

NATURAL GAS (CANNING BASIN JOINT VENTURE) AGREEMENT BILL 2013

EXPLANATORY MEMORANDUM

Section 1

Contains the short title of the Act.

Section 2

Paragraph (a) provides that sections 1 and 2 of the Act come into operation on the day on which the Act receives Royal Assent.

Paragraph (b) provides that sections 3 - 6 come into operation on the day after the day the Act receives Royal Assent.

Section 3

Contains the definitions of "scheduled agreement" (the agreement a copy of which is set out in Schedule 1 to the Act) and "the Agreement" (the scheduled agreement or, if it is varied in accordance with its terms, that agreement as varied from time to time).

Section 4

Provides that the scheduled agreement is ratified and the implementation of the Agreement is authorised.

Section 5

Provides that the State has power in accordance with clause 30 to take land for the purposes of the Agreement as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997* (WA).

Section 6

Subsection (1) provides that the Agreement operates and takes effect despite any enactment or other law.

Subsection (2) provides that if a provision of the scheduled agreement purports to expressly or by implication modify or exclude the application or operation of an enactment for a purpose or in relation to a person or thing, the application or operation is modified or excluded for that purpose or in relation to the person or thing to the extent or for the period mentioned in the provision or necessary for the provision to have effect.

Subsection (3) provides that section 6 does not limit or otherwise affect the application of the *Government Agreements Act 1979* (WA).

SCHEDULE 1

NATURAL GAS (CANNING BASIN JOINT VENTURE) AGREEMENT 2013

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time ("the State"), Buru Energy Limited, Diamond Resources (Fitzroy) Pty Ltd, and Diamond Resources (Canning) Pty Ltd (collectively "the Joint Venturers") and Mitsubishi Corporation (the "Guarantor").

Recitals

- A. Advises that the Joint Venturers are the registered and beneficial holders of petroleum exploration permits listed in the Schedule and granted under the *Petroleum and Geothermal Energy Resources Act 1967* (WA).
- B. Advises that the Joint Venturers are actively exploring the Titles Areas for petroleum including for the purposes of:
 - (a) evaluating the technical and economic viability of the natural gas resources within the Title Areas (which areas are prospective for both conventional and unconventional resources); and
 - (b) proving up sufficient reserves of natural gas to underpin the establishment and sustained operation of firstly the Domgas Project and secondly the production of liquefied natural gas for export to overseas purchasers.
- C. Advises that the State, for the purposes of:
 - (a) encouraging accelerated expenditure by the Joint Venturers in the continuing exploration and evaluation of natural gas resources within the Titles Areas; and
 - (b) promoting industrial development in Western Australia generally; and
 - (c) promoting energy security in Western Australia in particular,desires to facilitate the establishment of the Domgas Project and, if the Joint Venturers so wish, of the LNG Project upon and subject to the terms of the Agreement.

Clause 1 – Definitions

Defines the terms used in the Agreement.

[Where the defined terms are used in this Explanatory Memorandum they shall be read as bearing their respective meanings under clause 1 of the Agreement]

Clause 2 – Interpretation

Subclause (1)

Sets out principles for interpreting the Agreement.

Subclause (2)

Provides that nothing in the Agreement shall be construed to exempt the State or the Joint Venturers from compliance with laws relating to native title, exempt the Joint Venturers from compliance with the

Environmental Protection Act 1986 (WA), the Contaminated Sites Act 2003 (WA), the Petroleum and Geothermal Energy Resources Act 1967 (WA) (as modified by the Agreement) or the Petroleum Pipelines Act 1969 (WA) (as modified by the Agreement), or exempt the Joint Venturers from compliance with the Aboriginal Heritage Act 1972 (WA) (as modified by the Agreement).

Clause 3 – Ratification and operation

Subclause (1)

The State commits to introduce and sponsor a Bill into Parliament prior to 31 December 2012 or such later date as the parties may agree to ratify the Agreement. Such later date has been agreed by the parties by letter during April 2013 and is now 30 September 2013.

Subclause (2)

States that the Agreement, other than clause 1, 2 and 3, will not come into operation until the day after the day the Bill is passed and comes into operation as an Act.

Subclause (3)

Provides, unless the parties otherwise agree, for the determination of the Agreement if the Bill has not commenced to operate as an Act by 31 December 2013.

Subclause (4)

Provides that on the day after the day the Bill commences to operate as an Act all the provisions of the Agreement will operate and take effect despite any enactment or other law.

Clause 4 – Initial obligations of the State

Subclause (1)

Obliges the State, subject to the adequate protection of the environment and the land affected, to arrange for the issue of requisite authority under one or more of (as determined by the State) section 91 or 182 of the *Land Administration Act 1997 (WA)* or section 7 of the *Petroleum Pipelines Act 1969 (WA)* to allow the Joint Venturers to enter upon Crown Land (excluding Port land or the Dampier to Bunbury Natural Gas Pipeline corridor) to carry out all works to the extent reasonably necessary for the purpose of undertaking its obligations under clause 5(1)(b)(ii) (to undertake investigations, appraisals and studies to finalise and submit detailed proposals referred to in clause 11 for the initial Domgas Project).

Subclause (2)

States that for the purposes of subclause (1) section 182 of the *Land Administration Act 1997 (WA)* shall apply as if the Domgas Project is a proposed public work for which the Minister for Lands is under that section authorised to take interests in land.

Subclause (3)

Requires the Joint Venturers to obtain all unconditional and irrevocable consents (in a form and substance acceptable to the Minister) of each person whose consent the relevant grantor (acting with the concurrence of the Minister) requires for the grant of any requisite authority referred to in subclause (1).

Clause 5 – Initial obligations of the Joint Venturers

Subclause (1)

Obliges the Joint Venturers to:

- (a) continue to explore and evaluate the Title Areas in accordance with their obligations under the *Petroleum and Geothermal Energy Resources Act 1967* (WA) (as modified by the Agreement) as holders of the relevant Petroleum Titles; and
- (b) in addition undertake geological, engineering and environmental investigations, appraisals and studies and in due course marketing and finance studies and other necessary matters to (i) prove up sufficient reserves of natural gas within the Title Areas to establish and sustain the operation of a technically and economically viable Domgas Project, and, subject to (i), submit detailed proposals under clause 11 for the initial Domgas Project.

Subclause (2)

Obliges the Joint Venturers to keep the State fully informed at 6 monthly intervals from the Commencement Date about the progress and results of their investigations and studies under subclause (1)(b) and to supply the Minister such information in relation thereto as may be requested from time to time.

Subclause (3)

Obliges the Joint Venturers to co-operate and consult with the State about matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may reasonably request the Joint Venturers to undertake.

Subclause (4)

Modifies the *Aboriginal Heritage Act 1972* (WA) for the purposes of the Agreement to enable the Joint Venturers to obtain clearances under section 18 of that Act.

Clause 6 – Community development plan

Subclause (1)

Defines community and social benefits.

Subclause (2)

States that the Joint Venturers acknowledge the need for community and social benefits to flow from the Agreement.

Subclause (3)

Provides for the Joint Venturers, prior to submission of detailed proposals under clause 11, and if required by the Minister prior to the submission of proposals under clauses 13 (expansion of Domgas Project), clause 21 (initial LNG Project) or 23 (expansion of LNG Project), to prepare a plan which describes the Joint Venturers proposed strategies for achieving social and community in connection with the developments proposed, and to submit the plan to the Minister.

Subclause (4)

Provides for the Minister to, within one month of receipt of a plan, to either approve the plan or notify the Joint Venturers of any changes required. If the Joint Venturers are unwilling to accept the changes, either party may refer to arbitration the question of the reasonableness of the changes.

Subclause (5)

Provides that the plan, with such changes required by the Minister that the arbitrator determines (with or without modification) to be reasonable shall be deemed to be the approved plan.

Subclause (6)

Obliges the Joint Venturers to implement the approved plan.

Subclause (7)

Requires the Joint Venturers (at least annually) to report to the Minister about the implementation of the approved plan.

Subclause (8)

Provides for the Minister and the Joint Venturers at the request of either of them from time to time to confer and agree to amend the plan or to adopt a new plan, which would then become the approved plan under this clause.

Clause 7 – Local industry participation plan**Subclause (1)**

Defines local industry participation benefits.

