

GAS TRADING SYSTEM AGREEMENT

between

GAS INDUSTRY COMPANY LIMITED

and

THE MARKETPLACE COMPANY LIMITED

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THIS AGREEMENT made the _____ day of _____ 2008

BETWEEN **GAS INDUSTRY COMPANY LIMITED** a company registered under the Companies Act 1993 with its registered office at Level 9, State Insurance Tower, 1 Willis Street, Wellington (**Gas Industry Co**)

AND **THE MARKETPLACE COMPANY LIMITED** a company registered under the Companies Act 1993 with its registered office at Level 2, Deloitte House, 10 Brandon Street, Wellington (**Service Provider**)

BACKGROUND

- A.** Gas Industry Co has selected the Service Provider as its preferred supplier of services and deliverables for a system for trading gas to be established under the Rules of the New Zealand Gas Exchange.
- B.** The Service Provider has agreed to supply services and deliverables to Gas Industry Co in accordance with this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context requires otherwise:

Acceptance Certificate means, in respect of the Trading System, a written notice from Gas Industry Co to the Service Provider recording that Gas Industry Co is satisfied that the Acceptance Criteria for the Trading System have been met;

Acceptance Criteria means the following criteria:

- (a) the Trading System complies with the Specifications; and
- (b) all warranties set out in clause 16 are true and correct;

Acceptance Tests means the acceptance tests recorded or specified in Schedule 5 or as otherwise agreed in writing by the parties;

Acceptance Test Plan means the plan for the Acceptance Tests for the Trading System recorded or specified in Schedule 5, or as otherwise agreed in writing by the parties;

Agreement means this agreement and the schedules to this agreement;

Best Industry Practice means, in relation to any activity or service, the best practice or standard (recognised nationally or internationally) for that type of activity or service (in terms of quality, productivity, effectiveness and performance);

Break Costs means the value of the monthly fee specified in paragraph 3 of Schedule 7 multiplied by:

- (a) 6, if this Agreement is terminated 12 months or less after the Launch Date; and

- (b) **X**, if this Agreement is terminated more than 12 months after the Launch Date, where:

$$X = 6 * \frac{Y}{24}; \text{ and}$$

Y is the number of full months from the date on which this Agreement is terminated until the date three years after the Launch Date;

Change has the meaning set out in clause 8.1;

Change Control Process means the process set out in Schedule 8;

Change Request has the meaning set out in clause 2 of Schedule 8.

Commencement Date means the date of this Agreement;

Confidential Information means, in relation to either party, any information (in any form whether written, electronic or otherwise):

- (a) that is confidential to that party and relating to the Deliverables and the Services;
- (b) relating to the business, operations, facilities or Intellectual Property of that party or its suppliers or customers;
- (c) disclosed by that party to the other party on the express basis that such information is confidential;
- (d) in relation to the Service Provider, includes information obtained by Gas Industry Co during an audit under clause 9; or
- (e) which might reasonably be expected by that party to be confidential in nature,

and, in relation to Gas Industry Co, includes information (in any form whether written, electronic or otherwise) relating to Trades and Participants. Confidential Information does not include information that is:

- (f) at the date of receipt by either party, in the public domain or that subsequently enters the public domain without any breach of this Agreement;
 - (g) at the date of receipt by either party, already known to that party;
 - (h) received in good faith by either party from a third party without an obligation of confidentiality;
 - (i) agreed by either party in writing to be information to which this Agreement does not apply; or
 - (j) independently acquired or developed by either party without breaching their respective obligations under this Agreement;
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Deliverable means any deliverable to be supplied by the Service Provider to Gas Industry Co which is specified in Schedule 1, including each item of Software and Documentation;

Documentation means any document which the Service Provider must prepare and/or deliver to Gas Industry Co in accordance with Schedule 1;

Error means, in respect of the Trading System, any failure to comply with the Acceptance Criteria;

Fees mean the fees set out in Schedule 7, which are payable by Gas Industry Co to the Service Provider;

Force Majeure means, in relation to either party (the "**Affected Party**"), an event or circumstance which is beyond the reasonable control of the Affected Party, including (without limitation):

- (a) an act of God;
- (b) an act of public enemy, or declared or undeclared war or threat of war;
- (c) a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party); or
- (d) a national emergency, pandemic, epidemic and loss of supply of essential services, including electrical power and telecommunication services,

but does not include any event or circumstance which could have been avoided, prevented or circumvented by the Affected Party exercising Best Industry Practice;

GST means goods and services tax payable under the Goods and Services Tax Act 1985, at the rate prevailing at the time of supply;

Impact Report has the meaning set out in clause 3 of Schedule 8;

Implementation Plan means the Implementation Plan set out in Schedule 4;

Intellectual Property means patents, registered designs, petty patents, utility models, trade marks (including logos and trade dress), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, confidential information, know-how and trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

IP Claim has the meaning set out in clause 13.2;

Late Interest means, in respect of any amount properly invoiced by the Service Provider and not paid when due, interest accrued on that amount at a rate of the 90 day commercial bill rate as published on the Reuters monitor service and applying at 10.30am on the relevant day, plus 2% per annum for the period from (but excluding) the due date to (and including) the date on which the amount is paid, with such interest accruing daily and compounding annually;

Law means any rules of common law, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time and, in the case of the Service Provider, includes any applicable industry codes of conduct and any contract or other enforceable obligation of the Service Provider relating to the Deliverables and Services;

Launch Date means the date on which an Acceptance Certificate is issued to the Service Provider;

Licence has the meaning set out in clause 14.1.

Milestone means a milestone recorded in the Implementation Plan;

Milestone Date means a date by which a Milestone must be achieved, as specified in the Implementation Plan;

New Release means:

- (a) any new version of software released generally to users to replace, modify or attach to any Software to provide additional functionality, not being a maintenance release covered by paragraph (b); or
- (b) any software released generally to users to replace, modify or attach to any Software to rectify any Error, including releases which, in addition to rectifying an Error, provide additional functionality;

Personnel means:

- (a) in relation to Gas Industry Co, Gas Industry Co's personnel (including its representatives, employees and agents); and
- (b) in relation to the Service Provider, the Service Provider's and each Subcontractor's personnel (including their representatives, employees and agents) used to provide any Deliverables or Services;

Project Manager has the meaning set out in clause 5.2;

Rules mean the Rules of the New Zealand Gas Exchange, as amended from time to time;

Services mean the implementation and training services, support and maintenance services and/or other professional services provided by the Service Provider under this Agreement from time to time, as described in Schedules 1, 3 and 6;

Service Levels mean, for any Services, the standards of service the Service Provider must attain in providing those Services under this Agreement, as set out in Schedule 6;

Site means, in relation to the Deliverables and the Services, the premises for delivery of the relevant Deliverable and/or provision of the relevant Service (as the case may be);

Software means software that is developed and used to operate the Trading System, and which is owned by the Service Provider or a third party and in

respect of which a licence is, or is to be, provided by the Service Provider or a third party to Gas Industry Co under this Agreement, as described in clause 14;

Source Materials means the source code for the Software, including the algorithms, and the Documentation;

Specifications mean all the specifications and requirements as set out in Schedule 2;

Subcontractor means any third party appointed by the Service Provider to supply any of the Deliverables and/or perform any of the Services;

Term means the term of this Agreement described in clause 3;

Termination Date means the date three years after the Launch Date, unless the Agreement is terminated early in accordance with clause 12 or extended in accordance with clause 3.2;

Trade means a trade of gas for money made through the Trading System;

Trading System means the online gas trading system described in Schedule 2;

Warranty Period means in relation to the Software, the ninety day period commencing on the Launch Date; and

1.2 Interpretation

Capitalised terms: capitalised terms in this Agreement which are not defined in this Agreement but which are defined in the Rules have the meanings given to them in the Rules.

Monetary amounts: all monetary amounts are stated exclusive of GST and in New Zealand dollars;

GST: GST is payable at the same time and in the same manner as is any other amount payable under this Agreement, where that amount is subject to GST under the Goods and Services Tax Act 1985;

Expressions: expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background;

Headings: sections, clauses and other headings are for ease of reference only and will not affect the interpretation of this Agreement;

Obligation: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

Reference to party: references to any "party" are to a party to this Agreement and include that party's successors, executors, administrators and permitted assignees including any person taking by way of novation (as the case may be);

Reference to person: references to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority;

Singular and plural: the singular includes the plural and vice versa;

Conflict within Agreement: if there is any conflict between the documents which are part of this Agreement, the order of precedence will be as follows:

- (a) the terms of the body of this Agreement;
- (b) the schedules to this Agreement.

