

Western Australia
Barrow Island Bill 2003

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Barrow Island Bill 2003

A Bill for

An Act —

- **to ratify, and authorise the implementation of, an agreement between the State and the Gorgon joint venturers relating to a proposal to undertake offshore production of natural gas and other petroleum and a gas processing and infrastructure project on Barrow Island; the agreement having been entered into having regard to the need to minimise environmental disturbance on Barrow Island (a class A nature reserve) and providing for the support of conservation programs relating to Barrow Island and other parts of the State;**
 - **to make provisions to enable land on Barrow Island (but no more than 300 ha in total of uncleared land) to be used, under the *Land Administration Act 1997*, for gas processing project purposes;**
 - **to make provisions as to the conveyance and underground disposal of carbon dioxide recovered during gas processing on Barrow Island,**
- and for incidental purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Barrow Island Act 2003*.

2. Commencement

5 (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Section 12 comes into operation —

10 (a) if the *Petroleum Safety Act 1999* has come into operation before the day on which this Act receives the Royal Assent, on that day;

(b) otherwise, on the day on which the *Petroleum Safety Act 1999* comes into operation.

3. Definitions

In this Act —

15 **“Barrow Island lease”** means the petroleum lease dated 27 February 1967 granted under the *Petroleum Act 1936* and registered as Number 1H and named “Barrow Island” under that Act and includes that lease as renewed, substituted or varied;

20 Note: though repealed by the *Petroleum Act 1967*, the *Petroleum Act 1936* continues to apply to the Barrow Island lease and renewals of it (see the *Petroleum Act 1967* s. 134).

“Barrow Island lessee” means the lessee under the Barrow Island lease;

25 **“BI Act Minister”** means the Minister to whom the administration of this Act is for the time being committed;

“CALM Act Minister” means the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed;

“**carbon dioxide**” means gases consisting predominantly of carbon dioxide recovered during gas processing on Barrow Island;

“**gas**” means natural gas and other petroleum;

- 5 “**gas processing project purpose**” includes, without limiting the ordinary meaning of the term, any of the following —
- (a) the conveyance by pipeline of gas or a product of gas processing;
 - (b) the provision of support facilities and services —
10 (i) for any gas processing project on Barrow Island; or
(ii) for purposes of the Barrow Island lease;
 - (c) the provision of emergency shelter facilities on Barrow Island;
 - 15 (d) any other purpose ancillary or beneficial to a gas processing project purpose;

“**LA Act**” means *Land Administration Act 1997*;

“**LA Act Minister**” has the meaning given to “Minister” in the LA Act section 3(1);

20 “**the Agreement**” means the Gorgon Gas Processing and Infrastructure Project Agreement, a copy of which is set out in Schedule 1, and includes the Agreement as varied from time to time in accordance with its provisions;

25 “**the reserve**” means class A reserve no. 11648 comprising the whole of Barrow Island that is reserved under the LA Act section 41 for the purpose of conservation of flora and fauna.

4. Notes not part of the law

30 Notes in this Act are provided to assist understanding and do not form part of the Act.

Part 2 — Ratification of Agreement

5. Agreement ratified and implementation authorised

- (1) The Agreement is ratified.
- (2) The implementation of the Agreement is authorised.
- 5 (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement operates and takes effect despite any other Act or law.

Part 3 — Use of reserve under the *Land Administration Act 1997*

6. Leasing parts of the reserve

- 5 (1) The LA Act Minister may, under the LA Act section 79, grant a lease of land that is part of the reserve for a gas processing project purpose, even though that land is part of the reserve, but subject to section 9.
- 10 (2) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the BI Act Minister for the LA Act Minister to do any of the following in relation to a lease referred to in that subsection —
- (a) grant the lease;
 - (b) fix the duration of the lease under the LA Act section 79(1)(b);
 - 15 (c) determine an option for the renewal of the lease under the LA Act section 79(3)(a);
 - (d) extend the term of or vary a provision of the lease under the LA Act section 79(4);
 - 20 (e) give an approval under the LA Act section 18(7) in relation to the lease where the lease is granted to a person who is not a party to the Agreement;
 - (f) accept the surrender of the lease under the LA Act section 81(1);
 - 25 (g) order the lease to be forfeited under the LA Act section 35(3);
 - (h) remove fixtures from, or cause improvements to, the leased land under the LA Act section 92(3);
 - (i) grant an option for the lease under the LA Act section 88(1);
 - 30 (j) vary a condition of a sublease of the lease under the LA Act section 81(3).

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- 5 (3) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the CALM Act Minister for the LA Act Minister to determine or vary, under the LA Act section 79(1)(c), a condition of a lease referred to in subsection (1) that relates to or affects the conservation of flora and fauna on the reserve.
- 10 (4) The LA Act Minister is not to grant a lease referred to in subsection (1) in relation to an area of the reserve that would, if granted, coincide with or overlap the area to which the Barrow Island lease relates, unless the Barrow Island lease —
- (a) has been surrendered under the *Petroleum Act 1936* section 66 in respect of the area to which the lease relates; or
- 15 (b) is otherwise no longer in force in respect of the area to which the lease relates.
- Note: though repealed by the *Petroleum Act 1967*, the *Petroleum Act 1936* continues to apply to the Barrow Island lease and renewals of it (see the *Petroleum Act 1967* s. 134).
- 20 (5) For the purposes of granting a lease referred to in subsection (1), the *Petroleum Act 1936* section 66 is to be read as enabling the Barrow Island lessee, at any time with the consent of the Governor, to surrender any part of the Barrow Island lease including the natural surface and below the natural surface to a depth specified in the instrument of surrender.
- 25 (6) The LA Act sections 12, 14 and 35(4)(a)(i) do not apply to a lease referred to in subsection (1) or a proposed lease of that kind.
- 30 (7) The LA Act section 18 does not apply to a lease referred to in subsection (1) that is granted to a person who is a party to the Agreement.

7. Licences affecting the reserve

- (1) The LA Act Minister may, under the LA Act section 91, grant a licence in respect of land that is part of the reserve for a gas

processing project purpose, even though that land is part of the reserve, but subject to section 9.

- 5 (2) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the BI Act Minister and, if the Barrow Island lessee's consent is required under the Barrow Island lease, the Barrow Island lessee for the LA Act Minister to do any of the following in relation to a licence referred to in that subsection —
- 10 (a) grant the licence;
- (b) fix or extend the duration of the licence under the LA Act section 91(2)(a);
- (c) amend a provision of the licence under the LA Act section 91(2)(d).
- 15 (3) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the CALM Act Minister for the LA Act Minister to determine, under the LA Act section 91(2)(b), or vary, a condition of a licence referred to in subsection (1) that relates to or affects the conservation of flora and fauna on the reserve.
- 20 (4) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the BI Act Minister for the LA Act Minister to do any of the following in relation to a licence referred to in that subsection —
- 25 (a) give an approval under the LA Act section 18(7) in relation to the licence where the licence is granted to a person who is not a party to the Agreement;
- (b) terminate the licence under the LA Act section 91(3).
- (5) For the purposes of subsection (1), the LA Act section 91(5) is to be read as providing that nothing in that Act prevents the simultaneous existence on the same area of the reserve of —
- 30 (a) a licence referred to in subsection (1); and

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(b) a mining or petroleum right, as that term is defined in the LA Act section 3(1), including a right under the Barrow Island lease.

