

**EMSTRADEPOINT**

**PRODUCT SUPPLEMENT - GAS**

**Version 8.1**

**effective 25 May 2022**



**EMS  
TRADEPOINT**

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## PART I: INTRODUCTION AND DEFINITIONS

### 1. INTRODUCTION

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1.1 **Commodity:** The Commodity for this Product Supplement is Gas.

1.2 **Scope of Product Supplement:** This Product Supplement, together with the Core Rules, sets out the terms under which emsTradePoint makes available and operates the Trading System for Participants to trade in the physical sale and purchase of Gas.

### 2. DEFINITIONS

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2.1 **Defined Terms:** In this Product Supplement, unless the context indicates otherwise:

**Affected Participant** means a Short Receipt Participant or a Short Delivery Participant, or both, as the context requires;

**Aggregate emsTradePoint Trade Quantity** means, in respect of a Participant and a Day, the total of:

- (a) the Participant's Trade Quantities in its Buyer Trade Legs for that Day; less
- (b) the Participant's Trade Quantities in its Seller Trade Legs for that Day,

whereby a total that is a positive number indicates an aggregate obligation to Receive that quantity of Gas and a total that is a negative number indicates an aggregate obligation to Deliver that quantity of Gas;

**Approved Nomination** has the meaning given in the MPOC;

**Carbon Charge** means a charge or liability imposed under any Legal Requirement in relation to greenhouse gas emissions and includes any liability under the Climate Change Response Act 2002;

**Cash-Out Buy Price** means a price per GJ of Gas, calculated by emsTradePoint using the same methodology as used to calculate the "Cash-Out Buy Price" under the MPOC; provided that if for any reason emsTradePoint cannot reasonably calculate the Cash-out Buy Price using that methodology, it may substitute another methodology based on the same principles as underpin that methodology. For the avoidance of doubt, emsTradePoint may reference its own Products and indices in its calculations;

**Cash-Out Sell Price** means a price per GJ of Gas, calculated by emsTradePoint using the same methodology as used to calculate the "Cash-Out Sell Price" under the MPOC; provided that if for any reason emsTradePoint cannot reasonably calculate the Cash-Out Sell Price using that methodology, it may substitute another methodology based on the same principles as underpin that methodology. For the avoidance of doubt, emsTradePoint may reference its own Products and indices in its calculations;

**Critical Contingency Event** has the meaning given in the Critical Contingency Regulations;

**Critical Contingency Management Plan** has the meaning given in the Critical Contingency Regulations;

**Critical Contingency Operator** means the person appointed as the critical contingency operator under the Critical Contingency Regulations. The Critical Contingency Operator is a Relevant Authority;

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

**Deliver** means to deliver Gas physically at a Hub, or to carry out the act required such that physical delivery is deemed to have been made at the Hub, in accordance with the MPOC;

**FM Day** means a Day in the relevant Participant FM Period;

**FM Participant** has the meaning given in rule 12.1;

**FM Participant Shortfall Quantity** means the quantity of Gas (in whole GJs) that the FM Participant will fail to Deliver or Receive (as the case may be) on the relevant FM Day due to an event or circumstance of Participant Force Majeure for the FM Participant, as set out in the relevant Participant FM Certificate (and for the avoidance of doubt, does not include any quantity to the extent that it would change the FM Participant from having an aggregate obligation to Deliver Gas on an FM Day to having an aggregate obligation to Receive Gas on an FM Day, and vice versa). If the FM Day is an FM SDE Day, the maximum FM Participant Shortfall Quantity is:

$$A * ((24 - B) / 24)$$

Where:

**A** means the sum of Affected Participants' Original Trade Quantities for the FM Day

**B** means the number of whole hours from 12.00:00 am on the FM SDE Day until the start of the Intra-Day Cycle that commences at least 90 minutes after the time emsTradepoint receives the relevant Participant FM Certificate;

**FM SDE Day** means a Day of a Participant FM Period referred to in paragraph (a)(i) or (b)(i) of the definition of Participant FM Commencement Date;

**FM SDE Trade** means an Off-Exchange Trade for which all Off-Exchange Notices indicate that the Off-Exchange Trade may be subject to Participant Force Majeure for same day events;

**Gas** means gas that complies with the Grade and Quality Specifications in the relevant Product Specification;

**GJ** means  $1 \times 10^9$  Joules;

**Hub** means the place in the Maui Pipeline (actual or deemed) where Gas is Received or Delivered in accordance with a Product Specification;

**Industry Body Levy** means the wholesale portion of the levy payable under the Gas (Levy of Industry Participants) Regulations 2012 and any replacement regulations;

**Intra-Day Cycle** has the meaning given in the MPOC;

**Joule** means the joule as defined in the National Standards Regulations 1976;

**Maui Pipeline** has the meaning given in the MPOC;

**Maui Pipeline Operating Code** or **MPOC** means the operating code for access to the Maui pipeline, as amended from time to time. The MPOC is a Network Code;

**Negative Imbalance** arises when:

- (a) at the end of a Day, the Participant's Net Approved Nomination at a Hub less the Participant's Net Obligation at that Hub is a negative number; and
- (b) as the context requires, means that number as an absolute quantity in GJ;

**Net Approved Nomination** means, on a Day, the sum of a Participant's Approved Nominations for Delivery at a Hub less the sum of the Participant's Approved Nominations for Receipt at that Hub;

**Net Obligation** means, on a Day, for all of a Participant's Trade Legs with a Delivery Period on that Day, the sum of the Participant's Seller Trade Leg Obligations at a Hub less the sum of the Participant's Buyer Trade Leg Obligations at that Hub;

**Nomination** means a nomination in accordance with the MPOC;

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

**Original Trade Quantity** is a term used for the avoidance of doubt in the context of quantities affected by a Participant FM Certificate (**Current Certificate**), and:

- (a) for an FM SDE Day, refers to the Trade Quantity the relevant Participant (be they an Affected Participant or the FM Participant) is required to Deliver or Receive under Trade Legs for FM SDE Trades on the FM SDE Day; and
- (b) for an FM Day that is not an FM SDE Day, refers to the Aggregate emsTradepoint Trade Quantity the relevant Participant (be they an Affected Participant or the FM Participant) is required to Deliver or Receive under Trade Legs on the FM Day;

in each case:

- (c) after taking into account any Shortfall Quantity or FM Participant Shortfall Quantity already applying to the Participant on that FM Day, by reference to previous Participant FM Certificates; but
- (d) without regard to the effect of the Current Certificate;

