

DISTRIBUTION SERVICES AGREEMENT

Between

GASNET LIMITED

("GasNet")

AND

xxxxx

(the "Customer")

_____ 2013

DISTRIBUTION SERVICES AGREEMENT

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Agreement made this ___ day of ___ 2013

BETWEEN

- 1 GASNET LIMITED a duly incorporated company having its registered office at 8 Cooks Street, Wanganui ("GasNet")
- 2 xxxxxxx a duly incorporated company having its registered office at _____ ("the Customer")

BACKGROUND

- A GasNet is engaged in the distribution of Gas through its independent trading division called GasNet.
- B The Customer has requested GasNet to distribute Gas on its behalf.
- C GasNet agrees to distribute such gas on behalf of the Customer on the terms and conditions set out in this Agreement.

IT IS ACKNOWLEDGED AND AGREED as follows:

1 INTERPRETATION

1.1 Defined Terms

In this Agreement and in each Appendix, unless the context otherwise requires, the following terms shall bear the following meanings:

"Agreement" means this Agreement, including the Appendices, as amended from time to time in accordance with Clause 25;

"Allocation Agent" means the person appointed in accordance with the Downstream Reconciliation Rules and is responsible for calculating the proportions of Gas received by, or delivered to, the Customer in circumstances where the Customer shares a Receipt Point or Delivery Point with other System Users in accordance with the Downstream Reconciliation Rules.

"Appendix" or **"Appendices"** means an Appendix or Appendices to this Agreement;

"Bill Rate" means the 90 day Commercial Bill Rate as published by Reuters Press Agency applying at 10.45am on that day;

"Billing Period", unless the Parties agree otherwise in writing, means the period from 00.00 hours on the first Day in one Month up to 24.00 hours on the last Day of the same Month.

“Business Day” means any day (other than a Saturday or Sunday) on which registered banks are open for business, excluding automatic teller machines, in Wanganui;

“Calorific Value” has the same meaning as in NZS5259: 1997 Gas Measurement;

“Commencement Date” means the date that this Agreement commences and is the date specified as such in Appendix One or such other date as may be agreed between the Parties;

“CNG” has the same meaning as in the Gas Regulations 1993;

“CNG Station” has the same meaning as in the Gas Regulations 1993;

“Critical Contingency” has the same meaning in the Gas Governance (Critical Contingency Management) Regulations 2008;

“Critical Contingency Management” means the Gas Governance (Critical Contingency Management) Regulations 2008;

“Critical Contingency Operator” has the same meaning in the Gas Governance (Critical Contingency Management) Regulations 2008;

“Day” shall mean a period of 24 consecutive hours, beginning and ending at 00.00 hours and when referring to a particular Day the date of the Day shall be the date on which that Day begins;

“Default Rate” means the Bill Rate plus 5% per annum;

“Delivery Point” means the delivery point or points where gas exits the distribution system (as described in Clause 6.3) as specified in Appendix One;

“Distribution Fees” means the fees payable under this Agreement as set out in Appendix One;

“Distribution Service” means the service required to be provided by GasNet pursuant to Clause 5.1 through GasNet;

“Distribution System” means the “Distribution System” (as defined in the Gas Act 1992) owned by GasNet and operated by GasNet and made available by GasNet for the distribution of Gas;

“Downstream Reconciliation Rules” means the Gas (Downstream Reconciliation) Rules 2008;

“End User” or **“End Users”** means a purchaser or purchasers of Gas for use or resale from the Customer where the supply is by means of the Distribution System;

“Fittings” has the same meaning as in the Gas Act 1992;

“Force Majeure” means an event or circumstances not within the reasonable control of GasNet or the Customer, as the case may be, which results in or causes a failure by such Party in the performance of any obligations imposed on

it by this Agreement and which by the exercise of due diligence such Party could not have prevented or overcome and shall include but shall not be limited to acts of God, acts of the Queen's enemies, sabotage, acts of war, blockades, insurrections, riots, epidemics, floods, storms, earthquakes, fires, washouts, landslides, explosions, breakage of or accident to machines, pipelines, or associated equipment, freezing of wells or delivery facilities, well blowouts, craterings, nuclear accidents, civil disturbances, strikes lockouts or other industrial disturbances and the order of any court or national or local government authority;

"Gas" means:

- (a) gas with all the characteristics listed in the Gas Specification and within the absolute limits specified in the Gas Specification; or
- (b) Non-Specification Gas accepted for delivery by GasNet pursuant to Clause 11;

"Gas Installation" has the same meaning as in the Gas Act 1992;

"Gas Measurement System" has the same meaning as in the Gas Act 1992;

"Gas Specification" means the New Zealand Specification For Reticulated Natural Gas NZS5442:1990;

"GST" means Goods and Services Tax payable pursuant to the Goods and Services Tax Act 1985;

"GST Amount" shall have the meaning ascribed to that term in Clause 14.9;

"Information Memorandum" means the full set of information, including any updated information, provided about the Distribution System by GasNet in accordance with the New Zealand Gas Pipeline Access Code;

"Interest Rate" means the Bill Rate plus 2% per annum;

"Maximum Hourly Quantity" or **"MHQ"** means the maximum Quantity of Gas measured in cubic meters, at standard conditions as defined by the Gas Regulations 1993, which GasNet has agreed, subject to the terms of this Agreement, to accept receipt of, distribute and deliver for the Customer in any hour of any Day as specified in Appendix One;

"Maximum Instantaneous Quantity" or **"MIQ"** means the maximum instantaneous quantity of Gas measured in cubic meters, at standard conditions as defined by the Gas Regulations 1993, which GasNet has agreed, subject to the terms of this Agreement, to accept receipt of, distribute and deliver for the Customer at any point in time as specified in Appendix One;

"Month" shall mean the period beginning at 00.00 hours on the first Day of a calendar month and ending at 24.00 hours on the last day of the same calendar month;

"Nominated Annual Quantity" or **"NAQ"** means that Quantity of Gas which the

Customer has notified GasNet will be delivered in any Year to a Delivery Point as specified in Appendix One;

“Nominated Monthly Quantity” or **“NMQ”** means that Quantity of Gas which the Customer has notified GasNet will be delivered in any Month to a Delivery Point as specified in Appendix One;

“Non-Specification Gas” means gas with one or more characteristics outside the absolute limits detailed in the Gas Specification;

“Party” means GasNet and the Customer individually and **“Parties”** means them collectively;

“Quantity” or **“Quantities”** for the purposes of Distribution Service, other than for the determination of Maximum Hourly Quantities and Maximum Instantaneous Quantity, means energy measured in Gigajoules;

“Reasonable and Prudent Operator” means an operator of a gas distribution system whose standard of performance is equal to or better than good gas distribution operating practice as determined by reference to proper and prudent practices recognised nationally or internationally as applying to the operation of such systems;

“Receipt Point” means the receipt point or points where gas enters the Distribution system (as described in Clause 6.1) as specified in Appendix One;

“Service Charge” means the charges payable by the Customer calculated and payable in accordance with Appendix One;

“Supply Charge” means the charge payable by the Customer calculated and payable in accordance with Appendix One;

“System User” means any person (other than the Customer) together with its successors and assigns whose Gas is or is to be distributed through the Distribution System to a Delivery Point;

“Termination Date” means the Termination Date set out in Appendix One;

“Time of Use Device” means equipment used for the purpose of providing Gas flow information at predetermined moments in time;

“Unbilled Gas” means the estimated Quantity of Gas which has been delivered by GasNet to each Delivery Point up to the end of the Billing Period and which has not been billed from Meter readings;

“Upon Demand” shall have the meaning ascribed to that term in Schedule Five to the Chattels Transfer Act 1924;

“Usage Profile” means, in relation to a Delivery Point, an annual usage profile identifying anticipated deliveries to the Customer at that Delivery Point, for each hour and Day of the Year, and shall have the same meaning as “Static Deemed Profile” in the Downstream Reconciliation Rules;

“Year” means a period of 365 (or 366 in a leap year) consecutive Days

commencing at 00.00 hours on the 1st day of October in each year and ending at 24.00 hours on the 1st day of October in the following year provided that the first Year shall include the broken period from 00.00 hours on the Commencement Date (if not 1 October) to 00.00 hours on the 1st day of October immediately following the Commencement Date;

“**GasNet**” means GasNet Limited and its successors and permitted assigns.

1.2 Construction

1.2.1 In the construction of this Agreement, unless the context otherwise requires:

1.2.1.1 A reference to a clause or to a Appendix is to a clause in or Appendix to this Agreement;

1.2.1.2 The singular includes the plural and vice versa;

1.2.1.3 References to any statute, regulations, New Zealand Standard, or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, standard, instrument or by-law as from time to time amended including substituted provisions that substantially correspond to those referred to;

1.2.1.4 References to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local or municipal authorities in each case whether or not having separate legal personality;

1.2.1.5 Clause headings are inserted for convenience only and shall not affect the interpretation of this Agreement;

1.2.1.6 A reference to a prohibition against doing anything is to be regarded as including a reference to not permitting, suffering or causing that thing to be done;

1.2.1.7 Expressions referring to writing shall be construed as including references to words printed, type-written, telexed, lithographed, facsimiled or otherwise traced, copied or reproduced;

1.2.1.8 “TJ” shall mean Terajoules, “GJ” shall mean Gigajoules and “MJ” shall mean Megajoules;

1.2.1.9 All references to time in this agreement shall refer to New Zealand Standard Time;

1.2.1.10 References to “dollars” and “\$” are references to New Zealand dollars.

2 CONDITIONS PRECEDENT

Prior to the receipt and distribution of Gas through the Distribution System to a Delivery Point or Points pursuant to this Agreement:

- 2.1 The Customer and GasNet shall have executed this Agreement; and
- 2.2 The Customer shall have satisfied GasNet that:
 - 2.2.1 the Customer has suitable arrangements for both a Gas supply and maintenance of that supply during the term of this Agreement; and
 - 2.2.2 the Customer has suitable commercial and technical arrangements to supply Gas to an End User or the Gas is for the Customer's own use; and
- 2.3 The Customer shall have provided to GasNet all of the information listed in Appendix One; and
- 2.4 The Customer shall have given GasNet an executed performance bond or security required under Clause 13.8, if the Customer was notified that GasNet requires a bond.
- 2.5 Where the Nominated Annual Quantity is greater than or equal to 10 TJ, a Time of Use Device is installed at the Delivery Point.
- 2.6 Where the Nominated Annual Quantity is less than 10 TJ, the Customer has provided GasNet with a Usage Profile for the Delivery Point or there is a Time of Use Device installed at the Delivery Point.

3 COVENANT TO PROVIDE DISTRIBUTION SERVICES

- 3.1 GasNet shall provide and the Customer shall accept Distribution Services on the terms and conditions set out in this agreement.
- 3.2 GasNet warrants to the Customer that at all times during the term of this agreement it will act as a Reasonable and Prudent Operator and deal with all users of the Distribution System on an arms length basis and generally in a manner consistent with the policies described in GasNet's publicly available Information Memorandum.

4 TERM OF AGREEMENT

This Agreement shall come into force on the Commencement Date and, (subject to termination pursuant to Clause 16), shall continue until terminated by the Customer by the giving of 3 months prior written notice to GasNet, or on the termination date set out in Appendix One whichever is the earlier.

5 SERVICES PROVIDED

5.1 Distribution Service

Subject to the provisions of this Agreement, GasNet, shall, on a 24 hour per day basis, receive at the Receipt Point, distribute through its Distribution System, and deliver to the Customer at the Delivery Point, the Quantities of Gas requested by

the Customer in Appendix One.

