



Western Australia

Barrow Island Act 2003

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Barrow Island Act 2003

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Defined terms

Barrow Island Act 2003

An Act —

- **to ratify, and authorise the implementation of, an agreement between the State and the Gorgon joint venturers relating to a proposal to undertake offshore production of natural gas and other petroleum and a gas processing and infrastructure project on Barrow Island; the agreement having been entered into having regard to the need to minimise environmental disturbance on Barrow Island (a class A nature reserve) and providing for the support of conservation programs relating to Barrow Island and other parts of the State;**
 - **to make provisions to enable land on Barrow Island (but no more than 332 ha in total of uncleared land) to be used, under the *Land Administration Act 1997*, for gas processing project purposes;**
 - **to make provisions as to the conveyance and underground disposal of carbon dioxide recovered during gas processing on Barrow Island,**
- and for incidental purposes.**

[Long title amended by No. 24 of 2013 s. 4.]

Part 1 — Preliminary

1. Short title

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

2. Commencement

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

[(2) *deleted*]

[Section 2 amended by No. 13 of 2005 s. 48(2).]

3. Definitions

In this Act —

2013 variation agreement means the agreement a copy of which is set out in Schedule 2;

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

Note:

Though repealed by the *Petroleum Act 1967*, the *Petroleum Act 1936* continues to apply to the Barrow Island lease and renewals of it (see the *Petroleum Act 1967* s. 134).

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

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

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

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

gas means natural gas and other petroleum;

gas processing project purpose includes, without limiting the ordinary meaning of the term, any of the following —

- (a) the conveyance by pipeline of gas or a product of gas processing;
- (b) the provision of support facilities and services —
 - (i) for any gas processing project on Barrow Island; or
 - (ii) for purposes of the Barrow Island lease;
- (c) the provision of emergency shelter facilities on Barrow Island;
- (d) any other purpose ancillary or beneficial to a gas processing project purpose;

LA Act means *Land Administration Act 1997*;

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

the Agreement means the Gorgon Gas Processing and Infrastructure Project Agreement, a copy of which is set out in Schedule 1, and, except in section 5(1), includes the Agreement as varied from time to time in accordance with its provisions and by the 2013 variation agreement;

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

[Section 3 amended by No. 24 of 2013 s. 5.]

4. Notes not part of the law

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

Part 2 — Ratification of Agreement

5. Agreement ratified and implementation authorised

- (1) The Agreement is ratified.
- (2A) The 2013 variation agreement is ratified.
- (2) The implementation of the Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement operates and takes effect despite any other Act or law.

[Section 5 amended by No. 24 of 2013 s. 6.]

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

6. Leasing parts of the reserve

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

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- (3) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the CALM Act Minister for the LA Act Minister to determine or vary, under the LA Act section 79(1)(c), a condition of a lease referred to in subsection (1) that relates to or affects the conservation of flora and fauna on the reserve.
- (4) The LA Act Minister is not to grant a lease referred to in subsection (1) in relation to an area of the reserve that would, if granted, coincide with or overlap the area to which the Barrow Island lease relates, unless the Barrow Island lease —
 - (a) has been surrendered under the *Petroleum Act 1936* section 66 in respect of the area to which the lease relates; or
 - (b) is otherwise no longer in force in respect of the area to which the lease relates.

Note:

Though repealed by the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Act 1936* continues to apply to the Barrow Island lease and renewals of it (see the *Petroleum and Geothermal Energy Resources Act 1967* s. 134).

- (5) For the purposes of granting a lease referred to in subsection (1), the *Petroleum Act 1936* section 66 is to be read as enabling the Barrow Island lessee, at any time with the consent of the Governor, to surrender any part of the Barrow Island lease including the natural surface and below the natural surface to a depth specified in the instrument of surrender.
- (6) The LA Act sections 12, 14 and 35(4)(a)(i) do not apply to a lease referred to in subsection (1) or a proposed lease of that kind.
- (7) The LA Act section 18 does not apply to a lease referred to in subsection (1) that is granted to a person who is a party to the Agreement.

7. Licences affecting the reserve

- (1) The LA Act Minister may, under the LA Act section 91, grant a licence in respect of land that is part of the reserve for a gas processing project purpose, even though that land is part of the reserve, but subject to section 9.
- (2) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the BI Act Minister and, if the Barrow Island lessee's consent is required under the Barrow Island lease, the Barrow Island lessee for the LA Act Minister to do any of the following in relation to a licence referred to in that subsection —
 - (a) grant the licence;
 - (b) fix or extend the duration of the licence under the LA Act section 91(2)(a);
 - (c) amend a provision of the licence under the LA Act section 91(2)(d).
- (3) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the CALM Act Minister for the LA Act Minister to determine, under the LA Act section 91(2)(b), or vary, a condition of a licence referred to in subsection (1) that relates to or affects the conservation of flora and fauna on the reserve.
- (4) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the BI Act Minister for the LA Act Minister to do any of the following in relation to a licence referred to in that subsection —
 - (a) give an approval under the LA Act section 18(7) in relation to the licence where the licence is granted to a person who is not a party to the Agreement;
 - (b) terminate the licence under the LA Act section 91(3).
- (5) For the purposes of subsection (1), the LA Act section 91(5) is to be read as providing that nothing in that Act prevents the simultaneous existence on the same area of the reserve of —

- (a) a licence referred to in subsection (1); and
 - (b) a mining, petroleum or geothermal energy right, as that term is defined in the LA Act section 3(1), including a right under the Barrow Island lease.
- (6) The LA Act sections 12 and 14 do not apply to a licence referred to in subsection (1) or a proposed licence of that kind.
- (7) The LA Act section 18 does not apply to a licence referred to in subsection (1) that is granted to a person who is a party to the Agreement.

[Section 7 amended by No. 35 of 2007 s. 90.]

8. Easements affecting the reserve

- (1) The LA Act Minister may, under the LA Act section 144, grant an easement in respect of land that is part of the reserve for a gas processing project purpose, even though that land is part of the reserve, but subject to section 9.
- (2) For the purposes of subsection (1) —
- (a) while the Barrow Island lease is in force —
 - (i) the references in the LA Act Part 8 to the management body are to be read as if they were references to the BI Act Minister; and
 - (ii) the references in the LA Act Part 8 to the lessee or any other person having any interest, right, title, or power in respect of the relevant land are to be read as if they were references to —
 - (I) each person to whom is granted a lease referred to in section 6(1), a licence referred to in section 7(1) or an easement referred to in section 8(1); and
 - (II) if the Barrow Island lessee's consent is required under the Barrow Island lease, the Barrow Island lessee;

and

- (b) when the Barrow Island lease is not in force, the references in the LA Act Part 8 to the management body are to be read as if they were references to the BI Act Minister.
 - (3) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the CALM Act Minister for the LA Act Minister to specify, under the LA Act section 144(1)(b), or vary, a condition of an easement referred to in subsection (1) that relates to or affects the conservation of flora and fauna on the reserve.
 - (4) For the purposes of subsection (1), the LA Act is to be read as requiring the consent of the BI Act Minister for the LA Act Minister to do any of the following in relation to an easement referred to in that subsection —
 - (a) give an approval under the LA Act section 18(7) in relation to the easement where the easement is granted to a person who is not a party to the Agreement;
 - (b) order the easement to be cancelled under the LA Act section 145;
 - (c) order the easement to be forfeited under the LA Act section 35(3).
 - (5) The LA Act sections 12, 14, 35(4)(a)(i) and 44 do not apply to an easement referred to in subsection (1), or a proposed easement of that kind.
 - (6) The LA Act section 18 does not apply to an easement referred to in subsection (1) that is granted to a person who is a party to the Agreement.
- 9. No more than 332 ha in total of uncleared land to be subject of leases, licences or easements**
- (1) The total area of uncleared land made up by the parts of the reserve that are the subject of leases referred to in section 6(1),

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licences referred to in section 7(1) or easements referred to in section 8(1) is not to exceed 332 ha.

