

Schedule 1

[section 3]

GOLDFIELDS GAS PIPELINE AGREEMENT

THIS AGREEMENT is made this 23rd day of March 1994

BETWEEN

THE HONOURABLE RICHARD FAIRFAX COURT, B.Com., M.L.A.,
Premier of the State of Western Australia, acting for and on behalf of the said
State and its instrumentalities from time to time (hereinafter called "the State")
of the first part

WESMINCO OIL PTY. LTD. ACN 004 968 389 a company incorporated in
the State of Victoria and having an office in Western Australia at
28 - 42 Ventnor Avenue, West Perth **NORMANDY PIPELINES PTY. LTD.**
ACN 063 551 888 a company incorporated in the State of South Australia and
having an office in Western Australia at 8 King's Park Road, West Perth and
BHP MINERALS PTY. LTD. ACN 008 694 782 a company incorporated in
the State of Western Australia and having its registered office at Level 18,
200 St George's Terrace, Perth (hereinafter collectively called "the Joint
Venturers" in which term shall be included their respective successors and
permitted assigns) of the second part

WESTERN MINING CORPORATION HOLDINGS LIMITED ACN
004 820 419 a company incorporated in the State of Victoria and having an
office in Western Australia at 28 - 42 Ventnor Avenue, West Perth (hereinafter
called "WMCH") of the third part

AND

NORMANDY POSEIDON LIMITED ACN 009 295 765 a company
incorporated in the State of Western Australia and having an office in Western
Australia at 8 King's Park Road, West Perth (hereinafter called "NPL") of the
fourth part

W H E R E A S:

- (a) the State desires to promote economic development in the inland Pilbara and Goldfields regions of Western Australia by facilitating the availability of natural gas in these regions under arrangements that aim to reduce energy prices and assure reliability of energy supplies;
- (b) the Joint Venturers, while seeking to reduce their respective energy costs and assure the reliability of both energy supplies and energy prices to their operations in the inland Pilbara and the Goldfields regions to the greatest extent reasonably practicable, recognise the State's desire that other parties in those regions should have available to them access to

transmission facilities for gas on a non-discriminatory basis at fair and reasonable prices;

- (c) the Joint Venturers were selected and invited to enter into this Agreement after the State called for expressions of interest from the private sector to build, own and operate a pipeline and associated facilities to enable the delivery of natural gas into the said regions of Western Australia;
- (d) the Joint Venturers are currently proceeding with detailed feasibility studies with a view to undertaking development of a natural gas transmission pipeline comprising —
 - (i) construction and commissioning of the Pipeline and other related facilities required for the operation of the Pipeline; and
 - (ii) operation and maintenance of the Pipeline and all related facilities;
- (e) the State desires fair and reasonable terms and conditions based on principles of a consistent nature to apply to access to natural gas transmission pipelines within Western Australia; and
- (f) the State, for the purpose of promoting industrial development and employment opportunity generally in Western Australia, has agreed to assist the establishment of the said works and provide for their ongoing operation and development upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context —

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, or “require”, means advise, apply, approve, approval, consent, certify, direct, 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;

“approved proposal” means a proposal approved or deemed to be approved under this Agreement;

“associate” means, in respect of a Joint Venturer, any related body corporate of that Joint Venturer within the meaning of the Corporations Law and any joint venture or partnership of which that Joint Venturer or related body corporate is a member holding an interest of not less than 25% and any other person approved by the Minister for the purpose of this definition;

“**associated development**” means a development by a Third Party comprising —

- (a) the construction and commissioning of gas pipelines and related facilities to bring natural gas from producers of gas to a connection with the Pipeline or to the Dampier to Bunbury gas pipeline to enable transmission of gas to the Pipeline; or
- (b) the construction and commissioning of lateral pipelines from the Pipeline and electricity generation (including cogeneration) facilities that utilise gas transmitted through the Pipeline, associated electrical transmission lines from such generation facilities and facilities for the direct use of gas;

“**Clause**” means a clause of this Agreement;

“**Commercial Arbitration Act**” means the *Commercial Arbitration Act 1985*;

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

“**Developable Capacity**” is, at a particular time, the difference between the capacity of the Pipeline and the capacity which would be available if such additions of plant or pipeline as are technically feasible and economically feasible were made to it;

“**Electricity Act**” means the *Electricity Act 1945*;

“**Energy Minister**” means the Minister or Ministers in the Government of the State for the time being responsible for the administration of the Electricity Act, the State Energy Commission Act and the *Gas Undertakings Act 1947*;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**Initial Committed Capacity**” and “**Initial Customers**” have the meanings given in subclause (3) of Clause 8;

“**Joint Venturers’ workforce**” means the persons (and the dependants of those persons) engaged whether as employees, agents or contractors in the Joint Venturers’ activities under this Agreement;

“**Land Act**” means the *Land Act 1933*;

“**laws relating to traditional usage**” means laws applicable from time to time in Western Australia in respect of rights or entitlements to or interests in land or waters which rights, entitlements or interests are acknowledged, observed or exercisable by Aboriginal persons (whether communally or individually) in accordance with Aboriginal traditions, observances, customs or beliefs;

“legitimate business interests of the Joint Venturers” means the legitimate business interests of the Joint Venturers’ as owners and operators of the Pipeline on the basis that they constitute an independent pipeline owner offering transmission services without any bundling of those services with other services such as the purchase, sale, storage or supply of gas (beyond short term balancing between receipts and deliveries);

“local authority” means the council of a municipality that is a city, town or shire constituted under the Local Government Act;

“Local Government Act” means the *Local Government Act 1960*;

“Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this 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;

“Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Petroleum Pipelines Act;

“month” means calendar month;

“non-discriminatory”, in respect of access to the Pipeline by Third Parties and negotiations for that access, means —

- (a) that all such Third Parties seeking or negotiating for access at any particular time must be provided with substantially the same information by the Joint Venturers in relation to the principles upon which access may be granted and the tariff principles then applicable under this Agreement and that no Third Party will be disadvantaged, as against other Third Parties, as a consequence of differences in the information respectively provided to them; and
- (b) that the same principles must be applied to all such Third Parties to ascertain the access rights to be afforded to them and the tariff which may be negotiated by them, so that differences in access rights and tariffs offered to Third Parties from time to time must be substantially attributable to differences in their respective requirements and the times at and the circumstances under which their respective agreements are negotiated,

but the parties acknowledge that differences in terms and conditions upon which access is granted and tariffs agreed will vary from one Third Party to another as a consequence of differences between their respective requirements and the times at and the circumstances under which their respective agreements are concluded;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“**Petroleum Pipelines Act**” means the *Petroleum Pipelines Act 1969*;

“**Pipeline**” means the pipeline or pipeline system for the transmission of natural gas from the North West of the said State into the inland Pilbara and Goldfields regions, together with all structures for protecting or supporting the pipeline or pipeline system and associated facilities for the compression of gas, the maintenance of the pipeline and the inlet and outlet of gas and all fittings, appurtenances, appliances, compressor stations, scraper stations, mainline valves, telemetry systems (including communications towers), works and buildings used in connection with the pipeline or pipeline system which pipeline or pipeline system is the subject of approved proposals under this Agreement and includes any extension or enlargement thereto that may be approved under Clause 12;

“**Pipeline Licence**” means the licence granted to the Joint Venturers under paragraph (a) of subclause (1) of Clause 16;

“**private roads**” means the roads referred to in subclause (1) of Clause 15 and any other roads (whether within or outside the pipeline easement) constructed by the Joint Venturers in accordance with an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

“**public road**” means a road as defined by the *Road Traffic Act 1974*;

“**Public Works Act**” means the *Public Works Act 1902*;

“**said State**” means the State of Western Australia;

“**State Energy Commission Act**” means the *State Energy Commission Act 1979*;

“**State Energy Commission**” means The State Energy Commission of Western Australia as described in section 7 of the State Energy Commission Act and includes, in respect of any particular statutory function of the State Energy Commission under the State Energy Commission Act, any successor of the State Energy Commission in respect of that statutory function;

“**subclause**” means subclause of the Clause in which the term is used;

“**Third Party**” means a person other than the Joint Venturers acting collectively and includes (but is not limited to) any one or more of the Joint Venturers acting independently of the other Joint Venturers and outside the scope of the joint venture between them; “**this Agreement**” “**hereof**” and “**hereunder**” refer to this Agreement, whether in its original form or as from time to time added to, varied or amended.