References to clauses and schedules: references to clauses and schedules are to clauses in, and the schedules to, this Agreement, and each schedule forms part of this Agreement and, subject to the Conflict provision above, has effect as if set out in the body of this Agreement;

Control: references to one person being "**controlled**" by another person mean that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to:

- (a) appoint and/or remove the majority of the members of the governing body of that person;
- (b) appoint a member or members of the governing body of that person, with the power to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body or the members of that person; or
- (c) control, by any other means, the affairs and policies of that person,

and, "**control**" and "**change in control**" have corresponding meanings;

References to documents: references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time;

Statutory provision: references to any statutory provision include any statutory provision which amends or replaces it and any subordinate legislation made under it;

Grammatical forms: other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a meaning corresponding to the meaning of the defined word or phrase;

Including: wherever the words "includes" or "including" (or similar words) are used, they are deemed to be followed by the words "without limitation"; and

Approvals: where there is any reference in this Agreement to something being subject to the approval or consent of a party, unless expressly stated otherwise, such approval or consent will not be unreasonably withheld or delayed.

2. APPOINTMENT

2.1 Appointment: Gas Industry Co appoints the Service Provider, and the Service Provider agrees, to provide the Deliverables and the Services:

2.1.1 on the terms and conditions set out in this Agreement; and

2.1.2 in accordance with the Rules.

2.2 **Exclusive appointment:** The Service Provider has been appointed as the exclusive provider of the Services and the Deliverables during the Term, provided that, for the avoidance of doubt, this clause does not limit the rights of Gas Industry Co to appoint or engage any third party to provide deliverables and/or services which are complementary to those to be provided under this Agreement.

3. TERM

3.1 **Term:** This Agreement will commence on the Commencement Date and will end on the Termination Date.

3.2 **Extension:** Gas Industry Co may, by notice in writing delivered to the Service Provider no less than three months (or such shorter period agreed by the Service Provider) prior to the Termination Date extend the Term, such that the Termination Date will, subject to clause 12 or a further extension under this clause 3.2, be two years later than the previously scheduled Termination Date. Gas Industry Co may, unless the Service Provider agrees otherwise, only exercise this extension option twice.

4. PERFORMANCE

4.1 **Service Provider obligations:** In providing the Deliverables and/or Services and otherwise complying with its obligations under this Agreement, the Service Provider must:

4.1.1 comply with the Rules, including undertake all the duties and obligations of the Trading System Operator under the Rules;

4.1.2 identify and provide all personnel, resources and processes required to provide the Deliverables and the Services in accordance with this Agreement;

4.1.3 act with care, skill and diligence and in accordance with Best Industry Practice;

4.1.4 meet the applicable Service Levels and use all reasonable endeavours to exceed the applicable Service Levels;

4.1.5 comply with the time frames and other requirements set out in this Agreement;

4.1.6 keep Gas Industry Co fully advised of progress and changes or possible changes to the scope or timing of the provision of the Deliverables and Services;

4.1.7 provide such assistance and information to Gas Industry Co as is necessary to enable Gas Industry Co (acting reasonably) to obtain the full benefit of the Deliverables and the Services, taking into account the fact that, because of Gas Industry Co's function, it will benefit from the Trading System working well for

those that use the Trading System, even though Gas Industry Co will not, itself, use the Trading System;

- 4.1.8** at all times deal, and fully co-operate, with Gas Industry Co in good faith, and do such things and sign such documents as are required for the provision of the Deliverables and the Services;
- 4.1.9** not damage the reputation and goodwill of Gas Industry Co;
- 4.1.10** comply with all Law and obtain and maintain, at its cost, all licences, approvals, permits and authorisations required by Law in order for it to provide the Deliverables and the Services and otherwise perform its obligations under this Agreement; and
- 4.1.11** promptly notify Gas Industry Co of any breach of the Service Provider's obligations under this Agreement or any matter which may impact on the Service Provider's ability to perform its obligations under this Agreement.

4.2 Gas Industry Co obligations: Gas Industry Co must:

- 4.2.1** comply with the Rules to the extent necessary to enable the Service Provider to provide the Deliverables and Services;
 - 4.2.2** co-operate with the Service Provider and its Personnel in relation to the provision of the Deliverables and the Services;
 - 4.2.3** allow the Personnel of the Service Provider to access the Sites as reasonably required for the proper provision of the Deliverables and the Services, provided that the Service Provider must ensure that its Personnel complies with all of the Service Provider's obligations under this Agreement;
 - 4.2.4** at all times deal with the Service Provider in good faith, and do such things and sign such documents as are reasonably required by the Service Provider to enable it to provide the Deliverables and the Services;
 - 4.2.5** promptly notify the Service Provider of any breach of Gas Industry Co's obligations under this Agreement or any matter which may impact on Gas Industry Co's or the Service Provider's ability to perform their obligations under this Agreement;
 - 4.2.6** comply with any Software licence terms, provided that they are clearly communicated to it by the Service Provider, including the software licence terms in clause 14;
 - 4.2.7** provide such assistance and information to the Service Provider as is reasonably requested and is necessary to enable the Service Provider to perform its obligations under this Agreement;
 - 4.2.8** not damage the reputation and goodwill of the Service Provider; and
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- 4.2.9 comply with the time frames and other requirements set out in this Agreement.

5. PERSONNEL

5.1 **Personnel requirements:** The Service Provider must:

- 5.1.1 use an adequate number of Personnel to provide the Deliverables and Services; and
- 5.1.2 ensure that all of its Personnel are properly educated, trained, skilled, experienced and fully qualified for the obligations they perform.

5.2 **Project Managers:** Each party will, immediately following the Commencement Date, appoint a project manager ("**Project Manager**") who will:

- 5.2.1 serve as the primary point of contact with the other party; and
- 5.2.2 have overall responsibility for the performance of that party's obligations under this Agreement.

5.3 **Replacement:** Each party may replace its Project Manager from time to time provided it gives prior written notice of such replacement to the other party.

5.4 **Meetings:** The Project Managers will meet together, at no less than fortnightly intervals, to:

- 5.4.1 monitor progress of the Service Provider in providing the Deliverables and the Services;
- 5.4.2 review resource needs and detail timing for upcoming tasks;
- 5.4.3 as far as they are able, settle and agree any issues arising in the course of providing the Deliverables and/or the Services, and review risks and agree risk management actions; and
- 5.4.4 monitor compliance by each party of any other of their respective obligations under this Agreement,

provided that if both Project Managers agree, such meetings may be held more frequently or less regularly if both consider it appropriate.

5.5 **Reporting:** The Service Provider must provide reports at the frequency, and containing the detail set out in Schedule 9.

6. IMPLEMENTATION

6.1 **Implementation:** The Service Provider will implement the Trading System in accordance with the Implementation Plan.

6.2 **Completion of Implementation:** The Service Provider shall use reasonable endeavours to complete each Milestone by the relevant Milestone Date and shall use its best endeavours to complete the

implementation of the Trading System by the date specified for completion in the Implementation Plan.

- 6.3 Failure to complete Milestones:** If the Service Provider fails, or is likely to fail, to complete a Milestone by the relevant Milestone Date it shall promptly inform Gas Industry Co of the delay and provide an updated estimate of timing.

7. ACCEPTANCE TESTING

- 7.1 Acceptance Tests:** Gas Industry Co will, following notification by the Service Provider that the implementation of the Trading System is complete, conduct the Acceptance Tests in accordance with the Acceptance Test Plan. The Service Provider will provide such assistance as is reasonably required by Gas Industry Co in relation to the Acceptance Tests.
- 7.2 Successful completion:** If the Acceptance Tests demonstrate to the satisfaction of Gas Industry Co (acting reasonably) that the Acceptance Criteria have been met, Gas Industry Co will complete, sign and provide to the Service Provider an Acceptance Certificate. Gas Industry Co will not unreasonably withhold or delay the provision of this Acceptance Certificate.
- 7.3 Unsuccessful completion:** If the Acceptance Tests carried out under clause 7.1 do not demonstrate to the satisfaction of Gas Industry Co (acting reasonably) that the Acceptance Criteria have been met, Gas Industry Co will promptly notify the Service Provider of the details of such failure and the Service Provider will, as soon as is reasonably practicable, and in any event within 15 Business Days of receiving such notification from Gas Industry Co, remedy any relevant failures or deficiencies so that the Acceptance Criteria are met.
- 7.4 Repeat Acceptance Tests:** The Service Provider will immediately notify Gas Industry Co in writing when it has completed the remedial work under clause 7.3 and Gas Industry Co will, promptly after receipt of such notification, repeat the Acceptance Tests.
- 7.5 Continued Acceptance Tests:** The process set out in clauses 7.3 and 7.4 may, at the request of Gas Industry Co, be repeated, until the Acceptance Tests demonstrate to the satisfaction of Gas Industry Co (acting reasonably) that the Acceptance Criteria have been met.
- 7.6 General:** The issue by Gas Industry Co of any Acceptance Certificate will not release the Service Provider from its obligations under this Agreement, including the warranties set out in clause 16.
- 7.7 Delay:** Any rights and remedies that Gas Industry Co may have under this Agreement or otherwise for any failure or delay by the Service Provider in performing its obligations under this clause 7 will not apply to the extent that such failure or delay is caused by:
- 7.7.1** an action or inaction of Gas Industry Co which breaches this Agreement;

- 7.7.2 the performance or not of the telecommunications networks of third party network providers; or
- 7.7.3 an inherent defect in any third party software of which the Service Provider could not, by using its best endeavours, be expected to be aware.