5.2 Pressure and Flow Service

GasNet shall deliver Gas to the Customer at the flow rate and pressure specified in Appendix One for each of the Delivery Point or Points specified in Appendix One;

5.3 Distribution System Operations

5.3.1 Subject to any other arrangement between the parties to this agreement GasNet will own, operate and control the Distribution System at all times whether itself or through designated agents;

5.3.2 Subject to compliance with the terms of this Agreement, GasNet reserves the right to decide the manner in which it shall conduct the operations of its Distribution System but shall exercise such rights in a manner consistent with being a reasonable and prudent operator;

5.3.3 Notwithstanding Clause 5.3.1 and 5.3.2, GasNet will operate and maintain the Distribution System in accordance with NZS5258:1995 Gas Distribution.

5.4 Expansion or modification

Prior to the commitment of capital funding for any expansion or modification of the Distribution System, as a result of additional quantities required outside the limits of Appendix One, separate contractual risk-sharing arrangements may be required between GasNet and the Customer.

6 RECEIPT POINTS AND DELIVERY POINTS

6.1 Receipts Points

6.1.1 Gas shall be received by GasNet for distribution through the Distribution System at a Receipt Point. Receipt Points shall at all times comply with the technical requirements for Receipt Points set out in Section 1 of Appendix Two, the cost and compliance to be borne by the owner of the relevant Receipt Point.

6.2 New Receipt Points

6.2.1 New Receipt Points may be constructed by GasNet in accordance with Clause 6.1.1. GasNet may require that some or all of the Gas received from the Customer shall be then received through this new connection. To the extent that the cost of construction of the new Receipt Point, or the re-routing of Gas through the new Receipt Point may impact on the Customer, the Customer shall be entitled to have the cost of the new Receipt Point or the re-routing of Gas referred to the dispute resolution procedure outlined in Clause 20.

6.2.2 The Customer may apply to GasNet in writing for a new Receipt Point to

be constructed in addition to the Receipt Point(s) specified in Appendix One. Where a new Receipt Point results in additional costs GasNet may recover these from the Customer.

6.3 Delivery Points

Gas distributed by GasNet on behalf of the Customer shall be delivered by GasNet to the Customer at a Delivery Point. Any Delivery Point shall at all times comply with the technical requirements for Delivery Points set out in Appendix Two, the cost and responsibility of such compliance to be borne GasNet. The Customer acknowledges that it shall have no other right, title or interest in the relevant Delivery Point equipment.

6.4 New Delivery Points

- 6.4.1 All equipment upstream of the Delivery Point shall be owned by GasNet.
- 6.4.2 New Delivery Points shall be constructed in accordance with Appendix Two.
- 6.4.3 The Customer may request GasNet to construct a new Delivery Point in addition to the Delivery Point(s) specified in Appendix One. Where a new Delivery Point results in additional costs GasNet may recover these from the Customer.

6.5 Compliance

As a condition of the acceptance of any Gas by GasNet, GasNet shall be entitled to confirm that both the relevant Receipt Point and the relevant Delivery Point comply with the applicable technical requirements set out in Appendix Two. This clause shall not apply in the event that GasNet owns the relevant Receipt Point or relevant Delivery Point and any non-compliance is the direct result of GasNet breaching the Reasonable and Prudent Operator standard.

6.6 Shared Receipt Points and Delivery Points

- 6.6.1 The apportionment of delivered energy between users of receipt points and delivery points will be calculated by the Allocation Agent as prescribed in the Downstream Reconciliation Rules. The Customer will comply with the requirements for Retailers specified in the Gas (Downstream Reconciliation) Rules 2008.
- 6.6.2 For the avoidance of doubt, multiple user delivery points include delivery points serving a common downstream pipework system.
- 6.6.3 Where used in this Clause 6.6, the terms "receipt point" and "delivery point" include the "Receipt Point" and the "Delivery Point".

7 QUANTITY

7.1 Maximum Hourly Quantity

Subject to the provisions of this Agreement, GasNet, shall, on a 24 hour per day basis, receive at the Receipt Point, distribute through its Distribution System, and deliver to the Customer at the Delivery Point, a quantity of Gas no greater than the Maximum Hourly Quantity requested by the Customer in Appendix One.

7.2 Increase in Maximum Hourly Quantity

Where the Customer wishes to increase its Maximum Hourly Quantity, then:

- 7.2.1 the Customer shall advise GasNet in writing, of its request to increase the Maximum Hourly Quantity at a specified Delivery Point, noting the new Maximum Hourly Quantity and the date from when it will be required; and
- 7.2.2 GasNet shall advise the Customer within 10 Business Days whether GasNet can receive, distribute and deliver the new Maximum Hourly Quantity from the date requested by the Customer. In the event that GasNet is unable to receive, distribute and deliver the new Maximum Hourly Quantity from the date requested by the Customer, GasNet will advise the reason and the requirements for GasNet to be able to meet the Customer's request, including any risk-sharing arrangements that may be required by GasNet prior to committing capital funding in accordance with Clause 5.4; and
- 7.2.3 once agreement has been reached the new Maximum Hourly Quantity will be specified in a new Appendix One, which will be prepared by GasNet in accordance with Appendix Three, and signed by the Customer.

7.3 Reduction in Maximum Hourly Quantity

Where the Customer wishes to reduce its Maximum Hourly Quantity, then:

- 7.3.1 the Customer shall advise GasNet in writing, of its request to reduce the Maximum Hourly Quantity at a specified Delivery Point, noting the new Maximum Hourly Quantity and the date from when it will be effective; and
- 7.3.2 the new Maximum Hourly Quantity will be specified in a new Appendix One, which will be prepared by GasNet in accordance with Appendix Three, and signed by the Customer.

7.4 Usage in Excess of Maximum Hourly Quantity

- 7.4.1 The Customer shall on demand indemnify and hold GasNet harmless against each cost, loss, damage, expense (including all legal expenses on a full indemnity basis and taxes) and liability sustained or incurred by GasNet as a direct or indirect result of the Customer receiving, taking or

being delivered any Quantities in excess of the Maximum Hourly Quantity. GasNet shall use all reasonable endeavours in the circumstances to mitigate the indemnified repercussions sustained or incurred by GasNet. The maximum amount claimable under this indemnity shall be \$1,000,000 in respect of any one event or related series of events with a maximum amount claimable in any 12 month period of \$5,000,000, irrespective of the number of events. Charges or fees paid or payable by the Customer under this Agreement shall not be included in calculating any amount claimable by GasNet under this Clause 7.4. The limitations expressed in Clause 18 shall not apply in respect of any indemnity under this Clause 7.4.1.

7.4.2 Clause 7.4.1 is not to limit, modify or exclude any other rights available to GasNet in respect of the Customer receiving, taking or being delivered any Quantities in excess of the Maximum Hourly Quantity, whether those rights arise under this Agreement or otherwise.

7.4.3 In the event that GasNet receives from any System User (other than the Customer) any amount (the "indemnified amount") in respect of that party receiving, taking or being delivered any quantities in excess of the Maximum Hourly Quantity in accordance with provisions equivalent to Clause 7.4.1 under that party's contract with GasNet, then if;

7.4.3.1 a surplus remains after GasNet has applied the indemnified amount, in its sole discretion, to any costs, losses, damages, expenses and liabilities sustained or incurred by it; and

7.4.3.2 the Customer was detrimentally affected by having received, taken or been delivered the Quantity in excess of the Maximum Hourly Quantity,

then GasNet shall pay the Customer a proportion of such surplus to compensate the Customer for its loss suffered, calculated on a pro-rata basis by reference to the loss suffered by all other System Users detrimentally affected by that party receiving, taking or being delivered any quantities in excess of the Maximum Hourly Quantity.

7.5 Usage Profile

7.5.1 In respect of all Delivery Points where the Nominated Annual Quantity is less than 10 TJ and at which there is no Time of Use Device installed, the Customer shall comply in all respects with the requirements of the Downstream Reconciliation Rules.

7.6 Time of Use Device

In respect of all Delivery Points where the Nominated Annual Quantity:

7.6.1 is greater than or equal to 10 TJ; or

7.6.2 is less than 10 TJ and there is no current Usage Profile,

then a Time of Use Device shall be installed at the Delivery Point. GasNet shall provide and install a Time of Use Device at all such Delivery Points and the Customer shall pay the appropriate fee specified in Appendix One.

7.7 Changes in Quantities

7.7.1 In the event that the Customer wishes to vary its Nominated Annual Quantity, Nominated Monthly Quantity or Usage Profile at a Delivery Point, then:

7.7.1.1 the Customer will notify GasNet before 1 July in any Year of the Quantities for delivery during the following Year; and

7.7.1.2 if, at any time during the Year the Customer requires a variation to the Nominated Annual Quantity, Nominated Monthly Quantity or Usage Profile, the Customer shall notify GasNet, as soon as reasonably practical, of the new Quantity or Quantities. Any additional system throughput will be negotiated and agreed by the Parties in writing in the form attached as Appendix Three.

8 TITLE, POSSESSION, RESPONSIBILITY AND DEEMED DELIVERY

8.1 Title to Gas

Title to the Gas shall at all times remain with the Customer and the Customer hereby warrants to GasNet that, at the time of delivery to GasNet, the Customer has good title to the Gas, free and clear of all liens, encumbrances and claims. For the purposes of this Clause 8.1, the Customer shall, where applicable, include any principal on whose behalf the Customer may be acting as agent, and the Customer is and will be warranting as to that principal's unencumbered title to the Gas.

8.2 Possession of Gas

The control and possession of the Gas shall pass from the Customer to GasNet at the Receipt Point and shall be held by GasNet until Gas is delivered to the Customer at the Delivery Point at which time the control and possession of such Gas shall revert to the Customer.

8.3 Responsibility for Gas

GasNet shall be solely responsible for the Gas on the basis set out in this Agreement while distributing it from the Receipt Point to the Customer at the Delivery Point and the Customer shall be solely responsible for the Gas at all other times.

8.4 Deemed Delivery of Gas

The Parties agree that by delivering Gas to the Customer at the Delivery Point in accordance with the terms of this Agreement, GasNet will be deemed to have delivered the Customer's Gas to it.

8.5 GasNet may Co-Mingle

GasNet shall have the right to co-mingle the Customer's Gas with other Gas in its Distribution System during distribution and to subject the Gas in its Distribution System to processes consistent with GasNet's operation of its Distribution System.

9 DISCONNECTION

9.1 Disconnection Requested by the Customer

GasNet shall as soon as reasonably practicable following receipt of a request from the Customer to disconnect a Delivery Point from the Distribution System, cause the delivery of Gas through the Delivery Point to be disconnected, and shall notify the Customer of the date and time at which the disconnection was effected.

9.2 Failure to Disconnect

GasNet shall not be liable to the Customer if GasNet fails to comply with a request to disconnect a Delivery Point from the Distribution System if GasNet considers that it is not reasonably practical to effect the disconnection as requested and promptly notifies the Customer accordingly.

9.3 GasNet may Disconnect

GasNet may, upon giving the Customer not less than two Business Days notice, disconnect a Delivery Point from the Distribution System if, and for so long as:

- 9.3.1 the Customer fails to provide access in accordance with Clause 28.4;
- 9.3.2 the Delivery Point or any associated Fittings are damaged; or
- 9.3.3 in GasNet's reasonable opinion any Fittings downstream of the Delivery Point or the premises or any Gas Installation of an End User is unsafe or fails to comply with the Gas Regulations 1993, any law or code of practice relating to the supply of Gas or any order of any court or government or local authority; or
- 9.3.4 the Customer is in breach of the Agreement pursuant to Clause 16.1.

Upon giving notice to the Customer in accordance with this clause, GasNet shall be entitled (but have no obligation) to notify the End User at the Delivery Point of its intention to disconnect the Delivery Point from the Distribution System and specify the reason for such disconnection. GasNet may impose any reasonable conditions as a condition of reconnection of the Delivery Point to the Distribution System.

9.4 Reconnection

GasNet shall reconnect the Delivery Point to the Distribution System on the request of the Customer subject to GasNet being satisfied that any conditions imposed following disconnection of the Delivery Point in accordance with Clause

9.3 have been met. The Customer shall pay the reconnection fee specified in Appendix One.

