PARTICIPANT VARIANCE AGREEMENT

Insert full name of Participant

Gas Industry Company Limited

CONTENTS

AGREEMENT DATED Enter date and month **2010**

PARTIES

1. **Insert full legal name of Participant** (**Participant**)

2. **Gas Industry Company Limited** (**Industry Body**)

BACKGROUND AND PURPOSE

A. The New Zealand Gas Exchange (**NZGE**) is a trading platform established for the purpose of facilitating transactionally efficient arrangements for the trading of gas across the Maui Gas Pipeline.

B. The Participant is a participant in the NZGE. Participation in the NZGE is governed by the Rules of the NZGE. The Rules provide for gas to be sold and purchased via the Trading System, and for the traded gas to be delivered to and received from a Trading Hub located on the Maui Pipeline.

C. The Industry Body is required, under the terms of the Hub Interconnection Agreement with MDL, to balance the Trading Hub to maintain the Operational Imbalance (as that term is defined in MPOC) at the notional Welded Points at or as close to zero as possible.

D. As part of its role, the Industry Body will need to "cash out" (by buying gas from, or selling gas to, the Participant) any individual Participant's variance between gas it has sold and/or purchased at the Trading Hub and its Approved Nominations at the Trading Hub on each Transmission Day.

E. The Participant and the Industry Body are required to enter into this Participant Variance Agreement to give effect to:

a. the Industry Body's balancing obligations; and

b. the Participant's obligations to pay for variances between its Approved Nominations and the gas it purchases and/or sells through the Trading System.

THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this Participant Variance Agreement, unless the context indicates otherwise:

(a) **Approved Nomination** has the meaning given to it in MPOC;

(b) **Bill Rate** has the meaning given to it in MPOC;

(c) **Business Day** has the meaning given to in the Rules;

(d) **Changed Provisional Cycle** has the meaning given to it in MPOC;

(e) **Credit Support** means the credit support arrangements set out in clause 16.1(b) or 16.1(c);

(f) **Contract** has the meaning given to it in the Rules;

(g) **Critical Contingency** has the meaning given to it in the Gas Governance (Critical Contingency Management) Regulations 2008;

(h) **Critical Contingency Price** has the meaning given to it in the Gas Governance (Critical Contingency Management) Regulations 2008;

(i) **Curtailed Nomination** means an Approved Nomination made by a Participant on the relevant Transmission Day at any Receipt Point or Delivery Point on the Maui Pipeline that is curtailed under MPOC, and which results in that Participant not being able to deliver or take delivery of the relevant quantity of gas under one or more of its Contracts on that Transmission Day;

(j) **Forced Variance** has the meaning given to it at clause 7;

(k) **Hub Interconnection Agreement** means the Interconnection Agreement between the Industry Body and Maui Development Limited for the notional interconnection of the TH Receipt Point and TH Delivery Point to the Maui Pipeline;

(l) **Incentives Pool Debit** has the meaning set out in MPOC;

(m) **Interest Rate** means the Bill Rate plus 3% per annum;

(n) **Intra-Day Cycle** has the meaning given to it in MPOC;

(o) **Maui Pipeline** has the meaning given to it in MPOC;

(p) **MDL IX** has the meaning given to it in MPOC;

(q) **MPOC** means the code issued by the owners of the Maui Pipeline covering operation of the Maui Pipeline, as amended from time to time;

(r) **Negative Cash-Out Price** means the price used to cash out a Negative Participant Variance as determined by the Industry Body in accordance with clause 6.3;

(s) **Negative Forced Variance** has the meaning given to it at clause 7.3;

(t) **Negative Forced Variance Price** means the price used to cash out a Negative Forced Variance as set out at clause 8.3;

(u) **Negative Mismatch Price** has the meaning given to it in MPOC;

(v) **Negative Participant Variance** has the meaning given to it at clause 5.2;

(w) **Net TQ** has the meaning given to it in clause 3.2;

(x) **Nomination Deadline** means the deadline for the relevant nomination cycle as posted on the MDL IX;

(y) **Nominated Quantity** has the meaning given to it in MPOC;

(z) **OATIS** means the online mechanism used to implement the MDL IX by which parties with interconnection agreements and transmission agreements can manage certain information requirements (or any replacement or improved mechanism);

(aa) **Participant Variance** has the meaning given to it at clause 5.1;

(bb) **Positive Cash-Out Price** means the price used to cash out a Positive Participant Variance as determined by the Industry Body in accordance with clause 6.2;

(cc) **Positive Forced Variance** has the meaning given to it at clause 7.3;

