3. Your response to this RFI, including any supporting documentation, must not exceed a maximum combined file size of 50MB.

Please ensure you submit your response to us before 5.00pm 12 March 2021.

2.5 Feedback to respondents

The RFI is not a formal procurement process and the Authority is not obliged to provide feedback to respondents to the RFI. However, the Authority may contact a respondent to clarify information provided. Contacting a respondent does not signify that there will be a procurement process, nor that the respondent will have a privileged position in any procurement. If the Authority contacts one respondent this does not create an obligation to contact any other respondent.

2.6 Official Information Act

The Authority will not attribute any information to a respondent, except where required to by law (including the Official Information Act 1982). There are provisions within the Act that enable commercially sensitive material to be withheld. The Authority will not publish individual responses to this RFI.

² <https://www.gets.govt.nz/>

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BACKGROUND TO THE SCHEME

3.1 The electricity futures market is a critical part of the NZ electricity market

The exchange traded NZ electricity futures market performs two key functions: electricity market participants use it directly and indirectly to manage their spot price risk, and participants and other interested parties use the forward price curve the futures market creates to inform a wide range of investment and operational decisions. These market functions promote the long-term interests of consumers by enabling efficient decisions, and fostering competition and transparency.

3.2 Market making supports the futures market

The Australian Securities Exchange (ASX) provides the platform on which NZ electricity futures and options are traded. The ASX platform is currently supported by market making services provided by the four largest generator-retailers: Contact Energy Limited, Genesis Energy Limited, Mercury NZ Limited and Meridian Energy Limited (together known as the regulated market makers). They each have a voluntary agreement with ASX to offer to buy and sell specific futures contracts with an agreed maximum difference between the buy and sell price (the bid-ask spread) for a half hour period during each trading day.

3.3 Enduring market making approach

The Authority is seeking to establish an enduring market making approach. This enduring market making approach builds on the current arrangements and seeks to establish an efficient market making scheme that improves market confidence and is service-oriented. The enduring market making approach will:

- transition, over a period of years, to an incentivised market making arrangement where market making services are performed by providers compensated on commercial terms. Commercial market makers will be compensated by a levy paid by all NZ electricity market generators and purchasers; and
- ensure the integrity of market making services is maintained in the transition period through a combination of regulated market makers and commercial providers.

In its final state, the Authority anticipates that the enduring approach may consist of a standalone incentivised commercial market making scheme under which the Authority will procure market making services from the most efficient service providers.

To facilitate the transition period, the Authority intends to appoint at least one commercial market maker to provide 20 percent of the scheme's total volume obligations. The remaining 80 percent of the volume obligation would be provided by the existing four market makers, each with a 20 percent share of the volume requirement. The Authority has consulted on implementing a permanent mandatory backstop for the existing market makers and is currently considering submissions to the proposal.³ The proposed permanent mandatory backstop will see the regulated parties continue to provide market making services on a voluntary basis. However, if a regulated party's service provision does not satisfy the Authority's requirements, the mandatory provisions will be activated and applied to the regulated party.

3.4 Funding the Scheme

Introducing commercial providers of market making services will require payment. The Authority intends for the beneficiaries of market making services to fund the Scheme. The Authority is intending to recover the costs of these market making service through an increase to the Authority Levy (the levy), which will be levied equally on generators and purchasers of electricity.

³ www.ea.govt.nz/development/work-programme/risk-management/hedge-market-development/consultations/#c18742

The Authority will consult levy-payers in 2021 on the costs of the market making service.

3.5 Relationship between commercial and regulated schemes

The Authority intends, in the first iteration of the enduring market making scheme, to have the existing regulated market makers (who are not paid for their service) provide market making services under the same conditions, to the greatest extent practical, as those providing services under commercial terms and conditions.

The Authority anticipates that, over time, the balance of service provision between commercial and regulated market makers will shift to include more volume provided by commercial providers, and less volume provided by regulated providers. The enduring solution may see full provision of market making services by commercial providers. Regulated market makers are not restricted from also providing market making services on a commercial basis.

3.6 More information

You may find the following resources useful in preparing your response:

- The Authority's history of hedge market development: www.ea.govt.nz/development/work-programme/risk-management/hedge-market-development/
- The Authority's Electricity Market Information website: www.emi.ea.govt.nz/
- The Australian Securities Exchange: www2.asx.com.au/markets/trade-our-derivatives-market/overview/energy-derivatives/electricity
- ASX energy derivatives settlement price process: www.asxenergy.com.au/trading/settlement_rules_2
- The Authority has arranged for access to the ASX's historic daily data for NZ electricity derivatives to RFI participants. The data available is detailed in the ASX Energy Daily Files User Guide.⁴ If you are interested in accessing this data,⁵ please contact the Authority.

3.7 Roadmap to establishment

Upon completion of this RFI process, the Authority will further develop the Scheme design it wishes to procure. The Authority then intends to initiate a formal procurement process, by initially seeking Registrations of Interest (ROI) from interested parties, to then shortlist and seek proposals through a Request for Proposal (RFP).

The ROI stage will openly invite an initial bid from potential participants, including those that responded to the RFI. The bids will be based on a near final set of design parameters and contract terms. The ROI will not be restricted to parties that participated in the RFI stage. The ROI will see the Authority select a shortlist of participants that will be invited to the final RFP stage.

Short-listed parties from the ROI stage will be invited to submit a final binding bid. The final bid will be based on the final design and contract. The short-listed parties will be required to demonstrate they have achieved a set of conditions precedent which will be detailed in the ROI. In addition to the final price of the service, parties will need to demonstrate their integrity and capability in providing market making services.

The Authority intends to work towards the following procurement timelines:

- March 2021; RFI close and consideration of information;
- Q3 2021; ROI open (6 weeks), open to any parties wanting to submit;
- Q4 2021; RFP open (6 weeks), invited parties short-listed from the ROI; and
- Q1 2022; selection of commercial providers, commencement of commercial market making. The Authority requests feedback on specific aspects of the proposed design.

⁴ www.asxenergy.com.au/products/data_centre/accessing-daily-files/asx-energy-daily-files-user-g.pdf

⁵ Access to this data will require adherence to a set of conditions. These conditions will be provided by the Authority.

4

DRAFT SCHEME DESIGN

The Authority remains open to varying the design and will take into account feedback to this RFI in formulating the final design which will be presented in the ROI. Section 5 sets out the Authority's specific questions.

4.1 Scheme structure

The broad structure of the market making scheme is set out below, however the Authority is interested in feedback on specific aspects of the structure and its implications for interest in tendering, and the price level of the tender.

Market makers will provide market making services on the ASX, each trading day for NZ electricity futures. The market maker will provide services for at least 25 minutes of the 30-minute market making period (15:30–16:00 NZ local time) by providing both bids and offers for NZ electricity futures contracts

ASX NZ electricity futures are standardised and centrally cleared Contracts for Difference (CFDs) that are cash settled against two grid reference nodes – Otahuhu and Benmore – in the NZ electricity market. The contract size is 0.1 MW.

The market makers will provide the following services for baseload future products:

- Monthly – the current month and each of the five months following the current month
- Quarterly – each quarter that is available for trade on the ASX (between 13 and 17 quarters).

The Authority expects a total volume per future product of 12 MW will be provided by commercial and regulated market makers. The commercial scheme will provide 20 percent of this, 2.4 MW in the first iteration. In later iterations, it is anticipated that commercial providers will increase in volume provision and regulated market makers will reduce the volume provision.

The maximum spread between the bid and ask is the greater of 3 percent, and \$2/ MWh.

Contract specifications are set by the ASX, and are available here: <https://www.asx.com.au/services/trading-services/asx-trade24-market-information.htm>

4.2 Pricing structure

Commercial market makers will receive a fee for providing market making services, paid monthly, two months in arrears. Commercial market makers will be paid a daily fee by the Authority and their monthly payment will reflect the number of days services are provided. Commercial market makers will be contracted to provide services on each trading day of the contract term. The daily fee will be the same for each commercial market maker (if more than one) on a per MW basis. The daily fee will be set at the marginal bid price to fulfil the required MW volume.

A commercial market maker is not required to provide services on a given trading day if it is subject to a Permitted Circumstance.⁶ If a Permitted Circumstance applies and the market maker does not provide full services on that day, it forgoes its daily fee for that day.