5 (6) The LA Act sections 12 and 14 do not apply to a licence referred to in subsection (1) or a proposed licence of that kind.

(7) The LA Act section 18 does not apply to a licence referred to in subsection (1) that is granted to a person who is a party to the Agreement.

8. Easements affecting the reserve

10 (1) The LA Act Minister may, under the LA Act section 144, grant an easement in respect of land that is part of the reserve for a gas processing project purpose, even though that land is part of the reserve, but subject to section 9.

(2) For the purposes of subsection (1) —

15 (a) while the Barrow Island lease is in force —

(i) the references in the LA Act Part 8 to the management body are to be read as if they were references to the BI Act Minister; and

20 (ii) the references in the LA Act Part 8 to the lessee or any other person having any interest, right, title, or power in respect of the relevant land are to be read as if they were references to —

25 (I) each person to whom is granted a lease referred to in section 6(1), a licence referred to in section 7(1) or an easement referred to in section 8(1); and

(II) if the Barrow Island lessee's consent is required under the Barrow Island lease, the Barrow Island lessee;

30 and

(b) when the Barrow Island lease is not in force, the references in the LA Act Part 8 to the management body

are to be read as if they were references to the BI Act Minister.

- 5 (3) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the CALM Act Minister for the LA Act Minister to specify, under the LA Act section 144(1)(b), or vary, a condition of an easement referred to in subsection (1) that relates to or affects the conservation of flora and fauna on the reserve.
- 10 (4) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the BI Act Minister for the LA Act Minister to do any of the following in relation to an easement referred to in that subsection —
- 15 (a) give an approval under the LA Act section 18(7) in relation to the easement where the easement is granted to a person who is not a party to the Agreement;
- (b) order the easement to be cancelled under the LA Act section 145;
- (c) order the easement to be forfeited under the LA Act section 35(3).
- 20 (5) The LA Act sections 12, 14, 35(4)(a)(i) and 44 do not apply to an easement referred to in subsection (1), or a proposed easement of that kind.
- (6) The LA Act section 18 does not apply to an easement referred to in subsection (1) that is granted to a person who is a party to the Agreement.
- 25
- 9. No more than 300 ha in total of uncleared land to be leased, or the subject of licences or easements**
- (1) The total area of uncleared land made up by the parts of the reserve that are the subject of leases referred to in section 6(1), licences referred to in section 7(1) or easements referred to in section 8(1) is not to exceed 300 ha.
- 30

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(2) In subsection (1) —

“**uncleared land**” means land that is not cleared at the time of the grant, in relation to the land, of a lease referred to in section 6(1), a licence referred to in section 7(1) or an easement referred to in section 8(1).

5

10. Status and purposes of reserve not affected

(1) Despite the grant of a lease referred to in section 6(1), a licence referred to in section 7(1) or an easement referred to in section 8(1) —

10

(a) the reserve remains a class A reserve under the LA Act reserved for the purpose of conservation of flora and fauna; and

(b) the grant is not to be treated as reducing the area of, or excising an area from, the reserve for the purposes of the LA Act section 42(4).

15

(2) Nothing in this Act affects the operation of the LA Act section 45(3).

Part 4 — Conveyance and underground disposal of carbon dioxide

11. *Petroleum Pipelines Act 1969* applies to pipelines on Barrow Island for conveyance of carbon dioxide

- 5 (1) The provisions of the *Petroleum Pipelines Act 1969* apply as if there were included in the definition of “petroleum” in section 4(1) of that Act a reference to carbon dioxide.
- (2) Despite paragraph (b)(ii) of the definition of “pipeline” in section 4(1) of the *Petroleum Pipelines Act 1969*, that definition is to be treated as including a pipeline for the conveyance of carbon dioxide to a place on Barrow Island for the purpose of disposing of the carbon dioxide in an underground reservoir or other subsurface formation.
- 10

12. *Petroleum Safety Act 1999* applies to operations on Barrow Island concerning carbon dioxide

15

The provisions of the *Petroleum Safety Act 1999* apply as if there were included in the definition of “petroleum” in section 3 of that Act a reference to carbon dioxide.

13. Disposal of carbon dioxide underground

- 20 (1) A person must not inject carbon dioxide into an underground reservoir or other subsurface formation for the purpose of disposing of the carbon dioxide unless the person has the BI Act Minister’s approval under this section to do so.
- Penalty: \$50 000.
- 25 (2) An application for the BI Act Minister’s approval under this section —
- (a) is to be made in the form and manner approved by the BI Act Minister;

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- (b) is to be accompanied by particulars of —
- (i) the position, size, capacity and geological structure of the underground reservoir or other subsurface formation;
 - 5 (ii) the rate of the proposed disposal of the carbon dioxide, the volume and composition of the carbon dioxide proposed to be disposed of and the expected duration of the proposed disposal;
 - 10 (iii) the methods proposed to be used for the injection and disposal of the carbon dioxide;
 - (iv) the capability of the underground reservoir or other subsurface formation to confine the disposed carbon dioxide; and
 - 15 (v) technical advice and data available to the applicant in relation to the proposed disposal;
- and
- (c) is to be accompanied by the prescribed fee, if any.
- (3) The BI Act Minister may, at any time, require the applicant —
- 20 (a) to give the BI Act Minister, within the time specified by that Minister, further information in writing in connection with the application; or
 - (b) to inform such other persons as the BI Act Minister considers necessary that the application has been made.
- (4) In considering an application under this section the BI Act
- 25 Minister may seek, and have regard to, the advice or information of any person on a matter that in the opinion of that Minister is relevant to the proposed disposal.
- (5) The BI Act Minister is not to give his or her approval under this
- 30 section unless the BI Act Minister has consulted, and had regard to the advice, if any, of —
- (a) the LA Act Minister;
 - (b) the CALM Act Minister; and

- (c) any other person who is required to be informed under subsection (3)(b) of the application.
- (6) The BI Act Minister may grant his or her approval under this section subject to any condition or restriction including, without limiting the generality of the Minister's discretion, a condition as to —
 - (a) the payment of money to the State;
 - (b) indemnification of the State; or
 - (c) the transferability or otherwise of the approval.

Part 5 — Miscellaneous

14. Requirement to obtain authorisations under other laws not affected

(1) The grant of —

- 5 (a) a lease referred to in section 6(1);
 (b) a licence referred to in section 7(1);
 (c) an easement referred to in section 8(1); or
 (d) an approval under section 13,

10 does not affect the requirement to obtain under any written law
 (including the *Petroleum Pipelines Act 1969* as modified by
 section 11) a licence, permit, lease, approval, consent,
 registration, reservation, exemption or any other kind of
 authorisation to do an act that would be unlawful if done
 without the relevant authorisation.