**Participant FM Certificate** means a certificate in the form Published by emsTradepoint from time to time, to be used for Notifying emsTradepoint of Participant Force Majeure, and which includes details of:

- (a) the FM Participant's name;
- (b) the event or circumstance of Participant Force Majeure;
- (c) the Participant FM Commencement Date;
- (d) the Participant FM End Date;
- (e) the FM Participant's Original Trade Quantity obligation per FM Day (in GJ) and whether this is an aggregate obligation to Deliver Gas to emsTradepoint or to Receive Gas from emsTradepoint;

- (f) the aggregate quantity of Gas per Day that Participant will be not able to Deliver/Receive during the Participant FM Period (in whole GJs) (not to include any quantity to the extent that it would change the FM Participant from having an aggregate obligation to Deliver Gas on an FM Day to having an aggregate obligation to Receive Gas on an FM Day, and vice versa);
- (g) a certification by the person signing the Participant FM Certificate that the person is authorised to give the certificate and, on behalf of the FM Participant and him or herself, that the details given are true and correct;
- (h) any other details required by emsTradePoint to enable it to administer the relevant provisions of the Market Rules;

**Participant FM Commencement Date** means the date on which the FM Participant will first obtain relief under rule 12 for a failure to meet Delivery or Receipt obligations due to an event or circumstance of Participant Force Majeure, specified as such in the relevant Participant FM Certificate, provided that:

- (a) if the Participant FM Certificate is Notified to emsTradePoint at least 90 minutes before the final Intra-Day Cycle on a Day, the earliest date for the Participant FM Commencement Date is:
  - (i) the Day of notification if the FM Participant is party to any FM SDE Trades that settle on that Day (being an FM SDE Day), but only to the extent of those FM SDE Trades; or
  - (ii) otherwise, the Day following the Day of Notification;
- (b) if the Participant FM Certificate is Notified to emsTradePoint later than 90 minutes before the final Intra-Day Cycle on a Day, the earliest date for the Participant FM Commencement Date is:
  - (i) the Day after the Day of notification if the FM Participant is party to any FM SDE Trades that settle on that Day (being an FM SDE Day), but only to the extent of those FM SDE Trades. To avoid doubt, this means the FM Participant will be exposed to its full obligation to Deliver or Receive under those FM SDE Trades for the first 11 hours of the Day after the Day of notification; or
  - (ii) otherwise, the second Day following the Day of Notification;

**Participant FM End Date** means the date on which the FM Participant will last obtain relief under rule 12 for a failure to meet Delivery or Receipt obligations due to an event or circumstance of Participant Force Majeure, specified as such in the relevant Participant FM Certificate;

**Participant FM Period** means the period commencing on the Participant FM Commencement Date and ending on the Participant FM End Date;

**Participant Force Majeure** means an event or circumstance beyond the reasonable control of the Participant that will result in or cause a failure by the Participant in the performance of the Participant's aggregate obligation to emsTradePoint to Receive or Deliver a quantity of Gas on a Day, notwithstanding the exercise by the Participant of reasonable care, and subject to the foregoing, includes a Critical Contingency Event, provided that Participant Force Majeure may not be claimed by a Participant:

- (a) based upon economic considerations such as:

- (i) loss of the Participant's markets; or
  - (ii) the Participant's inability to economically generate, transmit, distribute, use or re-sell Gas; or
- (b) to the extent that a quantity would change the FM Participant from having an aggregate obligation to Deliver Gas on a Day to having an aggregate obligation to Receive Gas on a Day, and vice versa;

**Positive Imbalance** arises when:

- (a) at the end of a Day, the Participant's Net Approved Nomination at a Hub less the Participant's Net Obligation at that Hub is a number greater than zero; and
- (b) as the context requires, means that number as a quantity in GJ;

**Receive** means the transportation of Gas away from a Hub, or the act required such that Gas is deemed to have been so transported, in accordance with the MPOC;

**Settlement Statement** has the meaning given in rule 9.3;

**Short Delivery Participant** means, on an FM Day and in respect of a Participant FM Certificate which indicates that the FM Participant will Receive less than its Aggregate emsTradepoint Trade Quantity on that FM Day:

- (a) if the FM Day is an FM SDE Day, a Participant who is the Seller under an FM SDE Trade that settles on the FM Day; or
- (b) otherwise, a Participant who (by reference to Original Trade Quantity) has an aggregate obligation to Deliver Gas to emsTradepoint (but for the avoidance of doubt, does not include the relevant FM Participant);

**Short Delivery Participant Original Sum** means, on an FM Day, the sum of the aggregate quantities of Gas (in GJ) originally to be Delivered by all Short Delivery Participants to emsTradepoint (by reference to Original Trade Quantity as at the time of receipt of the relevant Participant FM Certificate by emsTradepoint);

**Short Receipt Participant** means, on an FM Day and in respect of a Participant FM Certificate which indicates that the FM Participant will Deliver less than its Aggregate emsTradepoint Trade Quantity on that FM Day:

- (a) if the FM Day is an FM SDE Day, a Participant who is the Buyer under an FM SDE Trade that settles on the FM Day; or
- (b) otherwise, a Participant who (by reference to Original Trade Quantity) has an aggregate obligation to Receive Gas from emsTradepoint (but for the avoidance of doubt, does not include the relevant FM Participant);

**Short Receipt Participant Original Sum** means, on an FM Day, the sum of the aggregate quantities of Gas (in GJ) originally to be Received by all Short Receipt Participants from emsTradepoint (by reference to Original Trade Quantity as at the time of receipt of the relevant Participant FM Certificate by emsTradepoint);

**Shortfall Quantity** means the quantity of Gas (in GJ) that will not be Received by a Short Receipt Participant or Delivered by a Short Delivery Participant (as compared to Original Trade Quantity), attributable to the relevant Participant FM Certificate, as calculated in rule 12.5;

**Transmission Quantity** means, for a Hub and any given Day in a Delivery Period, the quantity of Gas actually transferred in accordance with Approved Nominations at the Hub at the end of that Day.

**Transmission Services Agreement** has the meaning set out in the MPOC; and

**Transmission System Operator** means the owner or operator of the Maui Pipeline. The Transmission System Operator is a Relevant Authority;

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## PART II: RULES GOVERNING ACCESS TO THE MARKET

### 3. PARTICIPANTS

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**3.1 Application Procedure:** An Applicant must submit to emsTradePoint a copy of the Applicant's Transmission Services Agreement, or evidence of equivalent arrangements satisfactory to emsTradePoint.