8. CHANGE

8.1 Change Control Process: If:

- 8.1.1 Gas Industry Co requires any new deliverables or services that are not within the scope of this Agreement; or
- 8.1.2 either party proposes any change to the Deliverables and/or the Services (including any changes to the nature or scope of the Deliverables or the Services or to the timing of the delivery of the Deliverables or the Services) and such change cannot be accommodated by another process in this Agreement,

("Change") the parties will comply with the Change Control Process in respect of each such Change.

8.2 Upgrades and Patches: For the avoidance of doubt, the implementation of a New Release is a Change.

8.3 Development: The Service Provider acknowledges that Gas Industry Co may look to significantly develop the Trading System after the Launch Date. Although the Service Provider shall not unreasonably refuse a request for a Change to give effect to such developments, any such developments must comply with the Change Control Process.

9. DOCUMENTATION, RECORDS AND AUDIT

9.1 Requirements for Documentation: The Service Provider will supply Gas Industry Co with the Documentation in accordance with the requirements set out in Schedule 1. The Documentation must:

- 9.1.1 contain sufficient information for the full and efficient operation of the relevant Deliverables and/or Services to which the Documentation relates in the manner contemplated by Gas Industry Co;
- 9.1.2 correctly represent the attributes of the subject matter to which it relates;
- 9.1.3 provide proper and adequate instructions for its intended purpose; and
- 9.1.4 be written or delivered in English and at a level appropriate for the intended audience.

9.2 Audits: The Service Provider:

- 9.2.1 must allow Gas Industry Co and its Personnel access to the Service Provider's Personnel and premises; and

9.2.2 may allow Gas Industry Co and its Personnel to inspect and copy the Service Provider's accounts, records and documentation relating to the Deliverables and/or the Services,

for the purposes of Gas Industry Co auditing the Service Provider's compliance with this Agreement and/or in order for Gas Industry Co to comply with any Law, provided that Gas Industry Co must:

9.2.3 provide the Service Provider with reasonable prior written notice of any proposed audit, including the proposed time for the audit, the name of the auditor and how Gas Industry Co intends to conduct the audit; and

9.2.4 obtain the Service Provider's agreement (such agreement not to be unreasonably withheld) regarding the date for the audit and how the audit is to be conducted;

9.2.5 conduct the audit in a manner and at a frequency that does not unreasonably disrupt the Service Provider's business or Personnel.

9.3 Assistance: For the purposes of complying with clause 9.2, the Service Provider will promptly and efficiently give Gas Industry Co and its Personnel such assistance as is reasonably required by Gas Industry Co for the purposes of auditing the Service Provider under clause 9.2.

9.4 Subcontractors: The Service Provider will use all reasonable endeavours to procure that each of its Subcontractors give Gas Industry Co the same rights, and agrees to fulfil the same obligations to Gas Industry Co as set out in clauses 9.1 and 9.2.

9.5 Costs of audit: Gas Industry Co will meet the costs of conducting an audit except the Service Provider's costs of co-operating with any audit. For the avoidance of doubt, this means that the Service Provider will not charge Gas Industry Co for any costs it may incur as a result of Gas Industry Co conducting an audit (including the costs associated with the Service Provider co-operating with any such audit) except that the Service Provider may charge for such costs if they are significant and the audit does not establish any non-compliance by the Service Provider.

10. FEES

10.1 Fees: Gas Industry Co must pay the Fees to the Service Provider for the Services and Deliverables in accordance with the payment terms set out in clause 11 and Schedule 7.

10.2 Fixed Charges: The Fees are the total amount payable by Gas Industry Co for the relevant Deliverables and/or Services to be provided under this Agreement. All costs and expenses relating to the supply of the Deliverables and the provision of the Services, and the Service Provider's performance of its obligations under this Agreement, are the sole responsibility and expense of the Service Provider unless Gas Industry Co has expressly agreed to pay for them in this Agreement.

11. INVOICING AND PAYMENT

11.1 Invoicing: The Service Provider must issue an invoice for any instalment of the Fees only upon supply of the Deliverables and/or Services to which that instalment relates.

11.2 General invoicing requirements: Each invoice submitted to Gas Industry Co under this Agreement, in order to be validly issued for the purposes of this Agreement, must:

11.2.1 be in the form of a valid tax invoice for GST purposes;

11.2.2 be delivered by the means of communication requested by Gas Industry Co from time to time;

11.2.3 describe in adequate detail the Deliverables and/or the Services that are the subject of the invoice and the timing of the provision of such Deliverables and/or the Services; and

11.2.4 be in the format specified by written notice given by Gas Industry Co to the Service Provider from time to time.

11.3 Disputed invoices: Where Gas Industry Co disputes any portion of any amount appearing as payable on an invoice issued by the Service Provider to Gas Industry Co under this Agreement:

11.3.1 Gas Industry Co will notify the Service Provider of such dispute at the earliest reasonable opportunity; and

11.3.2 Gas Industry Co must pay the undisputed portion of the invoice on its due date, but will not be obliged to pay the disputed portion of that invoice until the parties' dispute has been resolved by agreement between the parties or, in the absence of such agreement, in accordance with clause 20.

11.4 Late Payment: If Gas Industry Co:

11.4.1 does not pay any properly invoiced amount when due (other than in accordance with clause 11.3.1); or

11.4.2 withholds payment of a portion of an invoice under clause 11.3.1, and the relevant dispute is resolved in favour of the Service Provider such that the full amount withheld must be paid by Gas Industry Co,

Gas Industry Co must pay Late Interest in respect of the amount not paid when due.

11.5 Payment: Any valid invoice received by Gas Industry Co from the Service Provider will be payable on the 20th day of the month following the month in which the invoice is received by Gas Industry Co. Gas Industry Co will not be required to pay any invoice which is not valid for the purposes of this Agreement.

- 11.6 Tax:** Other than GST, the Service Provider will be responsible for all taxes, levies or duties assessed on, or in relation to, the Service Provider's supply of the Deliverables and provision of the Services.

12. TERMINATION

- 12.1 Termination by Gas Industry Co:** In addition to any other right or remedy conferred on Gas Industry Co under this Agreement or by Law, Gas Industry Co may terminate this Agreement and/or the Licence at any time and with immediate effect by written notice to the Service Provider if:

- 12.1.1** the Service Provider has failed to comply with an earlier written notice given by Gas Industry Co:

- (a) specifying a material breach of this Agreement by the Service Provider; and
- (b) requiring that the Service Provider remedy that breach within 5 Business Days after receipt of that earlier notice;

- 12.1.2** the Service Provider has committed a material breach of this Agreement which is not reasonably capable of being remedied by the Service Provider within 5 Business Days;

- 12.1.3** the Service Provider goes into liquidation; has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets; becomes unable to pay its debts as they fall due; is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts; is removed from the New Zealand Companies Register; or if any event analogous in nature has occurred in respect of the Service Provider under any other law of any jurisdiction;

- 12.1.4** the Service Provider suspends, for 5 Business Days or longer, or ceases, or sells, its principal business undertaking or assets without Gas Industry Co's prior written consent (such consent not to be unreasonably withheld or delayed);

- 12.1.5** the Service Provider makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring);

- 12.1.6** the Service Provider ceases to be controlled by the same persons as at the date of this Agreement, without the prior written consent of Gas Industry Co (such consent not to be unreasonably withheld or delayed);

- 12.1.7** the Acceptance Criteria have not been met by the date 30 Business Days after the date specified in the Acceptance Test Plan, provided that, if any delay is caused by a breach by Gas Industry Co of this Agreement then, for the purposes of this clause, the date specified in the Acceptance Test Plan by which the Acceptance Criteria must be met shall be deemed to be adjusted by a period equal to the length of such delay;

12.1.8 Gas Industry Co becomes entitled to terminate the Agreement under clause 13.5; or

12.1.9 any Force Majeure is of such magnitude or will be of such duration that it is, or is reasonably likely to be, impossible or impractical for the Service Provider to comply, to a material extent, with the Service Provider's obligations under this Agreement (taken as a whole) for a period of two consecutive months or longer.