10 INTERRUPTION OF DISTRIBUTION SERVICE

10.1 Interruption of Acceptance at Receipt Point

Following at least five Business Days notice in writing from GasNet of a failure of the Customer's Receipt Point(s) to comply with the requirements of Appendix Two, GasNet shall have the right to interrupt or reduce acceptance of Gas at the Receipt Point, where the Customer has failed to maintain or operate the Receipt Point (including any bulk measuring equipment) in accordance with this Agreement, and otherwise in accordance with good pipeline industry practice and the Customer has not within such five Business Days rectified any such fault.

10.2 Interruption for Maintenance

GasNet may interrupt or reduce distribution to any Delivery Point either totally or partially for any period which in its opinion is necessary for the purposes of testing, adding to, altering, repairing, replacing, cleaning or maintaining any Distribution System equipment (including, without limitation, pipelines, valves, and monitoring equipment) or for any other purpose which in GasNet's opinion requires interruption or reduction of distribution services. In the event of interruption or reduction of distribution which would materially adversely affect the Customer, GasNet shall:

- 10.2.1 notify the Customer as early as reasonably practicable prior to interruption or reduction of distribution of its intention to interrupt or reduce distribution; and
- 10.2.2 minimise the period of interruption or reduction of distribution; and
- 10.2.3 agree with the Customer the timing of the interruption or reduction so as to minimise the disturbance to the Customer's business; and
- 10.2.4 provide an appropriate rebate of charges specified in Clause 13 to the Customer for loss of distribution services.

10.3 Emergency Interruption

GasNet shall have the right to as a Reasonable and Prudent Operator to interrupt or reduce distribution immediately in situations of emergency or risk of serious injury or damage to any person or the Distribution System or the environment for such period as in the opinion of the GasNet is necessary. In the event of any interruption or reduction to which this Clause 10.3 applies, GasNet shall as soon as reasonably practicable inform the Customer of the circumstances giving rise to the interruption or reduction, and shall use its reasonable endeavours to minimise the period of interruption or reduction. An appropriate rebate of charges specified in Clause 13 in respect of the period of interruption or reduction shall be given to the Customer for loss of distribution services.

10.4 Interruption for Flows in Excess of Maximum Hourly Quantity

GasNet shall have the right to interrupt or reduce distribution of any Gas delivered at a Delivery Point in any hour in excess of the Maximum Hourly Quantity if in GasNet's opinion delivery of such Gas may impair GasNet's ability to deliver gas to any other System User.

11 QUALITY

11.1 Gas

Subject to the balance of this Clause 11, all Gas received and delivered pursuant to this Agreement shall conform to the Gas Specification.

11.2 Non-specification Gas

11.2.1 The Parties acknowledge that, in relation to Non-Specification Gas, for certain factors, including the quantities of such gas, the Delivery Point for such gas, and the extent to which the specification of that gas varies from the limits prescribed in the Gas Specification the Parties shall use reasonable endeavours to negotiate the transport of Non-Specification Gas under this Agreement.

11.2.2 In the event that the Customer makes application for the transport of Non-Specification Gas, and GasNet is willing to provide distribution services, subject to any conditions or constraints deemed necessary by GasNet to safeguard the quality or energy value of Gas being delivered conforming to the Gas Specification or to protect the Distribution System or to avoid prejudicing the interests of others, then such proposed conditions or constraints will be promptly notified to the Customer to facilitate a revised application.

11.2.3 The agreed conditions or constraints applicable to the transport of Non-Specification Gas, which are subject to a revised application, will be incorporated in Appendix One

11.3 Notification of Delivery of Non-Specification Gas

11.3.1 In situations where the Customer expects that it will be unable to deliver Gas meeting the Gas Specification but still wants the Gas distributed by GasNet, the Customer shall give GasNet written notice as early as possible prior to delivery, giving particulars of the extent that the Non-Specification Gas will differ from the Gas Specification and (if known by the Customer at the time of the notice) the expected commencement and duration of the supply of Non-Specification Gas, so as to give GasNet a reasonable length of time before the proposed delivery takes place to decide whether or not to accept such proposed delivery of Non-Specification Gas, and to endeavour to gain the consent of potentially affected System Users.

- 11.3.2 GasNet shall notify the Customer whether or not it will accept delivery of such Non-Specification Gas within a reasonable time following receipt of the Customer's notice as is necessary to enable the Customer to prevent delivery of the Non-Specification Gas if necessary provided that GasNet reserves the right to revoke any such acceptance at any time for any reason and to refuse receipt of such Non-Specification Gas from that time.
- 11.3.3 In the event that GasNet accepts, distributes, and/or delivers Non-Specification Gas pursuant to Clause 11.3.2, GasNet may deliver to the Customer at the Delivery Point Gas having the same or narrower specifications than the specifications of the Non-Specification Gas delivered by the Customer to GasNet at the Receipt Point.

11.4 Blending

- 11.4.1 The Customer may request GasNet to blend the Gas to be accepted by GasNet provided that:
- 11.4.1.1 the Customer has obtained the prior written agreement of all other System User(s) utilising the Distribution System; and
 - 11.4.1.2 the resulting blended Gas will conform to the Gas Specification; and
 - 11.4.1.3 the Distribution System can account for the changed energy value of the resulting blended Gas.
- 11.4.2 The Customer shall pay all costs incurred by GasNet in carrying out the blending of Gas requested by the Customer.
- 11.4.3 GasNet shall make available to the Customer any records and information with regard to Gas blending carried out by GasNet which directly affects the Customer.

11.5 Odourisation

- 11.5.1 GasNet will comply with its obligations under the New Zealand Code of Practice for Odourisation of Gas NZGCP 3: in respect of Gas delivered by it at the Delivery Point.
- 11.5.2 The Customer will deliver Gas to GasNet at the Receipt Point which is odourised and complies with the Code of Practice for Odourisation of Gas NZGCP 3 in respect of Gas delivered by it at the Receipt Point. The Customer shall satisfy GasNet that quality assurance procedures are in operation to ensure odourisation of the Gas delivered by the Customer to the Receipt Point.
- 11.5.3 Where GasNet has to add odorant to Gas received by it at a Receipt Point, then if it was the Customer's Gas which required odorant the Customer shall pay the costs incurred by GasNet in adding the odorant.

- 11.5.4 Where GasNet has to add odorant due to odour fade in the Distribution System the cost shall be borne by GasNet.
- 11.5.5 GasNet will monitor and record odorant levels and will advise the Customer as soon as it anticipates or encounters any odorant fade or masking.

12 MEASUREMENT OF GAS

12.1 Receipt Point Measurement

GasNet may install, maintain, and operate, at or near the Receipt Point, bulk measuring equipment complying in all respects with Section 3 of Appendix Two and in particular NZS 5259:1997 "Gas Measurement" and otherwise in accordance with good pipeline industry practice.

12.2 Delivery Point Measurement

- 12.2.1 Subject to any other arrangement between parties to this agreement, GasNet shall install, maintain, and operate, at or near the Delivery Point, bulk measuring equipment complying in all respects with Appendix Two and in particular NZS 5259:1997 "Gas Measurement" and otherwise in accordance with good pipeline industry practice, such measuring equipment to measure the total amount of Gas delivered by GasNet to the Customer (and other system users) at the Delivery Point to enable the applicable fees as set out in Clause 13 to be calculated in accordance with Appendix One.
- 12.2.2 Any metering equipment required by the Customer or the End User in addition to that required pursuant to Clause 12.2.1 is not included in the Distribution Service provided by GasNet. GasNet may provide additional metering services at the cost to the party requesting such services. The Customer however may install its own metering equipment under the same conditions as provided for check metering as set out in Clause 12.9.
- 12.2.3 If the metering and reconciliation arrangements require Time of Use metering then GasNet shall provide such metering.
- 12.2.4 Where GasNet in pursuance of Clause 12.2.1 installs equipment that provides data relating to hourly Gas volumes, and/or flow pressure and/or temperature the Customer or the End User of the relevant Delivery Point may request GasNet to fit equipment that would allow the telemetric transfer of such data, the party requesting the installation of such telemetry equipment shall be responsible for all costs associated with its installation, maintenance, repair and removal provided that unless GasNet agrees in writing, the data provided by such telemetry equipment shall not be used as conclusive evidence of the delivery of Gas.

12.3 Measurement Binding

Quantities of Gas delivered to any Delivery Point shall be measured as the volumes recorded by GasNet's Meter and any Time of Use Device installed at that Delivery Point converted to a quantity of energy in accordance with NZS 5259:1997 "Gas Measurement". Quantities so measured and calculated shall be binding on the parties unless either of the parties disputes the accuracy of the Meter or the Time of Use Device by giving notice in writing to the other party.

12.4 Daily and Hourly Quantities

12.4.1 The Quantity of Gas delivered on any Day or in any hour to a Delivery Point where a Time of Use Device is installed shall be derived from recordings at the beginning and end of such Day or hour, as the case may be.

12.4.2 The Quantity of Gas delivered on any Day or in any hour to a Delivery Point where a Time of Use Device is not installed and where a Usage Profile has been agreed shall be derived in accordance with Clause 7.5.2.

12.5 Meter Reading

12.5.1 GasNet shall not, unless it has agreed otherwise with the Customer, read Meters at Delivery Points except as applicable to 12.5.2.

12.5.2 GasNet shall provide the Customer with daily Meter readings for Delivery Points where a Time of Use Device is installed within two Business Days of the Meter being read for billing purposes. GasNet is not required to provide this information on a daily basis but may do so at the Customers' request in accordance with Clause 12.2.2.

12.6 Unbilled Gas

For Delivery Points where the Meter was not read on the last day of the Billing Period, the Customer will estimate the Quantity of Gas which has been delivered by GasNet to each Delivery Point in accordance with the Downstream Reconciliation Rules.

12.7 Initial Meter Reading

GasNet shall carry out an initial reading of the Meter at each new Delivery Point prior to the commencement of deliveries to the Customer at that Delivery Point.

12.8 Special Meter Reading

The Customer may request a special Meter reading at any Delivery Point subject to payment of the special meter reading fee specified in Appendix One.

12.9 Check Metering

Each Party hereby grants (or will procure the grant) to the other Party the right to install and maintain check metering equipment at the site of its bulk measuring equipment, to enable that other Party to check the bulk measuring equipment located at that site provided that such check metering equipment shall not interfere in any way with any bulk measuring equipment (or other equipment) located at the site and that the cost of installing, maintaining and removing any such check metering equipment shall be borne by the Party installing such equipment.

12.10 Meter Testing

The accuracy of each Party's bulk measuring equipment shall be verified by that Party in accordance with NZS 5259:1997 "Gas Measurement" at reasonable intervals and, if requested, in the presence of representatives of the other Party but the Parties shall not be required to verify the accuracy of such equipment more frequently than once in any one year unless it can be shown through check metering or otherwise that the equipment may be out of calibration.

12.11 Special Test

If either Party notifies the other that it requires a special test of any bulk measuring equipment, the Parties shall co-operate to secure a prompt verification of the accuracy of such equipment. The reasonable expense of any such special test shall be borne by the Party which called for the test if the equipment tested is found to be accurate within the limits specified in Section 4 of Appendix Two. If the equipment tested is found to be inaccurate compared with the limits specified, then the expense of the special test shall be borne by the Party owning the bulk measuring equipment.

12.12 Test Procedures

The procedures outlined in Section 4 of Appendix Two shall apply to tests on equipment carried out pursuant to Clauses 12.10 and 12.11.

12.13 Connection to GasNet's On-Line Monitoring System

The Customer hereby agrees that GasNet may connect any on-line monitoring system operated by GasNet to the Customer's check metering equipment located downstream of a Delivery Point provided that GasNet agrees to pay such costs as mutually agreed between the Parties.