Subclause (2)

States that the Joint Venturers acknowledge the need for local industry participation benefits to flow from the Agreement.

Subclause (3)

Obliges the Joint Venturers to prepare and provide, in accordance with clause 11(8)(c), to the Minister a plan which contains in connection with the development proposed pursuant to clause 11 (initial Domgas Project) the matters listed in paragraphs (a) – (d) of the subclause.

Subclause (4)

Obliges the Joint Venturers to implement the plan provided in compliance with this clause.

Subclause (5)

Provides for the Minister and the Joint Venturers at the request of either of them from time to time to confer and agree to amend the plan or to substitute a new plan for the one previously provided.

Subclause (6)

States that the provisions of subclauses (3) and (4) shall apply with necessary modifications to any development proposed or to be proposed pursuant to clauses 13 (expansion of Domgas Project), 21 (initial LNG Project) or 23 (expansion of LNG Project), unless the Minister otherwise requires.

Clause 8 – Domgas Commitment**Subclause (1)**

Provides that the parties acknowledge that it is their common aspiration that the Joint Venturers will, subject to proving up sufficient reserves of natural gas within the Title Areas, prior to 25 years after the Domgas Project Operation Date, progressively and continuously make available for sale in the Western Australian domestic gas market a quantity of Domgas (produced as part of the Domgas Project from natural gas within the Title Areas) that is equivalent to at least 1,500 petajoules of natural gas.

Subclause (2)

Commencing no later than 31 March 2016, obliges the Joint Venturers to market Domgas (to be produced as part of the Domgas Project and obtained from within the Title Areas) on an ongoing basis for sale into the Western Australian domestic gas market and Petrochemical feed stocks for sale as contemplated by clause 28.

Subclause (3)

If liquefied natural gas for export is to be or is being produced from natural gas from within the Title Areas, obliges the Joint Venturers to market and make available for sale into the Western Australian domestic gas market a quantity of Domgas (produced from natural gas within the Title Areas) that at any time during the currency of the Agreement is equal to the equivalent of the Relevant Percentage (at least 15% (or such greater or lesser percentage as specified in the Domestic Gas Reservation Policy at the Relevant Time)) of the aggregate energy value of liquefied natural gas obtained from the Title Areas.

The subclause further provides that Domgas produced after the Commencement Date from natural gas within the Title Areas and sold by the Joint Venturers into the Western Australian domestic gas market and Petrochemical feed stocks sold by the Joint Venturers in compliance with clause 28 can both be counted towards the Joint Venturers' Domgas Commitment.

The subclause defines the phrases "Domestic Gas Reservation Policy", "energy value", "Relevant Percentage" and "Relevant Time" for the purposes of the subclause.

Subclause (4)

The parties acknowledge that it is their common expectation that the Joint Venturers will expand their Domgas Project in accordance with the Agreement in order to supply additional Domgas as contemplated by subclause (3).

Subclause (5)

Obliges the Joint Venturers as part of their Domgas Commitment to:

- (a) reserve or procure the reservation from time to time of natural gas within the Title Areas sufficient for the sustained operation of the Domgas Project and to meet their Domgas Commitment; and
- (b) discharge their ongoing marketing obligations in good faith actively and diligently including assessing demand through market research and discussions with potential buyers; and
- (c) provide the Minister at least every 12 months (unless the Minister requests otherwise) after 31 March 2016 with a report as to the performance of their Domgas Commitment.

Subclause (6)

Provides that the Minister may appoint an independent person to advise the Minister whether the Joint Venturers have actively and diligently undertaken ongoing marketing and obliges the Joint Venturers to provide to this independent person on a confidential basis information on their marketing activities.

Subclause (7)

Provides that clause 36 (Force Majeure) does not apply to this clause.

Subclause (8)

Provides that subject to clause 19 (Commercialisation of natural gas from the Title Areas) and provisions relating to the submission and approval of proposals, nothing in the Agreement prevents or restricts the Joint Venturers from commercialising as part of the Domgas Project more natural gas from within the Title Areas than is required to be reserved pursuant to subclause (5)(a).

Clause 9 – Joint Venturers’ continuing exploration obligation

Subclause (1)

Obliges the Joint Venturers, notwithstanding approval of proposals for the Domgas Project, to continue to actively explore the Title Areas for natural gas in accordance with the *Petroleum and Geothermal Energy Resources Act 1967* (WA) (as modified by the Agreement) with a view to commercialising such natural gas as Domgas and, if the Joint Venturers so wish, liquefied natural gas for export.

Subclause (2)

Obliges the Joint Venturers to keep the State fully informed in writing at 6 monthly intervals from the date of approval of all proposals required by clause 11(1) as to the progress and results of such exploration and to supply to the Minister such information relating thereto as the Minister may request from time to time.

Subclause (3)

Obliges the Joint Venturers to co-operate and consult with the State regarding matters referred to in subclauses (1) and (2).

Clause 10 – Domgas Project Pipeline Corridor

Subclause (1)

Provides that not before 31 December 2014, during their investigations, appraisals and studies, the Joint Venturers are obliged to consult with the Minister and to seek the agreement of the Minister (after the Minister consults the Pipelines Act Minister and (if relevant) the DBNGP Land Access Minister and the Commissioner of Main Roads) as to:

- (a) the diameter of the Domgas Project Pipeline (having regard to matters including the parties aspirations under clause 8(1), proven reserves of natural gas within the Title Areas and information provided by the Joint Venturers under clause 5);
- (b) where the Domgas Project Pipeline will begin and end;
- (c) the route for the Domgas Project Pipeline and associated access roads within the Domgas Project Pipeline Easement; and
- (d) land required for the Domgas Project Pipeline Easement for that route as well as for associated infrastructure and works and areas for the taking of borrow.

Further provides that in seeking such agreement on matters (b) to (d) above, regard is to be had to achieving a balance between engineering matters, the nature and use of any lands concerned and the costs of acquiring the land (all of which is to be borne by the Joint Venturers) and that the parties acknowledge that the Domgas Project Pipeline Corridor may need to vary along its route to accommodate the Domgas Project Pipeline, access roads and associated infrastructure and borrow areas.

Subclause (2)

Allows the Minister and the Joint Venturers to vary their agreement pursuant to subclause (1) before the submission of proposals.

Subclause (3)

Provides that the Joint Venturers are responsible for obtaining all unconditional and irrevocable consents (in form and substance acceptable to the Minister) of each person whose consent the Land Act Minister (acting with concurrence of the Minister) requires for the grant of the Domgas Project Pipeline Easement and the inclusion of additional land in the Domgas Project Pipeline Easement (as contemplated by clause 15(8)).

Subclause (4)

Clause 42 (Arbitration) does not apply to subclauses (1) and (2).

Subclause (5)

Provides that the Joint Venturers can only make an application under the *Petroleum Pipelines Act 1969* (WA) for a pipeline licence for the same purpose or substantially the same purpose as the Domgas Project Pipeline once an agreement has been reached with the Minister in accordance with subclause (1).

Subclause (6)

Provides that the Joint Venturers are responsible for applying (consistent with the matters agreed under clause 10(1)) under the *Petroleum Pipelines Act 1969* (WA) for the grant of the Domgas Project Pipeline Licence.

Clause 11 – Joint Venturers to submit proposals for Domgas Project

Subclause (1)

Provides for the Joint Venturers, subject to the *Environmental Protection Act 1986* (WA) and the other provisions of the Agreement, to submit detailed proposals for the Domgas Project by 30 June 2016 which proposals shall include (amongst others) the following matters:

- the Domgas Treatment Plant at the commencement of the Domgas Project Pipeline and other Domgas Project Treatment Plants (if any);
- the Domgas Project Pipeline within the Domgas Project Pipeline Corridor;
- the pipeline connections to connect the Domgas Project Pipeline to each Domgas Project Treatment Plant and to the domestic gas network;
- associated infrastructure and works to be within the Domgas Project Pipeline Corridor;
- leases, licences and easements under the *Land Administration Act 1997* (WA) or the *Dampier to Bunbury Pipeline Act 1997* (WA) section 41(2)(b) approval or section 34 access authority.

The deadline date (30 June 2016) may only be extended once pursuant to clause 37 (Power to extend periods and dates) for a period not exceeding 18 months.