Interpretation

2. In this Agreement —
 - (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than Clause 31 to extend any period or date shall be without prejudice to the power of the Minister under Clause 31;
 - (c) clause headings do not affect the 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;
 - (e) one gender includes the other genders; and
 - (f) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor and the regulations for the time being in force thereunder, except that in the case of a reference to the State Energy Commission Act, a reference to that Act relating to any particular subject matter or statutory function of the State Energy Commission thereof includes a reference to any Act or particular provision passed in substitution therefor relating to that same or a similar subject matter or statutory function.

Liability of Joint Venturers

3. The obligations of the Joint Venturers hereunder are joint obligations and, in establishing that any breach of the obligations of the Joint Venturers or any of them under this Agreement has occurred, proof against any one or more of the Joint Venturers shall be sufficient proof as against all Joint Venturers. However, the liability of each individual Joint Venturer for any sum of money found to be payable in respect of any such breach or otherwise payable under this Agreement (including, but not limited to, Clauses 26, 32, 33 and 35) shall be limited to the percentage interest of that Joint Venturer in this Agreement as varied or adjusted from time to time pursuant to Clause 28.

Initial obligations of the State

4. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act (referred to in this Agreement as the “*Goldfields Gas Pipeline Agreement Act 1994*”) prior to 30 June 1994 or such later date, if any, as the parties hereto may agree upon.

Ratification and operation

5. (1) The provisions of this Agreement, other than this Clause and Clauses 1, 2, 3 and 4, shall not come into operation until the Bill referred to in Clause 4 has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (2) If before 30 June 1994 or such later agreed date the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (3) On the said Bill commencing to operate as an Act, the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the Joint Venturers

6. (1) The Joint Venturers shall undertake field and office engineering, environmental and market studies and other matters necessary for the purposes of Clause 7 and to enable them to finalise and to submit to the Minister the detailed proposals referred to in Clause 9.
- (2) The Joint Venturers shall keep the State fully informed in writing quarterly as to the progress and results of their operations under subclause (1) and shall supply to the State such information in relation thereto as the Minister may request.
- (3) The Joint Venturers shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish to undertake.
- (4) For the purposes of this Clause and to the extent reasonably necessary to enable the Joint Venturers to carry out their obligations under this Clause and to carry out surveys of land and other works in relation to the Pipeline and for the purpose of complying with and making applications with respect to land under the *Aboriginal Heritage Act 1972*, but subject to laws relating to traditional usage and to the adequate protection of the environment (including flora and fauna) —
 - (a) the State shall, subject to the adequate protection of the land affected (including improvements thereon), allow the Joint Venturers and their agents and contractors to enter upon

Crown lands (including land the subject of a pastoral lease);
and

- (b) the Joint Venturers and their agents and contractors may subject to the Petroleum Pipelines Act and any authorisations required under that Act enter land to carry out surveys and other works in relation to the Pipeline and may subject to section 82 of the Public Works Act and authorisation pursuant to that section exercise the powers set out in that section as if the Pipeline were works under that Act.

Route for the Pipeline

7. (1) As soon as practicable during their studies under Clause 6, and from time to time during those studies as required by either of the parties hereto, the Joint Venturers shall meet with the Minister to seek agreement on a route for the Pipeline and the land required for the Pipeline. In seeking such agreement, regard shall be had to achieving a balance between engineering matters including Pipeline costs, the nature and use of any lands concerned and interests therein and the cost to both parties of acquiring the land.
- (2) Where the Minister and the Joint Venturers propose to reach agreement on a route (which may include alternative routes), the Minister shall refer the lands proposed as the route and any proposed alternative routes to the Minister for Mines and the Minister for Mines shall act in relation to any such reference in accordance with Part IIA of the Petroleum Pipelines Act, and the provisions of that Part shall apply to the reference, as if the reference were an application for a licence under that Act (but only in respect of the proposed route of the Pipeline).
- (3) Forthwith after sections 32A to 32F of the Petroleum Pipelines Act has been complied with, the Minister for Mines shall advise the Minister whether he would or would not be prepared to grant a licence under that Act in respect of a proposed route and, if he is prepared to so grant, advise the Minister of any condition he would propose to attach to, or any variation he would propose to require in respect of, the licence on grounds relating to traditional usage.
- (4) If the advice of the Minister for Mines pursuant to subclause (3) is that he would not be prepared to grant a licence in respect of a proposed route or if any conditions or variations proposed by the Minister for Mines in respect of a proposed route are not acceptable to either the Joint Venturers or the Minister or if, as a result of changed circumstances, the Joint Venturers propose any variation to an agreed route then the Joint Venturers and the Minister shall seek to agree on another route or routes for the

Pipeline. The provisions of subclauses (1), (2), and (3) and this subclause shall apply to such other route or routes proposed to be agreed between the Joint Venturers and the Minister.

- (5) Where pursuant to subclause (3) or (4) the Minister for Mines has advised that he would be prepared to grant a licence under the Petroleum Pipelines Act in respect of a proposed route and the Joint Venturers and the Minister have accepted any proposed conditions or variations, section 10A of that Act shall not apply to any application by the Joint Venturers pursuant to Clause 16 for a pipeline licence in respect of that route or any part thereof and section 33E of the Public Works Act shall not apply to a subsequent setting apart or taking, in accordance with section 19 of the Petroleum Pipelines Act or pursuant to the Public Works Act or this Agreement, of the land for the Pipeline the subject of the reference to the Minister for Mines.

Initial Customers

8. (1) Prior to submitting any proposal in relation to the matters referred to in paragraph (a) of subclause (1) of Clause 9, each of the Joint Venturers shall be entitled (and is hereby authorized by the State) to reserve to itself, for such period and on such terms as the Joint Venturers may agree, access to such of the transmission capacity of the Pipeline as it requires for the transmission of such gas as each Joint Venturer or its associates may require. The Joint Venturers shall not be obliged to charge each other or to pay tariffs for such access or for transmission services in respect of such gas and, subject to this Agreement, may make such contractual arrangements between themselves in relation thereto as they see fit. The Joint Venturers shall advise to the Minister details of any such agreement at the time of submission of proposals under paragraph (a) of subclause (1) of Clause 9.
- (2) (a) The Joint Venturers shall use all reasonable endeavours to promote use of and obtain customers for the Pipeline.
- (b) Prior to submitting any proposal in relation to the matters referred to in paragraph (a) of subclause (1) of Clause 9, the Joint Venturers shall invite (by such reasonable means as the Minister may approve) firm expressions of interest from Third Parties wishing to purchase transmission capacity in the Pipeline. The invitation shall incorporate a proposed tariff schedule prepared by the Joint Venturers in accordance with principles approved by the Minister (which principles shall apply only to Initial Customers in respect of the Initial Committed Capacity and shall be reasonable in the circumstances) and shall be open for a period of 60 days or such other period as the Minister and the Joint Venturers

may agree. The Minister's response to a request under this paragraph for approval of a means of invitation or tariff principles shall be given within 30 days of the request.