(dd) **Positive Forced Variance Price** means the price used to cash out a Positive Forced Variance as set out at clause 8.2;

(ee) **Positive Mismatch Price** has the meaning given to it in MPOC;

(ff) **Positive Participant Variance** has the meaning given to it at clause 5.2;

(gg) **Provisional Cycle** has the meaning given to it in MPOC;

(hh) **Publish** means make available to Participants;

(ii) **Rules** means the "Rules of the New Zealand Gas Exchange" as amended from time to time;

(jj) **Trading Hub or TH** means the "Hub" under the Rules, being the pair of notional welded points (the TH Delivery Point and TH Receipt Point) provided for in the Hub Interconnection Agreement;

(kk) **TH Delivery Point** means the delivery point to which Participants nominate gas (that the Participant is selling pursuant to a trade through the Trading System) for delivery;

(ll) **TH Receipt Point** means the receipt point from which Participants nominate gas (that the Participant is buying pursuant to a trade through the Trading System);

(mm) **Trading Day** has the meaning given to it in the Rules;

(nn) **Trading System** has the meaning given to in the Rules;

(oo) **Transmission Day** has the meaning given to it in MPOC; and

(pp) **Welded Party** has the meaning given to it in MPOC.

1.2 **Interpretation:** In this Participant Variance Agreement, unless the context indicates otherwise:

(a) clause headings and other headings are for ease of reference only and will not affect this Participant Variance Agreement's interpretation;

(b) references to any person include that party's executors, administrators, successors and permitted assigns;

(c) references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;

(d) references to the singular include the plural and vice versa;

(e) references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision that amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;

(f) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

(g) the term "includes" or "including" (or any similar expression) is deemed to be followed by the words "without limitation"; and

(h) references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

2. NOMINATIONS

2.1 If, in respect of any Transmission Day, a Net TQ "buy" or "sell" position exists for the Participant, the Participant will submit a nomination under MPOC as follows:

(a) if the Participant has a Net TQ "buy" position, the Participant must use reasonable endeavours to obtain an Approved Nomination or Approved Nominations for the transport of a quantity of gas equal to its Net TQ from the TH Receipt Point; or

(b) if the Participant has a Net TQ "sell" position, the Participant must use reasonable endeavours to obtain an Approved Nomination or Approved Nominations for the transport of a quantity of gas equal to its Net TQ to the TH Delivery Point.

2.2 The "reasonable endeavours" obligation under clause 2.1 does not apply where a Participant obtains compliant Approved Nominations, but one or more of those Approved Nominations is subsequently curtailed under MPOC.

2.3 The Participant may use the Daisy Chain Nomination process or the Pooled Nomination process provided for by MPOC for its nominations under clause 2.1, but may not use Displaced Gas Nominations as provided for under MPOC.

2.4 The Participant may amend its nomination prior to the Changed Provisional Cycle's Nomination Deadline or any Intra-Day Cycle's Nomination Deadline, but will only do so on the basis that its amended nomination matches its Net TQ "buy" or "sell" position in accordance with clause 2.1.

3. NET TQ AND ADJUSTMENTS TO NET TQ

3.1 A Participant's Net TQ will be calculated by the Industry Body in accordance with this clause. Net TQ is used by the Industry Body for the purposes of calculating Participant Variances under clause 5 and Forced Variances under clause 7.

3.2 Subject to amendments made under clause 3.3, a Participant's Net TQ will be the absolute value of the difference (if any) between the total quantity of gas purchased by a Participant and the total quantity of gas sold by that Participant in respect of a given Transmission Day as a result of Contracts issued by the Trading System Operator.

3.3 Where in respect of a given Transmission Day:

(a) a Participant has its Approved Nomination curtailed under MPOC; or

(b) a Participant is notified under the Rules that the Participant with whom it was to trade gas under a Contract is unable to deliver that gas or uplift that gas,

the Industry Body may, but is under no obligation to, adjust that Participant's Net TQ so as to reduce, or avoid, a Participant Variance occurring as a result of (a) and (b) above. The Industry Body will, from time to time, Publish principles setting out how it will exercise its discretion to adjust Net TQs under this clause 3.3.

4. CONFIRMATIONS

4.1 As the Industry Body is the Welded Party at the Trading Hub, the Industry Body will arrange the following to be automatically confirmed in OATIS: the Participant's Nominated Quantities in respect of the Provisional Cycle, Changed Provisional Cycle and each Intra-Day Cycle in OATIS.