**3.2 Market Access Criteria:** The Market Access Criteria include:

- (a) for Bidding Participants, the Participant has entered into and maintains as valid and subsisting: a Transmission Services Agreement that allows it to Receive Gas at a Hub in connection with Trades and Trade Legs to which it is or may become a party, or an equivalent arrangement satisfactory to emsTradePoint; and
- (b) for Offering Participants, the Participant has entered into and maintains as valid and subsisting: a Transmission Services Agreement that allows it to Deliver Gas at a Hub in connection with Trades and Trade Legs to which it is or may become a party, or an equivalent arrangement satisfactory to emsTradePoint.

### 4. EMSTRADEPOINT'S OBLIGATIONS

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**4.1 Welded Party Obligations:** As the "Welded Party" at a Hub, without limiting emsTradePoint's rights and powers under MPOC, emsTradePoint will generally arrange for a Participant's "Nominated Quantities" to be automatically confirmed in OATIS for the "Provisional Cycle", "Changed Provisional Cycle" and each "Intra-Day Cycle" (terms as defined in the MPOC).

**4.2 No Monitoring of Nominations:** For the avoidance of doubt, automatic confirmation of Nominations by emsTradePoint is not an acknowledgement that a Participant's Nominations are correct and emsTradePoint is not required to take any steps towards checking whether a Participant's Net Approved Nomination matches that Participant's Net Obligation. emsTradePoint will use its reasonable endeavours to alert a Participant if emsTradePoint becomes aware that the Participant may have incorrect Nominations, but a Participant is solely responsible for any difference between its Net Approved Nomination and its Net Obligation and emsTradePoint is not liable for any failure by it to alert a Participant of incorrect Nominations.

### 5. PARTICIPANT'S OBLIGATIONS AND WARRANTIES

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**5.1 Participant's Positive Obligation:** Each Participant must at all times keep emsTradePoint promptly informed of any material changes to the Participant's Transmission Services Agreement (other than changes made to all Transmission Services Agreements) or equivalent arrangements.

**5.2 Warranties:** The Participant warrants that:

- (a) where it is the Seller, it has good title to and the right to sell the Gas it sells; and
- (b) the Gas will be Delivered free and clear of all liens, encumbrances or adverse claims (as to title or otherwise).

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## 6. TERMINATION OF PARTICIPANT AGREEMENT

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**6.1 Termination by emsTradepoint for Participant Force Majeure:** emsTradepoint may terminate a Participant Agreement by Notice to the Participant if at any time an event or circumstance of Participant Force Majeure is reasonably likely to continue for more than six months.

**6.2 Termination if Transmission Services Agreement Terminated:** emsTradepoint may terminate a Participant's Participant Agreement at any time by Notice to the Participant if the Participant's Transmission Services Agreement or equivalent arrangements are terminated by any party.

## 7. CRITICAL CONTINGENCIES

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**7.1 Critical Contingency Regulations:** Nothing in the Market Rules has precedence over the Critical Contingency Regulations.

**7.2 Effect of a Critical Contingency Event:** During a Critical Contingency Event, emsTradepoint:

- (a) is relieved of its obligations under the Market Rules to the extent performance of its obligations are affected by the Critical Contingency Event; and
- (b) may take such actions as it considers necessary for compliance with the Critical Contingency Regulations.

emsTradepoint will not be considered to be in breach of the Market Rules, an Associated Document or Trade Leg Term when this rule applies.

**7.3 Amended or Cancelled Trades:** Without limiting rule 7.2, emsTradepoint may amend or Void any Trade Leg as it considers necessary (prospectively or retrospectively) to comply with any instructions of the Critical Contingency Operator or the requirements of a Critical Contingency Management Plan. emsTradepoint will give Notice of an amended or Voided Trade Leg to affected Participants as soon as possible, but in any event actions taken by emsTradepoint in conformance with an amended Trade Leg will be final and binding on Participants.

**7.4 Market Suspension:** emsTradepoint may at any time suspend access to the Trading System for all Participants where there is a Critical Contingency Event.

**7.5 Not emsTradepoint Force Majeure:** A Critical Contingency Event is an event of emsTradepoint Force Majeure for the purposes of rule 21.1 of the Core Rules (Liability of emsTradepoint), but is not otherwise an event of emsTradepoint Force Majeure.

**7.6 Not Outage:** It is not an Outage if trading on the Trading Platform is unavailable to all Participants due to a Critical Contingency Event.

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**PART III: RULES GOVERNING THE OPERATION OF THE MARKET**
**8. PHYSICAL SETTLEMENT**


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**8.1 Physical Settlement Required:** Subject to rule 12.4:

- (a) the Seller must Deliver the Trade Quantity of Gas to emsTradepoint at the relevant Hub on each Day in the Delivery Period, in accordance with the Trade Leg Terms between the Seller and emsTradepoint; and
- (b) the Buyer must Receive the Trade Quantity of Gas from emsTradepoint at the relevant Hub on each Day in the Delivery Period, in accordance with the Trade Leg Terms between the Buyer and emsTradepoint.

For the avoidance of doubt, failure to Deliver or Receive to the extent covered by Participant Force Majeure is covered in rule 12.

**8.2 Hubs:** On any Day, a Participant must comply with the following as part of Delivery and Receipt of the Trade Quantity of Gas in a Trade Leg with a Delivery Period falling on that Day:

- (a) each "on the day" Delivery and Receipt obligation must be Nominated for the relevant Hub at the next practicable Intra-Day Cycle of the Delivery/Receipt Day;
- (b) Nominations effecting "day ahead" Delivery and Receipt obligations must be made for the relevant Hub before the commencement of the Delivery/Receipt Day; and
- (c) at the end of that Day, the Participant's Net Approved Nomination for a Hub must equal the Participant's Net Obligation for that Hub and for that Day.

**8.3 Cash-outs:** If a Participant defaults in its obligation under rule 8.2(c) on any Day, then, without prejudice to the other Rules:

- (a) if the Participant has a Negative Imbalance on that Day, the Participant shall be liable to emsTradepoint to make a payment, effected by way of an adjustment to the total amount payable under the Participant's Trade Legs with emsTradepoint for that Day, calculated as follows:

$$\text{Payment (in \$)} = \text{Cash-Out Buy Price (in \$ per GJ)} \times \text{the Negative Imbalance (in GJ)}$$

- (b) if the Participant has a Positive Imbalance on that Day, emsTradepoint shall be liable to the Participant to make a payment, effected by way of an adjustment to the total amount payable under the Participant's Trade Legs with emsTradepoint for that Day, calculated as follows:

$$\text{Payment (in \$)} = \text{Cash-Out Sell Price (in \$ per GJ)} \times \text{the Positive Imbalance (in GJ)}$$

- (c) notwithstanding any other Rule to the contrary, except in the case of manifest error, emsTradepoint's calculations of amounts payable under this rule are final and binding on the Participant.