13 FEES AND /CHARGES

13.1 Distribution Fees

The Customer shall pay the Service Charge and the Supply Charge as set out in Appendix One.

13.2 Charges Associated with Multiple User Delivery Points

In any case where a System User (other than the Customer) is entitled to have Gas delivered to the Delivery Point, the Customer shall:

13.2.1 be deemed to have received that proportion of the Gas agreed or decided under Clause 6.6 delivered to that Delivery Point in the Billing Period; and

13.2.2 be liable to pay that proportion of the Service Charges and Supply Charge for Gas delivered to the Delivery Point,

as may be specified in Appendix One.

13.3 Other Charges

The Customer shall pay all other charges incurred pursuant to this Agreement (including, but without limitation the charges set out in Clauses 11.5.3 and 12.11).

13.4 Non-Specification Gas

The charges set out in Clauses 13.1 to 13.3 and Clause 14.10 apply to Non-Specification Gas as if it was gas meeting the Gas Specification. In addition, GasNet shall be entitled to pass on to the Customer all reasonable and consequential costs and charges resulting from GasNet agreeing to accept, distribute and/or deliver Non Specification Gas at the request of the Customer.

13.5 Non-Standard Pressure Service

Where the Customer elects to receive Gas at a pressure in excess of the minimum pressure set out in Appendix One, the charge for such service will be set at the level of anticipated increased cost reasonably associated with the provision of the service, or as otherwise agreed. Where this service is provided the fees shall be as set out in Appendix One.

13.6 Rounding

All amounts to be paid pursuant to this Clause 13 shall be expressed in dollars to three decimal places per GJ of Gas.

13.7 Charges when Flows are Controlled

In circumstances where GasNet restricts the flow of Gas in accordance with Clause 10.4, the Customer acknowledges that (where applicable) all distribution charges will continue to apply.

13.8 Bond/Deposit

13.8.1 If requested by GasNet, prior to commencement of distribution service the Customer shall pay a deposit to GasNet or arrange a registered bank (or other person acceptable to GasNet acting reasonably) to post a bond equivalent to the approximate total fees payable by the Customer for two Billing Periods as estimated by GasNet. In the event that at the end of any Year during the term of this Agreement the Customer increases its obligations in respect of which charges are, or could be, incurred, GasNet may require that the amount of the deposit or bond be correspondingly increased from the beginning of the next Year and the Customer hereby agrees to comply with such requirement.

- 13.8.2 Where GasNet and the Customer agree on the terms under which any new equipment upstream of a Delivery Point is to be constructed, such terms may include the Customer posting a bond from a registered bank (or other person acceptable to GasNet acting reasonably) as required by GasNet. The amount of such bond shall be negotiated between the Parties and if no such agreement can be reached then this matter shall follow the dispute resolution procedure outlined in Clause 20.

13.9 Redetermination and Adjustment of Fees

- 13.9.1 Subject to Clause 3.2, GasNet's fees for distribution services may be redetermined by GasNet annually with effect from 1 October in each applicable Year.
- 13.9.2 The Customer will notify GasNet before 1 July in any Year of the Quantities for delivery during the following Year pursuant to Clause 7.7.1.1.
- 13.9.3 GasNet will notify the Customer by 1 August of the new fees for the following Year. In the event that the Customer does not accept the revised fees, the Customer may require GasNet to submit to the dispute resolution procedure outlined in Clause 20. In any such process or arbitration, GasNet will provide the mediator or arbitrator or such other authorised person as the case may be, and the Customer, with the prevailing applicable pricing methodology as a basis for examining the fees set, provided that the methodology itself will not be the subject of the dispute resolution procedure or arbitration.
- 13.9.4 Pursuant to Clause 14.10, fees may be revised at any time to take account of any new or changed tax, duty, impost, levy or other charge.
- 13.9.5 If GasNet proposes making material changes to the prevailing applicable pricing methodology which would, if introduced, have a material adverse effect on the Customer, then GasNet shall consult with the Customer in good faith before any such changes are made to ensure that the economic impact of the changes is equitable, but any final decision shall be at GasNet's discretion.

13.10 Negotiated Fees

GasNet may negotiate a fee which differs from any of the fees in GasNet's publicly available Information Memorandum ("the negotiated fee") so long as all of the following conditions are met:

- 13.10.1 the Customer provides GasNet with evidence that demonstrates to GasNet's satisfaction the reasons why the Customer desires the negotiated fee; and
- 13.10.2 all other entities involved in the supply of Gas to the Customer also agree to lower their rates; and

13.10.3 the negotiated fee is for an agreed period only; and

13.10.4 the negotiated fee is not likely to have the effect of destabilising other market prices (to be determined at GasNet's sole discretion).

14 PAYMENT

14.1 Invoices Rendered

On or before the 10th day of each Month GasNet shall render to the Customer an invoice for all services provided under this Agreement and all charges payable in the Billing Period. All such invoices shall be sent to the Customer in accordance with Clause 14.8.

14.2 Contents of Invoices

Invoices rendered pursuant to Clause 14.1 shall include the following information:

14.2.1 the total energy value of Gas delivered by GasNet to the Customer in the Billing Period, as supplied by the Customer in accordance with the Customer's obligations in respect of Clauses 3.1 in Appendix Six; and

14.2.2 the number of Delivery Points at which GasNet delivered Gas to the Customer in the Billing Period sub totalled for each of the fee categories specified in Appendix One; and

14.2.3 any charges payable pursuant to Clause 13 for the Billing Period; and

14.2.4 any additional fees and charges payable pursuant to this Agreement (including any adjustments for prior Billing Periods); and

14.2.5 GST payable pursuant to Clause 14.9.

14.3 Payment

Subject to Clauses 14.1, 14.4 and 14.6, the Customer shall pay to GasNet the aggregate amount stated in GasNet's invoice by direct credit to GasNet's bank account not later than the 20th day of each Month or on the preceding Business Day if the 20th of the Month is not a Business Day. However, in the event that GasNet's invoice was not received by the Customer until after the 10th Day of the Month, then payment shall be made within 10 days of receipt of the invoice. The Customer shall:

14.3.1 ensure that payment is credited to GasNet's bank account set out in Appendix One or such other bank account as notified by GasNet, or made in such other manner as may be mutually agreed in writing from time to time; and

14.3.2 immediately give notice to GasNet of the invoice number and the respective amount to which the payment relates.

14.4 Disputed Invoices

In the event of any dispute concerning an invoiced amount the Customer shall, within 10 Days from the date it received the invoice, notify GasNet in writing

identifying the amount in dispute and giving full reasons for the dispute. The Customer shall pay the full amount of any portion of the invoice which is not in dispute. The Parties agree to attempt to resolve the dispute but if a resolution is not forthcoming within a further 10 Days, the dispute will then be referred to an independent expert for binding resolution in accordance with Clause 20.3. In the event that the Customer complies with the provisions of this Clause 14.4, GasNet shall not have the right to suspend distribution services by reason only of the Customer's withholding of the disputed amount.

14.5 Interest on Disputed Amount

Where as a result of the determination of a dispute of the nature referred to in Clause 14.4 either Party has to pay money to the other, then in addition to such payment, interest calculated on a daily basis (but not compounded) shall be payable thereon from the due date for payment of the invoice until actual payment at a rate equal to the Interest Rate.

14.6 Incorrect Invoices

If it shall be found at any time that the Customer has been overcharged or undercharged in any form whatsoever under the provisions of this Agreement and the Customer shall have actually paid the invoices containing such overcharge or undercharge, then, within 30 days after such error has been discovered and the amount has been agreed to by the Parties or determined by an independent expert pursuant to Clause 20.3, GasNet shall refund to the Customer the amount of any such overcharge or the Customer shall pay to GasNet the amount of any such undercharge, in both cases together with interest on the overcharged or undercharged amount at the Interest Rate calculated from the due date for payment of the appropriate invoice to the date of actual payment of the overcharged or undercharged amount provided that there shall be no right to re-open invoices if more than 18 months has elapsed since the date of the invoice.

14.7 Default Interest

If either Party without lawful excuse defaults in the payment of money payable under this Agreement on the due date for payment (or, where money is payable Upon Demand, Upon Demand being made) then interest shall be payable on the amount unpaid from the due date for payment until actual payment, at a rate equal to the Default Rate, calculated on a daily basis.

14.8 Presentation of Invoices

Invoices rendered pursuant to Clause 14.1 shall be rendered by New Zealand Post to the Customer's postal address set out in Appendix One (or the Customer's postal address notified in writing to GasNet). By mutual agreement of the Parties invoices may be rendered by facsimile transmission to the Customer's facsimile number or by Email to the Customer's Email address set out in Appendix One. GasNet is entitled to rely on, as conclusive evidence of receipt of the invoice by the Customer, if sent by New Zealand Post when

posted, or the transmission confirmation record when sent by facsimile or in the absence of advice to the contrary when sent by Email.

14.9 Goods and Services Tax

14.9.1 In addition to any payments specified or determined pursuant to the provisions of this Agreement (including but not limited to payments under this Clause 14) the Customer shall pay to GasNet an amount equal to any GST which GasNet is liable for in respect of payments made by the Customer pursuant to this Agreement (“the GST Amount”).

14.9.2 The GST Amount shall be due and payable at the same time as the payment on which it is levied is due pursuant to Clause 14.3.

14.9.3 GasNet’s invoices provided to the Customer as referred to in this Clause 14 shall specify the GST Amount and shall comply with the Goods and Services Tax Act 1985.

14.10 Other Taxes

14.10.1 In addition to the fees, charges and GST payable pursuant to Clause 13 and this Clause 14, the Customer shall pay to GasNet an amount equal to any tax, duty, impost, levy or other charge (but excluding income tax and rates) imposed by the Government or other regulatory authority after the date of this Agreement from time to time on, or incurred by GasNet in respect of, any services provided pursuant to this Agreement (including without limitation, any increase of any such tax, duty, impost, levy or other charge, but excluding any increase in income tax or rates). GasNet agrees that any decrease of any such tax, duty, impost, levy or other charge (but excluding income tax, rates and GST) will be passed on to the Customer.

14.10.2 In the event that GasNet requires payment by the Customer of any new or increased tax, duty, impost, levy or other charge pursuant to Clause 14.10.1 it shall provide to the Customer a certificate from GasNet’s auditors confirming the amount is properly payable by GasNet, verifying the accuracy of the amount charged by GasNet and, where the amount is payable by GasNet in respect of all or some of its customers, confirming that the proportion payable by the Customer has been determined on an appropriate and reasonable basis taking into account the quantity of distribution services purchased by the Customer in comparison to all distribution services purchased from GasNet and any factor relevant to the new or increased tax, duty, import, levy or other charge. GasNet shall notify the Customer of the corresponding revision in the fees payable by the Customer under this Agreement.

14.10.3 Nothing in this Clause 14.10 derogates from Clause 14.9.

15 RECORDS AND INFORMATION

- 15.1 Each Party shall prepare and maintain proper books, records and inventories of all matters pertaining to this Agreement and, subject always to the right of each Party to withhold confidential information or information not related to the performance of this Agreement, each Party shall have the right to examine at any reasonable time, the books, records and documents of the other to the extent necessary to carry out an audit for the purposes of verifying any statement, computation or claim made under the provisions of this Agreement.
- 15.2 It is hereby acknowledged by the Parties that:
- 15.2.1 all information relating to the basis on which GasNet sets its fees (other than information required to be disclosed by law) shall be deemed to be confidential for the purposes of Clause 15.1; and
- 15.2.2 in respect of the derivation of the Customer's fees and charges a certificate given by GasNet's auditors shall be conclusive evidence of the correctness or otherwise of the calculation of the Customer's fees and charges based on Appendix One.

