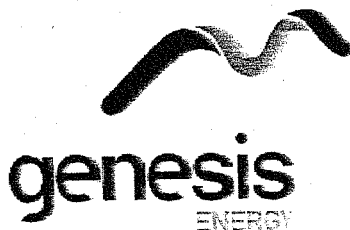


GENESIS POWER LIMITED
(trading as Genesis Energy)

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND

DEED RELATING TO RISK SHARING
ARRANGEMENTS FOR HUNTLY E3P 385MW
POWER STATION



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RELEASED UNDER THE OFFICIAL INFORMATION ACT

DEED dated 12 August 2004

PARTIES

GENESIS POWER LIMITED (trading as Genesis Energy) ("Genesis Energy")

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (the "Crown"), acting by and through Hon Dr Michael Cullen and Hon Pete Hodgson

INTRODUCTION

- A. Genesis Energy is a State Owned Enterprise pursuant to the SOE Act.
- B. Genesis Energy proposes to construct a 385MW combined cycle Gas fired power plant adjacent to its existing power station in Huntly ("Huntly e3p") to assist in meeting New Zealand's electricity generation needs.
- C. Genesis Energy has incurred expenditure of [] million (as at 30 June 2004) in relation to certain preliminary engineering design works and site enabling work for Huntly e3p. However Genesis Energy is currently not prepared to assume all the risks inherent in a full commitment to construct Huntly e3p given that:
- (a) its principal source of Gas has in the past been the Maui Field, and its entitlements to Gas from that field have declined;
 - (b) it has recently entered in to contracts to purchase Gas from the Pohokura and Kūpe fields, but such contracts are conditional and there are uncertainties as to when such contracts will become unconditional, and when and how much Gas will be delivered pursuant to them; and
 - (c) it needs to enter into arrangements to procure additional Gas and the source of such Gas and the nature of those arrangements is currently uncertain.
- D. Genesis Energy has negotiated a syndicated facility with Westpac Banking Corporation ("Westpac"), as arranger and underwriter, for the funding of its general corporate purposes, including the construction of Huntly e3p ("Huntly e3p Facility"). Genesis Energy's ability to make drawdowns under this facility is subject to conditions including Genesis Energy confirming that the Crown and Genesis Energy have entered into this deed.
- E. This deed is intended to enable Genesis Energy to make a full commitment to construct Huntly e3p and to meet the condition under the Huntly e3p Facility which is referred to in paragraph D.
- F. Due to the need to increase the level of electricity generation in New Zealand and the current and projected electricity supply and demand balance, the Crown is seeking to help reduce investment uncertainty in a period of adjustment to new sources of Gas by encouraging the construction of Huntly e3p. Huntly e3p is particularly important, and is uniquely placed at this point in time to deliver on the Crown's objectives. Accordingly, the Crown is prepared to assume certain risks, in relation to the investment by Genesis Energy in Huntly e3p, that the Crown would not otherwise be prepared to assume.

COVENANTS

1. INTERPRETATION AND DEFINITIONS

1.1 **Definitions:** In this deed, unless the context otherwise requires:

"Assumed Electricity Output" means the amount of electricity which should be able to be generated by Huntly e3p and reflecting anticipated scheduled and unscheduled maintenance in each Semi-Annual Period during the Term, if a quantity of Gas equivalent to half the Base Case is available to Genesis Energy in each such Semi-Annual Period, and after allowing for the allocations of Gas comprised in the Base Case to:

- (a) the Assumed Retail Amount for the purposes of the Retail Business in that Semi-Annual Period; and
- (b) the Assumed Generation Amount as fuel to be used in operating Huntly 1-4, and as a fuel for the Te Awamutu co-generation plant in that Semi-Annual Period.

"Assumed Generation Amount" has the meaning given to that term in paragraph (b) of the definition of "Unused Gas".

"Assumed Retail Amount" has the meaning given to that term in paragraph (a) of the definition of "Unused Gas".

"Authority" includes every minister, department of state, government authority, regional council, territorial authority or other statutory or regulatory authority having jurisdiction or authority to perform or exercise functions or powers under or pursuant to any legislation.

"Base Case" means the amount set out in column 4 entitled "Base Case" in the table in Schedule 1, which represents Genesis Energy's assumed annual Gas supply requirements for the purposes of this deed, expressed in PJ, and comprises the Assumed Generation Amount, the Assumed Retail Amount, and the amount likely to be required to achieve the Assumed Electricity Output, as such Base Case may be adjusted pursuant to clause 5.2 (but for the avoidance of doubt excludes any amount of Gas which may be used in Genesis Energy's P40 facility at Huntly or any other current or future gas fired thermal generation plant), provided that in order to reflect the fact that the formula in clause 6.1 is based on a calculation in GJ, when the amount of the Base Case is to be determined for the purposes of that formula such amount shall be re-calculated and expressed in GJ.

"Business Case" means the business case, with supporting analysis, prepared by Genesis Energy and provided to the Crown in 2001, and updated by further material provided to the Crown in June 2004, in relation to the decision to proceed to construct Huntly e3p.

"Commissioned" means, in relation to Huntly e3p, that "Taking Over" has occurred in relation to Huntly e3p, as that term is defined in the EPC, which is expected to occur by 15 December 2006, and **"Commissioning"** has a corresponding meaning.

"Commencement Date" means the earliest of:

- (a) the date on which Huntly e3p is Commissioned;

- (c) the date on which Huntly e3p is ready for Commissioning but the occurrence or completion of Commissioning is delayed and a material contributing factor in such delay is, or such delay is materially caused by, the existence at the relevant time of shortage circumstances (as defined in clause 2.3(a)); and
- (d) 1 April 2007.

"**Contract Review**" means a review conducted under clause 10.

"**Contracts**" means, at any time, agreements entered into by Genesis Energy for the purchase of Gas (including, without limitation, on a spot market basis), being:

- (a) the agreements for the purchase of Gas which Genesis Energy has entered in to as at the date of this deed, details of which are set out in Schedule 2, and which are expected to deliver the respective volumes of Gas set out in columns 5, 6, 7 and 8 of Schedule 1; and
- (b) such additional or replacement agreements for the purchase of Gas as may be entered in to by Genesis Energy after the date of this deed.

