

# DAILY METERED TRANSPORTATION IMBALANCE NETTING AGREEMENT

AGREEMENT made as of the \_\_\_\_ day of 20\_\_\_\_, by and between \_\_\_\_\_  
Aggregator Name

("Aggregator") having offices at \_\_\_\_\_ and  
Aggregator Address

National Fuel Gas Distribution Corporation, a New York corporation, with offices at 6363 Main Street, Williamsville, New York, 14221-5887 ("Company").

## DEFINITIONS APPLICABLE TO THIS AGREEMENT

Terms and conditions in this Agreement not defined below shall have their meaning as defined or utilized in the Company's Tariff for gas service, PSC No. 8 - GAS.

Aggregator	Signatory to this Agreement who, in the judgment of Company, has been determined creditworthy for participation in DMT Customer imbalance management (i.e. the DMT Supplier or Marketer under SC 13D.)
DMT	Daily Metered Transportation
DMT Customer	SC 13D Transportation service customer who has appointed Aggregator.
DMT Market Pool	The pool or group of DMT Customers enrolled by the Aggregator.
DMT Imbalance	Net imbalances developed by the DMT Market Pool and the primary financial responsibility of the Aggregator.
Commission	Public Service Commission of the State of New York
SC 13D	Service Classification No. 13D under Company's tariff.
Tariff	Company's Schedule of Gas service, P.S.C. No. 8, GAS, or successor.
Transportation Customer	Transportation service customer of Company pursuant to an effective Transportation Service Agreement.
UBPs	Uniform Business practices as adopted by the Commission.

**WHEREAS**, Aggregator desires to participate in Company's DMT program by performing imbalance management services for DMT Customer(s) under SC 13D;

**WHEREAS**, Aggregator wishes to assume responsibility for payment, on behalf of its DMT Customer(s), of DMT Imbalance charges incurred by DMT Customer account(s) in Aggregator's DMT Market Pool;

**WHEREAS**, Aggregator wishes to do all things necessary to effectuate all services under Company's DMT program as set forth under SC 13D;

**WHEREAS**, Company is willing to provide such services to Aggregator as are necessary and sufficient to effectuate the DMT program under SC 13D in accordance with all laws, rules, regulations, permits, orders and authorization applicable to the DMT program, or any part thereof.

The parties agree as follows:

**A. Designation as Aggregator:**

Company shall accept designation and appointment of Aggregator, and identification of DMT Market Pool, upon receipt of a valid enrollment, upon the terms and conditions contained in this Agreement and SC 13D. The Aggregator, upon request, shall provide the Company with evidence of Customer consent.

**B. Identification of DMT Customer:**

DMT Customers shall be identified by the Aggregator by enrolling DMT Customers into the Aggregator's DMT Market Pool, subject to the terms and conditions contained therein and under SC 13D. All necessary customer information shall be communicated to the Company via Electronic Data Interchange (EDI), the Company's Web Site or other protocol established by the Company. Notification and execution of Customer switches including switches from the Company to the Aggregator, as well as the timing thereof, shall be governed by the applicable provisions of the UBPs.

**C. Term of Agreement:**

The term of this Agreement shall commence on \_\_\_\_\_ and shall continue through \_\_\_\_\_  
(beginning date)  
(ending date), and renew annually for successive terms ending each \_\_\_\_\_ unless

otherwise terminated by the following events:

1. Default by Aggregator of any terms or conditions contained in this Agreement;
2. By mutual agreement of Company and Aggregator;
3. At the discretion of Company to the extent necessary to preserve system operational integrity;
4. Pursuant to an order of the Commission.

**D. Aggregator's Duties and Obligations:**

1. Aggregator hereby assumes primary responsibility for DMT Customer transportation nominations and for DMT Imbalances as calculated and billed by Company under SC 13D.
2. DMT Imbalances shall be resolved as described under SC 13D. Aggregator shall be billed for applicable imbalance services pursuant to the Tariff.
3. All other terms and conditions under SC 13D and Company's Tariff apply as if fully stated herein, and as amended from time to time.

**E. Company's Duties and Obligations:**

1. Company shall accept Aggregator's DMT Market Pool, as described in B above, and shall provide all services required to effectuate service under SC 13D.
2. Company shall bill Aggregator on a monthly basis for DMT Imbalance charges and imbalance cash out charges (as applicable), plus applicable fees, taxes and surcharges incurred.
3. Company shall bill DMT Customer for DMT delivery charges, plus applicable fees, taxes and surcharges incurred.
4. All other terms and conditions under SC 13D and Company's Tariff apply as if fully stated herein.

**F. Rates and Charges:**

Applicable rates and charges for DMT service shall be billed to Aggregator pursuant to SC 13D.