4.2 For the avoidance of doubt, the Industry Body will not check whether a Participant’s Nominated Quantity matches that Participant’s Net TQ. A Participant is solely responsible for any difference between its Approved Nomination and its Net TQ.

5. PARTICIPANT VARIANCE

5.1 A Participant Variance exists for a Participant if, on a Transmission Day, there is a difference between that Participant's:

(a) Approved Nomination at the TH Receipt Point or TH Delivery Point (as the case may be); and

(b) Net TQ.

A Participant Variance will be expressed in gigajoules.

5.2 The Participant Variance will be calculated as follows:

(a) For nominations at the TH Delivery Point, the Participant Variance is calculated as:

Participant Variance = Approved Nomination – Net TQ

If the amount is positive, there is a Positive Participant Variance. If the amount is negative there is a Negative Participant Variance.

(b) For nominations at the TH Receipt Point, the Participant Variance is calculated as:

Participant Variance = Net TQ – Approved Nomination

If the amount is positive, there is a Positive Participant Variance. If the amount is negative there is a Negative Participant Variance.

6. CASH-OUT OF PARTICIPANT VARIANCES

6.1 Subject to clause 6.5, where a Participant Variance exists at the end of a Transmission Day (and regardless of the reason for the Participant Variance) the Industry Body will:

(a) purchase from the Participant the surplus gas represented by a Positive Participant Variance for an amount calculated by multiplying the Positive Participant Variance by the Positive Cash-Out Price; or

(b) sell to the Participant the shortfall gas represented by a Negative Participant Variance for an amount calculated by multiplying the Negative Participant Variance by the Negative Cash-Out Price.

6.2 Subject to clause 6.5, the Positive Cash-Out Price for the day on which a Positive Participant Variance was incurred will be determined by the Industry Body to be the lowest of:

(a) the lowest price at which any gas product has been traded on the Trading System (on a per gigajoule basis) during the 7 Trading Days prior to the day on which the Positive Participant Variance was incurred;

(b) the lowest price (on a per gigajoule basis) at which the Participant has a Contract to transact gas for that day; and

(c) P * X
where:

P = the Positive Mismatch Price in gigajoules for the day on which the Positive Participant Variance was incurred

X = an adjustment factor, as determined by the Industry Body from time to time in accordance with clause 6.4

For the avoidance of doubt, where no gas has been traded on the Trading System in the period set out at clause 6.2(a), the Positive Cash-Out Price per gigajoule will be calculated according to the lower of 6.2(b) and 6.2(c).

6.3 Subject to clause 6.5, the Negative Cash-Out Price for the day on which a Negative Participant Variance was incurred will be determined by the Industry Body to be the highest of:

(a) the highest price at which any gas product has been traded on the Trading System (on a per gigajoule basis) during the 7 Trading Days prior to the day in which the Negative Participant Variance was incurred;

(b) the highest price (on a per gigajoule basis) at which the Participant has a Contract to transact gas for that day; and

(c) N * Y :

where:

N = the Negative Mismatch Price per gigajoule for the day on which the Negative Participant Variance was incurred

Y = an adjustment factor, as determined by the Industry Body from time to time in accordance with clause 6.4

For the avoidance of doubt, where no gas has been traded on the Trading System in the period set out at clause 6.3(a), the Negative Cash-Out Price per gigajoule will be calculated according to the higher of 6.3(b) and 6.3(c).

6.4 The component "X" in clause 6.2(c) and the component "Y" in clause 6.3(c) will be determined by the Industry Body from time to time. The Industry Body will Publish the components "X" and "Y" and will give Participants not less than 10 Business Days' notice of any change in the components "X" and "Y". It is the Industry Body's intention to use the components "X" and "Y" to create the appropriate incentives for Participants to avoid Participant Variances.

6.5 Where:

(a) a Participant Variance is also a Forced Variance, this clause 6 will not apply and instead the Positive Forced Variance Price and the Negative Forced Variance Price calculated under clause 8 will apply to that Participant Variance;

(b) a Participant Variance occurred on the same day as a Critical Contingency, this clause 6 will not apply and instead the Positive Participant Variance Price and the Negative Participant Variance Price calculated under clause 10 will apply to that Participant Variance.

7. FORCED VARIANCE

7.1 A Forced Variance exists for a Participant if, on a Transmission Day:

(a) that Participant has had its Approved Nomination at the Trading Hub curtailed through an action taken under section 15 of MPOC to balance the Trading Hub; and

(b) there are no Intra Day Cycles remaining for that Transmission Day.

A Forced Variance will be expressed in gigajoules.