15 (2) A requirement to obtain under the LA Act an authorisation
 referred to in subsection (1) is subject to the modifications to the
 LA Act made under Part 3.

(3) Nothing in subsection (1) affects the operation of the
Agreement.

20 **15. Limitations on gas processing projects on Barrow Island**

(1) Any gas processing project on Barrow Island must be the
subject of a Government agreement as defined in the
Government Agreements Act 1979 section 2.

25 (2) Subsection (1) does not apply to gas processing under the
Barrow Island lease.

(3) After the Barrow Island Coordination Council is formed under
clause 13 of the Agreement, a person cannot operate a gas
processing project on Barrow Island unless the person is a
participant in the Council.

16. Land used for gas processing project purpose is rateable land

5 For the avoidance of doubt in the interpretation of the *Local Government Act 1995* section 6.26(2)(a)(i), it is declared that any part of the reserve that, at a particular time, is being used for a gas processing project purpose, is not being used or held for a public purpose.

17. Regulations

10 The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

18. Review of Act on cessation of Agreement

15 (1) In the event that the Agreement ceases under clause 4(1) or 8(6) of the Agreement, the BI Act Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the day on which the Agreement ceases, and in the course of that review that Minister is to consider and have regard to —

- 20 (a) the need for the continuation of the operation of this Act; and
(b) such other matters as appear to that Minister to be relevant to the operation and effectiveness of this Act.

25 (2) The BI Act Minister is to prepare a report based on his or her review made under subsection (1) and, as soon as is practicable after the preparation of the report, is to cause the report to be laid before each House of Parliament.

**Schedule 1 — Gorgon Gas Processing and Infrastructure
Project Agreement**

[s. 3]

THIS AGREEMENT is made this 9th day of September 2003

5

BETWEEN:

THE HONOURABLE GEOFFREY IAN GALLOP, B.Ec., MA., MPhil.,
DPhil., M.L.A., Premier of the State of Western Australia, acting for and on
10 behalf of the said State and its instrumentalities from time to time (hereinafter
called "the State") of the one part; and

CHEVRONTEXACO AUSTRALIA PTY. LTD. ABN 29 086 197 757 of
Level 24 QV1 Building, 250 St George's Terrace, Perth, Western Australia,
TEXACO AUSTRALIA PTY. LTD. ABN 18 081 647 047 of Level 24 QV1
15 Building, 250 St George's Terrace, Perth, Western Australia, **MOBIL**
AUSTRALIA RESOURCES COMPANY PTY. LIMITED ABN
38 000 113 217 of 12 Riverside Quay, Southbank, Melbourne, Victoria and
SHELL DEVELOPMENT (AUSTRALIA) PROPRIETARY LIMITED
20 **ABN 14 009 663 576** of Level 28 QV1 Building, 250 St George's Terrace,
Perth, Western Australia (hereinafter collectively called "the Joint Venturers" in
which term shall be included their respective successors and permitted assigns)
of the other part.

WHEREAS:

- 25 A. The Joint Venturers are the holders of the Title Areas (as hereinafter
defined) granted under the Petroleum (Submerged Lands) Act 1967 of
the Commonwealth and propose to undertake offshore production of
natural gas and other petroleum from those areas and a gas processing
and infrastructure project as hereinafter defined as the Project on
Barrow Island.
- 30 B. The State, for the purpose of promoting industrial development in
Western Australia and the supply of gas to the mainland of Western
Australia, desires to facilitate the establishment of the Project upon and
subject to the terms of this Agreement.

- C. The State and the Joint Venturers recognise the need for employment and training opportunities for the Western Australian workforce and for participation in the proposed development by suppliers manufacturers contractors and consultants resident in Western Australia.
- 5 D. The State and the Joint Venturers acknowledge the high biodiversity value on Barrow Island and the need for this Agreement to provide for net environmental, social and economic benefits for current and future generations and the need for minimisation of environmental impact of the Project on Barrow Island.

10 **NOW THIS AGREEMENT WITNESSES:**

Definitions

1. In this Agreement subject to the context:
- 15 "advise", "apply", "approve", "approval", "consent", "certify", "direct", "notice", "notify", "request", or "require", means advise, apply, approve, approval, consent, certify, direct, notice, notify, request or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;
- "Associated Entity" means:
- 20 (a) in relation to a Joint Venturer other than Shell Development (Australia) Proprietary Limited ("**Shell**"): (i) a body corporate, partnership or other legal entity which is directly or indirectly controlled by the Joint Venturer; (ii) a body corporate, partnership or other legal entity which directly or indirectly controls the Joint Venturer; or (iii) a body corporate, partnership or other legal entity which is directly or indirectly controlled by a body corporate, partnership or other legal entity which directly or indirectly controls the Joint Venturer; and
- 25 (b) in relation to Shell: (i) N.V. Koninklijke Nederlandsche Petroleum Maatscappij ("**Royal Dutch**");
- 30

Schedule 1 **Gorgon Gas Processing and Infrastructure Project Agreement**

(ii) The 'Shell' Transport and Trading Company, plc ("**Shell Transport**"); and

(iii) any company (other than Shell) which is for the time being directly or indirectly controlled by Royal Dutch and Shell Transport or either of them.

5

For the purpose of this definition, a body corporate, partnership or other legal entity ("**Entity**") is directly controlled by another Entity or Entities holding shares carrying the majority of votes exercisable at a general meeting of the first mentioned Entity; and a particular Entity is indirectly controlled by an Entity or Entities (the "**parent Entity or Entities**") if a series of Entities can be specified, beginning with the parent Entity or Entities and ending with the particular Entity, so related that each Entity in the series, except the parent Entity or Entities, is directly controlled by one or more of the Entities earlier in the series;

10

15

"**approved proposal**" means a proposal approved or deemed to be approved under this Agreement;

"**Barrow Island Coordination Council**" or "**BICC**" means the group referred to in clause 13;

20

"**BICC Participants**" means the participants in the BICC from time to time;

"**Barrow Island lease**" has the meaning given to it in the Ratifying Act;

"**BI Lessee**" means the lessee from time to time under the Barrow Island lease;

25

"**CALM Act**" means the Conservation and Land Management Act 1984;

"**CALM Act Minister**" means the Minister to whom the administration of the CALM Act is for the time being committed;

"**Commencement Date**" means the date on which the Ratifying Act comes into operation;

30

"**Commonwealth**" means the Commonwealth of Australia and includes the Government for the time being thereof;

"**DCLM**" means the Department of Conservation and Land Management referred to in section 32 of the CALM Act;

"**Domgas Project**" means any domestic gas treatment plant within the Gas Processing Area on Barrow Island and a pipeline connection or connections to deliver natural gas from that plant to domestic gas infrastructure on the mainland of Western Australia;

5 "EP Act" means the Environmental Protection Act 1986;

