

**DATED**

**2020**

(1) THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF SOMALIA

**- and -**

(2) ◆

**MODEL PRODUCTION  
SHARING AGREEMENT**

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THIS PRODUCTION SHARING AGREEMENT ("Agreement") is made on 20

**BETWEEN:**

- (1) THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF SOMALIA ("Federal Government"), represented by the Minister of Petroleum and Mineral Resources; and
- (2) [◆], a limited liability company incorporated under the laws of Somalia and having a registered place of business at [◆] ("Contractor", including its successors and permitted assignees) represented by [◆].

**BACKGROUND:**

- A The title to all Petroleum existing in its natural condition in the territory of the Federal Republic of Somalia is the common good of the people of Somalia, owned by the Federal Republic of Somalia and vested in the Federal Government.
- B In accordance with the Act, the Federal Government has the authority to grant an authorisation for the Petroleum Operations and to enter into production sharing agreements.
- C The Federal Government wishes to promote and support the Exploration and Development of Petroleum throughout the Contract Area [and for that has run a tender process [*insert details*], with the Contractor having been selected (pursuant to a decision [*insert details*]) as the best bidder]. The Contractor wishes to join and assist the Federal Government in accelerating the Exploration and (potential) Production of Petroleum in the Contract Area.
- D The Contractor has the financial ability, technical competence and professional skills required to carry out the Petroleum Operations in accordance with the Agreement.

**IT IS AGREED:**

**1. INTERPRETATION**

In the Agreement, words in the singular include the plural and *vice versa*, and except where the context otherwise requires, shall have the meaning set forth in this clause 1. Words that are not defined herein, but are defined in the Act or Regulations shall have the meanings set forth therein.

"**Accounting Procedure**" means the Accounting Procedures and requirements set out in Schedule 2 attached hereto and made an integral part hereof;

"**Act**" means the Petroleum Law of the Federal Republic of Somalia, Law No. [◆], as amended, varied, modified or replaced from time to time;

"**Affiliate**" means a Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with another Person;

"**Appointee**" means a body corporate wholly owned or Controlled by the Federal Government, and appointed for the purposes of the Agreement;

"**Appraisal**" means all work carried out by the Contractor subsequent to a Discovery of Petroleum for the purpose of delineating one or more Petroleum Reservoirs to which that Discovery relates in terms of thickness, reservoir quality, and lateral extent and in order to further define the quantity of recoverable Petroleum therein and all activities related thereto;

**“Appraisal Well”** means any Well which is drilled or deepened for the purpose of Appraisal.

**"Appraisal Work Programme"** means a Work Programme in relation to Appraisal.

**"Arbitration Rules"** has the meaning specified in clause 48.3.5;

**"Arm’s Length"** means the sale of, or other transaction in, Petroleum in freely convertible currencies between sellers and buyers having no direct or indirect relationship or common interest whatsoever with each other that could reasonably influence the price or other commercial terms of the sale or other transaction, and where the contract price is the sole consideration for the sale, and neither the seller nor any other Person connected with the seller has, directly or indirectly, any interest in the subsequent resale or disposal of the Petroleum or any product derived therefrom;

**"Associated Natural Gas"** means:

- (a) any Natural Gas dissolved in or in contact with Crude Oil under reservoir conditions; and
- (b) any residue gas remaining after the extraction of Crude Oil from a Reservoir;

**"Best International Practice"** means such practices, methods, standards, and procedures generally accepted and followed internationally by prudent, diligent, skilled and experienced operators in the Petroleum Operations, including practices, methods, standards, and procedures intended to:

- (a) conserve Petroleum by maximising recovery of Petroleum in a technically and economically sustainable manner;
- (b) promote operational safety and prevention of accidents; and
- (c) protect the environment;

**"Block"** means acreage as defined by specific geographic coordinates for purposes of Petroleum Operations as regulated by the Act;

**"Brine"** means all saline geological formation water resulting from, obtained from, or produced in connection with Exploration, drilling, Well stimulation, Production of Crude Oil or Natural Gas, or plugging of a Well;

**"Budget"** means the annual estimate of the costs of all items included in a Work Programme;

**"Calendar Quarter"** or **"Quarter"** means a period of three consecutive months commencing with the first day of January, April, July and October;

**"Calendar Year"** means a period of twelve (12) consecutive months commencing with the first day of January in any year and ending the last day of December in that year, according to the Gregorian calendar;

**"Change in Law"** means the enactment, adoption, promulgation, bringing into effect, modification, amendment, repeal or re-interpretation after the date of the Agreement by any Governmental Authority of any statute, decree, ordinance or any other Laws (including, where existing, those relating to any tax, duty, licence, fee or other revenue-producing measure), that:

- (a) establishes either (A) a material increase in cost or (B) a material reduction in Revenues, as a consequence of any requirement for the performance of the Petroleum Operations or sale and export of the Petroleum; or
- (b) have a negative impact upon the technical or commercial feasibility of the Petroleum Operations, its future Revenues or its financing parameters; or
- (c) render the Petroleum Operations' implementation and operation more burdensome than envisaged at the time of the conclusion of the Agreement;

[provided that the event does not relate to any increased cost for environmental or health and safety compliance(s) where such compliance(s) could have been reasonably foreseen and designed for or mitigated by the Contractor at the date of entering into this Agreement.]

**"Commercial Assessment Period"** means the period commencing, at the request of the Contractor, at the time when the report regarding the evaluation Work Programme relating to the Discovery of Non-Associated Natural Gas has been submitted by the Contractor;

**"Commercial Discovery"** means a Discovery of Petroleum which has been duly evaluated in accordance with clause 6.4, and which can be produced commercially according to the Best International Practice, after the consideration of all pertinent technical and economic data;

**"Commercial Production"** means the quantity of Petroleum produced on a regular basis from a Field, saved and not used in Petroleum Operations;

**"Conservation of Petroleum Resources"** means prevention and minimization of wastage of Petroleum, protection of correlative rights and maximization of ultimate economic recovery;

**"Contract Area"** means the area covered by the Agreement, and described in Schedule 1: and any such area as may be modified in accordance with the Agreement (including through amendments, relinquishment, withdrawal, extension or otherwise);

**"Contract Year"** means twelve (12) consecutive calendar months from the Effective Date or from the anniversary thereof;

**"Control"** in relation to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management by that Person, whether through the ownership of shares, voting, securities, partnership or other ownership or participation interests, agreements or otherwise;

**"Convention"** has the meaning specified in clause 48.3.1;

**"Cost Gas"** means the portion of the available Natural Gas that the Contractor may freely retain and export each Calendar Year for the purposes of recovery of its Petroleum Costs;

**"Cost Oil"** means the portion of the available Crude Oil that the Contractor may freely retain and export each Calendar Year for the purposes of recovery of its Petroleum Costs;

**"Cost Petroleum"** has the meaning set out in sub-clause 10.1;

**"Crude Oil"** means all unrefined hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric conditions of temperature and pressure, and the liquid

hydrocarbons known as distillates or condensate or Natural Gas liquids obtained from Natural Gas by condensation or extraction;

**"Decommissioning"** means, in respect of the Contract Area, abandonment, decommissioning, transfer, removal and/or disposal, or, if applicable, re-deployment, of structures, facilities, installations, pipelines, equipment and other property, and other works, used in or related to the Petroleum Operations, to clean up the relevant area and to make it safe, to protect the environment, human beings, livestock, wildlife or marine life, to re-appropriate the area with local population and to restore the area's flora and fauna;

**"Decommissioning Costs"** means all the costs and expenditures incurred by the Contractor when carrying out Decommissioning operations (including those defined in the Accounting Procedure);

**"Decommissioning Fund"** means any account or fund established by agreement of the Contractor and the Government in accordance with Article 37(3) of the Act, for which the Contractor shall be required to make periodic contributions to fund some or all future Decommissioning obligations arising in connection with Petroleum Operations.

**"Decommissioning Plan"** means a plan of work, and an estimate of expenditures therefor, for Decommissioning, including environmental, engineering and feasibility studies in support of the plan;

**"Delivery Point"** means the location specified in the approved Development Plan and the approved Production Plan, within or outside the Contract Area;

**"Development"** shall include, but is not limited to:

- (a) all the operations and activities under the Agreement with respect to the drilling of Wells (other than Exploratory Wells and Appraisal Wells), the deepening, plugging, completing and equipping of such Wells, together with the design, construction and installation of such equipment, pipeline or lines, installations, production units and all other systems relating to such Wells as may be necessary in conformity with the Best International Practice and generally prevailing environmental practices in the international petroleum industry; and
- (b) all operations and activities relative to the servicing and maintenance of pipelines, lines, installations, production units and all related activities for Production and management of Wells;

**"Development and Production Period"** has the meaning set out in sub-clause 3.5;

**"Development and Production Work Programme"** means a Work Programme in relation to Development and Production.

**"Development and Production Bonus"** has the meaning given to it in clause 33.4

**"Development Area"** means the area delimited in the relevant Development Plan;

**"Development Costs"** means all the costs and expenditures incurred by the Contractor when carrying out Development (including those defined in the Accounting Procedure);

**"Development Plan"** means a plan for Development of a Development Area prepared and, where so required, approved in accordance with clause 8.2;

**"Discount Rate"** means the sum of one and the decimal equivalent of the percentage increase in the United States Consumer Price Index, as reported for the first time in the monthly publication *"International Financial Statistics"* of the International Monetary Fund, between the month of the Effective Date and the month when such costs were incurred;

**"Discovery"** means the discovery of a Petroleum Accumulation not previously proven by the drilling of a Well, with Petroleum productivity being demonstrated by either:

- (a) Petroleum being recovered at the surface in a flow measurable by conventional industry testing methods; or
- (b) Reservoir fluid content and deliverability being demonstrated using petrophysical and other subsurface evaluation technologies.

**"Discovery Warranting Appraisal"** means a Discovery which taking into account the available data and the prevailing commercial and technical environment, would reasonably warrant drilling Appraisal Wells in the area in which the Discovery is located.

**"Discovery Not Currently Warranting Appraisal"** means a Discovery that is not currently a Discovery Warranting Appraisal but which the Contractor reasonably believes may become a Discovery Warranting Appraisal prior to the end of the Exploration Period.

**"Discovery Area"** means that portion of the Contract Area reasonably determined by the Contractor on the basis of available seismic and well data to cover the areal extent of the discovered Petroleum Accumulation(s).

**"Economic Limit"** means that point in the life of the Field where expected Revenue to the Contractor from Petroleum Operations is insufficient to cover the operating costs to continue Petroleum Operations in accordance with the Agreement;

**["Evaluation Period"** means the period commencing on the date of a Discovery and ending on the date the Contractor notifies the SPA pursuant to clause 6.4.1.4 whether the Discovery is a Non-Commercial Discovery, a Discovery Not Currently Warranting Appraisal, a Discovery Warranting Appraisal or a Discovery of Non-Associated Natural Gas.]

**"Effective Date"** means the date immediately following the day on which the conditions set out in Clause 3.1 are satisfied or waived.

**"Execution Date"** means the date the Agreement has been duly signed by the Contractor and the Federal Government;

**"Exploration"** means any and all operations conducted for the purpose of making a Discovery, including, but not limited to,:

- (a) any activities necessary to commence operations;
- (b) any topographical, hydrographical, geological, geophysical, aerial and other surveys and activities (including interpretations, analyses and related studies) to investigate the subsurface for the location of Petroleum;
- (c) drilling of shot holes, core holes, stratigraphic test holes; spud, drilling, testing, coring, logging and equipping of Exploratory Wells and Appraisal Wells; and

- (d) procurement of such material, equipment, machinery, items and supplies as may be required or expedient for the foregoing activities; and all auxiliary operations and activities required or expedient for the better conduct or result of the foregoing activities;

**“Exploration Period(s)”** means the period(s) described in Clause 3.3, which includes the Initial Exploration Period, the First Additional Exploration Period, the Second Additional Exploration Period and any other extension as permitted under Clause 3.3.2.

**"Initial Exploration Period"** has the meaning given to it in clause 3.3.1.1

**"First Additional Exploration Period"** has the meaning given to it in clause 3.3.1.2

**"Second Additional Exploration"** has the meaning given to it in clause 3.3.1.3

**“Exploration Costs”** means all the costs and expenditures incurred by the Contractor when carrying out Exploration (including those defined in the Accounting Procedure);

**"Exploratory Well"** means a Well drilled in search of Petroleum to test a geological feature which has not been determined to contain Petroleum in commercial quantities;

**"Exploration Work Programme"** means a Work Programme in relation to Exploration.

**"Fair Market Value"** means the value of a Participating Interest determined by a Valuer on the following bases and assumptions:

- (a) the Participating Interest is being sold on the international market and the sale is not restricted to a purchase by the Federal Government;
- (b) the sale is on arms' length terms between a willing seller and a willing buyer;
- (c) the Participating Interest is being sold free of all encumbrances;
- (d) the sale is taking place on the date the Valuer is requested to determine the Fair Market Value; and
- (e) to take account of any other factors that the Valuer reasonably believes should be taken into account.

**"Federal Government Default Termination Amount"** has the meaning set out in Schedule 3.

**“Field”** means an area consisting of a single Petroleum Accumulation or multiple Petroleum Accumulations, all grouped on, or related to, the same individual geological structural feature and/or stratigraphic condition. There may be two or more Petroleum Accumulations in a Field that are separated vertically by intervening impermeable rock, laterally by geological barriers, or both

**"Fiscal Year"** means a period of twelve (12) consecutive months corresponding to the year of income;

**"Flow Line"** means those segments of pipe complete with equipment, such as pumping or compressor stations, separators, storage tanks, communication systems and valves, for transporting Petroleum from the wellhead in the Contract Area to the junction of a trunk pipeline or a transmission pipeline;

**"Gas Field"** means a Field from which Non-Associated Gas may be produced;

**"Governmental Authority"** means any national, federal, regional, state, local or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality;

**"ICSID"** has the meaning specified in clause 48.3.1;

**"Joint Operating Agreement"** means an agreement between Persons forming part of the Contractor with respect to their respective rights and obligations under the Agreement, as such agreement may be amended, supplemented, novated or restated from time to time;

**"Lapse of Consent"** means any Permit:

- (a) ceasing to remain in full force and effect, or
- (b) not being issued (or, having lapsed, not being renewed or replaced) within 180 days of properly and timely made and diligently pursued application by the Contractor for that Permit to be issued, renewed, or replaced, as the case may be, or
- (c) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Contractor's ability to perform its obligations under the Agreement, or
- (d) being withdrawn, cancelled, or suspended,

in each of the above instances despite the Contractor's compliance with the applicable procedural and substantive requirements as applied in a non-discriminatory manner. For the avoidance of doubt, if any Lapse of Consent is the result of any applicable procedural and substantive requirements (whether or not applied in a non-discriminatory manner) that have changed after the Effective Date, such change should be deemed a Change in Law event as defined in the Agreement;

**"Law"** means any enactment, subsidiary legislation, rule, regulation, order, directive or other written provision which is in force in Somalia on the day the Agreement is signed or thereafter;

**"LIBOR"** means the London Interbank Offered Rate for one month deposits of US dollars displayed on page "LIBOR01" of the Reuters Money Rates Service (or any other page that replaces page "LIBOR01" for the purposes of displaying the British Bankers Association (BBA) interest settlement rates for such deposits of US dollars in the London Interbank market) on the date of determination, or in the event the Reuters Money Rates Service, or a successor thereto, no longer provides such information, such other service as may be agreed by the Parties hereto that provides the BBA interest settlement rates for such deposits of US dollars in the London Interbank market and any other required information previously provided on page "LIBOR01";]

**"Local Content"** means the use of Somali local expertise, goods and services, people and businesses for the systematic development of national capacity and capabilities for the enhancement of the Somali economy;

**"Local Communities Fund"** has the meaning given to it in clause 33.5.

**"Material Adverse Effect"** means an increase in the cost to the Contractor (including any increase in amounts payable by the Contractor to the Federal Government or any authority in

Somalia) and/or a decrease in the gross revenue received by the Contractor from sales of Petroleum;

**"Maximum Efficient Rate"** means the rate at which the maximum ultimate economic Petroleum recovery is obtained from a Field without excessive rate of decline in Reservoir pressure, and consistent with the Best International Practice;

**"Minister of Petroleum"** means the Minister responsible for Petroleum of the Federal Republic of Somalia from time to time;

**"Ministry"** means the Ministry responsible for Petroleum in Somalia from time to time;

**"Natural Gas"** means hydrocarbons that are in a gaseous phase at atmospheric conditions of temperature and pressure, including wet mineral gas, dry mineral gas, casing head gas and residue gas remaining after the extraction or separation of liquid hydrocarbons from wet gas, and non-hydrocarbon gas produced in association with liquid or gaseous hydrocarbons;

**"Non-Associated Natural Gas"** means any Natural Gas that is not Associated Natural Gas;

**"Non-Commercial Discovery"** means a Discovery that is neither a Discovery Not Currently Warranting Appraisal nor a Discovery Warranting Appraisal.

**"Notification Date"** has the meaning set out in sub-clause 45.5;

**"Operator"** means the designated entity that is responsible for managing the day-to-day operation of Petroleum Exploration, Development and Production;

**"Participating Interest"** has the meaning set out in sub-clause 17.1;

**"Participation Agreement"** means an agreement entered into between the Federal Government and the Contractor in good faith, that regulates the participation of the Federal Government in Petroleum Operations, in the event the Federal Government exercises its option under clause 17.

**"Parties"** means, collectively, the Federal Government and the Contractor; each a **"Party"**;

**"Permits"** means all such permits, approvals, consents, authorisations, grants or certificates of registration, notifications, concessions, acknowledgements, agreements, licenses, decisions or similar items required to be obtained from any Somali Governmental Authority for the Contractor or for the performance of the Petroleum Operations;

**"Person"** means any natural or legal person;

**"Petroleum"** means all hydrocarbons (including Crude Oil and Natural Gas), whether capable of being produced from conventional and unconventional Reservoirs, including shale oil, oil shale, shale gas, coal bed methane gas, tar sands, and other sources of hydrocarbon reserves;

**"Petroleum Accumulation"** means any individual body of moveable Petroleum.

**"Petroleum Costs"** means expenditure made and obligations incurred and paid by the Contractor in carrying out Petroleum Operations hereunder, determined in accordance with the Accounting Procedure attached hereto in Schedule 2 and made a part hereof;

**"Petroleum Operations"** means all or any of the operations related to the Exploration, Development, Production, separation and treatment, storage and transportation of Petroleum up to the agreed Delivery Point;

**"Production"** includes, but is not limited to, operations and all activities related thereto carried out for Petroleum exploitation and production after the SPA's approval of the Production Plan, such as extraction, injection, stimulation, treatment, transportation, storage, lifting, export and related operations, but does not include (a) any storage or transportation beyond the Delivery Point, and (b) Development;

**"Production Costs"** means all the costs and expenditures incurred by the Contractor when carrying out Production (including those defined in the Accounting Procedure);

**"Profit Gas"** means the remaining available Natural Gas, after the Contractor has taken the Cost Gas pursuant to sub-clause 10.3;

**"Profit Oil"** means the remaining available Crude Oil, after the Contractor has taken the Cost Oil pursuant to sub-clause 10.3;

**"Profit Petroleum"** has the meaning set out in Schedule 6;

**"Reconnaissance Authorisation"** has the meaning given to it in Article 23 of the Act.

**"Regulations"** means the regulations made under the Act, as amended or issued from time to time;

**"Reservoir"** means a porous, permeable sedimentary rock formation or fractured rock formation capable of holding Petroleum and allowing Petroleum to flow from it.

**"Retention Area"** means the area established pursuant to sub-clause 7.4;

**"Revenue"** means the expected revenues derived from the conveyance and sale of Petroleum at the Delivery Point together with any firm tariff income earned by the Petroleum, Operations facilities (if any);

**"Royalties"** means the royalties set out in Schedule 7;

**"Semester"** means a period of six consecutive months, commencing with the first day of January or the first day of July of a Calendar Year;

**"Bank Guarantee/Security"** means, in each case in form and content satisfactory to the Federal Government:

- (a) a standby letter of credit issued by a bank acceptable to the Federal Government; or
- (b) an on-demand bond issued by a surety corporation acceptable to the Federal Government; or
- (c) a corporate guarantee acceptable to the Federal Government; or
- (d) any other financial security acceptable to the Federal Government.

**"SONOC"** means the Somalia National Oil Company;

**"Somali Governmental Authority"** means a Governmental Authority established in the Federal Republic of Somalia, including SONOC and the Somalia Petroleum Authority;

**"SPA"** means the Somalia Petroleum Authority established in the Federal Republic of Somalia pursuant to the Act;

**"Stabilisation Event"** has the meaning set out in sub-clause 45.2;

**"Termination Transfer Assets"** means all (movable or immovable) structures, installations, facilities, equipment and other assets from the Contract Area used for the purpose of the Petroleum Operations;

**"Third Party"** means a Person other than a Contractor, a Contractor's Affiliate or their respective directors, officers or employees;

**"Underground Injection Control Well" or "UIC Well"** means an individual non-commercial existing Well that is converted to a Brine injection Well for the sole purpose of disposal of Brine and liquid waste and includes all facilities necessary to conduct safe injection operations;

**"US dollars" or "USD"** means the lawful currency of the United States of America;

**"Valuer"** means an internationally reputable accountancy firm with experience in international oil and gas valuations selected by the Federal Government acting reasonably;

**"Well"** means any opening in the ground or seabed, made or being made by drilling or boring or in any other manner, within Somalia for the purpose of discovering and/or production of Petroleum, or for the injection of any fluid (excluding fresh water to be used as such, but including natural or artificial Brines and Well treatment chemicals) into a Petroleum Accumulation, other than a seismic hole or a structure test hole or a stratigraphic test hole; and

**"Work Programme"** means an annual plan itemising the Petroleum Operations to be carried out pursuant to the Agreement in relation to Exploration, Appraisal or Development and Production, as the case may be.

## **2. SCOPE**

2.1 This is an exploration and production sharing agreement, the object of which is the Exploration, Appraisal, Development and Production of Petroleum in the Contract Area and the supply of required infrastructure within and outside the Contract Area, up to the Delivery Point, all at the Contractor's sole risk and expense.