- (2) In subsection (1) —

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

[Section 9 amended by No. 24 of 2013 s. 7.]

10. Status and purposes of reserve not affected

- (1) Despite the grant of a lease referred to in section 6(1), a licence referred to in section 7(1) or an easement referred to in section 8(1) —
- (a) the reserve remains a class A reserve under the LA Act reserved for the purpose of conservation of flora and fauna; and
 - (b) the grant is not to be treated as reducing the area of, or excising an area from, the reserve for the purposes of the LA Act section 42(4).
- (2) Nothing in this Act affects the operation of the LA Act section 45(3).

Part 4 — Conveyance and underground disposal of carbon dioxide

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

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

[12. Deleted by No. 13 of 2005 s. 48(3)².]

13. Disposal of carbon dioxide underground

- (1) A person must not inject carbon dioxide into an underground reservoir or other subsurface formation for the purpose of disposing of the carbon dioxide unless the person has the BI Act Minister’s approval under this section to do so.
Penalty: \$50 000.
- (2) An application for the BI Act Minister’s approval under this section —
 - (a) is to be made in the form and manner approved by the BI Act Minister;
 - (b) is to be accompanied by particulars of —
 - (i) the position, size, capacity and geological structure of the underground reservoir or other subsurface formation;
 - (ii) the rate of the proposed disposal of the carbon dioxide, the volume and composition of the

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- carbon dioxide proposed to be disposed of and the expected duration of the proposed disposal;
- (iii) the methods proposed to be used for the injection and disposal of the carbon dioxide;
 - (iv) the capability of the underground reservoir or other subsurface formation to confine the disposed carbon dioxide; and
 - (v) technical advice and data available to the applicant in relation to the proposed disposal;
- and
- (c) is to be accompanied by the prescribed fee, if any.
- (3) The BI Act Minister may, at any time, require the applicant —
- (a) to give the BI Act Minister, within the time specified by that Minister, further information in writing in connection with the application; or
 - (b) to inform such other persons as the BI Act Minister considers necessary that the application has been made.
- (4) In considering an application under this section the BI Act Minister may seek, and have regard to, the advice or information of any person on a matter that in the opinion of that Minister is relevant to the proposed disposal.
- (5) The BI Act Minister is not to give his or her approval under this section unless the BI Act Minister has consulted, and had regard to the advice, if any, of —
- (a) the LA Act Minister;
 - (b) the CALM Act Minister; and
 - (c) any other person who is required to be informed under subsection (3)(b) of the application.
- (6) The BI Act Minister may grant his or her approval under this section subject to any condition or restriction including, without limiting the generality of the Minister's discretion, a condition as to —

- (a) the payment of money to the State;
- (b) indemnification of the State; or
- (c) the transferability or otherwise of the approval.

Part 5A — Indemnification by State for long-term liability resulting from underground disposal of carbon dioxide

[Heading inserted by No. 13 of 2015 s. 4.]

14A. Terms used

In this Part —

CO₂ means carbon dioxide;

CO₂ disposal management plan has the meaning given in the section 13 approval in clause 1 of the collateral deed;

CO₂ injection cessation date has the meaning given in the section 13 approval in clause 1 of the collateral deed;

CO₂ injection operations means the disposal of CO₂ recovered during gas processing on Barrow Island undertaken as part of the Project by —

- (a) injecting that CO₂ into the formation as part of a process known as geosequestration; and
- (b) establishing and operating infrastructure and facilities for that purpose and conducting associated monitoring activities,

in accordance with the Agreement and the section 13 approval;

CO₂ injection site closure notice means a notice issued no earlier than 15 years after the CO₂ injection cessation date in accordance with clause 8 of the collateral deed;

collateral deed means the CO₂ Disposal by Injection — Collateral Deed dated 14 September 2009 executed by the then Joint Venturers (Chevron (TAPL) Pty Ltd (ABN 18 081 647 047), Mobil Australia Resources Company Pty Limited (ABN 38 000 113 217) and Shell Development (Australia) Proprietary Limited (ABN 14 009 663 576)) in favour of the State and given in compliance with condition 2 of the section 13 approval;

common law liability means liability for damages —

- (a) in an amount claimed on the basis of a common law cause of action and either —
 - (i) awarded by a court; or
 - (ii) payable under a settlement, if the settlement was reached with the prior approval of the Commonwealth representative and the BI Act Minister as to the amount;
- and
- (b) not arising as a result of a failure by any of the Joint Venturers to act in good faith or without malice, fraud or recklessness;

Commonwealth representative means —

- (a) the Minister of the Commonwealth to whom the administration of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Commonwealth) is from time to time committed; or
- (b) another Minister or official of the Commonwealth that is from time to time notified to the BI Act Minister by the Minister referred to in paragraph (a);

formation has the meaning given in the section 13 approval;

Gorgon CO₂ means CO₂ recovered during processing of gas or other petroleum from the Title Areas or, in accordance with clause 18 of the Gorgon Agreement, from the Greater Gorgon Area, the Barrow Island Lease or other areas and includes flue gas from the treatment plant constructed and operated by the Joint Venturers as part of the Project;

Greater Gorgon Area has the meaning given in clause 1 of the Agreement;

holding company has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

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independent third party means a natural person or entity who is not —

- (a) the State or the Commonwealth; or
- (b) any of the Joint Venturers; or
- (c) a related entity of any of the Joint Venturers;

Joint Venturers has the meaning given in the Agreement and includes each of the former Joint Venturers;

leakage means the physical leakage of CO₂ from the formation into the atmosphere, biosphere or hydrosphere, other than as predicted in the section 13 approval;

liability assumption date means the day declared by the BI Act Minister as the liability assumption date by notice under section 14C(1);

Project has the meaning given in clause 1 of the Agreement;

related entity means —

- (a) a holding company; or
- (b) a subsidiary; or
- (c) a subsidiary of a holding company; or
- (d) an Associated Entity (as defined in clause 1 of the Agreement);

section 13 approval means the document dated 14 September 2009 setting out the conditions and restrictions of the BI Act Minister's approval granted to the then Joint Venturers (Chevron (TAPL) Pty Ltd (ABN 18 081 647 047), Mobil Australia Resources Company Pty Limited (ABN 38 000 113 217) and Shell Development (Australia) Proprietary Limited (ABN 14 009 663 576)) under section 13 to inject CO₂ into the formation as varied, added to or substituted for in accordance with condition 19 of that document and, for the avoidance of doubt, includes the collateral deed and the CO₂ disposal management plan;

subsidiary has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

Title Areas has the meaning given in clause 1 of the Agreement.

[Section 14A inserted by No. 13 of 2015 s. 4.]