Subclause (2)

Provides that the Joint Venturers may only submit proposals under subclause (1) if the Minister has approved the Community Development Plan, the Minister and the Joint Venturers have reached agreement pursuant to clause 10 and the Joint Venturers have a current application under the *Petroleum Pipelines Act 1969* (WA) for the Domgas Project Pipeline Licence.

Subclause (3)

Provides that proposals pursuant to subclause (1) must:

- specify the matters agreed between the Minister and the Joint Venturers pursuant to clause 10 and must be consistent with such agreed matters;
- specify the capacity of the proposed Domgas Project Pipeline;
- specify the capacity of each proposed Domgas Project Treatment Plant;
- specify the term of the Domgas Project;
- provide that the construction of the Domgas Project Pipeline will commence within 12 calendar months after approval of all proposals or the grant of the Domgas Project Pipeline Licence (whichever is later), and be completed with first transmission of natural gas to commence within 2 years thereafter; and
- provide that the construction of all other proposed facilities, infrastructure and works will commence no later than 12 months after the approval of all proposals and will be completed and operational within 3 years thereafter.

Provides that the parties acknowledge that proposals pursuant to subclause (1) shall contemplate the construction, operation and maintenance of the Domgas Project Pipeline in accordance with the safety cases and other plans and requirements of the *Petroleum Pipelines Act 1969* (WA) and the regulations thereunder.

Subclause (4)

Provides that with the consent of the Minister and any other parties concerned, the Joint Venturers may submit proposals pursuant to subclause (1) that allow them to use any existing facilities, equipment or services belonging to them (except for the pipes being part of the LNG Project Pipeline) or, upon terms and conditions agreed between the Joint Venturers and other parties, of any other existing facilities, equipment or services.

Subclause (5)

Provides that with the consent of the Minister, the Joint Venturers may propose, as part of their proposals under clause 11 (initial Domgas Project) or under clause 13 (expansion of Domgas Project), the construction, provision, enlargement or extension of the Domgas Projects' facilities, equipment and services (except the pipes being part of the Domgas Project) for use as part of the LNG Project.

Subclause (6)

Provides that proposals may, with the Minister's approval, be submitted separately and in any order and enables the Joint Venturers to withdraw and resubmit proposals at any time up until the proposals have been approved.

Subclause (7)

Requires the Joint Venturers to submit details to and, if required, consult with the Minister about any services, works, materials, plant, equipment and supplies that they propose to consider obtaining from or having carried out outside of Australia, and to provide reasons for this.

Subclause (8)

Provides that at the time the Joint Venturers submit their last proposal under this clause they shall:

- (a) furnish to the Minister's reasonable satisfaction evidence of (amongst other things) their financial capability, their readiness to carry out the operations referred to in the proposals and the readiness of the Pipelines Act Minister to grant the Domgas Project Pipeline Licence and all consents for the commencement of pipeline construction;
- (b) furnish to the Minister the consents required by the Land Act Minister for the grant of the Domgas Project Pipeline Easement (as referred to in clause 10(3)(a)); and
- (c) furnish to the Minister the local industry participation plan (as referred to in clause 7(3)).

Subclause (9)

Clause 36 (Force majeure) does not apply to this clause.

Clause 12 – Consideration of Domgas Project proposals

Subclause (1)

Details the procedure for consideration of proposals by the Minister, subject to the *Environmental Protection Act 1986* (WA). The Minister may:

- approve the proposal;
- defer consideration of the proposal until the Joint Venturers submit a further proposal or proposals in respect of other matters mentioned in clause 11(1) or until clause 11(8) has been complied with; or
- require as a condition precedent to giving his approval to the proposal that the Joint Venturers make reasonable alterations to the proposal or comply with reasonable conditions in respect to the proposal.

Subclause (2)

Requires the Minister to give notice of his decision in respect of the proposals to the Joint Venturers within 2 months of the later of:

- receiving proposals;
- authority to proceed under *the Environmental Protection Act 1986* (WA); and
- completion of all native title processes.

Subclause (3)

Requires the Minister to consult with the Joint Venturers if he defers his decision or requires changes to a proposal or compliance with conditions.

Subclause (4)

Provides for the Joint Venturers to refer certain decisions of the Minister to arbitration within 2 months if they consider such a decision to be unreasonable.

Subclause (5)

Details how an arbitration decision on a proposal is to be implemented.

Subclause (6)

Provides that notwithstanding any provision of this Agreement or that agreement has not been reached under clause 10(1) or that the Community Development Plan has not been approved, if all proposals and matters required pursuant to clause 11 are not approved or determined by 30 June 2018, the Minister may give the Joint Venturers 6 months notice of intention to determine this Agreement. If all proposals and matters are not approved or determined within that 6 months period, the Agreement will cease and determine subject to clause 39.

The deadline date (30 June 2018) and the 6 month period referred to above may not be extended by the Minister pursuant to clause 37 (Power to extend periods and dates).

Subclause (7)

Obliges the Joint Venturers to implement the approved proposals subject to and in accordance with the *Environmental Protection Act 1986* (WA).

Subclause (8)

Provides that the Minister may approve a variation to approved proposals during their implementation.

Clause 13 – Expansion of Domgas Project

Subclause (1)

Provides that if the Joint Venturers desire to:

- extend or enlarge the Domgas Project Pipeline or a Domgas Project Treatment Plant or increase the capacity of that pipeline or treatment plant,
- connect an existing or proposed pipeline to the Domgas Project Pipeline; or
- otherwise significantly modify, expand or vary their activities that may be carried on as part of the Domgas Project beyond those specified in the then approved proposals

they are obliged to give notice to the Minister and to furnish an outline of their proposals.

Subclause (2)

Requires the Minister, within one month after receiving a notice under subclause (1), to advise whether or not he approves in-principle the proposed extension, enlargement, increase or other modification, expansion or variation. It further provides that the in-principle approval may be subject to conditions including a condition requiring variations to the Agreement. The Joint Venturers may consult with the Minister in respect of any decision under this subclause.

Subclause (3)

Provides that only if the Minister gives in-principle approval under subclause (2), the Joint Venturers may submit detailed proposals provided that the provisions of clause 5 (other than subclause (1)(a) and (1)(b)(i)) and clause 10 (if an extension or enlargement of the Domgas Project Pipeline is envisaged) apply with necessary modifications prior to the submission of the detailed proposals.

Subclause (4)

Provides that after obtaining the Minister's in-principle approval, the Joint Venturers are obliged to submit detailed proposals (consistent with any conditions on such approval) to the Minister within a reasonable timeframe (as determined by the Minister), otherwise the in-principle approval will lapse.

Subclause (5)

Provides that (except as specified in this subclause) the provisions of clause 11 and clause 12 apply with necessary modifications to detailed proposals submitted pursuant to this clause. Further provides that the Joint Venturers may withdraw such proposals before approval or may give notice (within 3 months of any arbitration award relating to a decision of the Minister in considering the proposals) that they will not proceed with the proposals. In this event the Minister's in-principle approval will lapse.

Subclause (6)

Obliges the Joint Venturers to implement the approved proposals subject to and in accordance with the *Environmental Protection Act 1986* (WA).

Clause 14 – Petroleum Titles

Subclause (1)

Details the specific modifications made to the *Petroleum and Geothermal Energy Resources Act 1967* (WA) for the purposes of the Agreement in relation to the Petroleum Titles and the rights and obligations of the holders from time to time of the Petroleum Titles.

- (a) Provides that section 41 shall not apply to an application made during the Suspension Period (ie from the day after the Ratifying Act comes into operation until 31 January 2020) to renew an exploration permit. The effect of this provision is to provide the capacity for petroleum exploration permits that are Petroleum Titles to be renewed under section 40 for two consecutive 5 year terms (ie ending around 2024/2025) on the basis that 50% of the blocks comprised within the permits do not have to be relinquished on each renewal in accordance with section 41.

Clause 37(3)(a) provides that the Minister may not extend the Suspension Period.
- (b) Provides that an application under section 40 for a renewal of a petroleum exploration permit during the Suspension Period must be in respect of all blocks for which the permit is then in force unless the Petroleum Act Minister (acting with the concurrence of the Minister) consents to the application being for a lesser number of blocks.
- (c) Provides that an application for renewal of a petroleum exploration permit under section 40 may not be made earlier than 6 calendar months before the date of expiration of the permit.
- (d) Provides that section 97(3) (the capacity to extend the term of a petroleum title) does not apply during the Suspension Period or to a petroleum exploration permit that is renewed during the Suspension Period or in respect of the renewed term.