7.2 A Forced Variance is distinguished from a Participant Variance because in the case of a Forced Variance, a Participant's curtailment is the result of a balancing action taken under section 15 of MPOC to balance the Trading Hub and the Participant does not have the opportunity to take action to rectify the situation. For this reason, Participants with a Forced Variance are treated more favourably (in terms of the price the Industry Body pays to purchase "surplus" gas or the price at which the Industry Body sells "shortfall" gas) than Participants with a Participant Variance.

7.3 The Forced Variance will be calculated as follows:

(a) For nominations at the TH Delivery Point, the Forced Variance is calculated as:

Forced Variance = [curtailed nominations that satisfy clause 7.1] – Net TQ

If the amount is positive, there is a Positive Forced Variance. If the amount is negative there is a Negative Forced Variance.

(b) For nominations at the TH Receipt Point, the Forced Variance is calculated as:

Forced Variance = Net TQ – [curtailed nominations that satisfy clause 7.1]

If the amount is positive, there is a Positive Forced Variance. If the amount is negative there is a Negative Forced Variance.

8. CASH-OUT OF FORCED VARIANCES

8.1 Subject to clauses 8.4 and 8.5, where a Forced Variance exists at the end of a Transmission Day the Industry Body will*:*

(a) purchase from the Participant the surplus gas represented by any Positive Forced Variance for an amount calculated by multiplying the Positive Forced Variance by the Positive Forced Variance Price determined in accordance with clause 8.2; or

(b) sell to the Participant the shortfall gas represented by any Negative Forced Variance for an amount calculated by multiplying the Negative Forced Variance by the Negative Forced Variance Price determined in accordance with clause 8.3.

8.2 The Positive Forced Variance Price for the day on which a Positive Forced Variance was incurred will be equal to the Negative Cash-Out Price on that day.

8.3 The Negative Forced Variance Price for the day on which a Negative Forced Variance was incurred will be equal to the Positive Cash-Out Price on that day.

8.4 Where a Forced Variance occurred on the same day as a Critical Contingency, this clause 8 will not apply and instead the Positive Forced Variance Price and the Negative Forced Variance Price calculated under clause 10 will apply to that Forced Variance.

8.5 Despite this clause 8, the Industry Body will only be obliged to cash out Negative Forced Variance to the extent that there is offsetting Positive Forced Variance.

9. INVOICES AND STATEMENTS

9.1 The Industry Body will issue:

(a) invoices to Participants with a Negative Participant Variance or a Negative Forced Variance; or

(b) credit notes to Participants with a Positive Participant Variance or a Positive Forced Variance,

in respect of each Transmission Day.

9.2 The Industry Body will:

(a) issue invoices and credit notes on the fifth Business Day after the Transmission Day in which the Participant Variance or Forced Variance was incurred; and

(b) ensure invoices are issued with a payment date of the 20th of the month following the month in which the Participant Variance or Forced Variance occurred.

9.3 No later than 10 days after the end of each calendar month, the Industry Body will issue a statement to each Participant with a Participant Variance or Forced Variance on any Transmission Day in that calendar month. The statement will show:

(a) that Participant's Participant Variances and Forced Variances in respect of each Transmission Day in that calendar month;

(b) the dollar amounts from the invoices and credit notes issued to that Participant that correspond to each Participant Variance and Forced Variance in that calendar month;

(c) the net amount of all of that Participant's Participant Variances and Forced Variances for that month; and

(d) the balance payable to or by the Participant.

9.4 Where a statement shows a balance payable by the Participant, the Participant will pay the balance by direct credit (to the bank account nominated by the Industry Body) no later than the 20th of the month in which the statement was issued.

9.5 Where a statement shows a balance payable by the Industry Body, the Industry Body will pay the balance by direct credit (to the bank account nominated by the Participant) no later than the 20th of the month in which the statement was issued.

9.6 If the Industry Body determines that an invoice or statement issued in accordance with this clause 9 is materially incorrect, the Industry Body will reissue such invoice or statement prior to the due date for payment of the original invoice or statement. The reissued invoice or statement will be due on the due date of the original invoice or statement or five days after the reissue date, whichever is the later.

9.7 Payments due for payment on a day that is not a Business Day will be deemed to be due on the next Business Day.

9.8 If any monies payable under this Agreement are not paid by the due date, the overdue amount will (without prejudice to any other right or remedy under this Participant Variance Agreement) bear interest at the Interest Rate from the date on which these monies fall overdue until the date on which payment (including interest) is made in full. Interest will be calculated by the party owed the monies daily and compounded monthly. Interest will be paid by the party who owes the monies.