"**Executive Director**" means the executive director of DCLM referred to in section 36(1) of the CALM Act;

10 "**First long term lease**" means the first long term lease granted by the State to the Joint Venturers for the purposes of establishment of a gas processing plant pursuant to an approved proposal under clause 7 and includes that lease, if renewed or varied, as so renewed or varied;

"**Gas Processing Area**" means the areas of Barrow Island not exceeding in aggregate 300 hectares, as described in section 9 of the Ratifying Act;

15 "**gas processing project purpose**" has the meaning given to it in the Ratifying Act;

20 "**Greater Gorgon Area**" means the areas which are the subject of Retention Leases WA-15-R, WA-17-R, WA-18-R, WA-19-R, WA-20-R, WA-21-R, WA-22-R, WA-23-R, WA-24-R, WA-25-R and WA-26-R, Exploration Permits WA-253-P, WA-267-P and WA-268-P and graticular blocks 439, 440, 511, 512, 583 and 584 of Exploration Permit WA-205-P, or of titles derived from those titles, which are held during the term of this Agreement by any person under such titles granted pursuant to the Petroleum (Submerged Lands) Act 1967 of the Commonwealth;

25 "**LA Act**" means the Land Administration Act 1997, as amended by the Ratifying Act;

30 "**laws relating to native title**" means laws applicable from time to time in Western Australia in respect of native title and includes the Native Title Act 1993 (Commonwealth);

"**local government**" means a local government established under the Local Government Act 1995;

"**Minister**" means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this

Schedule 1 **Gorgon Gas Processing and Infrastructure Project Agreement**

Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers and includes the successors in office of the Minister;

"**month**" means calendar month;

5 "**Net Conservation Benefits**" means demonstrable and sustainable additions to or improvements in biodiversity conservation values of Western Australia targeting, where possible, the biodiversity conservation values affected or occurring in similar bioregions to Barrow Island;

10 "**person**" or "**persons**" includes bodies corporate;

"**petroleum**" has the meaning given to it in the Petroleum (Submerged Lands) Act 1967 of the Commonwealth;

15 "**Project**" means the processing of gas or other petroleum from within the Title Areas and, subject to this Agreement, gas or other petroleum from the Greater Gorgon Area and other areas to produce, by staged phases of development, some or all of:

(a) liquefied natural gas or other petroleum based products for sale within Australia and/or overseas;

20 (b) natural gas or processed natural gas or other petroleum based products for sale or industrial use on Barrow Island; and

(c) processed natural gas and the pipeline transportation of such gas to the mainland of Western Australia for sale within Australia,

25 and all related activities including construction, operation and maintenance of pipelines, transport, carbon dioxide disposal and other ancillary services and facilities;

"**Ratifying Act**" means the Act that ratifies this Agreement;

30 "**Title Areas**" means the areas which, at the Commencement Date, are the subject of Retention Leases WA-2-R, WA-3-R, WA-4-R, WA-5-R, WA-14-R and WA-16-R and graticular blocks 153, 154, 225, 226, 296, 297, 368 and 369 within Exploration Permit WA-205-P and in which interests are held during the term of this Agreement by any or all of the Joint Venturers under titles granted pursuant to the Petroleum (Submerged Lands) Act 1967 of the Commonwealth;

"**this Agreement**", "**hereof**" and "**hereunder**" refer to this Agreement as from time to time added to, varied or amended.

Interpretation

2. (1) In this Agreement:
- 5 (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than clause 24 to extend any period or date shall be without prejudice to the power of the Minister under clause 24;
 - 10 (c) clause headings do not affect interpretation or construction;
 - (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
 - 15 (e) one gender includes the other genders;
 - (f) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
 - 20 (g) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
 - (h) reference to any other document includes that document as from time to time added to, varied or
25 amended and notwithstanding any change in the identity of the parties;
 - (i) reference to a clause or schedule is a reference to a clause or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the
30 subclause of the clause or paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made; and
 - (j) "including" means "including, but not limited to".

Overall development - existing infrastructure

5. (1) Having regard to the Class A Nature Reserve status of Barrow Island, the provisions of the Ratifying Act, the need to minimise environmental disturbance and the impact on conservation values on Barrow Island by the avoidance of duplication of services, facilities and infrastructure and that no more than 300 hectares of uncleared land (as described in section 9 of the Ratifying Act) is available for this and other future gas processing developments on Barrow Island, the Joint Venturers in their planning and preparations for proposals shall take into account and make provision as far as practicable for use and sharing of services, facilities and infrastructure. The Joint Venturers and the State shall co-operate and consult with each other regarding these matters, State Government policies and development objectives, the Joint Venturers' commercial requirements and any other relevant matters that the Minister or the Joint Venturers may wish to consider.
- 20 (2) Subject to clause 21 the Joint Venturers shall, if so requested by the Minister or by another existing or prospective occupant of Barrow Island, enter into negotiations for the sharing or supply, in both cases on reasonable commercial terms and subject to there being spare capacity available, of the Joint Venturers' services, facilities and infrastructure on Barrow Island. The implementation of such arrangements shall not be precluded by this Agreement.

Reservation of areas

6. (1) The Gas Processing Area shall be reserved by the State solely for the provision of land areas for the establishment of projects to process or use natural gas and other petroleum from the Title Areas and the Greater Gorgon Area (together with ancillary processing or use of gas and other petroleum from the Barrow Island lease or elsewhere if approved by the Minister), and for associated activities to such projects and the Minister shall not consent to the grant of any lease, easement or licence under the Ratifying Act which is inconsistent with this reservation.