"**Deductible**" means the amount to be deducted from any Semi-Annual Payment, being [] s. 9(2)(b)(i)

"**EPC**" means the turnkey contract to be entered in to for the engineering, procurement and construction of Huntly e3p.

"**Excluded Gas**" means in relation to any Semi-Annual Period, the aggregate of all amounts of Excluded Unproven Contracted Gas and Excluded Non-Contracted Gas, provided that an amount of Gas shall not be counted more than once for the purpose of calculating such aggregate.

"**Excluded Non-Contracted Gas**" means, in relation to any Semi-Annual Period, any amount of Gas, expressed in GJ, which Genesis Energy is not, at the date of this deed, entitled to receive under any Contract (whether a Proven Contract or an Unproven Contract) and:

- (e) in respect of which Genesis Energy has, either in that or any previous Semi-Annual Period during the Term, had a bona-fide opportunity to purchase on arms-length terms from a third party;

- (f) which, if it had been purchased by Genesis Energy would have been supplied in the relevant Semi-Annual Period; and

- (g) which Genesis Energy did not purchase at the time it was available and Genesis Energy's failure to purchase, or decision not to purchase such Gas:

- (i) constitutes a breach by Genesis Energy of its obligations under clause 5.4; or

- (ii) is based on a commercial decision by Genesis Energy not to operate Huntly e3p for economic reasons []

s. 9(2)(b)(ii)

59(2)(b)(i)

"Excluded Unproven Contracted Gas" means an amount of Gas, expressed in GJ, which Genesis Energy is entitled to take under Unproven Contracts during the relevant Semi-Annual Period, but which it does not take in that Semi-Annual Period as a result of:

- (a) the failure of Huntly e3p to operate for any reason, including (but not limited to):
- (i) mechanical failure of Huntly e3p or any material part of it;
 - (ii) failure of, or constraints in relation to the capacity of, any Gas transmission pipeline, equipment or system;
 - (iii) failure of, or constraints affecting, any electricity injection or connection plant, transmission network, or equipment; and
 - (iv) constraints arising from environmental or other consents, approvals or requirements of any Authority,

which in each case, in the opinion of Genesis Energy (acting as a Reasonable and Prudent Business), affect or limit the ability of Huntly e3p to operate;

- (b) any planned or unplanned maintenance, or repair work on, or affecting, Huntly e3p or a material part of it, any Gas transmission pipeline, equipment or system, or any electricity injection or connection plant, transmission network, or equipment; or
- (c) Genesis Energy's decision not to operate Huntly e3p for economic reasons,

59(2)(b)(i)

and, for the avoidance of doubt, Excluded Unproven Contracted Gas:

- (d) subject to paragraph (e) below, does not include Gas which Genesis Energy is entitled to and able to take, and in respect of which no event or circumstance of the type referred to in paragraphs (a), (b) or (c) above has occurred or exists, but which is not delivered; and
- (e) does include Gas which is not delivered but which, if it had been delivered or available to be delivered, Genesis Energy would not have taken as a result of any of the circumstances referred to in paragraphs (a), (b), or (c) of this definition of Excluded Unproven Contracted Gas.

"Gas" means natural gas, which may include, without limitation, liquefied natural gas, and which is suitable for use as a generation fuel in Huntly 1-4, Huntly e3p and for on-

sale in the Retail Business and, to the extent such natural gas requires transportation through any pipeline system, meeting the applicable transportation standards or specifications.

"**Generation Amount**" has the meaning given to that term in paragraph (b) of the definition of "Unused Gas".

"**GJ**" means gigajoule, being 1,000,000,000 joules, where one joule equals the work done by a force of one newton displaced through a distance of one metre.

"**GST**" means goods and services tax levied under the Goods and Services Tax Act 1985.

"**Huntly e3p**" has the meaning given to that term in paragraph B of the Introduction.

"**Huntly e3p Facility**" has the meaning given to that term in paragraph D of the Introduction.

"**Huntly 1-4**" means units 1 to 4 inclusive of the existing dual fuel (coal and gas) capable thermal power station located adjacent to the Huntly Site.

"**Huntly Site**" means the site where Huntly e3p will be located.

"**LD Payment**" [

] s 9 (2) (b) (ii)
s 9 (2) (i)

"**LTMA**" means the long term maintenance agreement for the maintenance of Huntly e3p.

"**Maximum Semi-Annual Payment**" means the maximum amount payable to Genesis Energy by the Crown in relation to any Semi-Annual Period, calculated in accordance with clause 6.4.

"**Mid-Term Review Date**" means the date five years after the Commencement Date.

"**Non-Delivered Proven Gas**" means, in relation to any Semi-Annual Period, an amount expressed in GJ which is the sum of all amounts of Proven Gas Entitlements for that Semi-Annual Period which are not delivered to Genesis Energy, irrespective of the cause of such non-delivery and irrespective of whether such non-delivery has been caused or instigated by Genesis Energy, the relevant Supplier, any third party, or any other circumstances whatsoever.

"**PJ**" means petajoule, being 10^{15} joules, where one joule equals the work done by a force of one newton displaced through a distance of one metre.

"**Payment Review**" means a review conducted under clause 7.3 or clauses 7.4 and 7.5.

"Principles" has the meaning given to that term in clause 3.2.

"Proven Contracts" means, at any time:

- (a) the Contracts referred to in paragraphs 1, 2, 3 and 9 of Schedule 2; and
- (b) any other Contract which is agreed by Genesis Energy and the Crown to be a Proven Contract, or which is classified or reclassified as a Proven Contract following a Contract Review.

"Proven Gas Entitlement" means, in relation to any Semi-Annual Period and with respect to a Proven Contract, the quantity of Gas which Genesis Energy is entitled to be supplied with in that Semi-Annual Period under that Proven Contract.