9.9 Notwithstanding clauses 9.1 through 9.5, if a Participant accumulates unpaid invoices in excess of $10,000, then the Industry Body may request immediate payment of those invoices.

10. CRITICAL CONTINGENCY EVENT

10.1 Where a Negative Participant Variance or a Negative Forced Variance occurred on the same day as a Critical Contingency, then the applicable Critical Contingency Price in respect of that Critical Contingency will be used to “sell” to the Participant the shortfall gas represented by any Negative Participant Variance or Negative Forced Variance.

10.2 Where a Positive Participant Variance or a Positive Forced Variance occurred on the same day as a Critical Contingency, the price at which the Industry Body will "purchase" from the Participant surplus gas represented by any Positive Participant Variance or Positive Forced Variance will depend on the extent to which there are offsetting Negative Participant Variances and Negative Forced Variances. If:

(a) the magnitude of the sum of the Negative Participant Variances and Negative Forced Variances is greater than or equal to the magnitude of the sum of the Positive Participant Variances and Positive Forced Variances, then the Positive Cash-Out Price and the Positive Forced Variance Price will be the applicable Critical Contingency Price in respect of that Critical Contingency; or

(b) the magnitude of the sum of the Negative Participant Variances and Negative Forced Variances (Total Negative Variance) is less than the magnitude of the sum of the Positive Participant Variances and Positive Forced Variances (Total Positive Variance), then the Positive Cash-Out Price and the Positive Forced Variance Price will be calculated as the Critical Contingency Price multiplied by the ratio of Total Negative Variance to Total Positive Variance (for example, if the Critical Contingency Price is $10, the Total Negative Variance is 15 and the Total Positive Variance is 20, then the Positive Cash-Out Price and the Positive Forced Variance Price will be calculated as follows: $10 x 15/20 = $7.50).

10.3 Invoices, credit notes, and statements will be issued in accordance with clause 9, except, where the Critical Contingency Price applies or is used to determine the appropriate price, the Industry Body will not be required to issue any invoices, credit notes or statements until the Critical Contingency Price is available.

11. CONFIDENTIALITY

11.1 The Industry Body will treat as confidential, and will not directly or indirectly disclose or permit to be disclosed to any person, information provided by a Participant under this Participant Variance Agreement, except:

(a) to the extent required by this Participant Variance Agreement, the Hub Interconnection Agreement or the Rules;

(b) as required by law;

(c) where such information is already or becomes public knowledge, otherwise than as a result of a breach by the Industry Body of this clause 11; or

(d) as authorised in writing by the relevant Participant.

11.2 All information provided to the Industry Body under this Participant Variance Agreement is to be used by the Industry Body for the sole purpose of performing its obligations under this Participant Variance Agreement, the Hub Interconnection Agreement and the Rules.

12. ASSIGNMENT

12.1 Subject to clause 12.2, neither party will transfer or assign all or any of its rights or obligations under this Participant Variance Agreement to any other person without the other party's prior written approval.

12.2 Notwithstanding clause 12.1, the Industry Body may transfer all of its rights and obligations under this Participant Variance Agreement to the Energy Commission formed under section 43ZZH of the Gas Act 1992.

13. TERM

13.1 This Participant Variance Agreement will terminate on the earlier of:

(a) the Rules ceasing to require the Participant to be party to a Participant Variance Agreement; or

(b) the Participant becoming a Former Participant under the Rules,

provided that this Participant Variance Agreement will not cease to be of effect until the Participant's obligations are fulfilled insofar as they relate to Contracts made under the Rules prior to the date of the occurrence of the event at clause 13.1(a) or 13.1(b) (as applicable).

13.2 The Participant and the Industry Body acknowledge that the Rules may be amended from time to time, which may require a new Participant Variance Agreement to be entered into. If so, and the Participant wishes to continue to be a Participant under the Trading System, the Participant will enter into a new Participant Variance Agreement.

14. COSTS AND PROFIT

14.1 If the Industry Body, as a Welded Party in respect of the Trading Hub, is required to pay any amount under MPOC (including amounts in respect of an Incentives Pool Debit):

(a) where the amount has been incurred in relation to a specific Participant or Participants, the Industry Body shall recover such an amount from the relevant Participant; or

(b) where the amount has not been incurred in relation to a specific Participant or Participants or the specific Participant cannot be identified, the Industry Body will first use any Surplus under clause 14.2 to pay these costs. The Industry Body shall recover any remaining amounts from persons who were Participants at any time during the 6 months immediately preceding the event being charged for (**Eligible Participants**). Eligible Participants will be liable to contribute to such amount on a pro rata basis, according to the total number of gigajoules each Eligible Participant has traded with another Participant through the Trading System over the 6 months immediately preceding the event being charged for.

