



Western Australia

Natural Gas (Canning Basin Joint Venture) Agreement (Termination) Act 2018

As at 21 Aug 2018

No. 12 of 2018

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Natural Gas (Canning Basin Joint Venture) Agreement (Termination) Act 2018

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Western Australia

Natural Gas (Canning Basin Joint Venture) Agreement (Termination) Act 2018

No. 12 of 2018

An Act to amend the *Natural Gas (Canning Basin Joint Venture) Agreement Act 2013* to provide for the ratification of an agreement for the termination of the Natural Gas (Canning Basin Joint Venture) Agreement and for related purposes.

[Assented to 21 August 2018]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Natural Gas (Canning Basin Joint Venture) Agreement (Termination) Act 2018*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Natural Gas (Canning Basin Joint Venture) Agreement Act 2013*.

4. Long title amended

In the long title after “**State,**” insert:

to ratify a further agreement for the termination of that agreement,

5. Section 3 amended

In section 3 insert in alphabetical order:

termination agreement means the agreement a copy of which is set out in Schedule 3;

6. Section 4A inserted

After section 4 insert:

4A. Ratification of termination agreement

The termination agreement is ratified.

7. Section 6 amended

(1) After section 6(1) insert:

(1A) The termination agreement operates and takes effect despite any enactment or other law.

(2) In section 6(2) delete “agreement or the 2015 variation agreement” and insert:

agreement, the 2015 variation agreement or the termination agreement

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8. Schedule 3 inserted

After Schedule 2 insert:

Schedule 3 — Termination agreement

[s. 3]

2017

**THE HONOURABLE MARK McGOWAN
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

and

**BURU ENERGY LIMITED
ACN 130 651 437**

**DIAMOND RESOURCES (FITZROY) PTY LTD
ACN 145 113 177**

**DIAMOND RESOURCES (CANNING) PTY LTD
ACN 145 113 186**

and

MITSUBISHI CORPORATION

**NATURAL GAS (CANNING BASIN JOINT VENTURE)
AGREEMENT 2012**

TERMINATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 27th day of November 2017

BETWEEN

THE HONOURABLE MARK McGOWAN, BA LLB, 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 (**State**) of the one part,

AND

BURU ENERGY LIMITED ACN 130 651 437 of Level 2, 16 Ord Street, West Perth, Western Australia, **DIAMOND RESOURCES (FITZROY) PTY LTD** ACN 145 113 177 of Level 36, 120 Collins Street, Melbourne, Victoria and **DIAMOND RESOURCES (CANNING) PTY LTD** ACN 145 113 186 of Level 36, 120 Collins Street, Melbourne, Victoria (hereinafter collectively called the **Joint Venturers** in which term shall be included their successors and permitted assigns) of the second part

AND

MITSUBISHI CORPORATION of 3-1, Marunouchi 2-Chome, Chiyoda-Ku, Tokyo, Japan (**Guarantor**) of the third part.

WHEREAS:

- A.** The State, the Joint Venturers and the Guarantor are now the parties to the agreement dated 7 November 2012, which agreement was ratified by the *Natural Gas (Canning Basin Joint Venture) Agreement Act 2013* (WA), and as varied by agreement dated 1 July 2015 is referred to in this Agreement as the **Principal Agreement**.
- B.** The State, the Joint Venturers and the Guarantor wish to terminate the Principal Agreement in the manner and on the terms set out in this Agreement.

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NOW THIS AGREEMENT WITNESSES:

1. Definitions

In this Agreement subject to the context:

Operative Date has the meaning given in clause 3(2).

Petroleum Act means the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

Petroleum Minister means the Minister responsible for the administration of the Petroleum Act.

Petroleum Titles has the same meaning as in the Principal Act and at the date of this Agreement comprises the titles listed in the Schedule.

Ratifying Act means the Act of the Parliament of Western Australia to ratify this Agreement referred to in clause 3.

this Agreement, hereof and hereunder refer to this Agreement, whether in its original form or as from time to time added to, varied or amended.

2. Interpretation

In this Agreement:

- (a) clause headings do not affect interpretation or construction;
- (b) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (c) a reference to one gender includes the other genders;
- (d) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (e) a reference to a "person" includes a body corporate;
- (f) a 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;

- (g) a reference to any document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
- (h) a reference to a clause or schedule is a reference to a clause in 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;
- (i) a reference to this Agreement includes all recitals, schedules and annexures; and
- (j) "including" means "including, but not limited to".

3. Ratification and operation

- (1) This Agreement, other than this clause and clauses 1 and 2, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause and clauses 1 and 2, comes into operation on the day after the date on which it is ratified by an Act of the Parliament of Western Australia (**Operative Date**) unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia before 31 March 2018, 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 31 December 2018 or such later date agreed between the parties to this Agreement, 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.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other

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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. Termination of Principal Agreement