12.2 Termination without cause by Gas Industry Co: Gas Industry Co:

12.2.1 may terminate this Agreement and/or the Licence without cause at any time during the period commencing from the Launch Date and ending twelve months after the Launch Date upon 20 Business Days' written notice; or

12.2.2 may terminate this Agreement and/or the Licence without cause at any time more than twelve months after the Launch Date upon three months notice.

12.3 Termination by Service Provider: In addition to any other right or remedy conferred on the Service Provider under this Agreement or by Law, the Service Provider may terminate this Agreement and/or the Licence at any time and with immediate effect by written notice to Gas Industry Co if:

12.3.1 Gas Industry Co has failed to make any payment to Service Provider in accordance with this Agreement, and has not remedied such failure within 20 Business Days of receiving written notice from Service Provider of such failure;

12.3.2 Gas Industry Co materially breaches its obligations under clause 4.2.6 and does not remedy such breach within 20 Business Days of receiving written notice from Service Provider of such failure;

12.3.3 Gas Industry Co goes into liquidation; has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets; becomes unable to pay its debts as they fall due; is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts; is removed from the New Zealand Companies Register;

12.3.4 Gas Industry Co suspends, for 10 Business Days or longer, or ceases, or sells, its principal business undertaking or assets without the Service Provider's prior written consent (which the Service Provider may withhold in its sole discretion); or

12.3.5 Gas Industry Co makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring).

12.4 Consequences of termination: Without limiting any other rights or remedies of either party:

- 12.4.1** if this Agreement is terminated by either party before the Launch Date, the Service Provider shall immediately cease work and Gas Industry Co shall reimburse the Service Provider for all reasonable costs incurred up to the termination date or which the Service Provider will be unable to avoid incurring after the termination date;
- 12.4.2** if Gas Industry Co terminates this Agreement after the Launch Date under clause 12.2, or if the Service Provider terminates this Agreement after the Launch Date under clause 12.3, Gas Industry Co shall pay the Service Provider an amount equal to any Fees which have accrued up to the termination date but are unpaid (which Fees shall be calculated on a pro-rata basis in respect of any items for which periodic Fees are payable), together with the Break Costs;
- 12.4.3** if Gas Industry Co terminates this Agreement after the Launch Date under clause 12.1, then Gas Industry Co shall pay the Service Provider an amount equal to any Fees which have accrued up to the Termination Date but are unpaid (which Fees shall be calculated on a pro-rata basis in respect of any items for which periodic Fees are payable);
- 12.4.4** if the termination date is after the Launch Date, the Service Provider shall return to Gas Industry Co all of the data generated by the Trading System including Participant information, offers made, acceptances submitted and contracts formed in a form which is useable by Gas Industry Co;
- 12.4.5** termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the other party, where the breach occurred before the termination of this Agreement; and
- 12.4.6** the provisions of clauses 12, 13, 14, 15, 16, 17, 20 and 21 together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

13. INTELLECTUAL PROPERTY

13.1 Ownership of Intellectual Property: Unless otherwise agreed between the parties in writing:

- 13.1.1** all Intellectual Property of the Service Provider and its licensors that is not developed, commissioned or created under or in connection with this Agreement, but is used for the purposes of this Agreement together with all updates, modifications, adaptations and/or additions made to that Intellectual Property whether under this Agreement or otherwise, will be owned exclusively by the Service Provider or the relevant licensors;

- 13.1.2** all Intellectual Property of Gas Industry Co and its licensors that is not developed, commissioned or created under this Agreement, but is used for the purposes of this Agreement, together with all updates, modifications, adaptations and/or additions made to that Intellectual Property whether under this Agreement or otherwise, will be owned exclusively by Gas Industry Co or the relevant licensors;
 - 13.1.3** all new Intellectual Property that is developed, commissioned or created under this Agreement, including Intellectual Property rights in the Software and Deliverables, will be owned exclusively by the Service Provider upon creation; and
 - 13.1.4** both parties must use all best endeavours to protect the other's Intellectual Property rights and interests from infringement during and after the expiry of this Agreement.
 - 13.2 Intellectual Property Indemnity:** The Service Provider indemnifies Gas Industry Co against all liabilities, damages, expenses and losses (including legal costs) arising from any claim or proceeding brought against Gas Industry Co to the extent that the claim or proceeding is based on an allegation that Gas Industry Co's possession or use of any Deliverable and/or Service supplied or licensed by the Service Provider under this Agreement infringes any third party's Intellectual Property ("IP Claim").
 - 13.3 Conditions Applying to Intellectual Property Indemnity:** The Service Provider's obligations under clause 13.2 are conditional on:
 - 13.3.1** Gas Industry Co promptly notifying the Service Provider in writing of any IP Claim;
 - 13.3.2** Gas Industry Co making no admission regarding the IP Claim without the Service Provider's consent;
 - 13.3.3** the Service Provider conducting and/or settling (at its own cost) all negotiations and litigation; and
 - 13.3.4** Gas Industry Co giving the Service Provider all reasonable assistance. The Service Provider must reimburse Gas Industry Co's reasonable costs and expenses associated with providing such assistance.
 - 13.4 Rectifying an IP Claim:** If at any time an IP Claim is made, or in the Service Provider's reasonable opinion is likely to be made, then in defence or settlement of such an IP Claim, the Service Provider must (at its option):
 - 13.4.1** obtain for Gas Industry Co the right to continue using the items which are subject to the IP Claim; or
 - 13.4.2** at the Service Provider's expense, modify, replace or re-perform the items which are the subject of the IP Claim so they become non-infringing.
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- 13.5 Termination for IP Infringement:** If the remedies in clause 13.4 are exhausted without remedying or settling (to Gas Industry Co's reasonable satisfaction) the IP Claim, Gas Industry Co may terminate this Agreement under clause 12.1.

14. LICENCE

- 14.1 Software licence:** The Service Provider grants to Gas Industry Co a non-exclusive, non transferable, perpetual licence (the "**Licence**") to use the Software (excluding third party software) and Documentation but only:

14.1.1 from the Launch Date;

14.1.2 subject to Gas Industry Co paying the Fees in accordance with the requirements of Schedule 7; and

14.1.3 for the purpose of facilitating the operation of the New Zealand Gas Exchange.

- 14.2 Exclusions:** The Licence does not give Gas Industry Co the right to:

14.2.1 operate, modify and/or copy the Software either during the term or after the expiry of this Agreement; and

14.2.2 modify and/or copy the Documentation either during the term or after the expiry of this Agreement except for its own personal use.

- 14.3 Termination of the Licence:** Where either party terminates the Licence under clause 12, Gas Industry Co must immediately cease all use of the Software and Documentation and promptly return or destroy the Software or Documentation to the Service Provider.

- 14.4 Termination of this Agreement:** For the avoidance of doubt:

14.4.1 where this Agreement expires; or

14.4.2 where Gas Industry Co terminates this Agreement under clause 12.1 or 12.2,

the Licence will continue.

- 14.5 Expansion of Licence:**

14.5.1 The parties shall negotiate in good faith with a view to agreeing, by the date six months after the Launch Date, terms on which the Licence will be varied to allow Gas Industry Co to operate, modify and copy the Software, after this Agreement has expired or been terminated.

14.5.2 For the avoidance of doubt, it is intended that the Licence, as varied in accordance with clause 14.5.1, will remain subject to clause 14.1.3.

14.6 Escrow: The parties shall agree an appropriate escrow agreement for the Source Material (excluding third party Source Material), which reflects the following principles:

14.6.1 the escrow agreement must be in a form, and with an escrow agent, approved by Gas Industry Co (such agreement not to be unreasonably withheld or delayed);

14.6.2 the Service Provider must deposit a current version of the Source Material with the escrow agent and update this version whenever the Source Material is modified; and

14.6.3 the Source Material will only be released from escrow if the Service Provider goes into liquidation or has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets.