Amounts will be invoiced as soon as reasonably practicable and will be payable by the relevant Participant by the fifth Business Day after receipt of the invoice or the due date specified on the invoice (which ever is the later).

14.2 As soon as reasonably practicable after the end of the Industry Body's financial year (**Year End**), the Industry Body will reconcile the total amounts paid and received in respect of:

(a) purchases of surplus gas under clauses 6.1(a) and 8.1(a) and sales of that gas under MPOC; and

(b) purchases of gas under MPOC and sales of that shortfall gas under clause 6.1(b) and 8.1(b).

If the result is a net surplus (**Surplus**), then that Surplus will be applied to the Industry Body's costs associated with the Trading System (**Costs**) in accordance with clause 14.3. If the result is a net deficit (**Deficit**), then that Deficit will be recovered in accordance with clause 14.5.

14.3 The Industry Body will apply the Surplus to Costs incurred in the 12 months immediately preceding Year End, provided that the Industry Body determines such costs have not already been recovered by other means.

14.4 If after applying any Surplus to Costs in accordance with clause 14.3, there is an amount remaining, the Industry Body will apply this amount to future Costs that would otherwise be met through levy funding.

14.5 The Industry Body will recover any Deficit from persons who were Participants at any time during the 12 months immediately preceding Year End (**Year-End Eligible Participants**). Year-End Eligible Participants will be liable to contribute to such amount on a pro rata basis, according to the total number of gigajoules each Year-End Eligible Participant has traded with another Participant through the Trading System over the 12 months immediately preceding Year End.

15. DISPUTE RESOLUTION

15.1 If either party believes that there is a dispute between the parties concerning this Participant Variance Agreement, that party will give notice to the other party setting out details of the dispute (the **Dispute Notice**). If a Dispute Notice is given, the following process will apply:

(a) The parties will nominate and direct an appropriate person from within their organisation to use reasonable endeavours to resolve the dispute within 10 Business Days of the date of the Dispute Notice;

(b) If the dispute is not resolved under clause 15.1(a) above, the parties may agree to refer the dispute to an independent expert agreed by the parties; or

(c) If the parties do not agree to refer the dispute to an independent expert within 20 Business Days of the date of the Dispute Notice, the dispute must be referred to a sole arbitrator under the Arbitration Act 1996. If the parties are unable to agree on an arbitrator within 30 Business Days of the date of the Dispute Notice, such arbitrator is to be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

A decision of the independent expert or arbitrator is binding on the parties.

15.2 For the avoidance of doubt, where a breach of this Participant Variance Agreement also constitutes an actual breach of the Rules or is related to an actual breach of the Rules, then the parties may agree to resolve any dispute arising out of that actual breach of the Rules together with the breach of this Participant Variance Agreement. The dispute resolution process under this Participant Variance Agreement and the Rules is the same.

15.3 This clause 15 does not in any way affect a Party's rights to apply for injunctive relief from the Court.

16. PRUDENTIAL REQUIREMENTS

16.1 The Participant must, at all times during the term of this Participant Variance Agreement, have in place and comply with one of the following prudential requirements (for the purpose of providing security to the Industry Body in relation to payments required under this Participant Variance Agreement):

(a) the Participant must itself hold and maintain an acceptable credit rating in accordance with clause 16.2;

(b) the Participant must arrange for a third party to provide one or a combination of the following securities, in a form acceptable to the Industry Body, for the amount required in accordance with this clause 16, provided that the party providing the security maintains an acceptable credit rating in accordance with clause 16.2;

(i) an unconditional payment guarantee or letter of credit in favour of the Industry Body; or

(ii) an unconditional third party guarantee in favour of the Industry Body; or

(iii) any combination of the securities listed in clause 16.1(b)(i) or 16.1(b)(ii) above, as agreed between the Parties; or

(c) the Participant must put in place, and comply with, such other arrangements as may be agreed to by the Industry Body.

Subject to clause 16.8, the Participant may elect which of the prudential requirements it satisfies.

16.2 For the purposes of clause 16.1, an acceptable credit rating means that the Participant, or any third party providing security pursuant to clause 16.1(b) (as the case may be), must carry a long-term credit rating:

(a) of at least Baa2 (Moody's Investor Services Inc.), BBB (Standard & Poor's Ratings Group), B (AM Best), or an equivalent rating from any other reputable rating agency which is acceptable to the Industry Body; and

(b) if a party has the minimum acceptable credit rating, this rating is not subject to negative credit watch.