16 TERMINATION

16.1 Defaults may Lead to Termination

In cases where:

- 16.1.1 either Party defaults in payment of any money payable under this Agreement (for reasons other than those in Clauses 14.4 or 14.6) for a period of ten Business Days; or
- 16.1.2 either Party defaults in the performance of any of the other material covenants or obligations imposed upon it by this Agreement; or
- 16.1.3 a resolution is passed or an order made by the Court for the liquidation of either Party except for the purposes of reconstruction or amalgamation; or
- 16.1.4 either Party makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of that Party's creditors; or
- 16.1.5 a Force Majeure event or circumstance occurs with the result that it is unlikely that one Party could ever again be in a position to perform its obligations under this Agreement; or
- 16.1.6 either Party ceases to be engaged in the delivery or trading of Gas,
- then the Party not in default or unaffected by the circumstances (referred to in the balance of this Clause 16.1 as the "Notifying Party") may at its option give notice to terminate this Agreement in the following manner:
- 16.1.7 The Notifying Party shall give written notice to be served on the other Party (the "Defaulting Party") stating specifically the cause for

terminating this Agreement and declaring it to be the intention of the Notifying Party to terminate the same.

16.1.8 Where the notice is given in respect of a default under Clauses 16.1.1, 16.1.2 or 16.1.5 (a “30 Day Default”), the Defaulting Party shall have 30 days after the service of that notice in which to remedy or remove the cause or causes stated in the notice for terminating this Agreement.

In respect of a default under Clauses 16.1.3, 16.1.4 or 16.1.6, no such 30 day period shall apply and termination can be effected immediately upon delivery of the notice.

16.1.9 In respect of a 30 Day Default, if within 30 days the Defaulting Party does remove and remedy the cause or causes and fully indemnifies the Notifying Party for all direct consequences of such breach, then such notice of default shall be deemed to be withdrawn and this Agreement shall continue in full force and effect.

16.1.10 If the Defaulting Party does not so remedy and remove the cause or causes or does not indemnify the Notifying Party for any and all direct consequences of such a 30 Day Default to the satisfaction of the Notifying Party, within 30 days, then the Notifying Party shall be entitled to terminate this Agreement forthwith.

16.2 Customer has a Right to Terminate

Notwithstanding anything else in this Agreement, the Customer shall be entitled to terminate this Agreement provided that it has given GasNet 30 Days notice in writing of its intention to do so.

16.3 Termination Without Prejudice to the Amounts Outstanding

The termination of this Agreement shall not, of itself:

16.3.1 relieve the Customer of its obligation to pay any money outstanding at that time; or

16.3.2 relieve GasNet of its obligation to deliver any Gas belonging to the Customer in the Distribution System at the time of termination; or

16.3.3 constitute a waiver of any remedy to which the Party not in default may be entitled for breach of this Agreement.

16.4 Effects of Termination

The termination rights set out in Clause 16.1 and 16.2 shall be in addition to, and not in substitution for, any other rights and remedies available to the Parties (including any rights and remedies which but for the inclusion of this Clause 16.4 would not have been available to the Parties) whether pursuant to this Agreement, at law, at equity or otherwise.

17 FORCE MAJEURE

- 17.1 Notwithstanding the other provisions of this Agreement but subject to Clause 17.2, a Party shall be relieved from liability under this Agreement:
- 17.1.1 in the case of GasNet, to the extent that on account of Force Majeure GasNet has not accepted, distributed or delivered or is unable to accept, distribute or deliver Gas in the quantities required by the Customer; and
 - 17.1.2 in the case of the Customer, to the extent that on account of Force Majeure the Customer has not delivered or taken delivery of Gas pursuant to this Agreement or has failed to perform any of its obligations under this Agreement.
- 17.2 Notwithstanding Clause 17.1, the Parties shall not be relieved from liability to pay money due at the time of the Force Majeure event, or to give any notice which may be required to be given pursuant to this Agreement. For the avoidance of doubt, the Customer shall be relieved of its obligation to pay the Service Charge, to a level proportionate with the duration and extent of the Force Majeure.
- 17.3 If either Party seeks relief under Clause 17.1, that Party shall, upon the occurrence of any such failure due to Force Majeure:
- 17.3.1 as soon as reasonably practicable but in any event within 48 hours give notice to the other Party of the occurrence of the event or circumstance claimed to be Force Majeure and provide to the other Party full particulars relating to the event or circumstance and the cause of such failure. Such notice shall also contain an estimate of the period of time required to remedy such failure; and
 - 17.3.2 render the other Party reasonable opportunity and assistance to examine and investigate the event or circumstance and the matters which caused the event or circumstance and failure; and
 - 17.3.3 as quickly as reasonably possible, use due diligence and take all reasonable steps which may be necessary to rectify, remedy, shorten or mitigate the event or circumstance giving rise to Force Majeure so as to minimise any loss, damage, expense or other effects of the suspension of obligations suffered or incurred, or likely to be suffered or incurred by the Party (and the other Party shall use reasonable endeavours to assist the Party claiming Force Majeure to do so, provided the other Party incurs no direct or indirect cost in doing so); and
 - 17.3.4 give notice as soon as reasonably practicable but in any event within 48 hours to the other Party upon termination of the event of Force Majeure.
- 17.4 For the avoidance of doubt, the Customer will not be able to claim relief from liability under Clause 17.1.2 for the suspended performance, or non performance, of obligations of any of its customers, howsoever caused.
- 17.5 If, as a result of Force Majeure, GasNet is not able to provide distribution

services in accordance with this Agreement then GasNet shall, in good faith, allocate among all of its System Users (including the Customer) any available distribution services in accordance with section 5 of Appendix Two.

18 LIABILITIES

18.1 Liability for Negligence and Wilful Default

If either Party (the "Liable Party") is negligent, or wilfully defaults, in respect of or in the performance of its obligations to the other Party under this Agreement, then:

- 18.1.1 the Liable Party shall be liable to the other Party for the direct losses caused by the negligence or wilful default; and
- 18.1.2 the Liable Party shall indemnify the other Party against all claims, demands, actions or proceedings by third parties, and any costs or expenses in connection therewith which would otherwise be and become payable by the other Party, in consequence of or arising out of the negligence or wilful default. Any allegations by a third party that might lead to a claim in respect of this indemnity shall be subject to the procedure set out in Clause 18.11.

The liabilities and indemnified amounts referred to in this Clause 18.1 shall be subject to the limitations as to quantum outlined in Clause 18.7. Nothing in this Clause 18 shall operate to limit the liability of either Party to pay all appropriate fees and charges incurred pursuant to Clauses 13 and 14.

18.2 Limitation of Liability

Except as provided in Clauses 18.1, 18.4 and 18.5, neither Party shall be liable to compensate the other Party for any loss, injury, or damage arising directly or indirectly from:

- 18.2.1 any act, omission, error, default or delay of the Party or its officers, employees or agents; or
- 18.2.2 any act, omission, error, default or delay in respect of the provision, use or termination of distribution services under this Agreement; or
- 18.2.3 the failure by the Party or its officers, employees or agents to commence acceptance, transmission, or delivery of Gas or other services pursuant to this Agreement; or
- 18.2.4 any failure of any part of the Distribution System, Receipt Point or Delivery Point; or
- 18.2.5 any interruption or reduction of distribution services, receipts or deliveries of Gas or Non-Specification Gas (made in accordance with this Agreement or otherwise); or
- 18.2.6 any act or omission of any other customer of the Party and any other third party for whom the Party is not responsible.

18.3 Direct Losses Only

If for any reason it is determined that, notwithstanding Clause 18.2, a Party is liable to the other Party for breach of this Agreement other than in the circumstances described in Clause 18.1, then:

- 18.3.1 the liability of the Party in breach to the other Party shall never exceed the loss or damage sustained by the other Party itself resulting from or arising out of that breach; and
- 18.3.2 any liability shall be subject to the limitations as to quantum outlined in Clause 18.7; and
- 18.3.3 under no circumstances will the Party in breach be liable to the other Party:
 - 18.3.3.1 in contract, tort (including negligence) or otherwise for any and all consequential loss or damage including, but without limiting the generality thereof, the other Party's loss of profits, business or anticipated savings and damages, whether or not the consequential loss or damage was or ought to have been known by the Party in breach; or
 - 18.3.3.2 for any and all claims, demands, actions or proceedings by third parties, and any costs or expenses in connection therewith, that are not already excluded under Clause 18.3.3.1.

18.4 Customer's Liability

Except as provided in Clause 18.1, the Customer alone will be responsible for and liable to pay any money by way of compensation, damages or repair which may be or become payable in consequence of the occurrence during the term of this Agreement in or about or incidental to activities in or about the locations specified in Clause 18.6 of:

- 18.4.1 any injury to or death of any person who is employed by the Customer or by any person contracting with the Customer (except GasNet), howsoever caused; and
- 18.4.2 any loss of or damage to any property of the Customer or of any person contracting with the Customer (except GasNet), howsoever caused;

and the Customer shall hold harmless and indemnify GasNet, any person contracting with GasNet (except the Customer) and their respective employees, agents and servants from and against all liabilities and expenses of whatsoever nature for, under or in connection with any claim, demand, action or proceeding whatsoever made or brought by any person in respect of or in relation to any such injury, death, loss or damage.

18.5 GasNet's Liability

Except as provided in Clause 18.1, GasNet alone will be responsible for and liable to pay any money by way of compensation, damages or repair which may be or become payable in consequence of the occurrence during the term of this Agreement in or about or incidental to activities in or about the locations specified in Clause 18.6 of:

18.5.1 any injury to or death of any person, who is employed by GasNet or by any person contracting with GasNet (except the Customer), howsoever caused; and

18.5.2 any loss of or damage to any property of GasNet or of any person contracting with GasNet (except the Customer), howsoever caused;

and GasNet shall hold harmless and indemnify the Customer, any person contracting with the Customer (except GasNet) and their respective employees, agents and servants from and against all liabilities and expenses of whatsoever nature for, under or in connection with any claim, demand, action or proceeding whatsoever made or brought by any person in respect of or in relation to any such injury, death, loss or damage.

18.6 Liability Locations

The locations specified for the purposes of Clauses 18.4 and 18.5 shall be:

18.6.1 Receipt Point; and

18.6.2 Delivery Point; and

18.6.3 Distribution System; and

18.6.4 such other premises or places of storage, distribution or delivery of Gas, received, transmitted, or delivered to the Customer as shall from time to time be agreed upon in writing by GasNet and the Customer; and

18.6.5 such other premises or places where:

18.6.5.1 property of GasNet or persons employed by GasNet; and

18.6.5.2 property of the Customer or persons employed by the Customer;

are in proximity as shall from time to time be agreed upon in writing by the Customer and GasNet.

18.7 Capped Liability

If for any reason, whether in accordance with or despite the various limitations in this Clause 18:

18.7.1 GasNet, its officers, employees, or agents are liable to the Customer; or

18.7.2 the Customer, its officers, employees, or agents are liable to GasNet;

in contract, tort (including negligence) or otherwise, the combined maximum liability of that Party to the other Party shall be \$1,000,000 in respect of any one

event or related series of events, with a maximum liability in any 12 month period of \$5,000,000, irrespective of the number of events. No charge or fee paid or payable by either Party under this Agreement shall be included in any calculation of liability limitation pursuant to this Clause 18.7.

18.8 Refund of Charges

Notwithstanding Clause 18.2 but subject to all other provisions of this Clause 18, where there is a total failure of the pipeline supplying a Delivery Point for any reason after one Party advises the other in writing of the failure, and the failure or continuation of the failure is not in any way directly or indirectly caused by the Customer or any person for whom the Customer is responsible, GasNet will, on request by the Customer made within 10 Business Days, refund or give a credit to the Customer for each period of 24 hours or part thereof by which the failure continues after the time of service of the Customer's notice mentioned above calculated as the daily Service Charge payable in respect of the affected Delivery Point. Such a refund or credit will only apply where the Customer has paid the Service Charge in respect of the period of failure, notwithstanding Clause 17.2.