2.2 Subject to the Agreement, the Contractor shall:

2.2.1 have the exclusive right to carry out Petroleum Operations for the duration of the Agreement, at its sole cost, risk and expense, and shall therefore have an economic interest in the Exploration and (potential) Production of Petroleum in the Contract Area;

2.2.2 provide all capital, machinery, equipment, facilities, technology and personnel required for the conduct of Petroleum Operations;

2.2.3 as further provided in the Agreement, share the Petroleum from the Contract Area;

- 2.2.4 be responsible to the Federal Government for the execution of Petroleum Operations in accordance with the terms of the Agreement, the Act and Regulations; and
- 2.2.5 without prejudice to the Contractor's position as an independent Contractor hereunder, the extent and character of activities to be performed by the Contractor shall be subject to the general supervision, review and approval by the SPA, as set forth in the Agreement, the Act and Regulations.
- 2.3 The Contractor is not authorised to carry out Petroleum Operations in any part of Somalia outside the Contract Area.
- 2.4 The Agreement does not authorise the Contractor to conduct Petroleum Operations beyond the Delivery Point.
- 2.5 The Agreement (including the rights, obligations and liabilities of each Party hereunder) is made pursuant and is subject to the Act and [Regulations].

### **3. CONDITIONS PRECEDENT AND TERM**

#### **3.1 Conditions Precedent**

- 3.1.1 Other than in relation to sub-clause 3.1, clause 4 and clause 44, clause 48, and clause 47, the entry into full force and effect of the Agreement is conditional upon:
  - 3.1.1.1 the appointment of an Operator in accordance with clause 4;
  - 3.1.1.2 if there is more than one Person constituting the Contractor, the conclusion and approval of the Joint Operating Agreement in accordance with clause 4;
  - 3.1.1.3 the Contractor providing the Federal Government with Bank Guarantee/Security in accordance with sub-clause 5; [and]
  - 3.1.1.4 the Contractor demonstrating, to the reasonable satisfaction of the Federal Government, that it has complied with the applicable insurance requirements set out in clause 34.
- 3.1.2 If the conditions precedent set out in sub-clause 3.3.1 have not been fulfilled or waived by the 60th day after the date of the Agreement, sub-clause 3.1, clause 4 and clause 34 shall terminate and be of no further force and effect.

#### **3.2 Term**

Unless sooner terminated or surrendered pursuant to clause 39 (Termination) and subject to the extension of the Development and Production Period in accordance with clause 3.5.3 this Agreement shall commence on the Effective Date and remain in force until the first to occur of:

- 3.2.1 the last day of the Exploration Period if there has been no Development and Production Period; and
- 3.2.2 the last day of the last subsisting Development and Production Period;

#### **3.3 Exploration Period**

- 3.3.1 The Exploration Period shall commence on the Effective Date and, unless this Agreement is sooner terminated pursuant to clause 39 (Termination) shall continue:
- 3.3.1.1 for an Initial Exploration Period of three (3) Contract Years from the Effective Date; and
  - 3.3.1.2 *provided that* the Contractor has upon written application to the SPA made not later than thirty (30) days prior to the expiry of the Initial Exploration Period, fulfilled all of its minimum work and expenditure obligations under the Agreement, a First Additional Exploration Period of two (2) Contract Years from the date of expiry of the Initial Exploration Period; and
  - 3.3.1.3 *provided that* the Contractor has upon written application to the SPA made not later than thirty (30) days prior to the expiry of the First Additional Exploration Period fulfilled all of its minimum work and expenditure obligations under the Agreement, and a Second Additional Exploration Period of two Contract Years from the date of expiry of the First Additional Exploration Period.
- 3.3.2 In order to enable the Contractor to complete the works at the end of the Second Additional Exploration Period, the SPA shall, on written application by the Contractor made not later than ninety (90) days before the expiry of the Second Additional Exploration Period, grant an extension for such period as may be necessary for the Contractor to complete the works, which the Contractor shall carry out continuously and diligently, which in any event shall not be longer than three hundred and sixty five (365) days.
- 3.3.3 Unless the Government notifies the Contractor of any objection within forty-five (45) days of receiving a notice under clause 3.3.1.2 or clause 3.3.1.3, the Contractor shall be deemed to have fulfilled its minimum work and expenditure obligations under the Agreement in respect of the relevant period.

#### 3.4 **Exploration Period Special Extensions**

- 3.4.1 If the Contractor has made a Discovery and pursuant to clause 6.4.1 and has notified the SPA that it has made a Discovery, the Exploration Period shall not terminate before the end of the Evaluation Period and shall apply to the Contract Area at the time the Discovery was made.
- 3.4.2 If pursuant to clause 6.7.1 the Contractor is drawing up an Appraisal Work Programme and Budget in respect of a Discovery, the Exploration Period shall not terminate unless the Contractor fails to submit to the SPA an Appraisal Work Programme and Budget in accordance with the timescales set out in clause 6.7.1. Where the Contractor submits an Appraisal Work Programme and Budget in compliance with clause 6.7.1. the Exploration Period shall not terminate in respect of a Discovery Area to which the Appraisal Work Programme and Budget relates until the first to occur:
- 3.4.2.1 the date on which the proposed Development Plan submitted by the Contractor in respect of the Discovery Area is approved by the SPA Petroleum pursuant to clause 8.3;

3.4.2.2 the date the Contractor gives notice, or is deemed to have given notice, to the SPA under clause 6.7.9 that the Discovery is a Non-Commercial Discovery and the Contractor does not intend to develop it.

3.4.3 If pursuant to clause 40.3.1 there is an ongoing Commercial Assessment Period, the Exploration Period shall not terminate in respect of the portion of the Contract Area that is subject to a Commercial Assessment Period for the duration of the Commercial Assessment Period.

### 3.5 **Development and Production Period**

3.5.1 Subject to clause 3.5.2, a Development and Production Period shall commence with respect to a Development Area on the date when the SPA pursuant to clause 8.3 approves the Development Plan in relation to such area], and unless this Agreement is extended or sooner terminated or surrendered in accordance with its terms, shall, in respect of the Development Area, continue to subsist until the day that is twenty-five (25) years from the date that the Development Plan was adopted for that Development Area (**Development and Production Period**).

3.5.2 Prior to the commencement of any Development and Production Period, the Contractor is required to pay to the Federal Government the Development and Production Bonus in respect of each new Development Area.

3.5.3 If the Contractor has fulfilled all of its obligations for the applicable term of the Agreement, the SPA may grant an additional extension in relation to the Development Area for a further period of up to ten (10) Calendar Years, if so authorised by the Act.

## 4. **JOINT OPERATING AGREEMENT AND OPERATOR**

### 4.1 **Submission of Joint Operating Agreement**

4.1.1 Where the Contractor consists of more than one Person:

4.1.1.1 their liability shall be joint and several (other than in relation to the corporate taxes, where the liability shall be several); and

4.1.1.2 the Persons shall enter into a Joint Operating Agreement binding the Persons constituting the Contractor.

4.1.2 Where such persons under clause 4.1.1.2 enter into a Joint Operating Agreement, the Contractor shall provide a copy of the Joint Operating Agreement (including any amendment thereof) to the SPA for approval.

4.1.3 The SPA shall have sixty (60) days following submission of the Joint Operating Agreement under clause 4.1.2 to approve the Joint Operating Agreement. If the SPA has reasonable grounds for refusal the SPA may refuse refusal within the same period of time or submit to the Contractor suggested modifications and revisions thereto.

4.1.4 Following consultation with the Contractor, the Contractor shall consider in good faith the inclusion of such suggested modifications and revisions against Best Industry Practice and update the Joint Operating Agreement to reflect any changes made by the SPA, and re-submit the Joint Operating Agreement to the SPA for

approval. To the extent that Parties cannot come to a mutual agreement within twenty (20) days following the Contractor's re-submission of the Joint Operating Agreement such dispute shall be dealt with in accordance with clause 48.2 (Expert Determination).

4.1.5 Where the expert determines that the Joint Operating Agreement or amendments thereto meets Best International Practice the SPA shall forthwith give the requisite approval to the Joint Operating Agreement or amendments thereto.

4.1.6 Where the expert determines that the Joint Operating Agreement or amendments thereto do not meet Best International Practice then the expert shall within thirty (30) days make such amendments to the Joint Operating Agreement as he or she deems appropriate and which meets Best International Practice and the SPA shall forthwith give the requisite approval to the Joint Operating Agreement.

4.1.7 In case of expiry of the period of sixty (60) days following submission to the SPA of the Joint Operating Agreement under clause 4.1.2 without the SPA providing comments on the Joint Operating Agreement, the Joint Operating Agreement (including any amendment thereof) shall be deemed approved by the SPA.

## 4.2 Management Committee

4.2.1 The Joint Operating Agreement shall establish a management committee for the purposes of controlling and supervising the conduct of Petroleum Operations, ensuring cooperation between the Parties, overseeing and supervising the implementation of Petroleum Operations and the compliance with Work Programmes, Development Plans and Production Plans.

4.2.2 The Joint Operating Agreement shall establish the functions and the procedures of the management committee. The Federal Government is entitled to appoint its representatives who shall be part of the management committee and shall act as observers (with the right, *inter alia*, to provide information and informal suggestions) in all management committee activities. The Contractor shall ensure that the appointed Federal Government representatives in the management committee receive all information in connection with the activities of the management committee. The Contractor shall ensure that the Federal Government representatives receive written notice within reasonable time and latest at the same time as the other Contractor representatives in the management committee.

## 4.3 Appointment of an Operator

4.3.1 At the same time as submitting the Joint Operating Agreement under clause 4.1 the Contractor shall nominate an Operator. If the SPA has reasonable grounds for refusal of the proposed Operator (such to be notified to the Contractor), the SPA may refuse grant of approval within twenty (20) days following submission of Joint Operating Agreement, at which point the Parties shall work together in good faith to agree an appropriate Operator. To the extent that Parties cannot come to a mutual agreement within twenty (20) days following the Contractor's receipt of the SPA's refusal, such dispute shall be dealt with in accordance with clause 48.2 (Expert Determination).

4.3.2 In case of expiry of the period of twenty (20) days following submission to the SPA without the SPA either approving or refusing grant of approval, the Operator (including any change of the Operator) shall be deemed approved by the SPA.

- 4.3.3 In the event that an existing Operator ceases to be the Operator, the Contractor shall within thirty (30) days propose a new Operator to the SPA, which shall be approved by the SPA in accordance with clause 4.3.1.
- 4.3.4 If the Contractor does not put forward a proposal for a new Operator in accordance with clause 4.3.3 or clause 4.4.2, or a proposed Operator is not approved by the SPA (such approval not to be unreasonably withheld or delayed) and:
- 4.3.4.1 the Operator is being replaced pursuant to clause 4.4.1 the SPA may, by written notice to the Operator and the Persons constituting the Agreement terminate this Agreement due to the agreement's material default.; or
  - 4.3.4.2 the Operator is being replaced for any reason other than pursuant to clause 4.4.1, the decision of approving a new Operator shall be referred to an expert for determination in accordance with clause 48.2 (Expert Determination).
- 4.3.5 When submitting a request to the Federal Government for approval of a new Operator in accordance with clause 4.3.3 the Contractor shall also provide the SPA with proof of the technical and financial capacity and professional skills of the proposed assignee.

#### 4.4 **Removal of an Operator**

- 4.4.1 In the event of the occurrence of any of the following, the SPA may, by written notice to the Operator and the entities constituting the Contractor, request that a new Operator shall be proposed if:
- 4.4.1.1 Operator becomes insolvent, makes an arrangement or composition with its creditors or goes into liquidation (other than for the purpose of restructuring or amalgamation); or
  - 4.4.1.2 Contractor has committed a material breach of this Agreement as a consequence of the material default of the Operator, and the Operator has either failed to commence to cure that breach within ninety (90) days of receipt of a notice from the SPA detailing the alleged breach or failed to diligently pursue the cure to completion.
- 4.4.2 The Contractor must then within thirty (30) days propose to the SPA a new Operator and the provisions of clause 4.3.4. shall apply.

#### 4.5 **Obligations of an Operator**

- 4.5.1 The Operator shall:
- 4.5.1.1 supervise the Petroleum Operations on behalf of the Contractor;
  - 4.5.1.2 represent the Contractor in all matters related to the Agreement; and
  - 4.5.1.3 be the only Person which, on behalf of the Contractor, may execute contracts, incur expenses, make commitments and implement other actions in connection with the Petroleum Operations.

- 4.5.2 The obligations, liabilities, acts and omissions of the Operator are considered the obligations, liabilities, acts and omissions of the Contractor.

## **5. BANK GUARANTEE/SECURITY**

### **5.1 Bank Guarantee/Security**

- 5.1.1 The Contractor shall, as a condition precedent to effectiveness of this Agreement (in accordance with sub-clause 3.1) and, when the Agreement has been extended in accordance with clause 3.3, a condition precedent to the commencement of each subsequent Exploration Period, submit to the Federal Government and maintain in full force and effect a Bank Guarantee/Security that is acceptable to the Federal Government in respect of its minimum work requirements during the relevant Exploration Period (including any additional Exploration Period).

- 5.1.2 Without prejudice to the preceding sentence and unless otherwise agreed between the Parties, the amount of the Bank Guarantee/Security to be maintained during each Exploration Period shall be equal to the estimated expenditure of the minimum work obligations applicable to such Exploration Period.

- 5.1.3 The costs of provision of Bank Guarantee/Security may not be included in Petroleum Costs and are not subject to cost recovery under sub-clause 10.1.

- 5.1.4 In the event that at the end of any Exploration Period or upon the date of termination of this Agreement, whichever occurs first, the Contractor has not fulfilled its minimum work obligations in accordance with clause 6.2.1, and the Contractor has failed to make the required payment in accordance with clause 6.2.2 – 6.2.4, the Federal Government may claim under the Bank Guarantee/Security in the following amounts:

5.1.4.1 in respect of the Contractor's payment obligation clause 6.2.2, the amount set out in clause 6.2.2;

5.1.4.2 in respect of the Contractor's payment obligation under clause 6.2.3, the amount set out in clause 6.2.3;

5.1.4.3 in respect of the Contractor's payment obligation under clause 6.2.4, the amount set out in clause 6.2.4

(each and together the "**Shortfall**")

- 5.1.5 If and to the extent that the amount of the Bank Guarantee/Security does not cover the Shortfall the Contractor shall promptly, but not later than thirty (30) days of written demand, pay to the Federal Government (or as directed by the Federal Government) the Shortfall that has not been paid under the Bank Guarantee/Security.

### **5.2 Preservation of Financial Guarantee**

- 5.2.1 The Financial Guarantee is a continuing guarantee and will extend to the ultimate balance as determined under clause 5.1.2, regardless of any intermediate payment or discharge in whole or in part.

### **5.3 Parent Company Guarantee**

- 5.3.1 The Contractor shall, not later than thirty (30) days after the approval of the first Development Plan, provide, in substantially the same form of Schedule 4, an unconditional and irrevocable parent company guarantee from a Person acceptable to the SPA in respect of all its obligations under the Agreement (which shall, for the avoidance of doubt, include all obligations of the Operator). The Contractor shall thereafter maintain in full force and effect the parent company guarantee for the duration of this Agreement.
- 5.3.2 The amount of the parent company guarantee shall be determined from time to time.
- 5.3.3 The Federal Government may claim under the parent company guarantee if:
- 5.3.3.1 the Contractor fails to perform any of its obligations under this Agreement;
  - 5.3.3.2 SPA has notified the Contractor of the amount due (calculated in accordance with clause 5.3.4) and the Contractor has not rectified such default in all material respects within thirty (30) days of receipt of the notice; and
  - 5.3.3.3 SPA is permitted to do so under the Act.
- 5.3.4 Subject to clause 5.3.3, the amount that the Federal Government shall be entitled to claim from the guarantor under the parent company guarantee shall be:
- 5.3.4.1 in respect of the Contractor's payment obligations under this Agreement, the full amount that is outstanding to be paid by the Contractor; and
  - 5.3.4.2 in respect of Petroleum Operations set out in an approved Work Programme and Budget, an amount calculated by reference to the estimated expenditure under the approved Work Programme and Budget and the actual work obligations and/or expenditure obligations undertaken by the Contractor.

## **6. EXPLORATION**

### **6.1 Authorisation to Explore**

The Contractor is, subject to the provisions of the Agreement, authorised to conduct the Exploration within the Contract Area during the Exploration Period. This grant of authorisation includes, if and to the extent required by the Act or any other Law, the grant by the SPA to the Contractor of a Reconnaissance Authorisation.

### **6.2 Minimum Work and Expenditure Obligations**

- 6.2.1 The Contractor shall, during the relevant Exploration Period, diligently carry out no less than the minimum work obligations listed in Schedule 5 for that Exploration Period.
- 6.2.2 In the event that the Contractor does not carry out the entire minimum work obligations required in the Initial Exploration Period under Schedule 5 paragraph 1.1.1, the Contractor shall pay to the Government, within thirty (30) days of demand, an amount equal to [five (5) million USD] for each Exploratory Well that was included in SCHEDULE 5: paragraph 1.1.1 (if any).

- 6.2.3 In the event that the Contractor does not carry out the entire minimum work obligations required in the Initial Exploration Period under SCHEDULE 5: paragraph 1.1.2, the Contractor shall pay to the Government, within thirty (30) days of demand, the difference between the minimum work obligation and the actual amount of 3D seismic acquired, processed and interpreted at the rate of [four thousand (4000)] USD per km<sup>2</sup> 3D seismic.
- 6.2.4 In the event that the Contractor does not carry out the entire minimum work obligations in relation to either the First Additional Exploration Period or the Second Additional Exploration Period as set out in SCHEDULE 5: paragraphs 1.2 and 1.3 respectively, the Contractor shall pay to the Government, within thirty (30) days of demand, an amount equal to the estimated expenditure of those minimum work obligations that have not been performed and which are set out in the relevant Approved Work Programme and Budget.
- 6.2.5 If the Contractor does not comply with its obligation under clause 6.2.2, 6.2.3 or 6.2.4, the Government may, notwithstanding any other rights available to it under this Agreement, make a claim under the Bank Guarantee/Security in accordance with clause 5.1.4.

### **6.3 Exploration Work Programme and Detailed Budget**

- 6.3.1 The Contractor shall:
- 6.3.1.1 not later than thirty (30) days after the Effective Date, submit, and make a presentation to the SPA about, a detailed written report containing the Exploration Work Programme and detailed Budget for the first Contract Year; and
  - 6.3.1.2 not later than ninety (90) days before the end of each Contract Year, submit, and make a presentation to the SPA about, a detailed written report containing the Exploration Work Programme and detailed Budget for the next Contract Year.
- 6.3.2 Each Exploration Work Programme and Budget shall be consistent with the provisions of clause 6.2 and the minimum work obligations listed in Schedule 5.
- 6.3.3 The SPA may, within sixty (60) days of the receipt of the draft annual Exploration Work Programme and detailed Budget, submit to the Contractor suggested modifications and revisions thereto, specifying in reasonable detail his or her reasons for the suggested modifications. The Contractor shall consider the inclusion of such suggested modifications and revisions against the Best International Practice and shall provide the SPA with a revised Exploration Work Programme and detailed Budget which the Contractor has updated following receipt of such suggested modifications and revisions.
- 6.3.4 The revised annual Exploration Work Programme and detailed Budget submitted to the SPA in accordance with 6.3.2 is subject to written approval by the SPA, which approval shall be granted within thirty (30) days of the submission thereof to the SPA (unless otherwise agreed in writing).
- 6.3.5 In case of expiry of the period of thirty (30) days following submission to the SPA without the SPA either approving or refusing grant of approval, the finalised annual

Exploration Work Programme and detailed Budget shall be deemed approved by the SPA.

- 6.3.6 If the SPA does not approve the revised annual Exploration Work Programme then the SPA shall notify the Contractor within fifteen thirty (30) days after his or her receipt thereof and the Parties shall meet promptly thereafter and attempt to agree on a Exploration Work Programme. If the Parties are unable to agree within fifteen (15) days of their first meeting, then either Party may refer the matter to an expert for determination pursuant to clause 48.2 (Expert Determination)
- 6.3.7 Where the expert determines that the Exploration Work Programme or amendments thereto does meet the requirements of this Agreement and Best International Practice the SPA shall forthwith give the requisite approval to the Exploration Work Programme or amendments thereto submitted by the Contractor.
- 6.3.8 Where the expert determines that the Exploration Work Programme or amendments thereto do meet the requirements of this Agreement and Best International Practice then the expert shall within thirty (30) days make such amendments to the Exploration Work Programme or revisions thereto as he or she deems appropriate and which meets the requirements of this Agreement and Best International Practice and the SPA shall forthwith give the requisite approval to the expert's Exploration Work Programme.

#### 6.4 **Discovery and Appraisal**

- 6.4.1 Upon a Discovery the Contractor shall:
- 6.4.1.1 notify the SPA of a Discovery of Petroleum within twenty-four (24) hours of the Discovery being made;
- 6.4.1.2 forthwith, but not later than thirty (30) days after completion and testing of such Exploratory Well, submit an initial Discovery report with all relevant information to the SPA;
- 6.4.1.3 carry out a technical evaluation of the well data and of all other relevant subsurface data and submit the evaluation to the Minister as soon as it is completed (and in any event within five (5) months of making the Discovery); and
- 6.4.1.4 within thirty (30) days after the date on which the technical evaluation is submitted to the SPA, notify the SPA in writing whether or not in the reasonable opinion of the Contractor the Discovery is:
- (a) a Discovery Warranting Appraisal;
  - (b) a Discovery Not Currently Warranting Appraisal;
  - (c) a Non-Commercial Discovery; or
  - (d) a Discovery of Non-Associated Natural Gas; and
- 6.4.1.5 for Discoveries Not Currently Warranting Appraisal, propose a Retention Area for the purposes of clause 7.4.

## **6.5 Classification of a Discovery Not Currently Warranting Appraisal**

- 6.5.1 If the Contractor notifies the SPA under clause 6.4.1.4(b) that a Discovery is a Discovery Not Currently Warranting Appraisal, the provisions of clause 7.4 shall apply.
- 6.5.2 Unless the Agreement has been terminated earlier, until the date which is five (5) years after the Effective Date, the Contractor may give written notice to the SPA, at any time, that a Discovery Not Currently Warranting Appraisal is a Discovery Warranting Appraisal. In which case the provisions of clause 6.7 shall apply.

## **6.6 Discovery of Non-Associated Gas**

If the Contractor notifies the SPA under clause 6.4.1.4(d) that a Discovery is a Discovery of Non-Associated Gas, the provisions of clause 40 shall apply.