A commercial market maker is not required to provide services on a day it uses an Exemption.⁷ Each market maker can use a maximum of five Exemptions each calendar month. If a market maker uses an Exemption it will forgo its daily fee for that day.

If a commercial market maker does not provide services on a trading day and a Permitted Circumstance does not apply and it does not have any Exemptions available, the market maker will forgo its daily fee, and be required to pay an amount being a multiple of four times the daily fee to the Authority. Should a market maker have three days where they are liable to make such payments in a rolling ninety-day period, they could face termination by the Authority.

4.3 Contracting approach

Commercial market makers will enter into a contract for market making services with the Authority, who will be responsible for payment. Commercial market makers will also enter into an agreement with the ASX to provide market making services, which may require the acquisition of an Australian Financial Services licence, as well as compliance with the ASX Operating Rules.⁸ Market makers will be responsible for meeting their own costs of provision, including all fees, margin and broking costs.

⁶ A Permitted Circumstance is a day where the market maker is unable to provide services through disruption of the ASX Trading Platform, breach of law or force majeure events.

⁷ An Exemption is a trading day where a market maker does not provide services at its own discretion.

⁸ Available at <https://www2.asx.com.au/about/regulation/rules-guidance-notes-and-waivers/asx-operating-rules-guidance-notes-and-waivers>

The initial term of the contract is proposed to be 12 months. The Authority has prepared a draft contract term sheet for discussion (Appendix 1).

In addition to the contract, the Authority will require commercial market makers to participate in an incentive scheme. This incentive scheme is detailed in the following subsection.

4.4 Alignment of incentives for all market makers

Any commercial market maker appointed by the Authority would be providing market making services alongside the current regulated market makers. The Authority recognises the merits of aligning incentives to ensure all market makers operate in a consistent manner.

The Authority is currently developing an incentive scheme. The incentive scheme seeks to incentivise increased activity and participation in the market by both commercial and regulated market makers.

The Authority will develop and set the terms of the incentive scheme in due course. Commercial market makers would be required, as a term of their commercial market making services agreement, to agree to the incentive scheme the Authority has developed. The regulated market makers would each be provided with an offer to enter into the incentive scheme, on the terms set by the Authority. If those regulated market makers choose to enter the incentive scheme, the terms and conditions of it will then be included in a separate agreement as between the Authority and that regulated market maker.

The incentive scheme will come into effect if there are two or more members of the incentive scheme. It will be in place if the Authority chooses more than one commercial market maker, and / or at least one regulated market maker joins the incentive scheme. It is recognised that the incentive scheme will be most effective if all market makers are a part of the incentive scheme, and the Authority will encourage this to happen.

The regulated market makers would each be provided with an offer to enter into the incentive scheme, on the terms set by the Authority. Regulated market makers that provide services at a lower level than average, would expect to be a net payer to the incentive scheme, and those that provide services at a higher level than average would expect to be a net beneficiary from the incentive scheme.

As the term of a current commercial market maker's agreement ends, then that commercial market maker would exit the incentive scheme. The subsequent commercial market maker(s) contracted through the next procurement process for commercial market making services would enter the incentive scheme. It is expected the regulated market makers who enter the incentive scheme would remain in the incentive scheme for as long as it continues to apply, including in the event a regulated market maker is operating under the proposed regulated market making provisions in the Code.

The proposed incentive scheme is set out below. The Authority expects to continue to develop this framework, including the consideration of feedback received through this RFI process, as well as seeking feedback from each of the regulated market makers outside of this procurement process.

4.5 Proposed Incentive Scheme

The Authority considers there are two primary implications from a market maker (being a commercial market maker and/or a regulated market maker) not providing services during a trading session:

- volume made by market makers is reduced by the obligations of the absent market maker, with a reduction in liquidity.
- there is an increase in the expected cost of market making on the remaining market makers, with an increased chance remaining market makers would have to trade in less favourable conditions than is typical:
 - the motivation not to market make is often positively correlated to expected market volatility, as volatility increases the expected cost of market making.
 - price discovery carries more risk with reduced market makers standing in the market and collectively sharing the burden of discovering where the price equilibrium is.

The incentive scheme addresses these implications by having non-compliant market makers face a cost of their decision not to participate, and improving the payoffs for market makers remaining in the market. The anticipated additional cost facing the compliant market makers in a session would form the basis for transfer payments from the absent market maker(s) to the remaining market makers. These transfers

compensate the remaining market makers in the incentive scheme for the additional risk they bear as a consequence of absent market makers not providing services. The compensation from the transfer payment would encourage a greater degree of participation amongst the remaining market makers, and may have the potential to encourage greater provision of market making services in volatile market periods than the alternative where there is no incentive scheme.

Accordingly, on all trading days where a market maker does not provide compliant market making services, that market maker is required to make a transfer payment to the incentive scheme. The level of this transfer payment (the Daily Incentive Fee (DIF)) will be the equivalent of the daily service fee the commercial market maker would have received if they had been compliant on that day.

The DIF applying to a specific market maker will reflect their volume obligations. The DIF for the regulated market makers will be aligned with the DIF payable to the commercial market maker(s) by weighting them to take into account any difference in volume obligations between parties (a market maker with half the volume obligation of another market maker will face a DIF half of what the other market maker would face). Therefore, the prevailing DIF will vary across market makers in a linear fashion as a function of their MW volume obligations. The DIF per MW volume obligation will change for all members of the incentive scheme as there are changes in the tender values when a commercial market maker's contract is retendered.

Commercial market makers make payments to the incentive scheme on Trading Session Exemption Days (as defined in the proposed Term Sheet in Appendix 1). The payments will also apply to a regulated market maker.

The total transfer payment from non-compliant parties for a trading session will be paid out to the compliant market makers prorated with respect for the volume obligations of the compliant parties (a compliant market maker with half the volume obligation of another compliant market maker will receive half the transfer payment of what the other market maker will receive).

The size of the daily transfer pool will be an increasing function of the MW volume obligations of the non-compliant market makers, which has the effect of increasing the benefit per MW of volume obligation of the compliant market makers. For example, assume a market making scheme (and associated incentive scheme) with 12 MW as its total cumulative volume and five market makers, each with 2.4 MW obligations, and each facing a DIF of \$100. The additional return a compliant market maker may receive under a range of participation circumstances is set out in Table 1 below. A compliant market maker is one that provides market making services and a non-compliant market maker is one that does not provide market making services in a trading session.

Table 1: Example of possible returns for a Market Maker (MM) under the incentive scheme

Number of Compliant MMs	Number of Non-Compliant MMs	Total Pool (based on DIF of \$100)	Compliant MMs' share of Pool	Compliant MM's additional return per MW
5	0	\$0	\$0	\$0
4	1	\$100	\$25	\$10.42
3	2	\$200	\$67	\$27.78
2	3	\$300	\$150	\$62.50
1	4	\$400	\$400	\$166.67
0	5	\$500	0	N.A.

To fund the daily transfer pool it is proposed:

- For a commercial market maker, the DIF foregone on a day it is non-compliant would be paid into the incentive scheme as the commercial market maker's DIF.
- For regulated market makers, they would have to make a contribution equivalent to their DIF into the incentive scheme on trading days they are non-compliant.
- In the scenario where all market makers are non-compliant the entire transfer payment is foregone by the market makers and held over by the Authority. This is appropriate as no price formation or market making contracts are provided. In these circumstances, the incentive would be used to offset the costs of future commercial market making.

The Authority, or its agent would be responsible for administering the settlement of the incentive scheme. The DIFs and associated returns payable by and to the incentive scheme participants would be calculated and settled on a monthly basis and paid/collected on the same payment terms as the DIF payments (two months in arrears). To facilitate the operation of the incentive scheme, the Authority is considering requiring participating market makers provide an initial refundable deposit of 5 times their respective DIF to fund the first month of the incentive scheme and operating a washup arrangement.

4.6 Consequences of terminating a commercial market maker for non-performance

It is proposed the early termination of a commercial market maker for non-performance will set in motion a process to:

- recover costs for early termination from the commercial market maker
- maintain the market making scheme's total volume (12 MW per contract) commitment and financial incentives to market make,
- find a replacement market maker on commercial terms for the duration of the contract term, where the Authority deems it expedient and cost-effective to do so.