18.9 Each Limitation Separate

Each limitation or exclusion of this Clause 18 and each protection given to GasNet and to the Customer or their respective officers, employees, or agents by any provision of this Clause 18 is to be construed as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.

18.10 No Limit on Orders for Specific Performance

Nothing in this Clause 18 shall limit the right of the parties to enforce this Agreement by seeking an order for specific performance or a like order pursuant to any arbitration under this Agreement.

18.11 Claims

If a third party alleges any liability (whether actual or contingent) or commences any proceedings against a Party (a "Third Party Claim") in respect of which that Party (the "Claiming Party") makes, or is in a position where it could reasonably anticipate that it might seek to make, any claim against the other Party (the "Defending Party") pursuant to Clause 18.1.2, the following procedure shall apply:

18.11.1 Notice

The Claiming Party shall immediately give notice of the Third Party Claim to the Defending Party.

18.11.2 No Payment or Admission of Liability

The Claiming Party will not make any payment or admission of liability in respect of the Third Party Claim without the prior written consent of the Defending Party. The Defending Party will not unreasonably withhold its consent under this Clause 18.11.2.

18.11.3 Defending Party may Defend

If the Defending Party accepts liability to the Claiming Party for a Third Party Claim, then the Defending Party (and its legal representatives) may elect to defend in the name of the Claiming Party any Third Party Claim involving any litigation. The Defending Party must notify the Claiming Party of its election within 14 days of receiving notice of the Third Party Claim. The Claiming Party shall provide or procure to be provided such assistance as the Defending Party may reasonably require if:

- 18.11.3.1 the Defending Party first agrees that it has an obligation to indemnify the Claiming Party against any liabilities resulting from such Third Party Claim and/or its defence; and
- 18.11.3.2 the Claiming Party is not required to render assistance to the Defending Party pursuant to this Clause 18.11.3, other than allowing a defence in its name, in circumstances where the Claiming Party reasonably believes that its reputation could be damaged or impaired by such assistance; and
- 18.11.3.3 the Claiming Party can decline the defence in its name of any Third Party Claim in circumstances where such defence is not meritorious or is vexatious (if there is any dispute as to the merit of a defence, the matter shall be immediately referred to arbitration pursuant to Clause 21, and concluded as speedily as possible); and
- 18.11.3.4 the Defending Party agrees that it will pay the costs of the Claiming Party in providing assistance in defending the Third Party Claim.

18.11.4 Defending Party's Counsel

If the Defending Party elects to defend a Third Party Claim under Clause 18.11.3, then it may choose its own counsel for such defence. The costs of that counsel will be met by the Defending Party.

18.11.5 Duty to Mitigate

The Claiming Party shall take all reasonable steps to avoid or mitigate any loss or liability which might give rise to a claim under Clause 18.1.2 and will not take any active steps which would or could directly and inevitably result in the occurrence of an indemnifiable event.

18.11.6 Other Limitations

The Defending Party shall not be required to make any payment in respect of any claim under Clause 18.1.2 based on a contingent liability until the contingent liability becomes an actual liability and is due and payable.

19 CONFIDENTIAL INFORMATION

19.1 Except as required by law neither Party shall communicate or comment upon any details contained in this Agreement to third parties without the prior written consent of the other Party provided that:

19.1.1 a Party may, without such prior written consent, communicate or comment on the details contained in this Agreement to any financial institution from which such Party is seeking to obtain finance, or to any accountant or legal adviser, upon obtaining a written undertaking from such person to keep such matters confidential; and

19.1.2 the Customer may, without such prior written consent of GasNet, communicate or comment on the provisions of this Agreement, strictly on a "need to know" basis, to any other user of the Distribution System to whom the Customer wishes to share a Receipt Point or Delivery Point, as provided in Clause 6.6.

20 DISPUTE RESOLUTION

Subject to Clause 20.2, in the event of any dispute between the Parties arising out of this Agreement (other than a dispute to which Clause 18.11.3.3 applies) the Parties shall submit to the dispute resolution procedure contained in Appendix Four.

20.1 A dispute or difference on any of the following matters shall be determined by an independent expert in accordance with Clause 20.2:

20.1.1 invoices rendered; and

20.1.2 metering equipment; and

20.1.3 multiple user delivery points and receipt points; and

20.1.4 any other matters that the Parties may agree to in writing.

20.2 If any dispute or any difference arises between the Parties concerning any matter set out in Clause 20.1 either Party may give written notice to the other Party. If such dispute or difference is not resolved by negotiation between the Parties within a period of 10 Business Days from the date of notice being given under this Clause 20.2, either Party may refer the matter in dispute to an independent expert nominated in writing by GasNet and the Customer jointly (or, in default of agreement within 2 Business Days thereafter as to the nominee, by the President for the time being of the Institute of Professional Engineers New Zealand ("IPENZ")). The determination in writing of the independent expert or the nominee of the President of IPENZ on the matter in dispute will be conclusive and binding on the Parties and will be deemed to have been given as an expert and not an arbitrator. The costs of the independent expert or the nominee of the President of IPENZ (as the case may be) will be borne as to one half by GasNet and as to the other half by the Customer. For the avoidance of doubt, the provisions of the Arbitration Act 1996 shall not apply to such determination.

21 ARBITRATION

- 21.1 Where Clause 5 of Appendix Four applies and the matter remains unresolved or where Clause 18.11.3.3 applies the matter in dispute between the Parties shall be referred to arbitration within five Business Days in accordance with the Arbitration Act 1996 except that clauses 4 and 5 of Schedule Two to the Arbitration Act 1996 shall not apply.
- 21.2 Either Party may refer a matter to arbitration by giving to the other Party notice in writing stating the subject matter and details of the dispute and that Party's desire to have the matter referred to arbitration.
- 21.3 The arbitration shall be by one arbitrator to be agreed upon by the Parties or, in the event that a single arbitrator cannot be agreed, then before two arbitrators one to be appointed by each Party and their umpire to be appointed by the arbitrators before any arbitration proceedings commence. If the identity of the arbitrator, or two arbitrators and umpire, remains unsettled 30 days after the giving of notice pursuant to Clause 21.2, then an arbitrator for the matter in dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc.
- 21.4 Pending resolution of any dispute or difference, the Parties shall continue to perform their respective obligations pursuant to the provisions of this Agreement.

22 NOTICES

- 22.1 Each Party shall provide written notification to the other at the earliest possible time of any factor, event or impending event known to it which may affect its ability to meet the requirements of this Agreement.
- 22.2 All notices, demands, consents, requests or other communications (collectively referred to as "notices") required or permitted to be given or made to either Party pursuant to this Agreement, shall be in writing and shall be deemed to be sufficiently served, given or made if personally delivered or if sent by registered mail, or e-mail, or facsimile to the Party to be notified at the appropriate address specified in Appendix One or in either case to such other address as the Party to be notified shall designate by written notice given to the other Party.
- 22.3 A notice personally delivered shall be deemed served upon delivery. If sent by registered mail the notice shall be deemed served on the earlier of the date of receipt or on the second Business Day after the same was committed to post. If sent by facsimile or e-mail transmission such notice shall, if sent prior to 4.00 pm on any Business Day, be deemed served on that Business Day. If sent after 4.00pm on any Business Day it shall be deemed served on the next Business Day.

23 WAIVER

Any failure or delay by either Party in exercising any of its rights under this Agreement shall not operate as a waiver of its rights and shall not prevent such Party from

subsequently enforcing any right or treating any breach by the other Party as a repudiation of the Agreement.

24 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties from the Commencement Date on the subject matter of this Agreement and supersedes all prior negotiations, representations and agreements between the Parties.

25 AMENDMENT

25.1 Except as expressly set out in this Agreement, no variation, modification or waiver of any provision of this Agreement shall be of any force or effect unless it is in writing and signed by both Parties. Any amendment to this Agreement shall be in the form attached as Appendix Three, unless the Parties otherwise agree.

25.2 The Parties agree that changes from time to time during the currency of this Agreement that relate only to Delivery Point(s) can be recorded by exchange of correspondence between the Parties and will not require formal amendment pursuant to clause 25.1 more frequently than once in any six month period.

26 SEVERABILITY

If any clause or provision of this Agreement shall be held illegal or unenforceable by any judgement of any Court or Tribunal having competent jurisdiction, such judgement shall not affect the remaining provisions of this Agreement which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included in this Agreement.

27 ASSIGNMENT

27.1 Subject to Clause 27.2, either Party may only assign the totality of its rights and obligations under this Agreement.

27.2 In the event of assignment pursuant to Clause 27.1, the assignor shall remain liable to the other Party for the due performance of all obligations under this Agreement as primary obligor and not merely as surety or guarantor only, unless that other Party has given its prior written consent to the release of the assignor from its obligations.

27.3 Prior to an assignment made pursuant to this Clause 27, the assignor shall obtain execution by the assignee of a Deed of Covenant binding the assignee (consequent upon the assignment) to observe and perform all the duties and obligations arising to be observed and performed under this Agreement.

27.4 Notwithstanding the effective date of any assignment made in accordance with the provisions of this Clause 27, in respect of any charges payable under this Agreement, the assignor shall remain liable up to the end of the Billing Period during which the assignment takes place.

27.5 An amalgamation (as defined in the Companies Act 1993) of the Customer with any other company or companies shall require GasNet's consent (not to be

unreasonably withheld). Upon amalgamation, the Customer shall notify GasNet of the name of the amalgamated company and certify that the amalgamation has complied and continues to comply with any relevant law.

28 ACCESS RIGHTS

- 28.1 Each Party hereby grants to the other access to its relevant premises at reasonable times for the purposes of performing this Agreement.
- 28.2 The right of access conferred by Clause 28.1 shall, when appropriate, be exercised as follows:
- 28.2.1 reasonable notice specifying the time of such proposed access is to be given by the Party seeking access to the other; and
- 28.2.2 each Party shall take all reasonable steps to ensure that its officers, agents, and employees who enter the premises of the other Party cause as little inconvenience to the other Party as possible and observe recognised safety and security procedures.
- 28.3 If any equipment of a Party (the “owner”) is or is to be located on the premises of another person and the other Party requires access to that equipment for any purpose under this Agreement, the owner shall use its best endeavours to secure from that other person a right of access to that person’s property which can be exercised by the Party seeking access.
- 28.4 The Customer shall ensure that GasNet has a right of access at all times to examine, test, install, replace or modify any Meter and associated Fittings at a Delivery Point or any part of the Distribution System to the extent that it or they are located on or within an End User’s premises. In exercising its right of access GasNet shall take all reasonable steps to ensure that its officers, agents, and employees who enter the premises of an End User cause as little inconvenience to the End User as possible and observe recognised safety and security procedures.

29 CONSUMER GUARANTEES ACT

The Customer represents and warrants that it has entered into this Agreement to acquire distribution services from GasNet solely for business purposes. Nothing in the Consumer Guarantees Act 1993 is to apply to the supply of Gas or any services to the Customer under this Agreement.

30 EXCLUSION OF IMPLIED TERMS

All terms and conditions relating to this Agreement and the distribution services that are implied by law or custom are excluded to the maximum extent permitted by law.

31 GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the law of New Zealand and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts.

32 COUNTERPART

This Agreement may be executed in two or more counterparts and all such copies shall be read and construed as one and the same document.

IN WITNESS WHEREOF this Agreement was executed by the Parties on the day and year first above written

SIGNED ON BEHALF OF GASNET BY
two of its Directors

Signed

Signed

Name

Name

SIGNED ON BEHALF OF THE CUSTOMER BY
two of its Authorised Signatories

Signed

Signed

Name

Name

APPENDIX ONE

SPECIAL TERMS AND CONDITIONS FOR THE PROVISION OF DISTRIBUTION SERVICES

33 Customer's Details

Street Address:

Mailing Address:

Facsimile Number:

E-mail Reference:

E-Mail Billing:

Marked for the attention of:

34 GasNet's Details

Street Address: 8 Cooks Street, Wanganui

Mailing Address: PO Box 7149
Wanganui

Facsimile Number: (06) 349 0135

E-mail Reference: enquiries@gasnet.co.nz

Bank Account: 01-0790-0168376-00

Marked for the attention of: General Manager

35 Commencement Date:

36 Termination Date: To be advised under section 4: Terms of Agreement

37 Apportionment of delivered energy for multiple user Receipt Points and Delivery Points:

If applicable refer to Clause 6.6 of this Agreement and Table 1 of this Appendix One.