14.7 Failure to agree an appropriate escrow arrangement: Where the parties (acting reasonably and in good faith) are unable to agree on appropriate terms for an escrow arrangement, then any issues of dispute shall be resolved under clause 20 of this Agreement.

15. CONFIDENTIALITY

15.1 Publication of Agreement: Gas Industry Co is entitled to publish this Agreement.

15.2 Confidentiality: The parties must maintain as confidential at all times, and will not at any time, directly or indirectly:

15.2.1 disclose or permit to be disclosed to any person;

15.2.2 use for itself; or

15.2.3 use to the detriment of the other party,

any Confidential Information of the other party except:

15.2.4 as required by Law;

15.2.5 with the prior written consent of the party that owns the Confidential Information; or

15.2.6 if necessary for the party to perform its obligations under this Agreement and then only after procuring a commitment from the third party to comply with the confidentiality obligations set out in this clause 15.

15.3 Announcements: The Service Provider will not make any announcements or disclosures about the subject matter of this Agreement, except in a form and manner, and at a time previously approved in writing by Gas Industry Co (such approval not to be unreasonably withheld or delayed).

16. WARRANTIES

16.1 Reciprocal warranties: Each party warrants to the other that:

- 16.1.1 it has obtained all authorisations and has done all things necessary in order to enter into this Agreement and to perform its obligations under this Agreement; and
- 16.1.2 it is not aware of anything which will, or might be reasonably expected to, prevent that party from performing, or impair that party's performance of, its obligations under this Agreement, in the manner and at the times contemplated by this Agreement.

16.2 Service Provider warranties: The Service Provider warrants, undertakes and represents to Gas Industry Co that:

- 16.2.1 it has the expertise, experience, resources, capacity and ability to, and will, perform and discharge its obligations under this Agreement in a timely manner, efficiently, diligently and in accordance with Best Industry Practice;
- 16.2.2 the statements and representations that it made in, and in relation to, its RFP proposal entitled Proposal to Gas Industry Company Limited – Gas Trading System RFP (dated 18 June 2007) are true and correct;
- 16.2.3 all information provided by the Service Provider to Gas Industry Co under or in relation to this Agreement is true, accurate and not misleading in any respects, and that to the best of its knowledge Gas Industry Co's use of that information will not infringe the Intellectual Property rights of any third person;
- 16.2.4 the Services will be performed with due care and skill, diligence, and to a level reflective of, and in accordance with, a high level of industry knowledge and competence;
- 16.2.5 the Service Provider has made appropriate checks regarding the honesty and reliability of any Personnel taking account, in particular, of such persons' access to Confidential Information of Gas Industry Co and access to secure parts of the Trading System; and
- 16.2.6 to the best of its knowledge, Gas Industry Co's use or possession of the Deliverables and/or the Services will not infringe the Intellectual Property rights of any third party.

16.3 Service Provider warranties on delivery: The Service Provider warrants, undertakes and represents to Gas Industry Co in respect of each Deliverable that, at the time of delivery to Gas Industry Co:

- 16.3.1 that Deliverable complies with the relevant Specifications in all respects;
 - 16.3.2 to the extent reasonably possible, that Deliverable is free from material defects in design, materials, workmanship, performance and installation;
-

- 16.3.3** to the extent reasonably possible, the Software does not contain any computer viruses, interruptions, logic bombs, Trojan horses or other forms of malicious code or performance impediments;
 - 16.3.4** that Deliverable complies with all applicable Laws affecting it or any of its functions or facilities; and
 - 16.3.5** that Deliverable is fit for the purpose for which it is provided.
- 16.4 Third party warranties:** The Service Provider will assign to Gas Industry Co or, if it is unable to do so, will hold for the sole benefit of Gas Industry Co, all warranties and guarantees for products provided by third parties to the Service Provider, where those products are embedded in the Service Provider's products, in relation to the Deliverables and/or the Services.
- 16.5 Warranty Period:** Without limiting any other rights or remedies of Gas Industry Co, if the Service Provider becomes aware of any Error in the Software during the Warranty Period, the Service Provider will (at its own expense):
 - 16.5.1** remedy the Error in the Software within the time scales required by and otherwise in accordance with the provisions of Schedule 6 of this Agreement; and
 - 16.5.2** without limiting the effect of clause 16.5.1, if necessary, replace or repair all or any defective part of the Software which has given rise to the Error. If all or any part of the Software is replaced during the Warranty Period, the Warranty Period in relation to the replacement Software or any part of it will be deemed to be the period of 90 days from the date of delivery of such replacement Software or any part of it.

17. INDEMNITY AND INSURANCE

- 17.1 Gas Industry Co Indemnity:** The Service Provider indemnifies Gas Industry Co at all times against any losses, damages or costs (including enforcement costs, on a solicitor and own client basis) suffered or incurred by Gas Industry Co as a direct result of a breach by the Service Provider of any of its obligations or warranties under this Agreement.
- 17.2 Service Provider Indemnity:** Gas Industry Co indemnifies the Service Provider at all times against any losses, damages or costs (including enforcement costs, on a solicitor and own client basis) suffered or incurred by the Service Provider as a direct result of a breach by Gas Industry Co of any of its obligations under clauses 4.2.6, 14 and 15.
- 17.3 Insurance:** The Service Provider will maintain:
 - 17.3.1** professional indemnity insurance in an amount not less than \$10 million; and
 - 17.3.2** public liability insurance in an amount of not less than \$10 million;

with reputable insurers and shall use reasonable endeavours to ensure that such terms are acceptable to Gas Industry Co (acting reasonably). The Service Provider will provide Gas Industry Co, whenever requested by Gas Industry Co, with the most recent certificate of currency provided to it by its insurers and warrants on providing such certificate that the details set out in it remain accurate.

17.4 Gas Industry Co Liability cap: Gas Industry Co's maximum aggregate liability under or in connection with this Agreement (whether in contract, tort or otherwise), except for liability arising as a result of wilful breach or fraud on the part of Gas Industry Co or from breaches of clauses 13, 14 and 15, is limited to an amount equal to the Fees paid and/or payable under this Agreement for Deliverables and/or Services at the date the relevant cause of action arose provided that this clause will not limit Gas Industry Co's obligation to pay any Fees payable for Deliverables and/or Services which are properly due.

17.5 Service Provider Liability Cap: The Service Provider's maximum aggregate liability:

17.5.1 under or in connection with this Agreement (whether in contract, tort or otherwise) for each year of the Term of this Agreement, except for liability arising as a result of wilful breach or fraud on the part of the Service Provider or from breaches of clauses 13, 15 and 16, is limited to the Fees payable for that year of the Term of the Agreement;

17.5.2 for any breaches of the Rules is limited to \$20,000 in respect of any one event or series of closely related events arising from the same cause or circumstance or \$100,000 in respect of all events occurring in any year of the Term of this Agreement,

provided that where any breach of this Agreement also constitutes a breach of the Rules then the only remedy shall be that available under the Rules.

17.6 Indirect Loss: Neither party shall be liable to the other party for any indirect losses, damages or costs incurred or suffered by that other party as a result of a breach of this Agreement.

18. FORCE MAJEURE

18.1 Force Majeure: Subject to clause 12, if and to the extent either party is unable to carry out any of its obligations under this Agreement because of any event or circumstance which is, in relation to that party, a Force Majeure (such party being referred to in this clause 18 as the "Non-Performing Party") the Non-Performing Party will have no liability to the other party in respect of the non-performance by the Non-Performing Party of such obligations, provided that:

18.1.1 the Non-Performing Party must, as soon as reasonably practicable after becoming aware of the Force Majeure, notify the other party in writing describing the event or circumstance of Force Majeure;

- 18.1.2 neither party will be released from any liability which existed before the commencement of the Force Majeure;
- 18.1.3 the Non-Performing Party must use its best endeavours to overcome, and to mitigate the effects of, the Force Majeure and to complete the Non-Performing Party's obligations under this Agreement on time;
- 18.1.4 the Non-Performing Party will, as soon as reasonably practicable after becoming aware of the cessation of the Force Majeure, notify the other party in writing; and
- 18.1.5 this Agreement will otherwise remain in effect in all respects.