- (c) The Joint Venturers shall use all reasonable endeavours to procure from those Third Parties submitting expressions of interest binding commitments to purchase transmission capacity on terms and conditions acceptable to the Joint Venturers. Any such commitment shall be considered as binding notwithstanding that it may be conditional upon completion of the Pipeline, but shall not be regarded as binding if it is conditional upon the relevant Third Party being able to procure suppliers of or customers for gas.
- (3) (a) The parties (including, in that capacity, the separate Joint Venturers) who commit in accordance with subclause (1) or (2) are referred to in this Agreement as the "Initial Customers".
 - (b) The aggregate of the binding commitments procured under subclause (2) for terms of 10 years or more and the capacity reserved by each of the Joint Venturers under any agreements of the kind referred to in subclause (1) is referred to in this Agreement as the "Initial Committed Capacity".

Joint Venturers to submit proposals

- 9. (1) Subject to and in accordance with the EP Act, the laws relating to traditional usage and the provisions of this Agreement, the Joint Venturers shall, within 6 months of the date of agreement on the route for the Pipeline pursuant to Clause 7 (or thereafter within such extended time as the Minister may allow as hereinafter provided), submit to the Minister to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the construction and operation of the Pipeline, which proposals shall include the location, area, Pipeline route in accordance with Clause 7, lay-out, design, quantities and estimated costs, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —
 - (a) the Pipeline and Pipeline sizing (in accordance with subclause (5));
 - (b) operator and operational arrangements;
 - (c) take off locations for Initial Customers;
 - (d) Pipeline gas quality specifications;

- (e) water supply;
- (f) electricity supply;
- (g) construction and permanent road access;
- (h) temporary works in relation to the construction and testing of the Pipeline;
- (i) construction accommodation and ancillary facilities for the Joint Venturers' workforce;
- (j) other special work sites;
- (k) arrangements for access to the Pipeline by Third Parties;
- (l) tariff setting principles to apply to Third Parties other than Initial Customers in respect of the Initial Committed Capacity;
- (m) use of local labour, professional services, manufacturers, suppliers, contractors and materials;
- (n) the Pipeline Licence and any other leases, licences or easements of land required from the State; and
- (o) an environmental management programme as to measures to be taken in respect of the Joint Venturers' activities under this Agreement, for rehabilitation and the protection and management of the environment.

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 the matter or matters mentioned in one or more of paragraphs (a) to (o) of subclause (1) and, until all of their proposals under this Clause have been approved, the Joint Venturers may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Joint Venturers to submit a proposal under this Clause in respect of the subject matter of the withdrawn proposal.

Services and works from outside Australia

- (3) The Joint Venturers shall, whenever any of the following matters referred to in this subclause are proposed by the Joint Venturers (whether before or during the submission of proposals under this Clause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and 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.

Additional submissions

- (4) At the time when the Joint Venturers submit the last of the proposals pursuant to this Clause they shall —
 - (a) furnish to the Minister's reasonable satisfaction evidence of —
 - (i) the financial capability of the Joint Venturers to undertake the operations to which the said proposals refer; and
 - (ii) the readiness of the Joint Venturers to embark upon and proceed to carry out the operations referred to in the said proposals; and
 - (b) advise the Minister of any associated developments of which they are aware or which they believe to be under contemplation.

Initial Pipeline size

- (5) Unless otherwise agreed by the Minister, the initial development of the Pipeline shall be such that its size is the greater of —
 - (a) a diameter of 400 mm from the commencement of the Pipeline through to Newman thence of 350 mm through to Kalgoorlie; and
 - (b) such diameter or diameters as are required so that the initial operating capacity of the Pipeline is sufficient to provide for all Initial Committed Capacity,and such that —
 - (c) the Pipeline shall be suitable for operation at a pressure of not less than 10,200 kPa; and
 - (d) the capacity of the Pipeline shall be able to be expanded, by using additional compression, by a minimum of 50% of the Initial Committed Capacity.

Freedom of Information Act

- (6) No agency of the State shall be permitted to make any application under section 35 of the *Freedom of Information Act 1992* in respect of any information provided to the State or to the Minister under this Agreement.

Consideration of proposals

10. (1) Subject to the EP Act and laws relating to traditional usage, in respect of each proposal pursuant to subclause (1) of Clause 9 the Minister shall —
- (a) approve of 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 matters mentioned in subclause (1) of Clause 9 not covered by the said proposal; or
 - (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 where implementation of any proposals hereunder has 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 Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

Advice of Minister's decision

- (2) The Minister shall, within two months after receipt of proposals pursuant to subclause (1) of Clause 9 or, where the proposals are to be assessed under section 40(1)(b) of the EP Act or where laws relating to traditional usage apply, then within two months after service on him of an authority under section 45(7) of the EP Act or satisfaction of the requirements under laws relating to traditional usage (as the case may be), give notice to the Joint Venturers of his decision in respect to the proposals.

Consultation with Minister

- (3) If the decision of the Minister is as mentioned 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

- (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 may within two months after receipt of the notice mentioned in subclause (2), 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

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows —
 - (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 Agreement shall on the expiration of that period of 3 months determine and neither the State nor the Joint Venturers shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement; or
 - (b) if by the award the dispute is decided in favour of the Joint Venturers, the decision shall take effect as (and be deemed to be) a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Effect of non-approval of proposals

- (6) Notwithstanding that under subclause (1) any proposals of the Joint Venturers are approved by the Minister or deemed to be approved as a consequence of an arbitration award, unless each and every such proposal and matter is so approved or deemed to be approved within 12 months of the date for submission of proposals pursuant to subclause (1) of Clause 9 or by such extended date or period if any as the Joint Venturers shall be granted or entitled to pursuant to the provisions of this Agreement, then the Minister may give to the Joint Venturers 12 months' notice of intention to determine this Agreement and, unless before the expiration of the said 12 months' period all the detailed proposals and matters are so approved or determined this Agreement shall determine and neither the State nor the Joint Venturers shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

Implementation of proposals

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage, the Joint Venturers shall use their reasonable endeavours (and are hereby authorized by the State) to implement the approved proposals in accordance with the terms thereof and so that the Pipeline is constructed and operational within 2 years of the final approval of the proposals and shall, subject to reasonable maintenance and operational shut down requirements, ensure continuous operation of the Pipeline thereafter. However, notwithstanding any other provision of this Agreement, the Joint Venturers shall not be liable to the State for —
- (a) any indirect, incidental or consequential loss or damage;
 - (b) loss of profits or revenues, other than moneys payable under the terms of this Agreement; or
 - (c) increased costs of any kind,
- under or arising out of any breach by the Joint Venturers of their obligations under this subclause.