14B. Notice that Commonwealth representative is satisfied of certain matters

- (1) The BI Act Minister may, after the expiration of the 15 year period beginning on the CO₂ injection cessation date, request the Commonwealth representative to give the BI Act Minister notice that the Commonwealth representative is satisfied in respect of the matters listed in subsection (2).
- (2) The matters in respect of which the Commonwealth representative must be satisfied are as follows —
 - (a) the Gorgon CO₂ injected into the formation is behaving as predicted in the modelling of the plume provided by the Joint Venturers to the BI Act Minister either —
 - (i) as part of the application under section 13 that resulted in the grant of the section 13 approval; or
 - (ii) in subsequent refinements of that modelling accepted by the BI Act Minister in accordance with the section 13 approval,
and there is no significant risk of leakage;
 - (b) there is no significant risk that the CO₂ in the formation will have a significant adverse impact on the geotechnical integrity of the whole or a part of a geological formation or a geological structure;
 - (c) there is no significant risk that the CO₂ in the formation will have a significant adverse impact on the environment, or other geological resources, including groundwater;
 - (d) there is no significant risk that the CO₂ in the formation will have a significant adverse impact on human health or safety;

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- (e) for at least 15 years since the CO₂ injection cessation date there have not been any operations to inject CO₂ into the formation;
- (f) for at least 15 years since the CO₂ injection cessation date there have not been any operations to inject any other substances into the formation other than where that was necessary for legitimate and appropriate plume monitoring and management activities;
- (g) the BI Act Minister has advised that he or she has issued or is intending to issue a CO₂ injection site closure notice in accordance with the section 13 approval.

[Section 14B inserted by No. 13 of 2015 s. 4.]

14C. Declaration of liability assumption date

- (1) The BI Act Minister must, by notice published in the *Gazette*, declare a particular day as the liability assumption date if —
 - (a) the Commonwealth representative has given the notice requested under section 14B(1); and
 - (b) the BI Act Minister has issued a CO₂ injection site closure notice.
- (2) The liability assumption date must not be earlier than the day on which the notice under subsection (1) is published.

[Section 14C inserted by No. 13 of 2015 s. 4.]

14D. State to indemnify

The State will indemnify the Joint Venturers for their common law liability to independent third parties arising after the liability assumption date for loss or damage caused by the injection of Gorgon CO₂ in the formation where that loss or damage is attributable to an act done, or omitted to be done, in the carrying out of CO₂ injection operations under the authority of the section 13 approval.

[Section 14D inserted by No. 13 of 2015 s. 4.]

14E. Payment under indemnity and appropriation

The payment of any money under the indemnity in section 14D is to be made by the Treasurer and charged to the Consolidated Account, which this section appropriates to the necessary extent.

[Section 14E inserted by No. 13 of 2015 s. 4.]

14F. Disclosure of information to Commonwealth representative

- (1) The BI Act Minister may, at any time, disclose to the Commonwealth representative information or any document that —
 - (a) relates to CO₂ injection operations or to a proposal by the Joint Venturers that relates to CO₂ injection operations; or
 - (b) is relevant to —
 - (i) a matter listed in section 14B(2); or
 - (ii) the existence (or otherwise) or extent of liability mentioned in section 14D.
- (2) Subsection (1) applies to information or documents whether given to the BI Act Minister by the Joint Venturers, produced by or on behalf of the BI Act Minister or otherwise obtained by the BI Act Minister.

[Section 14F inserted by No. 13 of 2015 s. 4.]

Part 5 — Miscellaneous

14. Requirement to obtain authorisations under other laws not affected

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

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

- (2) A requirement to obtain under the LA Act an authorisation referred to in subsection (1) is subject to the modifications to the LA Act made under Part 3.
- (3) Nothing in subsection (1) affects the operation of the Agreement.

15. Limitations on gas processing projects on Barrow Island

- (1) Any gas processing project on Barrow Island must be the subject of a Government agreement as defined in the *Government Agreements Act 1979* section 2.
- (2) Subsection (1) does not apply to gas processing under the Barrow Island lease.
- (3) After the Barrow Island Coordination Council is formed under clause 13 of the Agreement, a person cannot operate a gas processing project on Barrow Island unless the person is a participant in the Council.

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

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

17A. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

[Section 17A inserted by No. 13 of 2015 s. 5.]

17. Regulations

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

18. Review of Act on cessation of Agreement

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

the course of that review that Minister is to consider and have regard to —

- (a) the need for the continuation of the operation of this Act;
and
 - (b) such other matters as appear to that Minister to be relevant to the operation and effectiveness of this Act.
- (2) The BI Act Minister is to prepare a report based on his or her review made under subsection (1) and, as soon as is practicable after the preparation of the report, is to cause the report to be laid before each House of Parliament.

Schedule 1 — Gorgon Gas Processing and Infrastructure Project Agreement

[s. 3]

THIS AGREEMENT is made this 9th day of September 2003

BETWEEN:

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

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

WHEREAS:

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

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

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context:

"advise", "apply", "approve", "approval", "consent", "certify", "direct", "notice", "notify", "request", or "require", means advise, apply, approve, approval, consent, certify, direct, notice, notify, request or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

"Associated Entity" means:

- (a) in relation to a Joint Venturer other than Shell Development (Australia) Proprietary Limited ("**Shell**"):
- (i) a body corporate, partnership or other legal entity which is directly or indirectly controlled by the Joint Venturer;
 - (ii) a body corporate, partnership or other legal entity which directly or indirectly controls the Joint Venturer; or
 - (iii) a body corporate, partnership or other legal entity which is directly or indirectly controlled by a body corporate, partnership or other legal entity which directly or indirectly controls the Joint Venturer; and
- (b) in relation to Shell:
- (i) N.V. Koninklijke Nederlandsche Petroleum Maatscappij ("**Royal Dutch**");

- (ii) The 'Shell' Transport and Trading Company, plc ("**Shell Transport**"); and
- (iii) any company (other than Shell) which is for the time being directly or indirectly controlled by Royal Dutch and Shell Transport or either of them.

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

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

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

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

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

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

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

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

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

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

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

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

"EP Act" means the Environmental Protection Act 1986;

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

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

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

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

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

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

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

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

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

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

"**month**" means calendar month;

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

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

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

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

- (a) liquefied natural gas or other petroleum based products for sale within Australia and/or overseas;
- (b) natural gas or processed natural gas or other petroleum based products for sale or industrial use on Barrow Island; and
- (c) processed natural gas and the pipeline transportation of such gas to the mainland of Western Australia for sale within Australia,

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

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

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

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

Interpretation

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

- (2) Nothing in this Agreement shall be construed to exempt the State or the Joint Venturers from compliance with or to require the State or the Joint Venturers to do anything contrary to any law relating to native title or any lawful obligation or requirement imposed on the State or the Joint Venturers as the case may be pursuant to any law relating to native title.
- (3) 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 or the Ratifying Act.

Ratification and operation

3.
 - (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage and commencement as an Act prior to 31 December 2003 or such later date as may be agreed between the parties hereto.
 - (2) The provisions of this Agreement other than this clause and clauses 1 and 2 will not come into operation until the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and comes into operation as an Act.
 - (3) If by 31 December 2003 or later agreed date the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will 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.
 - (4) On the said Bill commencing to operate as an Act all the provisions of this Agreement will operate and take effect notwithstanding the provisions of any Act or law.

Preparatory work

4.
 - (1) The Joint Venturers shall continue their field and office geological, geotechnical, engineering, environmental, social impact, heritage, marketing and finance studies and

investigations into other matters as they consider necessary to enable them to finalise and to submit proposals under this Agreement and shall report in writing thereon to the State at quarterly intervals or such longer periods as may be approved by the Minister. If such preparatory work leads the Joint Venturers to conclude at any time prior to submission of their complete detailed proposals under clause 7(1) that the Project cannot successfully be established in accordance with this Agreement, the Joint Venturers shall consult with the Minister thereon and following such consultation, if they are still of that mind, they may within 21 days after the consultation notify the Minister that they do not intend to submit such proposals and, upon that notification, this Agreement shall cease and determine.