16.3 The Participant, or the party providing security pursuant to clause 16.1(b) (as the case may be), will provide evidence of the acceptable credit rating (as set out in clause 16.2) at the time of signing this Participant Variance Agreement, and at such other times as the Industry Body may reasonably require.

16.4 Where security takes the form of Credit Support, the minimum amount of such security shall be (subject to amendment under clause 16.5) an amount required to meet, as at the date of this Participant Variance Agreement, any criteria Published by the Industry Body.

16.5 The Industry Body may, from time to time but no more frequently than quarterly, review the amount of security provided pursuant to clause 16.4, and require such amount to be adjusted up or down to reflect the then current criteria as Published by the Industry Body.

16.6 Where a Participant has complied with the requirements of clause 16.1, that Participant shall as soon as reasonably practicable notify the Industry Body if:

(a) the Participant ceases to comply with the requirements of clause 16.1;

(b) the Participant reasonably believes that its financial position is likely to be materially adversely impaired such that its ability to pay any invoice issued by the Industry Body pursuant to clause 9.1(a) will be consequently affected; or

(c) a third party security provider (upon which current satisfaction by the Participant of the prudential requirements in this clause 16 is dependent) no longer holds an acceptable credit rating in terms of clause 16.2.

16.7 Where the Industry Body believes that the Participant should have given notice under clause 16.6 and the Industry Body has not received a copy of any such notice, the Industry Body may enquire of the Participant as to whether it should have given such notice. Any such enquiry shall be in writing and be addressed to the Chief Executive (or equivalent, as the case may be) of the Participant. If such notice should have been given, the Participant shall give notice immediately, or if no notice is required, the Participant must respond to the Industry Body in writing within 2 Business Days of receipt of the Industry Body's notice under this clause 16.7. Correspondence sent or received by either party under this clause shall be treated as confidential by the Parties.

16.8 If the Participant fails to pay the Industry Body any amount set out in any invoice issued by the Industry Body pursuant to clause 9.1(a) on the due date for payment, then on the expiry of five days prior written notice from the Industry Body, and without limiting any other right the Industry Body may have under this Participant Variance Agreement or the Rules, the Industry Body may:

(a) make a claim under any Credit Support to the extent payment is due and the Participant shall procure such payment;

(b) require Credit Support from the Participant, if Credit Support has not already been provided by the Participant;

(c) require a change to the type of Credit Support provided for the Participant; and/or

(d) require an increase to the level of Credit Support held for the Participant.

and, in such circumstances, the amount of Credit Support required shall be as determined by the Industry Body.

16.9 Where any claim is made under any Credit Support instrument a Participant, upon notification from the Industry Body, must procure replacement Credit Support so that the Credit Support requirements set out in clause 16.1 continue to be met.

16.10 Where a Participant is required to provide new, replacement or additional Credit Support, it must do so within 20 Business Days of the Industry Body's written request.

16.11 If this Participant Variance Agreement is terminated, the Industry Body will release any associated security to the extent that all Contracts formed by the Participant through the Trading System have been completed and the Participant has paid all outstanding amounts.

17. LIABILITY

17.1 Notwithstanding anything else in this Participant Variance Agreement, and to the extent permitted by law, the Industry Body will not have any liability to any Participant, Suspended Participant or Former Participant in connection with:

(a) any loss or damage arising as a result of the Industry Body’s tortious default (including negligence); or

(b) any indirect or consequential loss or damage, or any loss of profits or savings or any economic loss, arising in connection with this Participant Variance Agreement.

17.2 The Industry Body may rely on any information provided to it by MDL, the Trading System, and the Hub Operator as accurate.

18. NOTICES

18.1 Where this Participant Variance Agreement provides for the giving of a notice, such notice must be in writing and be:

(a) delivered by hand to the nominated physical address of the addressee; or

(b) sent by post to the nominated postal address of the addressee; or

(c) sent by facsimile to the nominated facsimile number of the addressee; or

(d) sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.

18.2 For the purposes of this clause:

(a) the nominated address details for any Participant will be those specified in the Register of Participants (as defined in the Rules);

(b) the Industry Body will Publish nominated address details for itself.