**8.4 Title:** Title to and every risk in the Trade Quantity of Gas for each Day in the Delivery Period in a Trade Leg is deemed to pass from the Seller to emsTradepoint and from

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emsTradepoint to the Buyer on that Day free of any lien, charge, encumbrance or adverse claim (as to title or otherwise), in accordance with Approved Nominations.

- 8.5 Unascertained Goods:** Sections 143 to 145 (inclusive) of the Contract and Commercial Law Act 2017 (relating to appropriation of unascertained goods) do not apply to the sale and purchase of Gas under a Trade or Trade Leg.

## 9. FINANCIAL SETTLEMENT

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- 9.1 Tax Invoices:** By the tenth Day of each month (or if the tenth Day of the month is not a Business Day then by the next Business Day after the tenth Day of the month), emsTradepoint will issue a Tax Invoice to each Participant that has received a supply from emsTradepoint, for all supplies made by emsTradepoint to that Participant for the previous month. Each Tax Invoice will detail:

- (a) all Trade Values under Trade Legs for Days in a Delivery Period in the month covered by the Tax Invoice, where the Participant was the Buyer (based on Original Trade Quantity where relevant, and with Trade Values pro-rated as necessary where the Delivery Period falls across two months);
- (b) any amount due to the Participant or payable by the Participant (as the case may be) in accordance with rule 8.3 for Days in the month covered by the Tax Invoice;
- (c) any amount due to the Participant in accordance with rule 12.8 for FM Days in the month covered by the Tax Invoice;
- (d) any Fees the Participant became liable to pay pursuant to the Market Rules in the month covered by the Tax Invoice; and
- (e) any other deductions permitted or required, or amounts the Participant became liable to pay in the month covered by the Tax Invoice, under the Market Rules.

However, emsTradepoint is not obliged to issue a Tax Invoice for a month to any Participant that is not liable to pay emsTradepoint any amounts for the month under the Market Rules.

- 9.2 Buyer-Created Tax Invoices:** By the tenth Day of each month (or if the tenth Day of the month is not a Business Day then by the next Business Day after the tenth Day of the month), emsTradepoint will issue a Buyer-Created Tax Invoice to each Participant for all supplies made by the Participant to emsTradepoint for the previous month. Each Buyer-Created Tax Invoice will detail all Trade Values under Trade Legs for Days in a Delivery Period in the month covered by the Buyer-Created Tax Invoice, where the Participant was the Seller (based on Original Trade Quantity where relevant, and with Trade Values pro-rated as necessary where the Delivery Period falls across two months):

- (a) reduced by an amount equal to any Industry Body Levy payable by emsTradepoint in relation to that supply;
- (b) reduced or increased (as the case may be) by any amount to be paid by the Participant or to be paid to the Participant in accordance with rule 8.3 for Days in the month covered by the Buyer-Created Tax Invoice; and
- (c) reduced by any amount to be provided by the Participant in accordance with rule 12.8 for FM Days in the month covered by the Buyer-Created Tax Invoice.

However, emsTradePoint is not obliged to issue a Buyer-Created Tax Invoice for a month to any Participant that emsTradePoint is not liable to pay any amount to for the month under the Market Rules. Participants agree that they will not issue a Tax Invoice for any supplies that are covered in Buyer-Created Tax Invoices issued under the Market Rules.

**9.3 Settlement Statement:** By the tenth Day of each month (or if the tenth Day of the month is not a Business Day then by the next Business Day after the tenth Day of the month), emsTradePoint will issue a statement (**Settlement Statement**) to each Participant showing:

- (a) amounts owed by the Participant to emsTradePoint under any Tax Invoices issued by emsTradePoint to that Participant in that month; less
- (b) amounts owed by emsTradePoint to the Participant under any Buyer-Created Tax Invoices issued by emsTradePoint to that Participant in that month (less amounts that may be deducted under rule 14.3 of the Core Rules); less
- (c) amounts owed by emsTradePoint to the Participant under any credit note issued by emsTradePoint to that Participant under rule 9.7(b) in that month.

However, emsTradePoint is not obliged to issue a Settlement Statement for a month to any Participant that emsTradePoint has not issued a Tax Invoice or Buyer-Created Tax Invoice to in that month.

**9.4 Payment Owed by a Participant:** If a Settlement Statement shows a net amount is owed by a Participant to emsTradePoint, the amounts described in rules 9.3(a) and 9.3(b) shall be netted and the Participant must pay emsTradePoint the net amount specified in the Settlement Statement in cleared funds within 10 Days of the issuing of the Settlement Statement.

**9.5 Payment Owed to a Participant:** If a Settlement Statement shows a net amount is owed by emsTradePoint to a Participant, the amounts described in rules 9.3(a) and 9.3(b) shall be netted and emsTradePoint will pay the Participant the net amount specified in the Settlement Statement in cleared funds within 10 Days of the beginning of the month following the month of the Settlement Statement.

**9.6 Collateral Limit Breach:** If payment under rule 9.5 would cause a Participant to be in Collateral Limit Breach then, only to the extent necessary to prevent the Collateral Limit Breach, the due date for payment under rule 9.5 will be extended to the date that is 2 Business Days after the date on which the Collateral Limit Breach would no longer occur. emsTradePoint must Notify the affected Participant if emsTradePoint delays payment to a Participant under this rule.

**9.7 Errors and adjustments:** Where:

- (a) emsTradePoint is Notified (and agrees with the Notification) or otherwise discovers that a Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement contains an error or omission that affects the net amount owed to or owed by emsTradePoint, emsTradePoint will reverse the Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement and provide the Participant with a corrected Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement (as the case may be) as soon as practically possible. The corrected Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement will replace the original Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement; or
- (b) there is an agreed change (which, for the avoidance of doubt, shall not include any amount calculated in accordance with rule 12.8) to the terms or nature of the supply covered by a Tax Invoice or Buyer-Created Tax Invoice or some other

event referred to in section 25(1) of the GST Act, emsTradepoint will provide the Participant with a debit note or credit note (as the case may be) that complies with the GST Act as soon as practically possible.

