

## Participation Agreement for Multiple Trading Relationships Pilot

Ara Ake Limited (**we, us**) are administering a multiple trading relationships (**MTR**) pilot (**Pilot**) as part of our investigation into alternative electricity market settings.

MTR enables customers to contract with more than one supplier to receive or supply electricity services at a single ICP. In the Pilot, these services are consumption services, generation services and flexibility services (**Pilot Services**).

The objectives of the Pilot are:

- (a) to provide a real-world test for MTR;
- (b) to evaluate if MTR is viable and sufficiently attractive to Customers to justify the Authority amending the Code to introduce MTR;
- (c) to discover and highlight risks and constraints that might impact negatively on electricity markets if MTR were added to the Code; and
- (d) to understand more about the different business models and offerings that might be developed if MTR were added to the Code.

A detailed description of the Pilot is contained in the Pilot operational requirements (**Operational Requirements**), which are published [here](#).

These terms and conditions are about how we, **you** (the Participant entered on the registration page) and other Participants will cooperate and work collaboratively together to achieve the Pilot's objectives. If you accept these terms and conditions - by selecting "I accept" and pressing "continue" - they will form a binding contract (a **Participation Agreement**) between us and you. If you do not accept these terms and conditions then unfortunately you cannot participate in the Pilot.

The person entering into this Participation Agreement on your behalf must have authority from you to do so. This is the "authorised person" entered on the registration page. By accepting these terms and conditions, you confirm you have taken all steps necessary to validly enter into this Participation Agreement and the person entering into this Participation Agreement on your behalf is authorised by you to do so.

Please read these terms and conditions and the Operational Requirements (linked above) carefully before continuing.

### Interpretation

1. In this Participation Agreement, unless the context requires otherwise, capitalised terms have the meanings given to them below or elsewhere in this Participation Agreement or, if not defined below or elsewhere in this Participation Agreement, have the meanings in the Operational Requirements:
  - (a) **Allocation Agent** means the person performing the sub-ICP reconciliation and settlement functions for the Pilot to allocate physical volumes and financial obligations between Traders and Suppliers;
  - (b) **Authority** means the Electricity Authority;
  - (c) **Business Day** means any day of the week other than Saturday, Sunday or a public holiday within the meaning of the Holidays Act 2003;

- (d) **Code** means the Electricity Industry Participation Code 2010;
- (e) **Confidential Information** means information about:
  - (i) the Pilot, or
  - (ii) us, any other Participant, the Connection Agent or the Allocation Agent that becomes known to you as a result of your participation in the Pilot,
 except for such information that is already, or becomes, public knowledge, other than as a result of your breach of this Participation Agreement;
- (f) **Connection Agent** means the person performing the sub-ICP registry function for the Pilot;
- (g) **Customer** means a consumer who is supplied with, or supplies, electricity at an ICP on the network of a Distributor Participant;
- (h) **Customer Information** means information about:
  - (i) the identity or characteristics of a Customer, including the Customer's contact details; or
  - (ii) the Pilot Services received or supplied by a Customer, including the Customer's connection and volume information;
- (i) **Distributor** has the meaning in section 5 of the Electricity Industry Act 2010;
- (j) **ICP** means an installation control point as defined in the Code;
- (k) **Intellectual Property** means all intellectual property rights and interests (including common law rights and interests) in any jurisdiction;
- (l) **MBIE** means the Ministry of Business, Innovation & Employment;
- (m) **Participant** means a Distributor, Trader or Supplier participating in the Pilot, including you;
- (n) **Pilot Advisory Group** means the group of representative Participants referred to in the Operational Requirements;
- (o) **Supplier** means a sub-ICP supplier of a Pilot Service to, or sub-ICP purchaser of a Pilot Service from, a Customer; and
- (p) **Trader** means a person who supplies electricity to, or purchases electricity from, a Customer at the Customer's ICP.

### **Participant Obligations**

2. We and you agree to cooperate and work collaboratively with each other, other Participants, the Connection Agent and the Allocation Agent to achieve the Pilot's objectives.
3. You must participate in the Pilot in accordance with the Operational Requirements, including by complying with any obligation or requirement in the

Operational Requirements that is expressed as something you “must”, “will” or “should” do, or “must not”, “will not” or “should not” do. This includes:

- (a) collecting and sharing information, including:
    - (i) ensuring all necessary information is provided to the Connection Agent to enable the proper and timely recording of sub-ICP connection information;
    - (ii) ensuring all necessary information is provided to the Allocation Agent to enable the proper and timely reconciliation of electricity volumes and calculation of financial obligations;
    - (iii) ensuring all Customer survey results are provided to the Connection Agent as requested by Ara Ake;
    - (iv) ensuring all other information required by the Operational Requirements is provided to the Allocation Agent and/or Connection Agent;
  - (b) arranging access to relevant volume information for the Allocation Agent’s reconciliation of electricity volumes and calculation of financial obligations;
  - (c) timely invoicing and settling of payments for Pilot Services and distribution services based on the Allocation Agent’s calculation of financial obligations;
  - (d) obligations and requirements relating to the Customer experience, including:
    - (i) providing Customers with certain information, including information about how Powerswitch does not offer a comparison service relevant to the Pilot, the term of the Pilot and options available to Customers at the end of the Pilot;
    - (ii) complying with processes for Customers who choose to switch Traders and for disconnecting Customers; and
    - (iii) exchanging information between Participants about network outages, Customer credit management and disconnection; and
  - (e) complying with relevant network operating and connection standards.
4. We may change the Operational Requirements at any time by publishing new Operational Requirements on our website, and will notify you if we do. We will consult with the Pilot Advisory Group before changing the Operational Requirements, unless the change is minor or corrects an error or we consider there are extenuating circumstances that require us to change the Operational Requirements urgently.
5. Without limiting clause 3, you must not do or omit to do anything that unreasonably prevents, discourages or delays a Customer receiving a Pilot Service from, or supplying a Pilot Service to:
- (a) a Supplier instead of a Trader; or

- (b) a new Supplier instead of the Customer's current Supplier for the Pilot Service.
6. There is no charge or fee for participating in the Pilot. However, you must meet all of your own costs of participating in the Pilot. We will not provide you with any payment or compensation for your participation in the Pilot.
- If you are a Supplier, in addition to agreeing to this Participation Agreement, you must enter into agreements with Customers for the Pilot Services you wish to supply to, or receive from, them (**Customer Agreements**).
7. A Customer Agreement:
- (a) must not have a term that extends beyond the End Date;
  - (b) must not be for a generation Pilot Service provided from a non-renewable source;
  - (c) must contain permission from the Customer for you to share the Customer's Customer Information with the relevant Distributor Participant, the relevant Trader Participant, the Connection Agent and the Allocation Agent, and to be used by them, as necessary for the purpose of operating the Pilot;
  - (d) must contain an acknowledgement that the Customer's anonymised Customer Information, may be shared by you, the relevant Distributor Participant, the relevant Trader Participant, the Connection Agent or the Allocation Agent with us, and may be used by us, for the purposes of:
    - (i) analysing the outcomes of the Pilot; and
    - (ii) preparing and publishing reports on the outcomes of the Pilot; and
  - (e) must provide that the Customer can exit the Pilot at any time.
8. Your participation in the Pilot does not exempt you (or any other Participant) from your obligations under the Code, Electricity Industry Act 2010, Privacy Act 2020 or any other relevant legislation or law, to the extent you have any such obligations.

#### **Duration of Pilot**

9. We will publish the start date for the Pilot on our website (**Start Date**). We may change the Start Date at any time by publishing a new Start Date on our website. We will notify you of the Start Date and any changes to it.
10. Subject to clause 11, the end date for the Pilot (**End Date**) is 18 months after the Start Date.
11. At any time before the End Date, we may, in our sole discretion:
- (a) extend the Pilot for one or more fixed periods, in which case the End Date will be extended accordingly; or
  - (b) terminate the Pilot.

12. If we extend or terminate the Pilot, we will provide you with at least 20 Business Days' notice unless, for termination, we consider there are extenuating circumstances that require the Pilot to be terminated on shorter or immediate notice.
13. If you are a Supplier, unless you and the relevant Trader agree otherwise, you must, at the end of the Pilot or as soon as reasonably practicable after the end of the Pilot:
  - (a) stop supplying Pilot Services to, or receiving Pilot Services from, Customers; and
  - (b) ensure the Pilot Services you supply to, or receive from, Customers revert to being supplied or received, or potentially supplied or received, by the relevant Trader.

### **Ending Participation**

14. If we extend the Pilot under clause 11, you may withdraw from the Pilot by notifying us of your withdrawal within 10 Business Days of our notice of extension. You cannot otherwise withdraw from the Pilot without our prior approval, which we may provide or withhold in our sole discretion.
15. We may remove you from the Pilot:
  - (a) if we reasonably consider you have committed, or intend to commit, a material breach of this Participation Agreement (including the Operational Requirements); or
  - (b) in any specific situation provided for in the Operational Requirements.
16. If we remove you from the Pilot under clause 15, we will provide you with at least 10 Business Days' notice of your removal, unless we consider there are extenuating circumstances that require you to be removed on shorter or immediate notice.
17. If you withdraw from the Pilot under clause 14 or if you are removed from the Pilot under clause 15, clause 13 will apply to you as if the Pilot had ended.

### **Information and Confidentiality**

18. We will publish a list of the Participants, including you, on our website.
19. We and you (and each other Participant) must comply with the Privacy Act 2020 in respect of any Customer Information collected and held, including by:
  - (a) disclosing and using the Customer Information only for the purposes consented to by the relevant Customer; and
  - (b) having appropriate systems and processes in place to protect the Customer Information from unauthorised disclosure or use.
20. You must not use any Customer Information you collect or hold for the purposes of the Pilot for any purpose not directly related to the Pilot, including for direct marketing of any products or services (other than Pilot Services as part of the Pilot) supplied by you or any third party. For the avoidance of doubt, this clause does not restrict your rights to use information about a Customer that you collect or hold independently of the Pilot.