Extension or termination of Agreement

11. (1) The periods set forth in subclause (1) of Clause 9 and subclauses (6) and (7) of Clause 10 will be extended (in addition to any extension granted pursuant to Clause 30 or 31) upon request of either the Joint Venturers or the State for such reasonable period or periods as may be necessary from time to time to enable either of the parties hereto to comply with laws relating to traditional usage.
- (2) If either the Joint Venturers or the State considers the development of the Pipeline should not proceed having regard to matters arising out of laws relating to traditional usage or by reason of claims or objections lodged under laws relating to traditional usage, that party shall consult with the other in regard thereto. Subject to such consultation, either party may, at any time before the approval or determination of the proposals required pursuant to subclause (1) of Clause 9 for reasons the subject of such consultation, determine this Agreement by notice to the other, whereupon this Agreement shall determine and neither the State nor the Joint Venturers shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

Additional proposals

12. (1) Subject to subclause (2), if the Joint Venturers at any time during the continuance of this Agreement desire significantly to modify, expand or otherwise vary their activities carried on pursuant to this Agreement beyond those activities specified in any approved proposals or to have the tariff setting principles or Third Party access arrangements approved pursuant to this Agreement varied, they shall give notice of such desire to the Minister and, within 2 months thereafter, shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (o) of subclause (1) of Clause 9 as the Minister may require.
- (2) The Joint Venturers shall not submit any proposal under this Agreement for any extension or addition to the Pipeline without first obtaining the consent of the Minister thereto, but nothing in this subclause shall be taken to prevent the Joint Venturers or any of them from applying for a licence for any pipeline under the Petroleum Pipelines Act or any other applicable law.
- (3) The provisions of Clause 9 (other than subclause (5)) and Clause 10 (other than paragraph (a) of subclause (5) and subclauses (6) and (7)) shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause, with the proviso that the Joint Venturers may withdraw such proposals by notice to the Minister 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. Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage, the Joint Venturers shall implement approved proposals pursuant to this Clause in accordance with the terms thereof.

Use of local labour professional services and materials

13. (1) The Joint Venturers shall, for the purposes of this Agreement —
 - (a) except in those cases where the Joint Venturers can demonstrate it is impracticable so to do, use labour available within Western Australia or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
 - (b) as far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia, or if such services

are not available within Western Australia, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;

- (c) during design and when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers, manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and, where possible, preference to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and, where possible, preference to other Australian suppliers, manufacturers and contractors; and
 - (e) if, notwithstanding the foregoing provisions of this subclause, a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and, where possible, preference to tenders, arrangements or proposals that include Australian participation.
- (2) Except as otherwise agreed by the Minister, the Joint Venturers shall, in every contract entered into with a Third Party for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such Third Party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Joint Venturers concerning such Third Party's implementation of that condition.
- (3) The Joint Venturers shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines, commencing from the date of this Agreement, concerning their implementation of the provisions of this Clause, together with a copy of any report received by the Joint Venturers pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.

- (4) The Joint Venturers shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as reasonably required by the Minister of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that they may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia, together with their reasons therefor and shall, as and when required by the Minister, consult with the Minister with respect thereto.

Protection and management of the environment

14. (1) The Joint Venturers shall in respect of the matters referred to in paragraph (o) of subclause (1) of Clause 9 and which are the subject of approved proposals, carry out a continuous programme including monitoring to ascertain the effectiveness of the measures they are taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment and shall, as and when reasonably required by the Minister from time to time, submit to the Minister a detailed report thereon.
- (2) Whenever as a result of their activities pursuant to subclause (1) or otherwise information becomes available to the Joint Venturers which, in order to more effectively rehabilitate, protect or manage the environment, may necessitate or could require any changes or additions to any approved proposals or require matters not addressed in any such proposals to be addressed, the Joint Venturers shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (3) The Minister may, within 2 months of the receipt of a detailed report pursuant to subclauses (1) or (2), notify the Joint Venturers that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other reasonable matters as the Minister may require in connection therewith.
- (4) The Joint Venturers shall, within 2 months of receipt of a notice given pursuant to subclause (3), submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3) and (4) of Clause 10 shall mutatis mutandis apply.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage, the Joint Venturers shall implement the decision of the Minister or any award on arbitration, as the case may be, in accordance with the terms thereof.

Roads — Private roads

15. (1) The Joint Venturers shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which will be used in their activities hereunder;
 - (b) at their own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Joint Venturers' activities and their invitees and licensees from using those private roads; and
 - (c) at any place where any private roads are constructed by the Joint Venturers so as to cross any railways or public roads, provide at their cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or The Western Australian Government Railways Commission, as the case may be.

Maintenance of public roads

- (2) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Joint Venturers for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority, as the case may be.

Upgrading of public roads

- (3) In the event that for or in connection with the Joint Venturers' activities hereunder the Joint Venturers or the Joint Venturers' workforce uses or wishes to use a public road (whether referred to in subclause (2) or otherwise) which is inadequate for the purpose, or any use by the Joint Venturers or the Joint Venturers' workforce of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear), the Joint Venturers shall pay to the State or the local authority, as the case may require, the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads, having regard to the use of such public road by others.

Acquisition of private roads

- (4) Where a road constructed by the Joint Venturers for their own use is subsequently required for public use, the State may, after consultation with the Joint Venturers and so long as resumption thereof shall not unduly prejudice or interfere with the activities of

the Joint Venturers under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Joint Venturers such amount as is reasonable.

Pipeline Licence and other tenures of land

16. (1) On request made by the Joint Venturers, not later than 3 months after all their proposals submitted pursuant to subclause (1) of Clause 9 have been approved or deemed to be approved and the Joint Venturers have complied with the provisions of subclause (4) of Clause 9, the State shall in accordance with the approved proposals grant to the Joint Venturers, or arrange to have the appropriate authority or other interested instrumentality of the State grant, on such terms and conditions as shall be reasonable having regard to the requirements of the Joint Venturers and for a period of 21 years with one automatic extension for a further period of 21 years on the same terms and conditions —
- (a) a Pipeline Licence in respect of the Pipeline; and
 - (b) leases, licences or easements for the Pipeline and access roads to the Pipeline and other facilities which are the subject of approved proposals,

under and, except as otherwise provided in this Agreement, subject to the Petroleum Pipelines Act or the Land Act as the case may require (each as modified by this Agreement) and will take such action (including the payment of compensation to any person having an interest in any land the subject of the Pipeline Licence or such leases, licences or easements under laws relating to traditional usage) as may be necessary to ensure that the land is and remains free of claims adverse to the interest of the Joint Venturers in that land.

Licence fees and rentals

- (2) (a) The Joint Venturers shall pay in respect of the Pipeline Licence and any other licences granted hereunder pursuant to the Petroleum Pipelines Act, an annual licence fee of the lesser of —
- (i) the fee from time to time applicable under the Petroleum Pipelines Act; and
 - (ii) \$80 per kilometre or part thereof in 30 June 1994 dollars, escalated thereafter to reflect movements in the Consumer Price Index (all groups weighted average of eight capital cities) for each June quarter to the succeeding June quarter or if such Index ceases to be published or becomes inappropriate such other

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Index to be agreed by the parties hereto for the purpose of this subparagraph.

- (b) The Joint Venturers shall pay in respect of other licences and in respect of leases and easements granted hereunder reasonable rentals or other amounts to be agreed between the Minister and the Joint Venturers.

Modification of Land Act

- (3) For the purpose of this Agreement, in respect of any tenures to be granted to the Joint Venturers under this Agreement, the Land Act shall be deemed to be modified by —
 - (a) the substitution for subsection (2) of section 45A of the following sub-section —

“(2) Upon the Minister specifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be leased.”;
 - (b) the deletion of the proviso to section 116;
 - (c) the deletion of section 135;
 - (d) the deletion of section 143;
 - (e) the inclusion of a power to grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this subclause shall not operate so as to prejudice the rights of the State to determine any lease, licence or other right or title in accordance with the other provisions of this Agreement.