- (2) With each report pursuant to subclause (1) the Joint Venturers shall also advise the State of the then expected Western Australian and other Australian content of their proposed works and, in relation thereto, the matters the subject of clause 15(4).
- (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 subclause (1) and any other relevant studies in relation thereto that the Minister may wish to undertake and shall join with the State in any studies into infrastructure that the Minister and the Joint Venturers agree should be undertaken.
- (4) If so requested by the Joint Venturers the State shall, at the cost of the Joint Venturers, exercise any powers available to it pursuant to the Barrow Island lease in relation to access for the Joint Venturers to land within that lease for the purposes of this clause.
- (5) For the purpose of this Agreement, the Joint Venturers in relation to any land the subject of approved proposals or proposed as land to be granted in accordance with proposals under this Agreement shall be deemed to be within the expression "the owner of any land" for the purposes of section 18 of the Aboriginal Heritage Act 1972.

Overall development - existing infrastructure

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

Reservation of areas

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

- (2) For the period from the Commencement Date to 31 December 2009 the State shall reserve to the Joint Venturers areas within the Gas Processing Area of 150 hectares in the aggregate from which they may seek the grant of long term leases of land for the purposes of the Project and easements for carbon dioxide pipelines, control lines and ancillary services under the LA Act in accordance with approved proposals.
- (3) The State shall also reserve areas within the Gas Processing Area of not less than 50 hectares for the grant of easements under the LA Act for petroleum pipelines, control lines and ancillary services associated with gas and other petroleum processing within the Gas Processing Area by the Joint Venturers and other occupants of the Gas Processing Area.
- (4) If the Joint Venturers or any other occupants of the Gas Processing Area are granted any easement under subclause (3), the State shall ensure that they locate their pipelines and other lines and services within such easement and implement arrangements for risk management and risk allocation so as to allow others to install lines within the easement associated with gas and other petroleum processing within the Gas Processing Area.
- (5) The Joint Venturers shall, where reasonably practicable, locate their construction and laydown areas within the 150 hectares reserved under subclause (2) or within cleared land and may seek the grant of short term leases under the LA Act over such areas in accordance with approved proposals.
- (6) The Joint Venturers shall also, where reasonably practicable and subject to implementation of reasonable arrangements for risk management and risk allocation, allow third parties to locate temporary construction and laydown areas on areas within the 150 hectares reserved under subclause (2). If the State reserves areas for or grants titles to third parties in respect of other parts of the Gas Processing Area or other cleared land, the State shall, without limiting subclause (5), ensure that the Joint Venturers have equivalent construction and laydown rights over such areas.

- (7) In respect of any area reserved pursuant to subclause (2) which is not the subject of an approved proposal or approved proposals at 31 December 2009, the State and the Joint Venturers shall consult with each other regarding the market situation and gas reserves in the Title Areas and the Greater Gorgon Area and the Joint Venturers' continued requirement for the area or any part thereof. Any portions of the area not reasonably required by the Joint Venturers at the discretion of the Joint Venturers, shall be released from the reservation. Any area not so released shall continue to be reserved under subclause (8) until 31 December 2014 or the sooner cessation of this Agreement.
- (8) In respect of any area continuing to be reserved pursuant to subclauses (2) and (7) which is not the subject of an approved proposal or approved proposals at 31 December 2014, the State and the Joint Venturers shall consult with each other regarding the market situation and gas reserves in the Title Areas and the Greater Gorgon Area and the Joint Venturers' continued requirement for the area. After such consultation the Minister at his discretion, may cancel the reservation or extend the whole or any part thereof that is then not the subject of an approved proposal for such period not exceeding 5 years as the Minister may determine.
- (9) If the date 31 December 2008 referred to in clause 7(1) is extended pursuant to clause 24 then the dates 31 December 2009 and 31 December 2014 in subclauses (2), (7) and (8) shall respectively be automatically extended for the same length of time.
- (10) If the Joint Venturers wish to use land within the Gas Processing Area beyond that which is reserved for them from time to time, they may request permission to bring forward a proposal under this Agreement in respect of that land and the Minister may in his discretion allow this.
- (11) The Minister shall advise the Joint Venturers of any land within the Gas Processing Area that the State is considering reserving or granting to a third party for the establishment and operation of plant for the treatment of natural gas and other petroleum, its processing, storage and/or shipment and

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

Joint Venturers to submit Proposals

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

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

Order of proposals

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

Additional submissions

- (3) (a) Each time that the Joint Venturers submit a proposal or proposals under this clause they shall submit to the Minister in respect of that proposal or proposals details of any services (including any elements of the project investigations design and management) and 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.

- (b) At the time when the Joint Venturers submit the complete detailed proposal or proposals required under this clause they shall confirm or address further the matters referred to in paragraph (a) and shall also submit to the Minister:
 - (i) evidence to the reasonable satisfaction of the Minister as to the availability of finance necessary to carry out the Project; and
 - (ii) evidence to the reasonable satisfaction of the Minister as to the readiness of the Joint Venturers in all other respects to carry out the Project.
- (4) If the complete detailed proposals submitted under this clause do not include a proposal to inject carbon dioxide recovered during gas processing, the Minister may notify the Joint Venturers within 60 days after submission of those proposals that he will not consider the proposals. On such notification the proposals shall lapse and clause 8(3) shall apply in relation to the submission of further proposals by the Joint Venturers. The Minister's decision under this subclause shall not be referable to arbitration under clause 30.
- (5) The provisions of clause 23 shall not apply to this clause.

Consideration of proposals

- 8. (1) Subject to clause 7(4), in respect of each proposal pursuant to clause 7(1) the Minister shall:
 - (a) approve the proposal without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the

matters mentioned in clause 7(1) 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:

- (d) where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall, if the case so requires, incorporate a requirement that the Joint Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures; and
- (e) subject to clause 8(1)(d), if the proposals include details of the conditions and restrictions that have been imposed on an approval to inject carbon dioxide under section 13 of the Ratifying Act, the Minister may not make any decision under clause 8(1)(b) or (c) which is inconsistent with those conditions and restrictions.

Advice of Minister's decision

- (2) The Minister shall, within two months after receipt of proposals pursuant to clause 7(1) and compliance by the Joint Venturers with clause 7(3), give notice to the Joint Venturers of his decision in respect to the proposals **PROVIDED THAT:**

- (a) where a proposal is to be assessed under section 40(1)(b) of the EP Act the Minister shall give notice to the Joint Venturers of his decision in respect to the proposal within 2 months after the later happening of the receipt of the proposal and the

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

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

Consultation with Minister

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

Minister's decision subject to arbitration

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

Arbitration award

- (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 - termination

- (6) Notwithstanding that under this clause any proposals of the Joint Venturers under clause 7(1) 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 by 31 December 2009 or by such extended date or period if any as the Joint Venturers shall be granted pursuant to clause 24 or clause 30(3) then, notwithstanding anything to the contrary in this Agreement, this Agreement shall on that date cease and determine.

Variation of proposals

- (7) Notwithstanding clause 22 the Minister may during the implementation of approved proposals approve variations to those proposals.

Implementation of approved proposals

- 9. The Joint Venturers shall implement approved proposals in accordance with the terms thereof.

Additional proposals

- 10. (1) Subject to clause 5, if the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify, expand or otherwise vary their activities carried on pursuant to any approved proposals 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 clause 7(1) as the Minister may require.

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

Net Conservation Benefits

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

become liable to pay the adjusted amount in accordance with this clause:

$$A = \frac{B \times C}{D}$$

Where:

A = the adjusted amount of the instalment.

B = the unadjusted amount of the instalment, as at 1 January 2004.

C = the Consumer Price Index All Groups Perth last published by the Australian Bureau of Statistics before 1 January in the year of the adjustment.

D = the Consumer Price Index All Groups Perth last published by the Australian Bureau of Statistics before 1 January 2004.