- 9.8 Delay in Invoice:** No delay by emsTradepoint in issuing a Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement will affect the Participant's liability for the amounts payable once the Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement is issued, except that the due date for payment will be extended by one Business Day for every Business Day by which the Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement is late in being issued.
- 9.9 Disputes:** Subject to rule 9.7, each Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement is final and binding as to the amount payable under it. Participants may not withhold or reduce payment as a result of any unresolved dispute as to any item set out in any Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement. A Participant must Notify emsTradepoint as soon as practicable, but at least within 5 Business Days following the date of issue of the Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement, if it disputes any item contained in the Tax Invoice, Buyer-Created Tax Invoice or Settlement Statement. Any subsequent payment following agreement or settlement of a dispute will be paid by the relevant party as soon as reasonably practicable.
- 9.10 No Set Off:** Amounts payable by Participants or emsTradepoint under the Market Rules must be paid:
- (a) free and clear of any restriction, reservation or condition; and
  - (b) subject to rule 14.3 of the Core Rules, without deduction or withholding in respect of tax or on account of any amount due or to become due to the paying Party (other than the netting contemplated by rules 9.4 or 9.5), whether by way of set off, counterclaim or otherwise or on any other basis.
- 9.11 Industry Body Levy Information:** Each Offering Participant must Notify emsTradepoint by the second Business Day of each month the quantity of Gas purchased by emsTradepoint from the Offering Participant under Trade Legs in the previous month that is subject to the Industry Body Levy when purchased by emsTradepoint. If an Offering Participant fails to so Notify emsTradepoint under this rule, emsTradepoint will deem that all Gas purchased by emsTradepoint from the Offering Participant in that month is subject to the Industry Body Levy and will calculate the Industry Body Levy accordingly. emsTradepoint relies on the correctness of the information provided to it under this rule to determine its liability to pay the Industry Body Levy, and rule 21.4 of the Core Rules applies to any failure by an Offering Participant under this rule.
- 9.12 Carbon Charges and Levies Included in Price:** All Prices and Trade Values include:
- (a) any amount payable under the Energy Resources Levy Act 1976;
  - (b) all Carbon Charges; and
  - (c) the costs of any Industry Body Levy payable by emsTradepoint.

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**PART IV: GENERAL PROVISIONS**
**10. INFORMATION FROM TRANSMISSION SYSTEM OPERATOR**


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emsTradepoint may rely on any information provided to it by the Transmission System Operator as accurate.

**11. DISPUTE RESOLUTION**


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Nothing in the Market Rules derogates from a Party's rights of access to a dispute resolution scheme under section 43E of the Gas Act 1992.

**12. FORCE MAJEURE AFFECTING CERTAIN PARTICIPANT TRADES**


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**12.1 Participant Force Majeure:** If a Participant (**FM Participant**) reasonably anticipates that it will fail in its obligation to emsTradepoint to Deliver or Receive a quantity of Gas due to an event or circumstance of Participant Force Majeure (whether that event or circumstance has already occurred or is anticipated), then the FM Participant must:

- (a) provide a Participant FM Certificate to emsTradepoint by Notice as soon as reasonably practicable; and
- (b) notify emsTradepoint by telephone that it has Notified a Participant FM Certificate (and for the avoidance of doubt, this telephone notification must be by speaking to emsTradepoint personnel and a telephone message will not suffice).

**12.2 Reliance:** Without prejudice to its rights and powers under rule 22 of the Core Rules, emsTradepoint is entitled to rely on a Participant FM Certificate on its face (but may reject a Participant FM Certificate that does not contain all the required details or does not comply with the Market Rules, in which case the Participant FM Certificate will be deemed not to have been Notified to emsTradepoint).

**12.3 Market Notification:** As soon as practicable after receiving a Participant FM Certificate, emsTradepoint must:

- (a) Publish the following information in respect of the Participant FM Certificate:
  - (i) That emsTradepoint has received a Participant FM Certificate;
  - (ii) The Participant FM Commencement Date and Participant FM End Date;
  - (iii) For each FM Day covered by that Participant FM Certificate:
    - (A) whether the FM Participant will fall short in its aggregate obligation to Deliver Gas to emsTradepoint or in its aggregate obligation to Receive Gas from emsTradepoint;
    - (B) the FM Participant Shortfall Quantity;
- (b) in respect of each FM Day on which a Participant is an Affected Participant, Notify the Affected Participant:
  - (i) as to:

- (A) whether the Affected Participant is a Short Delivery Participant or a Short Receipt Participant; and
  - (B) the Shortfall Quantity for the Affected Participant (calculated in accordance with rule 12.5); and
- (ii) as soon as reasonably practicable after emsTradePoint receives Notification of the relevant Participant FM Certificate.

A Notice given under this rule may include information about more than one Day.

**12.4 Adjustment to Trade Quantity for Physical Settlement:** For the avoidance of doubt, an FM Participant will not Deliver or Receive (as the case may be) the FM Participant Shortfall Quantity on an FM Day, and an Affected Participant will not Deliver or Receive (as the case may be) the Shortfall Quantity for the Affected Participant on an FM Day.

**12.5 Calculation of Shortfall Quantity:** Subject to rule 12.6, the Shortfall Quantity is calculated as follows:

$$\text{Shortfall Quantity} = (A / B) * C$$

Where:

**A** means the FM Participant Shortfall Quantity

**B** means:

- (a) where the relevant Participant FM Certificate indicates that the FM Participant will Deliver less than its Aggregate emsTradePoint Trade Quantity on an FM Day, the Short Receipt Participant Original Sum; and
- (b) where the relevant Participant FM Certificate indicates that the FM Participant will Receive less than its Aggregate emsTradePoint Trade Quantity on an FM Day, the Short Delivery Participant Original Sum

**C** means, the aggregate quantity of Gas (in GJ) that the Affected Participant is obliged to Deliver to or Receive from emsTradePoint (as the case may be) on the FM Day, by reference to Original Trade Quantity

**12.6 Rounding:** If the Shortfall Quantity calculated under rule 12.5 is not a whole number, it shall be rounded to the nearest whole GJ. If the sum of all Shortfall Quantities attributable to a Participant FM Certificate is not equal to the relevant FM Participant Shortfall Quantity, then:

- (a) the Shortfall Quantity of the Affected Participant with the lowest Shortfall Quantity shall be adjusted by the difference (either over or under the FM Participant Shortfall Quantity); and
- (b) if there is more than one Affected Participant to which rule 12.6(a) could apply, the Shortfall Quantity of the Affected Participant with the most recently dated Participant Agreement shall be adjusted by the difference (either over or under the FM Participant Shortfall Quantity).