21. You must notify us before making any statements about the Pilot to the media, and provide us with a reasonable opportunity to comment on your proposed statement. Alternatively, you may refer any media enquiries about the Pilot to us.
22. Subject to clause 23, you must maintain the Confidential Information as confidential at all times, and must not at any time directly or indirectly:
  - (a) disclose or permit to be disclosed to any person any Confidential Information; or
  - (b) use any Confidential Information for any purpose other than participating in the Pilot in accordance with this Participation Agreement.
23. Clause 22 does not apply to:
  - (a) your disclosure of Confidential Information to your officers, employees, agents or professional advisers who need to know the Confidential Information for the purposes of the Pilot, provided that you are responsible for any unauthorised disclosure or use of Confidential Information by your officers, employees, agents or professional advisers to whom you disclose Confidential Information; or
  - (b) your use or disclosure of Confidential Information:
    - (i) as required by law or by the listing rules of any relevant stock exchange;
    - (ii) as required for the purposes of any legal proceedings; or
    - (iii) as authorised in writing by us.

### **Intellectual Property**

24. All new Intellectual Property developed during the Pilot (**Pilot IP**) will be exclusively owned by the party who developed it.
25. We will exclusively own all new Intellectual Property in all reports we prepare on Pilot outcomes and post-Pilot recommendations. You agree we may incorporate any Pilot IP owned by you in such reports, but will not include any of your commercially sensitive information.

### **Liability**

26. You acknowledge and agree that:
  - (a) you are participating in the Pilot at your own risk; and
  - (b) we are not responsible or liable for, and give no warranties or representations as to:
    - (i) the outcomes of the Pilot, either generally or for you specifically; or
    - (ii) the acts or omissions of any Participant, the Connection Agent or the Allocation Agent.

27. Clauses 28 and 29 apply to:
- (a) our, any other Participant's, the Connection Agent's or the Allocation Agent's liability to you (in which case we, the other Participant, the Connection Agent or the Allocation Agent is the **First Party** and you are the **Second Party**)
  - (b) your liability to us (in which case you are the **First Party** and we are the **Second Party**); and
  - (c) your liability to any other Participant (in which case you are the **First Party** and the other Participant is the **Second Party**).
28. The First Party will not be liable to the Second Party under or for breach of this Participation Agreement or otherwise in connection with the Pilot (whether in contract, tort or otherwise), except in respect of the First Party's:
- (a) fraud;
  - (b) wilful misuse of Customer Information or Confidential Information;
  - (c) wilful infringement of Intellectual Property rights; and
  - (d) if the First Party is you and the Second Party is any other Participant, the First Party's wilful breach of clause 13.
29. The First Party will not be liable to the Second Party under or for breach of this Participation Agreement or otherwise in connection with the Pilot (whether in contract, tort or otherwise) in respect of any:
- (a) indirect or consequential loss or damage suffered or incurred by the Second Party;
  - (b) unless you are the First Party and any other Participant is the Second Party, direct loss of profit, revenue, opportunity or goodwill suffered or incurred by the Second Party; or
  - (c) loss or damage that results from any act or omission by the Second Party.
30. You, as the Second Party referred to in clause 27(c) of any other Participation Agreement between us and any other Participant, agree to the exclusions of liability in clauses 28 and 29 of the other Participation Agreement.

### **General**

31. Clauses 13 and 18 to 38 will survive the end of the Pilot or your withdrawal or removal from the Pilot.
32. If there is a conflict between the terms of this Participation Agreement and the Operational Requirements, the terms of this Participation Agreement will prevail.
33. Any notices required to be made to us under this Participation Agreement may be sent to the email address for Pilot notices published on our website. Any notices required to be made to you under this Participation Agreement may be sent to the email address you provided when you registered as a Participant.

34. Except as provided for in this clause, this Participation Agreement is not intended to (and does not) confer any rights on any person not a party to it. The following clauses are for the benefit of, and are intended to be enforceable against you by, the following third parties:

Clause	Third parties
13	other Participants
20	other Participants
22	other Participants, Connection Agent, Allocation Agent
28, 29 and 29	other Participants, Connection Agent, Allocation Agent
30	other Participants

35. This Participation Agreement records the entire agreement between us and you in relation to the Pilot, and supersedes all previous understandings, arrangements or agreements (whether written or oral) between us and you relating to the Pilot.
36. Nothing in this Participation Agreement constitutes a partnership, joint venture or agency between us and you or authorises either us or you to enter into contractual relationships or incur obligations on behalf of the other.
37. Subject to clause 4, no amendment to this Participation Agreement will be effective unless it is in writing and signed or otherwise accepted by a duly authorised representative of us and you. To the extent permitted by Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017, it is not necessary for us or you to obtain the consent or agreement of any third party to amend this Participation Agreement.
38. This Participation Agreement is governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand courts for all matters arising out of this Participation Agreement or the Pilot.