In light of the disapplication of section 97(3), further provides an additional power for the Petroleum Act Minister to vary or suspend minimum work commitments or exempt a permittee from compliance with minimum work commitments during the final year of the term of the relevant petroleum exploration permit if (after consulting the Minister) he considers it appropriate.

- (e) Provides that in relation to a petroleum exploration permit to be renewed or renewed during the Suspension Period:
- (i) in determining the minimum work commitments for the renewed term, The Petroleum Act Minister shall have regard to the permittee's obligations under clauses 5 and 9(1) of the Agreement; and
 - (ii) in determining compliance with minimum work commitments for the renewed term, the Petroleum Act Minister may credit appraisal work carried out on any gas discovery in the area of that permit or in the adjacent area of a permit that is also a Petroleum Title provided that the Petroleum Act Minister considers such crediting is consistent with and facilitates the objects of the Agreement.
- (f) Provides that the Petroleum Act Minister shall not (without the concurrence of the Minister) give his consent under section 98 (to the surrender of blocks within a petroleum title) to an application for surrender of blocks in respect of petroleum exploration permits or petroleum drilling reservations.
- (g) Provides that the Petroleum Act Minister may only exercise his powers under section 99 (cancellation of petroleum titles for non-compliance with conditions of the title and other specified requirements of the Petroleum Act) with the concurrence of the Minister.

Subclause (2)

Provides that at any time after 31 March 2016, the Minister (after consulting with the Petroleum Act Minister) may approve any petroleum exploration permit or petroleum drilling reservation held solely by one or more of the Joint Venturers and which is wholly within the Canning Basin as a Petroleum Title for the purposes of the Agreement and therefore making it subject to the provisions of the Agreement from the date of the Minister's approval.

Provides that the Minister may not give his approval unless he or she is satisfied that the land is prospective for natural gas and that such an approval would more efficiently or satisfactorily facilitate the objects of the Agreement.

Subclause (3)

Provides that with the prior consent of the Minister (after consulting the Petroleum Act Minister), the Joint Venturers can withdraw the whole (but not part only) of a Petroleum Title from the Agreement, upon which the title ceases to be a Petroleum Title under the Agreement and any modifications of the *Petroleum and Geothermal Energy Resources Act 1967* (WA) under the Agreement cease to apply. The title then continues in force under the *Petroleum and Geothermal Energy Resources Act 1967* (WA) for the balance of its then current term (without the benefits, rights, obligations and restrictions of the Agreement).

In considering an application under this clause, the Minister is to consider whether the withdrawal of the Petroleum Title may prejudice or compromise the objects of the Agreement.

Subclause (4)

Provides that the Joint Venturers are responsible for obtaining under the *Petroleum and Geothermal Energy Resources Act 1967* (WA) the grant of any petroleum production licences or retention leases even if they are required for the purposes of the Domgas Project or the LNG Project and on grant such

titles will be Petroleum Titles. Further, that the Joint Venturers are responsible for obtaining any extensions or renewals of petroleum exploration permits or petroleum retention leases and extensions of petroleum drilling reservations.

Subclause (5)

Obliges the Joint Venturers to lodge with the Petroleum Act Department in respect of all Petroleum Titles periodic reports required by the *Petroleum and Geothermal Energy Resources Act 1967* (WA); reports on drilling where the main purpose was to discover or prove up natural gas reserves within the Title Areas and a summary of the status of and prospects for gas discovery and reserves, if requested by the Minister. The Joint Venturers acknowledge that any notifications provided to the Petroleum Act Department under section 44(1) of *Petroleum and Geothermal Energy Resources Act 1967* (WA) may be provided by that department to the Minister.

Clause 15 – Pipeline Licences and Project Titles

Subclause (1)

In relation to the initial Domgas Project, provides that no later than 3 months after the Joint Venturers' proposals have been approved, the State will cause to be granted to the Joint Venturers under the *Petroleum Pipelines Act 1969* (WA) (as modified by the Agreement) a licence to construct the Domgas Project Pipeline, an easement within the Domgas Project Pipeline Corridor to construct and operate that pipeline, access roads and associated infrastructure and works and (if required) access rights and authority under the *Dampier to Bunbury Pipeline Act 1997* (WA) to connect the Domgas Project Pipeline to the DBNGP.

Subclause (2)

In relation to the initial LNG Project, provides that no later than 3 months after the Joint Venturers' proposals have been approved, the State will cause to be granted to the Joint Venturers under the *Petroleum Pipelines Act 1969* (WA) (as modified by the Agreement) a licence to construct the LNG Project Pipeline, an easement within the LNG Project Pipeline Corridor to construct and operate that pipeline, access roads and associated infrastructure and works; and (if required) access rights and authority under the *Dampier to Bunbury Pipeline Act 1997* (WA) to connect the Domgas Project Pipeline to the DBNGP.

Subclause (3)

Provides that, subject to subclause (4), the State will, no later than 3 months after the approval of proposals for the grant of such leases, licences and easements, cause such titles to be granted under the *Land Administration Act 1997* (WA) to the Joint Venturers on terms and conditions including rentals and renewal rights which the Minister (after consulting the Land Act Minister) considers reasonable.

Subclause (4)

States that a Project Title can only be determined by the expiration of its term; by surrender of the title in accordance with the Agreement; or pursuant to or as otherwise provided by the Agreement.

Subclause (5)

States that a Project Title cannot be forfeited or determined except in accordance with the Agreement.

Subclause (6)

Provides that if additional proposals are approved in relation to the Domgas Project Pipeline or the LNG Project Pipeline, then the State will cause the Pipelines Act Minister (if necessary) to vary the terms and conditions of the applicable Pipeline Licence (including as to the area of the licence).

Subclause (7)

Obliges the Joint Venturers, if the Minister so requires, within 6 months after the Domgas Project Operation Date or such longer allowed period, to surrender the area of the Domgas Project Pipeline Easement down to 30 metres in width or such other width approved or required by the Minister (after consulting the Joint Venturers, the Land Act Minister, the Pipelines Act Minister and (if relevant) the Commissioner of Main Roads) which allows for safe operation of the pipeline.

Subclause (8)

Provides that if additional proposals are approved for the extension or enlargement of the Domgas Project Pipeline outside the then Domgas Project Pipeline Corridor, the Land Act Minister is obliged to include the area within the Domgas Project Pipeline Easement and subclause (7) applies with necessary modification to such additional land. The land can be included even if a survey has not been completed but will be subject to correction once it has occurred.

Subclause (9)

Obliges the Joint Venturers, if the Minister so requires, within 6 months after the LNG Project Operation Date or such longer allowed period, to surrender the area of the LNG Project Pipeline Easement down to 30 metres in width or such other width approved or required by the Minister (after consulting the Joint Venturers, the Land Act Minister, the Pipelines Act Minister and (if relevant) the Commissioner of Main Roads) which allows for safe operation of the pipeline.

Subclause (10)

Provides that if additional proposals are approved for the extension or enlargement of the LNG Project Pipeline outside the then LNG Project Pipeline Corridor, the Land Act Minister is obliged to include the area within the LNG Project Pipeline Easement and subclause (9) applies with necessary modifications to such additional land. The land can be included even if a survey has not been completed but will be subject to correction once it has occurred.

Subclause (11)

In respect of the Project Pipelines, the Pipeline Licences and the Pipeline Easements, modifies the *Petroleum Pipelines Act 1969* (WA) and its regulations for the purposes of the Agreement.

- (a) Deletes paragraph (c) of the definition of "pipeline" in section 4 to ensure that the *Petroleum Pipelines Act 1969* (WA) applies to the Project Pipelines.
- (b) Replaces section 10 so as to require the Pipelines Act Minister to grant a licence following approval of relevant proposals under the Agreement for the Domgas Project Pipeline or LNG Project Pipeline.
- (c) Amends section 15(1) to allow the Pipeline Licences to be varied to include additional land within the licence area that is required to accommodate additional proposals approved under clauses 13 or 23 of the Agreement.