**12.7 Liability:** Except as provided in rule 12.8:

- (a) emsTradePoint will not be liable for a failure to Deliver or Receive the Shortfall Quantity to or from an Affected Participant or an FM Participant;

- (b) an FM Participant will not be liable for a failure to Deliver or Receive the FM Participant Shortfall Quantity to or from emsTradePoint;
- (c) an Affected Participant will not be liable for a failure to Deliver or Receive the Shortfall Quantity for the Affected Participant to or from emsTradePoint, and

the compensation calculated under rule 12.8 is in full and final settlement of all liability for any such failure to Deliver or Receive.

## 12.8 Compensation:

- (a) Where a Participant FM Certificate indicates that an FM Participant will Deliver less than its Aggregate emsTradePoint Trade Quantity on an FM Day:

- (i) emsTradePoint must compensate each Short Receipt Participant in an amount determined as follows in respect of each such FM Day, with the compensation to be effected by way of reduction of the total amount payable by the Short Receipt Participant for its Buyer Trade Legs with emsTradePoint for that FM Day:

**Compensation** (in \$ per GJ) = Shortfall Quantity \* VWAP

Where:

**Shortfall Quantity** is determined in accordance with rule 12.5 with respect to the Short Receipt Participant

**VWAP** means the volume weighted average price (in \$) per GJ of Gas in Trades by the Short Receipt Participant on the Trading Platform for Delivery on the FM Day, as calculated by emsTradePoint:

- (A) as at the time emsTradePoint received the relevant Participant FM Certificate; and
- (B) excluding Trades considered by emsTradePoint to be irregular.

- (ii) the FM Participant must compensate emsTradePoint in an amount equal to the total of all compensation emsTradePoint must make under rule 12.8(a)(i) that is attributable to that FM Participant's Participant FM Certificate, with the compensation to be effected by way of reduction of the total amount payable by emsTradePoint for its Seller Trade Legs with that FM Participant for that FM Day;

- (b) Where a Participant FM Certificate indicates that an FM Participant will Receive less than its Aggregate emsTradePoint Trade Quantities on an FM Day:

- (i) each Short Delivery Participant must compensate emsTradePoint in an amount determined as follows in respect of each such FM Day, with the compensation to be effected by way of reduction of the total amount payable by emsTradePoint for its Seller Trade Legs with that Short Delivery Participant for that FM Day:

**Compensation** (in \$ per GJ) = Shortfall Quantity \* VWAP

Where:

**Shortfall Quantity** is determined in accordance with rule 12.5 with respect to the Short Delivery Participant

**VWAP** means the volume weighted average price (in \$) per GJ of Gas in Trades by the Short Delivery Participant on the Trading Platform for Delivery on the FM Day, as calculated by emsTradePoint:

- (A) as at the time emsTradePoint received the relevant Participant FM Certificate; and
- (B) excluding Trades considered by emsTradePoint to be irregular.

- (ii) emsTradePoint must compensate the FM Participant in an amount equal to the total of all compensation emsTradePoint receives under rule 12.8(b)(i) that is attributable to that FM Participant's Participant FM Certificate, with the compensation to be effected by way of reduction of the total amount payable by the FM Participant for its Buyer Trade Legs with emsTradePoint for that FM Day.

**12.9 No Suspension:** emsTradePoint may not give a Participant a Suspension Notice under rule 7.1(a) of the Core Rules if the reason the Participant is unable or likely to become unable to meet its obligations in respect of one or more Trades or Trade Legs is that the Participant is an FM Participant, Short Receipt Participant or Short Delivery Participant.

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## SCHEDULE 1 – PARTICIPANT AGREEMENT

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### Parties

1. emsTradepoint Limited (**emsTradepoint**); and

2. Name of Company: \_\_\_\_\_

Address for Service: \_\_\_\_\_

(The address for service must be a New Zealand address)

Company Address: New Zealand

(If different from the address for service)

Country: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

(This is the email address that electronic communications will be sent to (other than those electronic communications transmitted through the Trading System))

Telephone Numbers and name of relevant representative:

Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

(These are the telephone numbers for telephone communications under the Market Rules. A maximum of three numbers may be provided.)

Registered Company (or other body corporate) number: \_\_\_\_\_

**(Participant)**

together, **Parties**

### Background

A. emsTradepoint operates and maintains the Market to enable Participants to trade Gas (and other Commodities) through the Trading System in accordance with the Market Rules.

B. The Participant has read the Market Rules (and all relevant supporting documentation) and wishes to participate in the Market.

### Interpretation

1. The capitalised terms used in this Participant Agreement have the meaning given to those capitalised terms in the Market Rules.

2. The rules of interpretation in the Market Rules apply to the interpretation of this Participant Agreement unless otherwise indicated in this Participant Agreement.

3. Subject to the rights of any successor or permitted assigns of the Parties, no provision of this Participant Agreement creates any rights enforceable by a third party. All third party

rights enforceable or implied by law are, to the extent permissible by law, excluded from this Participant Agreement.

4. References in this Participant Agreement to rules are references to rules of the Market Rules.
5. The provisions of the Market Rules that apply to or affect Participant Agreements are deemed to be incorporated into this Participant Agreement.

#### Access to the Market

6. emsTradePoint grants the Participant the right to access the Trading System and use the Service and the Data, in accordance with the Market Rules for Products designated with the Hub "emsTradePoint Trading Region South Hub" and such other Products agreed between the Participant and emsTradePoint by variation to this Participant Agreement from time to time.
7. Notwithstanding clause 6, the Participant is a *(please tick the applicable box)*:
  - Bidding Participant only
  - Offering Participant only
  - Bidding Participant and an Offering Participant
  - View-Only Participant
8. The Participant will only:
  - (a) make Bids if it is a Bidding Participant; and
  - (b) make Offers if it is an Offering Participant.
9. A **Physical Delivery Agent Agreement** is an agreement under which an agent has agreed to ship Gas in the Transmission System on the Participant's behalf. If the Participant is a party to a Physical Delivery Agent Agreement, the following applies:
  - (a) if the Participant is the agent under the agreement, the election under clause 7 will also operate to include Trade Quantities of the person who is the principal under the agreement; and
  - (b) if the Participant is the principal under the agreement, the Participant is bound by the option selected under clause 7 in the Participant Agreement of the person acting as agent under the agreement.

#### Rights and Obligations of the Participant

10. The Participant has **attached** to this Participant Agreement any information required by emsTradePoint and will provide emsTradePoint with updates as soon as said information changes.
11. The Participant agrees to act in accordance with this Participant Agreement, Associated Documents and Market Rules (as amended from time to time), and to comply with its obligations under, arising out of, or in connection with any of them.
12. The Participant warrants that it meets all the Market Access Criteria (or will be able to meet all the Market Access Criteria immediately upon becoming a Participant), and will continue to do so throughout the term of this Participant Agreement.