"Reasonable and Prudent Business" means, in relation to Genesis Energy:

- (a) a business which is operated in accordance with the requirements of the Companies Act 1993 and the SOE Act, and on a reasonable and prudent basis having regard to the industry in which it operates, the nature of the assets operated in that business, and the judgments which are required to be made in that context; and
- (b) where this term is used in relation to any decision, or the making of any judgment, by Genesis Energy, includes a requirement that the relevant decision or judgment is made as if Genesis Energy did not have the benefit of this deed; and
- (c) where this term is used to specify a standard of performance in accordance with which Genesis Energy is expected to conduct its business, means that the appropriate reference point is the standard which would be adopted by a business of the type described in paragraph (a) of this definition which does not have the benefit of arrangements of the type contained in this deed.

"Retail Amount" has the meaning given to that term in paragraph (a) of the definition of "Unused Gas".

"Retail Business" means the business of supplying reticulated natural gas to domestic and business users of such gas, which is carried on by Genesis Energy as at the date of this deed, as the same may be developed or changed during the Term.

"Schedule 1 Letter" means a letter dated on or about the date of this deed from the Chairman and the Chief Executive of Genesis Energy to the Crown attaching a Schedule, and references in this deed to "Schedule 1" are to that Schedule.

"SCI" means the Statement of Corporate Intent which Genesis Energy is required, under the SOE Act, to prepare and file in respect of each Year.

"Semi-Annual Payment" means an amount calculated in accordance with clause 6.1, to be paid by the Crown to Genesis Energy in accordance with clause 7.1.

"Semi-Annual Period" means, in each Year during the Term:

- (a) the period from the 1st day of July to the 31st day of December; and
- (b) the period from the 1st day of January to the 30th day of June,

as applicable, provided that if the period between:

- (c) the Commencement Date and the following 31 December or 30 June (as the case may be); or
- (d) the expiry of the Term and the preceding 31 December or 30 June (as the case may be),

is less than a period of 6 months, the resulting period shall be deemed to be a Semi-Annual Period and clause 2.2 shall apply to adjust the application of this deed to that shortened period.

"Shortfall" means, in relation to any Semi-Annual Period, an amount (expressed in GJ) equal to the deficit remaining after subtracting, from an amount equal to half the Base Case for that Year, the amount of Gas actually delivered to Genesis Energy in that Semi-Annual Period.

"SOE Act" means the State Owned Enterprises Act 1986.

"Supplier" means the party or parties which have agreed to supply Gas to Genesis Energy under a Contract.

"Term" has the meaning given to that term in clause 2.1.

"Unproven Contract" means a Contract which, at any time when a decision is to be made as to the status of such Contract, is not a Proven Contract.

"Unused Gas" means, in relation to any Semi-Annual Period, an amount of Gas, expressed in GJ, which is equal to the aggregate of:

- (a) the difference arrived at by deducting the amount of Gas which Genesis Energy actually uses in the operation of its Retail Business in that Semi-Annual Period ("**Retail Amount**") from an amount equal to half the amount ("**Assumed Retail Amount**") provided for in the Base Case in respect of that Year in column 2 of Schedule 1; and
- (b) the difference arrived at by deducting the aggregate of the amount of Gas which Genesis Energy actually uses to operate Huntly 1-4 and supplies for the operation of the co-generation unit at the Te Awamutu dairy factory owned by Fonterra Co-operative Group Limited in that Semi-Annual Period (together, "**Generation Amount**") from an amount equal to half the amount ("**Assumed Generation Amount**") provided for in the Base Case in respect of that Year in column 1 of Schedule 1,

provided that if either of such differences is negative (that is, a greater quantity of Gas has been used in the relevant activity than the relevant assumed amount), such difference shall be ignored for the purposes of this calculation.

"Year" means a period of 12 months commencing on 1 July in any calendar year and ending on 30 June in the next succeeding calendar year, or such other period as the parties may from time to time agree in writing.

1.2 **Interpretation:** Unless the context otherwise requires or is specifically otherwise stated:

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;
- (c) the singular includes the plural and vice versa;

- (d) references to any form of law are to New Zealand law, including as amended or re-enacted;
- (e) all dollar (\$) amounts refer to New Zealand dollars;
- (f) all amounts to be paid under this deed are stated exclusive of GST and shall be increased by the amount of GST (if any) imposed on any supply in respect of which the amount is paid;
- (g) if a party comprises more than one person, each of those person's liability is joint and several;
- (h) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (i) references to Genesis Energy include its Related Companies (as that term is defined in the Companies Act 1993) from time to time; and
- (j) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other right, power and remedy at any time.

2. TERM

2.1 **Duration:** This deed shall come in to effect on the Commencement Date and shall continue in force until the earliest of:

- (a) the date upon which Genesis Energy has Proven Contracts for the supply of Gas for quantities which are equal to or greater than the Base Case in each remaining Year during the Term; or
 - (b) the expiry of the Huntly e3p Facility, provided that, where the Huntly e3p Facility is replaced by one or more subsequent agreement(s) which are intended to replace that facility, or provide funds to repay that facility (irrespective of whether those subsequent agreements are on similar terms, or are with the same or different parties, as that facility), this deed shall only terminate pursuant to this clause 2.1(b) upon the expiry of such subsequent agreement(s); or
 - (c) the date ten (10) years from the Commencement Date,
- such period being the "Term".

2.2 **Part periods:** If the first or final Semi-Annual Period is a period of less than 6 months then the amounts of the Base Case and the Deductible shall each be adjusted on a pro-rata basis to reflect the number of days in that Semi-Annual Period when compared with the number of days which would have applied if the Semi-Annual Period had constituted a full six month period.

2.3 **Back Stop Commencement Date:** If the Commencement Date is the date specified in paragraph (c) of the definition of "Commencement Date" in clause 1.1, and Huntly e3p has not been Commissioned then:

- (a) until Commissioning actually occurs, Genesis Energy may not make a claim for a Semi-Annual Payment under clause 7.1, provided that if on or after 1 April 2007 Huntly e3p is ready for Commissioning but such Commissioning is delayed and a material contributing factor in such delay is, or such delay is materially caused by, the existence at the relevant time of a shortage of Gas

over and above the Assumed Retail Amount and the Assumed Generation Amount (such circumstances being referred to in this clause 2.3 as being "shortage circumstances"), this restriction shall not apply and Genesis Energy may make claims under clause 7.1 despite this restriction; and

- (b) the first Semi-Annual Period in respect of which a claim for a Semi Annual Payment may be made shall be the Semi-Annual Period in which Commissioning actually occurs, or would have occurred but for shortage circumstances; and
- (c) clause 2.2 shall apply to regulate the treatment of any part periods.