Petroleum Pipelines Act

- (4) The Joint Venturers shall provide to the Minister, as part of their proposals for the Pipeline pursuant to subclause (1) of Clause 9, the information and other matters referred to in paragraphs (c) to (j) inclusive of section 8(1) of the Petroleum Pipelines Act and sections 8(2), 8(3) (other than paragraph (b) of subsection (3) of section 8, insofar as it may extend to owners or occupiers taking by grant from the Crown under any law other than the *Transfer of Land Act 1897*, the Land Act or the *Mining Act 1978*), 8(4) and 8(5) shall apply mutatis mutandis to those proposals as if those proposals were an application for a licence under that Act, but otherwise section 8 of that Act shall not apply in relation to the Pipeline.
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- (5) For the purposes of this Agreement, in respect of the Pipeline and any licence relating to the Pipeline, the Petroleum Pipelines Act shall be deemed modified by —
- (a) the substitution for section 10 of the following section —

“10. The Minister shall, on request made pursuant to clause 16(1) of the agreement (as amended from time to time) ratified by the *Goldfields Gas Pipeline Agreement Act 1994*, grant a licence in accordance with the provisions of that agreement and cause to be published in the *Government Gazette* a notice that the licence has been granted.”;
 - (b) the deletion of paragraph (c) in the definition of “pipeline” in section 4;
 - (c) the deletion of sections 9, 12, 13, 21, 24, 26, 27 and 28;
 - (d) in respect of the automatic extension under this Agreement of the Pipeline Licence for an additional term of 21 years after the first 21 year term of the Pipeline Licence, the deletion of section 11; and
 - (e) amending section 16 to include, after the passage “unalienated Crown land”, the passage “(which shall be taken to include, without limitation, any stock route, road reserve, water reserve or railway reserve)”.

Access to SEC Dampier to Bunbury gas transmission pipeline

17. (1) For the purposes of this Agreement, the State shall ensure that the State Energy Commission, where it is technically feasible and economically feasible so to do and subject to compliance by the relevant Third Party with the gas quality specifications then current for the Dampier to Bunbury pipeline, grants access to any Third Party wishing to transmit gas to the Pipeline through the Dampier to Bunbury pipeline at fair and reasonable terms and conditions based on principles (including, but not limited to, those relating to expansion of capacity) that are generally consistent, where relevant, with the principles of access and transmission and the tariff setting principles then applying to the Pipeline.
- (2) Should any Third Party transmitting or wishing to transmit gas through the Dampier to Bunbury Gas pipeline to the Pipeline advise the Minister that he has not been able, for a period of at least 2 months, to reach agreement with the State Energy Commission upon such access or on terms and conditions to be applicable thereto and provide to the Minister such details of the matters in question as are available to that Third Party and as the Minister

may request, the Minister may require that the State Energy Commission provide the Minister with details of the matter forthwith.

- (3) Consequent upon an advice pursuant to subclause (2) the Minister shall, unless the State Energy Commission enters into arrangements with the Third Party concerned satisfactory to the Minister and to the Third Party for resolution of the matter, make a determination as to reasonable terms and conditions and tariffs which he reasonably considers are appropriate in the circumstances for use of the relevant section of the Dampier to Bunbury pipeline by the Third Party. Unless the Minister is advised, within one month of his determination, that the State Energy Commission and the Third Party have resolved the matters between them or that those matters have been referred to arbitration for resolution, the Minister, on the expiration of that period, shall cause the Energy Minister to direct the State Energy Commission to apply the determination of the Minister.
- (4) Any direction by the Energy Minister shall have due regard to operational or technical requirements necessary for safe and reliable operation of the Dampier to Bunbury pipeline and the provisions of this Agreement.

Electricity generating works

18. (1) The State acknowledges that associated developments that have been notified to it by the individual Joint Venturers as planned by the individual Joint Venturers or their associates, are an essential element to the individual Joint Venturers of the overall Pipeline project.
- (2) In respect of any proposed electricity generating facility utilising gas transmitted through the Pipeline (and any electricity transmission works from that facility) which is approved by the Minister under section 7(1) of the Electricity Act (as modified below), the Electricity Act shall be deemed modified by —
 - (a) in sections 7(1) (where it thirdly and fourthly occurs), 8(1), 8(3), 13(1), 13(2), 13(3), 14, 16 and 20, the deletion of “Commission” and the substitution in each of those cases of the following —

“Minister for the time being responsible for the administration of the *Goldfields Gas Pipeline Agreement Act 1994*”; and
 - (b) the deletion of sections 13(4), 13(5), 13(6) and 17, paragraphs (a), (d) and (1) of section 32(1) and section 43.

- (3) The State shall ensure that the State Energy Commission, where such access is technically feasible and economically feasible, shall grant access for electricity transmission to any integrated system of power supply of the State Energy Commission (or portions thereof) for the purpose of enabling the supply of electricity from any associated development approved by the Minister under section 7(1) of the Electricity Act (or other generating facility so approved by the Minister) —
- (a) to the facilities of any Joint Venturer or its associates in the inland Pilbara and Goldfields regions of Western Australia or in other areas determined by the Minister for the purpose of this subclause; or
 - (b) to other consumers approved by the Minister in areas determined by the Minister.
- (4) The terms and conditions of any access granted pursuant to subclause (3) shall be subject to arrangements to be agreed between the State Energy Commission and the person seeking access (but subject always to emergency powers of the State Energy Commission and such operational and technical requirements as are necessary for the safe and reliable operation of its electricity grid) or, failing agreement, such reasonable terms and conditions as shall be determined by arbitration between the person seeking access and the State Energy Commission under the Commercial Arbitration Act.
- (5) Section 7(3) of the Electricity Act shall apply to any Third Party generating electricity from gas transmitted through the Pipeline for the use of a Joint Venturer or any associate of a Joint Venturer and the Minister consents to and approves of the sale of that electricity for that purpose.
- (6) The provisions of clause 7 shall mutatis mutandis apply to or in respect of any lateral pipeline forming part of an associated development undertaken by —
- (a) any Joint Venturer or any of its associates to enable it to consume gas in its own mining or mineral processing operations; or
 - (b) any Third Party to whom subclause (5) applies.
- (7) Nothing contained in this Agreement shall be taken to impose any obligation on the Joint Venturers in respect of any associated development and no event or circumstance which arises in connection with any associated development shall affect any of the rights or obligations of the Joint Venturers under this Agreement.

Gas transmission market growth

19. During the currency of this Agreement the Joint Venturers shall actively promote, and cause any operator of the Pipeline to actively promote, use of the Pipeline by Third Parties and shall pursue growth in the market for gas transmission through the Pipeline. The Joint Venturers shall confer with the Minister upon request of the Minister from time to time in respect to their endeavours pursuant to this Clause.