**Termination**

13. This Participant Agreement may be terminated in accordance with the Market Rules.

**Applicable Law and Competent Court**

14. This Participant Agreement is governed exclusively by the laws of New Zealand.

15. All disputes between emsTradePoint and the Participant which may arise out of or in connection with this Participant Agreement and/or the Market Rules will be settled in accordance with the relevant provisions in the Market Rules.

Agreed and signed in duplicate and initialled on all pages by authorised representatives of the Participant and emsTradePoint:

**SIGNED** on behalf of **EMSTRADEPOINT LIMITED** by:

**SIGNED** on behalf of **[PARTICIPANT NAME]** by:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Name of authorised representative

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Applicant who wishes to become a Bidding Participant and/or Offering Participant to **attach**:*

- *Copy or proof of the Applicant's Transmission Services Agreement with Maui Development Limited (for Trading Region South Hub use) or evidence of equivalent arrangements satisfactory to emsTradePoint*
- *Names of the persons who will be responsible for managing the Applicant's trading of Gas through the Trading System if the Applicant becomes a Participant*
- *Sufficient information to enable emsTradePoint to determine whether the Applicant meets (or will be able to meet all the Market Access Criteria immediately upon becoming a Participant)*

*Applicant who wishes to become a Bidding Participant to **attach** (in addition):*

- *Proposed Collateral Limit (subject to emsTradePoint acceptance)*
- *Bank Guarantee (or alternative means of satisfying Prudential Assurance as required by emsTradePoint)*

*All Applicants to **attach**:*

- *Any other information required by emsTradePoint at the time of application to become a Participant (without prejudice to emsTradePoint's right to request further information after application)*

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**SCHEDULE 2 – PRODUCT SPECIFICATION**


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<b>Product</b>	<b>Natural Gas Physical – Trading Region South Hub</b>	
<b>Product Codes</b>	Delivery Period of one Day	<b>NGP-TRS (D)</b>
	Delivery Period of one Week	<b>NGP-TRS (W)</b>
	Delivery Period of one Month	<b>NGP-TRS (M)</b>
<b>Commodity</b>	Gas	
<b>Venue</b>	emsTradepoint Trading System	
<b>Trading Hours</b>	Market Open: 0930	
	Market Close: 1730	
<b>Network Code</b>	Maui Pipeline Operating Code	
<b>Contract Unit</b>	1 GJ	
<b>Pricing Quotation</b>	New Zealand dollars and cents per GJ	
<b>Lot Size</b>	1 GJ	
<b>Tick Size</b>	\$0.01 (1.0¢) per GJ	
<b>Maximum Contract Price</b>	None	
<b>Minimum Contract Price</b>	\$0.01 (1.0¢) per GJ	
<b>Hub</b>	emsTradepoint Trading Region South Hub on the Maui Pipeline	
<b>Delivery</b>	Delivery in accordance with Approved Nominations to the Trading Region South (Delivery) Welded Point, pursuant to the Network Code	
<b>Receipt</b>	Receipt in accordance with Approved Nominations from the Trading Region South (Receipt) Welded Point, pursuant to the Network Code	
<b>Contract Window</b>	NGP-TRS (D)	The current Day plus up to the next 13 Days. New 7 Days will be opened for trade each Friday.
	NGP-TRS (W)	The next full Week plus up to the next 7 Weeks. New Week will be opened for trade each Friday.
	NGP-TRS (M)	The next full Month plus up to the next 24 Months. New Month will be opened for trade on the first Day of each Month.
<b>Settlement Type</b>	Physical only.	
<b>Grade and Quality Specifications</b>	New Zealand Standard Specifications for Reticulated Natural Gas NZS 5442:2008 as amended and replaced from time to time.	
<b>Market Rules</b>	This Product is subject to the Market Rules of emsTradepoint, as amended from time to time.	

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**SCHEDULE 3 – STATEMENT OF CHARGES**


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**1 Fees**

Type of Fee	Fee
Participant Establishment Fee	\$10,000
Standard Annual Access Fee (per Year)	\$25,000
View-Only Annual Access Fee (per Year)	\$5,000
Standard Trading Fee	As per 2 below
Small Participant Trading Fee (per GJ, per Trade Leg)	\$0.125
Prudential Assurance Review Fee	As per 3.9 below

**2. Standard Trading Fees**

The Standard Trading Fee for a Trade Leg is the amount calculated by applying the lower of the rates determined under the following tables to the Trade Leg:

Participant's total Trade volume in previous 12 Months for relevant Product (GJ) <sup>1, 2, 3</sup>	Standard Trading Fee for NGP-TRS (D) (per GJ, per Trade Leg)	Standard Trading Fee for NGP-TRS (W) (per GJ, per Trade Leg)	Standard Trading Fee for NGP-TRS (M) (per GJ, per Trade Leg)
0 – 749,999	\$0.075	\$0.060	\$0.050
750,000 – 1,499,999	\$0.075	\$0.050	\$0.040
1,500,000 +	\$0.075	\$0.040	\$0.030

1. Including the volume of the Trade for which the Standard Trading Fee is being calculated.

2. Different rates will apply to different parts of a Trade if the Trade straddles volume tranches. For example, if a Participant that has traded 740,000 GJ of NGP-TRS (M) in the last 12 months makes a 30,000 GJ Trade of NGP-TRS (M), that Trade will be charged at \$0.050 per GJ for 9,999 GJ and \$0.040 per GJ for 20,001 GJ.

3. Trades in one Product do not count towards the historical Trade volume for any other Product.

Volume of one-off Trade (GJ)	Standard Trading Fee for all Products (per GJ, per Trade Leg)
0 – 49,999	\$0.075
50,000 – 99,999	\$0.060
100,000 – 199,999	\$0.040
200,000 +	\$0.030

### 3. Terms

3.1 All Fees are subject to the provisions of the Market Rules and are stated exclusive of GST.

3.2 A Participant (other than a View-Only Participant) (a **Full Participant**) must pay the Participant Establishment Fee and (subject to 3.6 below):

- (a) the Standard Annual Access Fee and the Standard Trading Fee; or
- (b) by election under 3.7 below, the Small Participant Trading Fee and any amount payable under 3.7 below.

A Full Participant that has made the election under 3.7 below is referred to as a **Small Participant**. A Full Participant that has not made the election under 3.7 below is referred to as a **Standard Participant**.

