

# **TUBRIDGI PIPELINE SYSTEM ACCESS ARRANGEMENT**

## **Tubridgi Parties**

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## **ANNEXURE B**

### **GENERAL TERMS & CONDITIONS**

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## **GENERAL TERMS AND CONDITIONS**

These are the terms and conditions applicable to the provision of the Haulage Reference Service by the Tubridgi Parties for the Tubridgi Pipeline System. These terms and conditions will also apply to the provision of Negotiated Services to the extent that the Tubridgi Parties determine that these terms and conditions are appropriate and applicable to those Negotiated Services.

### **1. THE AGREEMENT**

#### **1.1. Contents of Agreement**

The Agreement between the Tubridgi Parties and the Pipeline User comprises these terms and conditions and the Specific Terms and Conditions.

#### **1.2. Inconsistency**

If these terms and conditions and the Specific Terms and Conditions are inconsistent in any respect, the Specific Terms and Conditions will prevail to the extent of the inconsistency.

#### **1.3. Interpretation**

Definitions given to terms in the Access Arrangement (to which these terms and conditions are annexed) apply to those terms in the Agreement except where the contrary intention appears.

### **2. HAULAGE REFERENCE SERVICE**

#### **2.1. Haulage Reference Service**

During the Term, in consideration of the Charges payable by the Pipeline User under the Agreement, the Tubridgi Parties jointly will:

- (a) receive Gas from or for the account of the Pipeline User at each User Receipt Point; and
- (b) deliver Gas to or for the account of the Pipeline User through each User Delivery Point,

in accordance with, and subject to, the terms of the Agreement.

#### **2.2. Delivery Quantities**

The Pipeline User irrevocably authorises the Tubridgi Parties during the Term to deliver through each Transmission Delivery Point whatever Gas is taken through that Transmission Delivery Point.

### **2.3. Service Standards**

The Tubridgi Parties jointly will ensure that the Tubridgi Pipeline System is operated and managed during the Term in accordance with the Access Arrangement (to which these terms and conditions are annexed) and in accordance with any Pipeline Licence.

## **3. CAPACITY MANAGEMENT**

### **3.1. Maximum Daily Quantity**

The Maximum Daily Quantity (MDQ) for a User Delivery Point is the maximum Quantity of Gas which the Tubridgi Parties are obliged to deliver through that User Delivery Point to or for the account of the Pipeline User during any Pipeline Day.

### **3.2. Tubridgi Pipeline System Limitations**

At no time will the Tubridgi Parties have any obligation to deliver more Gas through a User Delivery Point than is possible given the technical, physical and practical limitations of the Tubridgi Pipeline System, and the pressure and flow-rate of Gas within the Tubridgi Pipeline System, at that time.

### **3.3. Gas Balancing**

At all times during the Term, the Pipeline User must ensure that the aggregate Quantity of Gas delivered through each User Receipt Point by or for the account of the Pipeline User is equal to the aggregate Quantity of Gas delivered to or for the account of the Pipeline User through each User Delivery Point.

### **3.4. Constant Rate**

At all times during the Term, the Pipeline User must ensure that the rate at which Gas is delivered through each User Receipt Point by or for the account of the Pipeline User is as constant as possible and that the rate at which Gas is taken through each User Delivery Point to or for the account of the Pipeline User is as constant as is possible.

## **4. OVERRUN CHARGES**

### **4.1. Overrun Charge**

Whenever the Quantity of Gas delivered through any User Delivery Point to or for the account of the Pipeline User on any Pipeline Day exceeds the MDQ for that User Delivery Point, the Pipeline User will pay the Tubridgi Parties a daily overrun charge in accordance with this clause.



#### **4.2. Calculation of Daily Overrun Charge**

The daily overrun charge payable to the Tubridgi Parties in respect of a given Pipeline Day will be calculated in accordance with the formula:

$$(PDQ - MDQ) \times OR$$

where:

PDQ (peak day quantity) is the Quantity of Gas delivered to or for the account of the Pipeline User through that User Delivery Point on that Pipeline Day;

MDQ is the Maximum Daily Quantity for that User Delivery Point on that Pipeline Day; and

OR is the Overrun Rate per TJ on that Pipeline Day.

#### **4.3. Invoicing**

Each invoice given by or on behalf of the Tubridgi Parties to the Pipeline User pursuant to the Agreement will (where practical) include, or be accompanied by, details of the daily overrun charges for which the Pipeline User is liable.

#### **4.4. MDQ Increase**

If the Quantity of Gas delivered through any User Delivery Point to or for the account of the Pipeline User exceeds the MDQ for that User Delivery Point on any Pipeline Day either three times in a Month or six times in a Year, then the MDQ for that User Delivery Point will be increased effective from the next Pipeline Day so that it is equal to the average Quantity of Gas delivered through that User Delivery Point for those Pipeline Days on which MDQ was exceeded.

### **5. RECEIPT POINT METERS**

#### **5.1. Metering Equipment**

The Pipeline User must ensure that each User Receipt Point has Metering Equipment to continuously and instantaneously measure the Quantity of Gas delivered through that User Receipt Point.

#### **5.2. Readings**

The Pipeline User must ensure that the Tubridgi Parties may remotely access the measurements and readings taken by the Metering Equipment provided by the Pipeline User at each User Receipt Point.

### **5.3. Maintenance**

The Pipeline User must ensure that the Metering Equipment provided by the Pipeline User at each User Receipt Point is maintained in reasonable condition throughout the Term.

## **6. DELIVERY POINT METERS**

### **6.1. Metering Equipment**

The Tubridgi Parties jointly will ensure each User Delivery Point has Metering Equipment to continuously and instantaneously measure the Quantity of Gas delivered to that User Delivery Point.

### **6.2. Readings**

The Tubridgi Parties jointly must ensure that the Metering Equipment they provide at the User Delivery Point is read at least once on each Pipeline Day where practicable and the meter readings are provided to the Pipeline User on a daily basis.

### **6.3. Maintenance**

The Tubridgi Parties jointly will ensure that the Metering Equipment provided by the Tubridgi Parties at each User Delivery Point is maintained in reasonable condition throughout the Term.

## **7. METER ACCURACY**

### **7.1. Party Responsible**

For the purposes of the Agreement, the party responsible for Metering Equipment is the Pipeline User (in the case of the Metering Equipment at any User Receipt Point) and the Tubridgi Parties jointly (in the case of Metering Equipment at any User Delivery Point).

### **7.2. Scheduled Meter Testing**

The party responsible for Metering Equipment must ensure that the accuracy of that Metering Equipment is tested in accordance with good industry practice and any applicable laws.

### **7.3. Unscheduled Meter Testing**

The party responsible for Metering Equipment will also test the accuracy of that Metering Equipment whenever it is requested to do so by the other party in accordance with the Agreement.

#### **7.4. Form of Request**

Whenever the Pipeline User wishes to request the Tubridgi Parties to test the Metering Equipment at any User Delivery Point the Pipeline User must make a request to the Tubridgi Parties in whatever form the Tubridgi Parties (or the Tubridgi Operator on their behalf) requires from time to time.