Access to Pipeline and Pipeline expansion

20. (1) The Joint Venturers shall provide (and are authorized by the State to provide) in accordance with this Clause non-discriminatory Third Party access to such capacity, including Developable Capacity, of the Pipeline as may from time to time not be contracted or utilised (including so much of the Initial Committed Capacity as is, from time to time, unutilised).
- (2) The terms and conditions of Third Party access to the Pipeline (including access by any Initial Customer to capacity which is in excess of that Initial Customer's portion of the Initial Committed Capacity) shall be subject to and in accordance with by-laws from time to time made, altered or repealed as provided in subclause (1) of Clause 21 or other applicable laws or subsidiary legislation referred to in subclause (2) of Clause 21 and, subject thereto or, if no such by-laws, laws or subsidiary legislation are made or in force, then upon non-discriminatory fair and reasonable terms and conditions and, in relation to tariffs, subject to Clause 22.
- (3) The Joint Venturers shall report annually to the Minister all requests by Third Parties for use of the Pipeline and the extent to which such requests have been met and, where such requests have not been met, shall provide a full explanation why this was so and shall provide such further information as is available to them relating to the matter as the Minister may reasonably require.
- (4) The Joint Venturers shall use all reasonable endeavours to develop the capacity of the Pipeline (including the installation of additional compressor stations and looping of the Pipeline) as may be necessary from time to time to accommodate the requirements of Third Parties wishing to transmit gas through the Pipeline. The obligations of the Joint Venturers under this subclause shall be subject to it being technically feasible and economically feasible to so develop the capacity of the Pipeline and shall not be taken to impose on the Joint Venturers any requirement to construct lateral pipelines.
- (5) If the Minister considers that the Joint Venturers have not met the reasonable needs of a Third Party by developing the capacity of the

Pipeline pursuant to this Clause, the Minister may direct the Joint Venturers to submit, within 3 months of that direction or within one month after all necessary EP Act approvals have been obtained, whichever is the later, proposals for expansion of the capacity of the Pipeline.

- (6) The Joint Venturers shall comply with any direction pursuant to subclause (5) and the provisions of subclauses (1), (2) (3) and (4) of Clause 10 shall mutatis mutandis apply to the proposals. The Joint Venturers shall implement the decision of the Minister or any award on arbitration as the case may be in accordance with the terms thereof PROVIDED HOWEVER that the Joint Venturers shall not be required to implement such proposals where it is not technically feasible or economically feasible for them to do so, having regard to the legitimate business interests of the Joint Venturers.
- (7) The Joint Venturers shall, at the cost of the relevant Third Party, undertake the connection to the Pipeline of a lateral pipeline for any Third Party reasonably requiring such connection, subject to —
 - (a) the operational and technical requirements necessary for the safe and reliable operation of the Pipeline and any other pipelines to which the Pipeline is or is committed to be connected or which are or are committed to be connected to the Pipeline;
 - (b) the Third Party access and tariff provisions relating to the Pipeline pursuant to this Agreement;
 - (c) the applicable billing and metering arrangements;
 - (d) compliance with the gas quality specifications then applicable to the Pipeline; and
 - (e) where reasonably required, the provision of security for the payment of transmission charges by the relevant Third Party.

For the purpose of this subclause, “connection” means the physical connection of the Third Party’s pipeline to the Pipeline and the installation of valves, metering equipment, control systems and other appurtenances necessary as a consequence of the connection.

- (8) Should a Third Party wishing to obtain access to the Pipeline advise the Minister that he has not been able, for a period of at least 2 months, to reach agreement with the Joint Venturers upon such access or on terms and conditions to be applicable thereto and provide to the Minister such details of the matter in question as the Minister may request, the Minister may require that the Joint

Venturers forthwith provide the Minister with details of the matter as are available to them. This subclause does not apply in relation to the determination of the Initial Committed Capacity under Clause 8.

- (9) Consequent upon an advice pursuant to subclause (8) the Minister may, unless the Joint Venturers enter into arrangements with the person concerned to the reasonable satisfaction of the Minister for resolution of the matter, determine reasonable terms and conditions, consistent with the tariff setting principles then applicable under Clause 22 upon which transmission services shall be provided to the person concerned (which may include a direction to expand the capacity of the Pipeline), but in making any such determination, the Minister shall have due regard for —
- (a) the terms of this Agreement;
 - (b) the legitimate business interests of the Joint Venturers;
 - (c) the interests of all Third Parties holding contracts for transmission services in the Pipeline;
 - (d) the interests of others in whose favour a determination has been made under this subclause; and
 - (e) the operational and technical requirements necessary for the safe and reliable operation of the Pipeline.
- (10) The Joint Venturers shall comply with any reasonable direction by the Minister under subclause (9) PROVIDED THAT they shall not be required to expand the capacity of the Pipeline unless it is technically feasible and economically feasible (having regard for the matters referred to in paragraph (b) of subclause (9)) to do so. If the Joint Venturers form the opinion that the direction of the Minister is unreasonable or that it is not technically feasible or economically feasible to expand the capacity of the Pipeline, they may refer the matter to arbitration pursuant to Clause 37.
- (11) The Joint Venturers shall from time to time as requested meet with the Minister to consider the extent the Pipeline is meeting the needs of industry generally within the region served by or which could be served by the Pipeline.

By-laws and regulations

21. (1) The Governor in Executive Council may, upon recommendation of the Energy Minister, make, alter and repeal by-laws relating to terms and conditions for access to and use by Third Parties of the Pipeline which incorporate and are in all material respects consistent with the approved proposals, the provisions of Clause 20 and the tariff setting principles applicable from time to time under

Clause 22. The Energy Minister shall consult with the Joint Venturers prior to making any such recommendation and, in making any such recommendation, shall have due regard for (inter alia) —

- (a) the legitimate business interests of the Joint Venturers;
- (b) the interests of all Third Parties holding contracts for transmission services in the Pipeline; and
- (c) the operational and technical requirements necessary for the safe and reliable operation of the Pipeline.

If the Joint Venturers at any time consider that any by-law made under this Agreement has, as a result of altered circumstances, become unreasonable or inappropriate, then the Joint Venturers may recommend to the Energy Minister such alteration or repeal as they believe should be made and, if requested by the Joint Venturers, the Energy Minister will consult with the Joint Venturers with regard thereto.

- (2) In the event of uniform laws or subsidiary legislation being promulgated for petroleum and gas pipeline operation in Western Australia then, subject to subclause (3), any by-laws made under subclause (1) shall cease and determine on the expiry of two years after the coming into operation of the uniform laws or subsidiary legislation.
- (3) The uniform laws and subsidiary legislation referred to in subclause (2) shall not have effect to the extent that the Joint Venturers can demonstrate that the uniform laws or subsidiary legislation there referred to have or are likely to have a material adverse effect on the legitimate business interests of the Joint Venturers but in any event, insofar as any such uniform laws or subsidiary legislation may purport to apply to the Initial Committed Capacity, such of those uniform laws or that subsidiary legislation shall only so apply to the extent that the Initial Committed Capacity is, from time to time, unutilised.

Tariffs

- 22. (1) Contracts for transmission of natural gas and associated services negotiated by the Joint Venturers with Third Parties must incorporate tariffs that are fair and reasonable and consistent with the tariff setting principles approved by the Minister under this Agreement.
- (2) If the State at any time, as a result of altered circumstances considers that any approved tariff setting principles should be varied, then the Minister shall have the right to consult with the

Joint Venturers and to require them to negotiate in good faith to address those altered circumstances. However, the failure of the Joint Venturers and the Minister to reach agreement shall not entitle the Minister to any remedy or to submit any matter to arbitration. Where agreement is reached as to changes in the approved tariff setting principles, those principles shall thereafter be deemed amended to include those changes.