3. GUIDING PRINCIPLES

3.1 **Purpose:** The fundamental purpose of the parties in entering into this deed is to record the basis on which the Crown shall assume certain risks for the reasons referred to in paragraph F of the Introduction to this deed.

3.2 **Principles:** To give effect to the fundamental purpose referred to in clause 3.1 the parties have agreed to the following principles:

- (a) The Crown is to share part of the risk to Genesis Energy of:
 - (i) the deliverability to Genesis Energy of contracted Gas from unproven fields; and
 - (ii) the ability of Genesis Energy to contract for Gas in the future, in relation to Genesis Energy's requirement to procure a nominal amount of Gas calculated by reference to the demands of Gas for:
 - (iii) Genesis Energy's existing Retail Business;
 - (iv) Huntly 1-4;
 - (v) Genesis Energy's existing commitments in relation to the Te Awamutu co-generation unit; and
 - (vi) Genesis Energy's assumed requirements for Gas for Huntly e3p.
- (b) The Crown is not to share any other risks, including the following risks:
 - (i) counterparty or enforcement risk [s 9(2)(b)(ii)]
 - (ii) operating risks affecting certain Gas and electricity systems, plant and equipment, arising as a result of environmental consents or other requirements, or other operating risks affecting Huntly e3p, including planned and unplanned maintenance outages; and
 - (iii) risks related to economic decisions made by Genesis Energy about whether and when to operate Huntly e3p [s 9(2)(j)]
- (c) The Crown is not to share with Genesis Energy risks to the extent that Genesis Energy's existing Retail Business, or Huntly 1-4, or the co-generation unit at

the Te Awamutu dairy factory do not require at least the volumes of Gas assumed in the Base Case for such activities, for whatever reasons.

- (d) The Crown requires Genesis Energy, and Genesis Energy wishes, to continue to act as a Reasonable and Prudent Business for the purpose of:
- (i) contracting for Gas;
 - (ii) otherwise acquiring Gas;
 - (iii) generally endeavouring to minimise Shortfalls which might give rise to claims under this deed,

where, acting as a Reasonable and Prudent Business, it would be economic for Genesis Energy to do so,

(together, the "Principles").

3.3 **Status of Principles:** For the avoidance of doubt, the Principles are not intended to form part of the operative provisions of this deed. They are, however, intended to assist the interpretation of this deed during its Term by providing guidance as to the parties' current intentions.

3.4 **Act reasonably in good faith:** Each party agrees that, in exercising any discretion or right under this deed, it will act reasonably and in good faith.

3.5 **Basis of behaviour:** The parties agree that they will conduct themselves in relation to all discussions and negotiations with each other under this deed as follows:

- (a) each party will act reasonably and in good faith;
- (b) communications will be open, transparent and non-adversarial;
- (c) adverse implications or outcomes will be identified;
- (d) commitments to actions will be honoured; and
- (e) each party will ensure that appropriate personnel and resources are committed to its obligations.

3.6 **Disputes:** Notwithstanding that any matter between the parties may be subject to dispute the parties will continue to comply with, perform and observe their respective obligations under this deed. In seeking to resolve any dispute or uncertainty, and in conducting any review under this deed, the parties will have regard to the fundamental purpose recorded in clause 3.1 and the Principles.

4. CONDITIONS PRECEDENT

4.1 **Conditions:** This deed is subject to and conditional upon:

- (a) Genesis Energy and each other party thereto entering in to and executing the Huntly e3p Facility, EPC and LTMA contracts; and
- (b) the conditions to draw down under the Huntly e3p Facility (other than the condition in paragraph 10 of Schedule 2 of the document entitled "Revolving Cash Advances Facility" and forming part of the documentation for the Huntly

e3p Facility Agreement, which relates to the entry into this deed) being satisfied in accordance with their terms,

in each case not later than:

- (c) in the case of the conditions in (a), 31 August 2004; and
- (d) in the case of the conditions in (b), 31 December 2004.

4.2 **Consequences of failure to satisfy:** This deed is voidable by written notice given, in the circumstances referred to in paragraph (b) of this clause by Genesis Energy, and in all other circumstances by either party, if:

- (a) any of the conditions in clause 4.1 is not fulfilled, by the dates stated in clause 4.1 or such later dates as may be agreed by the parties; or
- (b) any consent or approval required in terms of those conditions is granted on terms not reasonably acceptable to Genesis Energy,

and if this deed is so avoided it will be of no further force or effect and both parties shall be released from their obligations under this deed.

5. BASE CASE AND SHORTFALLS

5.1 **Contracted Gas:** As at the date of this deed Genesis Energy has entered into the existing Contracts referred to in columns 5, 6, 7 and 8 of Schedule 1, which are expected to deliver the volumes of Gas set out in those columns of Schedule 1. However, although Genesis Energy has entered into the existing Contracts:

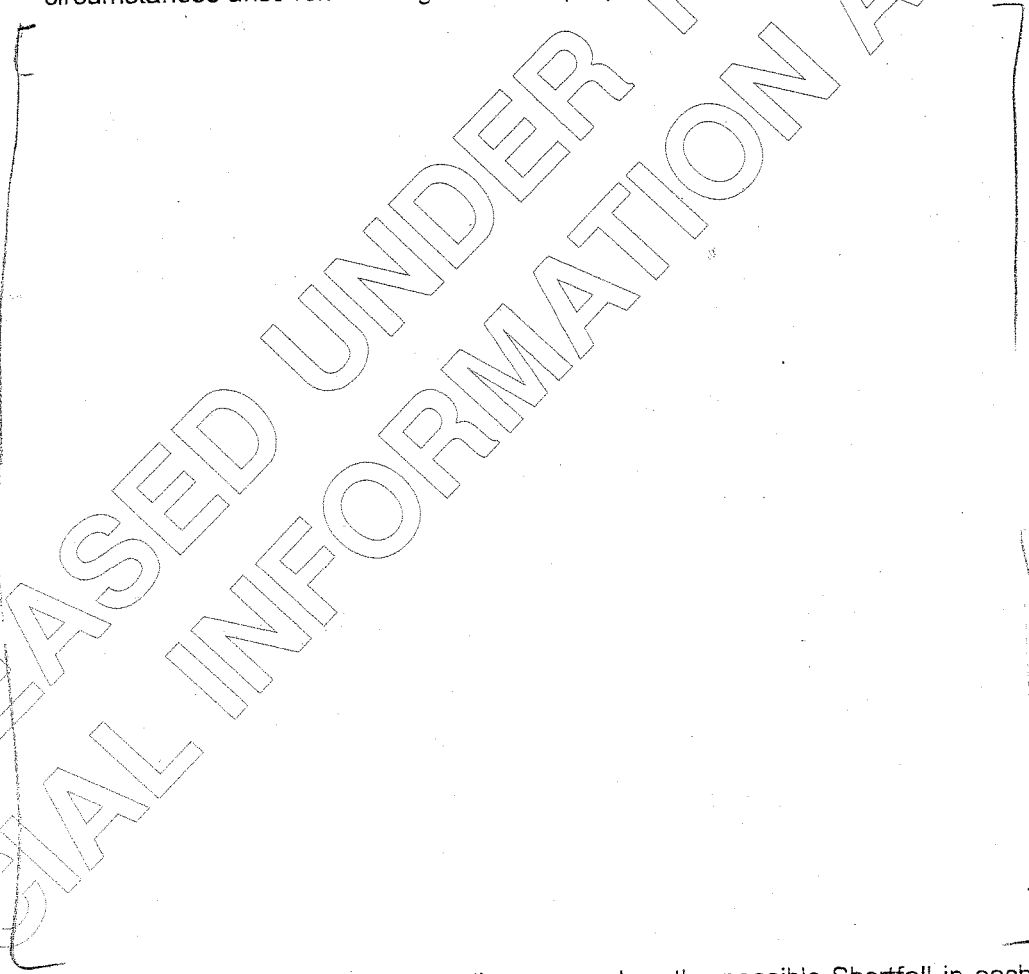
- (a) the actual quantity of Gas supplied to Genesis Energy under those Contracts may differ from that set out in Schedule 1; and
- (b) the volumes and timing of Gas to be supplied under those Contracts remains uncertain for a variety of reasons, including, without limitation, the fact that the Pohokura and Kupe Gas fields are yet to be developed and may, when developed, produce less Gas than anticipated in the Contracts in relation to those Gas fields.

5.2 **Required Gas:** For the purposes of this deed, Genesis Energy's assumed Gas supply requirements during the Term in order to operate its Retail Business, operate Huntly 1-4, supply Gas for use at the Te Awamutu co-generation plant, and achieve the Assumed Electricity Output by operating Huntly e3p, are assumed to be as set out in the Base Case, and the parties agree that:

- (a) subject to paragraph (b) below, the Base Case is fixed at the date of this deed and will not be adjusted or altered in any way during the Term, irrespective of whether the actual requirements of Genesis Energy for Gas during the Term (whether as a result of construction of new plant, reduced availability of coal or other alternative fuels, or other changes in Gas requirements for any reason) increase or decrease from those assumed, at the date of this deed, to apply; but
- (b) notwithstanding paragraph (a), the Base Case shall be adjusted if, and to the extent that:
 - (i) at Commissioning of Huntly e3p; or

- (ii) at any time following a "turbine inspection" in relation to Huntly e3p (which inspections are intended to occur approximately every 2 years); or
- (iii) at any other time or times during the Term there is a material change in the plant performance of Huntly e3p (whether positive or negative) which, when viewed at the end of any Semi-Annual Period, has materially affected Huntly e3p plant performance for a period of not less than 6 months in the previous 12 months,

which in any such case has the result that either or both of the following circumstances arise relative to guaranteed performance test conditions:



s.9(2)(b)(i)

5.3 **Possible Shortfall:** The amounts currently assessed as the possible Shortfall in each Year during the Term are set out in column 10 of Schedule 1. Genesis Energy shall provide to the Crown, in writing, an update of this assessment on a quarterly basis during the Term in accordance with clause 9.1, but each such updated assessment shall be calculated on the basis that the Base Case shall not be altered from that determined under clause 5.2. For the avoidance of doubt, the actual Shortfall in any Semi-Annual Period (and not the possible Shortfall specified in Schedule 1 or updated pursuant to this clause 5.3) is to be used in calculating the amount of any Semi-Annual Payment under clause 6.1.

5.4 **Obligation to mitigate Shortfall:** Genesis Energy must use reasonable endeavours throughout the Term to minimise the amount of the Shortfall in each Semi-Annual Period by:

(a)

S. 9(2)(b)(ii)

(b)

in any period of reduced availability or non-availability of Gas which is likely to be of extended duration, considering the feasibility of converting Huntly e3p to operate on alternative fuels to Gas (potentially including distillate) and, if the decision is made to convert Huntly e3p to operate on an alternative fuel, seeking supplies of such alternative fuel, provided that:

- (i) Genesis Energy shall not be required to take such steps if it would not, acting as a Reasonable and Prudent Business, take such steps; and
- (ii) if Genesis Energy decides to take any such steps the parties shall review this deed with reference to its fundamental purpose and the Principles set out in clause 3 to determine whether, and the extent to which:
 - (aa) the arrangements in this deed should continue for the remainder of the Term; and
 - (bb) the terms of this deed should be modified or adjusted to reflect such developments.

The process described in clause 10.4 shall apply to such review, with the necessary modifications.