#### **7.5. Notice of Tests**

Whenever the party responsible for Metering Equipment is required to conduct a test under the Agreement, that party will notify the other party of the time or times at which that party intends to conduct that test. The other party may witness the test.

#### **7.6. Notice of Results**

The party responsible for Metering Equipment will give the other party notice of the results of any test of that Metering Equipment conducted at the request of the other party pursuant to the Agreement as soon as practicable after that test has been conducted.

#### **7.7. Inaccurate Meters**

Subject to the Agreement, if any test of Metering Equipment pursuant to the Agreement shows that the measurements taken by that Metering Equipment are outside a margin of accuracy of plus 2% or minus 3% (the 'allowable margin of accuracy') of the Quantity of Gas delivered through that Metering Equipment then:

- (a) the party responsible for that Metering Equipment must ensure that Metering Equipment is repaired or adjusted as soon as is practicable so that the measurements it takes are within the allowable margin of accuracy or replace that Metering Equipment with Metering Equipment that takes measurements within the allowable margin of accuracy; and
- (b) the Tubridgi Parties jointly must correct previous readings taken from that Metering Equipment to reflect the actual Quantity Gas delivered (or a reasonable estimate of the Quantity of Gas delivered) since the date of the last reading taken from that Metering Equipment or, if later, the last date on which that Metering Equipment was tested and the measurements found to be within the allowable margin of accuracy.

#### **7.8. Basis for Corrections**

If the Tubridgi Parties are required by the Agreement to correct previous readings taken from any Metering Equipment, the Tubridgi Parties will make those corrections on whatever basis they consider (or the Tubridgi Operator on their behalf considers) reasonable in the circumstances. The corrections will bind the Pipeline User in the absence of manifest error.

## **7.9. Maximum Correction**

The Tubridgi Parties will not correct the readings taken from any Metering Equipment more than one year prior to the date of the relevant test unless the Tubridgi Parties are required to do so by law.

## **7.10. Test Fees**

If the Pipeline User requests a test pursuant to the Agreement, the Tubridgi Parties will not have to conduct that test if the Pipeline User has not paid (or, where permitted by the Tubridgi Parties, agreed to pay) the Tubridgi Parties a test fee of an amount equal to the cost of the test or the maximum amount permitted by law, whichever amount is lesser.

## **7.11. Refund of Fees**

If the Pipeline User has paid the Tubridgi Parties a test fee for testing any Metering Equipment and the test shows that the measurements taken by that Metering Equipment are outside the allowable margin of accuracy, the Tubridgi Parties will refund that test fee to the Pipeline User or credit the Pipeline User with that test fee in the next invoice issued pursuant to the Agreement.

## **7.12. Adjust Accounts**

If the Tubridgi Parties are required by the Agreement to correct readings taken from the Metering Equipment at any User Delivery Point, they will recalculate the Charges in respect of the relevant User Delivery Point and debit the Pipeline User with any underpayment, or credit the Pipeline User with any overpayment, in the next invoice issued pursuant to the Agreement.

# **8. GAS SPECIFICATIONS**

## **8.1. Specifications**

The Pipeline User will ensure that Gas delivered to the Tubridgi Parties by or for the account of the Pipeline User meets the specifications listed below. However, if the gas specifications for the pipeline at which a Transmission Delivery Point is located are more stringent, then the specifications of that pipeline will apply, and the Tubridgi Parties will reserve the discretion to transport gas which may not meet the following specifications:

- (a) be free by normal commercial standards from objectionable odours, dust, gum, gum-forming constituents, waxes, other solid or liquid matters, aromatic hydrocarbons which might cause injury to, or interfere with the proper operation of all equipment through which it flows;
- (b) have a hydrocarbon dewpoint below 0°C over the pressure range 2.5 to 8.72 Mpa;

- (c) contain not more than 3.6 mole % carbon dioxide;
- (d) contain not more than 6.5 mole % inert gases;
- (e) contain not more than 0.2 mole % of oxygen;
- (f) contain not more than 10 mg/m<sup>3</sup> of total sulphur;
- (g) contain not more than 2 mg/m<sup>3</sup> of hydrogen sulphide;
- (h) contain not more than 48 mg/m<sup>3</sup> of water; and
- (i) have a Wobbe Index of between 46.0 MJ/m<sup>3</sup> and 51.5 MJ/m<sup>3</sup>;
- (j) have a Heating Value of between 35.5 and 42.3 MJ/m<sup>3</sup>;
- (k) contain not more than 600 Bequerels per cubic meter of radioactive materials; and
- (l) contain LPG of at least 1.45 tonnes/TJ, subject to any changes that may occur in the future to the LPG requirement on the DBNGP.

## **8.2 Specification Testing**

The Tubridgi Parties will determine reasonable methods and procedures and instruments to be used for making tests to determine whether Gas conforms to the Gas specifications as set out in this clause.

## **8.3 Failure to Comply**

If Gas delivered or to be delivered into the Tubridgi Pipeline System (or any part of it) does not meet the specifications then applicable to the Tubridgi Pipeline System (or the relevant part of it), the Tubridgi Parties may curtail or interrupt deliveries through any Transmission Receipt Point or Transmission Delivery Point, flare or release Gas from the Tubridgi Pipeline System or take whatever other steps the Tubridgi Parties consider (or the Tubridgi Operator on their behalf considers) necessary or desirable to ensure that Gas within the Tubridgi Pipeline System meets the specifications and does not present a threat to any person or property.

## **9. RECEIPT PRESSURES**

### **9.1. Receipt Pressure**

The Pipeline User will ensure that Gas delivered at any User Receipt Point by or for the account of the Pipeline User is delivered at a pressure which will not exceed the Maximum Allowable Operating Pressure (MAOP) in the Tubridgi Pipeline or the MAOP in the Griffin Pipeline and will be at all times at a sufficient pressure to enable the delivery of gas into the Tubridgi Pipeline System at the prevailing pressure.

## **9.2. Failure to Comply**

If the pressure of Gas delivered or to be delivered at any Transmission Receipt Point is not within the limits specified for that Transmission Receipt Point by the Tubridgi Parties, the Tubridgi Parties may curtail or interrupt deliveries through any Transmission Receipt Point or any Transmission Delivery Point, or flare or release Gas in the Tubridgi Pipeline System or take whatever other steps the Tubridgi Parties consider (or the Tubridgi Operator on their behalf considers) necessary or desirable to increase or reduce the pressure of Gas within the Tubridgi Pipeline System or to avoid any threat to any person or property.

## **10. DELIVERY PRESSURES**

### **10.1. Delivery Pressure**

Subject to the Agreement, the Tubridgi Parties jointly will ensure that Gas delivered at each User Delivery Point during the Term is at a pressure of no less than the minimum operating pressure of the pipeline into which Gas is delivered through that User Delivery Point.