- 5 (2) For the period from the Commencement Date to 31 December 2009 the State shall reserve to the Joint Venturers areas within the Gas Processing Area of 150 hectares in the aggregate from which they may seek the grant of long term leases of land for the purposes of the Project and easements for carbon dioxide pipelines, control lines and ancillary services under the LA Act in accordance with approved proposals.
- 10 (3) The State shall also reserve areas within the Gas Processing Area of not less than 50 hectares for the grant of easements under the LA Act for petroleum pipelines, control lines and ancillary services associated with gas and other petroleum processing within the Gas Processing Area by the Joint Venturers and other occupants of the Gas Processing Area.
- 15 (4) If the Joint Venturers or any other occupants of the Gas Processing Area are granted any easement under subclause (3), the State shall ensure that they locate their pipelines and other lines and services within such easement and implement arrangements for risk management and risk allocation so as to allow others to install lines within the easement associated with gas and other petroleum processing within the Gas Processing Area.
- 20 (5) The Joint Venturers shall, where reasonably practicable, locate their construction and laydown areas within the 150 hectares reserved under subclause (2) or within cleared land and may seek the grant of short term leases under the LA Act over such areas in accordance with approved proposals.
- 25 (6) The Joint Venturers shall also, where reasonably practicable and subject to implementation of reasonable arrangements for risk management and risk allocation, allow third parties to locate temporary construction and laydown areas on areas within the 150 hectares reserved under subclause (2). If the State reserves areas for or grants titles to third parties in respect of other parts of the Gas Processing Area or other cleared land, the State shall, without limiting subclause (5), ensure that the Joint Venturers have equivalent construction and laydown rights over such areas.
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- 5 (7) In respect of any area reserved pursuant to subclause (2) which is not the subject of an approved proposal or approved proposals at 31 December 2009, the State and the Joint Venturers shall consult with each other regarding the market situation and gas reserves in the Title Areas and the Greater Gorgon Area and the Joint Venturers' continued requirement for the area or any part thereof. Any portions of the area not reasonably required by the Joint Venturers at the discretion of the Joint Venturers, shall be released from the reservation.
- 10 Any area not so released shall continue to be reserved under subclause (8) until 31 December 2014 or the sooner cessation of this Agreement.
- 15 (8) In respect of any area continuing to be reserved pursuant to subclauses (2) and (7) which is not the subject of an approved proposal or approved proposals at 31 December 2014, the State and the Joint Venturers shall consult with each other regarding the market situation and gas reserves in the Title Areas and the Greater Gorgon Area and the Joint Venturers' continued requirement for the area. After such consultation
- 20 the Minister at his discretion, may cancel the reservation or extend the whole or any part thereof that is then not the subject of an approved proposal for such period not exceeding 5 years as the Minister may determine.
- 25 (9) If the date 31 December 2008 referred to in clause 7(1) is extended pursuant to clause 24 then the dates 31 December 2009 and 31 December 2014 in subclauses (2), (7) and (8) shall respectively be automatically extended for the same length of time.
- 30 (10) If the Joint Venturers wish to use land within the Gas Processing Area beyond that which is reserved for them from time to time, they may request permission to bring forward a proposal under this Agreement in respect of that land and the Minister may in his discretion allow this.
- 35 (11) The Minister shall advise the Joint Venturers of any land within the Gas Processing Area that the State is considering reserving or granting to a third party for the establishment and operation of plant for the treatment of natural gas and other petroleum, its processing, storage and/or shipment and

associated ancillary structures and for incidental and ancillary purposes and, if requested by the Joint Venturers, the Minister shall consult with them in this regard.

Joint Venturers to submit Proposals

- 5 7. (1) Subject to the provisions of this Agreement, the Joint
Venturers shall, on or before 31 December 2008, or by such
extended date as may be allowed pursuant to clause 24 or
clause 30(3), submit to the Minister to the fullest extent
10 reasonably practicable their detailed proposals (including
plans where practicable and specifications where reasonably
required by the Minister and any other details normally
required by a local government in whose area any works are
to be situated) with respect to the Project including, subject to
and in accordance with clause 5, their proposals for the use
15 and/or sharing of existing services, facilities or infrastructure
on Barrow Island, which proposals shall include the location,
area, provisions relating to management of quarantine risk,
lay-out, design (including design features to enable future
delivery of gas to the mainland), quantities, materials and time
20 program for the commencement and completion of
construction or the provision (as the case may be) of each of
the following matters, namely:
- 25 (a) a pipeline or pipelines bringing untreated natural gas
and other petroleum from the Title Areas to Barrow
Island, including details of how the pipeline or
pipelines will deliver or be expanded to deliver the
untreated gas required for the establishment of a
Domgas Project in accordance with clause 17;
 - 30 (b) pipelines to be situated on Barrow Island;
 - 30 (c) the treatment plant;
 - 30 (d) disposal of carbon dioxide (including by injection or
sale);
 - 30 (e) shipping facilities and services;
 - 35 (f) quarantine management plan in respect of Barrow
Island;

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- (g) water supply;
- (h) power supply;
- (i) accommodation for construction and permanent workforce;
- 5 (j) a social impact management plan including education, health and policing services and community facilities;
- (k) use of local professional services labour and materials and measures to be taken with respect to the engagement and training of employees by the Joint
10 Venturers, their agents and contractors;
- (l) any leases, licences or easements required from the State;
- (m) airport and heliport facilities;
- (n) any other works, service or facilities desired by the
15 Joint Venturers;
- (o) establishment and operation of the Barrow Island Coordination Council; and
- (p) closure plan including rehabilitation and long term management plan for injected carbon dioxide.

20 **Order of proposals**

- (2) Each of the proposals pursuant to subclause (1) may, with the approval of the Minister or if so required by him, be submitted separately and in any order as to any matter or matters mentioned in subclause (1).

25 **Additional submissions**

- (3) (a) Each time that the Joint Venturers submit a proposal or proposals under this clause they shall submit to the Minister in respect of that proposal or proposals details of any services (including any elements of the project investigations design and management) and
30 any works materials plant equipment and supplies that they propose to consider obtaining from or having

carried out or permitting to be obtained from or carried out outside Australia together with their reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.

5 (b) At the time when the Joint Venturers submit the complete detailed proposal or proposals required under this clause they shall confirm or address further the matters referred to in paragraph (a) and shall also submit to the Minister:

10 (i) evidence to the reasonable satisfaction of the Minister as to the availability of finance necessary to carry out the Project; and

15 (ii) evidence to the reasonable satisfaction of the Minister as to the readiness of the Joint Venturers in all other respects to carry out the Project.

(4) If the complete detailed proposals submitted under this clause do not include a proposal to inject carbon dioxide recovered during gas processing, the Minister may notify the Joint Venturers within 60 days after submission of those proposals that he will not consider the proposals. On such notification the proposals shall lapse and clause 8(3) shall apply in relation to the submission of further proposals by the Joint Venturers. The Minister's decision under this subclause shall not be referable to arbitration under clause 30.

(5) The provisions of clause 23 shall not apply to this clause.

Consideration of proposals

8. (1) Subject to clause 7(4), in respect of each proposal pursuant to clause 7(1) the Minister shall:

30 (a) approve the proposal without qualification or reservation; or

(b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the

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matters mentioned in clause 7(1) not covered by the said proposal; or

- 5 (c) require, as a condition precedent to the giving of his approval to the said proposal, that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such alterations or conditions,

PROVIDED ALWAYS that:

- 10 (d) where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall, if the case so requires, incorporate a requirement that the Joint
15 Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures; and

- 20 (e) subject to clause 8(1)(d), if the proposals include details of the conditions and restrictions that have been imposed on an approval to inject carbon dioxide under section 13 of the Ratifying Act, the Minister may not make any decision under clause 8(1)(b) or (c) which is inconsistent with those conditions and restrictions.

25 **Advice of Minister's decision**

- (2) The Minister shall, within two months after receipt of proposals pursuant to clause 7(1) and compliance by the Joint Venturers with clause 7(3), give notice to the Joint Venturers of his decision in respect to the proposals **PROVIDED THAT:**
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- (a) where a proposal is to be assessed under section 40(1)(b) of the EP Act the Minister shall give notice to the Joint Venturers of his decision in respect to the proposal within 2 months after the later
35 happening of the receipt of the proposal and the

service on him of an authority under section 45(7) of the EP Act; and

- 5 (b) where a proposal will or may require the State to do any act which affects any native title rights and interests the Minister shall give notice to the Joint Venturers of his decision in respect to the proposal within 2 months of the later happening of the receipt of the proposal and the completion of all processes required by laws relating to native title to be
10 undertaken by the State before that act may be done by the State.