Replaces section 15(5) so as to require the Pipelines Act Minister to vary a licence (if necessary) following approval of relevant additional proposals under the Agreement for the Domgas Project Pipeline or the LNG Project Pipeline.

- (d) Inserts a new section 16A so that (i) clause 34(2) consent conditions (relating to a disposal of the Domgas Project Pipeline) relating to required variations of the Domgas Project Pipeline Licence, (ii) clause 39(6)(c)(ii) required variations (relating to the LNG Project Pipeline Licence) and (iii) the licence area of a Pipeline Licence can be reduced to coincide with the area of the applicable Pipeline Easement as reduced on any surrender can each be accommodated by the enhanced variation powers of the Pipeline Act Minister under the *Petroleum Pipelines Act 1969* (WA).
- (e) Inserts additional paragraphs at the end of section 16 to provide the power for the grant and enlargement of easements by the Minister for Lands under that section in accordance with the Agreement and clarifies the power to grant and vary the easements so as to require surrender down of the easement area in accordance with the Agreement and to authorise the taking of borrow from the area of the easement.
- (f) Modifications are made to section 19 to extend the existing formal notification requirements of that section to any extension or enlargement of a Pipeline Easement and to its reduction by surrender and to provide the Minister of Lands with a capacity by administrative guidelines to prescribe the detail of any additional procedural requirements (eg forms, notifications, registration processes etc) necessary to administer the dealings relating to the Pipeline Easements (eg enlargements and surrenders) as contemplated by the Agreement.
- (g) Deletes sections 24, 26, 27 and 28 as cancellation, forfeiture and determination of the Pipeline Licences are dealt with under the Agreement.
- (h) Inserts a further sentence at the end of section 57(1) to clarify that section 57(1) (regarding the ownership of pipelines) applies to the Project Pipelines subject to clause 39 of the Agreement.

Clause 16 – Construction and operation of Project Pipelines

Subclause (1)

Obliges the Joint Venturers in accordance with approved proposals, the Pipeline Licences, the *Petroleum Pipelines Act 1969* (WA) (as modified by the Agreement) and applicable Laws to construct the Project Pipelines, access roads and associated infrastructure and works in a proper and workmanlike manner and in accordance with recognised standards for pipelines of a similar nature operating under similar conditions.

Subclause (2)

Obliges the Joint Venturers, 6 months before the date for completion of the construction of the initial Domgas Project Pipeline, to inform the Minister as to the progress of the construction of and its likely completion and when the Domgas Project will be operational.

On the Domgas Project Operation Date, obliges the Joint Venturers to notify the Minister that the first transport of Domgas produced as part of the Domgas Project through the Domgas Project Pipeline for delivery into the Western Australian domestic gas market has occurred.

Subclause (3)

Obliges the Joint Venturers, 6 months before the date for completion of the construction of the initial LNG Project Pipeline, to inform the Minister as to the progress of the construction and its likely completion and when the LNG Project will be operational.

On the LNG Project Operation Date, obliges the Joint Venturers to notify the Minister that the first transport of natural gas obtained from the Title Areas through the LNG Project Pipeline to the LNG Production Facility has occurred.

Subclause (4)

Obliges the Joint Venturers to continually keep the Project Pipelines and associated infrastructure and works in an operable state, and to ensure that they are operated in a safe and proper manner in compliance with all applicable laws.

In particular obliges the Joint Venturers to ensure compliance with the *Petroleum Pipelines Act 1969* (WA) (as modified by the Agreement) and the Pipelines Licences in connection with the Project Pipelines.

Subclause (5)

Obliges the Joint Venturers to provide crossings for livestock and for any roads, other railways, conveyors, pipelines, transmission lines and other utilities existing at the date of the grant of the Pipeline Easement or other Project Titles or existing at the date the relevant land is subsequently included in the applicable easement or title.

In addition, for the purposes of such future crossings, obliges the Joint Venturers to (if applicable) give their consent and otherwise facilitate the grant by the State or any agency of any lease, licence, easement or other title over the land, so long as the Minister has consulted with the Joint Venturers and the grant does not in the Minister's opinion unduly prejudice or interfere with the activities under the Agreement. Further obliges the Joint Venturers to allow on reasonable terms access for the construction and operation of such future crossings and associated infrastructure.

Subclause (6)

Subject to clause 34, obliges the Joint Venturers to at all times be the holders of the Pipeline Licences and the Pipeline Easements and to manage and control the use of the Project Pipelines and the associated infrastructure and works.

Subclause (7)

Subject to clause 34, provides that the Joint Venturers shall not without the prior consent of the Minister (after consulting with the Pipelines Act Minister) dismantle, sell or otherwise dispose of any part or parts of the Project Pipelines or the associated infrastructure and works, or permit this to occur, other than for purposes of maintenance, repair, upgrade or renewal.

Subclause (8)

Provides that the Joint Venturers shall not without the prior consent of the Minister (after consulting with the Pipelines Act Minister) dismantle, sell or otherwise dispose of any part or parts of any Domgas Project Treatment Plant, any LNG Treatment Plant or the associated infrastructure and works, or permit this to occur, other than for purposes of maintenance, repair, upgrade or renewal.

Clause 17 - Roads**Subclause (1)**

Obliges the Joint Venturers at their own cost to construct and maintain all private roads which are used in their activities, erect signposts and take other necessary steps to prevent other parties from using the private roads, and at any point where a private road crosses any railways or public road, provide protection and signposting, required by the Commissioner of Main Roads or the Public Transport Authority.

Subclause (2)

Obliges the State to maintain all public roads used by the Joint Venturers for the purposes of the Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority.

Subclause (3)

Provides that in the event that the Joint Venturers or their workforce uses or wishes to use a public road which is inadequate for the purpose, or use by the Joint Venturers or their workforce results in excessive damage or deterioration (other than fair wear and tear), the Joint Venturers are obliged to pay the State or the local authority the whole or an equitable part of the total cost of any upgrading or making good as may be reasonably required by the Commissioner of Main Roads, having regard to use of such road by others.

Subclause (4)

Provides that if the Joint Venturers construct a road and it is subsequently required for public use, the State after consultation with the Joint Venturers may resume the road as a public road, and upon resumption pay to the Joint Venturers an amount that is found to be reasonable.

Clause 18 – Access obligations in respect of the Project Pipelines

Obliges the Joint Venturers to comply with the Laws for the time being in force in Western Australia with respect to access by persons to or use of the services provided by the Project Pipelines. Further provides that nothing in the Agreement limits the rights of the State to regulate access to the Project Pipelines.

Clause 19 – Commercialisation of natural gas from the Title Areas**Subclause (1)**

Provides that the Joint Venturers cannot after the Commencement Date, without the prior consent of the Minister, sell, dispose or otherwise commercialise or permit commercialisation of natural gas obtained from the Title Areas other than means of infrastructure and activities comprising the Domgas Project or the LNG Project.

Further provides that the Minister cannot:

- (a) unreasonably withhold his consent to commercialisation of Domgas, and
- (b) consent to commercialisation of such natural gas for the production of liquefied natural gas for export before all proposals for the initial Domgas Project have been approved except on the basis that natural gas obtained from the Title Areas is commercialised (by the production of Domgas as part of the Domgas Project) before such natural gas is commercialised by the production of liquefied natural gas for export.

Subclause (2)

Obliges the Joint Venturers to provide an outline to the Minister of any proposed commercialisation arrangement requiring consent.

Subclause (3)

Obliges the Joint Venturers, if required by the Minister, to provide further particulars of the proposed commercialisation arrangement.

Subclause (4)

Allows the Joint Venturers full opportunity to consult with the Minister in respect of any decision made under this clause.

Clause 20 – LNG Project Pipeline Corridor

Subclause (1)

Provides that not before 31 December 2014 and not less than 12 months before they intend to submit proposals under clause 21, the Joint Venturers are to consult with the Minister to seek the agreement of the Minister (after the Minister consults the Pipelines Act Minister and (if relevant) the DBNGP Land Access Minister and the Commissioner of Main Roads) as to:

- (a) the diameter of the LNG Project Pipeline;
- (b) where the LNG Project Pipeline will begin and end;
- (c) the route for the LNG Project Pipeline and associated access roads within the LNG Project Pipeline Easement;
- (d) land required for the LNG Project Pipeline Easement for that route as well as for associated infrastructure and works and areas for the taking of borrow; and
- (e) the Relevant LNG Precinct.