### **10.2. Exclusion of Liability**

The Tubridgi Parties will not breach their obligations under the previous sub-clause where their failure to comply with that sub-clause is due to:

- (a) the technical, practical and physical limitations of the Tubridgi Pipeline System;
- (b) the fact that insufficient Gas is delivered into the Tubridgi Pipeline System;  
or
- (c) the fact that Gas is delivered into the Tubridgi Pipeline System at pressures outside the limits specified from time to time by or on behalf of the Tubridgi Parties,

whether or not the Tubridgi Parties or any of them knew, or ought to have known, of those facts or matters at any time before, on or after the Start Date.

### **10.3. No Implied Obligation**

Nothing in this clause imposes any obligation on any of the Tubridgi Parties to take any steps to modify the technical, practical or physical limitations of the Tubridgi Pipeline System or to cause or procure the delivery of Gas into the Tubridgi Pipeline System or to ensure that Gas is delivered into the Tubridgi Pipeline System at pressures within the limits specified from time to time by or on behalf of the Tubridgi Parties.

## **11. POSSESSION OF GAS AND RESPONSIBILITY**

### **11.1. Control and Possession**

As between the Tubridgi Parties and the Pipeline User:

- (a) the Pipeline User will be in control and possession of Gas prior to its delivery into the Tubridgi Pipeline System and after its delivery out of the Tubridgi Pipeline System; and
- (b) the Tubridgi Parties will be in control and possession of the Gas following its delivery into the Tubridgi Pipeline System and prior to its delivery out of the Tubridgi Pipeline System.

### **11.2. No Responsibility before Receipt**

To the extent permitted by law, none of the Tubridgi Parties will have any responsibility or liability whatsoever with respect to any Gas before it is delivered into the Tubridgi Pipeline System. This sub-clause will survive the termination of the Agreement.

### **11.3. Limited Responsibility after Delivery**

To the extent permitted by law, none of the Tubridgi Parties will have any responsibility or liability whatsoever with respect to any Gas, after it is delivered out of the Tubridgi Pipeline System, on account of anything which may be done, happen or arise with respect to that Gas prior to receipt at any Transmission Receipt Point or after delivery at any Transmission Delivery Point, provided that the Tubridgi Parties have complied with their obligations pursuant to sub-clause 10.1. This sub-clause will survive the termination of the Agreement.

### **11.4. Lost Gas**

None of the Tubridgi Parties will have any responsibility or liability whatsoever for any Gas that is lost, or unaccounted for, for reasons beyond the control of those Tubridgi Parties. This sub-clause will survive the termination of this Agreement.

### **11.5. Apportionment**

If any Gas is lost, or cannot be accounted for, the Tubridgi Parties will allocate that Gas amongst the Pipeline User and other persons for whose account Gas is delivered into the Tubridgi Pipeline System in accordance with the provisions of any Apportionment Agreements (or if there are no Apportionment Agreements or no relevant provisions in the Apportionment Agreements, then) on a reasonable basis.

### **11.6. No Delivery Obligation**

None of the Tubridgi Parties will have any obligation to deliver to or for the account of the Pipeline User any Quantity of Gas that is lost, or unaccounted for, for reasons beyond the control of those Tubridgi Parties.

## **12. WARRANTIES AND TITLE TO GAS**

### **12.1. Warranty of Title to Gas**

The Pipeline User warrants that the Pipeline User has good title to all Gas supplied to the Tubridgi Parties at each User Receipt Point by or for the account of the Pipeline User, free and clear of all mortgages, charges and other encumbrances and all other third party rights and claims.

### **12.2. Warranty of Right to Deliver**

The Pipeline User also warrants that the Pipeline User has the right to supply Gas at each User Receipt Point for transportation by the Tubridgi Parties under the Agreement.

### **12.3. Repetition of Warranties**

The warranties made by the Pipeline User under the Agreement will be deemed to be repeated on each day on which Gas is delivered to or for the account of the Pipeline User at any User Receipt Point or any User Delivery Point, by reference to the circumstances applicable on that day.

### **12.4. Indemnity**

The Pipeline User will indemnify each of the Tubridgi Parties against any loss, cost, expense or damage arising from or out of any breach by the Pipeline User of any warranty made or deemed to be made by the Pipeline User under the Agreement.

### **12.5. Title**

Title to the Gas received by the Tubridgi Parties at any User Receipt Point by or for the account of the Pipeline User will pass to the Tubridgi Parties in proportion to their respective Participating Interests. Title to Gas delivered by the Tubridgi Parties to or for the account of the Pipeline User at any User Receipt Point will pass to the Pipeline User.

### **12.6. Commingling of Gas**

The Gas delivered to the Tubridgi Parties at any Transmission Receipt Point may be commingled with other Gas in the Tubridgi Pipeline System. The Tubridgi Parties will be entitled to deliver Gas in a commingled state to or for the account of the Pipeline User.



### **13. SUPPLY CURTAILMENT**

#### **13.1. Right to Curtail**

Subject to clause 13.2, the Tubridgi Parties may interrupt or curtail deliveries of Gas into, through or out of the Tubridgi Pipeline System (whether to or for the account of the Pipeline User or to or for the account of any other person):

- (a) where necessary to permit maintenance, repairs, improvements or alterations to the Tubridgi Pipeline System or any part of it;
- (b) where necessary to protect the operational integrity of the Tubridgi Pipeline System or any part of it or to ensure the safe and efficient operation of the Tubridgi Pipeline System or any part of it;
- (c) in the event of an emergency or where necessary to avert danger to persons or property or to comply with any law;
- (d) where the Quantity of Gas delivered into the Tubridgi Pipeline System or any part of it is insufficient to meet demand;
- (e) where the Quantity of Gas delivered into the Tubridgi Pipeline System by or for the account of the Pipeline User is less than the Quantity of Gas delivered out of the Tubridgi Pipeline System to or for the account of the Pipeline User (or will or may be less than unless deliveries of Gas are curtailed or interrupted);
- (f) where the Tubridgi Parties consider that the delivery of that Gas into, through or out of the Pipeline will or may constitute or result in a breach by the Pipeline User of its obligations under the Agreement or, but for Force Majeure, will or may constitute or result in a breach by the Pipeline User of its obligations under the Agreement; or
- (g) where the Tubridgi Parties consider that the delivery of that Gas into, through or out of the Pipeline will or may constitute or result in a breach by any of the Tubridgi Parties of any of their obligations pursuant to the Griffin Pipeline Agreement or the Thevenard Gas Transport Agreement.

#### **13.2. Planned Maintenance**

The Tubridgi Parties will give the Pipeline User at least 14 days notice whenever the Tubridgi Parties propose to interrupt or curtail deliveries of Gas to or for the account of the Pipeline User in order that the Tubridgi Parties may undertake planned maintenance or augment the Tubridgi Pipeline System.