Consequences of early termination for non-performance on a commercial market maker

It is proposed:

The Authority will have cause to terminate a commercial market maker for non-performance where they exceed two "unauthorised" non-compliance days within a rolling 90-day period. The two unauthorised days per rolling 90-days, are in addition to five Exemption days per month and any Permitted Circumstance days.⁹

The terminated party will be required to meet all costs of early termination (proposed 40 days DIF) and any other outstanding payments (for example, potentially 8 days DIF for non-compliance on up to two unauthorised days). The risk of the non-performing commercial market maker not making the relevant payments for non-performance will be mitigated by the following:

- all commercial market makers will post a performance bond with the Authority equal to 40 days DIF within five working days of signing the market making service contract.
- fifty percent of the performance bond will be returned to the commercial market maker over the first two months of the contract, being:
 - DIF multiplied by number of compliant days in first calendar month of contract term, paid on the 20th of the following month
 - DIF multiplied by number of compliant days in second month of contract term, subject to the maximum total funds returned to the commercial market maker for the first two calendar months not exceeding 20 days DIF, paid on the 20th of the following month.
- commercial market makers will be paid two months in arrears, on the 20th of the month.
- the Authority will have first claim on any remaining bond and fee for service owing to the commercial market maker, at the time the party is terminated for non-performance, for the purposes of offsetting and making good on any termination payments or other payments the commercial market maker has outstanding. If the residual bond and unpaid fees exceeds all outstanding financial claims owing to the Authority, then the balance will be returned to the commercial market maker as soon as practicable.
- at the conclusion of the contract, any remaining bond will be repaid to the market maker.

⁹ It is proposed the consequences of non-compliance on each of the Commercial Market Maker's five monthly exemption days is for the Commercial Market Maker to forgo their DIF. The consequence for each day of further non-compliance is to both forgo the DIF and pay an amount equivalent to 4 days DIF to the Authority.

Consequences of early termination of a commercial market maker on remaining market makers.

It is proposed:

- the regulated market makers will assume, with immediate effect, the market making obligations of a commercial market maker which is terminated prior to the conclusion of their contract.
- the exiting commercial market maker's contracted minimum volume obligations will be allocated on a pro-rata basis between the four regulated market makers on their volume obligations.
- in exchange each regulated market maker will receive their pro-rata share of the former commercial market maker's DIF entitlement, on those days they are compliant and satisfy their share of the former commercial market maker's volume commitments. On days they are non-compliant, their DIF entitlement will be foregone and shared amongst compliant market makers, on the same basis as the incentive scheme.

These termination arrangements will continue until the Authority either appoints a service provider to assume some, or all, of the terminated commercial market maker's obligations and entitlements, or the contract period ends, whichever is sooner.

The volume and service obligations and the commercial terms of the remaining commercial market makers will be unchanged in the event of a termination. A remaining commercial market maker's volume obligation, as a percentage of the market making scheme's total volume, will be unaffected. The composition of regulated and commercial market makers will change, with an increased supply from the regulated providers, at least until a new market maker is contracted.

Appointment of replacement market makers

It is proposed that:

The Authority will seek to appoint replacement market makers in the event of an early termination, so long as:

- the Authority is satisfied that a new provider meets all due diligence requirements,
- the solution is cost effective and affordable, and
- the remaining term of the contract is sufficient to warrant the costs associated with the appointment of a new market maker (typically greater than eight weeks).

To this end, the Authority proposes inviting all regulated and existing commercial market makers, as well as short-listed parties from the ROI or subsequent RFPs, the opportunity to fulfil some or all of the terminated commercial market maker's volume obligation on the prevailing commercial DIF terms.

In the event that replacement market makers cannot be secured on prevailing terms, the Authority may elect to invite respondents to offer a lump sum "contracting fee", over and above the DIF, for which they would be willing to provide the services until the end of the contract period. If the Authority agrees to pay a supplier this contracting fee, the fee will be amortised over the remaining days of the contract - but will only be paid for those days the relevant market maker is compliant.

The contracting fee will have no financial consequences for other market makers' compensation amounts or other amounts payable by them - it is a commercial matter strictly between the Authority and the contracting party. Importantly, it is proposed that the DIF prevailing at the time a commercial market maker is terminated, will not change as a consequence of appointing new market makers.

In all cases the Authority will have sole discretion over which parties are selected to provide the required market making services.

4.7 Summary of base proposal

Nodes	Otahuhu and Benmore
Monthly Contracts	Front six contracts
Quarterly Contracts	All available to trade
Total Volume	12 MW (120 lots) for all contracts
Regulated market maker volume	80%, 9.6 MW 2.4 MW for each regulated market maker
Commercial market maker volume	20%, 2.4 MW, shared between one or more commercial market makers
Maximum spread	3% all contracts
Minimum spread	\$2/MWh all contracts
Trading window	15:30 to 16:00 pm NZ time
Market making	25 minutes of trading window
Volume refresh	No
Monthly exemptions	Five
Consequence of failure to meet obligations – Commercial market makers	First five days in calendar month, loss of DIF Subsequent 2 days in rolling 90-day period - payment of an amount being 4 times DIF Third day in rolling 90-day period - potential termination at Authority's discretion triggering a payment of an amount being 40 times DIF
Consequence of failure to meet obligations – Regulated market makers	First five days in calendar month, loss of DIF Third day of non-met obligations in rolling 90-day period – mandatory market making provision with reduction in exemptions to two days per calendar month
Incentive scheme	Compulsory participation by commercial market makers and regulated market makers
ASX payments to market makers	Rebate of portion of trading fee
Commercial market maker financial requirements	Bond provided to Authority of 40 times Daily Fee before commencement of market making Professional indemnity insurance lodged

4.8 New design options

In addition to the base proposal described above, the Authority is interested in exploring three alternative features that may be included in the final scheme design. The Authority is seeking feedback on these options, including their feasibility and contribution to improving the efficient operation of the market making scheme.

4.9 Market opening provisions

The current proposal for market making is that each market maker must provide bids and offers within 3 percent of each other for 25 minutes in each market making window, and only contracts bought or sold by the market maker when its bid-offer spread was 3 percent or less count towards its volume obligation.

The Authority is considering an alternative which is to allow any volume bought or sold within the 30 minute market making window to count towards a market maker's volume obligation, provided the relevant volume bought or sold was as a result of on-market bids and offers. The purpose of this change would be to ease the price discovery process in the opening of the market making window, and to reduce the loss of liquidity where a tight spread causes market makers to inadvertently trade with each other at the start of a market making window. Market makers would still be required to provide bids and offers within 3 percent of each other for 25 minutes in each market making window, until they meet their volume obligation.

4.10 Refresh obligations

The current proposal for fulfilling market making volume obligations is a single bid and offer of the full volume obligation. For example, if a market maker has an obligation of 2.4 MW, then 24 contracts of 0.1 MW must be offered on the bid and offer. An alternative that the Authority is considering is a provision where the full obligation is maintained but offered in fractions and refilled as traded using a refresh obligation. For example, a 2.4 MW volume obligation could be split into smaller lots, for example 0.6 MW. Each time the bid or offer is partially or fully filled, the lot would be refilled until the full 2.4 MW is traded. The total volume obligation would remain the same, however it would be filled over multiple trades. Position refreshes would be required to take place within a set time limit (for example within thirty seconds of a trade). The Authority expects this change would reduce the cost of price discovery without materially reducing liquidity.

4.11 Obligation tranches

The current proposal for market making is each market maker has a full obligation to perform. Four regulated market makers provide 80 percent of the volume obligation (20 percent per market maker) and commercial market makers provide the remaining 20 percent. An alternative would be for market makers to provide a subset of their obligation. For example, an obligation of 2.4 MW could be divided into four parcels or 0.6 MW each. Provision of only one parcel would entitle a market maker to one quarter of their DIF, and require them to forgo the other three quarters of their DIF. For regulated market makers, provision of less than their full obligation would count towards one of their exemption days proposed under the Code amendment. Terms and conditions for all market makers would be adjusted to account for the obligation tranches, for example, market makers (commercial and regulated) would have five Exemption days per month for each tranche.

The benefit to providing a part obligation is that there may be incentives when there is limited participation in market making for some suppliers to provide a lower volume and receive a share of the incentive scheme pool, rather than an all or nothing volume provision. Less participation is favourable to no participation in both the formation of a forward price curve and the availability of contracts during periods of market volatility.

The Authority notes the interaction of obligation tranches and refresh obligations needs to be considered further and welcomes any feedback on how this may be practically achieved.