(4) If either:

(a) the Consumer Price Index All Groups Perth ceases to be published; or

(b) the method of calculation of the Consumer Price Index All Groups Perth substantially alters,

then the Consumer Price Index All Groups Perth is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made. That replacement index and those amendments are to be determined as follows:

(c) by agreement between the Joint Venturers and the Minister; or

(d) if they do not agree within 6 months, by the Australian Statistician or his nominee (acting as an expert and not as an arbitrator), whose decision is binding and conclusive.

(5) The special purpose trust account under subclause (2) shall be established pursuant to section 69 of the CALM Act and shall be subject to arrangements for governance, consultation and

reporting to be agreed between the Joint Venturers and the Minister, in consultation with the CALM Act Minister, as soon as practicable after the date of this Agreement. If section 69 of the CALM Act is repealed or substantially amended during the term of this Agreement, the Joint Venturers and the Minister shall promptly agree on an alternative equivalent special purpose trust account and any necessary alterations to the arrangements for governance, consultation and reporting.

- (6) No additional proposals shall be submitted under clause 10 for expansion of the Project beyond nameplate capacity of 10mtpa LNG production (or the equivalent gas input for other petroleum based product) until proportionate funding additional to the \$40 million referred to above has been agreed between the Joint Venturers and the State. Establishment and expansion of a Domgas Project by the Joint Venturers shall not be subject to additional Net Conservation Benefits payments.

DCLM costs

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

reasonably required by DCLM to maintain a permanent management presence on Barrow Island for the purpose of managing the Project's presence in relation to island and marine conservation and to carry out its role and responsibility

in respect of the Joint Venturers' operations and activities under this Agreement.

- (2) The term "permanent management presence" in subclause (1) includes:
 - (a) the capacity to provide for full time independent quarantine audit on Barrow Island and the mainland of Western Australia; and
 - (b) the capacity to ensure that all onsite and offsite areas including marine are appropriately monitored, researched and managed in relation to primary and secondary (direct and indirect) impacts in order to ensure that the total island marine and terrestrial ecology is being properly monitored and managed and to ensure that the ecological knowledge base is being properly developed.
- (3) To the extent DCLM claims reimbursement from the Joint Venturers, DCLM shall provide such substantiation as the Joint Venturers may reasonably request of DCLM's costs under subclause (1).
- (4) The maximum amount payable by the Joint Venturers under subclause (1)(a) shall be limited to \$1 million per calendar year during major construction phases of the Project and \$750,000 per calendar year during other times. These limits shall be pro rated in respect of periods of less than a calendar year and shall be indexed annually on the same basis set out in clause 11(3).
- (5) The Joint Venturers' obligations under subclause (1)(b) shall be limited to providing the accommodation and other facilities and services for the presence of three officers on Barrow Island during major construction phases and two officers at other times.

Barrow Island Coordination Council

13. The Joint Venturers shall prior to receiving approval of their complete detailed proposals under clause 7 make arrangements with the BI Lessee satisfactory to the Minister, in consultation with the CALM Act Minister, to form and

operate the Barrow Island Coordination Council in accordance with the following principles:

- (a) The formation and operation of the BICC shall not limit any rights or powers of DCLM in relation to the management of Barrow Island except to the extent, if any, that DCLM agrees.
- (b) The BICC shall commence operation on a nominated date within one month of approval of the proposals and the commitments of the BICC Participants shall relate to, and only to, matters, activities and events that occur after that date.
- (c) All of the Joint Venturers and the BI Lessee shall participate in the BICC either directly or through a properly authorised joint venture operator as their agent.
- (d) The BICC Participants shall nominate one of the BICC Participants as the BICC Manager with authority to undertake, and to represent all the BICC Participants in relation to, all BICC activities from time to time.
- (e) The matters to be coordinated by the BICC are:
 - (i) providing a single point of contact and interaction for DCLM in relation to the management of issues related generally to the operations of the BICC Participants on Barrow Island;
 - (ii) liaising with DCLM in relation to the terms and implementation of the management plan under Division 1 of Part 5 of the CALM Act so far as it relates generally to the operations of the BICC Participants on Barrow Island;
 - (iii) establishing, monitoring and reviewing from time to time procedures to apply to quarantine of all people and materials brought to Barrow Island for the purposes of the operations of any of the BICC Participants;

- (iv) planning and coordinating the BICC's role in emergency response to and undertaking, where necessary, remediation of any suspected or actual breach of quarantine in the operations of any of the BICC Participants;
 - (v) planning and coordinating the BICC's role in emergency response to and undertaking, where necessary, remediation of escape of hydrocarbons or other pollutants from the operations on Barrow Island of any of the BICC Participants;
 - (vi) reporting to the Minister and DCLM at least annually on all BICC activities in the preceding 12 months; and
 - (vii) other matters agreed between the BICC Participants from time to time.
- (f) The BICC Participants shall fund all the activities of the BICC.
 - (g) The BICC Participants shall undertake direct obligations to the State in respect of their involvement in the BICC.
 - (h) In addition to its commitments as a BICC Participant, each BICC Participant shall remain responsible and liable for its own environmental and other obligations relating to its operations on Barrow Island.
 - (i) The State shall require as a pre-condition to any grant of a lease, easement or licence under the LA Act that the grantee is a BICC Participant. If the State proposes to grant such tenure to a person who is not a BICC Participant, it must give at least 6 months notice to the BICC Participants and provide, or require the proposed grantee to provide them with details of the grantee's proposed operations on Barrow Island and of its technical and financial capacity. The BICC Participants shall, subject to the proposed grantee doing likewise, negotiate promptly and in good faith

with a view to admitting the proposed grantee as a BICC Participant and they shall admit the grantee if:

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

Protection and management of the environment

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

Use of local labour professional services and materials

15. (1) Except as otherwise agreed by the Minister the Joint Venturers shall, for the purposes of this Agreement -
- (a) except in those cases where the Joint Venturers can demonstrate it is not reasonable and economically practicable so to do, use labour available within Western Australia (using all reasonable endeavours to ensure that as many as possible of the workforce be recruited from the Pilbara) 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 where price, quality, delivery and service are otherwise equal or better.
- (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 quarterly intervals from the Commencement Date to the date of the first submission of proposals under clause 7 and thereafter at monthly intervals or such longer period as the Minister determines concerning its 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 required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

Leases, licences and easements

16. (1) The State shall in accordance with the Ratifying Act and the Joint Venturers' approved proposals grant to the Joint Venturers or arrange to have the appropriate authority of the State grant to the Joint Venturers for such periods and on such terms and conditions including rentals and renewal rights as shall be reasonable having regard to the requirements of the Joint Venturers and as are consistent with the terms of this Agreement and the approved proposals leases and where applicable licences and easements under the LA Act for all or

any of the purposes of the Joint Venturers' activities hereunder.

- (2) The First long term lease shall be for a term of 60 years from the date of approval of the complete detailed proposals under clause 7. At least 5 years before expiry of the First long term lease, the Minister and the Joint Venturers shall consult with each other about whether and on what basis the State proposes to grant any further tenure for industrial purposes over the land the subject of the First long term lease and whether the Joint Venturers propose to continue the Project. If the State proposes to grant any such further tenure and the Joint Venturers propose to continue the Project, the State shall, subject to subclause (6), offer such tenure to the Joint Venturers at least 2 years before expiry of the First long term lease. The State shall not, during the 5 years after expiry of the First long term lease, offer or grant to any person any tenure over the land that was the subject of the First long term lease unless the Joint Venturers have first been offered and refused such tenure on terms and conditions at least as favourable to them as the terms and conditions of the tenure offered or granted to the other person.
- (3) All other long term land titles issued pursuant to approved proposals shall have terms which expire at the same time as or, if agreed between the State and the Joint Venturers, on a date before the expiry of the First long term lease and the Joint Venturers shall also have rights of consultation and first refusal, as contained in subclause (2), in respect of continued tenure over the areas the subject of those titles. The Joint Venturers' rights of first refusal under subclauses (2) and (3) shall survive expiry of this Agreement due to expiry of the First long term lease.
- (4) The rental or charges for the First long term lease and other land titles granted to the Joint Venturers by the State shall, at the time of grant, be set at levels commensurate with rentals and charges payable in respect of equivalent titles granted for the purposes of other then existing large gas processing projects in the Pilbara region which are not subject to Government agreements (as defined in the Government Agreements Act 1979).