### 13.3 Effect of Curtailment on Charges

- (a) Where during a period of 12 calendar months commencing on the Start Date or any anniversary of the Start Date (the “Period”):
- (i) the Tubridgi Parties have interrupted or curtailed deliveries of Gas out of the Tubridgi Pipeline System other than due to reasons of Force Majeure or a breach by the Pipeline User of the Agreement (“Interruption”); and
  - (ii) assuming that the MDQ for the Period remains unchanged from the MDQ existing at the time the Interruption occurred, the Total Quantity of Gas Not Delivered to the Pipeline User exceeds an amount equal to 1% of the Pipeline User’s aggregated MDQ for the Period (the “Allowable Interruption Amount”),

then, in relation to any period of further Interruption during the Period where the Total Quantity of Gas Not Delivered to the Pipeline User exceeds the Allowable Interruption Amount (based on the assumption in paragraph (a)(ii)), the Pipeline User will not be liable to pay that portion of the Fixed Charge that relates to that period of further Interruption and which bears the same proportion to the entire Fixed Charge for that period as the Total Quantity of Gas Not Delivered bears to the MDQ.

- (b) For the purposes of this clause “Total Quantity of Gas Not Delivered” means the total quantity of Gas established by the Pipeline User as Gas that would have been taken had the Interruption not occurred and which is advised to the Tubridgi Parties on a monthly basis.
- (c) For the purposes of this clause “Fixed Charge” means that portion of the Charge that is calculated on the basis of the number of gigajoules of MDQ (as distinct from that portion of the Charge that is calculated on the basis of quantity of Gas delivered).

## 14. CHARGES AND INVOICES

### 14.1. Obligation to Pay Charges

In consideration for the Pipeline Services provided or to be provided under the Agreement, the Pipeline User must pay the Tubridgi Parties the Charges calculated from time to time in accordance with the Agreement and the Tariff Schedule.

### 14.2. Obligation to Invoice

On or before the 15<sup>th</sup> day of each calendar month that ends during the Term (commencing in the second calendar month that ends during the Term) and at or

after the end of the Term, the Tubridgi Parties will send the Pipeline User an invoice for the previous calendar month.

#### **14.3. Content of Invoice**

The Tubridgi Parties will ensure that the invoice sets out, or is accompanied by, the following information where applicable:

- (a) the aggregate Quantity of Gas delivered, or estimated to have been delivered, at each User Delivery Point (or at all the User Delivery Points) to or for the account of the Pipeline User during the previous month, determined in accordance with the Agreement;
- (b) the Charges payable by the Pipeline User in respect of the previous month, determined in accordance with the Agreement and the Tariff Schedule applicable during that month; and
- (c) any other information which the Tubridgi Parties are required under the Agreement to include in the invoice.

The Tubridgi Parties may give any or all of the information mentioned in this sub-clause to the Pipeline User in electronic form.

#### **14.4. Definition of Month**

For the purposes of clause 14.2 and 14.3, a reference to a “month” is a reference to a period which commences at 8:00am on the first day of a calendar month and ends at 8:00am on the first day of the next calendar month.

#### **14.5. Payment of Invoices**

Subject to clause 14.6, the Pipeline User must pay the amount shown in the invoice to the Tubridgi Parties within 10 days of the date of the invoice.

#### **14.6. Dispute as to Invoice**

If the Pipeline User, in good faith and on reasonable grounds, disputes its liability to pay all or any part of the amount shown in an invoice then the Pipeline User need only pay the amount not in dispute. In this case, the Pipeline User must forthwith give the Tubridgi Parties notice setting out full details of all of the grounds on which its disputes its liability to pay that amount.

#### **14.7. Resolution of Dispute**

If a dispute mentioned in clause 14.6 is resolved wholly or in part against the Pipeline User then the Pipeline User must pay the outstanding amount to the Tubridgi Parties within 7 days of the resolution of the dispute together with interest on the outstanding amount, calculated at the rate applicable under clause

17.1, from the last date for payment of the relevant invoice to the date on which the outstanding amount is actually paid in full.

#### **14.8. Correction of Billing Errors**

Subject to the Agreement, if the Pipeline User notifies the Tubridgi Parties of an error in an invoice issued by the Tubridgi Parties pursuant to the Agreement and the Tubridgi Parties agree that an error has occurred, then the error will be corrected within thirty days of the determination of the error. No claim for an adjustment will be made by the Pipeline User after the expiration of the period mentioned in sub-clause 21.2 or, in any event, more than twelve months after the date of the invoice.

### **15. DELIVERED QUANTITIES**

#### **15.1. Basis for Determination**

Whenever the Tubridgi Parties prepare an invoice for a given month, the Quantity of Gas shown in that invoice to have been delivered (or estimated to have been delivered) will be determined by the Tubridgi Parties in accordance with the Agreement.

#### **15.2. No Meter Reading**

If the Metering Equipment at a User Receipt Point or a User Delivery Point did not record the Quantity of Gas delivered through that User Receipt Point or that User Delivery Point (as the case may be) during any period, the Tubridgi Parties may estimate the Quantity of Gas delivered through that User Receipt Point or that User Delivery Point (as the case may be) for the account of the Pipeline User during that period in accordance with the provisions of any Apportionment Agreements (or if there are no Apportionment Agreements or no relevant provisions in the Apportionment Agreements, then) on a reasonable basis.

#### **15.3. Gas Allocation**

If the Tubridgi Parties receive Gas at any User Receipt Point, or deliver Gas to any User Delivery Point, during any period for the account of the Pipeline User and for the account of someone other than the Pipeline User, then the Tubridgi Parties may determine at which times they received or delivered Gas for the account of the Pipeline User and at which times they received or delivered Gas for the account of the other person, in accordance with the provisions of any Apportionment Agreements (or if there are no Apportionment Agreements or no relevant provisions in the Apportionment Agreements, then) on a reasonable basis.

#### **15.4. Determinations Conclusive**

A determination by the Tubridgi Parties of the Quantities of Gas received through any User Receipt Point, or delivered to any User Delivery Point, for the account of

the Pipeline User during any period will be conclusive and binding on the Pipeline User.

## **16. METHOD OF PAYMENT**

### **16.1. Method of Payment**

Payments by the Pipeline User under the Agreement will be made in immediately available funds on or before the due date by telegraphic transfer to a bank account or bank accounts designated by the Tubridgi Parties by notice in writing to the Pipeline User, or by other method of payment specified by the Tubridgi Parties by notice in writing to the Pipeline User.

### **16.2. Participating Interests**

The Tubridgi Parties will be entitled severally to share in each payment made by the Pipeline User to the Tubridgi Parties under or in relation to the Agreement in proportion to their respective Participating Interests.

### **16.3. No Set-Off**

Payments by the Pipeline User under the Agreement will be made in full without set-off, counterclaim or deduction, or withholding on any account whatsoever.

### **16.4. Business Days**

If, but for this sub-clause, any payment to be made by the Pipeline User under the Agreement would fall due on a day that is not a Business Day, then the payment will be made before the due date for payment.

## **17. FAILURE TO PAY**

### **17.1. Overdue Interest**

If the Pipeline User fails to pay any amount by the date on which that amount is due, then the Pipeline User will pay the Tubridgi Parties interest on the unpaid amount to the extent that it remains unpaid from time to time. Interest will be calculated on a daily basis and will accrue at a rate which is two per cent higher than the Interest Rate. Accrued interest is payable to the Tubridgi Parties on demand. Interest not paid in the month in which it accrues will be capitalised at the end of that month and will itself bear interest in accordance with this sub-clause. This sub-clause will survive the termination of the Agreement.