5 INFORMATION SOUGHT

To further develop the commercial market making scheme, the Authority has a set of specific questions about the design of the market making scheme. The Authority is also interested in any general feedback. Please submit your answers in the response form in Appendix 3.

1. Scheme variables

- A. The Authority is seeking to procure a total volume of 2.4 MW per contract from commercial market makers. The Authority is open to the volume being provided by one or more providers. What level of volume would be too small to tender for, and what level of volume would be too large to tender for? Please provide your reasons.
- B. The Authority is interested in how the volume provided impacts the cost, and how the cost of provision varies with MW provided by a single market maker.

Considering the Authority's base proposal, consisting of the term sheet in Appendix 1, and the draft incentive scheme detailed in Table 1, what do you estimate as the daily service fee for each of the following MW obligations your organisation would be interested in supplying, please provide an indication of the cost of providing for 0.4 MW, 0.8 MW, 1.2 MW, 1.6 MW, 2.0 MW and 2.4 MW using the variables for the base proposal described in section 4 (Table 1).

- C. What are the major factors contributing to the price level proposed?
- D. The Authority is proposing a maximum bid-offer spread of 3 percent as the base case. The Authority is also interested in how the cost of provision would vary at different levels of spread. Please provide an indication of how spread levels of 2 percent, 4 percent and 5 percent would affect the cost of provision, assuming all other variables for the Base case are unchanged.

2. Payment terms and bond

- A. The Authority will pay commercial market makers for their service on payment terms of two months in arrears, with monthly payments reflecting the number of days market making services are fully provided multiplied by the daily payment. Please provide comment on this arrangement.
- B. The Authority is proposing commercial market makers post a performance bond at the start of the contract, with the nature of the bond to be determined. What methods of performance bonding are preferred?

3. Contract term and procurement duration

- A. The Authority is proposing an initial contract term of 12 months, though is open to a different contract length (between nine and 24 months). What is your preferred contract length, and what are the costs and benefits of different contract lengths?
- B. The Authority intends a ROI that will be open for 6 weeks. Please provide comment on your ability to prepare and submit a fully considered registration in this length of time, and any constraints this may place on your participation.
- C. The Authority intends a RFP that will be open for 6 weeks. Please provide comment on your ability to prepare and submit a fully costed proposal in this length of time, and any constraints this may place on your participation.
- D. The Authority's timeline between the close of the RFP and the commencement of market making services is approximately 12 weeks. Please provide comment on your ability to be ready to provide services in this length of time.

4. Incentive Scheme

- A. The Authority's base proposal is that an incentive scheme is active during the commercial market making contract. What would be the impact on the cost of provision on your proposal if the incentive scheme was foregone?
- B. The Authority is interested in views on the efficiency of the incentive scheme. Please comment on how the incentive scheme can be amended to encourage participation during periods of market volatility.

5. Alternative design options

The Authority is interested in feedback on the alternative design options presented, see section 4.9 to 4.11 above.

- A. Please comment on how a reduced spread obligation in the opening period of the market making window would influence liquidity and price formation, the cost of providing market making services and the interest in participating in a market making scheme.
- B. Please comment on how a refresh obligation would influence liquidity and price formation, the cost of providing market making services and the interest in participating in a market making scheme.
- C. Please comment on how a parcelled volume obligation would influence liquidity and price formation, the cost of providing market making services and the interest in participating in a market making scheme.

6. Other feedback

- A. Regulated market makers can tender for the commercial scheme. The Authority notes that a market maker operating under two schemes may be perceived as a conflict of interest. What separation measures would be required to manage any perceived conflict of interest?
- B. The Authority requires commercial market makers to operate with a NZ registered company. Please comment on any impact this would have on participation.
- C. The Authority wishes to gauge interest in the opportunity. Do you intend to participate in the ROI stage?
- D. Do you foresee any barriers to submitting a registration in the ROI stage? If you foresee barriers, what are they and what suggestions do you have to remove those barriers?
- E. The Authority is interested in any other comments you may have. Please provide any other feedback you have on the term sheet and the proposed Scheme design more broadly.

CLOSED

7. Commercial Market Making costs – Daily fee

Please fill out the following tables:

[illegible]

APPENDIX 1: DRAFT CONTRACT TERM SHEET

Proposed Key Terms

ITEM	AREA	PROVISION
		Definitions
		<p>The following terms shall be defined accordingly in the Agreement:</p> <ul style="list-style-type: none"> ▪ “ASX” means ASX Operations Pty Limited. ▪ “ASX Trading Platform” means the trading platform provided by ASX, which is used for trading NZ electricity base load futures contracts. ▪ “Authority” means the Electricity Authority. ▪ “Business Day” has the meaning given to that term in paragraph (b) of the definition of “business day” in clause 1.1(1) of the Code. “Code” means the Electricity Industry Participation Code 2010, as updated from time to time. ▪ “CMMer” means the commercial market maker who is the party to this Agreement. ▪ “Daily Incentive Fee” is calculated as the: Maximum Contract Fee / [247] (being the estimated expected number of total possible Trading Days for the Term). [Note this number of “247” may be revised slightly as the various rounds of the procurement progress] ▪ “Force Majeure Event” means an event of the type set out in Item 32. ▪ “Market Making Session” means each period of 15:30 pm – 16:00 pm (NZ time) on a Trading Day during which NZ electricity base load futures contracts are to be available for trading on the ASX Trading Platform and the Services are expected to be provided. ▪ “Maximum Contract Fee” is the total possible amount of the Daily Incentive Fees payable to the successful CMMer (as determined through the procurement process for the appointment of one or more CMMers by the Authority). ▪ “Permitted Circumstance” means: <ul style="list-style-type: none"> – a day on which there is a lack of availability or disruption of the performance of ASX’s Trading Platform; or – in the reasonable opinion of the CMMer the performance of the Services during the particular Market Making Session may cause the CMMer to breach an applicable law, which the Authority determines to be the case (acting reasonably) following the provision of reasonable evidence by the CMMer that such a circumstance applied; or – a relevant Force Majeure Event applies. ▪ “Reg MMers” means the regulated market makers, being those vertically integrated gentailers who may become subject to a regulated mandatory baseload electricity futures market backstop scheme. ▪ “Services” means the market making services to be provided by the CMMer, as described in Item 4. ▪ “Service Levels” means the services levels set out in Item 5.

ITEM	AREA	PROVISION
		<ul style="list-style-type: none"> ▪ “Term” means the period of this Agreement starting on [insert date] and ending on [insert date ending 12 months later], unless terminated earlier in accordance with this Agreement. ▪ “Trading Day” means a business day on which ASX’s Trading Platform is operating a Market Making Session. ▪ “Trading Session Exemption Day” means a Trading Day (other than a day on which a Permitted Circumstance applies) where the CMMer has not provided the Services in accordance with the Service Levels.
		Term
1.	Term	The Term of the Agreement will be 12 months, subject to earlier termination in accordance with the termination provisions.
		Non-exclusive appointment
2.	Non-exclusive service provider	<p>The CMMer will be appointed to provide the Services (being commercial market making services for the NZ electricity futures market) to the required Service Levels through the ASX Trading Platform.</p> <p>The appointment of the CMMer is non-exclusive. The parties acknowledge and agree that the Authority may appoint one or more other commercial market marker(s) during the term of this Agreement, and that the Reg MMers also provide market making services for the NZ electricity futures market.</p> <p>The parties also acknowledge and agree that the CMMer can provide market making services, and participate, in other markets in and outside NZ, and for electricity futures markets for jurisdictions other than NZ.</p>

SCOPE OF SERVICES AND SERVICE LEVELS

		CMM Services
3.	CMMer appointed by Authority	<p>CMMer appointed by the Authority to provide the Services in accordance with this Agreement.</p> <p>CMMer acknowledges and agrees that each transaction entered into by it in performing the Services is entered into by it as principal and not as agent for the Authority. The CMMer has no right of recourse against, or indemnity from, the Authority in relation to any such transaction.</p> <p>Note:</p> <ul style="list-style-type: none"> ▪ In the event the CMMer bids for the Services as part of a consortium, the lead entity of that consortium will be the party to the Agreement with the Authority. The legal entity shall be responsible for ensuring the other parties in the consortium comply with the terms the lead entity (the CMMer) is required to meet under this Agreement and is liable for the failure of any party in the consortium to do so. ▪ A Reg MMer can bid for and be appointed to the role of CMMer. This does not derogate from the Reg MMer’s obligation to also provide market making services as required for Reg MMers. In the event that a Reg MMer is appointed as the CMMer, then the conflict of interest provisions (further provisions to be added) would address the separation requirements between the entity’s role as a CMMer, a Reg MMer and trading both as a generator and a retailer in the same electricity futures market for NZ. ▪ Before the commencement of the Agreement, the CMMer must be registered as a company, or an overseas company, and have a presence in NZ.