38 Fees and Charges

This section outlines the fees and charges payable by the Customer for use of the Distribution System under this Agreement.

38.1 Service & GMS Charges

Each month, for each Delivery Point, the Customer shall pay Service & GMS Charges equal to the applicable Service Charge Fee and GMS Charge Fee as

set out in Table 1 of this Appendix One.

The Service Charge & GMS Charge will be payable in monthly in arrears.

The Service Charge Fee and GMS Charge Fee shall be redetermined pursuant to Clauses 13.9.1 and 13.9.2 of this Agreement.

38.2 **Supply Charge**

Each month the Customer shall pay a Supply Charge equal to:

Supply Charge Fee (\$/GJ) x Gas Delivered (GJ)

Where:

Supply Charge Fee = the applicable Supply Charge Fee as set out in Table 1 of this Appendix One.

Gas Delivered = the energy value (expressed in GJ) of all Gas delivered to the Delivery Point(s) by GasNet on behalf of the Customer in any Month.

The Supply Charge will be payable in monthly in arrears.

The Supply Charge shall be redetermined pursuant to Clauses 13.9.1 and 13.9.2 of this Agreement.

39 **Bond/Deposit**

Pursuant to Clause 13.8 of this Agreement no bond or deposit will be required from the Customer.

40 **Delivery Point Details**

The following information is to be specified for each delivery point where applicable.

- 40.1.1 Identification number (a unique number for each Delivery Point as specified by GasNet)
- 40.1.2 Location
- 40.1.3 Receipt Point.
- 40.1.4 Maximum pressure
- 40.1.5 Minimum pressure
- 40.1.6 Nominated pressure
- 40.1.7 Maximum Hourly Quantity (MHQ)

- 40.1.8 Maximum Instantaneous Quantity (MIQ)
- 40.1.9 Nominated Monthly Quantity (NMQ)
- 40.1.10 Nominated Annual Quantity (NAQ)
- 40.1.11 Non standard pressure service (if any)
- 40.1.12 Specify dedicated or not
- 40.1.13 Proportion of volumes and charges (if delivery point not dedicated)
- 40.1.14 Frequency and timing of meter reading for the purpose of billing
- 40.1.15 ANZIC classification

WEBSITE COPY

SCHEDULE ONE
FEES AND CHARGES

Please refer to the covering letter for an attachment notification of the Fees and Charges.

WEBSITE COPY

APPENDIX TWO

TECHNICAL REQUIREMENTS

41 RECEIPT POINTS

- 41.1 Receipt Point site layout and design must conform with good engineering practice and in particular comply with the requirements of:
- 41.1.1 NZS 5223 Part 1;
 - 41.1.2 Gas Act 1992 and any Regulations made pursuant to that Act;
 - 41.1.3 NZS 5259:1997 "Gas Measurement";
 - 41.1.4 Health and Safety in Employment Act 1992; and
 - 41.1.5 Any other relevant Acts or Regulations in place at the time of construction.
- 41.2 Receipt Point sites shall have adequate security fencing, vehicular access, and alternative means of personnel egress.
- 41.3 All electrical equipment shall comply with NZ ECP 24 meet the technical requirements approved by the owner of the Receipt Point and Occupational Safety and Health (Ministry of Commerce) for the classified areas in which it is installed.
- 41.4 The Receipt Point may contain means to prevent excess offtake in the event of a failure of the downstream system. This could be an automatic linebreak device, remote operated block valve, flow control valve or other device as approved by GasNet.
- 41.5 Custody transfer metering shall be in accordance with NZS 5259:1997. GasNet shall determine the means of pressure, temperature, compressibility and calorific value determination and calculation of standard volume and energy.
- 41.6 The Receipt Point site must allow for installation of check metering equipment should this be required by GasNet.
- 41.7 The Customer shall be responsible for providing Gas at sufficient pressure to enable it to enter GasNet's Distribution System at whatever pressure may prevail therein. The Customer shall be aware that most pipelines operate below their maximum allowable operating pressure and that GasNet may in future elect to take Gas at a higher pressure into its Distribution System.
- 41.8 The Receipt Point must contain adequate pressure regulation (active and monitor preferred) and over-pressure protection equipment in order to adequately protect the Distribution System of a standard approved by GasNet. Further the Delivery

Point should also contain equipment to prevent overspeeding of the custody transfer meter(s) and check meter(s) if installed.

- 41.9 GasNet or the Customer may (at their own cost) require gas composition and properties (including calorific value) to be continuously monitored by gas chromatograph or other suitable device. The monitoring Party shall, if requested, supply the other Party with data collected as a result of such continuous monitoring.
- 41.10 The Receipt Point shall also contain equipment to prevent dust, oil, condensed hydrocarbons or other deleterious substances from reaching GasNet's Distribution System including the metering equipment.
- 41.11 Gas delivered shall conform to NZS 5442: 1990 and be odourised to conform with NZGCP3.
- 41.12 The Receipt Point must contain an approved means of electrically isolating the Receipt Point from GasNet's cathodic protection system.

A surge diverter approved by GasNet shall be installed across the isolating device.

Pipework within the Receipt Point site is to be suitably bonded so as to be electrically continuous and connected to an approved earthbed.

- 41.13 GasNet may require the Receipt Point to be connected to its remote monitoring system. This involves installation of a remote terminal unit (RTU), cabinet, uninterruptible power supply, telephone line or other communications link, protection devices, earthing, transducers, cabling etc. to provide GasNet with access to particular data, statuses and such other parameters as GasNet may reasonably require.

The Customer shall provide at GasNet's request at each Receipt Point a suitable building or enclosure to house remote monitoring equipment.

42 DELIVERY POINTS

- 42.1 Delivery Point site layout and design must conform with good engineering practice and in particular comply with the requirements of:
- 42.1.1 NZS 5258:1995 "Code of Practice for Gas Distribution";
- 42.1.2 Gas Act 1992 and any Regulations made pursuant to that Act;
- 42.1.3 NZS 5259:1997 "Gas Measurement";
- 42.1.4 Health and Safety in Employment Act 1992; and

- 42.1.5 Any other relevant Acts or Regulations in place at the time of construction.
- 42.2 Delivery Point sites shall have suitable security measures which will minimise damage and/or interference.
- 42.3 All electrical equipment shall comply with NZ ECP 24 for the classified areas in which it is installed.
- 42.4 The Delivery Point may contain means to prevent excess offtake in the event of unanticipated increase in usage or failure of the downstream system. This could be a flow restricting orifice or other device as approved by GasNet.
- 42.5 Custody transfer metering shall be in accordance with NZS 5259:1997. GasNet shall determine the means of pressure, temperature, compressibility and calorific value determination and calculation of standard volume and energy.
- 42.6 The Delivery Point must contain adequate pressure regulation and over-pressure protection equipment in order to adequately protect the system downstream of the Delivery Point of a standard mutually agreed between GasNet and the Customer.
- 42.7 GasNet or the Customer may (at their own cost) require gas composition and properties (including calorific value) to be continuously monitored by gas chromatograph or other suitable device. The monitoring Party shall, if requested, supply the other Party with data collected as a result of such continuous monitoring.
- 42.8 The Delivery Point shall also contain equipment to prevent dust, oil, condensed hydrocarbons or other deleterious substances from reaching the system downstream of the Delivery Point including the metering equipment.
- 42.9 Gas delivered shall conform to NZS 5442: 1990 and be odorised to conform with NZGCP3.
- 42.10 The Delivery Point shall be electrically isolated from the system downstream of the Delivery Point.
- 42.11 GasNet may require the Delivery Point to be connected to its remote monitoring system. This involves installation of a remote terminal unit (RTU), cabinet, uninterruptible power supply, telephone line or other communications link, protection devices, earthing, transducers, cabling etc. to provide GasNet with access to particular data, statuses and such other parameters as GasNet may reasonably require.

GasNet may construct at each Delivery Point a suitable building or enclosure to house remote monitoring equipment.

43 ACCIDENTS, INCIDENTS AND CALLOUTS

- 43.1 GasNet will notify the Customer as soon as possible of any incident that will, or has the potential to, directly affect End Users supplied by the Customer.
- 43.2 GasNet will report to the Customer on the investigation of any accident or incident that interrupts or curtails gas deliveries from the Distribution System.
- 43.3 The Customer will notify GasNet of all incidents occurring on an End User's installation that are likely to;
- 43.3.1 have been caused by a Distribution System fault, or
- 43.3.2 to have affected the normal operation of the Distribution System.
- 43.4 The Customer will immediately report to GasNet any signs of damage, gas escapes or other abnormalities on the Distribution System resulting from reports given to the Customer.
- 43.5 Unless alternative arrangements are made, GasNet will at all times be the principal contact for the public and consumers in relation to Gas supply and delivery issues to the outlet of the Gas Measurement System. The Customer may wish to make arrangements to respond to its End User's calls relating to the gas supply downstream of the Gas Measurement System. GasNet will accommodate these arrangements provided that all safety matters are adequately addressed.
- 43.6 Where GasNet is required to respond to End User(s) calls to gas supply incidents downstream of the Gas Measurement System GasNet may recover direct costs, relating to the incident, from the Customer.
- 43.7 Where the Customer has an agreement with GasNet to respond to End User's calls relating to the supply of Gas, then the Customer will furnish GasNet with ongoing and current 24 hour call out rosters and will have agreed procedures for handling calls and for communicating with GasNet.
- 43.8 GasNet will have procedures for handling calls relating to the Distribution System and will maintain rosters for responding to out of hour calls. Copies of ongoing and current rosters will be provided to the Customer.

44 TEST PROCEDURES

- 44.1 All test procedures shall be in accordance with NZS 5259:1997.
- 44.2 If, upon testing, any measuring equipment is found to be accurate within the maximum allowable error limits of table 1, NZS 5259:1997, all previous recordings or output of such equipment shall be considered accurate in

computing the acceptance, distribution, and delivery of Gas. To the extent that the error of the measuring equipment is not zero the equipment shall be adjusted immediately such that its error is as close as practicable to zero. No adjustment to the Customer's account shall be made.

- 44.3 If, upon testing, any measuring equipment shall be found to be inaccurate within the maximum allowable error limits of table 1, NZS 5259:1997, any previous recordings or output of such equipment shall be corrected by the full magnitude of the error found for any period wherein it is known definitely that the measuring equipment was operating inaccurately. In the event the period is not known or not agreed upon, such correction shall be for a period of one half of the time elapsed since the date of the preceding test. The equipment shall be adjusted immediately such that its error is as close as practicable to zero.
- 44.4 To determine the accuracy of any measurement device it shall be tested so that the output signal or reading of the device is as close as possible to the normal operating conditions or, if the device normally operates within a particular range, at points within that range. In the latter case the uncertainty shall be an average across the range.
- 44.5 For the purposes of Clause 4.1 of this Appendix a suitable calibration standard shall be any facility or testing device with traceability to a primary standard, or a testing laboratory or facility having accreditation recognised by GasNet.