### **17.2. Right to Suspend Services**

If the Pipeline User does not pay any amount due to any of the Tubridgi Parties under the Agreement, or under any Related Haulage Agreement, within seven days after notice is given to the Pipeline User of that amount falling due in accordance with sub-clause 14.5, then the Tubridgi Parties may cease delivering

Gas through any User Delivery Point to or for the account of the Pipeline User, and may cease performing any of their other obligations under the Agreement, until such time as the Pipeline User has paid in full all unpaid amounts due to the Tubridgi Parties together with any interest accrued on those amounts.

### **17.3. Notice Period for Suspension of Services**

The requirement for notice referred to in sub-clause 17.2 will be satisfied where:

- (a) written notice is supplied to the Pipeline User after the due date for payment; or
- (b) any invoice issued in respect of the amount due states that if the invoice is not paid in full within seven days after payment is due, the Tubridgi Parties may immediately cease delivering gas in accordance with clause 17 of the General Terms and Conditions.

## **18. BANK GUARANTEE**

### **18.1. Pipeline User to Provide**

The Pipeline User must cause or procure a bank acceptable to the Tubridgi Parties to issue an unconditional and irrevocable bank guarantee or undertaking in favour of the Tubridgi Parties in form and substance acceptable to the Tubridgi Parties.

### **18.2. Amount of Guarantee**

The bank guarantee or undertaking issued in favour of the Tubridgi Parties must be for an amount not less than the Charges for which the Pipeline User would become liable over a period of two months (assuming that the Quantity of Gas delivered to or for the account of the Pipeline User on each Pipeline Day during that period will be equal to the MDQ).

### **18.3. Pipeline User to Refresh**

Whenever the amount that the Tubridgi Parties may claim under the bank guarantee or undertaking is less than the Charges for which the Pipeline User would then become liable over a period of two months (based on the assumption mentioned in the previous sub-clause), the Pipeline User must within 14 days cause or procure the issuing bank to increase the amount available under that bank guarantee or undertaking so that it is not less than the Charges for which the Pipeline User would then become liable over a period of two months (based on that assumption).

### **18.4. Purpose of Guarantee**

The purpose of a bank guarantee or undertaking issued in favour of the Tubridgi Parties under the Agreement is to secure the payment by the Pipeline User of

amounts payable by it under and in relation to the Agreement or any Related Haulage Agreement. The Tubridgi Parties may call on that bank guarantee or undertaking at any time, and without notice to the Pipeline User, if the Pipeline User fails to pay any of those amounts when due except where the failure of the Pipeline User to pay arises in respect of a dispute in good faith and on reasonable grounds as to all or part of an invoice in accordance with sub-clauses 14.6 and 14.7.

#### **18.5. No Injunctive Relief**

The Pipeline User will not, and will not seek by any means to, restrain or prevent:

- (a) the Tubridgi Parties from calling on any bank guarantee of undertaking issued to them under the Agreement;
- (b) the issuer of that bank guarantee or undertaking from paying any amount to the Tubridgi Parties pursuant to that bank guarantee or undertaking; or
- (c) the Tubridgi Parties from using or applying any amount paid to them pursuant to that bank guarantee or undertaking.

#### **18.6. Withholding Services**

None of the Tubridgi Parties will have any obligation to comply with the terms of the Agreement at any time during which they do not hold a bank guarantee or undertaking issued in accordance with this clause for an amount at least equal to the amount required by the Agreement.

### **19. TERMINATION**

#### **19.1. Automatic Termination**

Subject to this clause, unless the Parties otherwise agree, the Agreement will terminate on the date set out in, or determined in accordance with, the Specific Terms and Conditions.

#### **19.2. Termination by the Tubridgi Parties**

The Tubridgi Parties may terminate the Agreement by seven days' notice given to the Pipeline User at any time, in the event that:

- (a) the Pipeline User fails to pay any amount due to the Tubridgi Parties on time in the manner required by the Agreement or any Related Haulage Agreement;
- (b) the Pipeline User breaches any other obligation under or in relation to the Agreement or any Related Haulage Agreement and, where that breach can be remedied, fails to remedy that breach to the satisfaction of the

Tubridgi Parties within 21 days (or such shorter period as is reasonable) after the Pipeline User receives notice of that breach;

- (c) the Pipeline User becomes an externally-administered body corporate or insolvent under administration (as defined in the Corporations Law);
- (d) the Pipeline User ceases to meet the requirements of the Credit Policy; or
- (e) there is any material adverse change, in the reasonable opinion of the Tubridgi Parties, in the ability of the Pipeline User to comply with its obligations under the Agreement or any Related Haulage Agreement.

### **19.3. Termination by the Pipeline User**

The Pipeline User may terminate the Agreement by seven days' notice given to the Tubridgi Parties at any time in the event that the Tubridgi Parties breach any obligation under or in relation to the Agreement and, where that breach can be remedied, fail to remedy that breach to the satisfaction of the Pipeline User within 21 days (or such shorter period as is reasonable) after the Tubridgi Operator receives notice of that breach from the Pipeline User.

### **19.4. Decommissioning**

The Tubridgi Parties may terminate the Agreement by written notice given to the Pipeline User at any time in the event that the Tubridgi Parties wish to decommission the Tubridgi Pipeline System or any part of it which the Tubridgi Parties consider necessary to enable them to perform any of their obligations under the Agreement. The Tubridgi Parties must notify the Pipeline User at least three months before they give a written notice to terminate pursuant to this sub-clause.

### **19.5. Effect of Termination**

The termination of the Agreement will terminate the rights and obligations of the Pipeline User and the Tubridgi Parties under the Agreement (to the extent that those rights and obligations have not then accrued), other than rights and obligations which are expressed or intended to survive termination.

## **20. RECEIPT AND DELIVERY POINTS**

### **20.1. Decommissioning Receipt Points**

The Tubridgi Parties may decide at any time to decommission any Transmission Receipt Point. They shall give written notice to the Pipeline User of that decision. They will have no obligation to receive Gas at that Transmission Receipt Point from the time it is closed for decommissioning so long as it is closed at least three months after notice was given to the Pipeline User pursuant to this sub-clause.



## **20.2. Decommissioning Delivery Point**

The Tubridgi Parties may decide at any time to decommission any Transmission Delivery Point. They shall give written notice to the Pipeline User of that decision. They will have no obligation to deliver Gas through that Transmission Delivery Point from the time it is closed for decommissioning so long as it is closed at least three months after notice was given to the Pipeline User pursuant to this sub-clause.

## **21. LIABILITY**

### **21.1. Notice of Claims**

The Pipeline User will promptly notify each of the Tubridgi Parties of any claim which the Pipeline User has, or believes it has, against them as a result of any breach of their obligations under or in relation to the Agreement (each, 'a Claim'). The Pipeline User's obligations under this sub-clause will survive the termination of the Agreement.

### **21.2. Limitation Period**

To the extent permitted by law, no party will have any liability to another party, for or in respect of any Claim, unless full particulars of that Claim are given by a party to another party within three months after that Claim becomes known to a party or its servants or agents or should have become known to a party or its servants or agents (whichever is earlier). This sub-clause will survive the termination of the Agreement.