5.5 **Banked Gas:** Genesis Energy shall, during the Term:

S. 9(2)(b)(i)
S. 9(2)(j)

6. **CALCULATION OF RISK SHARING PAYMENTS**

6.1 **Calculation:** To give effect to its commitment to share certain risks with Genesis Energy under this deed the Crown shall, in respect of each Semi-Annual Period during the Term, pay to Genesis Energy an amount calculated in accordance with the following formula:

[Redacted]

s.9(2)(b)(i)
s.9(2)(j)

6.2 **LD Payment calculation:** In relation to each Semi-Annual Period the LD Payment shall be calculated in the following manner:

[Redacted]

s.9(2)(b)(ii)
s.9(2)(j)

6.3 **Specific to Semi-Annual Periods:** For the avoidance of doubt, the amount of [] shall be determined strictly with reference to the particular Semi-Annual Period in relation to which they are calculated, and, in calculating the amount of Gas actually delivered, no allowance shall be made for Gas notified for

s.9(2)(b)(ii)
s.9(2)(j)

delivery or otherwise expected to be delivered but not actually delivered in the relevant Semi-Annual Period. Correspondingly, Gas notified for delivery in any prior Semi-Annual Period but actually delivered in the relevant Semi-Annual Period shall be taken in to account in such calculation. These requirements reflect the understanding that Gas cannot be stored, and the expectation by Genesis Energy that Huntly e3p will not be able to use more than 10PJ of Gas in any Semi-Annual Period.

6.4 **Maximum Semi-Annual Payment:** The maximum Semi-Annual Payment which Genesis Energy may claim for in any Semi-Annual Period under clause 6.1 shall not exceed a cap of [] million, and any amount in excess of that cap which Genesis Energy would otherwise have been entitled to claim for under that clause in that Semi-Annual Period shall be ignored and shall not be payable by the Crown. s 9(2)(b)(i)

6.5 **Maximum potential obligations:** The aggregate amount of all Semi-Annual Payments which the Crown shall be liable to make during the Term shall not exceed [] s 9(2)(b)(ii)

6.6 **Negative outputs:** For the avoidance of doubt, if the amount of Semi-Annual Payment following any application of the formula in clause 6.1 is a negative number, no amount is payable by the Crown with respect to that Semi-Annual Period.

6.7 **Guidelines and protocols:** The parties shall use reasonable endeavours to agree, by 1 December 2004, guidelines and protocols for monitoring the processes, including for making relevant measurements and calculations, to be applied by the parties under this deed, including for the purposes of:

- (a) the determination of the quantities of Gas actually delivered to Genesis Energy during any Semi-Annual Period;
- (b) the basis upon which Proven Gas Entitlements are to be determined, wherever possible in advance of the relevant Semi-Annual Period;
- (c) the basis upon which amounts of Excluded Unproven Contracted Gas and Excluded Non-Contracted Gas are to be determined,

including as necessary to take account of differences between Semi-Annual Periods under this deed and relevant periods under Contracts.

7. PAYMENTS, WASH-UPS AND REVIEWS

7.1 **Invoice:** Within 60 days of the end of each Semi-Annual Period Genesis Energy may claim a Semi-Annual Payment by issuing an invoice to the Crown, provided that Genesis Energy shall not claim a Semi-Annual Payment for an amount in excess of the Maximum Semi-Annual Payment.

7.2 **Confirmation:** Each claim made under clause 7.1 shall be accompanied by:

- (a) a confirmation, in writing, signed by the Chief Executive of Genesis Energy, stating that the claim made under that clause is based on information which Genesis Energy considers, in good faith and on reasonable grounds, to be complete and accurate, and confirming that on the basis of that information Genesis Energy considers, in good faith, that it is entitled to make the relevant claim under this deed; and
- (b) reasonable particulars of the claim and the details underlying it.

7.3 **Records and review:** Genesis Energy shall, at all times during the Term, maintain comprehensive records on which calculations required pursuant to this deed are based. The Crown may, no more frequently than once in any Year, by notice in writing to Genesis Energy, require Genesis Energy to permit a representative of the Crown (who shall be an official, or some other nominee of the Crown as Genesis Energy may reasonably approve (having regard to potential conflicts of interest), and who shall in either case enter into a confidentiality agreement with Genesis Energy agreeing to keep information provided by Genesis Energy to him or her confidential and to use such information solely for the purposes of this deed) to either:

- (a) review, at Genesis Energy's premises, during business hours, and at a time reasonably convenient to Genesis Energy; or
- (b) if the nature and commercial sensitivity of the relevant material facilitates such step, be provided with,

such records and information as may be required to satisfy the Crown of the basis for, and accuracy of, any claim(s) made pursuant to clause 7.1 in that Year. If, following any such review, it is agreed or determined that an adjustment should be made to a claim made by Genesis Energy pursuant to this deed in order to put the parties in the position which they would have been in had any information arising from such review been known at the time any such claim was made under clause 7.1, the relevant party shall pay to the other such amounts as are required to be paid to give effect to such agreement or determination. Any disagreements between the parties on such matters shall be resolved in the manner specified in clause 12.10.

7.4 **Final review and wash-up:** At any time within a period of 12 months following the end of any Year the Crown, or Genesis Energy, may give notice in writing to the other of them requiring a review to be undertaken as to whether:

- (a) if a claim was made by Genesis Energy under clause 7.1 in relation to either of the Semi-Annual Periods in such Year (such periods being the "**Reviewed Period**"), in the light of information or circumstances which have subsequently become known or matters which have emerged during the course of that full Year, the amount claimed understated, or overstated, the amount which could or should have been claimed by Genesis Energy pursuant to clause 7.1 when assessed with respect to the Semi-Annual Periods in the relevant Year; or
- (b) if no claim was made in relation to the Reviewed Period under clause 7.1 or any part thereof, a claim could, or should, have been made by Genesis Energy in relation to such Reviewed Period or any part thereof.

7.5 **Process:** If a Payment Review is initiated by a party under clause 7.4 the parties shall cooperate in good faith and shall promptly exchange relevant information between appropriately authorised senior executives and officials with a view to determining the matters the subject of the review. If, following such review, it is agreed or determined that any amount is payable by either party to the other to put the parties in the position which they would have been in had the relevant information or circumstances been known in the Reviewed Period or part thereof, the relevant party shall pay to the other such amount as is required to give effect to such agreement or determination. Any disagreements between the parties on such matters shall be resolved in the manner specified in clause 12.10.