ITEM	AREA	PROVISION
4.	Services	<p>The CMMer is required to provide market making services through two-way bid and offer quotes for each of the Otahuhu and Benmore nodes for the electricity base load futures market in NZ through the ASX Trading Platform for each Trading Day in the Term, where the Services offered meet the specified Service Levels in this Agreement.</p> <p>The CMMer is excused from providing the Services in accordance with the Service Levels:</p> <ul style="list-style-type: none"> ▪ on a Trading Session Exemption Day, provided that the CMMer may not take a Trading Session Exemption Day more than five times in any particular calendar month; or ▪ where the Authority determines (acting reasonably) that a Permitted Circumstance applies. If in a CMMer's reasonable opinion a Permitted Circumstance applies then the CMMer may choose not to provide the Services for such a Trading Day, and shall provide evidence to support its reasonable opinion as to such Permitted Circumstance applying to the Authority within 24 hours of the applicable Market Making Session. In the event the Authority (acting reasonably, on the basis of that and other evidence) determines that a Permitted Circumstance: ▪ did apply then it shall be deemed to be a Permitted Circumstance; or ▪ did not apply, then the CMMer shall be deemed to have taken a Trading Session Exemption Day or, where the CMMer has already used all of its Trading Session Exemption Days for that calendar month, shall be deemed to have failed to provide the Services to the Services Levels for that Market Making Session. For the avoidance of doubt, if the CMMer disputes the Authority's determination, the CMMer may take the matter to dispute resolution, but in the interim (until there is an outcome under dispute resolution) the position to be applied under this Agreement is that the Permitted Circumstance did not apply and the provisions of this Agreement will be applied accordingly. <p>Where a Permitted Circumstance applies or the CMMer takes a Trading Session Exemption Day, the Daily Incentive Fee is not payable to the CMMer.</p> <p>The CMMer undertakes that it will comply with all applicable rules and laws in performing its CMM Services.</p>
5.	Service Levels	<p>The Service Levels the CMMer must meet or exceed when providing the Services in each Market Making Session on each Trading Day (save for a Trading Session Exemption Day or where a Permitted Circumstance applies) are:</p> <ul style="list-style-type: none"> ▪ Offers and bids are to be made in the volume of 0.1 MW base load equivalent lots up to the total volume the CMMer has been engaged to provide (as determined as a result of the procurement process), which will be 2.4 MW base load equivalent. This means the CMMer would be required to place an offer of 24 contracts and a bid of 24 contracts, each of 0.1 MW base load equivalent, for each month or calendar quarter for each node, at the start of each Market Making Session. ▪ Provide services for 25 minutes in the 30 minutes in each Market Making session. ▪ Such volume of contracts is to be offered for: <ul style="list-style-type: none"> – each calendar quarter, for each of the two nodes (Otahuhu and Benmore), including the current calendar quarter and all of the other calendar quarters available for trading electricity base load futures contracts on the ASX Trading Platform; – each calendar month, for each of the two nodes (Otahuhu and Benmore), including the current calendar month and the following five calendar months. ▪ The maximum spread between bids and offers made by the CMMer for the contracts for a particular node for a particular month or quarter is to the greater of 3% or \$2.

ITEM	AREA	PROVISION
		<p>For the avoidance of doubt, if an offer or bid contract placed by the CMMer is taken then the CMMer is under no obligation to volume refresh (reload) another such offer or bid contract for that Market Making Session, and may withdraw the corresponding offer or bid placed for that lot.</p> <p>For example, the CMMer is required to have 24 offer and 24 bid contracts for the Otahuhu node for the current calendar month in place at the start of the Market Making Session and should five offers be taken in the first five minutes then at that point the CMMer is only obliged to have 19 offer contracts in the market (as the CMMer) and is not obliged to reload another 5 offer contracts to replace the 5 contracts already taken. In addition, the CMMer can also withdraw a bid contract (which has not been taken) for each offer contract taken. In this case this would mean that the CMMer could withdraw 5 bid contracts, and at this point in time – 5 minutes into the Market Making Session – the CMMer would only be obliged to have 19 offer contracts and 19 bid contracts in the market for the taking for the remainder of the Market Making Session. The CMMer is required to reload the number of offer and bid contracts to the required Service Level (e.g. 24 of each) for the start of the next Market Making Session.</p>
6.	Other services	The CMMer shall provide advice or feedback on market making and electricity futures markets, as reasonably requested by the Authority from time to time in order to assist the Authority in its continuing regulation and facilitation of an active electricity futures market.
7.	Consequences for failing to meet Service Levels	<p>If the CMMer does not comply with the Service Levels or any of its obligations under this Agreement it shall immediately notify the Authority in writing.</p> <p>If the CMMer fails to provide the Services to the required Service Levels on a Trading Day (other than a Trading Session Exemption Day or where a Permitted Circumstance or Force Majeure Event applies), then:</p> <ul style="list-style-type: none"> the Authority shall not pay the Daily Incentive Fee; the CMMer shall pay to the Authority an amount being four times the Daily Incentive Fee for such Trading Day; and in the event the CMMer has failed to provide the Services to the required Service Levels for more than two Trading Days (other than a Trading Session Exemption Day or where a Permitted Circumstance) in any rolling 90 calendar days period, then the Authority shall also have the right to terminate this Agreement immediately on written notice.
8.	CMMer required to provide collateral	<p>To underpin its performance of the Services, the CMMer shall be required to have collateral in place which:</p> <ul style="list-style-type: none"> for the first three full calendar months of the Term shall be equivalent to the amount of 40 x the Daily Incentive Fee in the form of a bond from a registered bank acceptable to the Authority; and for the remaining period of the Term shall be equivalent to the amount of 20 x the Daily Incentive Fee in the form of a bond from a registered bank acceptable to the Authority. For the avoidance of doubt, the parties recognise the reduction in the collateral amount from the fourth month of the Term is reflective of the Authority's payment obligation being two months in arrears and its right to set-off any amount payable by the Authority against any amount payable by the CMMer to the Authority.
9.	CMMer required to have agreement with ASX / member of ASX	<p>The CMMer is to provide the Services through the ASX Trading Platform.</p> <p>This Agreement is conditional on the CMMer being a member of and having entered into the required agreement with ASX, including provision of signed consent to ASX to enable ASX to share the CMMer's data with the Authority, with a copy of the signed agreement/terms and consent form being provided to the Authority.</p>

ITEM	AREA	PROVISION
10.	Authority may appoint administrator	The Authority may appoint a third party to carry out some or all of the Authority's administrative responsibilities in this Agreement. The Authority will provide prior written notice to the CMMer of any such appointment.
11.	CMMer to enter into the Incentive Scheme	The CMMer agrees to participate in any Incentive Scheme the Authority implements for Market Making Services.
		Fees and Payment
12.	Service Fee	The Service Fee payable to the CMMer shall be a Daily Incentive Fee payable for each Trading Day on which the CMMer provides the Services to the required Service Levels. For the avoidance of doubt, the CMMer will not receive the full amount of the Maximum Contract Fee if the CMMer does not provide the Services to the required Service Levels on all Trading Days.
13.	Payment of Service Fee	<p>The CMMer shall provide the Authority with a valid invoice for each calendar month, for the Services provided in that month, with such invoice required to be provided to the Authority within five Business Days following the calendar month in which the Services were provided. The invoice is to include the content, and be in the form, required by the Authority.</p> <p>The Service Fee will be calculated by the Authority for each month, and payable by the Authority to the CMMer two months in arrears, provided the CMMer has provided the Services and all reporting as required under the Agreement.</p> <p>If the invoice is provided late, the Authority is not obliged to meet its payment deadline, and payment may be delayed until the 20th of the second month following the date the invoice is submitted.</p>
14.	Service Fee washup	<p>In the event the actual number of Trading Days in the Term is greater or lesser than [247] Trading Days, then the Authority shall calculate (at the end of the Term) the actual amount of the Daily Service Fee that would have been payable on the basis of that actual number of Trading Days and determine (taking into account the number of Trading Exemption Days and Permitted Circumstance Days) the amount of a washup payment payable:</p> <ul style="list-style-type: none"> from the Authority to the CMMer, in the event the number of actual possible total Trading Days exceeded [247]; or from the CMMer to the Authority, in the event the number of actual possible total Trading Days were less [247], <p>on the basis of the Maximum Contract Fee.</p> <p>For the avoidance of doubt, there will be no change to any amount paid or payable under this Agreement, where it is calculated with reference to the amount of the Daily Incentive Fee (which shall be the Daily Incentive Fee amount determined at the start of this Agreement on the basis of there being an estimated 247 total Trading Days).</p>
		Meetings, Monitoring and Reporting
15.	Measuring and reporting against Service Levels	<p>CMMer is to provide to the Authority a monthly written report on its performance against Service Levels for the previous month, and year-to-date.</p> <p>All reporting to be in agreed format and is to be supported by such data as the Authority reasonably requests.</p>
16.	Provision of Data	CMMer to comply with Subpart 5 of Part 13 of the Code regarding the disclosure of information of risk management contracts (regardless of whether the CMMer is a participant to whom this Part applies).