## **6.7 Appraisal Work Programme and Budget**

- 6.7.1 If the Contractor notifies the SPA that the Discovery is a Discovery Warranting Appraisal in accordance with clause 6.4.1.3(a), it shall submit and orally present to the SPA, within ninety (90) days following the date of submission of the Discovery report a detailed Appraisal Work Programme and Budget, which shall provide for the expeditious Appraisal of the Discovery.
- 6.7.2 The SPA shall review the submitted Appraisal Work Programme and Budget and within ninety (90) days of submission, and may submit to the Contractor suggested modifications and revisions thereto, specifying in reasonable detail his or her reasons for the suggested modifications. The Contractor shall consider the inclusion of such suggested modifications and revisions against the Best International Practice and shall provide the SPA with a revised Appraisal Work Programme and Budget.
- 6.7.3 Failing notice by the SPA to the Contractor requesting amendment to the Appraisal Work Programme and Budget within ninety (90) days of its submission to the SPA, the relevant Appraisal Work Programme and Budget shall be deemed approved by the SPA immediately upon the expiry of the said period.
- 6.7.4 The revised Appraisal Work Programme and Budget submitted to the SPA in accordance with 6.3.2 is subject to written approval by the SPA, which approval shall be granted within thirty (30) days of the submission thereof to the SPA (unless otherwise agreed in writing).
- 6.7.5 In case of expiry of the period of thirty (30) days following submission to the SPA without the SPA either approving or refusing grant of approval, the revised Appraisal Work Programme and Budget and detailed Budget shall be deemed approved by the SPA.
- 6.7.6 If the SPA does not approve the revised Appraisal Work Programme and Budget then the SPA shall notify the Contractor within thirty (30) days after his or her receipt thereof and the Parties shall meet promptly thereafter and attempt to agree on an Appraisal Work Programme and Budget. If the Parties are unable to agree within fifteen (15) days of their first meeting, then either Party may refer the matter to an expert for determination pursuant to clause 48.2 (Expert Determination) and clause 6.3.7 and 6.3.8 shall apply mutatis mutandis.

- 6.7.7 After the Appraisal Work Programme and Budget have been approved by the SPA, the Contractor shall within twelve (12) months appraise the Discovery. Where Appraisal requires more time, the SPA may, upon request by the Contractor, extend the available time for a period reasonably required to expeditiously complete Appraisal.
- 6.7.8 If, at the end of the Second Additional Exploration Period, a Discovery has been made, but there has been insufficient time for the Contractor (acting reasonably, and having acted, in accordance with the Agreement) to Appraise such Discovery, the SPA shall, at the request of the Contractor, extend the term of the Exploration Period in respect to the prospective area of the Discovery and for the period of time reasonably required to expeditiously complete the adopted Appraisal Work Programme and Budget with respect to such Discovery and to determine whether or not the Discovery is commercial, but in any event, such extension to the Second Additional Exploration Period shall not exceed twelve (12) months .
- 6.7.9 The Contractor shall, not more than ninety (90) days after the Appraisal is completed, report to the SPA about the commercial prospects of the Discovery (including all relevant technical and economic data, such as, but not limited to, location, areal extent, lateral extent, thickness, estimate of in-place and recoverable Petroleum) and its determination of whether the Discovery is a Commercial Discovery, a Non-Commercial Discovery or whether the Contractor intends to request a Retention Area in accordance with clause 7.4.
- 6.7.10 If the Contractor reports that the Discovery is a Commercial Discovery, the provisions of clause 8.2 shall apply.

## **6.8 Non- Development of a Commercial Discovery**

- 6.8.1 Unless otherwise agreed in writing, if the Contractor fails to commence the development of a Commercial Discovery within twenty-four (24) months following the notice of a Commercial Discovery under clause 6.7.9, or if within twenty-four (24) months following the completion of a Work Programme the Contractor considers the Commercial Discovery does not merit development, the SPA may request the Contractor to relinquish the area corresponding to such Commercial Discovery and the Contractor shall forfeit any rights relating to any Production therefrom. The area subject to such relinquishment shall not exceed the extension of the discovered accumulation (as determined by the structural closure of the prospective horizon and all other relevant available information).
- 6.8.2 Any such relinquishment by the Contractor shall be credited in accordance with sub-clause 7.1.2

## **7. RELINQUISHMENT**

### **7.1 Periodic Relinquishments**

- 7.1.1 The Contractor shall relinquish:
- 7.1.1.1 at least 25% of the net area determined by subtracting the [Reserved Areas] from the original Contract Area at or before the end of the Initial Exploration Period;

- 7.1.1.2 an additional of at least 25% of the net area determined by subtracting the [Reserved Areas] from the remaining part of the original Contract Area at or before the end of the First Additional Exploration Period; and
- 7.1.1.3 at or before the end of the Second Additional Exploration Period, all of the remaining Contract Area that is not a Development Area.
- 7.1.2 [In this clause 7 "**Reserved Areas**" means:
  - 7.1.2.1 any area relating to a Discovery the commerciality of which is still being evaluated by the Contractor pursuant to clause 6.4.1;
  - 7.1.2.2 any Discovery Area that is the subject of an Appraisal Work Programme in accordance with clause 6.7.1
  - 7.1.2.3 a Retention Area, provided the Contractor diligently seeks to make it commercially viable and demonstrates to the SPA that it is doing so; and
  - 7.1.2.4 any subsisting Development Area.]
- 7.1.3 The Contractor may at any time, with at least three (3) months' prior written notice to the SPA, voluntarily relinquish a part of the Contract Area, whereupon such voluntary relinquishment shall be credited against the next relinquishment obligation of the Contractor under sub-clause 7.1.1.
- 7.1.4 The shape and size of an area relinquished shall be in a contiguous area of which its longer side shall not be more than three times its shorter side, and shall be approved by the SPA (such approval not being unreasonably withheld, delayed or conditioned).
- 7.1.5 The Contractor shall give one Calendar Year's written notice of relinquishment in respect of the Field and thirty (30) days written notice of relinquishment in respect of any other part of the Contract Area. In case of a relinquishment of the entire Contract Area, the Agreement shall terminate immediately following such relinquishment.
- 7.1.6 No relinquishment made in accordance with this clause shall relieve the Contractor of:
  - 7.1.6.1 its obligations to comply with the minimum Exploration work and expenditure set out in clause 6; or
  - 7.1.6.2 any other obligations or liabilities that have accrued prior to the date of relinquishment.
- 7.1.7 If the Contractor does not relinquish a portion of the Contract Area at the time and in the manner required by this clause, all of the Contract Area shall be deemed relinquished at the end of the Contract Year concerned.
- 7.1.8 It shall be a requirement for the portion relinquished under this sub-clause 7.1 to have geological and geophysical data which the Contractor shall be under obligation to submit at the time of relinquishment.

## 7.2 Final Relinquishment

7.2.1 Subject to sub-clause 6.7.8, the Contractor shall, at the expiry of the final Exploration Period, relinquish all of the Contract Area other than such part thereof as is the Development Area.

7.2.2 Except with the consent of the SPA, the Development Area shall be deemed to be relinquished on the earlier of:

7.2.2.1 Production from the Development Area ceasing permanently or for a continuous period of twelve (12) months (or, if because of Force Majeure, twenty-four (24) months or such longer period as determined by the Federal Government, in consultation with the Contractor); and

7.2.2.2 the expiry of the Development and Production Period.

### 7.3 **General**

7.3.1 This Agreement shall terminate in respect of a part of the Contract Area which is relinquished.

7.3.2 Relinquishment of all or part of the Contract Area is without prejudice to the obligations of the Contractor to Decommission.

### 7.4 **Retention Areas**

7.4.1 If following the initial evaluation in accordance with clause 6.4.1.4 the Contractor determines that a Discovery is a Discovery Not Currently Warranting Appraisal, or, if following Appraisal in accordance with clause 6.7 the Appraisal demonstrates that the Discovery, although substantial, is not then, either alone or in combination with other Discoveries, commercially viable, but is likely to become so within five (5) Calendar Years, the SPA may, at the request of the Contractor, declare a Retention Area in respect of those Discovery Areas.

7.4.2 The Retention Area shall consist of a single contiguous area that encompasses the field plus a reserve margin sufficient to cover the probable and possible extent of it, but the SPA may exclude deeper formations in which no Discovery has been made. The SPA, at any time and from time to time, whether of its own volition or at the request of the Contractor, may increase, decrease or vary the depth within the Contract Area of a Retention Area as may be required to ensure that it encompasses the Field. The Contractor shall relinquish any part of the Contract Area removed from a Retention Area as a consequence of such decrease or other variation if it occurs after the time for the relinquishment.

7.4.3 The Retention Area shall be deemed to have been relinquished at the earlier of:

7.4.3.1 expiry of the five (5) year period mentioned in sub-clause 7.4.1;

7.4.3.2 the Contractor ceasing to meet its obligations under sub-clause 7.1.2.3

7.4.3.3 the Contractor sending notice to the SPA in accordance with clause 6.5 that it intends to undertake Appraisal of the Retention Area if the Discovery was initially designated a Discovery Not currently Warranting Appraisal; and

- 7.4.3.4 the Contractor declaring a Commercial Discovery in respect of it and the SPA declaring a Development Area as a consequence thereof.

## **8. DEVELOPMENT**

### **8.1 Wells**

- 8.1.1 Unless such notice is waived, the Contractor shall not drill a Well or borehole or recommence drilling after one hundred and eighty (180) days' cessation without thirty (30) days' prior notification to the SPA, which notice shall set forth the Contractor's reasons for undertaking such drilling and shall contain a copy of the drilling programme.
- 8.1.2 The design and construction of a Well or borehole and the conduct of drilling shall be subject to and in accordance with Best International Practice.
- 8.1.3 Production of a Well shall be in accordance with Best International Practice and the Conservation of Petroleum Resources principles.
- 8.1.4 Conversion and operation of a Well to an Underground Injection Control Well shall be in accordance with the Best International Practice.
- 8.1.5 Plugging and abandonment of a Well shall be in accordance with the Best International Practice.
- 8.1.6 The Contractor shall not:
- 8.1.6.1 plug and abandon a Well or remove any permanent form of casing therefrom, without giving forty-eight (48) hours prior notification to the SPA, and an abandoned Well shall be securely plugged to prevent environmental damage, pollution, sub-sea damage, or water entering or escaping from the strata penetrated; or
- 8.1.6.2 commence drilling, re-enter or plug a Well unless a representative of the Federal Government (either directly or through the SPA) has been given a reasonable opportunity to be present.
- 8.1.7 The Contractor shall state, in its application to plug and abandon a Well on land, whether that Well is capable of providing fresh water supply.
- 8.1.8 The Contractor shall, within sixty (60) days of termination or expiry of the Agreement or the relinquishment of part of the Contract Area, deliver up all productive Wells, in the said relinquished area, in good repair and working order (together with all casings and installations which cannot be moved without damaging the Well), but the SPA may require the Contractor to plug and abandon the Well, at the Contractor's expense, by notifying the Contractor within thirty (30) days after such termination or expiry is effected or at least ninety (90) days prior to relinquishment of a Development Area.
- 8.1.9 If the Contractor applies to permanently plug and abandon an Exploratory Well or an Appraisal Well in which Petroleum of potentially commercial significance has not been found, the SPA may request the Contractor to deepen or sidetrack that Well and to test the formations penetrated as a result of such operation, or to drill another

Exploratory Well or Appraisal Well within the same prospect area, subject to the following provisions:

- 8.1.9.1 any such additional Petroleum Operations shall be at the sole cost, risk and expense of the Federal Government and shall be paid for in accordance with the Accounting Procedure. The Federal Government shall advance to the Contractor the funds necessary to conduct these operations;
  - 8.1.9.2 the Contractor shall not undertake such additional work if, in the reasonable opinion of the Contractor, it will interfere with the Petroleum Operations or is not commercially, technically or operationally feasible (in whole or part);
  - 8.1.9.3 if the Petroleum Operations undertaken under this sub-clause 8.1.9 result in a Commercial Discovery which the Contractor elects to evaluate and/or develop as a Field, the Contractor shall reimburse, within thirty (30) days of the notification made by the Contractor, the Federal Government [200%] of the costs and expenses incurred by the Federal Government for the conduct of the operations. If the Contractor does not make such election, the Federal Government shall have the right to continue the Petroleum Operation on this Commercial Discovery, at the sole cost, risk and expense of the Federal Government.
- 8.1.10 The Contractor shall give the SPA thirty (30) days' notice of any proposed seismic and/or geophysical surveys, which notice shall contain complete details of the programme to be conducted. At the request of the Contractor, the SPA may (but is not obliged to) waive this notice period.

## 8.2 Development Plan

- 8.2.1 The Development Plan shall be submitted by the Contractor within one hundred and eighty (180) days of the report submitted in accordance with clause 6.7.9, to the SPA for approval.
- 8.2.2 The Development Plan shall be based on sound engineering and economic principles and the Best International Practice and shall consider the Maximum Efficient Rate of Production appropriate to the Commercial Discovery.
- 8.2.3 The Development Plan submitted by the Contractor to the SPA shall contain details of the proposed Development Area that relates the Commercial Discovery. The proposed Development Area shall correspond as closely as possible to the extension of the discovered accumulation in the Contract Area, as determined by the analysis of all the relevant available information.
- 8.2.4 Without prejudice to the generality of sub-clause 8.2.1, the Development Plan shall include:
  - 8.2.4.1 a description of the proposed Commercial Discovery in the Development Area that is identified for the Development Plan;
  - 8.2.4.2 details of the following Petroleum Operations:

- (a) geologic, seismic, and geophysical Exploration analysis and Appraisal (including Production simulation profiles);
  - (b) proposed Well locations and Production, treatment, storage and transportation facilities to be located in the Development Area;
  - (c) spacing, Well construction, drilling process, casing and cement programs, Well logs, completion methods, and Production of the Wells required for Production of Petroleum in the Development Area;
  - (d) facilities for transporting Petroleum from the Development Area to the Crude Oil Delivery Point and the Natural Gas Delivery Point; and
  - (e) identification of any alternative markets and sales of all Petroleum resources, especially Natural Gas;
- 8.2.4.3 the initial Production profiles for all Petroleum reserves in the Commercial Discovery (including the Production life), the date of commencement of Production and the anticipated daily rates of Petroleum Production;
- 8.2.4.4 the Decommissioning Plan, in such detail as the SPA may require, including, in accordance with clause 13, a calculation of the Quarterly accrual charges to be paid by the Contractor to the Decommissioning Fund for individual Well plugging and abandonment operations and the overall field Decommissioning Costs;
- 8.2.4.5 a detailed social and environmental impact assessment (prepared in accordance with the then applicable international standards, requirements and guidelines and the Best International Practice) for the Commercial Discovery, which identifies current and possible social and environmental issues and concerns and contains a plan for ensuring social and environmental compliance during the life of the Field;
- 8.2.4.6 the Contractor's proposal for the valorisation of Petroleum contained in the deposit subject to the Commercial Discovery (including, where applicable, in relation to the Associated Natural Gas);
- 8.2.4.7 the Contractor's proposal for ensuring the safety, health, security and welfare of relevant Persons and facilities prepared in accordance with the then applicable international standards, requirements and guidelines and the Best International Practice;
- 8.2.4.8 the Contractor's proposals for stimulating Local Content, including:
- (a) maximizing the procurement and use of Somali goods and services in Petroleum Operations, *provided that* Somali goods and services are competitive in terms of performance, price, quality and availability to foreign equivalents;
  - (b) including specific training targets and identifying specific skills' training programs and technical courses that shall directly

translate to the employment of citizens of Somalia and shall ensure occupational health and safety requirements, fairness in gender practices, and career advancement opportunities; and

- (c) coordination with stakeholders and local communities in open and timely posting of job descriptions and minimum skills' requirements for employment to fully address Local Content issues and concerns;

- 8.2.4.9 the Contractor's complete finance program for the annual Development and Production Work Programme and Budget;
- 8.2.4.10 details and copies of all contracts, agreements and other arrangements for the sale of Petroleum;
- 8.2.4.11 a plan for construction and operation of related infrastructures, facilities, installations, equipment and other assets necessary for export of Petroleum from the Contract Area; and
- 8.2.4.12 such other data and information as Law or as the SPA reasonably requires in relation to the Development Plan.

### 8.3 Approval of Development Plan

- 8.3.1 The SPA and the Contractor shall jointly consider the Development Plan within 90 days of submission thereof. The SPA shall notify the Contractor in writing, within a period of ninety (90) days from the date on which the Development Plan was submitted:
  - 8.3.1.1 of his or her approval to the Development Plan; or
  - 8.3.1.2 that he or she does not approve the Development Plan, in which case the SPA shall provide details of any revisions or changes to such plan which it proposes are necessary in order for it to comply with Best International Practice, in which case the period for adoption of the Development Plan shall be extended for another ninety (90) days.
- 8.3.2 The Contractor shall consider the inclusion of the suggested modifications and revisions against the Best International Practice. If the Parties are unable to agree on the revisions and/or the content of a Development Plan within one-hundred and twenty (120) days from the date on which the Contractor has been notified of the Minster's decision in accordance with clause 8.3.1.2, then either Party may refer the matter to an expert for determination pursuant to clause 48.2 (Expert Determination).
- 8.3.3 Where the proposed Development Plan is referred to an expert in accordance with clause 8.3.2, such expert shall determine whether the Development Plan meets Best International Practice.
- 8.3.4 If the expert determines that that the Development Plan:
  - 8.3.4.1 does meet Best International Practice, the SPA shall forthwith give the requisite approval to the Development Plan submitted by the Contractor;

- 8.3.4.2 does not meet Best International Practice, the expert shall be instructed to make recommendations (as part of its determination) as to those amendments which are required in order to meet Best International Practice.
- 8.3.5 If the expert provides recommendations to the Parties in accordance with clause 8.3.4.2 the Contractor shall be entitled, within a period of ninety (90) days from the date it receives the expert's determination, to amend the Development Plan to reflect the recommendations proposed by the expert and submit such updated Proposed Development Plan to the SPA.
- 8.3.6 If the SPA notifies the Contractor that he or she does not approve the updated Development Plan within a period of ninety (90) days from receipt of the updated Development Plan from the Contractor, the procedure set out in clauses 8.3.1 to clause 8.3.2 shall apply *mutatis mutandis* (including, if necessary, referral to the expert for its second determination ("**Second Determination**").
- 8.3.7 If the Contractor does not submit an updated Development Plan within the time period specified in clause 8.3.5, or, in the event of a Second Determination it does not agree with the recommendations of the expert, it shall within a period of ninety (90) days relinquish that Development Area proposed by the Contractor in the Development Plan.
- 8.3.8 From time to time, in accordance with the approval process under clause 8.2.5, the Contractor may submit, for the approval by the SPA, amendments to or updates of the Development Plan.
- 8.3.9 The approval of the Development Plan represents the grant of relevant surface access authorisations in relation to the related infrastructures, facilities, installations, equipment and other properties necessary for exportation of Petroleum from the Contract Area.
- 8.3.10 After the Development Plan has been adopted, the Contractor shall proceed without undue delay, and in any event within one hundred and eighty days (180), to implement the Development of Petroleum in accordance with the Development Plan.
- 8.4 Submission and Approval of Development and Production Work Programme and Budget**
- 8.4.1 The Contractor shall submit and make a detailed presentation to the SPA, prior to 1st October of each Calendar Year following the adoption of the Development Plan, the Development and Production Work Programme and Budget for the next Calendar Year and the provisions of sub-clauses 6.7.2 – 6.7.6 shall apply *mutatis mutandis* to the approval of the annual Development and Production Work Programme and Budget.
- 8.4.2 Each Development and Production Work Programme and Budget shall be consistent with the requirements set out in the applicable approved Development Plan, and among others, contain estimates (for the next Calendar Year, respectively the next five Calendar Years) of Production), revenue and costs (capital and operating) of the Petroleum Operations.

## **9. PRODUCTION**

### **9.1 Authorisation to Conduct Production**

The Contractor is, subject to the provisions of the Agreement, authorised to conduct the Production within the Contract Area during the Development and Production Period.

## 9.2 **Production Levels and Production Work Programme and Budget**

- 9.2.1 The Contractor shall produce Petroleum at the Maximum Efficient Rate and follow the Conservation of Petroleum Resources principles, all in accordance with the Best International Practice.
- 9.2.2 Prior to 1st October of each Calendar Year following the commencement of the Commercial Production, the Contractor shall submit and orally present to the SPA, the Production Work Programme and Budget for the next Calendar Year, and the provisions of sub-clauses 6.7 – 6.7.6 shall apply *mutatis mutandis* to the approval of the Production Work Programme and Budget.
- 9.2.3 The Contractor shall endeavour to produce in each Calendar Year the forecast quantity estimated in the Production Work Programme and Budget.
- 9.2.4 The Crude Oil shall be run to storage (constructed, maintained and operated by the Contractor) and Petroleum shall be metered or otherwise measured, as required to meet the purpose of the Agreement in accordance with clause 41.

## 10. **COST RECOVERY AND PRODUCTION SHARING**

### 10.1 **Cost Recovery**

The Contractor shall be entitled to recover the Petroleum Costs incurred and paid by the Contractor pursuant to the provisions of the Agreement and duly entered in the Contractor's books of accounts, by taking and separately disposing of an amount equal in value to a maximum of [70%] of Crude Oil and [80%] of Natural Gas produced from the Contract Area during that Fiscal Year and not used in Petroleum Operations after the payment of all royalties due to the government. Such cost recovery Petroleum is the "**Cost Petroleum**" consisting of two categories, the Cost Oil and the Cost Gas.

- 10.1.1.1 The Petroleum Cost shall be recoverable either in the Fiscal Year in which it is incurred or the Fiscal Year in which Commercial Production occurs, whichever is the later.
- 10.1.1.2 For the purpose of this clause only, the "**Development Costs**" has the meaning set out in the Accounting Procedure (Schedule 2). The Development Costs and the Production Costs incurred in respect of a Development Area shall not be recoverable until the Commercial Production from that Development Area commences.
- 10.1.1.3 To the extent that, in a Fiscal Year, the Petroleum Costs that are recoverable exceed the value of all Cost Oil or Cost Gas for such Fiscal Year under sub-clause 10.1, the excess shall be carried forward for recovery by the Contractor in the next succeeding Fiscal Year or Fiscal Years, until fully recovered, but in no case after the termination of the Agreement.
- 10.1.1.4 To the extent that, in a Fiscal Year, the Petroleum Costs that are recoverable are less than the maximum value of the Cost Petroleum (as

specified in sub-clause 9.1), the excess shall become part of, and be included in the Profit Petroleum (as provided for in Schedule 6).