### **21.3. Exclusion of Consequential Loss**

To the extent permitted by law, none of the Tubridgi Parties will have any liability to the Pipeline User (whether in tort, in contract or otherwise) for any loss of profit, revenue or opportunity, or for any other indirect, special or consequential loss, cost, expense or damage.

### **21.4. Exclusion of Liability for Negligence**

To the extent permitted by law, none of the Tubridgi Parties will have any liability to the Pipeline User (either before or after termination of the Agreement) for any loss, cost, liability, expense or damage which the Pipeline User may suffer or incur as a result of any negligence (or any breach of any statutory duty or any duty of care, in tort or otherwise) on the part of the Tubridgi Parties or their servants, agents or contractors in or in connection with:

- (a) the provision to the Pipeline User of Pipeline Services pursuant to the Agreement; or
- (b) the operation, maintenance, repair, administration or management of the Tubridgi Pipeline System or any part of it.

### **21.5. Liability for Gross Negligence**

The previous sub-clause will not apply to the extent that the Tubridgi Parties, or their servants, agents or contractors, are guilty of Gross Negligence, provided that the liability of the Tubridgi Parties to the Pipeline User in respect of a claim based on Gross Negligence will be limited by the other sub-clauses of the Agreement.

### **21.6. Trade Practices Act and Fair Trading Act**

No clause of the Agreement will apply to the extent that it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

- (a) the application of all or any of the provisions of Division 2 of Part V of the *Trade Practices Act 1974* or Part III of the *Fair Trading Act 1987 (WA)*,
- (b) the exercise of a right conferred by such a provision;
- (c) any liability of a corporation for breach of a condition or warranty implied by such a provision; or
- (d) the application of section 75A of the *Trade Practices Act 1974* or section 41 of the *Fair Trading Act 1987 (WA)*.

### **21.7. Interpretation**

For the purposes of the previous sub-clause, a clause of the Agreement will not be taken to exclude, restrict or modify the application of a provision or section unless the term does so expressly or is inconsistent with that provision or section.

### **21.8. Statutory Immunity**

No clause of the Agreement is intended to vary or exclude, or to waive the benefit of, any immunity conferred on the Tubridgi Parties by any law.

## **22. CONSUMER CONTRACT LIMITATION**

### **22.1. Application of Clause**

The next sub-clause only applies if the Agreement is a contract for the supply by a corporation of goods or services to a consumer (other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption).

### **22.2. Limitation of Liability**

Subject to the next sub-clause, if this sub-clause applies, the liability of the Tubridgi Parties for breach of a condition or warranty implied by Division 2 of Part V of the *Trade Practices Act 1974* (other than a condition or warranty implied by section 69 of that Act) or Part III of the *Fair Trading Act 1987 (WA)* (other than a condition or warranty implied by section 36 of that Act) is limited:

- (a) in the case of goods, to any one or more of the following (at the option of the Tubridgi Parties):
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services, to one of the following (at the option of the Tubridgi Parties):
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

### **22.3. Section 68A(2) TPA and Section 35(2) FTA Exclusion**

The previous sub-clause will not apply in the circumstances specified in section 68A(2) of the *Trade Practices Act 1974* or section 35(2) of the *Fair Trading Act 1987 (WA)*.

### **22.4. Interpretation**

Terms used in the three preceding sub-clauses have the same meanings for the purposes of those sub-clauses as they have for the purposes of Division 2 of Part V of the *Trade Practices Act 1974* and Part III of the *Fair Trading Act 1987 (WA)* as the case may be.

## **23. FORCE MAJEURE**

### **23.1. Definition**

For purposes of the Agreement, Force Majeure (in relation to any party) means any event or circumstance not within the control of that party. In relation to each party, it includes (but is not limited to) each of the following to the extent that it is not within the control of that party:

- (a) acts of God, including, without limitation, earthquakes, floods, washouts, landslides, lightning, storms and the elements;
- (b) strikes, lockouts, bans, slowdowns or other industrial disturbances;
- (c) acts of enemy, wars, blockades or insurrections, riots and civil disturbances, arrest and restraint of rulers and peoples;
- (d) fire or explosion;

- (e) epidemic or quarantine;
- (f) order of any court or the order, act, or omission or failure to act of any government authority having jurisdiction, failure to obtain any necessary governmental consent or approval;
- (g) pipeline ruptures; or
- (h) equipment breakdown, accident, breakages or accident to machinery or pipelines, the necessity for making repairs and/or alterations in machinery or pipelines (other than routine maintenance or where the cause of such breakdown or breakage is a lack of proper maintenance).

### **23.2. Consequences of Force Majeure**

Non-performance by any party of its obligations under the Agreement, as a result of Force Majeure related to that party:

- (a) will not constitute a breach during the time and to the extent that such performance is prevented, wholly or in part, by Force Majeure; and
- (b) will not to that extent give rise to any liability to the other party for any direct, indirect, consequential or special losses or damages of any kind arising out of, or in any way connected with, that non-performance,

provided that Force Majeure will not excuse the performance by any party of an obligation to make any payment under the Agreement.

### **23.3. Effect of Force Majeure on Charges**

If Force Majeure prevents the Tubridgi Parties from performing their obligations to deliver Gas to or for the account of the Pipeline User at any User Delivery Point, then in respect of the period in which the force majeure event occurs, the Pipeline User will pay to the Tubridgi Parties the portion of the Charges based on the actual quantity of Gas delivered to the Pipeline User.

## **24. PIPELINE USER TO ASSIST**

### **24.1. Information**

The Pipeline User will provide the Tubridgi Parties (and will cause or procure each Transmission Operator to provide the Tubridgi Parties) with whatever information any of the Tubridgi Parties or the Tubridgi Operator might reasonably require from time to time in connection with the Agreement or the Pipeline Services provided or to be provided under the Agreement.

## **24.2. Assistance**

The Pipeline User will provide the Tubridgi Parties (and will cause or procure each Transmission Operator to provide the Tubridgi Parties) with whatever assistance or co-operation the Tubridgi Parties might reasonably require from time to time in connection with the Agreement or the Pipeline Services provided or to be provided under the Agreement.

## **24.3. Consultation**

Each of the Tubridgi Parties may provide each Transmission Operator with whatever information that Transmission Operator may require to

- (a) operate any transmission pipelines through which Gas is delivered into the Tubridgi Pipeline System to or for the account of the Pipeline User; or
- (b) operate any transmission pipelines to which Gas is delivered through the Tubridgi Pipeline System to or for the account of the Pipeline User.

This information may include (but is not limited to) information to enable gas balancing to occur on any transmission pipeline.

## **24.4. Survival**

This clause will survive the termination of the Agreement.