Consultation with Minister

- 15 (3) If the decision of the Minister is as mentioned in clause 7(4) or in either of paragraphs (b) or (c) of subclause (1), the Minister shall afford the Joint Venturers full opportunity to consult with him and, should they so desire, to submit new or revised proposals either generally or in respect to some particular matter.

Minister's decision subject to arbitration

- 20 (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Joint Venturers consider that the decision is unreasonable, the Joint Venturers within 2 months after receipt of the notice mentioned in
25 subclause (2), may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision **PROVIDED THAT** any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

Arbitration award

- 30 (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows:

35 (a) if by the award the dispute is decided against the Joint Venturers then, unless the Joint Venturers within 3 months after delivery of the award give notice to the Minister of their acceptance of the award, this

shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in clause 7(1) as the Minister may require.

- 5 (2) The provisions of subclause (1) shall not apply to matters the subject of clause 17.
- 10 (3) The provisions of clause 7 and clause 8 (other than clauses 8(5)(a) and (6)) shall mutatis mutandis apply to detailed proposals submitted pursuant to this clause, with the proviso that the Joint Venturers may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.

Net Conservation Benefits

- 15 11. (1) The Joint Venturers shall pay to the State \$40 million, by instalments to be indexed in accordance with subclause (3) from 1 January 2004, for ongoing programs that will provide Net Conservation Benefits.
- 20 (2) Each instalment under subclause (1) shall become due and payable, and shall be paid into a special purpose trust account, as follows:
- 25 (a) by an initial instalment of \$3 million within one month following the Commencement Date or upon establishment of the account in accordance with subclause (5), whichever is the later; and
- 30 (b) thereafter by further instalments totalling \$37 million (indexed in accordance with subclause (3)) commencing within one month of approval of complete detailed proposals submitted under clause 7 and continuing in accordance with a schedule of payments to be agreed between the Joint Venturers and the Minister, in consultation with the CALM Act Minister, prior to the approvals of those proposals.
- 35 (3) Each instalment under subclause (1) shall be adjusted immediately prior to payment in accordance with the

- 5 (5) The special purpose trust account under subclause (2) shall be established pursuant to section 69 of the CALM Act and shall be subject to arrangements for governance, consultation and reporting to be agreed between the Joint Venturers and the Minister, in consultation with the CALM Act Minister, as soon as practicable after the date of this Agreement. If section 69 of the CALM Act is repealed or substantially amended during the term of this Agreement, the Joint Venturers and the Minister shall promptly agree on an alternative equivalent special purpose trust account and any necessary alterations to the arrangements for governance, consultation and reporting.
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- 15 (6) No additional proposals shall be submitted under clause 10 for expansion of the Project beyond nameplate capacity of 10mtpa LNG production (or the equivalent gas input for other petroleum based product) until proportionate funding additional to the \$40 million referred to above has been agreed between the Joint Venturers and the State. Establishment and expansion of a Domgas Project by the Joint Venturers shall not be subject to additional Net Conservation Benefits payments.
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DCLM costs

- 25 12. (1) The Joint Venturers shall, during the term of this Agreement after approval of complete detailed proposals submitted under clause 7:
- 30 (a) pay to DCLM full cost recovery to cover all management costs of DCLM (to include a contribution to corporate support costs and the cost of salaries, including labour on-costs and other costs of the officers engaged therein); and
- 35 (b) provide within facilities on Barrow Island and from normal support services all food and accommodation, office and laboratory facilities, transport to and from Barrow Island and a dedicated motor vehicle, plus any other services and facilities agreed by DCLM and the Joint Venturers,

Barrow Island Coordination Council

13. The Joint Venturers shall prior to receiving approval of their complete detailed proposals under clause 7 make arrangements with the BI Lessee satisfactory to the Minister, in consultation with the CALM Act Minister, to form and operate the Barrow Island Coordination Council in accordance with the following principles:
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- 10 (a) The formation and operation of the BICC shall not limit any rights or powers of DCLM in relation to the management of Barrow Island except to the extent, if any, that DCLM agrees.
- 15 (b) The BICC shall commence operation on a nominated date within one month of approval of the proposals and the commitments of the BICC Participants shall relate to, and only to, matters, activities and events that occur after that date.
- 20 (c) All of the Joint Venturers and the BI Lessee shall participate in the BICC either directly or through a properly authorised joint venture operator as their agent.
- 25 (d) The BICC Participants shall nominate one of the BICC Participants as the BICC Manager with authority to undertake, and to represent all the BICC Participants in relation to, all BICC activities from time to time.
- 30 (e) The matters to be coordinated by the BICC are:
- (i) providing a single point of contact and interaction for DCLM in relation to the management of issues related generally to the operations of the BICC Participants on Barrow Island;
- (ii) liaising with DCLM in relation to the terms and implementation of the management plan under Division 1 of Part 5 of the CALM Act

5 proposes to grant such tenure to a person who is not a
BICC Participant, it must give at least 6 months notice
to the BICC Participants and provide, or require the
proposed grantee to provide them with details of the
grantee's proposed operations on Barrow Island and
of its technical and financial capacity. The BICC
Participants shall, subject to the proposed grantee
doing likewise, negotiate promptly and in good faith
with a view to admitting the proposed grantee as a
10 BICC Participant and they shall admit the grantee if:

- (i) the third party has undertaken all of the same
obligations to the State as the other BICC
Participants have undertaken in respect of
their involvement in the BICC;
- 15 (ii) the BICC Participants, acting reasonably, are
satisfied that the additional issues and risks
associated with the proposed activities of the
third party on Barrow Island can adequately
be managed by the BICC; and
- 20 (iii) the BICC Participants, acting reasonably, are
satisfied that the third party is capable of
meeting all its commitments as a BICC
Participant, including commitments to other
BICC Participants, and has entered into such
25 instruments and provided such security as
may reasonably be required by the BICC
Participants to ensure that those commitments
are met.

Protection and management of the environment

30 14. The Joint Venturers shall in respect of their activities and operations
hereunder comply in all respects with the EP Act and all requirements
and conditions applicable thereunder or pursuant thereto.

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revocation, restriction or variation of the approval during the term of this Agreement except in accordance with the approval.