- (5) The State's obligations under subclause (1) shall, subject to subclause (6), include:
 - (a) at the cost of the Joint Venturers, exercising any powers available to the State pursuant to the Barrow Island lease to enable the grant of leases, easements and licences to the Joint Venturers; and
 - (b) granting or arranging on terms and conditions to be agreed between the State and the Joint Venturers the grant from time to time of leases, easements or licences in respect of land then used by the Joint Venturers for gas processing project purposes if so requested by the Joint Venturers to enable continued use thereof after expiry or surrender of the Barrow Island lease over the relevant area.
- (6) The grant or offer of any title or other tenure under subclauses (2), (3) or (4) shall be subject to and may only be made in accordance with the Ratifying Act.
- (7) If the Joint Venturers obtain approval under Part 4 of the Ratifying Act to inject into the Dupuy aquifer or other aquifers or depleted reservoirs carbon dioxide recovered during gas processing, the State, subject to ongoing compliance by the Joint Venturers with relevant regulatory requirements, shall not revoke, restrict or vary, or permit revocation, restriction or variation of the approval during the term of this Agreement except in accordance with the approval.

Gas to mainland

- 17. (1) The Joint Venturers shall reserve or procure the reservation of gas within the Title Areas sufficient for the delivery of 2000 petajoules to the mainland. This reservation shall reduce by the number of petajoules of natural gas from the Project delivered to the mainland from time to time.
- (2) The Joint Venturers shall submit to the Minister by 31 December 2010 proposals for the establishment of a Domgas Project by 31 December 2012, including design features to enable the progressive expansion of the connection(s) to deliver at least 300 terajoules ("TJ") per day

of natural gas. The provisions of clause 10(3) shall apply to proposals under this clause.

- (3) From the Commencement Date until at least 300 TJ per day of natural gas is first delivered from Barrow Island to domestic gas infrastructure on the mainland the Joint Venturers shall:
- (a) actively and diligently undertake:
 - (i) ongoing marketing of natural gas in Western Australia (including investigation of proposals for using such gas as petrochemical feedstock); and
 - (ii) design, engineering and other relevant activities in relation to establishment of a Domgas Project; and
 - (b) report progress on these matters to the Minister on an annual basis or more often as may be required by the Minister.
- (4) To assist in his review of matters under subclause (3), the Minister may at any time after lodgement of complete detailed proposals under clause 7(1) until at least 300 TJ per day of natural gas is first delivered from Barrow Island to domestic gas infrastructure on the mainland, appoint at the cost of the Joint Venturers (subject to an agreed budget) an agreed person who is independent of the parties and does not have any conflict of interest with other companies involved in the Western Australian domestic gas industry to advise him of the extent to which the Joint Venturers have actively and diligently undertaken ongoing marketing in accordance with subclause (3). The Joint Venturers will provide on a confidential basis to such person, information on their marketing activities including indicative prices, quantities and qualities of natural gas offered for sale.
- (5) The provisions of clause 23 shall not apply to this clause.
- (6) If the Joint Venturers anticipate a need to extend the dates referred to in subclause (2), or to further extend any later dates previously agreed by the Minister, they shall consult with the Minister and then, at least 90 days after such consultations

commence, lodge a request with the Minister seeking such extension or further extension.

- (7) If the Joint Venturers seek to extend the dates referred to in subclause (2), or to further extend any later dates previously agreed by the Minister, on the grounds that a Domgas Project is not then Commercially Viable, the request shall include information that identifies the circumstances which would make a Domgas Project Commercially Viable and address their likelihood of occurrence and also include an analysis of the Commercial Viability of a Domgas Project, including the assumptions, the methodology and the conclusions reached by the Joint Venturers.
- (8) If the Minister receives a request under subclause (7), he is required to make a determination of Commercial Viability under this clause. For that purpose, the Minister may, or if so requested by the Joint Venturers shall, at the cost of the Joint Venturers, appoint an independent expert ("**Independent Expert**") to prepare a report and recommendation to the Minister as to whether or not a Domgas Project is then Commercially Viable. The election by the Minister or the request by the Joint Venturers to appoint an Independent Expert shall be made within 20 days of the Joint Venturers' request for extension under subclause (7). For the purposes of this sub-clause the following arrangements will apply in relation to the Independent Expert:
- (a) the identity of the Independent Expert and the terms of reference for the conduct of the Independent Expert's work (covering matters such as process and budgets, but not the tests of Commercial Viability itself) are to be agreed between the Minister and the Joint Venturers or, failing agreement within 50 days of the election or request to appoint, determined by the President of the Institution of Engineers (Australia);
 - (b) the Independent Expert shall comply with the terms of reference and enter into a confidentiality undertaking in favour of the State and the Joint Venturers and any other relevant third parties if appropriate;

- (c) the Joint Venturers and the State may make written and, if so requested by the Independent Expert, oral submissions to the Independent Expert in relation to Commercial Viability;
 - (d) the Joint Venturers and the State shall use all reasonable endeavours to make available to the Independent Expert all information relevant to the matter and which the Independent Expert reasonably requires in order to make a recommendation;
 - (e) the Independent Expert must prepare and provide the Minister with a report and recommendation as to Commercial Viability within 80 days of his or her appointment or such other period as agreed to by the parties;
 - (f) the Minister shall give the Joint Venturers a copy of the report and recommendation within 7 days of receipt from the Independent Expert; and
 - (g) the Independent Expert will act as an expert and not as an arbitrator.
- (9) The Minister's decision as to whether or not to grant an extension:
- (a) must be made within 90 days of request by the Joint Venturers, or if an Independent Expert is appointed, within 50 days of receipt of the Independent Expert's report and recommendation;
 - (b) must be based only on whether a Domgas Project is then Commercially Viable, taking due regard of any recommendation of the Independent Expert; and
 - (c) shall not be subject to arbitration under clause 30.
- (10) Unless the Minister otherwise agrees the Joint Venturers shall not expand the Project beyond that provided for in the complete detailed proposals approved under clause 7 until proposals for a Domgas Project under subclause (2) have been approved. The Minister in making his decision shall take into account such matters including Commercial Viability as the

Minister considers relevant. The Minister's decision shall not be subject to arbitration under clause 30.

- (11) If the Minister gives consent to an expansion under subclause (10), that subclause and this subclause shall continue to apply mutatis mutandis to any subsequent expansion of the Project.
- (12) If the Joint Venturers make a request under subclause (7) at least 200 days before the deadline date which they are seeking to have extended but, upon occurrence of that date, the Minister has not made a decision whether or not to extend, the Joint Venturers will not be considered to be in default for failing to meet the deadline at least until such decision has been made.
- (13) For the purposes of this clause:
 - (a) "**Commercially Viable**", in relation to a Domgas Project means that a Domgas Project could be established in conjunction with an LNG or other gas processing facility within the Gas Processing Area on Barrow Island such that the commercial rates of return (including recovery of all capital and operating costs, taxes, royalties and other charges associated with the delivery of domestic gas) meet or exceed the minimum return considered acceptable for this type of project by a reasonable petroleum developer or by investors or lenders to this type of project. "Commercial Viability" shall have a corresponding meaning.
 - (b) Commercial Viability shall be determined for a Domgas Project having regard to prevailing market conditions, and using proven technology readily available within the industry. Market conditions include market access, contract duration, prices, certainty and timing of market opportunities.
 - (c) A Domgas Project can not be claimed to be not Commercially Viable only because of an unwillingness by the Joint Venturers to acquire or to

apply proven technology, financial or human resources.