ITEM	AREA	PROVISION
17.	Additional Reporting	Any additional reporting as reasonably requested by the Authority from time to time.
18.	Audit	<p>The Authority has a right to appoint an auditor to audit the data provided by the CMMer or any data relating to the CMMer provided by ASX to the Authority.</p> <p>The cost of the audit will be met by the Authority if CMMer has complied with the Code and this agreement, and the CMMer if not complied with the Code and this agreement.</p>
19.	Meetings	The parties shall meet monthly to discuss the provision of the Services, performance against the Service Levels, relationship matters and any other matters the Authority wishes to discuss or seek advice on in relation to market making and the electricity futures market.

GENERAL TERMS AND CONDITIONS

		General Performance obligations
20.	Joint obligations	<p>Both Parties agree to:</p> <ul style="list-style-type: none"> act in good faith and honestly in their dealings with each other; discuss matters affecting this Agreement or the delivery of the Services, whenever necessary; notify each other promptly of any actual or anticipated issues that could significantly impact on the Services or the Fees, and/or receive media attention; and comply with all applicable laws and regulations.
21.	CMMer obligations	<p>CMMer must deliver the Services:</p> <ul style="list-style-type: none"> so as to meet or exceed the Service Levels and otherwise to the required performance standards, timeframes and quality set out this Agreement; and with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading market maker.
		Indemnities
22.	Third party claims	CMMer to indemnify the Authority in relation to any third party claims arising from the CMMer's failure to provide the Services in accordance with the Service Levels or in the event it breaches any law.
		Conflicts of interest / reputation
23.	Avoiding Conflicts of interest	<p>CMMer:</p> <ul style="list-style-type: none"> warrants that as at the commencement date, it has no conflict of interest in providing the Services or entering into this Agreement, and must do its best to avoid situations that may lead to a conflict of interest arising.
24.	Obligation to notify Authority	<p>CMMer must tell the Authority promptly, in writing, if any conflict of interest arises in relation to the Services or this Agreement.</p> <p>If a conflict of interest does arise the parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed.</p> <p>Each party must pay its own costs in relation to managing a conflict of interest.</p>

ITEM	AREA	PROVISION
		Insurance and Liability
25.	Obligation to notify Authority	<p>CMMer must tell the Authority promptly, in writing, if any conflict of interest arises in relation to the Services or this Agreement.</p> <p>If a conflict of interest does arise the parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed.</p> <p>Each party must pay its own costs in relation to managing a conflict of interest.</p>
26.	Exclusion	Neither party will be liable for indirect / consequential loss or damage.
27.	Cap	CMMer's liability under this Agreement (save for any liability resulting from misrepresentation, fraud or negligence) shall be limited to the Maximum Contract Fee including the maximum LDs.
		Termination rights
28.	Termination by the Authority	<p>The Authority may terminate the Agreement (in whole or in part) immediately on written notice if:</p> <ul style="list-style-type: none"> ▪ CMMer is in material breach of the Agreement and, in the case of a material breach capable of remedy, the breach is not remedied within 10 Business Days; ▪ CMMer is in persistent breach (including persistent Service Level breach); ▪ CMMer engages in conduct or has a conflict of interest that, in the Authority's reasonable opinion, causes or is likely to impact on the provision of the Services and Service Levels or cause damage to the Authority's reputation or business; ▪ CMMer suffers an insolvency event or is likely to suffer an insolvency event; ▪ CMMer breaches applicable law; ▪ there is a purported assignment or transfer by the CMMer (including as a result of change of control of the CMMer or any upstream company) of the Agreement to which the Authority has not given its consent; ▪ the ASX terminates / withdraws the right for the CMMer to provide services on the ASX Trading Platform; or ▪ there have been 10 or more Trading Days to date across the Term of the Agreement on which a Permitted Circumstance applies. <p>The Authority may also terminate this Agreement on one month's notice to the CMMer.</p>
29.	Termination by CMMer	CMMer may terminate the Agreement on account of the Authority's failure to pay, following 20 Business Days' notice and provided the failure to pay is not remedied within that notice period.
		Consequences of expiry / termination
30.	Termination by the Authority	The CMMer will be required to pay to the Authority an amount equivalent to 40 x Daily Incentive Fee.
		Miscellaneous
31.	Assignment and subcontracting	CMMer may not assign or transfer (including as a result of change of control) or subcontract (including to a related party) its obligations under this Agreement without the Authority's prior written consent, such consent, if granted, able to be granted on such conditions as the Authority considers fit (acting reasonably) in the circumstances.

ITEM	AREA	PROVISION
32.	Force Majeure	<p>Certain specified force majeure events that directly affect the party and prevent it from performing its obligations (provided reasonable mitigation policies are in place and have been applied to avoid or minimise the effect of such a force majeure event) may apply to relieve the parties from performing their obligations under the Agreement for as long as the force majeure event applies and continues to directly prevent the party from performing its obligations.</p> <p>In the event a force majeure event applies that prevents the CMMer from providing the Services to the required Service Levels, then the Authority shall not be obliged to pay the CMMer the Daily Incentive Fee for such Trading Day.</p>
33.	Warranties	<p>The CMMer warrants that it:</p> <ul style="list-style-type: none"> ▪ has sufficient skills and expertise to provide the CMM Services; and ▪ has sufficient financial capacity and backing to provide the CMM Services.
34.	Set-off	The Authority has the right to set off any amounts payable by the CMMer to it from any amounts owing and payable by the Authority to the CMMer.
35.	Dispute Resolution	<p>A party shall seek to resolve a dispute:</p> <ul style="list-style-type: none"> ▪ first by agreement between the parties, acting through duly authorised representatives of the parties; ▪ then, if agreement is not reached, through mediation using a mediator appointed by the parties collectively or, failing agreement on the mediator, then appointed by an independent body; ▪ then, if agreement is not reached, through arbitration.
36.	Compliance with law	CMMer responsible for compliance with law, including at its own cost, obtaining and maintaining all licences etc required to fulfil its obligations under this Agreement.
37.	Governing law	New Zealand

APPENDIX 2: RFI PROCESS, TERMS AND CONDITIONS

Note to interested parties and Respondents

In managing this RFI the Authority will endeavour to act fairly and reasonably in all of its dealings with interested parties and Respondents.

This section contains the RFI Process, Terms and Conditions (shortened to RFI-Terms) which apply to this RFI.

Words and phrases that have a special meaning are shown by the use of capitals. Definitions are at the end of this section.

If you have any questions about the RFI Terms please get in touch with the Authority's point of contact.

Standard RFI process

Preparing and submitting Information

1. Preparing Information

- a. Respondents are to use the Response Form provided in Appendix 3. By submitting a Response the Respondent accepts that it is bound by the RFI Process, Terms and Conditions (RFI-Terms) contained in Section 6 of this Appendix.

2. Respondents' Questions

- a. Each Respondent should satisfy itself as to the interpretation of the RFI. If there is any uncertainty in the RFI document/s Respondents should seek clarification. Refer to Section 2 for how to submit questions and clarifications. The Requester will respond to requests in a timely manner.
- b. The Requester may provide details of the question (which may be summarised) and answer to other potential Respondents. The Requester will not disclose the Respondent's identity. A Respondent may withdraw a request at any time.
- c. In submitting a request for clarification a Respondent is to indicate, in its request, any information that is commercially sensitive. The Requester will not publish such commercially sensitive information. However, the Requester may modify a request to eliminate such commercially sensitive information, and publish this and the answer where the Requester considers it of general significance to all Respondents.