- (3) The Joint Venturers shall establish and maintain an “indicative tariff schedule” based on the tariff setting principles approved from time to time by the Minister under this Agreement. The “indicative tariff schedule” shall provide sufficient detail to allow potential users to calculate gas transmission charges likely to apply in any reasonable circumstance.
- (4) The Joint Venturers shall provide to the Minister the “indicative tariff schedule” applicable from time to time.
- (5) The Joint Venturers shall make available the “indicative tariff schedule” and the approved tariff setting principles and the approved pipeline gas quality specifications as may be current from time to time to parties having a genuine interest in negotiating for the transmission of gas through the Pipeline in such detail as they may reasonably request.
- (6) The provisions of subclauses (8) and (9) of Clause 20 shall mutatis mutandis apply to any failure by a Third Party and the Joint Venturers to agree on a tariff.
- (7) The Joint Venturers shall make available to the Minister, upon request from time to time, all or any gas transmission contracts entered into with Third Parties in relation to the Pipeline. The Minister shall not use the information contained in any such contracts other than for the purpose of making determinations or giving directions as provided for in this Agreement and obtaining advice in relation thereto. The Minister shall ensure that any person not being an officer of the Public Service of the said State to whom the information is given in accordance with this Clause is bound to keep it confidential.

Accounting principles

23. (1) The Joint Venturers shall maintain such records (including a separate set of accounts in accordance with accounting procedures to be agreed between the Minister and the Joint Venturers) in respect of the establishment, operation and use of the Pipeline as may be required to show to the Minister’s reasonable satisfaction that transmission of gas through the Pipeline is available on a

non-discriminatory basis at fair and reasonable prices. The records shall include, inter alia —

- (a) information as to the nature and ownership of gas transmitted through the Pipeline; and
 - (b) costs of and revenue from the transmission of gas through the Pipeline.
- (2) The records will inter alia identify all transactions between the Joint Venturers and the individual companies comprising the Joint Venturers and companies associated with or related to the Joint Venturers or any of them and between any of them and Third Parties relating to the transmission of gas through the Pipeline.
 - (3) On the request from time to time of the Minister the Joint Venturers shall promptly provide the records maintained pursuant to this Clause and such information regarding the records as the Minister may reasonably require including, if requested by the Minister, an auditor's certification that the records have been properly maintained in accordance with this Clause.
 - (4) Information received by the Minister pursuant to this Clause shall not be used by the Minister other than for the purpose of determining or assisting in the exercise of the Minister's rights and the performance of his obligations hereunder and in relation to pipelines generally within the said State.

Zoning

24. The State shall ensure, after consultation with each relevant local authority, that the Pipeline Licence and any lands the subject of any lease, licence or easement granted to the Joint Venturers under this Agreement shall 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 authority or other authority of the State on the ground that such activities are contrary to any zoning by-law, regulation or order.

No discriminatory rates

25. (1) 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 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 and intended to be granted under this Agreement.

- (2) The State shall ensure that, notwithstanding the provisions of subclause (1) or any act or thing done or purported to be done under any Act, the valuation of all leasehold lands the subject of this Agreement (except as to any part upon which a permanent residence may be erected or upon which there stand any improvements that are used in connection with a commercial undertaking not directly related to the Pipeline) shall, for rating purposes under the Local Government Act, be deemed to be on the unimproved value thereof.
- (3) For the avoidance of doubt, the Joint Venturers are deemed not to be gas supply companies for the purposes of section 538 of the Local Government Act.
- (4) It is hereby declared and agreed that the provisions of section 533B of the Local Government Act shall not apply to any lands the subject of this Agreement.

Resumption for the purposes of this Agreement

26. (1) The State is hereby empowered, as and for a public work under the Public Works Act, to set apart, take and resume, for the purposes of this Agreement, lands required for the route of the Pipeline as specified in approved proposals and, notwithstanding any other provisions of that Act, may lease or grant licences or easements in respect of the whole or portions of that land in accordance with approved proposals and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of land resumed hereunder or the resumption thereof. The Joint Venturers shall pay to the State, on demand, the costs of and incidental to such resumption of any land, any right, title or other interest in which was derived from the Crown in right of the State otherwise than under laws relating to traditional usage.
- (2) For the purposes of this Agreement, and in the Public Works Act, when construed for the purposes of this Agreement, a reference to "land" shall be read as extending to any land, or to any portion of any land, or to the subsoil, surface or airspace relating thereto and to any estate, right, title, easement, lease, licence, privilege or other interest, in, over, under, affecting or in connection with that land or any portion, stratum or other specified sector of that land.

No resumption

27. Subject to the performance by the Joint Venturers of their obligations under this Agreement, the State shall not, during the currency of this Agreement, without the consent of the Joint Venturers, resume or suffer or permit to be resumed by any State instrumentality or by any local authority 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 or any of the works on the lands the subject of any licence, lease or easement 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' activities under this Agreement.

Assignment

28. (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 any person, with the consent of the Minister (which shall not be withheld unreasonably having regard, inter alia, to the interests of the State), the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holders of the Pipeline Licence or any other lease, licence or easement) and of the obligations of the Joint Venturers hereunder, subject however, in the case of an assignment, subletting or disposition to the assignee, sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with, observe and perform the provisions hereof on the part of the Joint Venturers to be complied with, observed or performed in regard to the matter or matters the subject of such assignment, subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1), the Joint Venturers shall at all times, during the currency of this Agreement, be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained in this Agreement and in the Pipeline Licence or any other lease, licence or easement the subject of an assignment, mortgage, subletting or disposition under subclause (1) PROVIDED THAT where a Joint Venturer has assigned or otherwise disposed of any part of its interest under this Agreement with the consent of the Minister as provided in

subclause (1), the Minister shall agree to release the Joint Venturers from such liability in respect of the part so assigned.

(3) Notwithstanding the provisions of the Petroleum Pipelines Act, the *Transfer of Land Act 1893* and the Land Act, insofar as the same or any of them may apply —

(a) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this Clause of or over the Pipeline Licence or any other lease, licence or easement granted under or pursuant to this Agreement by the Joint Venturers or any assignee, sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

(b) no transfer, assignment, mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under this Clause.

Variation

29. (1) The parties to this Agreement may from time to time, by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement or of any lease, licence or easement granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating the subject matter of this Agreement.

(2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition, substitution, cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

(3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Force majeure

30. 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 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, pickets, industrial boycotts, 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 or 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 an act authorised by this Agreement or, where the State is the party claiming force majeure, any act of the State or any authority of the State) 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 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

31. 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 or in any approved proposal 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.

Determination of Agreement

32. (1) If —
- (a) the Joint Venturers make default which the State considers material in the due performance or observance of any of the covenants or obligations of the Joint Venturers in this Agreement or in the Pipeline Licence or any other lease, licence or easement granted or assigned under this Agreement on their part to be performed or observed; or
 - (b) the Joint Venturers abandon or repudiate this Agreement or their activities under this Agreement

and such default is not remedied or such activities resumed within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3) the State may, by notice to the Joint Venturers, determine this Agreement.

- (2) The notice to be given by the State in terms of subclause (1) shall specify the nature of the alleged default or other ground so entitling the State to exercise such right of determination and, where appropriate and known to the State, the party or parties responsible therefor and shall be given to the Joint Venturers and all such assignees, mortgagees, chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or by whom an assignment, mortgage, charge or disposition has been effected in terms of Clause 28 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such assignee, mortgagee, chargee or disponee.
- (3) (a) If the Joint Venturers contest the alleged default (or the validity of the State's opinion on the materiality thereof), abandonment or repudiation referred to in subclause (1) the Joint Venturers shall, within 60 days after notice given by the State as provided in subclause (2), refer the matter in dispute to arbitration.
- (b) If the question is decided against the Joint Venturers, the Joint Venturers shall comply with the arbitration 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 paragraph (a) of subclause (1) shall not have been remedied within 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.