- (d) The cost of gas delivered to the inlet flange of the Domgas Project shall be deemed to be the average landed cost at Barrow Island of gas from the Title Areas assuming all the gas usage for gas processing at that time plus 300 TJ per day of domestic gas.
- (e) Where Commercial Viability is dependent upon combining a development with other third party developments or accessing third party facilities or technology, a Domgas Project will not be considered to be Commercially Viable if the Joint Venturers, using all reasonable endeavours, are unable to complete an agreement with that party, on reasonable commercial terms which provides an acceptable rate of return.

Processing and use of gas from other areas

- 18. (1) In addition to gas and other petroleum from the Title Areas, the Joint Venturers may process and use gas and other petroleum produced from the Greater Gorgon Area and the Barrow Island lease provided they give the Minister prior notice.
- (2) The Joint Venturers may process and use gas and other petroleum produced from other areas provided they have the prior consent of the Minister.

No discriminatory charges

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

of full enjoyment of the rights granted or intended to be granted under this Agreement.

Zoning

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

Assignment

21. (1) Subject to the provisions of this clause the Joint Venturers or any of them may at any time assign, mortgage, charge, sublet or dispose of to each other or to an Associated Entity as of right, or to any other company or person with the consent of the Minister (which consent shall not be unreasonably withheld) the whole or any part of the rights of the Joint Venturers hereunder (including their rights as the holders of any land title hereunder) 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 donee (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 will 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 PROVIDED THAT the Minister may agree to release the Joint Venturers or any of them from such liability where the Minister considers such release will not be contrary to the interests of the State.

Variation

22. (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 for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement. For the avoidance of doubt, the parties may not agree to extend the Gas Processing Area beyond 300 hectares.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) 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

23. Subject to clause 7(5) and clause 17(5), this Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement, except in either case any obligations to pay monies to the State or any instrumentality of the State, that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including (without limiting the generality of the foregoing) delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials,

reasonable failure to secure contractors, delays of contractors, factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party or parties of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

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

Determination of Agreement

25. (1) If:
- (a) (i) 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
 - (ii) the Joint Venturers abandon or repudiate this Agreement or abandon or repudiate their activities under this Agreement,
- and such matter is not remedied within a period of 180 days after notice is given by the State as provided in subclause (2) or if the matter is referred to arbitration, then within the period mentioned in subclause (3); or
- (b) the Joint Venturers or any of them goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Joint Venturers is assigned to another Joint Venturer

or to an assignee approved by the Minister under clause 21;

the State may by notice to the Joint Venturers determine this Agreement.

- (2) The notice to be given by the State to the Joint Venturers in terms of subclause (1)(a) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination.
- (3)
 - (a) If the Joint Venturers contest the alleged default or other ground referred to in subclause (1)(a) 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 subclause (1)(a) has not been remedied within a period of 180 days after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant, machinery, equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand.
- (5) For the purposes of this clause, remediation of defaults may with the approval of the Minister include one or both of

payment of reasonable compensation and substantial commencement of a reasonable program of remediation which will take longer than 180 days provided that failure by the Joint Venturers to pay such compensation or to complete such program shall itself constitute a default by them under this Agreement.

Effect of cessation or determination of Agreement

26. On the cessation or determination of this Agreement:

- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to, in or under this Agreement shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any guarantee or indemnity given under this Agreement;
- (b) the Joint Venturers shall forthwith pay to the State all money which may then have become payable or accrued due; and
- (c) save as aforesaid and as otherwise provided in this Agreement none of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

Indemnity

27. (1) Unless the Minister and the Joint Venturers otherwise agree in writing, the Joint Venturers shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to their activities hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any relevant Act such indemnity will not apply in circumstances where the State, its servants, agents, or

contractors are negligent in carrying out work for the Joint Venturers pursuant to this Agreement.

- (2) The State shall notify the Joint Venturers as soon as practicable of:
- (a) receipt of any written demand or notice or the service or institution of Proceedings; or
 - (b) becoming aware of the occurrence of any act or omission which is likely to give rise to a Third Party Claim.
- (3) If a Third Party Claim is made, the State shall:
- (a) unless prohibited by law, provide the Joint Venturers with all information, relevant to the Third Party Claim and any Proceedings, that the Joint Venturers may reasonably require from time to time;
 - (b) receive and give due consideration to opinions, requests and submissions from the Joint Venturers in relation the Third Party Claim or Proceedings;
 - (c) act with due regard to the interests of the Joint Venturers;
 - (d) if requested by the Joint Venturers and at the Joint Venturers' cost, join the Joint Venturers to any Proceedings;
 - (e) involve the Joint Venturers in any negotiations and discussions between the State and the third party relating to the Third Party Claim or Proceedings;
 - (f) not make any admission, offer, promise or payment or compromise or settle the Third Party Claim or Proceedings without the consent of the Joint Venturers;
 - (g) at the cost of the Joint Venturers, co-operate with the Joint Venturers in defending any Third Party Claim; and

- (h) not hinder the Joint Venturers, at their own cost, from making any offer, promise or payment or compromising or settling the Third Party Claim or Proceedings.
- (4) Clause 30 applies to any dispute under this clause.
- (5) For the purposes of this clause, the following words have the following meanings:
 - “Proceedings”** means any civil, criminal, administrative or arbitral proceedings, mediation or other form of dispute resolution (whether or not held in conjunction with any civil, criminal, administrative or arbitral proceedings) relating to a Third Party Claim;
 - “State”** includes the servants, agents and contractors of the State; and
 - “Third Party Claim”** means a claim by a third party against the State which could give rise to a claim by the State for indemnity under this clause.

Subcontracting

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

No resumption

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

nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Joint Venturers' operations hereunder.

Arbitration

30. (1) Any dispute or difference between the State and the Joint Venturers arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement shall, in default of agreement between them and in the absence of any provision in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the Commercial Arbitration Act 1985 and each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this clause will not apply to any case where the State, the Minister or any other Minister in the Government of the State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either the State or the Joint Venturers, to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties to the arbitration and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

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

Stamp duty

32. (1) The State shall exempt this Agreement from any stamp duty which but for the operation of this clause would or might be assessed and chargeable on it.
- (2) Any lease or agreement for lease from the Minister for Lands under the LA Act shall be subject to item 6(1) of the Third Schedule to the Stamp Act 1921.

Notices

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

Term of Agreement

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

Applicable law

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

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

SIGNED by **THE PREMIER THE HONOURABLE**

GEOFFREY IAN GALLOP MLA

in the presence of:

Geoff Gallop

Signature

C M Brown

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

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

James W Johnson

Director/~~Secretary~~

Paul M Oen

Director

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

James W Johnson

Director/~~Secretary~~

Paul M Oen

Director

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

N D Theobald

Signature

A L Groves

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

Witness

Gavin Ryan

~~Director~~/Secretary

Christopher Gunner

Director

Schedule 2 — 2013 variation agreement

[s. 3]

[Heading inserted by No. 24 of 2013 s. 8.]