## **25. USER'S INDEMNITIES**

### **25.1. Pipeline User's Breach**

The Pipeline User will indemnify each of the Tubridgi Parties against all loss, cost, expense or damage which any of the Tubridgi Parties might suffer or incur as a result of the Pipeline User's breach of the Agreement (or as a result of circumstances which, but for Force Majeure, would have constituted a breach by the Pipeline User of its obligations under the Agreement). This indemnity extends to (but is not limited to) any loss, cost, expense or damage which any of the Tubridgi Parties suffers or incurs in rectifying or remedying the Pipeline User's breach of the Agreement.

### **25.2. Damage to the Tubridgi Pipeline System**

The Pipeline User will indemnify each of the Tubridgi Parties against all loss, cost, expense or damage which any of the Tubridgi Parties might suffer or incur as a result of damage to any Transmission Receipt Point, any Transmission Delivery Point, any Metering Equipment or any other part of the Tubridgi Pipeline System that is caused by the Pipeline User or any of the Pipeline User's servants, agents, contractors or invitees.

### **25.3. Death and Personal Injury**

The Pipeline User will indemnify each of the Tubridgi Parties against all loss, cost, expense or damage which any of the Tubridgi Parties might suffer or incur as a result of the death or injury of any servant, agent, contractor or invitee of any of the Tubridgi Parties that is caused by the Pipeline User or any of the Pipeline User's servants, agents, contractors or invitees.

### **25.4. Survival**

This clause will survive the termination of the Agreement.

## **26. CONFIDENTIALITY**

### **26.1. Pipeline User's Obligations**

The Pipeline User must keep confidential any information which any of the Tubridgi Parties requires the Pipeline User to keep confidential.

### **26.2. No Disclosure**

The Pipeline User must not disclose to any third person any of the information it is required to keep confidential ('Confidential Information') except where disclosure is permitted pursuant to the Agreement.

### **26.3. Disclosure to Employees**

The Pipeline User may disclose Confidential Information to those of its servants and agents to whom it is necessary to make disclosure. However, the Pipeline User must ensure that any servant or agent to whom Confidential Information is disclosed does not disclose that Confidential Information to any third person to whom the Pipeline User could not make disclosure pursuant to the Agreement.

### **26.4. Disclosure By Law**

The Pipeline User may disclose Confidential Information to the extent that disclosure is required by law.

### **26.5. The Tubridgi Parties Obligations**

The Tubridgi Parties must comply with any confidentiality obligations imposed on them pursuant to section 4.1 of the Code.

### **26.6. Survival**

This clause will survive the termination of the Agreement.

## **27. NOTICES**

### **27.1. Notices**

Unless otherwise specified or agreed, notice given by any party under the Agreement will be given in writing and will be considered as having been given if delivered:

- (a) personally by being left at the address of the party to whom the notice is given between the hours of 9:00am and 5:00pm on any Business Day;
- (b) by facsimile; or
- (c) by mail with all postage and charges prepaid to either the Pipeline User or the Tubridgi Parties (as the case may be) at the address for notices specified in the Agreement.

Any communications sent by facsimile will be deemed to have been received on the date of dispatch if a transmission report from the sending facsimile machine indicates that the facsimile was sent in its entirety to the facsimile number of the addressee. If a notice is sent by facsimile after 5pm in the place to which the notice is sent, then the notice will be deemed to be received on the next Business Day.

Any communications by mail will be deemed to have been received on the third Business Day following the date of mailing.

Normal operating instructions may be made by telephone, electronic media or facsimile.

### **27.2 Address for Notices**

Unless notified otherwise, the address for notices under the Agreement for the Pipeline User is as specified in the Specific Terms and Conditions is:

Tim Scholefield  
Manager, Exploration & Production (WA)  
Origin Energy Resources Limited  
34 Colin Street  
WEST PERTH WA 6005

Telephone: 08 9324 6111  
Facsimile: 08 9321 5457  
Email: tim.scholefield@upstream.originenergy.com.au

## **28. ASSIGNMENT**

### **28.1. Assignment by the Pipeline User**

The Pipeline User may not transfer, assign or otherwise deal with any of its rights or obligations under the Agreement except in accordance with the Access Arrangement (to which these terms and conditions are annexed).

### **28.2. Assignment by the Tubridgi Parties**

Each of the Tubridgi Parties may assign or transfer its rights or obligations under the Agreement to any person who purchases or acquires the interest of any of the Tubridgi Parties in the Tubridgi Pipeline System or to any person who becomes entitled to possession and control of the Tubridgi Pipeline System.

### **28.3. Release from Obligations**

If any of the Tubridgi Parties assigns or transfers its rights and obligations under the Agreement, it will be automatically released and discharged from its obligations and liabilities under and in relation to the Agreement to the extent that those obligations and liabilities are assumed by the person who purchases or acquires the Tubridgi Pipeline System (or an interest in the Tubridgi Pipeline System) or possession and control of the Tubridgi Pipeline System.

### **28.4. Deed of Assumption**

For the purposes of the previous sub-clause, a person will be taken to have assumed obligations and liabilities of one or more of the Tubridgi Parties if that person executes a deed poll in favour of the Pipeline User (whether alone or with any other person or persons) under which that person undertakes to perform and discharge those obligations (whether alone or with any other obligations).

### **28.5. Encumbrances**

Each of the Tubridgi Parties may mortgage, charge or otherwise encumber any of its rights or obligations under the Agreement in favour of any person.

## **29. AMENDMENT OF AGREEMENT**

### **29.1. Written Amendments**

Subject to the next sub-clause, the Agreement may only be amended in writing executed by or on behalf of the Pipeline User and the Tubridgi Parties.

### **29.2. Automatic Amendments**

Whenever the terms and conditions set out in Annexure B to the Access Arrangement are amended in accordance with the Code, then (unless the Tubridgi Parties and the Pipeline User otherwise agree) the Agreement will be



amended in the same manner and to the same extent, with effect from the date on which those terms and conditions are amended.

### **30. RIGHTS AND OBLIGATIONS**

#### **30.1. Pipeline User**

If the Pipeline User comprises more than one person, the rights and obligations of those persons are joint and several rights and obligations.

#### **30.2. Tubridgi Parties**

The obligations of the Tubridgi Parties are joint obligations or several obligations, depending on what the context requires in any given case. None of the obligations of the Tubridgi Parties are joint and several rights or obligations.

#### **30.3. Joint Obligations**

If the Tubridgi Parties breach their joint obligations, the Tubridgi Parties will be liable to the Pipeline User in proportion to their respective Participating Interests as at the time of the breach. None of the Tubridgi Parties will be liable for a proportionate share of any damages or compensation that is greater than the proportion which its Participating Interest bore to 100 as at the time of the breach. None of the Tubridgi Parties will be responsible or liable to the Pipeline User if any of the other Tubridgi Parties does not bear or pay its proportionate share of any damages or compensation.

#### **30.4. Several Obligations**

None of the Tubridgi Parties will be responsible or liable to the Pipeline User for any breach by any of the other Tubridgi Parties of any of its several obligations under the Agreement. The failure of any of the Tubridgi Parties to perform its several obligations will not in any way affect the relationship between the Pipeline User and any of the other Tubridgi Parties or any rights and obligations between the Pipeline User and any of the other Tubridgi Parties.