- 10.1.1.5 For the purpose of valuation of the Cost Oil and the Cost Gas, the relevant provisions of clause 11 shall apply.
- 10.1.1.6 The Contractor shall keep detailed accounts of the Cost Petroleum in accordance with the Accounting Procedure.
- 10.1.1.7 The Contractor shall submit to the SPA a detailed report on all recoverable costs that have been incurred during the previous Fiscal Year within thirty (30) days of year end.
- 10.1.1.8 Should the SPA, upon review of the report detailed in sub-clause 10.1.1.7 above, decide that any listed cost(s) in the report be considered a non-recoverable cost in terms of Schedule 2: of this Agreement, the SPA shall notify the Contractor within 30 days of receiving the report and request that the disputed cost be removed from the recoverable cost classification.
- 10.1.1.9 Should there be a dispute regarding the classification of any recoverable costs submitted by the Contractor then either Party may refer the dispute to an expert, in accordance with clause 48.2 (Expert Determination).
- 10.1.1.10 The Petroleum Costs are not recoverable against other Contract Areas held by the Contractor in Somalia.
- 10.1.1.11 If the Contractor produces Crude Oil and Natural Gas from the Contract Area, the Petroleum Costs incurred by the Contractor shall be classified in the accounts as Cost Oil and Cost Gas when required in accordance with the Accounting Procedure.

## 10.2 Profit Petroleum Sharing and R-Factor

The Parties shall share Profit Petroleum in accordance with the provisions set out in Schedule 6.

## 10.3 Production Sharing

- 10.3.1 Crude Oil and Natural Gas Production shall be respectively disaggregated into the Cost Oil and the Profit Oil (and the Cost Gas and the Profit Gas), by using the relevant percentage calculated Quarterly for the Cost Petroleum (in accordance with sub-clause 10.1) and for the Profit Petroleum (in accordance with sub-clause 10.1).
- 10.3.2 The Cost Petroleum and the Profit Petroleum calculations (respectively disaggregated into the Cost Oil, the Cost Gas, the Profit Oil and the Profit Gas) shall be done Quarterly, on an accumulative basis during a given Fiscal Year. To the extent that actual quantities, costs and expenses are not known, provisional estimates of such data (based on the adopted annual Production Work Programme and Budget under clause 8) shall be used.
- 10.3.3 Within sixty (60) days of the end of each Fiscal Year, a final calculation of each category of the Cost Petroleum and the Profit Petroleum based on actual Crude Oil Production and Natural Gas Production, in respect of that Fiscal Year and the

recoverable Petroleum Costs, shall be prepared and any necessary adjustments shall be promptly made.

#### 10.4 **Lifting**

- 10.4.1 Subject to the Agreement, the Contractor may lift, dispose of and export from Somalia its share of Petroleum and retain the proceeds from the sale or other disposal of that share. The Contractor may proceed with the separation of liquids from all Natural Gas produced, and may transport, store and sell on the local market or export its share of liquid Petroleum so separated.
- 10.4.2 The Contractor and the SPA shall, from time to time, make such arrangements between them as are reasonable necessary, in accordance with the Best International Practice, for the separate lifting of the Parties' respective shares of Petroleum.
- 10.4.3 Each Party (and, as for the Contractor, each Person constituting it) shall have the right to proceed separately to the commercialisation, lifting and export of Petroleum to which it is entitled under the Agreement.
- 10.4.4 If so directed by the SPA in writing, the Contractor shall be obligated to lift and market part or the entire Federal Government's share of each category of the Profit Petroleum and any Federal Government or Appointee Participating Interest share of Petroleum in a Development Area.
- 10.4.5 If any Party fails to lift and market its share of Petroleum, the Contractor may lift and market such Party's share on its behalf.
- 10.4.6 the SPA shall notify the Contractor three months before the commencement of each Semester of a Calendar Year, specifying the quantity of Production of the Federal Government's share of the Profit Oil it elects to take and receive in kind and the quantity of Production of the Federal Government's share of the Profit Oil it elects not to take and receive in kind. If the SPA timely elects to take all or a portion of the Federal Government's share of the Profit Oil in kind, the offtaker shall be the SPA or another Somali Governmental Authority designated by the SPA. Such notice shall be effective for the ensuing Semester. Any sale by the Contractor of the Federal Government's share of the Profit Oil shall not, without the SPA's prior written consent, be for a term of more than one Calendar Year. The Contractor shall have the right and obligation to market the Federal Government's share at the then prevailing "fair market price".
- 10.4.7 The price paid by the Contractor for the Federal Government's share of the Profit Oil shall be the price established according to clause 11. The Contractor shall pay the Federal Government on a monthly basis, such payments to be made within thirty (30) days after the end of the month in which the Production occurred.
- 10.4.8 In case of the Commercial Production of Natural Gas, the Parties shall agree, when the Development Plan related to such commercialisation is adopted, on the rules applicable to the disposal of the Federal Government's share of the Profit Gas.
- 10.4.9 At a reasonable time prior to the scheduled date of commencement of the Commercial Production, the Parties shall agree to procedures concerning the scheduling, storage and lifting of Petroleum produced from and sold at the agreed upon Crude Oil Delivery Point and Natural Gas Delivery Point. The procedures shall be consistent with the terms of the Agreement and shall comprise the subjects

necessary for efficient and equitable operations (including, but not limited to, rights of the Parties, notification time, maximum and minimum quantities, duration of storage, scheduling, conservation, spillage, liabilities of the Parties, throughput fees and penalties, over and underlifting, safety and emergency procedures and any other matters that may be agreed by the Parties).

## 11. VALUATION

- 11.1 The value of Crude Oil, for all purposes under the Agreement, shall be denominated in US dollars and shall be calculated each Calendar Year on a Quarterly basis, adjusted at the Crude Oil Delivery Point, as follows:
- 11.1.1 if fifty percent (50%) or more of the total sales of Crude Oil produced from the Contract Area during that Calendar Quarter have been to Third Parties at Arm's Length, the value shall be the weighted average per unit price actually paid in those sales at the free on board (FOB) point of export or at the point that title and risk pass to a buyer, adjusted for the grade, gravity and quality of such Crude Oil as well as for the transportation costs and other appropriate adjustments for the grade, gravity and quality of such Crude Oil transaction, where the seller and the buyer are independent of one another and do not have (directly or indirectly) any common interest; or
- 11.1.2 if less than fifty percent (50%) of the total sales of Crude Oil produced from the Contract Area during that Calendar Quarter have been to Third Parties at Arm's Length, the value shall be the "fair market price" determined as the average per unit prevailing market price, actually paid during that Calendar Quarter in Arm's Length sales for export under term contracts of at least ninety (90) days between unrelated purchasers and sellers, for Crude Oil produced in Somalia and in the major Crude Oil producing countries, and adjusted for the grade, gravity and quality of such Crude Oil as well as for the transportation costs and any other appropriate adjustments. If necessary, a value of Crude Oil shall be determined separately for each Crude Oil or crude oil mix and for each point of delivery. The value of Crude Oil shall be mutually agreed at the end of each Calendar Quarter and applied to all transactions that took place during the relevant Quarter.
- 11.2 If the SPA and the Contractor cannot reach an agreement on the value of Crude Oil, or in case of inactivity of the SPA preventing the Parties from reaching an agreement on the value of Crude Oil, within thirty (30) days of the end of any Calendar Quarter, such determination shall be made by a sole expert in accordance with clause 48.
- 11.3 Pending the determination of the value of Crude Oil for a Calendar Quarter, the value of Crude Oil determined for the preceding Calendar Quarter shall be provisionally applied to make calculation and payment during such Calendar Quarter until the applicable value for that Calendar Quarter is finally determined pursuant to sub-clauses 11.1 and 11.2. Any adjustment to provisional calculation and payment, if necessary, shall be made within 30 days after such applicable value is finally determined.
- 11.4 Natural Gas shall be valued based on the actual proceeds received for sales, *provided that*, for sales of Natural Gas between the Contractor and any Affiliate, the value of such Natural Gas shall not be less than the then prevailing fair market value for such sales of Natural Gas, taking into consideration, to the extent possible, such factors as the market, quality and quantity of Natural Gas and other relevant factors reflected in Natural Gas pricing. The SPA shall have the right to review and approve Natural Gas sales contracts.

- 11.5 If the SPA disagrees with the value of Natural Gas, the disagreement may be referred to a sole expert in accordance with clause 48.
- 11.6 The Contractor shall deliver to the SPA monthly statements showing calculations of the value of Petroleum produced and sold from the Contract Area, which statement shall include, but not limited to, the following information:
- 11.6.1 quantities of Crude Oil sold by the Contractor during the preceding month constituting Arm's Length sales, together with the corresponding sale prices;
  - 11.6.2 quantities of Crude Oil sold by the Contractor during the preceding month to the Contractor's Affiliates, together with the corresponding sale prices;
  - 11.6.3 inventory in storage belonging to the Contractor at the beginning and at the end of the relevant month; and
  - 11.6.4 quantities of Natural Gas sold by the Contractor and the Federal Government, together with sale prices realised.

## **12. MEASUREMENT OF PETROLEUM**

- 12.1 The Contractor shall, prior to installation, submit to the SPA for approval the processes, procedures, systems and technologies for determining the volume and quality of Petroleum produced.
- 12.2 The instruments used for measuring Petroleum produced shall be calibrated in accordance with Law and the Best International Practice.
- 12.3 The volume and quality of Petroleum produced and saved from the Contract Area shall be measured by use of the methods and equipment customary in the Best International Practice and approved by the SPA.
- 12.4 The Federal Government (either directly or through the SPA) shall approve and inspect the methods and equipment used for measuring the volume and determining the quality of Petroleum and shall appoint an inspector to supervise the measurement of volume and determination of quality of Petroleum.
- 12.5 Where the method of measurement has caused an overstatement or understatement of a share of the Production, the error shall be presumed to have existed since the date of the last calibration of the measurement devices, unless the contrary is shown, and an appropriate adjustment shall be made for the period of error.
- 12.6 The SPA and the Contractor shall determine, when approving the Development Plan related to a Field, the measurement point at which Production shall be measured and the respective shares of Petroleum allocated.

## **13. PLUGGING AND ABANDONMENT AND DECOMMISSIONING**

### **13.1 Decommissioning Costs**

- 13.1.1 The Decommissioning Plan, to be part of the Development Plan, shall include a schedule for the amortization of costs and recovery of costs, estimated to be incurred when the Development is Decommissioned.

- 13.1.2 The Contractor shall commence making contributions to the Decommissioning Fund for future plugging and abandonment and Decommissioning Costs in the first Calendar Quarter in which the ratio of cumulative production to overall recoverable reserves reaches 70%.
- 13.1.3 In the event that the Contractor has reasons to believe that the contributions made in accordance with clause 13.1.2 may not be sufficient to complete the Decommissioning Operations it, shall commence making contributions to the Decommissioning Fund as early as possible to ensure that the Decommissioning Fund has all funds required to complete the Decommissioning Operations.
- 13.1.4 The Contractor shall examine, on an annual basis, the estimated costs of plugging and abandonment and Decommissioning and, if deemed appropriate, revise them and submit them to the SPA for approval, which approval shall be granted within thirty (30) days of submission. If the SPA has reasonable grounds for refusal (such to be notified to the Contractor), the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of thirty (30) days following submission to the SPA without the SPA either approving or refusing grant of approval, the estimated costs of plugging and abandonment and Decommissioning (including any revision thereof) shall be deemed approved by the SPA .
- 13.1.5 All plugging and abandonment and Decommissioning Costs allocated to the Decommissioning Fund shall be recoverable as Petroleum Costs at the time that the accrual is entered into the books.
- 13.1.6 The Contractor shall book an accrual on a Calendar Quarter basis for the amount of future plugging and abandonment and Decommissioning Costs according to the following formula:

$$FTA = \left( (ECA - AFB) \times \frac{CPP}{PRR} \right)$$

Where:

- FTA is the amount to be accrued for future plugging and abandonment and Decommissioning Costs in respect of the relevant Calendar Quarter;
- ECA is the total estimated cost of plugging and abandonment and Decommissioning operations established pursuant to this clause 12;
- CPP is the volume of Petroleum produced during the Calendar Quarter in which the plugging and abandonment and Decommissioning accrual was booked;
- PRR is the Contractor's estimated remaining recoverable reserves at the end of the Calendar Quarter in which the plugging and abandonment and Decommissioning accrual was booked, as such estimates may be revised by the Contractor from time to time;
- AFB is the accrued Decommissioning Fund at the end of the previous Calendar Quarter, including accrued interest, on the escrow account established under sub-clause 13.5.

## 13.2 **Plugging and Abandonment and Decommissioning**

- 13.2.1 Plugging and abandonment and Decommissioning activities shall commence on the earlier of:
- 13.2.1.1 the date when the relevant infrastructure, facility, asset, land or other site is no longer used for the purpose of Petroleum Operations (but only in relation thereof); and
  - 13.2.1.2 the date when the Field reached its Economic Limit.
- 13.2.2 On or before the start of the seven hundred and twenty (720) day period prior to the expected start date of plugging and abandonment and Decommissioning, the Federal Government (either directly or through the SPA) shall notify the Contractor which of the facilities and assets identified in the Development Plan shall not be plugged and abandoned and Decommissioned, but which shall revert to the ownership of the Federal Government in accordance with clause 18 of the Agreement. No further funds to cover plugging and abandonment and Decommissioning Costs shall be reserved or accrued for the facilities and assets so identified and a corresponding adjustments shall be made, if necessary, by the Contractor, to reflect it.
- 13.2.3 If the SPA elects not to use the facilities and assets identified in the Development Plan in sub-clause 13.2.2, the Federal Government (either directly or through the SPA) shall have the right to require the Contractor to remove them, at the Contractor's sole expense, in accordance with the Decommissioning Plan, it being understood that the plugging and abandonment and Decommissioning operations shall be carried out by the Contractor in accordance with the Best International Practice, the Agreement and the time schedule and conditions defined in the approved Decommissioning Plan.

## 13.3 **Plugging and Abandonment and Decommissioning upon Termination of Development Area**

- 13.3.1 If the Contractor recommends plugging and abandonment and or Decommissioning of facilities, assets or Wells belonging to it in connection with a termination of a Development Area (pursuant to clause 7.1.5 of the Agreement), the Federal Government may elect to take ownership of and continue using such facilities, assets and Wells by giving the Contractor written notice of such decision within sixty (60) days of the SPA's receipt of the Contractor's notice of relinquishment. Upon so notifying the Contractor, which notification is effective as of the Effective Date of the Contractor's relinquishment, the Federal Government shall take ownership of, and be responsible for, plugging and abandonment and Decommissioning of such facilities, assets and Wells.
- 13.3.2 If the Federal Government does not elect to continue using such facilities, assets or Wells, the Contractor shall be responsible for their plugging and abandonment and Decommissioning upon termination of the Agreement or of the Development Area. The Contractor may (in consultation with the Federal Government) defer the plugging and abandonment and Decommissioning operations for a reasonable period of time, such not to be longer than one hundred and eighty (180) days, if this would result in operational efficiencies that minimise the cost for both Parties.

#### **13.4 Facilities, assets and Wells that the Federal Government continues using**

With respect to any facilities, assets or Wells which the Federal Government elects to own pursuant to the Agreement, the Federal Government:

- 13.4.1 shall conduct such continued use and/or plug and abandon or decommission in accordance with the Best International Practice and in such a manner that does not interfere with the continuing Petroleum Operations; and
- 13.4.2 may plug and abandon and decommission such facilities, assets and Wells as and when the Federal Government decides.

#### **13.5 Disbursements of funds for plugging and abandonment and Decommissioning Costs**

- 13.5.1 The Contractor shall advise the SPA on an annual basis its best estimate of the projected date of plugging and abandonment of individual Wells and Decommissioning of the Field based on the then current estimate of when the Economic Limit will be reached (according to the then current Production forecast and realised Petroleum prices).
- 13.5.2 Once the Contractor commences booking accruals, the Contractor and the SPA shall cause the accrued costs of plugging and abandonment and Decommissioning operations to be set aside in a separate US dollar interest bearing escrow account in the joint names of the Contractor and the Federal Government, established at a mutually acceptable financial institution, to be used solely for paying the Decommissioning Costs. The escrow account is to be funded on a Quarterly basis by the Contractor (and the Federal Government, if it has Participating Interest), in proportion to the then current Participating Interests and out of its share of the ongoing Cost Petroleum and the Profit Petroleum attributable to the Contractor and the Federal Government entities, or by cash payment if Production is insufficient. A final reconciliation shall be submitted to the SPA, following completion of all plugging and abandonment and Decommissioning operations and adjustments made in accordance with sub-clause 13.6.

#### **13.6 Adjustments to accruals for plugging and abandonment and Decommissioning Costs**

- 13.6.1 If excess accruals which were booked in the Decommissioning Fund for plugging and abandonment and Decommissioning Costs remain following completion of all plugging and abandonment and Decommissioning operations, then such excess funds shall be distributed to the Contractor and the Federal Government (where the Federal Government has Participating Interest) as if such funds represented Profit Petroleum in the Calendar Quarter in which plugging and abandonment and Decommissioning is completed.
- 13.6.2 Any plugging and abandonment and Decommissioning cost accruals which have been booked in the Decommissioning Fund for purposes of removing facilities or assets, that the Federal Government later decides should not be removed, shall be paid by the Contractor to the Federal Government concurrently with the transfer of ownership of such facility, asset or Well to the Federal Government. The Federal Government represents that the transferred funds shall only be used in respect of its plugging and abandonment and Decommissioning operations.
- 13.6.3 If the amounts accrued for plugging and abandonment and Decommissioning Costs are insufficient to complete the plugging and abandonment and Decommissioning

activities, additional funds for such activities shall be provided from a portion of Crude Oil or Natural Gas which the Contractor is entitled to receive under the Agreement from any Development Area, or, if no Production is available, by cash payment by the Contractor and the Federal Government (where the Federal Government has Participating Interest) in the same ratio as would be applicable for distribution of excess amounts under sub-clause 13.6.1.

## **14. RIGHTS AND OBLIGATIONS OF THE CONTRACTOR**

### **14.1 Rights of the Contractor**

- 14.1.1 The Contractor has the right to carry out (through the Operator and/or Operator's agents, contractors and sub-contractors) Petroleum Operations within the Contract Area for the term of the Agreement, subject to the Agreement and Law.
- 14.1.2 The performance of the Petroleum Operations by the Operator does not relieve the Contractor from any obligation or liability under the Agreement; and the carrying out of the Petroleum Operations by the Operator's agents, contractors and/or sub-contractors does not relieve the Operator (or the Contractor) of any obligation or liability under the Agreement.
- 14.1.3 The Contractor has been granted the right, subject to Law, to freely access and operate within the Contract Area any facilities associated with Petroleum Operations and to perform or cause to be performed any infrastructure work required for carrying out, under normal economic conditions, Petroleum Operations and related activities, such as transportation and storage of equipment and substances extracted, establishment of equipment of telecommunications and lines of communication, as well as production and supply of energy required for Petroleum Operations on the basis that.
- 14.1.3.1 Permission may be granted to other Persons to search for and mine minerals, other than Petroleum, so long as they do not unreasonably interfere with the Petroleum Operations, and
- 14.1.3.2 easements and rights of way may be granted to other Persons for the benefit of land adjacent to the Contract Area.
- 14.1.4 The SPA shall recommend to the relevant Somali official body (whether federal, regional or local) to grant the necessary Permit to the Contractor to allow the Contractor to be provided with:
- 14.1.4.1 water in the Contract Area for the purpose of the Petroleum Operations, *provided that* the Contractor shall not unreasonably deprive the users of land, domestic settlements or cattle watering places of the water supply to which they are accustomed;
- 14.1.4.2 security within the Contract Area; and
- 14.1.4.3 any other services the Contractor may reasonably require for the purpose of performance of the Petroleum Operations.
- 14.1.5 Subject to the provisions of the Agreement, the Contractor may freely select its suppliers, contractors and sub-contractors.

## 14.2 General Standards of Conduct and Obligations of the Contractor

- 14.2.1 The Contractor shall, and shall ensure that its contractors, sub-contractors and agents, carry out the Petroleum Operations diligently, in accordance with the Agreement, the Best International Practice, the Act, Regulations and other Law.
- 14.2.2 Without limiting the foregoing, the Contractor shall:
- 14.2.2.1 maintain adequate financial, technical and professional capacity throughout the term of the Agreement;
  - 14.2.2.2 at all times ensure that any sub-contractor or agent of the Contractor acting on its behalf possesses the necessary skills and qualifications to perform the work;
  - 14.2.2.3 supply all the necessary funds and purchase or rent all facilities (such as, without limitation, machinery, plant, equipment, materials, supplies and installations) required for the performance of the Petroleum Operations;
  - 14.2.2.4 supply all the technical expertise, including the use of the foreign personnel required for the performance of the Petroleum Operations;
  - 14.2.2.5 within three (3) months following the Effective Date, open an office in Somalia and keep it open at all times during the term of the Agreement;
  - 14.2.2.6 within three (3) months following the Effective Date and thereafter for the term of this Agreement, designate a representative residing in Somalia with sufficient power and authority to represent the Contractor and to ensure that the Contractor's obligations under this Agreement are complied with (and the Contractor shall notify any change in the identity of such representative to the SPA from time to time);
  - 14.2.2.7 within three (3) months following the Effective Date, open a current bank account in Somalia and maintain a current bank account in Somalia for the term of this Agreement;
  - 14.2.2.8 provide appropriate working conditions, living accommodation on offshore installations and access to medical attention and nursing care for all personnel employed by it, its contractors and sub-contractors in Petroleum Operations in accordance with Law and the Best International Practice;
  - 14.2.2.9 ensure that all facilities (such as, without limitation, machinery, plant, equipment, materials, supplies and installations) used by the Contractor in connection with the Petroleum Operations are of proper and accepted construction standard and are kept in good repair;
  - 14.2.2.10 use the resources of the Contract Area as productively as possible and ensure that Petroleum discovered and produced is properly contained during Petroleum Operations, and Brine, drilling fluids, mud or any other liquids, solids or waste substances are properly contained and disposed of during Petroleum Operations;

- 14.2.2.11 prevent damage to producing formations and to adjacent strata which bear Petroleum, Brine or fresh water, and prevent Brine, fresh water and Petroleum entering through Wells into strata bearing Petroleum, except where: (i) approved Brine and liquid waste injection Well operations, and (ii) secondary and tertiary recovery operations are being conducted;
- 14.2.2.12 properly confine Petroleum and Brine in steel storage tanks constructed for that purpose, and not place Petroleum, Brine and drilling fluids in open drilling pits and earthen Reservoirs for storage or drilling, completions and Production, except temporarily in an emergency;
- 14.2.2.13 dispose of oil, Brine, salt water and other liquid and solid waste in accordance with the Best International Practice, to avoid damage to the environment and pollution;
- 14.2.2.14 if, after the Effective Date, other Persons are granted rights within the Contract Area concerning the exploration and production of any minerals or substances other than Petroleum, use its best endeavours to avoid obstruction or interference with such Persons' operations within the Contract Area and the SPA shall use his best endeavours to ensure that operations of such Persons do not obstruct the Contractor's performance of Petroleum Operations within the Contract Area; and
- 14.2.2.15 comply with Somali Local Content and other provisions established in the Agreement, policies, Regulations and other Laws, as amended or issued from time to time (including, without limitation, Law and the Best International Practice related to environmental protection, health, safety and quality).