Gas to mainland

- 5 17. (1) The Joint Venturers shall reserve or procure the reservation of gas within the Title Areas sufficient for the delivery of 2000 petajoules to the mainland. This reservation shall reduce by the number of petajoules of natural gas from the Project delivered to the mainland from time to time.
- 10 (2) The Joint Venturers shall submit to the Minister by 31 December 2010 proposals for the establishment of a Domgas Project by 31 December 2012, including design features to enable the progressive expansion of the connection(s) to deliver at least 300 terajoules ("TJ") per day of natural gas. The provisions of clause 10(3) shall apply to proposals under this clause.
- 15
- (3) From the Commencement Date until at least 300 TJ per day of natural gas is first delivered from Barrow Island to domestic gas infrastructure on the mainland the Joint Venturers shall:
- 20 (a) actively and diligently undertake:
- (i) ongoing marketing of natural gas in Western Australia (including investigation of proposals for using such gas as petrochemical feedstock); and
- 25 (ii) design, engineering and other relevant activities in relation to establishment of a Domgas Project; and
- (b) report progress on these matters to the Minister on an annual basis or more often as may be required by the
- 30 Minister.
- (4) To assist in his review of matters under subclause (3), the Minister may at any time after lodgement of complete detailed proposals under clause 7(1) until at least 300 TJ per day of natural gas is first delivered from Barrow Island to domestic gas infrastructure on the mainland, appoint at the cost of the
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- 5 Joint Venturers (subject to an agreed budget) an agreed person
who is independent of the parties and does not have any
conflict of interest with other companies involved in the
Western Australian domestic gas industry to advise him of the
extent to which the Joint Venturers have actively and
diligently undertaken ongoing marketing in accordance with
subclause (3). The Joint Venturers will provide on a
confidential basis to such person, information on their
marketing activities including indicative prices, quantities and
10 qualities of natural gas offered for sale.
- (5) The provisions of clause 23 shall not apply to this clause.
- (6) If the Joint Venturers anticipate a need to extend the dates
referred to in subclause (2), or to further extend any later dates
previously agreed by the Minister, they shall consult with the
15 Minister and then, at least 90 days after such consultations
commence, lodge a request with the Minister seeking such
extension or further extension.
- (7) If the Joint Venturers seek to extend the dates referred to in
subclause (2), or to further extend any later dates previously
20 agreed by the Minister, on the grounds that a Domgas Project
is not then Commercially Viable, the request shall include
information that identifies the circumstances which would
make a Domgas Project Commercially Viable and address
their likelihood of occurrence and also include an analysis of
25 the Commercial Viability of a Domgas Project, including the
assumptions, the methodology and the conclusions reached by
the Joint Venturers.
- (8) If the Minister receives a request under subclause (7), he is
required to make a determination of Commercial Viability
30 under this clause. For that purpose, the Minister may, or if so
requested by the Joint Venturers shall, at the cost of the Joint
Venturers, appoint an independent expert ("**Independent
Expert**") to prepare a report and recommendation to the
Minister as to whether or not a Domgas Project is then
35 Commercially Viable. The election by the Minister or the
request by the Joint Venturers to appoint an Independent
Expert shall be made within 20 days of the Joint Venturers'
request for extension under subclause (7). For the purposes of

this sub-clause the following arrangements will apply in relation to the Independent Expert:

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- (a) the identity of the Independent Expert and the terms of reference for the conduct of the Independent Expert's work (covering matters such as process and budgets, but not the tests of Commercial Viability itself) are to be agreed between the Minister and the Joint Venturers or, failing agreement within 50 days of the election or request to appoint, determined by the President of the Institution of Engineers (Australia);
 - (b) the Independent Expert shall comply with the terms of reference and enter into a confidentiality undertaking in favour of the State and the Joint Venturers and any other relevant third parties if appropriate;
 - (c) the Joint Venturers and the State may make written and, if so requested by the Independent Expert, oral submissions to the Independent Expert in relation to Commercial Viability;
 - (d) the Joint Venturers and the State shall use all reasonable endeavours to make available to the Independent Expert all information relevant to the matter and which the Independent Expert reasonably requires in order to make a recommendation;
 - (e) the Independent Expert must prepare and provide the Minister with a report and recommendation as to Commercial Viability within 80 days of his or her appointment or such other period as agreed to by the parties;
 - (f) the Minister shall give the Joint Venturers a copy of the report and recommendation within 7 days of receipt from the Independent Expert; and
 - (g) the Independent Expert will act as an expert and not as an arbitrator.

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- (9) The Minister's decision as to whether or not to grant an extension:
 - (a) must be made within 90 days of request by the Joint Venturers, or if an Independent Expert is appointed, within 50 days of receipt of the Independent Expert's report and recommendation;
 - (b) must be based only on whether a Domgas Project is then Commercially Viable, taking due regard of any recommendation of the Independent Expert; and
 - (c) shall not be subject to arbitration under clause 30.
 - (10) Unless the Minister otherwise agrees the Joint Venturers shall not expand the Project beyond that provided for in the complete detailed proposals approved under clause 7 until proposals for a Domgas Project under subclause (2) have been approved. The Minister in making his decision shall take into account such matters including Commercial Viability as the Minister considers relevant. The Minister's decision shall not be subject to arbitration under clause 30.
 - (11) If the Minister gives consent to an expansion under subclause (10), that subclause and this subclause shall continue to apply mutatis mutandis to any subsequent expansion of the Project.
 - (12) If the Joint Venturers make a request under subclause (7) at least 200 days before the deadline date which they are seeking to have extended but, upon occurrence of that date, the Minister has not made a decision whether or not to extend, the Joint Venturers will not be considered to be in default for failing to meet the deadline at least until such decision has been made.
 - (13) For the purposes of this clause:
 - (a) "**Commercially Viable**", in relation to a Domgas Project means that a Domgas Project could be established in conjunction with an LNG or other gas processing facility within the Gas Processing Area on Barrow Island such that the commercial rates of return

Barrow Island lease provided they give the Minister prior notice.

- 5 (2) The Joint Venturers may process and use gas and other petroleum produced from other areas provided they have the prior consent of the Minister.

No discriminatory charges

- 10 19. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local government or other authority of the State to impose, discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the activities of the Joint Venturers in the conduct of their business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted or intended to be granted under this Agreement.

Zoning

- 20 20. The State shall ensure after consultation with the relevant local government that the lands the subject of any leases, easements and licences granted to the Joint Venturers under this Agreement will be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Joint Venturers hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local government or other authority of the State on the ground that such activities are contrary to any zoning by-law, regulation or order.

Assignment

- 35 21. (1) Subject to the provisions of this clause the Joint Venturers or any of them may at any time assign, mortgage, charge, sublet or dispose of to each other or to an Associated Entity as of right, or to any other company or person with the consent of the Minister (which consent shall not be unreasonably

passed such a resolution the agreement shall have effect from and after that last day.

Force majeure

23. Subject to clause 7(5) and clause 17(5), this Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement, except in either case any obligations to pay monies to the State or any instrumentality of the State, that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including (without limiting the generality of the foregoing) delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors, factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party or parties of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

24. Notwithstanding any provision of this Agreement, the Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit, whether or not the period to be extended has expired or the date to be varied has passed.

award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Joint Venturers were not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.

(4) If the default referred to in subclause (1)(a) has not been remedied within a period of 180 days after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant, machinery, equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand.