3.3 Subject to 3.6 below, a View-Only Participant must pay the View-Only Annual Access Fee.

3.4 The Participant becomes liable to pay the Participant Establishment Fee on the Participant's Commencement Date.

3.5 The Participant becomes liable to pay the Standard Annual Access Fee or View-Only Annual Access Fee:

- (a) on the Participant's Commencement Date, pro-rated as necessary if the Participant's Commencement Date is not the first Day of a Year; and

(b) on the first Day of each Year.

3.6 If a Participant changes during a Year:

(a) from a Full Participant to a View-Only Participant, the Participant:

- (i) is not required to pay the View-Only Annual Access Fee for the Year;
- (ii) if immediately before the change the Participant was a Small Participant:

(A) must pay a Fee equal to:

$$\max\left(0, \frac{10,000 \times D_{\text{elapsed}}}{365} + \frac{AF_{\text{view-only}} \times D_{\text{remaining}}}{365} - TF_{\text{total}}\right)$$

where:

$AF_{\text{view-only}}$  is the View-Only Annual Access Fee; and

$D_{\text{elapsed}}$  is the number of Days elapsed in the Year on the Day of the change, excluding that Day;

$D_{\text{remaining}}$  is the number of Days remaining in the Year on the Day of the change, including that Day; and

$TF_{\text{total}}$  is the total Small Participant Trading Fees paid and payable by the Participant for the Year as at the Day of the change.

The Participant becomes liable to pay the Fee on the Day of the change; and

- (B) is not required to pay any amount under 3.7 below at the end of the Year regardless of the value of  $TF_{\text{total}}$ ; and
  - (iii) is not entitled to a refund of any part of the Standard Annual Access Fee for the Year or the Participant Establishment Fee;
- (b) from a View-Only Participant to a Full Participant, the Participant:
- (i) is not required to pay the Standard Annual Access Fee;

- (ii) must pay the Participant Establishment Fee and, except if the Participant immediately after the change is a Small Participant, a Fee equal to:

$$\max\left(0, \frac{AF_{standard} \times D_{remaining}}{365} - AF_{view-only}\right)$$

where:

**AF<sub>standard</sub>** is the Standard Annual Access Fee;

**AF<sub>view-only</sub>** is the View-Only Annual Access Fee; and

**D<sub>remaining</sub>** is the number of Days remaining in the Year on the Day of the change, including that Day.

The Participant becomes liable to pay both Fees on the Day of the change; and

- (iii) is not entitled to a refund of any part of the View-Only Annual Access Fee for the Year or the Participant Establishment Fee;

- (c) from a Standard Participant to a Small Participant:

- (i) the Participant is entitled to a refund of part of the Standard Annual Access Fee for the Year equal to:

$$\frac{AF_{standard} \times D_{remaining}}{365}$$

where:

**AF<sub>standard</sub>** is the Standard Annual Access Fee; and

**D<sub>elapsed</sub>** is the number of Days elapsed in the Year on the Day of the change, excluding that Day;

- (ii) the Participant is not entitled to a refund of any part of the Participant Establishment Fee; and

- (iii) the \$10,000 per Year floor referred to in 3.7 below will, for the Participant for the Year, be reduced to:

$$\frac{10,000 \times D_{remaining}}{365}$$

where  $D_{\text{remaining}}$  is the number of Days remaining in the Year on the Day of the change, including that Day; and

(d) from a Small Participant to a Standard Participant, the Participant:

(i) is not required to pay the Standard Annual Access Fee for the Year;

(ii) must pay a Fee equal to:

$$\max\left(0, \frac{10,000 \times D_{\text{elapsed}}}{365} - TF_{\text{total}}\right) + \frac{AF_{\text{standard}} \times D_{\text{remaining}}}{365}$$

where:

$AF_{\text{standard}}$  is the Standard Annual Access Fee;

$D_{\text{elapsed}}$  is the number of Days elapsed in the Year on the Day of the change, excluding that Day;

$D_{\text{remaining}}$  is the number of Days remaining in the Year on the Day of the change, including that Day; and

$TF_{\text{total}}$  is the total Small Participant Trading Fees paid and payable by the Participant for the Year as at the Day of the change.

The Participant becomes liable to pay the Fee on the Day of the change;

(iii) is not entitled to a refund of any part of the Participant Establishment Fee; and

(iv) is not required to pay any amount under 3.7 below at the end of the Year regardless of the value of  $TF_{\text{total}}$ .

**3.7** Instead of paying the Standard Annual Access Fee and Standard Trading Fee, a Full Participant may, for a Year, elect to pay the Small Participant Trading Fee, subject to a \$10,000 per Year floor (or such lower amount as may apply under 3.6(c)(ii) above, and subject to 3.6(a)(ii)(B) and 3.6(d)(iv) above). The Participant may revoke its election at any time. emsTradepoint will calculate the sum of the Participant's Small Participant Trading Fees paid and payable for the Year (based on the Trade Quantity in each Trade Leg forming part of the original Trade Quantity) at the end of the Year, and the Participant will become liable to pay any shortfall on the last Day of the Year as a Fee.

**3.8** For a Trade formed on or after 1 December 2016, the Participant becomes liable to pay the Standard Trading Fee or Small Participant Trading Fee for the Trade on the Day the Trade is formed, and the Fee will be included in the Tax Invoice for the month that includes that Day in accordance with rule 9.1.

- 3.9** If an Applicant or Participant wishes emsTradePoint to consider a form of Prudential Assurance that differs from the bank guarantee set out in Schedule 1 of the Core Rules, if required by emsTradePoint, the Applicant or Participant must pay a Fee to cover emsTradePoint's costs in considering this. emsTradePoint will obtain an estimate of such costs on request by the Applicant or Participant. The Participant will become liable to pay the Fee on the Day emsTradePoint makes its decision whether or not to accept the form of Prudential Assurance.
- 3.10** Subject to the Market Rules, no Fees will be refunded if the Participant's Participant Agreement is terminated, for any reason.
- 3.11** If there is a Shortfall Quantity or FM Participant Shortfall Quantity for a Trade then the Participant is entitled to a refund of the Standard Trading Fee or Small Participant Trading Fee for the Trade equal to:

$$TF_{original} - TF_{shortfall}$$

where:

**TF<sub>original</sub>** is the Standard Trading Fee or Small Participant Trading Fee the Participant became liable to pay for the Trade based on the original Trade Quantity in the relevant Trade Leg; and

**TF<sub>shortfall</sub>** is the Standard Trading Fee or Small Participant Trading Fee the Participant would have become liable to pay for the Trade based on the original Trade Quantity in the relevant Trade Leg adjusted for the Shortfall Quantity or FM Participant Shortfall Quantity.