## **15. RIGHTS OF THE FEDERAL GOVERNMENT**

- 15.1 The Federal Government may have access to a part of the Contract Area for a public purpose, acting reasonably (other than searching for or extracting Petroleum), provided that they have given reasonable notice to the Contractor, and only to the extent that it will not negatively affect Petroleum Operations of the Contractor.
- 15.2 Subject to other provisions of this Agreement, the Contractor shall not carry out Petroleum Operations on such part acquired by the Federal Government, but may:
  - 15.2.1 enter upon that part, but not materially interfere with the public purpose; and
  - 15.2.2 carry out directional drilling from an adjacent part.
- 15.3 The SPA (or a Person authorised by the SPA in writing) may, at all reasonable times, inspect any Petroleum Operations and any records of the Contractor relating thereto, and the Contractor shall provide, where available, facilities similar to those applicable to its own or to its sub-contractors' staff for transport to the Petroleum Operations, subsistence and accommodation and pay all reasonable, actual, documented expenses directly connected with such inspection.
- 15.4 Without limiting the right of the Federal Government to claim breach of the Agreement by the Contractor, in the event of a breach, the SPA may require the Contractor to perform an obligation under the Agreement by giving written notice that sets out a reasonable period for its performance. If the Contractor fails to comply with such notice, the SPA may perform such obligation, in which case the Contractor shall pay forthwith to the Federal Government all actual,

reasonable and documented amounts expended by the SPA directly in the execution of such obligation.

## **16. OBLIGATIONS OF THE FEDERAL GOVERNMENT**

- 16.1 The Federal Government may, at the request of the Contractor, make available to the Contractor such land as the Contractor may reasonably require in the Contract Area for the conduct of the Petroleum Operations in accordance with Law, and, where the land is private land, the Federal Government may, subject to the Act, acquire such land in accordance with Law.
- 16.2 The Contractor shall pay or reimburse the Federal Government any reasonable compensation (calculated in accordance with Law or, in the absence of its regulation in Law, the international standards, regulations and guidelines and the Best International Practice) that may be required for the setting apart, use or acquisition of any land for the Petroleum Operations.
- 16.3 Where the Contractor has occupied community land for the purpose of the Petroleum Operations before that land has been set apart, the Contractor shall notify the SPA in writing of the need to set apart such land, as provided for in Law.
- 16.4 The Federal Government shall grant (or cause to be granted) to the Contractor, its contractors and sub-contractors such wayleaves, easements, temporary occupation or other permissions within and out of the Contract Area as are necessary to conduct the Petroleum Operations and, in particular, for the purpose of laying, operating and maintaining pipelines and cables, and passage between the Contract Area and the Delivery Point.
- 16.5 The Federal Government shall at all times give the Contractor the right of ingress to and egress from the Contract Area and all facilities required for the conduct of the Petroleum Operations.
- 16.6 Subject to the national security requirements and Laws of Somalia relating to immigration, the Federal Government shall not unreasonably refuse or delay to issue and/or renew entry and work Permits for technicians and managers employed by the Contractor in connection with the Petroleum Operations (including its contractors, sub-contractors, their employees and dependants).

## **17. FEDERAL GOVERNMENT PARTICIPATION**

- 17.1 The Federal Government may elect to participate in the Petroleum Operations in any [Development Area] and acquire an interest of up to twenty percent [20%] ("**Participating Interest**") of the total interest in that Development Area. The Federal Government may participate either directly or through SONOC.
- 17.2 The Federal Government shall exercise the right to participate by giving notice to the Contractor within one hundred and eighty (180) days from the date falling five years after the start of Commercial Production (the date of such notice being the "Notice Date"). Such notice shall specify the Participating Interest that the Federal Government has elected in that Development Area. If the Federal Government exercises its option to participate, the Contractor (or each entity constituting the Contractor, *pro-rata*) shall transfer to the Federal Government that percentage interest specified by the Federal Government.
- 17.3 If the Federal Government exercises its right to participate in a Development Area:
- 17.3.1 The Contractor shall, from the date of signature of a binding and enforceable instrument of assignment and novation in respect of the Agreement by both Parties

("Participation Date"), be entitled to recover additional Cost Oil in an amount equal to:

- 17.3.1.1 the Fair Market Value of the Participating Interest being transferred; or
- 17.3.1.2 the sum of all Petroleum Costs incurred [since the Participation Date] with respect to the Participating Interest being transferred.
- 17.3.2 Upon the Participation Date the Federal Government shall participate as a Contractor entity under this Contract as if it had been a Contractor entity from the Participation Date, with all its right, duties, obligations and liabilities under this Agreement, but excluding the participating interest share of any claims, losses, costs, liabilities or expenses arising out of or in connection with the negligence, gross negligence or wilful misconduct of the Contractor, its Affiliates, or its or their contractor, vendors or agents caused and /or occurring prior to the Participation Date.
- 17.3.3 Where the Persons constituting the Contractor have entered into a Joint Operating Agreement prior to any exercise of the right to participate under clause 17.2, the Federal Government shall, upon signature of the instrument referred to in clause 17.3.1, become a party to such Joint Operating Agreement on the terms thereof.
- 17.3.4 If the Contractor only consists of one Party and a Joint Operating Agreement is not in place prior to the Federal Government exercising its right to participate under clause 17.2, then the Federal Government and the Contractor shall, within a reasonable period of time, negotiate in good faith and enter into a Joint Operating Agreement in accordance with good international oil and gas practice and based on the "Association for International Petroleum Negotiators Model Form Joint Operating Agreement".
- 17.4 The Federal Government shall, in exercise of its right to participate in a Development Area:
  - 17.4.1 have the right to a vote in proportion to its Participating Interest with respect to all decisions taken under the Agreement and the Joint Operating Agreement;
  - 17.4.2 own and separately take and dispose of its share in the Petroleum produced and saved to which the Contractor is entitled under the Agreement, corresponding to its Participating Interest in that Development Area;
  - 17.4.3 assume its share of costs, expenses and obligations incurred in respect of that Development Area, from the Participation Date, *pro-rata* to its Participating Interest; and
  - 17.4.4 own its Participating Interest in all assets acquired for the Petroleum Operations in or related to the Development Area.

## **18. FACILITIES**

- 18.1 The Contractor shall be the owner of all (movable or immovable) structures, installations, facilities, equipment and other assets which it has acquired for purposes of the Petroleum Operations, subject to the provisions of the Agreement. The preceding sentence does not apply to any assets leased to the Contractor, or leased by or belonging to Third Parties providing services.

- 18.2 The Contractor's approach to acquisition of the (movable or immovable) assets shall be cost-driven, so, to the extent it is financially more beneficial, the Contractor shall rent or lease assets rather than acquire ownership thereof.
- 18.3 Subject to prior written consent by the SPA (such not to be unreasonably withheld, delayed or conditioned), the Contractor shall have the right to construct access roads, drill water Wells and to place structures, installations, facilities, equipment and other assets necessary to conduct the Petroleum Operations (including, but not limited to, storage tanks, Flow Lines, shipment installations, transmission pipelines, water pipelines and cables), located inside or outside the Contract Area. Such written consent may be conditional on the use by other contractors of the excess capacity (if any) of those assets.
- 18.4 Where the SPA and the Contractor agree that a mutual economic benefit can be achieved by constructing and operating common facilities, the Contractor shall use its best endeavours to reach agreement with other contractors on the construction and operation of such common facilities.
- 18.5 The Contractor shall allow other Persons to use the structures, installations, facilities, equipment and other assets of the Contractor upon payment of a reasonable compensation, which includes a reasonable return on investment to the Contractor, and provided that such use does not unreasonably interfere with the performance of the Petroleum Operations by the Contractor.
- 18.6 The SPA may (after consultation with the Contractor) consent to the placement of structures, installations, facilities, equipment and other assets (such as Flow Lines, transmission pipelines, water pipelines and cables) in the Contract Area by other Persons, *provided that* those do not unreasonably interfere with the performance of the Petroleum Operations by the Contractor.
- 18.7 Subject to clause 13, on termination of this Agreement due to the Contractor's default or expiry of the Agreement or relinquishment of part of the Contract Area, the Contractor shall promptly, but in any case within three hundred and sixty five (365) days:
- 18.7.1 remove, at no cost to the Federal Government, all Petroleum Operation structures, installations, facilities, equipment and other assets from the Contract Area or the part relinquished (other than those that are situated in or related to a Development Area) in accordance with the Best International Practice and the time schedule and conditions defined in the Decommissioning Plan; or
- 18.7.2 upon written notice by the SPA requiring the Contractor to do so, at no cost to the Federal Government and without any charge, liability or security thereon, transfer all Petroleum Operation structures, installations, facilities, equipment and other assets from the Contract Area or the part relinquished (other than those that are situated in or related to a Development Area), including the ownership thereof, to the Federal Government in their current condition, whereupon the Federal Government shall become the owner of and responsible for operating, maintaining, plugging and abandoning and Decommissioning of such structures, installations, facilities, equipment and other assets.
- 18.8 If the rights of the Contractor in respect of a Development Area terminated due to the Contractor's default, expired or are relinquished, the Contractor shall promptly, but in any case within one hundred and eighty (180) days thereof, transfer to the Federal Government, at no cost, the Petroleum Operations structures, installations, facilities, equipment and other assets (including the ownership thereof) that are situated in the Development Area or that are related thereto, unless such structures, installations, facilities, equipment and other assets are or may be utilised by the Contractor in the Petroleum Operations under the Agreement, but the Federal

Government may require the Contractor to remove those, at the sole cost of the Contractor, in accordance with clause 13.

## **19. OFFSHORE OPERATIONS**

- 19.1 The Contractor shall ensure that facilities erected offshore in Somalia's territorial waters shall be:
- 19.1.1 constructed, placed, marked, buoyed, equipped and maintained so that there are safe and convenient channels for shipping in accordance with the applicable international standards, regulations and guidelines and the Best International Practice;
  - 19.1.2 fitted with navigational aids approved by the SPA;
  - 19.1.3 illuminated between sunset and sunrise in a manner approved by the Somalia ports and maritime authorities; and
  - 19.1.4 kept in good repair and working order.
- 19.2 The Contractor shall pay to the Federal Government a compensation (in the amount, and promptly after having been, determined by an independent expert appointed by both Parties) for any damage to and/or any detrimental interference (including, but not limited to, fishing rights) caused by the performance of the Petroleum Operations.

## **20. ENVIRONMENTAL PROVISIONS**

- 20.1 During the performance of the Petroleum Operations (including, without limitation, during Decommissioning), the Contractor shall comply with environmental principles and safeguards prescribed in Law concerning environmental protection and shall take all reasonable measures to ensure the protection of environment, human beings, livestock, wildlife or marine life and prevention of pollution, in accordance with the Best International Practice.
- 20.2 Without limiting the generality of foregoing, in carrying out the Petroleum Operations, the Contractor shall:
- 20.2.1 in accordance with Best International Practice, employ up-to-date techniques, practices and methods of operation for the prevention of environmental damage, the control of waste and the avoidance of unnecessary loss of, or damage to, natural resources;
  - 20.2.2 observe Law of general application in force from time to time in Somalia for the protection of the environment; and
  - 20.2.3 comply strictly with the obligations relating to the protection of the environment it has assumed under any approved Development Plan.
- 20.3 The Contractor shall take all necessary and adequate steps in accordance with the Best International Practice to:
- 20.3.1 ensure, if the Contractor is otherwise legally responsible, proper compensation for injury to Persons or damages to property resulting from the Petroleum Operations;
  - 20.3.2 act to avoid environmental damage in the Contract Area and adjoining or neighbouring lands and marine areas (directly or indirectly) caused by the Petroleum

Operations and, generally, respect the preservation of life, property and environment when carrying out the Petroleum Operations; and

- 20.3.3 rehabilitate, at its own cost, all areas that suffer environmental damage as a result of the Petroleum Operations.
- 20.4 Without limiting the generality of foregoing, prior to relinquishing a part of the Contract Area, the Contractor shall take all reasonable measures to abandon the area to be relinquished in accordance with the Best International Practice. Such measures shall include removal and closure of facilities, material and equipment, together with reasonable measures necessary for the preservation of fauna, flora and ecosystems, all in accordance with the Best International Practice. The Contractor shall only be responsible for site restoration or environmental damage to the extent the same pertains solely and directly to the Petroleum Operations.
- 20.5 The Contractor shall conduct a strategic environmental and social impact assessment and, within ninety (90) days after the Effective Date, submit a report thereon to the SPA (and to the relevant Somali Governmental Authority being responsible at that time for the environment) for approval, which approval shall be granted by the SPA (or such other relevant Governmental Authority, whichever is applicable) within the period of thirty (30) of submission. If such approving Governmental Authority has reasonable grounds for refusal (such to be notified to the Contractor), such Governmental Authority may refuse to grant approval within the same period of time. In case of expiry of the period of thirty (30) days following submission to such Governmental Authority without such Governmental Authority either approving or refusing to grant approval, the report shall be deemed approved. Such environmental and social impact assessment shall establish the effect of the Petroleum Operations to be undertaken under the Agreement on the environment, human beings, livestock, wildlife or marine life, and shall include emergency and accident response plans.
- 20.6 The Contractor shall notify such approving Governmental Authority and the SPA within twenty four (24) hours in writing in the event of any emergency or major accident and shall take such action as may be prescribed by the Federal Government's emergency procedures, the Contractor's emergency and accident response plans (developed pursuant to sub-clause 20.5) and the Best International Practice.
- 20.7 If the Contractor does not act promptly so as to control, clean up or repair any damage to environment, human beings, livestock, wildlife or marine life resulting from the performance of the Petroleum Operations, the SPA may, after giving the Contractor reasonable notice under the circumstances, take any corrective actions or measures that are necessary in accordance with the Best International Practice. The direct, actual, reasonable and documented costs and expenses of such actions shall be borne entirely by the Contractor, and shall not be (in whole or part) treated as and included in the Petroleum Costs and shall be promptly paid to the Federal Government.
- 20.8 If the Federal Government has reasonable grounds to believe that any works or installations erected by the Contractor or any operations carried out by the Contractor in the Contract Area are endangering or may endanger Persons or any property of any other Person or are causing damage to environment, human beings, livestock, wildlife or marine life to a degree which the Federal Government considers unacceptable, the Federal Government shall notify the Contractor thereof and the Parties shall immediately consult to agree on remedial measures to be taken by the Contractor within a reasonable period of time to repair any such damage or to prevent further damage (to the extent reasonably practicable). If there is a disagreement between the Parties regarding the existence of a problem or the remedial action to be taken by the Contractor, such matter shall be submitted to an expert for determination in accordance with this Agreement. In case of any matter referred to an expert, if requested by the Federal Government, the Contractor

shall undertake such temporary measures to address the Government's concerns, as may be reasonably requested by the Federal Government.

- 20.9 Each Party shall notify the other Party of any environmentally, archaeologically, historically or similarly protected areas or features which might be affected by the Petroleum Operations.
- 20.10 If the Petroleum Operations are to be conducted within the boundaries of any protected area within the Contract Area, the Contractor shall obtain such additional approvals as may be required under Law.
- 20.11 The Contractor shall not be liable for any pre-existing environmental conditions and any environmental damage caused by acts of Third Parties (other than the Contractor's Affiliates, contractors, sub-contractors or agents).

## **21. DOMESTIC SUPPLY OBLIGATIONS**

- 21.1 The Contractor shall supply Crude Oil and/or Natural Gas for domestic consumption in Somalia in priority to any other sale or supply and shall sell to the Federal Government that portion of the Contractor's share of Production of Petroleum which is necessary to satisfy the domestic supply requirement in accordance with this clause 21.
- 21.2 In each Calendar Year, the SPA shall notify the Contractor not less than 365 days prior to the beginning of that Calendar Year, of the domestic supply requirement.
- 21.3 The maximum amount of Crude Oil and/or Natural Gas that the Federal Government may require from the Contractor's share of Production of Petroleum shall be calculated each Calendar Quarter, and shall be equal to the excess of the total Crude Oil and/or Natural Gas domestic consumption in Somalia multiplied by a fraction, the numerator of which is the average Crude Oil and/or Natural Gas Production from the Contract Area and the denominator of which is the total Crude Oil and/or Natural Gas Production from all producers in Somalia, over the amount of Crude Oil and/or Natural Gas available to the Federal Government from the Contract Area as in the form of Federal Government's share of Production of Petroleum (under clause 10.3) and in the form of the Federal Government's participation share (under clause 17). For the purpose of this sub-clause, "domestic consumption" does not include Crude Oil and/or Natural Gas refined in Somalia for export.
- 21.4 When the Contractor is obligated to supply Crude Oil or Natural Gas for domestic consumption in Somalia, the price paid by the Federal Government shall be calculated in accordance with clause 11. Such sales to the Federal Government shall be invoiced monthly and shall be paid within sixty (60) days of receipt of the invoice, unless other terms and conditions are agreed in writing.
- 21.5 With the prior written consent of the SPA, the Contractor may comply with the requirements of this clause by importing Crude Oil or Natural Gas and recovery of the same amount from subsequent Production of Petroleum, with appropriate adjustments being made in the price and volume to reflect the transportation costs, differences in quality, gravity and terms of sale.
- 21.6 In this clause, "**Federal Government**" includes an Appointee as defined herein; and "**Contractor**" does not include the Federal Government, where the Federal Government has participated under clause 17.
- 21.7 In case of war or imminent expectation of war or grave national emergency, the SPA may requisition a part of Petroleum produced from the Contract Area and/or require the Contractor to increase such Production to the extent required. In such event:

- 21.7.1 the price to be paid by the Federal Government for Petroleum shall be the value determined in accordance with clause 10 of the Agreement and payment shall be made within thirty (30) days after delivery in US dollars at a bank outside Somalia designated by the Contractor; and
- 21.7.2 the Federal Government shall indemnify and hold the Contractor harmless against all claims, reasonable costs, losses and damages incurred or sustained by the Contractor as a result of such requisition and increase of Production.

## **22. DATA AND INFORMATION**

- 22.1 The Contractor shall have the right to use and have access to all geological, geophysical, drilling, Well production, Well location maps and other information held by the SPA related to the Contract Area and areas adjacent to the Contract Area, in consideration of the payment of required fees under this Agreement, in accordance with the Law, or under any other applicable Agreement.
- 22.2 The Contractor shall promptly provide the SPA, at no cost, with all data obtained as a result of the Petroleum Operations, including seismic data, geological, geophysical, geochemical, petrophysical, engineering, Well logs, maps, magnetic tapes, cores, cuttings and production data as well as all interpretative and derivative data, including reports, analyses, interpretations and evaluations prepared in respect of the Petroleum Operations.
- 22.3 The Federal Government has the title in all original data and information resulting from the Petroleum Operations (including, but not limited to, geological, geophysical, petrophysical and engineering data; Well logs and completion status reports; and any other data that the Contractor or anyone acting on its behalf may compile or obtain during the term of the Agreement). The Contractor may retain and use a copy of all such data, subject to this clause 22.
- 22.4 The Contractor acknowledges the proprietary rights of the Federal Government in all data and information referred to in this clause 22 and agrees to treat all such data and information as confidential and to comply with Law with respect to the storage and any transport or export out of Somalia of any such data and information.
- 22.5 The Contractor may disclose such data and information to its employees to the extent required for efficient conduct of the Petroleum Operations, *provided that* such individuals have signed an undertaking relating to the confidentiality of the same information as part of their employment contract or to Affiliates and consultants, or to bona *fide* prospective assignees of rights under the Agreement or to banks or financial institutions from which finance is sought, *provided that* the Contractor obtains from such Persons, prior to disclosure, a written confidentiality undertaking. In the case of disclosure to prospective assignees, any disclosure of such information shall require the prior written consent of the SPA (which shall not be unreasonably withheld, delayed or conditioned).
- 22.6 The Contractor may disclose information as and to the extent required by a Government Authority having proper jurisdiction over the Contractor, *provided that* the SPA is first notified of such disclosure and of the information so disclosed.
- 22.7 The Contractor's obligation of confidentiality under this clause 21 shall be of a continuing nature and shall not be cancelled by the expiration, suspension or termination of the Agreement.
- 22.8 All information (including the data, information and reports referred to in clauses 22 and 23) which the Contractor supplied to the Federal Government under or in connection with the Agreement are supplied at the sole expense of the Contractor.

## **23. REPORTS**

- 23.1 The Contractor shall supply to the SPA daily reports on drilling, completions and Production operations, and weekly reports on Exploration (including seismic and geophysical operations).
- 23.2 The Contractor shall report in writing to the SPA the progress of the Petroleum Operations according to the following schedule:
- 23.2.1 within thirty (30) days from the last day of March, June, September and December, covering the previous ninety (90) days;
  - 23.2.2 within ninety (90) days of the last day of December, covering the previous Calendar Year; and
  - 23.2.3 within ninety (90) days of the date of expiry or termination of the Agreement.
- 23.3 A report under sub-clause 23.2 shall contain, in respect of the period which it covers:
- 23.3.1 details of the Petroleum Operations carried out and the factual information obtained;
  - 23.3.2 a description of the area in which the Contractor has operated;
  - 23.3.3 an account of the revenue, costs and expenditure on the Petroleum Operations in accordance with the Accounting Procedure;
  - 23.3.4 a plot map (including a record of coordinates, including all pits, boreholes, Wells and facilities) used for the Petroleum Operations;
  - 23.3.5 on expiry or termination of the Agreement, details of the Petroleum Operations, including all the matters described in sub-clauses 23.3.1 to 23.3.4; and
  - 23.3.6 all information required by clause 22 not hitherto supplied.
- 23.4 Subject to clause 43, the Contractor shall report in writing to the SPA any change in the Contractor and its parent company.