3. Submitting Information

- a. Each Respondent is responsible for ensuring that its Response is received by the Requester at the correct address on or before the Deadline for Responses (refer to Section 2). The Requester will acknowledge receipt of a Respondent's Response.
- b. The Requester may rely on the Respondent's Response and information provided by the Respondent (e.g. in correspondence). In submitting a Response and communicating with the Requester each Respondent should check that all information it provides to the Requester is:
 - i. true, accurate and complete and not misleading in any material respect
 - ii. does not contain intellectual property that will breach a third party's rights.
- c. Where the Requester requires the Information to be delivered in hard and soft copies, the Respondent is responsible for ensuring that both the hard and soft copies are identical.

4. Requester's clarification

- a. The Requester may, at any time, request from any Respondent clarification or additional information about its Response. Respondents should endeavour to respond to requests in a timely manner.

5. Dates and times

- a. Unless specifically stated otherwise, all dates and times are NZ dates and times.

6. Requester's point of contact

- a. All enquiries regarding the RFI must be directed by email to the Requester's point of contact (refer Section 2). Only the point of contact, and any authorised person of the Requester, are authorised to communicate with Respondents regarding any aspect of the RFI.
- b. Where a Respondent has an existing contract or other unrelated relationship with the Requester then business as usual communications, for the purpose of managing delivery of that contract or other unrelated relationship, will continue using the usual contacts.

7. Conflict of Interest

- a. Each Respondent must complete the Conflict of Interest declaration in the Response Form.

8. Confidential Information

- a. The Requester and Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraph 8.c. of the RFI-Terms, and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
- b. The Requester and Respondent may each disclose Confidential Information to any person who is directly involved in the RFI process on its behalf, such as officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors, but only for the purpose of participating in the RFI.
- c. Respondents acknowledge that the Requester's obligations under paragraph 8.a. of the RFI-Terms are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary or constitutional convention and any other obligations imposed by the law. Where the Requester receives an OIA request that relates to a Respondent's Confidential Information the Requester will consult with the Respondent and may ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive.

9. Confidentiality of RFI information

- a. For the duration of the RFI, up to the date of the end of the follow on procurement process (if any), the Respondent agrees to keep the RFI strictly confidential and not make any public statement to any third party in relation to any aspect of the RFI or the RFI process.
- b. A Respondent may disclose information relating to the RFI to any person described in paragraph 8.b. of the RFI-Terms but only for the purpose of participating in the RFI. The Respondent must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the RFI.

10. Costs of participating in the RFI process

- a. Each Respondent will meet its own costs associated with the preparation and presentation of its Response.

11. Ownership of documents

- a. The RFI and its contents remain the property of the Requester. All Intellectual Property rights in the RFI remain the property of the Requester or its licensors. The Requester may request the immediate return or destruction of any or all RFI documents and any copies. Respondents must comply with any such request in a timely manner.
- b. All documents forming the Response will, when delivered to the Requester, become the property of the Requester. Responses will not be returned to Respondents at the end of the RFI process.
- c. Ownership of Intellectual Property rights in the Response remain the property of the Respondent or its licensors. However, the Respondent grants to the Requester a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Response for any purpose related to the RFI process.

12. No binding legal relations

- a. Neither the RFI, nor the RFI process, creates a process contract or any legal relationship between the Requester and any Respondent, except in respect of:
 - i. the Respondent's declaration in its Response
 - ii. the Respondent's statements, representations and/or warranties in its Response and in its correspondence with the Requester
 - iii. the standard RFI conditions set out in paragraphs 6 to 16 of the RFI-Terms
- b. Each exception in paragraph 12.a. of the RFI-Terms is subject only to the Requester's reserved rights in paragraph 13 of the RFI-Terms.
- c. Except for the legal obligations set out in paragraph 3.11.a. of the RFI-Terms no legal relationship is formed between the Requester and any Respondent.

13. Requester's additional rights

- a. Despite any other provision in the RFI the Requester may, on giving due notice to Respondents:
 - i. amend, suspend, cancel and/or re-issue the RFI, or any part of the RFI
 - ii. make any material change to the RFI on the condition that Respondents are given a reasonable time within which to respond to the change.
- b. Despite any other provision in the RFI the Requester may:
 - i. accept a late Response if it is the Requester's fault that it is received late
 - ii. accept a late Response where it considers that there is no material prejudice to other Respondents
 - iii. in exceptional circumstances, answer questions submitted after the Clarification Period ends
 - iv. liaise with any Respondent without disclosing this to, or doing the same with, any other Respondent
 - v. provide or withhold from any Respondent information in relation to any question arising in relation to the RFI. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a Respondent, is inappropriate to supply at the time of the request or cannot be released for legal reasons
 - vi. waive irregularities or requirements in the RFI process where it considers it appropriate and reasonable to do so.

14. New Zealand law

- a. The laws of NZ shall govern the RFI process and each Respondent agrees to submit to the exclusive jurisdiction of the NZ courts in respect of any dispute concerning the RFI or the RFI process.

15. Disclaimer

- a. The Requester will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Respondent or any other person in respect of the RFI process.
- b. Nothing contained or implied in the RFI, or RFI process, or any other communication by the Requester to any Respondent shall be construed as legal, financial or other advice. The Requester has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.
- c. To the extent that liability cannot be excluded, the maximum aggregate liability of the Requester is \$1.

16. Precedence

- a. Any conflict or inconsistency in the documents forming the RFI shall be resolved by giving precedence in the following descending order:
 - i. RFI Process, Terms and Conditions
 - ii. all other Sections of the RFI document
 - iii. any additional information or document provided by the Requester to Respondents through the Requester's point of contact or GETS.

Definitions

In relation to this RFI the following words and expressions have the meanings described below.

Confidential Information	<p>Information that:</p> <ul style="list-style-type: none"> a. is by its nature confidential b. is reasonably marked by either the Requester or a Respondent as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', 'classified' and/or 'restricted' c. is provided by the Requester, a Respondent, or a third party in confidence d. the Requester or a Respondent knows, or ought to know, is confidential. <p>Confidential information does not cover information that is in the public domain through no fault of either the Requester or a Respondent.</p>
Conflict of Interest	<p>A Conflict of Interest arises if a Respondent's personal or business interests or obligations do, could, or be perceived to, conflict with its obligations to the Requester under the RFI or in the provision of the goods or services. It means that the Respondent's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:</p> <ul style="list-style-type: none"> a. actual: where the conflict currently exists b. potential: where the conflict is about to happen or could happen, or c. perceived: where other people may reasonably think that a person is compromised.
Deadline for Responses	The deadline that Responses are to be delivered or submitted to the Requester as stated in Section 2.
GETS	Government Electronic Tenders Service www.gets.govt.nz
Intellectual Property	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
Point of contact	The Requester and each Respondent are required to appoint a point of contact. This is the channel to be used for all communications during the RFI process. The Requester's point of contact is identified in Section 2. The Respondent's point of contact is identified in its Information.
Request	Means the Requester's Request for Information.
Requester	The Requester is the government agency that has issued the Request for Information through a RFI with the intent obtaining information. The term Requester includes its officers, employees, contractors, consultants, agents and representatives.
Respondent	A person, organisation, business or other entity that submits a Response in response to the RFI. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives.
Response	The response a Respondent submits in reply to the Requester's RFI. It comprises the Response Form and all other information submitted by a Respondent.
Response Form	The form and declaration prescribed by the Requester and used by a Respondent to respond to the RFI, duly completed and submitted by a Respondent as part of its Response.
RFI	Means the Requester's Request for Information.
RFI Process, Terms and Conditions (shortened to RFI-Terms)	The terms and conditions that apply to RFIs as described in Section 6. These may be varied subsequent to the release of the RFI by the Requester on giving notice to Respondents
RFI-Terms	Means the Process, Terms and Conditions that apply to this Request for Information Conditions as described in Section 6.

APPENDIX 3: RESPONSE FORM

Request for Information Response Form

About the Respondent



Supplier Tips

- The section gives the Requester basic information about your organisation and identifies your point of contact for the duration of the RFI process.
- If an item is not applicable e.g. you do not have a registered office complete the box by stating 'not applicable'.
- If you are submitting a joint or consortium Response complete an 'Our profile' table for each Respondent. Cut and paste the table as appropriate. Provide only one point of contact for your joint/consortium Response.