19. ASSIGNMENT

- 19.1 **Assignment to Energy Commission:** Gas Industry Co may assign all of its rights and obligations under this Agreement to any Energy Commission established under section 43ZZH of the Gas Act 1992 upon reasonable prior written notice to the Service Provider.
- 19.2 **Any other assignment:** Subject to clause 19.1, neither party will transfer or assign all or any of its rights or obligations under this Agreement to any other person without the other party's prior written approval (such consent not to be unreasonably withheld or delayed).
- 19.3 **Effect of subcontracting:** The Service Provider will use all reasonable endeavours to ensure that its Subcontractors comply with the terms of this Agreement that are applicable to the Service Provider. The entry by the Service Provider into a subcontract will not create a contractual relationship between Gas Industry Co and the relevant Subcontractor and will not relieve the Service Provider from liability for the performance of any obligations under this Agreement. The Service Provider is liable to Gas Industry Co for the acts and omissions of each of its Subcontractors as fully as if they were acts or omissions of the Service Provider.
- 19.4 **Removal of a Subcontractor:** If Gas Industry Co considers the performance of any of the Services by a Subcontractor to be unacceptable or inadequate, Gas Industry Co may, by written notice to the Service Provider, require the Service Provider to, and the Service Provider will, remove that Subcontractor from the performance of the relevant obligations within 10 Business Days of receipt of the notice.

20. DISPUTE RESOLUTION

- 20.1 **Dispute resolution process to apply:** This clause 20 will apply to any dispute between the parties (except where the party seeks urgent interlocutory relief) relating to this Agreement.
- 20.2 **Dispute resolution process:** If either party believes that there is a dispute between the parties concerning this Agreement, that party will give written notice to the other party setting out details of the dispute. If a notice of dispute is given:

- 20.2.1** each party will direct its Project Manager to use his or her reasonable endeavours to resolve the dispute within 10 Business Days of the date of the notice;
- 20.2.2** if the dispute is not resolved under clause 20.2.1 above, the dispute will be referred to the parties' respective Chief Executive Officers, who will use their reasonable endeavours to resolve the dispute within 10 Business Days from the date the dispute is referred to him or her; and
- 20.2.3** if the dispute is not resolved under clause 20.2.2 above, then either party may (by written notice to the other party) require that the dispute be referred to mediation. The parties will appoint a mediator agreed by the parties, or if there is no agreement, approved by the President for the time being of the New Zealand Law Society or his or her nominee. The mediator will determine the process and timetable for the mediation. The cost of the mediation will be shared equally between the parties; and
- 20.2.4** if the dispute is not referred to mediation, or is not resolved as a result of a mediation undertaken under clause 20.2.3 above, then either party may (by written notice to the other party) refer the dispute to a sole arbitrator under the Arbitration Act 1996. If the parties are unable to agree on an arbitrator within 10 Business Days of notice being given referring the dispute to arbitration, such arbitrator to be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

20.3 Service Provider to continue providing the Deliverables and Services: In the event of a dispute between the parties concerning this Agreement, the Service Provider will continue to supply the Deliverables and to provide the Services (unless Gas Industry Co requests otherwise).

21. GENERAL

21.1 Entire arrangement: This Agreement:

- 21.1.1** records the entire arrangement between the parties relating to the matters dealt with in this Agreement; and
- 21.1.2** supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters.

21.2 Amendment: Subject to any other provision of this Agreement expressly providing for the updating or amendment of any particular plan or document, no amendment to this Agreement will be valid unless it is in writing and executed by both parties.

21.3 No waiver: Any waiver by either party of any of its rights or remedies under this Agreement will be effective only if it is recorded in writing, and signed by a duly authorised representative of that party. If the waiver relates to a breach of any provision of this Agreement this will not

(unless stated otherwise) operate as a waiver of any other breach of that provision.

- 21.4 Governing law and jurisdiction:** This 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 Agreement.
- 21.5 Severability:** If any provision contained in this Agreement is held to be illegal, invalid or unenforceable, it will be severable, will be deemed to be deleted from the body of this Agreement and will not affect the validity or enforceability of any other provisions in this Agreement.
- 21.6 Relationship of the parties:** Nothing expressed or implied in this 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. The relationship of the Service Provider to Gas Industry Co is that of an independent contractor.
- 21.7 Counterparts:** This 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 Agreement (including any facsimile copy of any document evidencing either party's execution of this Agreement) may be relied on by the other party as though it were an original copy.
- 21.8 Remedies cumulative:** The rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 21.9 Method of Delivery:** Any written notice required under this Agreement must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given if:
- 21.9.1** delivered by hand to the intended recipient's address as set out below; or
- 21.9.2** sent by facsimile to the intended recipient's facsimile number as set out below and the sender's facsimile machine confirms transmission to the intended recipient.

Notices to Gas Industry Co:

Contact Name: Senior Adviser
Wholesale Markets

Fax Number: 04-472-1801

Physical Address: Level 9, State Insurance Tower
1 Willis Street
Wellington

Notices to Service Provider:

Contact Name: General Manager
Market Operations

Fax Number: 04-473-5247

Physical Address: The Marketplace Company Ltd
10 Brandon Street
Wellington

For the purposes of this Agreement, any notice transmitted by facsimile or delivered after 5.00 pm New Zealand time on a Business Day, or at any time on a non Business Day, will be deemed received at 9.00 am New Zealand time on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

21.10 Further Assurances: Each party will do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.

21.11 Privity: Only the parties to this Agreement may pursue remedies or redress under this Agreement in the event of the other party breaching this Agreement.

EXECUTION

**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 THE MARKETPLACE 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

SCHEDULE 1**SERVICES AND DELIVERABLES**

1. The Service Provider will provide Gas Industry Co with the following Services and Deliverables:
 - (a) develop and implement a gas trading system (the **Trading System**) in accordance with the specifications set out in Schedule 2 and in accordance with the Implementation Plan set out in Schedule 5;
 - (b) operate and maintain the Trading System in accordance with the standards set out in Schedule 6;
 - (c) provide copies of the following documentation:
 - (i) an *M-coTrade gas system trading guide* - a step-by step guide for Traders to familiarise themselves with the M-coTrade system (which underpins the Trading System);
 - (ii) an *M-coTrade gas trading system administration guide* – a guide providing administrators of the Trading System with information required to manage the Trading System. This includes tasks such as setting up new contracts, setting up new users, opening and closing the market and changing market parameters;
 - (iii) *Technical documentation* – a guide sufficient to enable administrators of the Trading System to continue to maintain and operate the Trading System. This will include design specifications describing how the Trading System delivers each of the functional and operational requirements.
 - (d) provide training services in accordance with Schedule 3.

SCHEDULE 2

SPECIFICATIONS

THE TRADING SYSTEM

1. **Trading System:** The Trading System is an electronic trading platform, which will facilitate the trading of gas in accordance with the Rules of the New Zealand Gas Exchange by Participants who have been granted access by Gas Industry Co.
2. **Access to Trading System and Interface:** The Trading System will be a web-based system, which Participants will be able to access via the Internet. Certain information (as specified by Gas Industry Co) will also be able to be accessed from the Trading System by the public over the Internet.
3. **Web pages:** The Trading System's web pages must present information in a user-friendly way and be easy to navigate. The public pages, accessible by anyone, must be self-documenting. The pages to be used by Participants for trading must be secure and it must be easy for Participants to carry out the following activities on the webpages:
 - 3.1 place offers to buy or sell gas;
 - 3.2 hit facing offers to form gas contracts;
 - 3.3 view historical trade information;
 - 3.4 view historical trading activity;
 - 3.5 find the relevant information on the site;
 - 3.6 access online help.
4. **Fully functional webpages:** The Trading System's web pages will be fully functional for Participants, Gas Industry Co and the public using Internet Explorer 6 or higher or Mozilla Firefox 2.0.0.10 or higher, and will have at least minimal functionality for all other reasonably common web browsers, including Safari and Opera.
5. **Access:** The Trading System will be able available and accessible 24 hours per day, however, transactions will only being able to be carried out during normal trading hours as specified in the Rules.
6. **Access by new Participants:** New Participants must be able to quickly and easily access the Trading System once approved by Gas Industry Co. This will be achieved through an online administration facility.
7. **Updating details:** Participants must be able to easily update user details, such as their e-mail account to which notifications are to be sent. Each Participant will be provided with the ability to easily add extra users from the Participant organisation.
8. **Help functionality:** The Trading System will provide a context-sensitive online help function accessible by clicking an easily identified help icon from any page in

the Trading System. The help function will work using a database which is easily searchable, and is easily updatable by administrators.