Further provides that in seeking such agreement on matters (b) to (d) above, regard is to be had to achieving a balance between engineering matters, the nature and use of any lands concerned and the costs of acquiring the land (all of which is to be borne by the Joint Venturers) and that the parties acknowledge that the LNG Project Pipeline Corridor may need to vary along its route to accommodate the LNG Project Pipeline, access roads and associated infrastructure and borrow areas.

Subclause (2)

Allows the Minister and the Joint Venturers to vary their agreement pursuant to subclause (1) before the submission of proposals.

Subclause (3)

Provides that the Joint Venturers are responsible for obtaining all unconditional and irrevocable consents (in form and substance acceptable to the Minister) of each person whose consent the Land Act Minister (acting with concurrence of the Minister) requires for the grant of the LNG Project Pipeline Easement and the inclusion of additional land in the LNG Project Pipeline Easement (as contemplated by clause 15(10)).

Subclause (4)

Clause 42 (Arbitration) does not apply to subclauses (1) and (2).

Subclause (5)

Provides that the Joint Venturers can only make an application under the *Petroleum Pipelines Act 1969* (WA) for a pipeline licence for the same purpose or substantially the same purpose as the LNG Project Pipeline once an agreement has been reached with the Minister in accordance with subclause (1).

Subclause (6)

Provides that the Joint Venturers are responsible for applying (consistent with the matters agreed under clause 20) under the *Petroleum Pipelines Act 1969* (WA) for the grant of the LNG Project Pipeline Licence.

Clause 21 – Joint Venturers may submit proposals for an LNG Project

Subclause (1)

Provides for the Joint Venturers, subject to the *Environmental Protection Act 1986* (WA) and the other provisions of the Agreement, to submit detailed proposals for the LNG Project within 18 months after the date on which the Minister and the Joint Venturers reached agreement on all matters pursuant to clause 20, which proposals shall include (amongst others) the following matters:

- the LNG Treatment Plants (if any);
- the LNG Project Pipeline within the LNG Project Pipeline Corridor;
- the pipeline connections to connect the LNG Project Pipeline to any LNG Project Treatment Plant and to the LNG Production Facility (or relevant third party pipeline for delivery to the LNG Production Facility);
- associated infrastructure and works to be within the LNG Project Pipeline Corridor;
- leases, licences and easements under the *Land Administration Act 1997* (WA) or the *Dampier to Bunbury Pipeline Act 1997* (WA) section 41(2)(b) approval or section 34 access authority.

Subclause (2)

Provides that the Joint Venturers may only submit proposals under subclause (1) if the Minister has approved the Community Development Plan (if the Minister requires such a plan), the Minister and the Joint Venturers have reached agreement pursuant to clause 20, the Joint Venturers have a current application under the *Petroleum Pipelines Act 1969* (WA) for the LNG Project Pipeline Licence and all proposals required by clause 11 for the initial Domgas Project have been submitted.

Subclause (3)

Provides that proposals pursuant to subclause (1) must:

- specify the matters agreed between the Minister and the Joint Venturers pursuant to clause 20 and must be consistent with such agreed matters;
- specify the capacity of the proposed LNG Project Pipeline;
- specify the term of the LNG Project;
- specify the capacity of each proposed LNG Project Treatment Plant;
- provide that the construction of the LNG Project Pipeline will commence within 12 calendar months after approval of all proposals or the grant of the LNG Project Pipeline Licence (whichever is later), and be completed with first transmission of natural gas to commence within 2 years thereafter; and
- provide that the construction of all other proposed facilities, infrastructure and works will commence no later than 12 months after the approval of all proposals and will be completed and operational within 3 years thereafter.

Provides that the parties acknowledge that proposals pursuant to subclause (1) shall contemplate the construction, operation and maintenance of the LNG Project Pipeline in accordance with the safety cases and other plans and requirements of the *Petroleum Pipelines Act 1969* (WA) and the regulations thereunder.

Subclause (4)

Provides that with the consent of the Minister and any other parties concerned, the Joint Venturers may submit proposals pursuant to subclause (1) that allow them to use any existing facilities, equipment or services belonging to them (except for the pipes being part of the Domgas Project Pipeline) or, upon terms and conditions agreed between the Joint Venturers and other parties, of any other existing facilities, equipment or services.

Subclause (5)

Provides that with the consent of the Minister, the Joint Venturers may propose, as part of their proposals under clause 21 (initial LNG Project) or under clause 23 (expansion of LNG Project), the

construction, provision, enlargement or extension of the LNG Projects' facilities, equipment and services (except the pipes being part of the LNG Project) for use as part of the Domgas Project.

Subclause (6)

Provides that proposals may, with the Minister's approval, be submitted separately and in any order and enables the Joint Venturers to withdraw and resubmit proposals at any time up until the proposals have been approved.

Subclause (7)

Requires the Joint Venturers to submit details to and, if required, consult with the Minister about any services, works, materials, plant, equipment and supplies that they propose to consider obtaining from or having carried out outside of Australia, and to provide reasons for this.

Subclause (8)

Provides that at the time the Joint Venturers submit their last proposal under this clause they shall:

- (a) furnish to the Minister's reasonable satisfaction evidence of (amongst other things) their financial capability, their readiness to carry out the operations referred to in the proposals and the readiness of the Pipelines Act Minister to grant the LNG Project Pipeline Licence and all consents for the commencement of pipeline construction;
- (b) furnish to the Minister the consents required by the Land Act Minister for the grant of the Domgas Project Pipeline Easement (as referred to in clause 20(3)(a)); and
- (c) furnish to the Minister the local industry participation plan (as referred to in clause 7(3) and applying pursuant to clause 7(6)).

Clause 22 – Consideration of LNG Project proposals

Subclause (1)

Details the procedure for consideration of proposals by the Minister, subject to the *Environmental Protection Act 1986* (WA). The Minister may:

- approve the proposal;
- defer consideration of the proposal until the Joint Venturers submit a further proposal or proposals in respect of other matters mentioned in clause 21(1) or until clause 21(8) has been complied with; or
- require as a condition precedent to giving his approval to the proposal that the Joint Venturers make reasonable alterations to the proposal or comply with reasonable conditions in respect to the proposal.

Subclause (2)

Requires the Minister to give notice of his decision in respect of the proposals to the Joint Venturers within 2 months of the later of:

- receiving proposals;
- authority to proceed under *the Environmental Protection Act 1986* (WA);
- completion of all native title processes; and
- approval pursuant to clause 12 of all proposals required by clause 11 to be submitted for the initial Domgas Project.

Subclause (3)

Requires the Minister to consult with the Joint Venturers if he defers his decision or requires changes to a proposal or compliance with conditions.

Subclause (4)

Provides for the Joint Venturers to refer certain decisions of the Minister to arbitration within 2 months if they consider such a decision to be unreasonable.

Subclause (5)

Details how an arbitration decision on a proposal is to be implemented.

Subclause (6)

Obliges the Joint Venturers to implement the approved proposals subject to and in accordance with the *Environmental Protection Act 1986* (WA).

Subclause (7)

Provides that the Minister may approve a variation to approved proposals during their implementation.

Clause 23 – Expansion of LNG Project**Subclause (1)**

Provides that if the Joint Venturers desire to:

- extend or enlarge the LNG Project Pipeline or a LNG Project Treatment Plant or increase the capacity of that pipeline or treatment plant,
- connect an existing or proposed pipeline to the LNG Project Pipeline; or
- otherwise significantly modify, expand or vary their activities that may be carried on as part of the LNG Project beyond those specified in the then approved proposals

they are obliged to give notice to the Minister and to furnish an outline of their proposals.

Subclause (2)

Requires the Minister, within one month after receiving a notice under subclause (1), to advise whether or not he approves in-principle the proposed extension, enlargement, increase or other modification, expansion or variation. It further provides that the in-principle approval may be subject to conditions including a condition requiring variations to the Agreement. The Joint Venturers may consult with the Minister in respect of any decision under this subclause.