#### **30.5. Several Rights**

The rights of the Tubridgi Parties are several rights of each of Tubridgi Parties. Each of the Tubridgi Parties may enforce its rights against the Pipeline User separately from any of the other Tubridgi Parties. A defence available to the Pipeline User against one of the Tubridgi Parties will not of itself bar an action by any of the other Tubridgi Parties unless that defence is also available against those other Tubridgi Parties. No release granted by any of the Tubridgi Parties will bind any other Tubridgi Parties who have not also granted that release.

## **31. DELEGATION**

### **31.1. Obligations**

The Tubridgi Parties may from time to time authorise the Tubridgi Operator as their agent to perform some or all of the obligations of the Tubridgi Parties, or any of them, under the Agreement.

### **31.2. Rights**

The Tubridgi Parties may from time to time authorise the Tubridgi Operator as their agent to exercise some or all of the rights of the Tubridgi Parties, or any of them, under the Agreement.

### **31.3. Opinions**

A reference in the Agreement to a determination made by the Tubridgi Parties, an opinion formed by the Tubridgi Parties or something specified by the Tubridgi Parties includes a determination made by the Tubridgi Operator on behalf of the Tubridgi Parties, an opinion formed by the Tubridgi Operator on behalf of the Tubridgi Parties or that thing as specified by the Tubridgi Operator on behalf of the Tubridgi Parties.

### **31.4. Sub-Delegation**

The Tubridgi Operator may appoint agents or contractors to perform any obligations, or exercise any rights, which the Tubridgi Operator is authorised to perform or exercise on behalf of the Tubridgi Parties.

## **32. COSTS AND STAMP DUTY**

### **32.1. Pipeline User's Costs**

The Pipeline User must bear its own costs in connection with the preparation, negotiation execution and delivery of the Agreement.

### **32.2. Tubridgi Parties Costs**

The Pipeline User must reimburse the Tubridgi Parties on demand for their costs in connection with the preparation, negotiation, execution and delivery of the Agreement. These costs will include legal costs on a solicitor and own client basis.

### **32.3. Stamp Duty**

The Pipeline User will pay all stamp duty payable in any jurisdiction on or in respect of the Agreement or any document prepared or executed pursuant to the Agreement.

#### **32.4. Survival**

This clause will survive the termination of the Agreement.

### **33. RIGHTS, POWERS AND REMEDIES**

#### **33.1. Rights, Powers and Remedies**

Each right, power and remedy of any of the Tubridgi Parties under the Agreement is in addition to any other right, power and remedy under the Agreement or at law. The exercise by any one or more of the Tubridgi Parties of any right, power or remedy will not preclude the simultaneous or subsequent exercise of that or any other right, power or remedy.

#### **33.2. Modification, Waivers and Forbearance**

No failure or delay by any of the Tubridgi Parties in exercising any right, power or privilege under the Agreement will operate as a waiver thereof.

No waiver by any of the Tubridgi Parties of any one or more defaults by the Pipeline User in the performance of the Agreement will operate or be construed as a waiver by that Tubridgi Party of any future default or defaults, whether of a like or of a different character.

No granting of time or other forbearance or indulgence by any of the Tubridgi Parties will in any way release, discharge or otherwise affect the liability of the Pipeline User under the Agreement.

### **34. GOVERNING LAW**

The Agreement is governed by the laws of Western Australia. The Pipeline User submits to the jurisdiction of the courts of Western Australia.

### **35. SEVERANCE**

If any term of the Agreement is invalid, illegal or unenforceable, the Tubridgi Parties may decide whether to sever that term. If all of the Tubridgi Parties decide to sever that term, it will not form part of the Agreement. If not all of the Tubridgi Parties decide to sever that term, the Agreement will terminate.

### **36. MISCELLANEOUS PROVISIONS**

#### **36.1. Indemnities**

Each indemnity in the Agreement is a continuing indemnity which will survive the termination of the Agreement. It is not necessary to incur a loss, cost, expense or damage before enforcing any indemnity.

### **36.2. Consents**

Where any consent or approval is required from any of the Tubridgi Parties under the Agreement, none of the Tubridgi Parties will have any obligation to give that consent or approval except where an obligation to consent or approve is imposed by law. Each of the Tubridgi Parties may make any consent or approval subject to whatever conditions it considers necessary or desirable.

### **36.3. No Benefit to Other Persons**

Neither the Tubridgi Parties nor the Pipeline User intends that the provisions of the Agreement are to benefit, or affect contractually, in any way any other person. No person, other than valid assignees, will have any right to enforce the terms of the Agreement against the Pipeline User or any of the Tubridgi Parties.

### **36.4. Enforceability**

The Pipeline User represents that it has all necessary power and authority to enter into and perform its obligations under the Agreement and that the Agreement is binding and enforceable against it in accordance with its terms.

### **36.5. No Partnership**

Nothing in or arising out of the Agreement will constitute a partnership between the Pipeline User and the Tubridgi Parties or any of them for any purpose.

### **36.6. Further Assurances**

The Pipeline User will sign all such documents and do and procure to be done all such acts and things which the Tubridgi Parties considers necessary or desirable from time to time to give full effect to the Agreement.

## **37. INTERPRETATION**

### **37.1. Interpretation**

In interpreting these terms and conditions or the Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or to a person includes a corporation, firm, association, authority, trust, state or government and vice versa;
- (c) a reference to any gender includes a reference to each other gender;
- (d) where any expression is defined in the Agreement, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) clause headings are inserted for convenience only and do not affect the interpretation of the Agreement;

- (f) references to 'dollars' and '\$' are references to Australian dollars;
- (g) a reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of that legislation or any statutory provision substituted for it; and includes any subordinate legislation or statutory instruments issued pursuant to that legislation or as it may be modified, re-enacted or substituted;
- (h) a reference to paragraphs, sub-clauses, clauses and schedules is a reference to paragraphs, sub-clauses, clauses and schedules of and to the Agreement;
- (i) a reference to a clause is a reference to a discrete part of the Agreement that appears under its own heading in block capitals;
- (j) a reference to a sub-clause is a reference to a discrete part of the Agreement that appears under its own heading within a clause;
- (k) a reference to any agreement (including the Agreement) or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time; and
- (l) a reference to a party to the Agreement or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns.

### **37.2. Contra Proferens**

In the interpretation and construction of the Agreement, no presumption will be made against any party on the grounds that the Agreement or any provision of the Agreement was drafted by that party or its counsel.

### **37.3. Terminology**

Terminology used to describe units will, unless otherwise agreed, be in accordance with Australian Standard AS1000 'The International System of Units (SI System) and Its Application', the Commonwealth 'National Measurement Act 1960' and regulations thereunder, Australian Standard AS1376-1973 'Conversion Factors' and the Australian Gas Association publication 'Metric Units and Conversion Factors for Use in the Australian Gas Industry'.

### **37.4. Entire Agreement**

The Agreement constitutes the entire agreement between the Pipeline User and the Tubridgi Parties in relation to its subject matter. It supersedes all prior agreements, representations and understandings. All implied warranties, terms and conditions are excluded to the extent permitted by law.