7.6 **Payment:** The Crown shall, except where it is apparent on the face of the invoice that there has been a manifest error by Genesis Energy in calculating the amount of the Semi-Annual Payment or where the Crown disputes an invoice, pay that invoice within 60 days of the invoice date, but subject always to the provisions of clauses 7.4 and 7.5. Where the Crown disputes any invoice issued by Genesis Energy, it shall pay any

undisputed portion of such invoice in accordance with this clause and the dispute shall be resolved in accordance with clause 12.10.

7.7 **Income tax:** Any payments under this deed are based on the assumption that the payments are revenue in nature and are gross income for income tax purposes, and shall be received and accounted for by Genesis Energy on that basis.

7.8 **No repayment:** Except as a result of a Payment Review under clauses 7.4 and 7.5, for the avoidance of doubt:

- (a) each Semi-Annual Payment is payable by the Crown to Genesis Energy unconditionally, and all rights in and to such amounts shall pass to and vest in Genesis Energy as from the time of receipt of payment;
- (b) the Crown shall have no claim against Genesis Energy for repayment of, and Genesis Energy shall not be required to repay, all or any part of any Semi-Annual Payments made to it (if any) pursuant to this deed; and
- (c) this deed creates neither a guarantee nor an indemnity, and section 59(4) of the Public Finance Act 1989 shall not apply.

8. WARRANTIES

8.1 **Powers and authorities:** Genesis Energy warrants that:

- (a) it is a company duly incorporated and validly existing under the laws of New Zealand;
- (b) it has:
 - (i) the power and authority to own its assets and to carry on business as, and in such place or places as, it is now being conducted;
 - (ii) the power to enter into, and exercise its rights and perform and comply with its obligations under this deed;
 - (iii) taken all necessary action to authorise the entry into this deed and the performance of all its obligations expressed to be binding on it under this deed; and
- (c) all material consents required by it in connection with the entry into, execution or performance by it of this deed have been obtained or effected and are in full force and effect and there have been no material revocations or modifications to any such consent and there has been no material default in compliance with such consent.

9. REPORTING

9.1 **Keep informed:** Genesis Energy shall keep the Crown informed on a quarterly basis (or more regularly if the information is of sufficient importance) during the Term in relation to:

- (a) its progress towards procuring Gas supplies for power generation at Huntly e3p in addition to the existing Gas volumes set out in Schedule 1; and

- (b) the Kupe joint venture's progress in developing and producing Gas from the Kupe oil and gas field;
- (c) the possible amount of any Shortfall in any Semi-Annual Period; and
- (d) any other material matter or material information relevant to this deed.

10. ESTABLISHMENT OF CONTRACTS AS PROVEN CONTRACTS

10.1 Purpose and timing of review: On and as from:

- (a) the Mid-Term Review Date with respect to the Contracts referred to in paragraphs 4, 5, 6, 7 and 8 of Schedule 2; and
- (b) the date on which Genesis Energy enters into any Contract not referred to in Schedule 2, which Contract has a term of not less than 12 months,

(in any such case the "Review Date"), the Crown may initiate a review to determine whether any such Contract which is, at the relevant Review Date, an Unproven Contract should, in the light of information then available to the parties or circumstances which then exist, be classified or, as the case may be, reclassified as a Proven Contract with effect from that Review Date.

10.2 Criteria for Proven Contracts: A Contract shall be classified or, as the case may be, reclassified, as a Proven Contract where it:

10.3

Proven Contracts: If, as a result of a Contract Review under clause 10.1 it is agreed or determined that a Contract should properly be classified or reclassified as a Proven Contract then, with effect from the relevant Review Date, for the purposes of all determinations and calculations to be made under this deed after that date, such Contract shall be a Proven Contract, but without affecting in any way any entitlements, claims, or other matters arising prior to the Review Date. In particular (but without limiting the generality of the foregoing) neither party may require any amount to be paid, or repaid, by either party to the other, as a result of any Payment Review or otherwise, solely because a Contract which was, prior to a Review Date, an Unproven Contract, is reclassified as a Proven Contract under this clause 10 provided, however, that where a payment falls to be made by the Crown with respect to Gas under a Contract which is the subject of a Contract Review and that Contract is subsequently determined to be a

S.7(2)(b)(ii)
S.9(2)(j)

Proven Contract then, with effect from that Review Date, the amounts paid or payable under this deed in respect of that Contract shall be recalculated accordingly and:

- (a) in respect of any Semi-Annual Period or part thereof falling after the Review Date, any amount paid by the Crown which would not have been made if the outcome of that Contract Review had been known at the time of such payment shall be repaid by Genesis Energy; and
- (b) in respect of any part of any Semi-Annual Period that falls before such Review Date, for the purposes of any calculation pursuant to the formula in clause 6.1 the parties shall make such adjustments as are necessary to factor into that formula such adjusted inputs as may be required pursuant to this clause 10.3, including taking into account the classification or reclassification of such Contract as a Proven Contract.

10.4 **Process:** Any such Contract Review shall, following initiation by the Crown, be conducted by the parties exchanging relevant information and promptly engaging in good faith negotiation between appropriately authorized senior executives and officials, with a view to agreeing upon the issues the subject of the Contract Review.

11. CONFIDENTIALITY

11.1 **No disclosure:** Each party shall at all times keep confidential, treat as privileged, and not directly or indirectly make any announcement, disclosure or use, or allow any disclosure or use to be made, of any provision of this deed or of any information relating to any provision, or the subject matter, of this deed, or any information directly or indirectly obtained from another party under or in connection with this deed, except to the extent:

- (a) required by law; or
- (b) necessary to obtain the benefit of, or to carry out obligations under, this deed; or
- (c) that the information is or becomes available in the public domain without breach by a party of its confidentiality obligations under this clause or at law.

11.2 **Official Information Act:** Both parties acknowledge that they are subject to the provisions of the Official Information Act 1982. The parties also acknowledge that the arrangements contained in this deed are very confidential and commercially sensitive. In addition, disclosure of the contents of this deed or information exchanged pursuant to this deed could not only unreasonably prejudice the commercial position of Genesis Energy, but also affect competition in the New Zealand electricity and gas markets by providing access to information which competitors of Genesis Energy would not otherwise have. Accordingly, each party shall take all steps properly available to them acting in accordance with the provisions of the Official Information Act 1982 to safeguard, and keep confidential, all information relating to the arrangements in, or exchanged pursuant to, this deed.