## **24. BOOKS, ACCOUNTS AND AUDITS**

- 24.1 The Contractor shall maintain books and accounts in the English language, at the Contractor's office in Somalia, in accordance with the Accounting Procedure and International Financial Reporting Standards (IFRS) and shall, not later than ninety (90) days after the end of each Calendar Year, submit to the SPA a statement of those accounts and a consolidated annual report of its parent company.
- 24.2 The Contractor shall appoint an independent auditor of international standing, approved by the Federal Government, to audit annually the books and accounts of the Contractor and the Petroleum Operations and report thereon. The cost of such audit shall be borne by the Contractor and considered as recoverable cost under the Agreement.
- 24.3 The Federal Government may audit the books and accounts relating to the Petroleum Operations and any sale of Petroleum produced in accordance with the Agreement, within two Calendar Years of the end of the period to which they relate, and shall complete such audit within one hundred and eighty (180) days. The Contractor shall provide the SPA with any required explanations as soon as possible (and in any case not later than thirty (30) days of request) and

shall provide all necessary assistance to the Persons designated by the Federal Government for that purpose and facilitate their performance.

- 24.4 In the absence of an audit performed within two Calendar Years or in the absence of notice to the Contractor of a discrepancy in the books and accounts within three Calendar Years of the end of the period to which the audit relates, the Contractor's books and accounts shall be deemed accurate and complete.
- 24.5 Nothing in this clause shall be construed as limiting the right of the Federal Government or the SPA, pursuant to any power granted by Law, to audit or cause to be audited the books of the Contractor or the Operator.

## **25. REPORTING**

- 25.1 Without prejudice to the reporting obligations existing under the Act and Regulations, in accordance with the Best International Practice, the Contractor shall regularly inform the SPA of the performance of the Petroleum Operations and immediately of any accidents or dangerous occurrences which have occurred.
- 25.2 The Contractor shall have documented management systems in place, based on the Best International Practice for health, safety, environmental and quality management, as well as for normal day-to-day operations. These shall be made available for review by the SPA.
- 25.3 Without limiting the generality of foregoing, in accordance with its obligations under the Act and Regulations, the Contractor shall maintain records to facilitate the determination of the Local Content of expenditure incurred in respect of the Petroleum Operations. These records shall include supporting documentation certifying the cost of local materials, labour and services used and shall be subject to audit by the SPA. The Contractor shall prepare and submit to the SPA reports concerning the Local Content on a quarterly basis.

## **26. TITLE AND RISK TO PETROLEUM**

- 26.1 The title in the Contractor's share of Crude Oil shall pass to the Contractor (and risk therein shall remain with the Contractor) when it is delivered at the Crude Oil Delivery Point and the title in the Contractor's share of Natural Gas shall pass to the Contractor (and risk therein shall remain with the Contractor) when it is delivered at the Natural Gas Delivery Point. The title in the Federal Government's share of Petroleum taken by the Contractor pursuant to sub-clauses 10.4.4 **Error! Reference source not found.** and 10.4.6 shall pass to the Contractor (and risk therein shall remain with the Contractor) when Crude Oil is delivered at the Crude Oil Delivery Point and Natural Gas is delivered at the Natural Gas Delivery Point.
- 26.2 Notwithstanding sub-clause 26.1, Petroleum shall be at the risk of the Contractor until it is delivered at the Crude Oil Delivery Point, or the Natural Gas Delivery Point, respectively. The Contractor shall defend, indemnify and hold the Federal Government harmless from any and all claims asserted in respect of Petroleum wherein the risk is with the Contractor.

## **27. EMPLOYMENT AND TRAINING**

- 27.1 The Contractor shall employ Somali citizens residing in Somalia in the Petroleum Operations where they have similar or equivalent skills and qualifications as foreign nationals and the Contractor shall advertise such employment positions locally. The Contractor shall, until the expiry or termination of the Agreement, conduct training courses and programmes that will progressively increase employment of Somali citizens residing in Somalia. In this regard, the Contractor shall submit an annual training plan for approval by the SPA.

- 27.2 The training courses and programmes in sub-clause 27.1 shall be established and conducted in consultation with and subject to approval by the SPA, which approval shall be granted within fifteen (15) days of the end of the consultation period. If the SPA has reasonable grounds for refusal (such to be notified to the Contractor), the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of fifteen (15) days following submission to SPA without SPA either approving or refusing grant of approval, the approval shall be deemed granted by SPA.
- 27.3 The Contractor shall ensure that Somali citizens residing in Somalia are selected and trained consistent with Contractor's performance standards in relation to activities referred at sub-clause 29.3.
- 27.4 The Contractor shall, not later than ninety (90) days of the end of the preceding Calendar Year, submit to the SPA an annual report on the employment of Somali citizens residing in Somalia and the training courses and programmes held in the preceding Calendar Year, which report shall be reviewed by the SPA prior to the approval of any subsequent training plan.

## **28. TRAINING FUND**

- 28.1 In addition to the obligation under sub-clause 27.1 and commencing on the Effective Date, the Contractor shall contribute to the SPA, the Federal Government or any relevant Governmental Authority (as notified by the SPA) a minimum of five hundred thousand US dollars (500,000) per Calendar Year for the Federal Government training fund established under the Act. The obligation of the Contractor under this sub-clause 28.1 is considered the minimum expenditure obligation.
- 28.2 The amounts payable by the Contractor under this clause 28 may be included in Petroleum Costs for the purpose of cost recovery under sub-clause 10.1, but the late payment thereof shall attract interest in accordance with sub-clause 34.2 hereof which shall not be cost recoverable.
- 28.3 The training fund shall be managed by the SPA, the Federal Government or relevant Governmental Authority (as notified by the SPA) in accordance with the Act and Regulations.

## **29. PREFERENCE FOR SOMALI GOODS AND SERVICES**

- 29.1 If so required by the Act and Regulations, the Contractor shall (and shall ensure that its contractors and sub-contractors shall):
- 29.1.1 maximise the usage of Somali goods, services and businesses;
  - 29.1.2 give preference to Somali materials and supplies for use in the Petroleum Operations;
  - 29.1.3 give preference to Somali contractors for services connected with the Petroleum Operations,
- provided that Somali goods, services, businesses, materials and supplies are comparable in terms of performance, price, quality and availability to their foreign equivalents.
- 29.2 The Contractor shall:
- 29.2.1 on or prior to the start of each Calendar Year to which it applies, submit to the SPA a tentative schedule of the contemplated services and supply contracts with an estimated value exceeding the equivalent of US dollars ◆ per contract,

to be let during the forthcoming Calendar Year, showing the anticipated tender date and approximate value and the goods and services to be provided;

- 29.2.2 for contracts with an estimated value exceeding the equivalent of five hundred thousand US dollars (USD \$500,000.00) per contract, undertake to select its contractors and sub-contractors from adequately qualified, technically and financially capable and professionally skilled indigenous Somali companies by means of competitive bidding or by another appropriate method in accordance with the Best International Practice provided that the Contractor shall not be obligated to contract with such indigenous Somali companies unless the Somali goods, services, businesses, materials and supplies supplied by such contractors and sub-contractors are comparable in terms of performance, price, quality and availability to their foreign equivalents;
  - 29.2.3 as soon as practicable after their execution, provide to the SPA a copy of each contract requiring a payment in US dollars or equivalent together with a brief description of the efforts made to find a Somali supplier or contractor.
- 29.3 The Contractor shall give equal treatment to local enterprises by ensuring access to all tender invitations and by including appropriate weighting of Local Content in the tender evaluation criteria.

## **30. TECHNOLOGY TRANSFER**

- 30.1 The Contractor shall (and shall ensure that its sub-contractors shall) develop a technology transfer programme to promote the transfer of technology and skills created for or in connection to the Petroleum Operations to Somali employees that are Somali citizens residing in Somalia and to the Federal Government officials.
- 30.2 The technology transfer programme shall be aimed at building and developing in Somalia specialised technical, management and professional skills relevant to the Petroleum Operations and any necessary facilities requisite for the advancement of technical skills in the Petroleum Operations.
- 30.3 The Contractor shall transfer to Somali citizens residing in Somalia technology and business expertise in all areas of the Petroleum Operations, including, but not limited to:
  - 30.3.1 fabrication;
  - 30.3.2 information technology support (including seismic data acquisition, processing and interpretation support);
  - 30.3.3 operations and maintenance support;
  - 30.3.4 maritime services;
  - 30.3.5 business support services, including insurance, accounting, human resource services, consulting, marketing, legal and contract negotiations;
  - 30.3.6 financing; and
  - 30.3.7 trading.

- 30.4 In addition to the requirements set forth in sub-clause 30.3, the Contractor shall train and develop Somali citizens residing in Somalia so to make them more capable of making more value-added, analytical and decision making roles in areas, such as:
- 30.4.1 those of a technical or professional nature (including general management, design engineering, project management, seismic data processing, human resource development, legal, economics, auditing and accounting); and
  - 30.4.2 those involving business strategic skills (including leadership, business development, executive management, commercial, analytical, negotiating, strategy development and trading know how and acumen).

### **31. IMPORTS AND EXPORTS**

- 31.1 The Contractor (including its contractors and sub-contractors engaged in carrying out of the Petroleum Operations) has the unrestricted right to:
- 31.1.1 import into Somalia; and
  - 31.1.2 subject to sub-clauses 18.7 and 18.8, export (if imported on a temporary basis) from Somalia,
- all materials, equipment and supplies (including, but not limited to, machinery, vehicles, consumable items, movable property and any other articles) used and to be used solely in carrying out the Petroleum Operations under the Agreement.
- 31.2 In accordance with clause 42 the import and export of materials, equipment and supplies (including, but not limited to, machinery, vehicles, consumable items, movable property and any other articles) used and to be used solely in carrying out the Petroleum Operations under the Agreement shall be exempt from import and export duties, fees and taxes during the term of this Agreement.
- 31.3 In relation to materials, equipment and supplies imported or to be imported pursuant to sub-clause 31.1, when the SPA or its representative has certified that they are to be used solely in carrying out of the Petroleum Operations, the Contractor shall (and shall ensure that its contractors and sub-contractors shall) make such imports subject to:
- 31.3.1 approval of an import licence;
  - 31.3.2 an exchange control approval, subject to the provisions of clause 31; or
  - 31.3.3 independent inspection outside of Somalia by an inspecting body appointed by the Federal Government.
- 31.4 The actual costs of technical and other services and materials obtained for the purpose of the Petroleum Operations shall be cost recoverable under the Agreement, *provided that* those services and materials are reasonably required for the Petroleum Operations and *provided further that* the prices paid by the Contractor are not higher than those currently prevailing in usual Arm's Length transactions on the market for comparable services and materials.
- 31.5 The Contractor (including its contractors and sub-contractors) may sell in Somalia all imported items which are no longer needed for the Petroleum Operations, *provided that* the relevant seller fulfils all formalities required in connection with the payment of duties, taxes, fees and charges imposed on such sales (if any).

31.6 If equipment and materials are required for the subsequent Petroleum Operations by another contractor in another contract area (other than the Contract Area for which they were imported), a Permit may be issued by the relevant Somali official body (whether federal, regional or local) upon application by the Contractor for such equipment and materials to be used for such stated purpose.

## **32. EXCHANGE AND CURRENCY CONTROLS**

32.1 As long as the Contractor makes all tax and other payments due under the Agreement, complies with sub-clause 32.2 and is not otherwise in breach of the Agreement, the Federal Government shall, by appropriate legal notice, grant the Contractor, upon the Effective Date of the Agreement, the freedom to:

32.1.1 open and freely maintain accounts inside Somalia and foreign bank accounts outside Somalia in accordance with the Law in force from time to time in Somalia;

32.1.2 receive, retain outside Somalia and freely dispose of foreign currencies received by it outside Somalia (including, but not limited to, the proceeds of sales of Petroleum hereunder) and the Contractor shall not be obligated to remit such proceeds to Somalia (with the exception of those proceeds as may be needed to meet its expenses and payments to the Federal Government);

32.1.3 pay directly outside Somalia for purchases of services and materials necessary to carry out the Petroleum Operations;

32.1.4 pay its expatriate employees working in Somalia in foreign currencies outside of Somalia. Such expatriate employees shall be only required to bring into Somalia such foreign exchange as required to meet their personal living expenses and to meet payments of Somali taxes;

32.1.5 freely repatriate abroad all proceeds from its Petroleum Operations in Somalia (including, but not limited to, proceeds from the sale of assets and Petroleum); and

32.1.6 have rates of exchange for the purchase or sale of currency in Somalia, not less favourable to the Contractor than those granted to any other (domestic or foreign) investor in Somalia.

32.2 The Contractor shall notify the Federal Government and the Central Bank of Somalia, in such form and detail as the Federal Government or the Central Bank of Somalia may request:—

32.2.1 of the location of the Contractor's bank accounts in Somalia and abroad, which latter accounts shall be opened in internationally renowned banks of rating acceptable to the Central Bank of Somalia;

32.2.2 annually, before the commencement of each Calendar Year, of the Contractor's estimated receipts and disbursements of foreign exchange by principal headings during the Calendar Year (which statement may be amended from time to time, if necessary); and

32.2.3 Quarterly, within thirty (30) days of the end of each Calendar Quarter, of the Contractor's actual receipts and disbursements of foreign exchange by principal headings during the preceding Quarter.

- 32.3 Subject to its obligations under clause 29, the Contractor shall have the right to enter into all contracts and sub-contracts necessary to carry out the Petroleum Operations without prior approval by the Central Bank of Somalia, or any Somali Governmental Authority. The Federal Government reserves the right to inspect the records or documentation related to such contracts and sub-contracts and, in accordance with clause 22, to appoint independent auditors to examine the accounts of the Contractor, and the Contractor shall provide a copy of such contracts within thirty (30) days after their execution, *provided that* where the Federal Government disputes anything in the contracts or sub-contract, the value in dispute shall not be included, until the dispute has been resolved, in respect of the qualifying expenditure under the Somali tax, exchange and currency control Laws and regulations.
- 32.4 The Federal Government shall grant to the Contractor any certificate or other document required in accordance with the Laws of Somalia relating to foreign investments. If required, the amount recognised by such certificate or other document as having been invested shall be the actual amount for the time being invested by the Contractor as set forth in its books of account maintained and audited in accordance with the Agreement, *provided that* the Contractor shall not repatriate any proceeds of the sale of an asset forming part of either:
- 32.4.1 qualifying expenditure under Laws relating to tax;
- 32.4.2 any asset subject to such certificate or other document, without written approval and the necessary amendments thereto. Proceeds arising from any other source may be repatriated after the Federal Government has certified that such repatriation is in order.

### **33. FEES AND BONUSES**

- 33.1 The Contractor shall pay, on or before the beginning of the relevant Contract Year, to the Federal Government, the following surface fees:
- 33.1.1 one hundred US dollars (USD 100) per square kilometre per Calendar Year occurring during the Exploration Period (including any additional or extension periods); and
- 33.1.2 five hundred US dollars (USD 500) per square kilometre per Calendar Year occurring during the Development and Production period.
- 33.2 These surface fees shall be calculated on the basis of the surface area of the Contract Area on the date the payments are due.
- 33.3 [A signature bonus in the amount of two million US dollars (USD [2,000,000]) shall be paid by the Contractor to the Ministry promptly upon execution of the Agreement by the Parties.]
- 33.4 A Development and Production Bonus in the amount of [two million US dollars (USD [2,000,000])] shall be paid by the Contractor to the Ministry in connection with the commencement of a Development and Production Plan under clause 3.5.1.
- 33.5 The Contractor shall contribute to a fund to be established in accordance with terms and conditions agreed between the Contractor and the local communities, and approved by the Government of the Federal Member State ("**Local Communities Fund**"), a minimum of five hundred thousand US dollars (USD 500,000) per Calendar Year. The Contractor's obligation shall be increased to a minimum of one million US dollars (USD 1,000,000) per Calendar Year commencing with the adoption of the first Development Plan. The Contractor shall annually

report to the Minister of Petroleum and the Government of the Federal Member State on progress in fund implementation.

- 33.6 Fees and bonuses payable under clause 33 (other than the surface fees set out in sub-clause 33.1, 50% of the signature bonus set out in sub-clause 33.2 and the contributions to the Local Communities Fund as set out in sub-clause 33.5) may not be included in Petroleum Costs for the purpose of cost recovery under sub-clause 10.1 and late payment shall attract interest in accordance with sub-clause 34.2 hereof.

#### **34. PAYMENTS**

- 34.1 All sums due to the Federal Government or the Contractor shall be paid in US dollars or other currency agreed in writing by the Parties.
- 34.2 Any late payment due to the Federal Government or the Contractor shall attract interest at the rate of LIBOR plus 5% per annum.
- 34.3 Any and all payments payable by the Contractor to the Federal Government, under the Agreement shall be paid by electronic bank transfer to the following bank account:

Account Name: Central Bank of Somalia  
Bank Name: T.C. ZIRAAT BANKASI A.S.  
Swift Code: TCZBTR2A  
Address: General Mudurlugu Hazine Operayolari Bolum Baskanligi Maslak Mah.  
Eski Buyiikdere Cad. No: 39 B Block 34398 sisli-Istanbul, Turkey  
Account No: USD# 999022535001  
IBAN: TR360001000864999022535001  
Reference: Block # [•]

The foregoing bank details may be changed only by written notice to the Contractor signed by both the Minister of Petroleum and the Governor of the Central Bank of Somalia.

#### **35. INSURANCE**

- 35.1 The Contractor shall obtain and maintain, in respect of the Petroleum Operations, all insurance required in accordance with Best International Practice and as the Parties may agree in writing from time to time. Such insurance shall be of the type and in such amount as is required in accordance with Best International Practice and, unless, after using reasonable endeavours, impossible to obtain at any time or from time to time, shall include insurance against the following risks:
- 35.1.1 loss or damage to all installations and equipment which are owned or used by the Contractor in performance of the Petroleum Operations;
- 35.1.2 pollution and other environmental risks resulting from the Petroleum Operations, for which the Contractor may be held responsible;

- 35.1.3 property loss or damage or bodily injury suffered by any Third Party in the course of the Petroleum Operations by the Contractor, for which the Contractor may be liable to indemnify the Federal Government;
  - 35.1.4 the cost of removing damaged facilities and cleaning up operations following an accident in the course of the Petroleum Operations by the Contractor; and
  - 35.1.5 the Contractor's liability for its employees engaged in the Petroleum Operations.
- 35.2 The Contractor shall also maintain appropriate and adequate Third Party liability insurance and workmen's compensation insurance and shall provide the SPA with evidence of those insurances before the start of the Petroleum Operations.
- 35.3 The Contractor shall give preference to Somali insurance companies, if such companies offer insurance policies that are comparable to those generally acceptable by international financing institutions in the same or similar circumstances. Such Somali Insurance companies must be licensed in Somalia, be approved by the SPA and not subject to any international sanctions.
- 35.4 In relation to Development and the Production, the Contractor shall submit to the Federal Government a programme for the provision of an "All Risks" insurance which shall, *inter alia*, cover physical damage to the facilities under construction and installation as well as legal liabilities arising out of Development and the Production.
- 35.5 The Contractor shall require its sub-contractors to carry equivalent insurance of the type and in such amount as is required and is customary in accordance with the Best International Practice.
- 35.6 Any insurance policy relating to the Agreement shall name the Federal Government as an additional insured party and shall include a waiver of subrogation protecting the Federal Government against any claim, loss and damage resulting from any Petroleum Operation conducted by or on behalf of the Contractor, to the extent that the Contractor is liable for such claim, loss or damage under the Agreement. The Contractor shall not be liable for any claims arising from negligence or wilful misconduct of the Federal Government.
- 35.7 The Federal Government shall be provided with insurance certificates, including necessary details, for any insurance policy obtained and maintained by the Contractor which relates to the Agreement.

## **36. LIABILITY**

- 36.1 Neither Party shall be liable to the other Party for any indirect, punitive or consequential damages, including, but not limited to, production or loss of profits.
- 36.2 Neither Party shall have any liability to the other Party except pursuant to, or for breach of, the Agreement or in Law, *provided that* this provision is not intended to constitute a waiver of any rights of either Party against the other Party with regard to matters unrelated to the Agreement.
- 36.3 A Party suffering any cost, expense, loss or damage for which the other Party shall ultimately be liable shall take all reasonable steps to mitigate the same, and any claim brought shall be subject to any defence or counterclaim of the other Party available under this Agreement or applicable law.

## 37. INDEMNITY

- 37.1 The Contractor shall indemnify, defend and hold the Federal Government harmless against all losses incurred, suffered, sustained or required to be paid by the Federal Government for personal injury or death to persons or damage to property or environment arising out of any negligent or intentional act or omission by the Contractor in connection with the Agreement. Notwithstanding the foregoing, indemnification shall not be required to the extent that the Federal Government is reimbursed pursuant to any policy of insurance.
- 37.2 The Federal Government shall indemnify, defend and hold the Contractor harmless against all losses incurred, suffered, sustained or required to be paid by the Contractor for personal injury or death to persons or damage to property or environment arising out of any negligent or intentional act or omission by the Federal Government in connection with the Agreement. Notwithstanding the foregoing, indemnification shall not be required to the extent that the Contractor (i) receives indemnification pursuant to the terms of any of the contracts entered into by the Contractor and Third Parties in relation to the Petroleum Operations, or (ii) is reimbursed pursuant to any policy of insurance.
- 37.3 Upon payment of any indemnification by a Party pursuant to sub-clause 37.1 or sub-clause 37.2, the indemnifying Party, without any further action, shall be subrogated to any and all claims that the indemnified Party may have relating thereto, and such indemnified Party shall at the request and expense of the indemnifying Party co-operate with the indemnifying Party and give at the request and expense of the indemnifying Party such further assurances as are necessary or advisable to enable the indemnifying Party vigorously to pursue such claims.
- 37.4 Each Party shall promptly notify the other Party of any loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to clause 37. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss or proceeding and that such loss or proceeding may give rise to an indemnification, but in any event no later than fourteen (14) days after the receipt by the Party seeking indemnification of notice of the commencement of any action for which indemnity may be sought. The delay or failure of such indemnified Party to provide the notice required pursuant to this clause 37.4 to the other Party shall not release the other Party from any indemnification obligation which it may have to such indemnified Party except (i) to the extent that such failure or delay materially and adversely affected the indemnifying Party's ability to defend such action or increased the amount of the loss, and (ii) that the indemnifying Party shall not be liable for any costs or expenses of the indemnified Party in the defence of the claim, suit, action or proceeding during such period of failure or delay.
- 37.5 Neither the indemnifying Party nor the indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, *provided that* after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party so long as (a) such settlement does not include a finding or admission of violation of Law or other legal requirement by the indemnified Party, (b) the sole relief provided is monetary damages paid in full by the indemnifying Party, and (c) the indemnified Party will have no liability with respect to any claims so settled. Except where such consent is unreasonably withheld, delayed or conditioned, if a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other Party, without the prior written consent of the other Party, the other Party shall be excused from any obligation to indemnify the Party making such settlement or compromise in respect of such settlement or compromise.