Effect of determination of Agreement

33. On the determination of this Agreement —

- (a) (i) except as otherwise agreed by the Minister and the Joint Venturers, the rights of the parties 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 indemnity given under this Agreement;

- (ii) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (iii) save as aforesaid and as otherwise provided in this Agreement, neither 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; and
- (b) the Pipeline Licence or any other lease, licence or easement granted pursuant to this Agreement and then in force shall cease to have the benefit of the rights and privileges conferred by this Agreement, and any modification by this Agreement of any Act or law in relation thereto shall cease to apply, but otherwise the same shall continue in force under and subject to the Act or Acts pursuant to which they were granted for the balance of their respective unexpired terms and any extensions thereto that may be granted pursuant to any relevant Act.

Environmental protection

34. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their activities under this Agreement that may be made pursuant to the EP Act.

Indemnity

35. 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 without in any way affecting the Joint Venturers' obligations to the State under Clause 26, the foregoing provisions of this Clause shall not apply to any resumption by the State pursuant to Clause 26 AND PROVIDED FURTHER THAT, subject to the provisions of any other relevant Act such indemnity shall 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.

Subcontracting

36. Without affecting their liabilities under this Agreement, the Joint Venturers shall have the right from time to time to entrust to Third Parties the carrying out of any portions of the activities which they are authorised or obliged to carry out hereunder.

Arbitration

37. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights, duties or liabilities of any party under this Agreement or as to any matter to be agreed upon between the parties under this Agreement shall, in default of agreement between the parties 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 and notwithstanding section 20(1) of that Act, each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State, the Minister or any other Minister in the Government of the said State is, by this Agreement, given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered, upon the application of either of the parties, 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 under this Agreement and an award may, in the name of the Minister, grant any further extension or variation for that purpose.

Consultation

38. The Joint Venturers shall, during the currency of this Agreement, consult with and keep the State fully 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 might significantly affect the overall interest of the State under this Agreement.

Notices

39. Any notice, consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the

Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Joint Venturers at their respective addresses hereinbefore set forth or other address in the said State nominated by the Joint Venturers to the Minister and by the Joint Venturers 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 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.

Gas Undertakings Act exemption

40. The provisions of the *Gas Undertakings Act 1947* shall have no application to the Joint Venturers in relation to the transmission of gas through the Pipeline or to gas used by any of the Joint Venturers and their respective associates in its or their mining and processing activities.

Training Levy exemption

41. The provisions of the *Building and Construction Industry Training Levy Act 1990* and the *Building and Construction Industry Training Fund and Levy Collection Act 1990* shall have no application to the Joint Venturers when acting pursuant to and in accordance with the provisions of this Agreement.

Existing infrastructure

42. The proposals submitted by the Joint Venturers under Clause 9 or 12 may, with the approval of the Minister and that of any Third Parties concerned, instead of providing for the construction of new facilities of the kind therein mentioned, provide for the use by the Joint Venturers, upon reasonable terms and conditions, of any existing facilities of such kind.

Stone, sand, gravel and water

43. If approved proposals under Clause 9 or 12 so provide —
 - (a) the Joint Venturers may obtain stone, sand and gravel from the Pipeline route, without the payment of any royalty and without the need to apply for any tenement under the *Mining Act 1978*, for construction purposes in respect of the Pipeline; and
 - (b) subject to the *Rights in Water and Irrigation Act 1914*, the State shall grant or cause to be granted to the Joint Venturers such licences as they may reasonably require to develop sources of, draw and dispose of water for the purposes of hydrostatic testing of the Pipeline during and after its construction. The Joint Venturers shall meet their own costs in relation thereto and in respect of any

such licences. Any such licences shall be issued on reasonable terms and conditions.

Stamp Duty Exemption

44. (1) The State shall exempt the following instruments from any stamp duty which, but for the operation of this clause, would or might be assessed as chargeable on them:

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any permitted assignee the Pipeline Licence or any other licence, lease or easement;
- (d) any assignment, sublease or disposition (other than by way of mortgage or charge) made in conformity with the provisions of subclause (1) of Clause 28,

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made more than 2 years after the Pipeline was first used or installed ready for use.

(2) If, prior to the date on which the Bill referred to in Clause 4 to ratify this Agreement is passed as an Act, stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1), the State, when such Bill is passed as an Act, shall on demand refund any stamp duty so paid to the person who paid it.

Guarantees

45. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State to the Joint Venturers whether or not notice thereof is given to WMCH or NPL (as the case requires) by the State:

- (a) WMCH hereby guarantees to the State due performance by Wesminco Oil Pty. Ltd. of all its obligations to be performed hereunder; and
- (b) NPL hereby guarantees to the State the due performance by Normandy Pipelines Pty. Ltd. of all its obligations to be performed hereunder.

Term of Agreement

46. (1) Subject to the provisions of subclause (6) of Clause 10 and Clauses 11, 32 and 33 this Agreement shall expire on the expiration

of the Pipeline Licence by effluxion of time at the end of the second term of 21 years of the Pipeline Licence or on the sooner determination or surrender of the Pipeline Licence.

- (2) Prior to the expiration of the Pipeline Licence the Joint Venturers may, provided they are not in default of their obligations under this Agreement, make an application under section 11 of the Petroleum Pipelines Act for renewal of the Pipeline Licence and the provisions of that Act (unaffected by any modification of that Act by subclause (5) of Clause 16) shall apply to that application and any renewal of the Pipeline Licence pursuant to that application.

Applicable law

47. This Agreement shall 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 said **THE**)
HONOURABLE RICHARD FAIRFAX) R F COURT
COURT in the presence of:)

COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT

SIGNED, SEALED AND DELIVERED)
by Andrew Michelmore as the Attorney)
and in the name of **WESMINCO OIL**) A MICHELMORE
PTY. LTD. under the Power of Attorney) Signature of Attorney
dated 18 March 1994 in the presence of:)

P L WIESE
Signature of Witness

SIGNED, SEALED AND DELIVERED)
by Richard John Avery Hill as the Attorney)
and in the name of **NORMANDY**) RICHARD J A HILL
PIPELINES PTY. LTD. under the Power) Signature of Attorney
of Attorney dated 22nd March 1994 in the)
presence of:)

P L WIESE
Signature of Witness

Executed for and on behalf of **BHP**)
MINERALS PTY. LTD. by its duly)
authorised attorney under power of)
attorney dated 16th March 1994 in the)
presence of:)

ADA LIAN DAVIES
Signature of Witness

Ada Lian Davies
7 Glasnevin Court
WATERFORD WA 6152
Manager — Legal

G WEDLOCK
Signature of Attorney
GEOFFRED LLOYD
WEDLOCK

SIGNED, SEALED AND DELIVERED)
by Andrew Michelmore as the Attorney)
and in the name of **WESTERN MINING**)
CORPORATION HOLDINGS)
LIMITED under the Power of Attorney)
dated 18th March 1994 in the presence of:)

P L WIESE
Signature of Witness

ANDREW MICHELMORE
Signature of Attorney

SIGNED, SEALED AND DELIVERED)
by Richard John Avery Hill as the Attorney)
and in the name of **NORMANDY**)
POSEIDON LIMITED under the Power)
of Attorney dated 22nd March 1994 in the)
presence of:)

P L WIESE
Signature of Witness

RICHARD J A HILL
Signature of Attorney