HOW TRADING WILL WORK

9. Trading is governed by the Rules. In summary, trades will initially occur via means of a bulletin board function. Traders will be able to enter offers to buy or sell gas at a particular welded point. As a minimum, the Trading System should enable the following data to be received and recorded in the system:
 - 9.1 the parties to the trade;
 - 9.2 the quantity of gas to be traded;
 - 9.3 the price per Giga-Joule (GJ);
 - 9.4 the contract term;
 - 9.5 the Receipt or Delivery Point;
 - 9.6 the Product identifier;
 - 9.7 any additional notes and conditions.
10. Participants will be able to see all offers irrespective of their respective White List settings. Participants will be able to manage White Lists via an online interface, but changes to the White Lists will only take effect prior to the start of trading. The Trading System will only form contracts between counterparties where each counterparty is included on the other counterparty's White List.
11. At the end of trading, any bids or offers that have reached their expiry date will automatically be withdrawn from the Trading System.
12. When a Trade is completed, the originating party will be sent an email reporting that their Trade has been completed.
13. The Trading System should be able to cater for a reasonable range of different contracts to be able to facilitate trading at either a single virtual welded point (Hub), or a small number of physical welded points.
14. As soon as possible after trading ceases on a Trading Day, the Trading System will notify each Welded Party of any trades which have occurred at their respective Welded Points. That Notification will include:
 - 14.1 identities of the parties to the trade;
 - 14.2 the quantity of gas traded;
 - 14.3 the contract term, i.e. start and end dates;
 - 14.4 the Product Identifiers; and
 - 14.5 a unique number generated by the Trading System which identifies the trade.

INFORMATION

15. The Trading System will retain all bid, offer and trading information for a minimum period of two years from the date that information is first entered into the Trading System.
16. Expired bids and offers that do not result in any Trades will be archived from the Trading System after sixty days from the date of their expiry. These will be archived to a separate area of the database. This information will be retained for audit purposes and will be able to be accessed online by Gas Industry Co.
17. The following information will be available to Participants online:
 - 17.1 a contracts bulletin board;
 - 17.2 historical trades which that Participant was a party to with counterparties revealed;
 - 17.3 order book, containing history of entered bids and offers for that Participant.
18. The following information is able to be made available to the public online:
 - 18.1 trades history (no counterparties revealed);
 - 18.2 aggregated trade statistics (no counterparties revealed):
 - 18.2.1 by day/week/month;
 - 18.2.2 by most active contract;
 - 18.2.3 by most active trading party (if desired);
 - 18.2.4 by top movers.
19. All information available to Gas Industry Co, Participants and the public will be able to be easily found and accessed by the relevant persons.
20. Gas Industry Co will be able to switch the availability of categories of information to the public online or offline by notifying the Service Provider, who will switch such availability on or off within agreed service levels. All of the above mentioned public functions can be easily turned on or off.
21. The Trading System does not include functionality to enable the conditional automatic suppression of information. Development will be required in order to facilitate this requirement. The cost of such development is not included in the Fees, therefore, will be payable in addition to the Fees.
22. The Trading System does not provide Participants with their own individual customised features or facilities. Development will be required in order to facilitate this requirement. The cost of such development is not included in the Fees, therefore, will be payable in addition to the Fees.
23. In addition to trading notifications, Participants can also be sent daily summary information which will be collated at the end of the day and sent via email.

TECHNICAL

24. The Trading System, as at the date of this agreement, is able to support 15 Participants, each trading an average of five Trades per week (i.e. a total of up to 75 trades). If greater volumes of Trades are required, the Trading System will need to be scaled up to deal with this. Any such “scaling up” will be a Change, which the provisions in clause 8 and Schedule 8 will apply to.
25. The “hosted option” (which the Trading System is based on, as at the date of this agreement) is the most cost effective option for the volume levels referred to in paragraph 24. Other trading systems operating on the “hosted option” cater for significantly more activity than required. Migrating from a hosted option to a standalone environment to facilitate additional load will be straightforward, but will require the additional purchase of hardware, software licenses and related ongoing maintenance. The costs of this standalone option is not included in the Fees and will be payable in addition to the Fees.

SECURITY

26. **Different levels of access:** The Trading System will allow for different levels of access for the public, Participants that are logged on, Gas Industry Co and Trading System administrators. Gas Industry Co will be able to identify from time to time which functions and which categories of information are to be made available to different classes of users and the Service Provider will ensure that access is restricted in accordance with such instructions.
27. **Logged off:** Participants who are logged on will be automatically logged off if they are idle for more than 30 minutes.
28. **Public access:** Public access will be via unencrypted URL.
29. **Trader’s access:** Participants’ access will be via an encrypted URL, secured by a 128 bit SSL certificate.
30. **Security:** Security is obtained by a granular set of permissions which are assigned to roles. Roles are then assigned to each individual user.
31. **Security measures:** The Trading System will not allow any person to view data or carry out any function which that person is not authorised to do. Without limiting the Service Provider's responsibilities, the Service Provider will take all reasonable steps to ensure that the Trading System is secure from unauthorised access and use. As at the date of this agreement, those the security measures in place include:
- 31.1 two levels of firewall protection;
 - 31.2 intrusion detection systems;
 - 31.3 regular application, database and server log reporting;
 - 31.4 robust user and password management protocols;
 - 31.5 128 bit SSL encryption;
 - 31.6 annual audits of systems;
 - 31.7 server hardening; and

31.8 removal of all cleartext mechanisms.

32. **Review of security measures:** The security measures specified in clause 3 will be reviewed annually and will be adjusted in accordance with Best Industry Practice. Traders will be required to authenticate before being able to access the information and functions restricted to Participants. Strict password rules will be enforced.

PORTABILITY

33. **Portability:** The Trading System will be able to be easily moved to other platforms that run Oracle and Oracle internet application, whether or not such platforms are owned or run by the Service Provider, and will be easy to install and operate. Accordingly, the Trading System will be able to be easily moved to and run by a party other than the Service Provider.

SCHEDULE 3**TRAINING SERVICES**

The Service Provider will provide Gas Industry Co and users of the Trading System with a one-off, Wellington based, 1 hour workshop covering how to use the Trading System. This workshop will be based on the *M-coTrade gas system trading guide* referred to in clause 1(c)(i) of Schedule 1.

SCHEDULE 4
IMPLEMENTATION

The following table sets out the Implementation Plan for the implementation of the Services and Deliverables:

Milestone	Date to be Achieved
Deliver System	22 February 2008
Acceptance Testing Commences	25 February 2008
Trading System goes live	1 March 2008

SCHEDULE 5**ACCEPTANCE TESTS**

1. The Acceptance Tests will be based on a pass/fail evaluation based on the description provided for each functional and non functional requirement. The Service Provider will provide such assistance as is reasonably required by Gas Industry Co in relation to the Acceptance Tests.
2. The Acceptance Tests will be based upon the specifications outlined in Schedule 2. Tests will be performed on the production environment prior to going live to ensure as accurate tests as possible with regards to performance and connectivity.

SCHEDULE 6

SUPPORT AND MAINTENANCE SERVICES

GENERAL SUPPORT AND MAINTENANCE

- 1 The Service Provider will carry out the following general support and maintenance:
 - 1.1 The Service Provider will undertake regular maintenance of the Trading System, which will involve it:
 - 1.1.1 carrying out continuous replication of application transactions to a remote disaster recovery site;
 - 1.1.2 conducting nightly backups of the application to tape, to be stored offsite;
 - 1.1.3 conducting ongoing service improvement reviews;
 - 1.1.4 conducting general tuning;
 - 1.1.5 carrying out housekeeping tasks; and
 - 1.1.6 conducting day to day monitoring of logs and performance levels.
 - 1.2 The Service Provider will provide real-time synchronised backup of the Trading System and nightly back-ups to tape.
 - 1.3 All source code will be appropriately versioned and managed in accordance with generally agreed accepted practices.