## 38. FORCE MAJEURE

- 38.1 **"Force Majeure"** means an event or circumstance or combination of events or circumstances beyond the reasonable control of the Federal Government (including the SPA ) or the Contractor occurring on or after the Effective Date, which materially and adversely affects the performance by the affected Party of its obligations under or pursuant to the Agreement, *provided that* such material and adverse effect could not have been prevented, overcome or remedied by the affected Party through the exercise of diligence and reasonable care. Force Majeure events shall include, without limitation, the following events and circumstances, but only to the extent that they satisfy the above requirements:
- 38.1.1 any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion or act of terrorism;
  - 38.1.2 lightning, earthquake, tsunami, flood, storm, cyclone, typhoon or tornado; epidemic or plague; explosion, fire, blowout or chemical contamination; medical failure; down hole blockage; and
  - 38.1.3 strikes, works-to-rule, go-slows or other labour disputes, unless such strikes, works-to-rule, go-slows or labour disputes were provoked by the unreasonable action of the management of the affected Party or where, in the reasonable judgment of the affected Party, capable of being resolved in a manner not contrary to such Party's commercial interests.
- 38.2 Where a Party is (wholly or partially) unable to perform its obligations under the Agreement due to Force Majeure:
- 38.2.1 the affected Party shall promptly give written notice to the other Party of the occurrence of the Force Majeure event and shall, upon cessation of the Force Majeure event, promptly notify the other Party thereof;
  - 38.2.2 the affected Party shall use all reasonable endeavours to mitigate the effects of a Force Majeure event; and
  - 38.2.3 so long as the affected Party has at all times since occurrence of the Force Majeure event complied with the obligations of this clause and continues to so comply, then the obligations of the affected Party shall be suspended for the duration of the Force Majeure event.
- 38.3 In the event of Force Majeure the Contractor will continue to pay the surface fees pursuant to clause 33.2 provided that the Contractor will not be obligated to pay any further amounts pursuant to clause 28 (Training Fund), clause 33 (Fees and Bonuses) or otherwise under the Agreement.
- 38.4 If the non-affected Party disputes the existence of Force Majeure, such dispute shall be referred to arbitration in accordance with clause 48.
- 38.5 The occurrence of Force Majeure shall suspend the performance of the affected obligation. If the performance of an obligation is suspended due to Force Majeure for more than sixty (60) months, either Party may terminate the Agreement by notice in writing to the other Party, without further obligation. Without limiting the generality of any other provision of the Agreement, nothing in this clause shall however relieve the Contractor of any obligations and liabilities which arose or accrued prior to the occurrence of the Force Majeure event.

38.6 When the Agreement is terminated in accordance with sub-clause 38.5, subject to the rights and obligations of the Parties under clause 13, the Contractor shall conclude the Petroleum Operations in the area in relation to which the Agreement terminated in an orderly manner, and minimise disruption and harm to the Federal Government and Third Parties.

38.7 Subject to sub-clause 38.5, the term of the Agreement shall be automatically extended for the period of the Force Majeure.

## **39. TERMINATION**

### **39.1 Termination during the Initial Exploration Period**

39.1.1 Subject to clause 39.1.2 the Contractor may terminate this Agreement at any time prior to the expiry of the Initial Exploration Period on written notice to the Federal Government.

39.1.2 In the event that the Contractor wishes to exercise its option under clause 39.1.1, the Contractor shall, within thirty (30) days of the date of the notice to terminate, pay to the Government:

39.1.2.1 in the event that, prior to the termination, the Contractor did not carry out the entire minimum work obligations required in the Initial Exploration Period under SCHEDULE 5: paragraph 1.1.1, an amount equal to [five (5) million USD] for each Exploratory Well that was included in Schedule 5 paragraph 1.1.1 (if any); and

39.1.2.2 in the event that, prior to the termination, the Contractor did not carry out the entire minimum work obligations required in the Initial Exploration Period under SCHEDULE 5: paragraph 1.1.2, the difference between the minimum work obligation and the actual amount of 3D seismic acquired, processed and interpreted at the rate of [four thousand (4000)] USD per km<sup>2</sup> 3D seismic.

39.1.3 The termination shall not become effective until payment by the Contractor to the Federal Government of the amount set out in 39.1.2 above.

39.1.4 When the Agreement is terminated in accordance with sub-clause 39.1, subject to the rights and obligations of the Parties under clause 13 and elsewhere in this Agreement, the Contractor shall conclude the Petroleum Operations in the area in relation to which the Agreement terminated in an orderly manner, by minimizing disruption and harm to the Federal Government and Third Parties.

### **39.2 Termination due to Contractor Breach**

39.2.1 Subject to the provisions of the Act and clause 39.2.2, the SPA may terminate the Agreement by giving the Contractor written notice, if the Contractor—

39.2.1.1 fails to make any material payment to the Federal Government as required under the Agreement for a period exceeding thirty (30) days from the date of such payment became due;

39.2.1.2 being solely one entity, becomes insolvent, makes an arrangement or composition with creditors or goes into liquidation (other than for the purpose of restructuring or amalgamation);

- 39.2.1.3 interrupts Production for a period of more than ninety (90) consecutive days with no cause or justification acceptable in accordance with the Agreement or under Best International Practice, it being recognised that Force Majeure is an acceptable justification for such interruptions;
  - 39.2.1.4 intentionally extracts or produces any mineral which is not covered by the object of the Agreement, unless such extraction or production is expressly authorised or unavoidable as a result of operations carried out in accordance with Best International Practice;
  - 39.2.1.5 wilfully refuses to abide by expert determination or an award made in arbitration proceedings under clause 48;
  - 39.2.1.6 fails to provide or maintain the Bank Guarantee/Security, parent company guarantee and/or insurance required by the Agreement;
  - 39.2.1.7 fails to comply with clause 43 (Assignment and Change in Control);
  - 39.2.1.8 fails, within one hundred and eighty (180) days to:
    - (a) commence Exploration following the execution of this Agreement, or
    - (b) submit a Development Plan following a Commercial Discovery, or
    - (c) carry out the terms of an approved Development Plan;
  - 39.2.1.9 is in material breach of any other obligation under the Act, or the Agreement, which has not been remedied within ninety (90) days after notice from the Federal Government giving reasonable details of the breach by the Contractor and demanding remedy thereof; or
  - 39.2.1.10 has made or deemed to have made any representation or warranty which is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made, including representations and warranties made as part of the licensing round.
- 39.2.2 The period of termination notice in respect of sub-clauses 39.2.1.1, 39.2.1.6 and 39.2.1.7 hereof shall be thirty (30) days, and in any other case ninety (90) days when termination shall become effective unless Contractor has referred the matter to arbitration in accordance with Clause 48. If so referred, the SPA may not terminate the Agreement in respect of such event, except in accordance with the terms of any resulting arbitration award as provided for in Clause 48. If the Contractor remedies the breach within the period of termination notice, the SPA shall withdraw the termination notice. If the SPA reasonably believes that the Contractor is using its best endeavours to remedy the breach, the SPA may (but is not obliged to) withdraw the termination notice.
- 39.2.3 When the Agreement is terminated in accordance with sub-clause 39.1, subject to the rights and obligations of the Parties under clause 13, the Contractor shall conclude the Petroleum Operations in the area in relation to which the Agreement terminated in an orderly manner, by minimizing disruption and harm to the Federal Government and Third Parties. The same shall apply in case of expiry of the Agreement.

39.2.4 The exercise of the right of the Federal Government to terminate the Agreement due to the Contractor's default in accordance with this sub-clause 39.1 does not preclude the Federal Government from exercising other of its rights and remedies that are provided herein (including, without limitation, those set out in sub-clause 18.7 and sub-clause 18.8) or are available at Law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedy by the Federal Government shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by it.

### 39.3 Termination due to Federal Government Breach

39.3.1 Subject to the provisions of the Act and clause 39.3.2, the Contractor may terminate the Agreement by giving the Federal Government written notice:

39.3.1.1 if the Federal Government fails to make a material payment to the Contractor (if any), as required under the Agreement for a period exceeding thirty (30) days from the date of such payment became due; or

39.3.1.2 if the Federal Government is in material breach of any other obligation under the Act, Regulations or the Agreement not remedied within ninety (90) days after notice from the Contractor giving reasonable details of the breach by Federal Government and demanding remedy thereof, *provided that* for material breaches requiring more than ninety (90) days to cure, the Federal Government may have such additional time to cure any such material breach as it estimates may be necessary to do so if, prior to the end of such ninety (90) day period, the Federal Government provides satisfactory evidence to the Contractor that:

- (a) it has commenced and is diligently pursuing a cure; and
- (b) more than ninety (90) days, but not more than (180) days, is reasonably required to effectuate such cure and provides a good faith estimate of the amount of time needed to effectuate the cure; or

39.3.1.3 in the event of any expropriation, compulsory acquisition or nationalization by the Federal Government or any Somali Governmental Authority of (a) any ordinary share capital, or (b) any material asset, interest or right of the Contractor; or

39.3.1.4 if any Change in Law or Lapse of Consent occurs that:

- (a) makes unenforceable, invalid or void any material obligation of the Federal Government under or pursuant to the Agreement;
- (b) makes it unlawful for the Contractor to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under or pursuant to the Agreement; or
- (c) places material restrictions or limitations on the ability of the Contractor to convert Somali Shillings denominated payments which may be or become owed to the Contractor in connection with the Petroleum Operations into US dollars or to repatriate any such US dollars by way of (i) dividend, (ii) servicing,

repaying or prepaying any loans, and/or (iii) a distribution of capital, which restrictions or limitations remain in place more than one hundred and eighty (180) days without an arrangement being provided to exempt the Contractor from all such restrictions and limitations; or

- 39.3.1.5 if any representation or warranty made by or deemed to be made by the Federal Government hereunder is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made.
- 39.3.2 The period of termination notice in respect of sub-clauses 39.3.1.1 and 39.3.1.2 shall be thirty (30) days, and in any other case ninety (90) days when termination shall become effective unless the Federal Government has referred the matter to arbitration in accordance with Clause 48. If so referred, the Contractor may not terminate the Agreement in respect of such event, except in accordance with the resulting arbitration award or provided for in Clause 48. If the Federal Government remedies the breach within the period of termination notice, the Contractor shall withdraw the termination notice. If the Contractor reasonably believes that the Federal Government is using its best endeavours to remedy the breach, the Contractor may (but is not obliged to) withdraw the termination notice.
- 39.3.3 The termination of the Agreement for any reason shall be without prejudice to the rights and obligations expressed in the Agreement to survive termination, or the rights and obligations accrued thereunder prior to termination, including, related to Decommissioning, and all provisions of the Agreement reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.
- 39.3.4 Following the commencement of Commercial Production, in the event the Contractor terminates the Agreement as a result of the Federal Government's default then the Contractor has the option to require that the Federal Government (or its designee) shall purchase the Termination Transfer Assets for the Federal Government Default Termination Amount.
- 39.3.5 If the Contractor wishes to exercise this option, the Contractor shall send written notice to the Government no later than ten (10) days prior to the expiry of the notice period set out in clause 39.3.2 and the Federal Government shall, within one hundred and eighty (180) days of such notice purchase the Termination Transfer Assets for the Federal Government Default Termination Amount in accordance with Schedule 3: hereof.
- 39.3.6 The exercise of the right of the Contractor to terminate the Agreement due to the Federal Government's default in accordance with sub-clause 39.2.3 and the option to receive payment of the Federal Government Default Termination Amount, does not preclude the Contractor from exercising other of its rights and remedies that are provided herein, under contract or are available at Law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedy by the Contractor shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by it.
- 39.3.7 Without limiting the generality of sub-clause 39.3.6, upon the occurrence of a breach under clause 39.3.1.4 by the Federal Government, which is not cured within the applicable cure period, the Contractor may, at its option, terminate this Agreement,

or, invoke the application of clause 45 of the Agreement, in which case such clause 45 shall apply on the Parties *mutatis mutandis*, and seek the compensation from the Federal Government in accordance with clause 45 of the Agreement.

#### 40. NATURAL GAS

- 40.1 The Contractor shall have the right to use Natural Gas extracted from Reservoirs within the Contract Area for the Petroleum Operations in the Contract Area (included, but not limited to power generation, pressure maintenance and recycling and re-injection operations).
- 40.2 The terms and conditions relating to the use and Production of Associated Natural Gas shall be as follows:
- 40.2.1 If the Contractor elects to process and sell Associated Natural Gas, the Contractor shall notify the Federal Government and, for the purposes of cost recovery and entitlement of Production, such Associated Natural Gas shall be treated in the same manner as Oil.
- 40.2.2 If Contractor elects not to process and sell Associated Natural Gas not used for the purposes specified in sub-clause 40.1 or sub-clause 40.2.3 below, the Federal Government may, at the field separator, process and utilise that Natural Gas without compensation, but the Federal Government shall pay for all costs and expenses related thereto (which shall include, but not be limited to, any engineering studies, new facilities and equipment required for the gathering, transport, processing and utilization thereof) and the operations and maintenance of the same shall be at the sole risk, cost and expense of the Federal Government; *provided that* such off-take does not significantly disrupt or delay the conduct of the Petroleum Operations.
- 40.2.3 The Contractor may re-inject any Associated Natural Gas not used for the purposes specified in sub-clause 40.1, taken by the Federal Government pursuant to sub-clause 40.2.2 or sold by the Contractor pursuant to sub-clause 40.2.1, to the subsurface structure. Costs of such re-injection shall be recoverable to the extent that such re-injection is included in the Development Plan.
- 40.3 The terms and conditions relating to the evaluation Work Programme and the commercial assessment of the Production and sale of Non-Associated Natural Gas shall be as follows:
- 40.3.1 Within thirty (30) days of completion of the technical evaluation relating to a Discovery of Non-Associated Natural Gas made by the Contractor in accordance with clause 6.4.1.3 the Contractor may notify the SPA of its intention for a Commercial Assessment Period in respect of such Discovery to commence. The Commercial Assessment Period in respect of such Discovery shall, if requested by the Contractor, commence for a period of ◆ Calendar Years, exercisable at the sole option of the Contractor. An extension may be granted upon request by the Contractor to the Federal Government, for a second period of up to ◆ Calendar Years. An Appraisal report submitted under this clause 40 shall include the estimated recoverable reserves, projected delivery rate and pressure, quality specifications and other technical and economic factors relevant to the determination for available market for such Non-Associated Natural Gas. The Contractor shall, at any time during the Commercial Assessment Period, notify the Federal Government that the Petroleum Reservoir located in any Discovery of Non-Associated Natural Gas made by the Contractor (in respect of which an Appraisal report has been submitted) is commercial.

- 40.3.2 If the Contractor does not request for a Commercial Assessment Period pursuant to clause 40.3.1 within ninety (90) days from the date on which evaluation Work Programme was submitted, the Contractor shall notify the Federal Government whether any Discovery of Non-Associated Natural Gas made by the Contractor (in respect of which an Appraisal report has been submitted) is commercial.
- 40.3.3 If the Contractor gives notice that any Discovery of Non-Associated Natural Gas made by the Contractor is commercial, that notice shall, for the purpose of the Agreement, be a notice of Commercial Discovery and processing and utilisation shall follow the Development Plan approved in accordance with clause 8.
- 40.4 The Commercial Assessment Period shall end on the first to occur of:
- 40.4.1 the date following that on which the Contractor gives a notice of Commercial Discovery under sub-clause 40.3; or
- 40.4.2 the date that the Contractor voluntarily relinquishes that portion of the Contract Area to which the Commercial Assessment Period relates; or
- 40.4.3 expiry of the period to which the Contractor is entitled to under sub-clause 40.3.
- 40.5 The Contractor shall be deemed to have relinquished all rights to the Discovery of Non-Associated Natural Gas if it has not given a notice of Commercial Discovery under sub-clause 40.3 by the end of the Commercial Assessment Period or the earlier relinquishment of that portion of the Contract Area.
- 40.6 Where the Discovery is a Natural Gas Discovery, the Contractor shall:
- 40.6.1 prepare a report identifying potential market for Natural Gas, expected volumes for such market, infrastructure potentially required to access such market, expectations of price for the Natural Gas supplied to such market and identify options (including time frames for marketing the Natural Gas within three Calendar Years after the Discovery evaluation is completed); and
- 40.6.2 be responsible for investigating market opportunities and shall seek to develop a market for Non-Associated Natural Gas produced from any Development Area and shall sell such Non-Associated Natural Gas on a joint dedicated basis on terms common to all the Persons constituting the Contractor. The Contractor shall demonstrate to the SPA that the prices and other terms of sale of such Non-Associated Natural Gas represents the market value obtainable for it, taking into consideration a fair market cost for transporting such Non-Associated Natural Gas from the Delivery Point to the purchaser and having regard to the alternative uses and markets that can be developed for such Non-Associated Natural Gas. Any Oil produced from such a Natural Gas Discovery shall be treated in the same manner as the Natural Gas for the purposes of cost recovery and entitlement of Production.
- 40.7 With its request for approval of any gas sales contract, the Contractor may apply, in respect of any Development Area from which Non-Associated Natural Gas will be produced for sale under that gas sales contract, for an extension of the Development and Production Period and, where such extension is necessary to facilitate the sale of gas under any such gas sales contract, the SPA shall consider the request for extension, discuss the conditions upon which such extension could be granted with the Contractor and grant the extension with any conditions that the SPA considers are required.

40.8 Flaring of Natural Gas in the course of the activities provided for under the Agreement, is prohibited except:

40.8.1 short-term flaring necessary for Production testing;

40.8.2 when required for emergency or safety reasons; or

40.8.3 with the prior authorisation of the SPA,

in each case in accordance with the Act, Regulations and the Best International Practice.

40.9 The Contractor shall submit any request for authorization to flare Natural Gas to the SPA, and shall include in such request an evaluation of reasonable alternatives to flaring that have been considered along with information on the amount and quality of Natural Gas involved and the duration of the requested flaring.

#### **41. UNITISATION**

41.1 Where a Petroleum Accumulation in the Contract Area extends beyond the boundaries of the Contract Area into another contract area or a license area, the SPA may, in order to ensure efficient and secure petroleum operations, require the relevant petroleum operations to be developed and produced in a coordinated manner in order to ensure optimum petroleum recovery and optimum use of the relevant petroleum infrastructure, may on written notice to the Contractor and other contractor(s) request that they enter into a unitisation agreement.

41.2 Upon being so required by written notice in accordance with clause 41.1, the Contractor shall cooperate with the other contractor(s) to attempt to prepare a unitisation agreement for the Development and Production of the Field.

41.3 The Contractor shall submit the unitisation agreement to the SPA for approval within 18 months of receipt of notice from the SPA under clause 41.1.

41.4 The SPA shall grant approval within one hundred and eighty (180) days of submission. If the SPA has reasonable grounds for refusal (such to be notified to the Contractor), the SPA may refuse grant of approval within the same period of time. At which point the Parties shall work together in good faith to agree on an appropriate unitisation agreement.

41.5 In case of expiry of the period of one hundred and eighty (180) days following submission to the SPA without the SPA either approving or refusing grant of approval, the approval shall be deemed granted by the SPA.

41.6 Following the SPA's approval of an agreement in accordance with sub-clause 41.4 a collective proposal for a common Development Plan for the deposit of Petroleum shall be submitted by the Contractor and such other entity(ies) to the SPA for approval, which approval shall be granted within one hundred and eighty (180) days of submission. If the SPA has reasonable grounds for refusal (such to be notified to the Contractor), the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of one hundred and eighty (180) days following submission to the SPA without the SPA either approving or refusing grant of approval, the approval shall be deemed granted by the SPA.

41.7 If a Field in the Contract Area is in proximity to another Petroleum Accumulation in another area that is not subject of a production sharing agreement, the SPA may, in order to ensure efficient and secure petroleum operations, require the relevant petroleum operations to be developed and

produced in a coordinated manner in order to ensure optimum petroleum recovery and optimum use of the relevant petroleum infrastructure.

- 41.8 The Contractor shall forthwith notify the SPA where the Contractor discovers that a Petroleum Accumulation straddles an international boundary of the Federal Republic of Somalia and an international boundary of another sovereign state.

## **42. TAXATION AND ROYALTIES**

- 42.1 Notwithstanding Article 24 (7) of the Act, throughout the term of this Agreement in conducting the Petroleum Operations, the Contractor (including any entity forming part of the Contractor and/or the Contractor's contractors and/or sub-contractors) shall be exempt from the application of Laws relating to tax related to, and from the payment of:

42.1.1 value added and alike taxes;

42.1.2 property taxes;

42.1.3 regional, local and municipal taxes;

42.1.4 import and export taxes, duties, levies or other charges; and

42.1.5 other taxes of general application, except for where:

42.1.5.1 the Contractor is required to pay corporate income tax against its share of Profit Petroleum, at a rate set at 30%;

42.1.5.2 the withholding tax on the gross remittance payable by the Contractor to its sub-contractors, at a rate of 5% for foreign sub-contractors and 3% for local sub-contractors, with local sub-contractors able to offset the tax withheld against their corporate income tax payments provided that there shall be no withholding tax on:

(a) dividends;

(b) loan interest; or

(c) distributions of previously taxed profits from Somalia branch offices of foreign Persons

42.1.5.3 the capital gains tax (at a rate of 20% of the difference between the (recoverable and non-recoverable Petroleum Costs incurred by an assignor and the total acquisition price to be paid by an assignee), which capital gains tax shall apply to both cash and non-cash based transfers of direct and indirect assignments or other transfers, but shall not apply to those within the same group of companies;

42.1.5.4 foreign and local employees of the Contractor and its sub-contractors shall subject to payment of personal income tax and social security contributions, in accordance with prevailing Laws and regulations; and

42.1.5.5 the Contractor and its sub-contractors shall be liable to withhold and remit the applicable personal income tax and social security contributions, as required.