11.3 **Public copy:** Notwithstanding clauses 11.1 and 11.2 the parties shall, as soon as possible following execution of this deed, prepare and agree on the contents of a "public" copy of this deed which Genesis Energy may provide to its bankers, and which each party may provide on request under the Official Information Act 1982.

12. GENERAL

- 12.1 **Entire agreement:** This deed and the Schedule 1 Letter taken together constitute the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this deed and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.
- 12.2 **Amendments:** This deed may only be amended, supplemented or novated in writing executed by both parties.
- 12.3 **Severance:** If any provision of this deed is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this deed without affecting the validity of the remainder of this deed and shall not affect the enforceability, legality, validity or application of any other provision of this deed.
- 12.4 **Survival:** The provisions of this deed and any act, matter or thing done in connection with this deed or in connection with any other agreement, instrument, document, judgment or order of any court or in connection with the expiry or earlier termination of this deed shall not operate as a merger of any of the rights, powers or remedies of any of the parties under, or in connection with, this deed or at law, and those rights, powers and remedies shall survive and continue in full force and effect to the extent that they are unfulfilled or are not exhausted.
- 12.5 **Waiver:** Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this deed shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this deed shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.
- 12.6 **Costs:** Each party shall pay its own costs of, and incidental to the negotiation, preparation, and execution, of this deed.
- 12.7 **Counterparts:** This deed may be executed in any number of counterparts (including facsimile copies) and provided that every party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties.
- 12.8 **Further assurance:** Each party shall make all applications, execute all documents and do all acts and things necessary to implement and to carry out its obligations under this deed.
- 12.9 **Relationship between the parties:** Nothing in this deed shall create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have the authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in this deed.
- 12.10 **Dispute resolution:** If the parties are unable to agree on any matters arising from a Payment Review, or from a Contract Review, or otherwise arising out of the arrangements in this deed, the issues in dispute shall be elevated to the Chairman and Chief Executive of Genesis Energy, and the appropriate Ministers representing the Crown, and they shall, on behalf of the parties, resolve the relevant issues.

12.11 **Governing law:** This deed is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this deed.

12.12 **Notices:** Every notice to be given under, or in connection with, this deed shall be given in writing by:

- (a) personal delivery;
- (b) mailing by pre-paid registered post, and shall be deemed to be given two working days after (but exclusive of) the date of mailing; or
- (c) facsimile transmission, and shall be deemed to be given at the time specified in the facsimile transmission report of the facsimile from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given notice,

to the addresses specified below or if a written notice of change of address is given then to the new address:

To: Genesis Power Limited

Full address

Genesis Building
602 Great South Road
P O Box 17188
Greenlane
AUCKLAND

Phone 09 580 2094

Fax 09 580 4894

Contact person/position: The Chief Executive
With a copy to: The General Counsel and Company Secretary

To: The Crown, C/- The Treasury

Full address

PO Box 3724
WELLINGTON

Phone 04 472 2733

Fax 04 473 0982

Contact person/position: Branch Manager, Asset and Liability Management Branch

Notwithstanding any other provision contained in this clause any notice given after 5pm, or on a day which is not a working day, shall be deemed to be given at 9am on the next working day.

SIGNATURES

GENESIS POWER LIMITED by:

Brian Corban
Signature of Director

M E Jackson
Signature of Authorised Signatory

BRIAN CORBAN
Name of Director

M E JACKSON
Name of Authorised Signatory

Maureen Grant Shabovic
Signature of witness **MAUREEN GRANT SHABOVIC**

Business
Occupation

Auckland
City/town of residence

HER MAJESTY THE QUEEN IN RIGHT
OF NEW ZEALAND acting by and
through:

Michael Cullen
Hon Dr Michael Cullen
Minister of Finance

Pete Hodgson
Hon Pete Hodgson
Minister of Energy

RELEASED UNDER THE OFFICIAL INFORMATION ACT

SCHEDULE 1

Details are set out in the "Schedule 1 Letter".

s. 9(2) (b)(ii)
s. 9(2) (b)(i)
s. 9(2) (i)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

**SCHEDULE 2
GAS CONTRACTS**

Paragraph	Contract	Date	Gas Field
1	Agreement for Sale and Purchase of Gas between Contact Energy Limited and Electricity Corporation of New Zealand Limited	16 January 1996	Maui
2	Deed of Amendment and Settlement relating to the Huntly and Retail Gas Contracts between NGC New Zealand Limited and Genesis Power Limited	28 May 2004	Maui
3	Agreement as to Supply of Specification Gas between Swift Energy New Zealand Limited and Genesis Power Limited	7 July 2003	Rimu, Kauri
4	Gas Supply Agreement between Kupe Mining (No.1) Limited, Kupe Mining (No.2) Limited, Kupe Holdings Limited, GP No.2 Limited, Origin Energy Resources Ltd and Genesis Power Limited	5 February 2004	Kupe
5	*PPL 38146 Farm-out Agreement, including arrangements for transfer and supply of Gas between National Petroleum Limited, Petroleum Equities Limited, Nephrite Enterprises Limited and Genesis Power Limited	August 2004	Kupe
6	Pohokura Gas Sales Agreement between Shell Exploration NZ Limited, Shell (Petroleum Mining) Company Limited and Genesis Power Limited	21 May 2004	Pohokura
7	Gas Supply Agreement (Pohokura Early Production) between Todd Pohokura Limited and Genesis Power Limited	21 May 2004	Pohokura
8	Gas Supply Agreement between Todd Pohokura Limited and Genesis Power Limited	21 May 2004	Pohokura
9	Gas Supply Agreement (McKee and Mangahewa) between Todd Taranaki Limited and Genesis Power Limited	21 May 2004	McKee, Mangahewa

* Note: The table above assumes that the Kupe PPL 38146 Farm-out Agreement, including arrangements for transfer and supply of Gas between National Petroleum Limited, Petroleum Equities Limited, Nephrite Enterprises Limited and Genesis Energy is executed. As at the date of this deed, this contract is yet to be finalised. Should such contract not be executed for any reason, the table above shall be adjusted to delete the reference to this contract.