Our profile

Choose one of these statements to complete, and delete the others

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ITEM	DETAIL
Trading name:	
Full legal name (if different):	
Physical address:	
Postal address:	
Registered office:	
Business website:	
Type of entity (legal status):	
New Zealand Business Number:	
Country of residence:	

Our point of contact

ITEM	DETAIL
Contact person:	
Position:	
Phone number:	
Mobile number:	
Email address:	

Statistical information

ITEM	DETAIL
Do you hold an existing Australian Financial Services licence?	
Are you already registered to provide services on the ASX?	
Are you an existing provider of market making services? If yes, in what markets?	

Response to the Request for Information



Supplier Tips

- In this section you are asked to provide your response to the Authority Request for Information.
- If there is anything that you do not understand ask the Authority point of contact to clarify.
- If any information you provide is commercially sensitive to your organisation you must let the Requester know. Please mark the information 'commercially sensitive' or 'Confidential Information'. It is not acceptable to render this whole document confidential unless this is truly the case.

The Requester has a duty to protect Confidential Information subject to the exceptions in the RFI-Terms.

- You may include information not specifically requested by us in your Response especially if it adds value or provides an innovative or alternative response and is relevant to the Authority Request.
- If you have made any assumption in providing the response clearly state the assumption

Our response to questions

[Please provide answers to the questions below in the space provided on page 32]

1. Overall price

- Considering the Authority's base proposal, consisting of the term sheet in Appendix 1, and the draft incentive scheme detailed in Table 1, what do you estimate as the daily service fee for 2.4 MW per day, based on the base proposal described in section 4 above (right hand column in Table 1)? The Authority notes this price indication is non-binding. The purpose of understanding this indicative price is to enable the Authority to build a greater awareness of how decisions around the design may impact on service offers.
- What are the major factors contributing to the price level proposed?

2. Scheme variables

- The Authority is seeking to procure a total volume of 2.4 MW per contract from commercial market makers. The Authority is open to the volume being provided by one or more providers. What level of volume would be too small to tender for, and what level of volume would be too large to tender for? Please provide your reasons.
- The Authority is interested in how the volume provided impacts the cost, and how the cost of provision varies with MW provided by a single market maker. For each of the following MW obligations your organisation would be interested in supplying, please provide an indication of the cost of providing for 0.4 MW, 0.8 MW, 1.2 MW, 1.6 MW, 2.0 MW and 2.4 MW using the variables for the base proposal (Table 1).
- The Authority is proposing a maximum bid-offer spread of 3 percent as the base case. The Authority is also interested in how the cost of provision would vary at different levels of spread. Please provide an indication of how spread levels of 2 percent, 4 percent and 5 percent would affect the cost of provision, assuming all other variables for the Base case are unchanged.

- D. Regulated market makers are able to tender for the commercial scheme. The Authority notes that a market maker operating under two schemes may be perceived as a conflict of interest. What separation measures would be required to manage any perceived conflict of interest?

3. Payment terms and bond

- A. The Authority will pay commercial market makers for their service on payment terms of two months in arrears, with monthly payments reflecting the number of days market making services are fully provided multiplied by the daily payment. Please provide comment on this arrangement.
- B. The Authority is proposing commercial market makers post a performance bond at the start of the contract, with the nature of the bond to be determined. What methods of performance bonding are preferred?

4. Contract term and procurement duration

- A. The Authority is proposing an initial contract term of 12 months, though is open to a different contract length (between nine and 24 months). What is your preferred contract length, and what are the costs and benefits of different contract lengths?
- B. The Authority intends a ROI that will be open for 6 weeks. Please provide comment on your ability to prepare and submit a fully considered registration in this length of time, and any constraints this may place on your participation.
- C. The Authority intends a RFP that will be open for 6 weeks. Please provide comment on your ability to prepare and submit a fully costed proposal in this length of time, and any constraints this may place on your participation.
- D. The Authority's timeline between the close of the RFP and the commencement of market making services is approximately 12 weeks. Please provide comment on your ability to be ready to provide services in this length of time.

5. Incentive Scheme

- A. The Authority's base proposal is that an incentive scheme is active during the commercial market making contract. What would be the impact on the cost of provision be on your proposal if the incentive scheme was foregone?
- B. The Authority is interested in views on the efficiency of the incentive scheme. Please comment on how the incentive scheme can be amended to encourage participation during periods of market volatility.

6. Alternative design options

- A. The Authority is interested in feedback on the alternative design options presented, see section 4.9 to 4.11 above. Please comment on how a reduced spread obligation in the opening period of the market making window would influence liquidity and price formation, the cost of providing market making services and the interest in participating in a market making scheme.
- B. Please comment on how a refresh obligation would influence liquidity and price formation, the cost of providing market making services and the interest in participating in a market making scheme.
- C. Please comment on how a parcelled volume obligation would influence liquidity and price formation, the cost of providing market making services and the interest in participating in a market making scheme.

7. Other feedback

- A. The Authority requires commercial market makers to operate with a NZ registered company. Please comment on any impact this would have on participation.
- B. The Authority wishes to gauge interest in the opportunity. Do you intend to participate in the ROI stage?
- C. Do you foresee any barriers to submitting a registration in the ROI stage? If you foresee barriers, what suggestions do you have to remove those barriers?
- D. The Authority is interested in any other comments you may have. Please provide any other feedback you have on the term sheet.

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1. Commercial Market Making costs – Daily fee

Please fill out the following tables:

BASE CASE	COSTINGS BY DIFFERING MINIMUM VOLUME OBLIGATION PER COMMERCIAL MARKET MAKER					
	0.4 MW per provider	0.8 MW per provider	1.2 MW per provider	1.6 MW per provider	2.0 MW per provider	2.4 MW per provider
Cost estimate	\$NZ _____	\$NZ _____	\$NZ _____	\$NZ _____	\$NZ _____	\$NZ _____
Interest to participate at these volumes	Too small Interested Too large	Too small Interested Too large	Too small Interested Too large	Too small Interested Too large	Too small Interested Too large	Too small Interested Too large

Sensitivity Analysis

Please provide indications of how sensitive your Base Case cost estimates are to a change in a single variable, as well as the likelihood of participating in the RFP if the change was made.

SENSITIVITY ANALYSIS	SPREADS (BASE CASE: 3%)			INCENTIVE PAYMENTS (Base Case: applies to all MM)	TERMINATION AMOUNT PAYABLE (Base Case: 40 days DIF)		TERM OF CONTRACT (Base Case: 12 months) please base your response on a per month equivalent (ie, what percent would your costs change per month of services provided)	
Scenario	2%	4%	5%	Only applies to CMM	20 days DIF	60 Days DIF	9 months	24 months
Percentage impact on cost	_____ %	_____ %	_____ %	_____ %	_____ %	_____ %	_____ %	_____ %
Your interest to participate	Less No Change Higher	Less No Change Higher	Less No Change Higher	Less No Change Higher	Less No Change Higher	Less No Change Higher	Less No Change Higher	Less No Change Higher

Our assumptions

Please state any assumptions that you have made in relation to the Response.

Our declaration



Supplier Tips

- Here you must answer questions in making a formal declaration.
- Remember to select 'agree' or 'disagree' at the end of each row. If you don't you will be deemed to have agreed.
- Remember to get the declaration signed by someone who is authorised to sign and able to verify each of the elements of the declaration e.g. chief executive or a senior manager.
- If you are submitting a joint or consortium Response each Respondent (supplier involved in the joint response or consortium) must complete a separate declaration.

TOPIC	DECLARATION	RESPONDENT'S DECLARATION
RFI Process, Terms and Conditions:	have read and fully understand the RFI, including the RFI Process, Terms and Conditions. confirm that Respondent/s agree to be bound by them.	
Conflict of Interest declaration:	The Respondent warrants that it has no actual, potential or perceived Conflict of Interest in submitting this Response.	
Details of Conflict of Interest:		

DECLARATION

declare that in submitting the Response and this declaration:

- the information provided is true, accurate and complete and not misleading in any material respect
- the Response does not contain Intellectual Property that will breach a third party's rights

Signature:	
Full name:	
Title / position:	
Name of organisation:	
Date:	

CLOSED