HELPDESK

2. The helpdesk will respond to faults during normal business hours (8.30am to 5.30pm Monday to Friday) according to the following manner:

Level	Definition [point of contact]	Response Time *
Critical	Trading operations are unable to be carried out and there is no workaround [Call +64 4 4735240]	Within 1 hour
Medium	Trading operations are impacted, but there is a short term workaround [Call +64 4 4735240] or [Email support@nzge.co.nz]	Within 4 hours
Low	Trading operations are not impacted. Cosmetic and formatting changes [Email support@ nzge.co.nz]	Within 5 Business Days

* Response time is defined as receiving the request and actively working on the issue

SERVICE LEVELS

3. The Service Provider shall use its reasonable endeavours to ensure that the Trading System:
 - 3.1 is in good working order;
 - 3.2 is available 24 hours a day, 7 days a week although the Service Provider does not guarantee that the Trading System will operate continuously or be free of faults;
 - 3.3 is available in the manner and format set out in Schedule 2
 - 3.4 can cater for reasonably anticipated levels of on-line traffic to the Website from time to time; and
 - 3.5 at all times, performs in accordance with sufficiently fast response times to facilitate efficient and effective on-line trading.
4. The Service Provider will ensure that access to the public information webpages (being non trading webpages) will not impact on the performance of the trading webpages.
5. The Service Provider shall provide Gas Industry Co with written notice as soon as reasonably practicable if the Trading System is unavailable for any reason, and use its best endeavours to:
 - 5.1 take all practicable steps to promptly remedy the situation; and
 - 5.2 update the Trading System with any data that should be present, had the Trading System been working.

SCHEDULE 7**FEES**

- 1 **Fees:** The Fees (exclusive of GST) comprise:
 - (a) the development fee set out in paragraph 2;
 - (b) the monthly fee set out in paragraph 3;
 - (c) the hourly rates set out in paragraph 4; and
 - (d) the Break Costs (if applicable).
- 2 **Development Fee.** The development fee is a one off, non-recurring fee of \$54,000 plus GST (if any) payable within 30 calendar days after the Launch Date.
- 3 **Monthly Fee:** The monthly fee for the term of this agreement is \$5,000 plus GST (if any) payable in accordance with clause 11. The monthly fee includes the licence fee for the Trading System and the costs of providing system support, maintenance, hosting and network costs, and third party software.
- 4 **Hourly Rates:** The hourly rates are set out in the table below. These hourly rates will only be charged by the Service Provider for work it does preparing Impact Reports (as set out in Schedule 8, paragraph 4), and for services which the Service Provider is not required to carry out under this agreement, but which Gas Industry Co has requested and agreed will be charged on a time and materials basis.

Resource	Hourly Rate (excl GST)
GM, Market Operations	\$275.00
Consultant	\$230.00
Project Manager	\$230.00
System Trainer	\$220.00
Senior System Developer	\$185.00
System Developer	\$170.00
Analyst	\$160.00
Administrator Support	\$130.00

SCHEDULE 8**CHANGE CONTROL PROCESS**

1. **Change Control Process:** The parties will follow the change control process described in this Schedule 8 to initiate and consider:
 - (a) changes to the Deliverables or the Services (including any changes to the nature or scope of the Deliverables or the Services or to the timing or the delivery of the Deliverables or the Services) which cannot be accommodated by another process in this Agreement; or
 - (b) new deliverables or services that are not within the scope of this Agreement,each being referred to in this Agreement as a "**Change**".
2. **Change Request:** If either party wants to initiate a Change that party will describe the details of the Change in a written request to the other party ("**Change Request**").
3. **Impact Report:** The Service Provider will, within 10 Business Days of receiving a Change Request from Gas Industry Co, prepare an impact report ("**Impact Report**") detailing an explanation of the Change, including how the Change is to be implemented and, to the extent relevant, detailing:
 - (a) the feasibility of the Change;
 - (b) the effect of the Change on the ability of the Service Provider to meet its obligations under this Agreement;
 - (c) any cost implication for either party in relation to the Change;
 - (d) any consequential material impacts of the Change;
 - (e) where appropriate, suggested acceptance testing procedures and acceptance criteria for the proposed Change; and
 - (f) such other information which is likely to be material to Gas Industry Co.
4. **Costs for Preparing Impact Report:** If the Service Provider, acting reasonably, takes more than 5 hours to prepare an Impact Report, Gas Industry Co will pay the Service Provider at the hourly rates specified in Schedule 7 for each full hour reasonably spent preparing the Impact Report over and above 5 hours.
5. **Notify:** Gas Industry Co will, within 10 Business Days of receiving an Impact Report or Change Request, notify the Service Provider of whether it:
 - (a) accepts the Change Request from the Service Provider, or wishes to proceed with a Change following receipt of an Impact Report;
 - (b) wishes to renegotiate any aspect of the implementation of a Change Request, in which case the parties will negotiate in good faith to try and reach agreement on the terms for implementing the Change Request;

- (c) withdraws the Change Request if initiated by Gas Industry Co; or
- (d) does not accept the Change Request.

6. **Agreeing a Change Request:** If the terms for implementing a Change Request have been:

- (a) accepted under paragraph 5(a) of this Schedule;
- (b) agreed under paragraph 5(b) of this Schedule; or
- (c) determined under paragraph 7 of this Schedule,

Gas Industry Co or the Service Provider (as applicable) will send the other party a variation agreement reflecting those terms. The Service Provider will not undertake any Change until both parties have signed this variation agreement, and Gas Industry Co will not be bound to pay for any Change unless both parties have signed this variation agreement.

7. **Dispute Resolution:** If the parties cannot agree on a Change Request within 10 Business Days of Gas Industry Co giving notice under paragraph 5(b) of this Schedule then the matter will be resolved under clause 20. In determining this matter, the mediator or arbitrator will:

- (a) take into account the matters referred to in paragraph 3 of this Schedule;
- (b) ensure that the terms for implementing the Change Request reflect a fair and reasonable allocation of risk; and
- (c) ensure that any changes to the Fees are reasonable, competitive and include a reasonable profit.

8. **Not Unreasonably Refusing a Change:** Subject to paragraph 9 of this Schedule, the Service Provider must not unreasonably refuse (directly or indirectly) any Change Request submitted by Gas Industry Co, including (without limitation) where the Change is necessary to:

- (a) avoid or minimise any risk to the integrity and operation of the Trading System and/or the New Zealand Gas Exchange; and/or
- (b) enable participants to access and use the Trading System in accordance with the Rules.

9. **Reasonable Grounds for Refusing a Change:** The Service Provider, acting reasonably, may refuse a Change submitted by Gas Industry Co, including (without limitation) where it can demonstrate to Gas Industry Co that:

- (a) the Service Provider does not have the qualified resources needed to undertake the work required to implement the Change;
- (b) the Service Provider cannot meet the proposed timeframe for implementing the Change because of resourcing constraints or other constraints; or
- (c) the Change is technically unfeasible;

- (d) the Change will substantially alter the Service Provider risk profile, for example, by exposing it to greater liability.
- 10. **Pricing Principles:** The following pricing principles will apply in respect of a Change:
 - (a) the Service Provider will only charge Gas Industry Co for a Change to the extent that the Change is not already covered by the Fees;
 - (b) if there is a cost impact associated with implementing the Change then the parties will use genuine efforts to agree a reasonable price for the Change (taking into account the nature and extent of the Change);
 - (c) the pricing for any Change will be:
 - (i) reasonable and competitive and include a reasonable profit;
 - (ii) no higher than pricing the Service Provider offers its most preferred customers for products or services, which are the same as, or similar to, the products or services proposed to be provided to Gas Industry Co as part of the Change.
- 11. **Truncated Process:** Where a Change Request is relatively minor (in terms of cost and impact) and is fairly routine, and the parties agree (such agreement not to be unreasonably withheld), a truncated Change Control Process (acceptable to Gas Industry Co and the Service Provider) may be adopted to deal with that Change Request.
- 12. **Rule Changes:** The parties acknowledge that this Agreement has been agreed on the basis of Version 1.0 of the *Rules of the New Zealand Gas Exchange* dated 4 February 2008 and that any changes to the Rules after that date will be treated as rule changes. Notwithstanding anything else in this Agreement, any change to the Rules after the date of this Agreement will not affect the Service Provider's obligations or liabilities under this Agreement, except to the extent that such changes to the Rules are approved by the Service Provider in writing and this Agreement is amended to reflect the Rule changes.

SCHEDULE 9**REPORTING**

1. **Weekly Report:** During the Trading System development phase the Service Provider will provide to Gas Industry Co a weekly project report containing the following information:
 - (a) a management summary;
 - (b) an update on the status of the project during the implementation stage;
 - (c) any work planned over the next week;
 - (d) whether implementation is on schedule during the implementation stage;
and
 - (e) any issues or risks.

2. **Incident Reporting:** From 1 March 2008 the Service Provider will provide Gas Industry Co with:
 - (a) a detailed report in respect of any Error within 72 hours of the occurrence of any incident resulting from that Error;
 - (b) a detailed report in respect of any breach by the Service Provider of its obligations under this agreement within 72 hours of Service Provider becoming aware of that breach.