- (1) Subject to this clause, the Principal Agreement is hereby terminated with effect on and from the Operative Date and, except as otherwise provided in this Agreement, neither the State nor the Joint Venturers shall have any claim against the other with respect to any matter or thing in or arising out of the Principal Agreement.
- (2) Notwithstanding subclause (1) the Joint Venturers shall remain liable for any antecedent breach or default under the Principal Agreement and in respect of any indemnity given under the Principal Agreement.
- (3) Notwithstanding subclause (1) the Guarantor shall remain liable in respect of any guarantee given under the Principal Agreement in relation to any antecedent breach or default by Diamond Resources (Fitzroy) Pty Ltd or Diamond Resources (Canning) Pty Ltd under the Principal Agreement.
- (4) On and from the Operative Date:
 - (a) each Petroleum Title shall continue in force only under and, except as provided in this subclause, subject to the provisions of the Petroleum Act and, for the avoidance of doubt, each Petroleum Title shall cease to have the benefit of the rights and privileges conferred by, and be subject to the obligations or restrictions imposed by, the Principal Agreement;
 - (b) any modification of the Petroleum Act made by the Principal Agreement in relation to a Petroleum Title shall cease to apply and each Petroleum Title shall continue in force under and subject to the Petroleum Act for the balance of its term as extended in accordance with paragraphs (c) and (d) below;
 - (c) the State shall cause the Petroleum Minister to enter as soon as reasonably practicable a memorial in the register referred to in section 70 of the Petroleum Act recording that Petroleum Titles EP 371, EP428, EP431 and EP 436 shall continue in force until 30 July 2023 and the year end for each work requirement relating to these titles shall be suspended and extended for the additional period of 4 years and such

extension of the term of the titles and variation of work requirements shall be effective for all purposes on and from the date of entry of the memorial in the register;

- (d) the State shall cause the Petroleum Minister to enter as soon as reasonably practicable a memorial in the register referred to in section 70 of the Petroleum Act recording that Petroleum Title EP 391 shall continue in force until 31 January 2024 and the year end for each work requirement relating to this title shall be suspended and extended for the additional period of 4 years and such extension of the term of the title and variation of work requirement shall be effective for all purposes on and from the date of entry of the memorial in the register;
 - (e) in relation to the STP-LNA-0006 declaration of location over the Valhalla-Asgard Field affecting Petroleum Title EP371 the period in which application may be made for a retention lease under section 48A of the Petroleum Act or a production licence under section 50 of the Petroleum Act shall end on 30 June 2021; and
 - (f) for the avoidance of doubt, clauses 39 and 45 of the Principal Agreement will not survive termination of the Principal Agreement.
- (5) On and from the Operative Date the Joint Venturers will indemnify and keep indemnified the State and the State's employees, 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 the Joint Venturers pursuant to the Principal Agreement or relating to its operations under the Principal Agreement or arising out of or in connection with the construction, maintenance or use by the Joint Venturers or their employees, agents, contractors, assignees or sublessees of the Joint Venturers' works or services the subject of the Principal Agreement. This indemnity shall remain in force for a period ending on the date which is 20 years after the Operative Date.

5. Mitsubishi Corporation guarantee of subsidiaries' performance

The Guarantor hereby guarantees to the State the due performance by each of Diamond Resources (Fitzroy) Pty Ltd and Diamond

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Resources (Canning) Pty Ltd of all of their obligations under this Agreement.

6. Applicable law and submission to jurisdiction

This Agreement is to be interpreted according to the law for the time being in force in the State of Western Australia and the parties to this Agreement submit to the jurisdiction of the courts of Western Australia in relation to any action or proceeding to settle any dispute or question arising out of or in connection with this Agreement.

SCHEDULE

Petroleum Titles

Petroleum Exploration Permits No.	Blocks
EP371*	45
EP391	26
EP428	79
EP431	52
EP436	30

- *Includes STP-LNA-0006 Declaration of Location over the Valhalla-Asgard Field

EXECUTED as a deed.

SIGNED by the **HONOURABLE**)
MARK McGOWAN in the)
presence of:)

[Signature]
.....
Signature of witness

[Signature]
.....

NADEEN LYN ROBERTS
.....
Name of witness

EXECUTED by BURU)
ENERGY LIMITED)
ACN 130 651 437 in accordance)
with section 127 of the)
Corporations Act 2001)
(Commonwealth):)

[Signature]
.....
Signature of director:
Name of director: Eric Streitberg

[Signature]
.....
Signature of company secretary:
Name of company secretary:
Shane McDermott

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EXECUTED by DIAMOND)
RESOURCES (FITZROY) PTY)
LTD ACN 145 113 177 in)
accordance with section 127 of the)
Corporations Act 2001)
(Commonwealth):)

[Signature]
.....
Signature of director:

Masashi Shiraishi
.....
Name of director:

[Signature]
.....
Signature of director:

Tadashi Hara
.....
Name of director:

EXECUTED by DIAMOND)
RESOURCES (CANNING) PTY)
LTD ACN 145 113 186 in)
accordance with section 127 of the)
Corporations Act 2001)
(Commonwealth):)

[Signature]
.....
Signature of director:

Masashi Shiraishi
.....
Name of director:

[Signature]
.....
Signature of director:

Tadashi Hara
.....
Name of director:

SIGNED for and on behalf of)
MITSUBISHI CORPORATION)
in the presence of:)

[Signature]
.....
Signature of witness:

[Signature]
.....
Signature of duly authorised
representative:

Tadashi Hara
.....
Name of witness:

Fuminori Hasegawa
.....
Name:

Senior Vice President
Division COO,
Energy Business Division A
.....
Title:

=====