**G. Consequences of Default:**

In the event Aggregator fails to comply with any of the terms and conditions set forth herein and under SC 13D, this Agreement shall terminate and Company shall refund Aggregator's security deposit minus amounts due Company for services rendered under SC 13D or any applicable Service Classification for past DMT Imbalances, fees, and residual DMT Imbalances, if applicable.

**H. Incorporation by Reference:**

A copy of the currently effective form of SC 13D is attached hereto and is incorporated herein. All terms not otherwise defined in the Agreement shall have the same meaning as set forth in SC 13D. If there is any inconsistency between this Agreement, SC 13D and other provisions of the Tariff, either as presently effective or as amended, then the provisions of SC 13D and the Tariff shall apply.

**I. Notices:**

All notices, invoices and billing should be directed in care of the Transportation Services Department; inquiries regarding rates should be directed to the Energy Services Dept.; nominations and other correspondence pursuant to this Agreement shall be sent to the Transportation Services Department at the following address:

To Company: National Fuel Gas Distribution Corporation  
6363 Main Street  
Williamsville, New York 14221-5887

To Aggregator: \_\_\_\_\_  
(name)  
\_\_\_\_\_  
(address)  
\_\_\_\_\_  
\_\_\_\_\_

**J. Limitation on Company's Liability:**

Company shall not be liable for any error in judgment or any mistake of law or fact or any act done in good faith in the exercise of the powers and authority herein conferred or for any loss, damage, delay or failure to perform in whole or in part resulting from causes beyond Company's control, including, but not limited to, fires, strikes, insurrections, riots, embargoes, shortages in supplies, delays in transportation, or requirements of any governmental authority. Furthermore, in no event shall Company be liable for consequential, punitive, incidental, indirect or special damages in the provision of services hereunder.

**K. Aggregator Indemnity Obligations:**

Aggregator shall indemnify, save harmless and, at Company's option, defend Company from and against any and all losses, claims, demands, damages, costs (including, without limitations, reasonable attorneys' fees), expenses, liabilities, proceedings, suits, actions, restrictions, injunctions, fines, judgments, penalties and assessments which Company may suffer for, on account of, by reason of or in connection with any adverse claim of any person or persons to the gas purchased by Company under SC 13D, regarding purchases of DMT Month End Surplus Imbalances, and in connection with any bodily injury, including death to any person or persons (including, without limitation, Aggregator's employees) or any damage to or destruction of any property, including, without limitation, loss of use thereof, arising out of, in any manner connected with or resulting from the goods, work or services furnished by Aggregator with respect to this Agreement. The provisions of this Paragraph K shall survive the termination or expiration of this Agreement.

**L. Entire Contract:**

This agreement and express incorporations sets forth the entire contract between the parties concerning the subject hereof, and supersedes all prior and contemporaneous written or oral negotiations and agreements between them concerning the subject hereof.

**M. Modification of Agreement:**

Any amendment to this Agreement may be made in the sole discretion of Company so long as such changes are not inconsistent with the Tariff and any modification of this Agreement must be in writing and signed by both parties, except that modifications of the Tariff affecting this Agreement shall modify this agreement automatically with no further writings.

**N. Interpretation of Agreement:**

The interpretation, construction, and performance of this Agreement shall be in accordance with the laws of the State of New York, without recourse to the law regarding the conflicts of law, and the parties to this Agreement hereby submit and consent to the jurisdiction of the courts of the State of New York (including, without limitation, the federal courts located within the State of New York) in any action brought to enforce (or otherwise relating to) this Agreement.

**O. Drafting Presumptions:**

No presumption shall operate in favor of Aggregator or against Company as a result of drafting this Agreement.

**P. Waiver:**

No waiver by any party of any one or more defaults by the other in performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character.

**Q. Assignment:**

Aggregator shall not assign this Agreement, or any of its rights, duties or obligations hereunder without the prior written consent of Customer.

**R. Severability:**

If any provision of this Agreement is determined to be invalid or unenforceable or contrary to Commission Rules or law, the provision shall be deemed to be void as of the date of this Agreement and shall not be part of this Agreement and shall otherwise be severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement. If any provision of this Agreement does not comply with any law, ordinance or regulation of any governmental or quasi-governmental authority, now existing or hereinafter enacted, such provision shall to the extent possible be interpreted in such a manner so as to comply with such law, ordinance or regulation, or if such interpretation is not possible, it shall be deemed amended to satisfy the requirements thereof.

**S. Creditworthiness:**

In order to qualify for service hereunder, DMT Aggregator will be required to meet Company's credit requirements according to criteria contained in the Commission's Uniform Business Practices. Aggregator agrees to execute, on an ongoing basis, at the discretion of Company, any other agreements necessary in order to remain qualified as a DMT Aggregator. Failure to execute said other Agreements shall constitute default.

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorized officers as of the day and year first above written.

**NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

\_\_\_\_\_

(Witness)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(please type/print name & title of person signing)

\_\_\_\_\_

(Witness)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(please type/print name & title of person signing)