Subclause (3)

Provides that only if the Minister gives in-principle approval under subclause (2), the Joint Venturers may submit detailed proposals provided that the provisions of clause 5 (other than subclause (1)(a) and (1)(b)(i)) and clause 20 (if an extension or enlargement of the LNG Project Pipeline is envisaged) apply with necessary modifications prior to the submission of the detailed proposals.

Subclause (4)

Provides that after obtaining the Minister's in-principle approval, the Joint Venturers are obliged to submit detailed proposals (consistent with any conditions on such approval) to the Minister within a reasonable timeframe (as determined by the Minister), otherwise the in-principle approval will lapse.

Subclause (5)

Provides that (except as specified in this subclause) the provisions of clause 21 and clause 22 apply with necessary modifications to detailed proposals submitted pursuant to this clause. Further provides that the Joint Venturers may withdraw such proposals before approval or may give notice (within 3 months of any arbitration award relating to a decision of the Minister in considering the proposals) that they will not proceed with the proposals. In this event the Minister's in-principle approval will lapse.

Subclause (6)

Obliges the Joint Venturers to implement the approved proposals subject to and in accordance with the *Environmental Protection Act 1986* (WA).

Clause 24 – Treatment, use and delivery of gas from other areas**Subclause (1)**

Provides that with prior consent of the Minister, the Joint Venturers may as part of the Domgas Project, process and use natural gas from areas other than the Title Areas.

Subclause (2)

Provides that with prior consent of the Minister, the Joint Venturers may use the LNG Project Pipeline to convey natural gas obtained from outside the Title Areas (including purchased from third parties) to the LNG Production Facility (or to a third party pipeline for delivery to the LNG Production Facility) for the production from it of liquefied natural gas for export.

Subclause (3)

Provides that the Minister's consent can be subject to conditions that require variations or additions to the Agreement, and that the Joint Venturers' consent must be sought if the condition is to require a variation to the term of the Agreement or any of the Project Titles, or the rentals, licence or easement fees payable under the Project Titles.

Further requires the Minister to consult with the Joint Venturers concerning any decision made under this subclause.

Clause 25 – Compliance with laws

Requires the Joint Venturers in the construction, operation, maintenance and use of the Project Pipelines to comply with and observe the provisions of the Agreement, the *Petroleum Pipelines Act 1969* (WA) (as modified by the Agreement), the Pipeline Licences and any other applicable laws for the time being in force in Western Australia. Further requires the Joint Venturers to comply with and observe the Agreement and laws in force of the State in relation to the construction, operation, maintenance and use of any other facility, infrastructure or service provided or controlled by the Joint Venturers.

Clause 26 - Maintenance

Obliges the Joint Venturers to maintain and (where necessary) renew facilities, infrastructure and equipment the subject of the Agreement.

Clause 27 – Use of local labour professional services and materials

Subclause (1)

Details the obligations of the Joint Venturers with respect to the use of labour, professionals and services within Western Australia and Australia, giving suitably qualified Western Australian and Australian suppliers, manufacturers and contractors fair and reasonable opportunities to tender or quote for works and with respect to giving preference to contracts and orders that include participation by Western Australian or Australian suppliers, manufacturers and contractors.

Subclause (2)

Obliges the Joint Venturers, except as otherwise agreed by the Minister, in contracts with third parties to include the same local content obligations, as in subclause (1), and to also undertake procurement activities in accordance with each local industry participation plan provided under clause 11(8)(c), 13, 21(8)(c) or 23 as may be amended in accordance with clause 7(5).

Subclause (3)

Obliges the Joint Venturers to submit reports to the Minister concerning their implementation of local content obligations and relevant local industry participation plans.

Subclause (4)

Obliges the Joint Venturers to keep the Minister informed on any services and works proposed to be sourced overseas and consult with the Minister as and when required.

Clause 28 – Petrochemical feed stocks

Obliges the Joint Venturers, in accordance with clause 8(4), to market and make available for sale Petrochemical feed stocks to any existing or proposed producer of petrochemicals in Western Australia.

Clause 29 – No discriminatory charges

Obliges the State, except as otherwise provided in the Agreement, to ensure the titles, property or other assets, products, materials or services used or produced by the Joint Venturers by or through their activities in the conduct of the Domgas Project or the LNG Project are not subjected to discriminatory rates, taxes or charges by any local government or any agency, instrumentality or other authority of the State. The conferral of rights upon parties to other Government agreements is to be disregarded in applying this clause.

Clause 30 – Taking of land for the purposes of this Agreement

Subclause (1) and (2)

Empowers the State as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997* (WA) to take land (other than any part of a Port or the Dampier to Bunbury Natural Gas Pipeline corridor, or land the taking of which would be contrary to the provisions of a Government agreement) for either or both of the Domgas Project and the LNG Project, if the Joint Venturers consider it necessary and the Minister determines it is appropriate to be taken.

The clause modifies Parts 9 and 10 for the purposes of the clause, including to expedite the taking process.

Subclause (3)

Provides for the Joint Venturers to pay all costs and compensation in respect of any land taken for the purposes of the Agreement.

Clause 31 – No taking of land

Provides assurance to the Joint Venturers, subject to the performance by them of their obligations under the Agreement, against resumption of their facilities, infrastructure, works, installations, plant, equipment or other property the subject of or used for the purposes of the Agreement. Further provides that without the consent of the Joint Venturers (which may not be unreasonably withheld) the State shall not create or permit to be created any road, right of way, water right or easement of any nature in respect of any lands the subject of the Project Titles.

Clause 32 – Commonwealth licences and consents

Obliges the Joint Venturers to apply for licences and consents from the Commonwealth or any agency, authority or instrumentality thereof necessary to enable or permit the Joint Venturers to enter into the Agreement and to perform their obligations. Further provides for the State, on request by the Joint Venturers, to make representations for the grant to the Joint Venturers of such licences and consents.

Clause 33 – Assignment

Subclause (1)

Provides for the assignment, mortgaging, charging, subletting or disposition by the Joint Venturers as of right to another Joint Venturer and to any other person with the prior consent of the Minister of the whole or any part of its rights under the Agreement subject to the assignee or donee executing a deed of covenant in favour of the State (unless the Minister determines otherwise).

However these assignment and disposition rights are subject to each Joint Venturer (post such assignment or disposition) being a legal and beneficial holder of one or more of the Petroleum Titles, and that the Joint Venturers together continue to be the sole legal and beneficial holders of each of the Petroleum Titles.

Subclause (2)

Provides for a Joint Venturer to assign, mortgage, charge, sublet or dispose of (including transfer) to another Joint Venturer or to another person, with the consent of the Minister, the whole or part of its legal and beneficial holding of a Petroleum Title subject to the following conditions:

- (a) to the assignee or donee being or becoming a Joint Venturer;
- (b) to the assignor or disponent ceasing to be a Joint Venturer if, following the assignment or disposition, the assignor will not be a legal and beneficial owner of a Petroleum Title; and
- (c) to the assignee or donee executing in favour of the State (unless the Minister determines otherwise) a deed of covenant to comply with the Agreement.

Subclause (3)

Provides for a Joint Venturer, notwithstanding anything in or done under subclauses (1) and (2), to be and remain liable for the performance of all covenants and agreements on its part under the Agreement, unless the Minister agrees to approve a release from such liability where the Minister considers such release will not be contrary to the interests of the State.

Subclause (4)

Specifies the situations that the Minister must consult with the Pipelines Act Minister, the Land Act Minister, the DBNGP Land Access Minister or the Petroleum Act Minister before granting any consent under subclauses (1) and (2).

Subclause (5)

Notwithstanding the *Dampier to Bunbury Pipeline Act 1997* (WA), *Land Administration Act 1997* (WA), the *Petroleum and Geothermal Energy Resources Act 1967* (WA), and the *Petroleum Pipelines Act 1969* (WA), no assignment, mortgaging, charging, subletting or disposition by the Joint Venturers of rights under the Agreement shall require any approval or consent other than under subclauses (1) and (2) and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this clause).

Clause 34 – Sale or other disposal of Domgas Project Pipeline

Subclause (1)

Enables, after the Domgas Project Operation Date and with the prior consent of the Minister at the time (after consulting the Pipelines Act Minister and the DBNGP Land Access Minister), the Joint Venturers to sell the whole or part of their rights as holder of the Domgas Project Pipeline (together with the Domgas Project Pipeline Licence, the Easement and other Project Titles which are required for the operation, maintenance, inspection or repair of the Domgas Project Pipeline) on the basis that the Domgas Project Pipeline will be excluded from the scope of the Domgas Project and the Agreement will cease to apply to the Domgas Project Pipeline, the Domgas Project Pipeline Licence, the Domgas Project Pipeline Easement and the applicable other Project Titles.