45 LOAD MANAGEMENT

- 45.1 In the event that GasNet determines that any System User (including the Customer) and/or its End User(s) is acting in a manner that compromises the access rights of any other System User (including the Customer) and/or their End User(s), or the deliverability of Gas to End Users, then GasNet will take appropriate actions available to it under the Gas Act to protect the interest of other Distribution System users. GasNet shall not be held liable for the actions of any party that prevents GasNet from providing the services described in this Appendix unless such actions have been approved in writing by GasNet.
- 45.2 GasNet will be responsible for the costs of providing load management, including the cost of equipment and processes.
- 45.3 GasNet will be solely responsible for the management of Distribution System emergencies. Emergency management will include the actions necessary to:
- 45.3.1 Assess and make safe any situation;
 - 45.3.2 Arrange for the control of the flow of gas into and out of the Distribution System;
 - 45.3.3 Make temporary or permanent repairs to any part of the Distribution

System;

- 45.3.4 Restore the Distribution System back to its previous operational condition;
- 45.3.5 Keep System Users (including the Customer) and others informed of developments.
- 45.4 GasNet will maintain a written plan outlining the resources available and the actions likely to be taken when handling any foreseeable emergency involving the Distribution System. The plan shall include loadshedding principles and loadshedding schedules provided by the System User(s) (including the Customer).
- 45.5 By 1 July of each year (or more frequently if reasonably asked by GasNet), the Customer will supply to GasNet loadshedding schedules that identify and classify all non-domestic Delivery Points. GasNet will from time to time advise the Customer of the loadshedding classifications that apply.
- 45.6 In situations involving interruption to the Gas supply, GasNet will be responsible for isolating and tagging the Delivery Points and will as soon as practical advise the Customer of the action taken.
- 45.7 GasNet will nominate a person who will act as a Customer Liaison Officer who will liaise with the Customer in the event of a Civil Defence or system emergency and will notify the Customer of the name of the person. The Customer will nominate a person who will liaise with GasNet in the event of a Civil Defence or system emergency and will notify GasNet of the name of the person.
- 45.8 The Customer must take no action during the course of a Distribution System emergency to compromise the ability of GasNet to manage the emergency.
- 45.9 Once the Distribution System has been returned to its normal operating condition, GasNet will advise the Customer, who is then responsible for the safe re-introduction of gas to affected Customers.
- 45.10 In the event of a Critical Contingency the Parties shall comply in all respects with the requirements of the Gas Governance (Critical Contingency Management) Regulations 2008 including any instructions from the Critical Contingency Operator.

46 ACTS, STANDARDS AND CODES

The following Acts, Standards and Codes, as amended from time to time, form part of and are to be read in conjunction with this Agreement:

- Arbitration Act 1996
- Commerce Act 1986;

- Companies Act 1993
- Consumer Guarantees Act 1993;
- Energy Resources Levy Act 1976;
- Fair Trading Act 1986;
- Gas Act 1992;
- Hazardous Substances and New Organisms Act 1996;
- Health and Safety in Employment Act 1992;
- Ministry of Energy (Abolition) Act 1989;
- New Zealand Railways Act 1981;
- Personal Property Securities Act 1999;
- Resource Management Act 1991;
- Transit New Zealand Act 1989.
- Gas (Information Disclosure) Regulations 1997;
- Gas (Safety and Management) Regulations 2010;
- Ministry of Energy (Levies) Regulations 2000;
- Gas Governance (Compliance) Regulations 2008
- Gas Governance (Critical Contingency Management) Regulations 2008
- NZS 4442: 1998 “Welded Steel Pipes and Fittings for Water, Sewage, and Medium Pressure Gas”;
- NZS 5223: Part 1: 1985 “Code of Practice for High Pressure Gas and Petroleum Liquids Pipelines”;
- NZS 5258: 2003 “Gas Distribution Networks”;
- NZS 5259: 2004 “Gas Measurement”;
- NZS 5261: 2003 “Gas Installation”;
- NZS 5263: 2003 Gas detection and odourisation;
- NZS 5442: 2008 “Specification for Reticulated Natural Gas”;
- AS/NZS 2430.3.4: 1997 “Classification of Hazardous Areas – Part 3.4: Examples of area Classification – Flammable Gases”.
- AS/NZS 4130:2009 Polyethylene (PE) pipes for pressure applications.
- AS/NZS 4131:2010 Polyethylene (PE) compounds for pressure pipes and fittings.
- GIP001 Gas Industry Disconnection and Reconnection Protocol;
- GIP002 Event Notification Protocol.
- GIP003 Gas Industry New Connection Protocol;
- GIP008 Gas Industry Safety Management System
- New Zealand Gas Pipeline Access Code;

**APPENDIX THREE
AMENDING AGREEMENT**

This Agreement is made the _____ day of _____ 20____

BETWEEN

- 1 GASNET LIMITED at Wanganui ("GasNet")
2 _____ ("the Customer")

BACKGROUND

- 1 By agreement dated [_____] GasNet agreed to provide distribution services to the Customer on the basis set out in that agreement (the " Distribution Services Agreement").
2 GasNet and the Customer now wish to amend the Distribution Services Agreement on the basis set out in this Agreement.

IT IS ACKNOWLEDGED AND AGREED as follows:

47 INTERPRETATION

47.1 Defined Terms

Terms defined in Clause 1.1 of the Distribution Services Agreement shall, unless the context otherwise requires, have the same meanings in this Agreement.

47.2 Construction

Clause 1.2 of the Distribution Services Agreement shall, unless the context otherwise requires, apply in respect of this Agreement as if it were set out in this Clause 1.2.

48 AMENDMENTS TO DISTRIBUTION SERVICES AGREEMENT

The Distribution Services Agreement is hereby amended as follows with effect from [_____]:

49 CONFIRMATION

The Parties agree that the Distribution Services Agreement, as hereby amended, is confirmed.

IN WITNESS WHEREOF this Agreement has been executed on the date shown on the first page.

APPENDIX FOUR

DISPUTE RESOLUTION PROCEDURE

50 CONSTRUCTION

Unless otherwise defined or the context otherwise requires all terms which are capitalised in this Appendix shall bear the same meaning as in the main body of the Agreement.

51 INITIATING RESOLUTION

If a dispute arises out of or in connection with this Agreement the Parties, using the procedures set out in this Appendix, agree to make a genuine effort to resolve the dispute without resorting to litigation. Either Party may initiate these resolution procedures by giving written notice to the other Party.

52 NEGOTIATIONS

The Party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other Party within three Business Days. The Party receiving such written notice must then give written notice to the other Party naming its representative in the negotiations. Each representative must have authority to settle the dispute. As soon as possible after both Parties have been so advised of each others' representatives, the representatives must enter into negotiations to try to resolve the dispute.

53 ALTERNATIVE DISPUTE RESOLUTION

53.1 If the dispute is not resolved within 5 Business Days of both Parties being advised of each other's representatives under Clause 3 of this Appendix, then within a further 5 Business Days, the Parties must either:

53.1.1 initiate any available standard industry dispute resolution procedure if such a procedure has been agreed to by both Parties in writing with respect to the particular dispute; or

53.1.2 in the event that Clause 4.1.1 of this Appendix does not apply, attempt to agree on a process for resolving the dispute, such as further negotiations, mediation, or independent expert determination, but not arbitration or litigation. Agreement on a process is to include agreement on:

53.1.2.1 the procedure and timetable for any exchange of documents and other information relating to the dispute;

53.1.2.2 procedural rules and a timetable for the conduct of the selected method of proceeding;

- 53.1.2.3 a procedure for selection and compensation of any neutral person who may be employed by the Parties in dispute;
- 53.1.2.4 whether or not the decision of any mediator or independent expert, or other decision reached as a result of further negotiation or other dispute resolution process, will be final and binding on the Parties.

53.2 The Parties must maintain the confidentiality of any documents or other information made available to, or coming to the knowledge of, any Party in the course of negotiations or other dispute resolution process established under this Clause 4 of this Appendix. The Parties may use such information in settling the dispute, but not for any other purpose. They may not rely on, or introduce as evidence in any arbitral, judicial or other proceeding:

- 53.2.1 views expressed or suggestions made by either Party or another party on a possible settlement of the dispute;
- 53.2.2 any admission or concession made by either Party or another party in the course of negotiations or any other agreed process to resolve the dispute;
- 53.2.3 proposals made or views expressed by a neutral person employed by the Parties to the dispute; or
- 53.2.4 the fact that either Party had or had not indicated willingness to accept a proposal for settlement.

53.3 Where a time limit is set in these alternative dispute resolution provisions for doing something the Parties' representatives may agree to extend that time limit.

54 ARBITRATION

If:

- 54.1 the Parties fail to agree on a dispute resolution process within the applicable time limit; or
- 54.2 using an agreed dispute resolution process (including any dispute resolution process initiated under Clause 4.1.1 of this Appendix) the Parties fail to settle the dispute within a further 20 Business Days, subject to any agreement made pursuant to Clause 4.1.2.4 of this Appendix;

the Parties shall refer the dispute to arbitration in accordance with the Arbitration Act 1996 pursuant to Clause 29 of this Agreement.

APPENDIX FIVE**INFORMATION TO BE PROVIDED BY GASNET**

In accordance with this provision of the Agreement the following information will be supplied by GasNet to the Customer.

55 Metering

- 55.1 For each Delivery Point with a Time of Use Device, meter readings taken in accordance with Appendix One.
- 55.2 Any information relevant to the checking of metering equipment.
- 55.3 Relevant information to assist in the estimation of quantities of Gas during periods when the metering equipment is known to be not functioning or inaccurate.
- 55.4 Information relevant to the possible interference with or damage to the Customer's metering equipment that comes to the notice of GasNet.

56 Customers

- 56.1 Details of the location of End Users disconnected by GasNet because of serious risk to life or property or because the End User's installation does not comply with the requirements of this Agreement.

57 Odourisation

- 57.1 Where requested, details of odorant levels measured by GasNet.
- 57.2 Notification within ½ hour of GasNet becoming aware of any situation where Gas within its Distribution System is, or has the potential to be, over or under odourised.

58 Information Disclosure

- 58.1 A complete copy of the information publicly disclosed by GasNet in compliance with the Gas (Information Disclosure) Regulations 1997.

59 Prices and Charges

- 59.1 Where requested, details of GasNet's pricing strategies, policies and methodologies.
- 59.2 Written notice of any proposed price variations.

APPENDIX SIX**INFORMATION TO BE PROVIDED BY THE CUSTOMER**

In accordance with this provision of the Agreement the following information will be supplied by the Customer to GasNet.

60 Delivery Points

- 60.1 Gasfitting certification certificates issued pursuant to the Gas Regulations 1993 for End Users.
- 60.2 Details of deleted or disconnected End Users

61 Metering

- 61.1 Any information relevant to the checking of metering equipment.
- 61.2 Relevant information to assist in the estimation of quantities of Gas during periods when the metering equipment is known to be not functioning or inaccurate.
- 61.3 Information relevant to the possible interference with or damage to GasNet's metering equipment that comes to the notice of the Customer.

62 Billing Information

The following information shall be provided in accordance with Clause 14.2.1:

- 62.1 For the purposes of charging for Distribution Services in the Billing Period;
 - 62.1.1 the total energy value of Gas delivered by GasNet to the Customer in that Billing period; and
 - 62.1.2 the total energy value of Gas estimated to have been delivered by GasNet in the Billing Period but not accounted for in metered quantities.
- 62.2 The Calorific Value of the Gas delivered by the Customer to GasNet at the Receipt Point for each day in the Billing Period.

63 Odourisation

- 63.1 Where requested, copies of the quality assurance procedures for the supply of odourised Gas to GasNet at the Receipt Point.
- 63.2 Where requested, details of odourant levels measured by the Customer at Receipt and Delivery Points.
- 63.3 Notification within ½ hour of the Customer becoming aware that over or under

odorised Gas may occur at a Receipt and/or Delivery Point.

64 General

- 64.1 Details of significant deterioration in the financial position of the Customer likely to lead to the Customers' insolvency or liquidation as soon as the Customer becomes aware that such a financial position exists.
- 64.2 Such details of the Customers' contract(s) with any party (other than GasNet) supplying transportation services or Gas as may affect any condition of this Agreement.

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