2013

**THE HONOURABLE COLIN JAMES BARNETT
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

AND

CHEVRON (TAPL) PTY LTD

ABN 18 081 647 047

MOBIL AUSTRALIA RESOURCES COMPANY PTY LIMITED

ABN 38 000 113 217

SHELL DEVELOPMENT (AUSTRALIA) PROPRIETARY LIMITED

ABN 14 009 663 576

OSAKA GAS GORGON PTY LTD

ABN 13 139 074 847

TOKYO GAS GORGON PTY LTD

ABN 16 138 592 042

CHUBU ELECTRIC POWER GORGON PTY LTD

ABN 94 140 107 464

**GORGON GAS PROCESSING AND INFRASTRUCTURE PROJECT
AGREEMENT 2003**

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 21st day of October 2013

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT MLA., Premier of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (**State**)

AND

CHEVRON (TAPL) PTY LTD ABN 18 081 647 047 of Level 24, 250 St Georges Terrace, Perth, Western Australia, **MOBIL AUSTRALIA RESOURCES COMPANY PTY LIMITED** ABN 38 000 113 217 of 12 Riverside Quay, Southbank, Melbourne, Victoria, **SHELL DEVELOPMENT (AUSTRALIA) PROPRIETARY LIMITED** ABN 14 009 663 576 of Level 3, 2 Victoria Avenue, Perth, Western Australia, **OSAKA GAS GORGON PTY LTD** ABN 13 139 074 847 of Level 16, 108 St Georges Terrace, Perth, Western Australia, **TOKYO GAS GORGON PTY LTD** ABN 16 138 592 042 of Level 21, Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **CHUBU ELECTRIC POWER GORGON PTY LTD** ABN 94 140 107 464 of Level 22, St Martins Tower, 44 St Georges Terrace, Perth, Western Australia

(together with their successors and permitted assigns collectively called the "**Joint Venturers**").

RECITALS

- A.** The State and the Joint Venturers are now the parties to the agreement dated 9 September 2003, the execution of which by the State was ratified by the *Barrow Island Act 2003* and which as subsequently varied by agreement dated 9 September 2009 is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State and the Joint Venturers wish to vary the Principal Agreement on the terms and conditions of this Agreement.

THE PARTIES AGREE as follows:

- 1.** Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2.**
 - (1) This Agreement, other than this clause and clause 1, does not come into operation except in accordance with subclause (2).
 - (2) This Agreement, other than this clause and clause 1, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia unless, before that day, it terminates under subclause (4).
 - (3) The State must introduce in the Parliament of Western Australia before 31 December 2013, or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
 - (4) If by 30 June 2014 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will 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. The Principal Agreement is hereby varied as follows:

- (1) in clause 1 in the definition of "Gas Processing Area" by deleting "300" and substituting "332";
- (2) in clause 5(1) by deleting "300" and substituting "332";
- (3) in clause 6 by inserting after subclause (11) the following new subclause:

"(12) If the Minister considers it reasonable and appropriate to do so the Minister may approve pursuant to clause 8(7) (including as applying pursuant to clause 10(3)) variations to any approved proposals to which a subclause (10) permission relates to provide for the grant (including by variation of any existing titles) to the Joint Venturers under the LA Act and in accordance with this Agreement of leases, licences and easements in respect of land within the Gas Processing Area beyond that otherwise allowed by the subclause (10) permission."; and

- (4) in clause 22(1) by deleting " 300" and substituting "332".

EXECUTED as a deed.

SIGNED by **THE HONOURABLE**)
COLIN JAMES BARNETT) [Signature]
in the presence of:)

[Signature] _____

Witness:

Name: Nicole Henderson

EXECUTED by **CHEVRON (TAPL) PTY LTD**)
in accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by authority of its)
Directors:)

[Signature]
Signature of Director

[Signature]
Signature of Director/Secretary

Roy J. Krzywosinski
Name of Director

Marcia H Decter
Name of Director/Secretary

EXECUTED by **MOBIL AUSTRALIA RESOURCES COMPANY PTY LIMITED**)
by its undersigned Attorney who has not)
received any notice of revocation of the Power)
of Attorney under which this deed is signed:)

[Signature]
Signature of Attorney

[Signature]
Signature of Witness

Luke P Musgrave
Name of Attorney

Robyn Eileen Susan Wheatland
Name of Witness

EXECUTED by **SHELL DEVELOPMENT (AUSTRALIA) PROPRIETARY LIMITED**)
in accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by authority of its)
Directors:)

[Signature] _____
Signature of Director

[Signature] _____
Signature of Director/Secretary

Cassandra Jane Chinkin
Name of Director

Peter Lorbeer
Name of Director/Secretary

EXECUTED by **OSAKA GAS**)
GORGON PTY LTD in accordance)
with section 127(1) of the *Corporations*)
Act 2001 (Cth) by authority of its)
Directors:)

[Signature] _____
Signature of Director

[Signature] _____
Signature of Director/Secretary

Yasuo Kato
Name of Director

Keiji Takemori
Name of Director/Secretary

EXECUTED by **TOKYO GAS**)
GORGON PTY LTD in accordance)
with section 127(1) of the *Corporations*)
Act 2001 (Cth) by authority of its)
Directors:)

[Signature] _____
Signature of Director

[Signature] _____
Signature of Director/Secretary

Koichi Tanimura
Name of Director

Chris Rumley
Name of Director/Secretary

EXECUTED by **CHUBU**)
ELECTRIC POWER GORGON)
PTY LTD in accordance with section)
127(1) of the *Corporations Act 2001*)
(Cth) by authority of its Directors:)

[Signature]
Signature of Director

[Signature]
Signature of Director/Secretary

Yuta Kano
Name of Director

Akira Mikami
Name of Director/Secretary

[Schedule 2 inserted by No. 24 of 2013 s. 8.]

Notes

¹ This is a compilation of the *Barrow Island Act 2003* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Barrow Island Act 2003</i> ²	61 of 2003	20 Nov 2003	Act other than s. 12: 20 Nov 2003 (see s. 2); s. 12 repealed by No. 13 of 2005 s. 48(3)
<i>Petroleum Legislation Amendment and Repeal Act 2005</i> s. 48	13 of 2005	1 Sep 2005	28 Mar 2007 (see s. 2 and <i>Gazette</i> 27 Mar 2007 p. 1405)
<i>Petroleum Amendment Act 2007</i> s. 90	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and <i>Gazette</i> 18 Jan 2008 p. 147)
<i>Barrow Island Amendment Act 2013</i>	24 of 2013	18 Dec 2013	s. 1 and 2: 18 Dec 2013 (see s. 2(a)); Act other than s. 1 and 2: 19 Dec 2013 see s. 2(b))
<i>Barrow Island Amendment Act 2015</i>	13 of 2015	8 May 2015	s. 5: 20 Nov 2003 (see s. 2(b)); s. 1 and 2: 8 May 2015 (see s. 2(a)); Act other than s. 1, 2 and 5: 9 May 2015 (see s. 2(c))

² Section 12 of this Act had not come into operation when it was repealed by the *Petroleum Legislation Amendment and Repeal Act 2005* s. 48(3).

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
2013 variation agreement.....	3
Barrow Island lease.....	3
Barrow Island lessee	3
BI Act Minister	3
CALM Act Minister.....	3
carbon dioxide.....	3
CO2.....	14A
CO2 disposal management plan.....	14A
CO2 injection cessation date.....	14A
CO2 injection operations	14A
CO2 injection site closure notice	14A
collateral deed.....	14A
common law liability	14A
Commonwealth representative.....	14A
formation.....	14A
gas.....	3
gas processing project purpose	3
Gorgon CO2.....	14A
Greater Gorgon Area.....	14A
holding company.....	14A
independent third party	14A
Joint Venturers.....	14A
LA Act	3
LA Act Minister	3
leakage	14A
liability assumption date	14A
Project.....	14A
related entity	14A
section 13 approval	14A
subsidiary	14A
the Agreement.....	3
the reserve.....	3
Title Areas	14A
uncleared land.....	9(2)