(5) For the purposes of this clause, remediation of defaults may with the approval of the Minister include one or both of payment of reasonable compensation and substantial commencement of a reasonable program of remediation which will take longer than 180 days provided that failure by the Joint Venturers to pay such compensation or to complete such program shall itself constitute a default by them under this Agreement.

Effect of cessation or determination of Agreement

26. On the cessation or determination of this Agreement:

(a) except as otherwise agreed by the Minister the rights of the Joint Venturers to, in or under this Agreement shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any guarantee or indemnity given under this Agreement;

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- (b) the Joint Venturers shall forthwith pay to the State all money which may then have become payable or accrued due; and
- (c) save as aforesaid and as otherwise provided in this Agreement none of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
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Indemnity

27. (1) Unless the Minister and the Joint Venturers otherwise agree in writing, the Joint Venturers shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to their activities hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any relevant Act such indemnity will not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Joint Venturers pursuant to this Agreement.
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- (2) The State shall notify the Joint Venturers as soon as practicable of:
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- (a) receipt of any written demand or notice or the service or institution of Proceedings; or
- (b) becoming aware of the occurrence of any act or omission which is likely to give rise to a Third Party Claim.
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- (3) If a Third Party Claim is made, the State shall:
- (a) unless prohibited by law, provide the Joint Venturers with all information, relevant to the Third Party Claim and any Proceedings, that the Joint Venturers may reasonably require from time to time;
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- (b) receive and give due consideration to opinions, requests and submissions from the Joint Venturers in relation the Third Party Claim or Proceedings;
- (c) act with due regard to the interests of the Joint Venturers;
- (d) if requested by the Joint Venturers and at the Joint Venturers' cost, join the Joint Venturers to any Proceedings;
- 10
- (e) involve the Joint Venturers in any negotiations and discussions between the State and the third party relating to the Third Party Claim or Proceedings;
- (f) not make any admission, offer, promise or payment or compromise or settle the Third Party Claim or Proceedings without the consent of the Joint Venturers;
- 15
- (g) at the cost of the Joint Venturers, co-operate with the Joint Venturers in defending any Third Party Claim; and
- (h) not hinder the Joint Venturers, at their own cost, from making any offer, promise or payment or compromising or settling the Third Party Claim or Proceedings.
- 20
- (4) Clause 30 applies to any dispute under this clause.
- (5) For the purposes of this clause, the following words have the following meanings:
- 25
- “Proceedings”** means any civil, criminal, administrative or arbitral proceedings, mediation or other form of dispute resolution (whether or not held in conjunction with any civil, criminal, administrative or arbitral proceedings) relating to a Third Party Claim;
- 30
- “State”** includes the servants, agents and contractors of the State; and

Schedule 1 Gorgon Gas Processing and Infrastructure Project Agreement

“Third Party Claim” means a claim by a third party against the State which could give rise to a claim by the State for indemnity under this clause.

Subcontracting

- 5 28. Without affecting the liabilities of the parties under this Agreement both the State and the Joint Venturers will have the right from time to time to entrust to one or more Joint Venturers or to third parties the carrying out of any portions of the activities which it is or they are authorised or obliged to carry out hereunder.

10 **No resumption**

29. The State shall not during the currency hereof without the consent of the Joint Venturers resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant equipment or other property for the time being belonging to the Joint Venturers and the subject of or used for the purpose of this Agreement nor any of the works on the lands the subject of any lease, easement or licence granted to the Joint Venturers in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Joint Venturers' operations hereunder.

25 **Arbitration**

30. (1) Any dispute or difference between the State and the Joint Venturers arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement shall, in default of agreement between them and in the absence of any provision in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the Commercial Arbitration Act 1985 and each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

5 (2) Except where otherwise provided in this Agreement, the provisions of this clause will not apply to any case where the State, the Minister or any other Minister in the Government of the State is by this Agreement given either expressly or impliedly a discretionary power.

10 (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either the State or the Joint Venturers, to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties to the arbitration and an award may in the name of the Minister grant any further extension or variation for that purpose.

15 **Consultation**

20 31. The Joint Venturers shall during the currency of this Agreement consult with and keep the State informed on a confidential basis concerning any action that the Joint Venturers propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency, authority, instrumentality or other body) which is likely to significantly affect the overall interest of the State under this Agreement.

Stamp duty

25 32. (1) The State shall exempt this Agreement from any stamp duty which but for the operation of this clause would or might be assessed and chargeable on it.

 (2) Any lease or agreement for lease from the Minister for Lands under the LA Act shall be subject to item 6(1) of the Third Schedule to the Stamp Act 1921.

30 **Notices**

35 33. Any notice consent or other writing authorised or required by this Agreement to be given or sent by the State to the Joint Venturers will be deemed to have been duly given or sent if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post or handed to the

Schedule 1 **Gorgon Gas Processing and Infrastructure Project Agreement**

5 Joint Venturers at their addresses as hereinbefore set forth or other
 address in Western Australia nominated by the Joint Venturers to the
 Minister and by the Joint Venturers to the State if signed on their
 behalf by any person or persons authorised by the Joint Venturers or by
 their solicitors as notified to the State from time to time and forwarded
 by prepaid post to or handed to the Minister and except in the case of
 personal service any such notice consent or writing shall be deemed to
 have been duly given or sent on the day on which it would be delivered
 in the ordinary course of post.

10 **Term of Agreement**

34. Subject to the provisions of clauses 4(1), 8(5), 8(6), 25 and 26, this
 Agreement shall expire on the expiration or sooner determination of the
 First long term lease.

Applicable law

15 35. This Agreement is to be interpreted according to the law for the time
 being in force in the State of Western Australia.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of
the parties hereto the day and year first hereinbefore mentioned.

SIGNED by **THE PREMIER THE HONOURABLE
GEOFFREY IAN GALLOP MLA**

in the presence of:

Geoff Gallop

Signature

C M Brown

**THE MINISTER FOR STATE DEVELOPMENT
THE HONOURABLE CLIVE MORRIS BROWN
MLA**

EXECUTED by **CHEVRONTEXACO AUSTRALIA PTY LTD**
ABN 29 086 197 757 pursuant to
Section 127(1) of the
Corporations Act

James W Johnson
Director/~~Secretary~~

Paul M Oen
Director

EXECUTED by **TEXACO AUSTRALIA PTY LTD**
ABN 18 081 647 047 pursuant to
Section 127(1) of the
Corporations Act

James W Johnson
Director/~~Secretary~~

Paul M Oen
Director

EXECUTED by **MOBIL AUSTRALIA RESOURCES COMPANY PTY. LIMITED**
ABN 38 000 113 217
Pursuant to a Power of
Attorney by Neil David Theobald

N D Theobald
Signature

A L Groves
Witness

Schedule 1 Gorgon Gas Processing and Infrastructure Project Agreement

EXECUTED by **SHELL
DEVELOPMENT (AUSTRALIA)
PTY LTD ABN 14 009 663 576**
pursuant to Section 127(1)
of the Corporations Act

Gavin Ryan

Director/Secretary

Christopher Gunner

Director

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