18.3 Notices given are deemed to have been received:

(a) in the case of notices delivered by hand, at the time that such notice is left with an apparently responsible person at the recipient's nominated address;

(b) in the case of notices sent by post, two Business Days (if posted within New Zealand to an address in New Zealand) or ten Business Days (if posted by airmail from one country to another) after the date of posting;

(c) in the case of notices sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the facsimile machine from which the notice or other communication was sent in its entirety to the recipient's facsimile number;

(d) in the case of notices sent by electronic transmission or any other similar method of electronic communication, at the time:

(i) the computer system used to transmit the notice has received an acknowledgment or receipt addressed to the electronic mail address of the person transmitting the notice; or

(ii) the person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee;

except that if a notice is deemed to have been received outside of a Business Day, that notice will be taken as having been duly received by the recipient at 9 am on the next occurring Business Day.

19. AMENDMENT OF PARTICIPANT VARIANCE AGREEMENT

19.1 The Industry Body may review and amend the terms of this Participant Variance Agreement from time to time, where it considers it necessary or appropriate to:

(a) enable it to effectively balance the Trading Hub;

(b) reflect the terms of MPOC;

(c) be consistent with the Rules; or

(d) reflect any industry gas balancing and/or allocation arrangements or legislation (including rules and regulations) related to or affecting gas balancing arrangements.

19.2 The Industry Body may only amend the terms of this Participation Variance Agreement if it makes the same amendments to all other Participant Variance Agreements.

19.3 Subject to clause 19.5, the Industry Body will consult with Participants on any amendment of the Participant Variance Agreement.

19.4 If, after consultation with Participants, the Industry Body determines to make any amendment to this Participant Variance Agreement, the Industry Body must Publish:

(a) the date on and from which the amendments will take effect, which must be the later of:

(i) 20 Business Days after the date of Publication; or

(ii) the day after the latest supply end date under any Contract (as that term is defined in the Rules) in existence at the date of Publication; and

(b) a copy of the amended Participant Variance Agreement that will apply from that date.

19.5 Where an amendment of the Participant Variance Agreement is considered by the Industry Body, in its absolute discretion, to be urgent, the Industry Body may:

(a) Publish the amendment of the Participant Variance Agreement that will take effect from the day after the date of Publication; and

(b) consult with Participants on the amendment of the Participant Variance Agreement, after the amendment has been Published; and

(c) make any further amendment to the Participant Variance Agreement consequent upon that consultation and clause 19.4 will apply.

19.6 If a Participant does not wish to be bound by the amended Participant Variance Agreement, that Participant must notify the Industry Body prior to the day the amended Participant Variance Agreement will take effect that it wishes to cease its participation in the Trading System. The Participant will become a Former Participant (as that term is defined in the Rules) with effect from the day the amended Participant Variance Agreement takes effect.

19.7 For the avoidance of doubt:

(a) no amendments made in accordance with this clause may be applied retrospectively; and

(b) nothing in this clause limits a Participant's right to elect to terminate its participation in the Trading System under the Rules.

20. GENERAL

20.1 Subject to any other provision of this Participant Variance Agreement expressly providing for the updating or amendment of this Participant Variance Agreement, no amendment to this Participant Variance Agreement will be valid unless it is in writing and executed by both parties.

20.2 No party may waive any of its rights or remedies under this Participant Variance Agreement without the other party's prior written consent.

20.3 This Participant Variance Agreement is governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Participant Variance Agreement.

20.4 If any provision contained in this Participant Variance Agreement is held to be illegal, invalid or unenforceable, it will be severable, will be deemed to be deleted from the body of this Participant Variance Agreement and will not affect the validity or enforceability of any other provisions in this Participant Variance Agreement.

20.5 Except as expressly provided for in this Participant Variance Agreement, nothing in this Participant Variance Agreement will constitute either party as the partner, agent, employee or officer of, or as a joint venturer with, the other party. Neither party will make any contrary representation to any other person.

20.6 This Participant Variance Agreement may be executed in one or more counterpart copies which, read together, will constitute one and the same instrument. Any facsimile copy of this Participant Variance Agreement (including any facsimile copy of any document evidencing either party's execution of this Participant Variance Agreement) may be relied on by the other party as though it were an original copy.

20.7 The rights, powers and remedies provided in this Participant Variance Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.

20.8 Each party will do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Participant Variance Agreement.

SIGNATURES

SIGNED by **GAS INDUSTRY COMPANY LIMITED** by:

Full name of director/authorised signatory	Signature of director/authorised signatory
Full name of director/authorised signatory	Signature of director/authorised signatory

SIGNED by **Insert full legal name of Participant** by:

Full name of director/authorised signatory	Signature of director/authorised signatory
Full name of director/authorised signatory	Signature of director/authorised signatory