Subclause (2)

Provides that the Minister may give consent under subsection (1) subject to conditions and details some of the subject matter that the conditions may deal with.

Subclause (3)

Provides that arbitration does not apply to a decision made by the Minister under subclause (1) or a condition imposed by the Minister under subsection (2).

Clause 35 – Variation or determination of Agreement by agreement

Subclause (1)

Enables the Agreement to be varied from time to time by agreement in writing between the parties for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of the Agreement.

Subclause (2)

Requires any variation to the Agreement made pursuant to subclause (1) to be tabled in both Houses of Parliament in accordance with the subclause.

Subclause (3)

Details how the variation to the Agreement may come into operation.

Subclause (4)

Provides, subject to subclause (5), that the Joint Venturers can give notice to the State between 31 December 2015 and 31 March 2016 stating that they do not intend to submit proposals for the Domgas Project due to one or more of the following reasons:

- the Joint Venturers have been unable to prove up sufficient reserves of gas from within the Title Areas to underpin the Domgas Project;
- the Joint Venturers preparatory work leads them to conclude that the Domgas Project is not technically viable; and
- the Joint Venturers preparatory work leads them to conclude that the Domgas Project is otherwise not economically viable.

Further provides that upon the Joint Venturers giving notice in accordance with this subclause the Agreement shall cease and determine.

Clause 37(3) provides that the Minister may not extend the dates specified in this subclause.

Subclause (5)

Provides that the Joint Venturers right to give notice under subclause (4) is subject to:

- (a) having first consulted with the Minister, including as to the reasons proposed for giving the notice;
- (b) 21 days have lapsed since they consulted with the Minister;
- (c) The Minister and the Joint Venturers have not already reached agreement pursuant to clause 10 or clause 20 as the case may be on all matters required to be agreed under the respective clause; and
- (d) the Minister not having granted an extension of the clause 11(1) date for submission of proposals for the Domgas Project.

Subclause (6)

Enables, after the LNG Project Operation Date, the Agreement to be determined by mutual agreement of the parties in relation to the LNG Project.

Clause 36 – Force Majeure

Subject to clauses 8(7) and 11(9), provides for the temporary suspension of the Agreement obligations as a result of a range of circumstances beyond the control of the Joint Venturers or the State.

Clause 37 – Power to extend periods and dates

Subclause (1)

Subject to subclauses (2) and (3), allows the Minister, at the request of the Joint Venturers, to extend dates or periods referred to in the Agreement.

Subclause (2)

Provides that the date specified in clause 11(1) for submission of proposals may only be extended once and for a period not exceeding 18 months.

Subclauses (3)

Provides that the Minister cannot extend the Suspension Period or the date or notice period specified in clause 12(6) or the dates specified in clause 35(4).

Clause 38 – Determination of Agreement by the State

Subclause (1)

Specifies the events that can result in determination of the Agreement.

Subclause (2)

Requires specified details to be given in a notice of determination.

Subclause (3)

Enables the Joint Venturers to contest a notice of default and allows the matter to be decided by arbitration. Where the arbitration decision is against the Joint Venturers and the arbitrator finds there was a genuine dispute, the time for complying with such a decision shall not be less than 90 days.

Subclause (4)

Enables the State to remedy a default and recover costs of doing so from the Joint Venturers.

Clause 39 – Effect of cessation or determination of Agreement

Subclause (1)

Subject to subclause (6), details the effect of determination of the Agreement.

Contains provisions regarding whether improvements to the land are to become the property of the State or are to be removed by the Joint Venturers, and subject to subclause (3) and in compliance with subclause (4) details what the Joint Venturers must do in regards to decommissioning and removing facilities and infrastructure, and also reinstating and rehabilitating the land.

Subclause (2)

Provides that in relation to Petroleum Titles, the benefit and rights conferred by the Agreement cease to apply and that the titles are to continue in force subject to the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

In particular provides that if a petroleum exploration permit that is a Petroleum Title has been renewed during the Suspension Period, the benefits of the modifications of the *Petroleum and Geothermal Energy Resources Act 1967* (WA) continue for the lesser of the balance of the remaining term and the period of 6 months commencing on the date after the expiration or earlier cessation of the Agreement. Accordingly, the exploration permit on any further renewal application will then be subject to the section 41 requirement for relinquishment of 50% of the blocks comprising the permit.

Subclause (3)

Provides that the Joint Venturers are not obliged to decommission and remove facilities and infrastructure, or rehabilitate the land, if they receive notice from the relevant Minister stating that they are not required to do so.

Subclause (4)

Provides that the Joint Venturers must at all times comply with all relevant Laws in decommissioning, removing facilities and infrastructure, and rehabilitating the land.

Subclause (5)

States that upon cessation or determination of the Agreement except as otherwise agreed by the Minister, the facilities and other infrastructure, subject to a notice from the relevant Minister, become (if not then already) the absolute property of the State without payment of any compensation to the Joint Venturers.

Subclause (6)

Details the consequences of determination of the Agreement in relation to the LNG Project by mutual agreement pursuant to clause 35(6).

Clause 40 – Indemnity

Requires the Joint Venturers to indemnify the State in respect of actions, costs or demands of third parties resulting from activities undertaken by the Joint Venturers under the Agreement or by third parties on their behalf, except where the State (or its agents) has been negligent in carrying out work for the Joint Venturers pursuant to the Agreement.

Clause 41 – Subcontracting

The State and the Joint Venturers may subcontract to third parties any activity they are authorised or obliged to carry out under the Agreement.

Clause 42 – Arbitration**Subclause (1)**

Describes the arbitration process applicable to the Agreement.

Subclause (2)

States that any party to a dispute can appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in arbitration.

Subclause (3)

Arbitration will not apply where the State, the Minister or any other Minister has discretionary power.

Subclause (4)

Empowers the arbitrator to grant interim extensions to any date or period in the Agreement (which the Minister under clause 37 would be permitted to extend) to preserve rights while a matter is before arbitration.

Clause 43 – Consultation**Subclause (1)**

Requires the Joint Venturers to consult with and keep the State informed on any action that it proposes to take with any third party, including the Commonwealth, which is likely to significantly affect the overall interest of the State under the Agreement.

Subclause (2)

Requires the Joint Venturers to consult with and keep the State informed with respect to significant events that might materially affect the establishment and sustained operation of, and ownership of, the Domgas Project or the LNG Project.

Clause 44 – Notices

Specifies how notices are to be given under the Agreement.

Clause 45 – Mitsubishi Corporation guarantee of subsidiaries' performance

Provides that the Guarantor guarantees to the State the performance of the obligations of Diamond Resources (Fitzroy) Pty Ltd and Diamond Resources (Canning) Pty Ltd under the Agreement. Further provides for the Minister to release the Guarantor from the guarantee if satisfied that these companies have the necessary financial capacity to perform their obligations under the Agreement and except as provided in a release given under this clause provides for the guarantee to continue notwithstanding that the Agreement ceases or is determined.

Clause 46 – Term of Agreement**Subclause (1)**

Subject to this clause and clauses 38 and 39, the Agreement will expire 25 years after the date on which the last of the Joint Venturers' proposals for the Domgas Project are submitted under clause 11 are approved or determined pursuant to clause 12.

Subclause (2)

Provided that there is no default the subject of a notice of default given by the State under clause 38 that has not been remedied, the Joint Venturers may give notice to the Minister, not earlier than 2 years before the expiration of the term, of their desire to have an extension for a further period of up to 25 years and their plans for the continued undertaking of that Domgas Project during that period.

Subclause (3)

Provides that the Minister can extend the term of the Agreement in accordance with the notice given under subclause (2) if he is satisfied that during that requested term the Joint Venturers intend to continue to undertake the Domgas Project.

Clause 47 – Applicable law

The Agreement is subject to the laws of Western Australia.

Schedule to the Agreement

Sets out the details of the five petroleum exploration permits that constitute the Petroleum Titles as at the date of the Agreement.