- 42.2 Without limiting the generality of sub-clause 41.1, the SPA shall ensure that the relevant Somali official body (whether federal, regional or local), upon written request by the Contractor, shall issue the Contractor (or, as it may be, any entity forming part of the Contractor or the Contractor's contractors or sub-contractors) with a certificate confirming that it has paid Somali corporate income tax.
- 42.3 It is understood and agreed that the portion of each category of the Profit Petroleum which the Federal Government is entitled to take and receive for a given Fiscal Year is exclusive of all taxes payable by the Contractor.
- 42.4 The Contractor agrees to pay and discharge as and when due such taxes due on its Profit Oil. The Contractor shall prepare and file tax returns with the relevant Somali official body (whether federal, regional or local) as provided for in the applicable tax laws. The receipts shall be issued by the relevant Somali official body (whether federal, regional or local).
- 42.5 Where the Contractor consists of more than one entity, the tax liabilities of each entity under this clause 42 shall be several and the provisions of this clause 42 shall apply, *mutatis mutandis*, to each such entity.
- 42.6 Royalties shall be payable by the Contractor in accordance with Schedule 7:

### **43. ASSIGNMENT AND CHANGE OF CONTROL**

#### **43.1 Assignment by, and change of Control of, the Contractor**

- 43.1.1 The Contractor may assign part or all of its rights and obligations under or pursuant to the Agreement to an Affiliate having technical and financial capacity and professional skills to perform this Agreement with the prior approval of the SPA, which approval shall be granted within thirty (30) days of receipt by the SPA of the notice from the Contractor that it intends to make such an assignment. If the SPA has reasonable grounds for refusal (such to be notified to the Contractor), the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of thirty (30) days following submission to the SPA without the SPA either approving or refusing grant of approval, the approval shall be deemed granted by the SPA.
- 43.1.2 In case of the proposed assignment to an Affiliate, the notice shall be accompanied by proof of the technical and financial capacity and professional skills of the proposed assignee and the SPA may require the proposed assignee to provide a guarantee and/or other security for the performance of its obligations as the Contractor as a condition of its approval.
- 43.1.3 In the event that the Contractor, or any entity making up the Contractor (the "**Transferor**") proposes to sell, assign, transfer or otherwise dispose of any part of its Participating Interest or any of its rights under this Agreement to any Person which is not its Affiliate (a "**Third Party**") (which shall include, for the avoidance of doubt, where any Transferor is subject to a change of Control), the Transferor shall notify the SPA and the Transferor shall first offer pre-emption rights to the Federal Government in relation to the Participating Interest proposing to be transferred (or deemed transferred) by the Transferor.
- 43.1.4 The notification referred to in clause 43.1.3 shall include the price and other essential terms and conditions of the proposed transfer including the identity of the proposed

transferee and shall be accompanied by proof of the technical and financial capacity and professional skills of the proposed transferee.

- 43.1.5 The pre-emption rights shall be offered on terms which are at least as favourable as the terms on which the interest has been offered to the Third Party.
- 43.1.6 SPA shall notify the Transferor within thirty (30) days after receipt of the notification referred to in clause 43.1.3, 43.1.4 whether it elects to exercise its pre-emption right.
- 43.1.7 If SPA does not exercise the pre-emption right by failing to give the notification set out in clause 43.1.6, then the Federal Government shall be deemed to have waived its pre-emption right in respect of such transfer. In the event that the SPA has waived its pre-emption right, the Transferor may transfer its interest to the Third Party only with the prior written approval of the SPA, which approval shall be granted within thirty (30) days of receipt by the SPA of the notification set out in clause 43.1.3. If the SPA has reasonable grounds for refusal (such to be notified to the Transferor), the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of thirty (30) days following the notification set out in clause 43.1.3 without the SPA either approving or refusing grant of approval, the approval shall be deemed granted by the SPA. The SPA may also require the transferee to provide a guarantee and/ or other security for the performance of its obligations as the Contractor as a condition of the SPA's approval.
- 43.1.8 If the Federal Government exercises its pre-emption right by giving the notification set out in clause 43.1.6 then the Transferor and the Federal Government (or another entity nominated by the Federal Government) shall execute an assignment under the terms and conditions set out in the notification under clause 43.1.3.
- 43.1.9 Any transfer to a Third Party made otherwise than in accordance with this clause 43 shall be null and void.
- 43.1.10 The Contractor shall within seven days of the relevant event provide the SPA with:
- 43.1.10.1 copies of agreement or other document of preliminary nature (such as, for example, memorandum of understanding or term sheet) entered into by the Contractor in preparation for any intended assignment;
  - 43.1.10.2 details of any material changes in the corporate structure, ownership and financial position of the Contractor and its parent company; and
  - 43.1.10.3 details of any change in Control in its corporate structure (including outside Somalia) arising by acquisition or exchange of shares, which shall be deemed and treated as an assignment within Somalia for the purposes of clause 42.
- 43.1.11 Any change of Control over one of the entities constituting the Contractor is, to the extent not already required by application of other provisions of this clause 43, subject to prior written approval by the SPA, which approval shall be granted within thirty (30) days of request. If the SPA has reasonable grounds for refusal (such to be notified to the Contractor), the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of thirty (30) days following request to the SPA without the SPA either approving or refusing grant of approval, the approval shall be deemed granted by the SPA. For the purpose of this sub-clause "**Control**"

shall have the same meaning as set forth in the definition of an "**Affiliate**" in clause 1.

- 43.1.12 The Contractor shall furnish to the SPA copies of all agreements and deeds related to an assignment. Any assignment pursuant to this clause shall be fully disclosed by the assignor to the Somali tax authorities. Subject to the provisions of this Agreement, any tax arising from any assignment pursuant to Law in force from time to time in Somalia shall be paid by the assignor in the manner specified in such Law.
- 43.1.13 At any time at which the Contractor is constituted by more than one entity, the reference in clause 43 to "the Contractor" shall be construed as a reference to each one of those entities.
- 43.1.14 An assignment under clause 43 means any assignment, transfer, sale, merger, conveyance, novation or other dealing, directly or indirectly, including by way of change in Control, of any right, power or interest in the Contract Area and/or the Agreement and/or the Petroleum which has not been, but might be, recovered in the Contract Area or any proceeds from sale of such Petroleum and/or anything whereby this Agreement, the Petroleum or all or any part of the Contractor's rights, interests, benefits, obligations and liabilities under it would, but for this clause 43.1, be held for the benefit of, or be exercisable by or for the benefit of, any other Person.
- 43.1.15 Notwithstanding the foregoing provisions, for the purpose of financing the Petroleum Operations, it is expressly acknowledged that the Contractor may obtain such financing from lenders and for that purpose the Contractor may assign to, or grant a security interest of any kind in favour of, such lenders of any and all of its rights and interests under or pursuant to the Agreement. The Contractor shall notify the Federal Government of the creation of such security over its rights and interests under the Agreement at least 30 days prior to the execution of any such assignment or security interest. The grant of security rights and interests of any kind by the Contractor over any and all of its rights and interests under or pursuant to this Agreement in all circumstances is subject to prior written approval of the SPA, which approval shall be granted within thirty (30) days of request. If the SPA has reasonable grounds for refusal (such to be notified to the Contractor), the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of thirty (30) days following request to the SPA without the SPA either approving or refusing grant of approval, the approval shall be deemed granted by the SPA.

## 43.2 **Assignment by the Federal Government**

- 43.2.1 The Federal Government may assign or otherwise transfer any or all of its rights, benefits and obligations under this Agreement to any entity which is a public company, administrative agency or other body wholly owned and/ or regulated by the Federal Government.
- 43.2.2 Subject to the Act and Regulations and to clause 43.2.1, the Federal Government may not assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without the Contractor's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) unless the Federal Government can satisfy the Contractor of such proposed assignee's status and ability to observe and perform the Agreement, *and provided that* the Federal Government has given prior notice to that effect to the Contractor and such notice shall have given sufficient information to demonstrate the status and ability of the proposed assignee to carry out the terms of the Agreement.

#### **44. CONFIDENTIALITY**

- 44.1 The Parties shall keep the information that the other Party supplied under or in connection with the Agreement confidential, and shall not disclose it to any other Person (other than to a Person employed by or on behalf of the Party), save where such information is required to be disclosed in accordance with any applicable laws and regulations, the rules or regulations of a stock exchange or by a decision of a court or any other official body of competent jurisdiction (whether federal, regional or local), except with the consent of the other Party (such not to be unreasonably withheld, delayed or conditioned).
- 44.2 Notwithstanding sub-clause 44.1, the SPA may use any information supplied pursuant the Agreement for the purpose of preparing and publishing reports and returns required by Law.
- 44.3 The SPA may publish any information which relates to a relinquished area at any time after its relinquishment, and in any other case, at any time after expiry of five Calendar Years after the information was received by the SPA (unless the SPA reasonably determines, upon request by the Contractor, that a longer period shall apply).
- 44.4 The Agreement is a public document and the Federal Government shall have the right to publish and keep it publicly available. The Federal Government may publish such information concerning the Agreement as may be required by Law, including for purposes of obtaining ratification of the Agreement or in accordance with internationally accepted standards and norms concerning transparency in the extractive industries.
- 44.5 The Parties shall consult with each other prior to the release of any public statement or press release, and, except to the extent required by Law, rule or regulation of any Somali Governmental Authority or a stock exchange on which a Party is listed, no Party shall make any public statement or press release without the approval of all the other Parties (which shall not be unreasonably withheld, delayed or conditioned).
- 44.6 The confidentiality obligations of the Parties under this clause 43 are continuing obligations, and any Party ceasing to be a Party to the Agreement shall remain bound by this clause, until the Agreement has ordinarily terminated, has expired or, in case of early termination of this Agreement, until the date when it would have expired had there not been early termination.

#### **45. ECONOMIC STABILISATION**

- 45.1 Except as may be expressly provided herein, the Federal Government shall not amend, modify, rescind, terminate, declare invalid or unenforceable, require renegotiation of, compel replacement

or substitution, or otherwise seek to avoid, alter or limit the Agreement without the prior written consent of Contractor.

- 45.2 Notwithstanding anything to the contrary in this Agreement, and without prejudice to any other rights of the Contractor under the Agreement, in the event of a Change in Law or a Lapse of Consent that has a Material Adverse Effect or positively affects the rights or interests of the Contractor (each, a “**Stabilisation Event**”), then the Parties shall negotiate such amendments to the Agreement as may be necessary to put the Parties in the same economic position as they would have been in had such Stabilisation Event not occurred or otherwise not been made; provided that to the extent that the Contractor’s rights, obligations or benefits which existed at the time that the Agreement was executed cannot be restored, subject to sub-clauses 45.3 to 45.5 (inclusive), the Federal Government shall pay to the Contractor such compensation as may be necessary to put the Contractor in the same economic position as the Contractor would have been in had such Stabilisation Event not occurred or otherwise not been made.
- 45.3 Payment of such compensation pursuant to clause 45.2 shall be due on and from ninety (90) days from the date of notification of a claim made by the Contractor to the Federal Government in respect of such Stabilisation Event.
- 45.4 No obligation to compensate the Contractor shall arise under clause 45.2 unless the relevant Change in Law(s) or Lapse in Consent(s) cause a cumulative Material Adverse Effect in excess of [one (1) million USD] (“**Threshold Amount**”) per Calendar Year. If the Threshold Amount is exceeded only the portion of the economic impact in excess of the Threshold Amount shall be compensated.
- 45.5 Upon either Party’s request, the Federal Government and the Contractor shall endeavour in good faith for a period of ninety (90) days after notification by the Contractor to the Federal Government under clause 45.3 (“**Notification Date**”) to agree on any amount of compensation payable and any amendments to this Agreement required to restore the economic position of the Contractor.
- 45.6 If agreement is not reached by the Parties (acting in good faith and reasonably) on the amount of compensation and any amendments to this Agreement within the ninety (90) day period from the Notification Date, then:
- 45.6.1 the Federal Government shall pay any undisputed sum and thereafter pay such amount as is agreed or determined payable in respect of the disputed sum within ninety (90) days of:
- 45.6.1.1 the date on which the Parties resolve the disputed sum; or
- 45.6.1.2 the date of determination by an arbitrator, if the Parties fail to reach agreement, and the matter has been referred for arbitration;
- 45.6.2 either Party may pursue resolution of the dispute in accordance with the dispute resolution procedure set out herein.
- 45.7 If payment is not made pursuant to clause 45.6.1 the Contractor agrees, and the Federal Government agrees (and shall procure that any Governmental Authority agrees) that the Contractor may automatically set-off the unpaid sum against:
- 45.7.1 any amount payable by the Contractor to the Federal Government under this Agreement; and any

45.7.2 future payments to be made by the Contractor to the Federal Government under this Agreement, so as long as the requirement of such compensation payment persists.

#### **46. WAIVER**

46.1 A waiver of an obligation of the Contractor shall be in writing, signed by the SPA. No waiver shall be implied in event that the SPA does not exercise a right or remedy under the Agreement.

46.2 Any party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity from either jurisdiction or enforcement to the fullest extent permitted by the laws of any applicable jurisdiction. Without limitation, such waiver extends to immunity from (i) any expert determination, mediation, or arbitration proceedings commenced pursuant to this Agreement; (ii) any judicial, administrative, or other proceedings to aid any expert determination, mediation, or arbitration commenced pursuant to this Agreement; and (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order, or attachment (including pre-judgment attachment) that results from an expert determination, mediation, arbitration, or any judicial or administrative proceedings commenced pursuant to this Agreement. For the purposes of this waiver only each Party acknowledges that the Agreement constitutes a commercial transaction and that its rights and obligations under the Agreement are of a commercial and not governmental nature.

#### **47. GOVERNING LAW**

47.1 The Agreement and any dispute or claim arising out of or in connection with the Agreement (including in relation to its subject matter, formation, validity, termination and non-contractual matters and obligations) shall be governed by, interpreted and construed in accordance with ENGLISH law.

47.2 The decisions of the SPA and any other Somali Governmental Authority under the Agreement shall be taken and made in accordance with this Agreement, the Act and Regulations.

47.3 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Law, this Agreement shall prevail.

#### **48. DISPUTE RESOLUTION**

##### **48.1 Amicable Settlement**

Except as otherwise provided in the Agreement, any difference or dispute arising out of or in relation to or in connection with the Agreement shall, as far as possible, be settled amicably. If any difference or dispute remains unresolved within a period of twenty (20) days of the first evidence of the difference or dispute, either Party shall have the right to serve upon the other Party a detailed statement stating the issues in dispute. Within twenty (20) days of receipt of the statement or other mutually agreed period, the SPA and the chief executive of the Contractor shall meet to resolve the difference or dispute. Where no settlement is reached within twenty (20) days from the date of the meeting, either Party shall have the right, subject to clause 47.2, to have such difference or dispute resolved through arbitration in accordance with ICSID arbitration rules adopted by the International Centre for Settlement of Investment Disputes.

## 48.2 Expert Determination

Each Party, may refer any dispute or disagreement (which includes any inaction by a Party, the SPA or, where applicable, any other Person) concerning:

- 48.2.1 singular issues that, in the reasonable opinion of the referring Party, can be resolved by expert determination; or
- 48.2.2 technical/operational issues (including, without limitation, those related to the valuation of Crude Oil and approvals by the Federal Government, the SPA, or any other Somali Government Authority of various work programmes, budgets and plans),

for determination by an internationally recognised sole expert to be appointed by agreement of the Parties (or, if they fail to agree on the appointment within a period of thirty (30) days, by the Secretary General of the International Chamber of Commerce).

In such case, the Parties shall agree on the terms of reference for the expert determination, schedule and other procedural matters.

The decision (including the one on costs mentioned below) of the sole expert shall be final and binding on the Parties (including, for the avoidance of doubt, on the SPA and, where relevant, any other Person, each being required to adhere to, and act in accordance with, such final determination).

The sole expert shall make a determination within sixty (60) days of his appointment and shall concurrently decide on the allocation of costs of expert determination and related costs of the Parties (including their respective professional advisors) to one or both Parties. Where the sole expert fails to make a determination within the time set forth above, either Party may refer the matter to arbitration.

## 48.3 Arbitration

- 48.3.1 Subject to the provisions of sub-clauses 47.1 and 47.2, the Parties hereby consent to submit to the International Centre for Settlement of Investment Disputes ("**ICSID**") any dispute arising under or in relation to the Agreement for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**Convention**"). Save where the contrary appears, terms used in this clause 47.3 shall bear the same meaning as they do in the Convention.
- 48.3.2 The Parties hereby agree that the Contractor, because of foreign control, shall be treated as a national of a state other than the Federal Republic of Somalia for the purposes of the Convention.
- 48.3.3 The Parties agree that the transaction to which the Agreement relates is an investment.
- 48.3.4 Any arbitral tribunal (the "**Tribunal**") constituted pursuant to the Agreement shall consist of three arbitrators. Each party shall appoint one arbitrator within fourteen days of the registration of the request for arbitration. The third arbitrator, who shall be the President of the Tribunal, shall be appointed by agreement of the arbitrators appointed by the Parties or, failing such agreement within twenty eight days of registration of the request for arbitration by the Chairman of the ICSID

Administrative Council at the request of either Party. None of the arbitrators may be a citizen or a national of, or a permanent resident in, the Federal Republic of Somalia.

- 48.3.5 Any arbitration proceeding pursuant to the Agreement shall be conducted in accordance with the Arbitration Rules of ICSID in effect on the date on which the proceeding is instituted (the "**Arbitration Rules**"). Such Arbitration Rules shall be subject to the express provisions of this clause 47.3. In the event of any conflict the provisions of this clause 47.3 shall take precedence over such Arbitration Rules. Any communications by the Secretary-General of ICSID or the Tribunal with either Party may be sent in the manner provided in clause 47.4.
- 48.3.6 Any arbitration proceedings commenced pursuant to the Agreement shall be held in London which shall be the seat of the arbitration proceedings. In relation to any arbitration proceedings commenced under or in connection with the Agreement, the Federal Government irrevocably submits to the jurisdiction of the courts of England and Wales and waives, to the extent permitted by applicable law, any objection to such arbitration whether on the ground of venue or on the ground that the arbitration has been commenced in an inconvenient forum.
- 48.3.7 The language of any arbitration proceedings shall be in English.
- 48.3.8 Any award in arbitration proceedings held pursuant to the Convention shall be binding on the Parties and judgment thereon may be entered in any court having jurisdiction for the purpose. The Federal Government irrevocably and generally consents in respect of the enforcement of any arbitral award or determination of a sole expert against it in any proceedings in any jurisdiction and to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, giving, enforcement or execution against or in respect of any property whatsoever (irrespective of its use or intended use) of any decision, award, order or judgment which may be made or given in such proceedings and the granting of any injunction or order for the specific performance or for recovery of land or other property).
- 48.3.9 To the extent permissible under English law, the Parties waive any right to appeal to any court of law or other judicial authority in connection with any arbitration proceedings conducted pursuant to the Agreement.
- 48.3.10 The costs incurred by the Parties in connection with any arbitration procedure conducted pursuant to the Agreement (to include both Parties' legal and other professional costs and other expenses, the fees and expenses of the Tribunal and the charges for the use of the facilities of ICSID) shall be borne:
- (a) equally by the Parties where the dispute has been referred jointly by them; or otherwise;
  - (b) in accordance with clause 61(2) of the Convention.
- 48.3.11 It is hereby agreed that the right of either Party to refer a dispute to ICSID pursuant to the Agreement shall not be affected by the fact that the relevant Party has received full or partial compensation from any Third Party with respect to any loss or injury that is the subject of the dispute.

48.3.12 The amount (if any) which is required by a determination or award of the Tribunal under this clause 47.3 to be paid by one Party to the other Party shall be paid within ten business days of the issue of the determination or award and, if not paid within that time, interest on that amount shall accrue and be payable at the rate of LIBOR plus five per cent per annum (to be compounded on the first day of each calendar month of non-payment).

48.3.13 The provisions of this clause shall not preclude any Party from applying for interim relief on an urgent or any other basis to a court of competent jurisdiction.

48.4 **Notices**

48.4.1 Any notice and other communication under the Agreement shall be in writing and shall be delivered by hand, sent by registered post, certified post, fax or E-mail to the following address:

To the Federal Government (with a copy to the SPA):

[◆]

Fax: [◆]

Email: [◆]

To the SPA:

[◆]

Fax: [◆]

Email: [◆]

To the SPA:

[◆]

Fax: [◆]

Email: [◆]

To the Contractor:

[◆]

Fax: [◆]

Email: [◆]

To the Operator (with a copy to the Contractor):

[◆]

Fax: [◆]

Email: [◆]

48.4.2 A notice shall be effective on receipt.

48.4.3 Any notice, if sent by facsimile or E-mail, shall be deemed received by the Party to whom it was addressed on the first business day after the day upon which the facsimile or E-mail was received. Any notice, if by personal delivery to any Party, shall be deemed to be received by the addressee on the date of delivery, if that date is a business day, or otherwise on the next business day following delivery. The Contractor may at any time and from time to time change its authorised representative or its address herein on giving the Federal Government ten (10) days' notice in writing to such effect.

#### **49. ANTI-CORRUPTION**

49.1 The Contractor and SONOC shall establish and implement anti-bribery and anti-corruption policies and measures that are consistent with the requirements of Law, the provisions of the Agreement and complimentary to any other relevant anti-corruption laws and obligations.

49.2 The Contractor shall implement necessary systematic measures in order to ensure that any person who undertakes activities that are relevant to the Agreement (including work, services, delivering of goods) will not make, offer or authorise any payment, gift, promise or other advantage (whether directly or through any other person or entity) to or for the use of benefit of any public official, any political party, political party official or candidate for office or any other individual or entity, where such payment, gift, promise or advantage would violate Law or other anti-corruption laws and obligations applicable to the Contractor.

49.3 The Contractor (including its directors, officers, employees and personnel) shall comply with Law and other anti-corruption laws and obligations applicable to it. The Contractor shall ensure that its Affiliates (including their respective directors, officers, employees and personnel) comply with Law and other anti-corruption laws and obligations applicable to the Contractor.

49.4 Each Party shall as soon as possible notify and keep informed the other Party of any investigation or proceeding relating to an alleged violation of Law or other anti-corruption laws and obligations applicable to such Party.

#### **50. HEADING AND AMENDMENTS**

50.1 Headings are inserted in the Agreement for convenience only and shall not affect the construction or interpretation hereof.

50.2 The Agreement shall not be amended, modified or supplemented except by an instrument in writing signed by the Parties.



**SCHEDULE 1: THE CONTRACT AREA**

## SCHEDULE 2: ACCOUNTING PROCEDURE

The purpose of this Accounting Procedure is to establish methods and rules of accounting for Petroleum Operations and the principles set forth herein shall apply to Petroleum Operations pursuant to the Agreement, to which this Schedule 2 is attached.

### 1. General Provisions

#### 1.1 Interpretation

##### 1.1.1 Definitions

**"Controllable Material"** means Material which the Operator subjects to record Control and inventory. A list of types of such Material shall be furnished to the Federal Government and Non-operator(s);

**"Joint Account"** means the set of accounts maintained by the Operator to record all expenditure and other transactions under the provisions of the Agreement. Such accounts will distinguish between Exploration, evaluation, Development, Decommissioning and Production Costs. After adoption of the Development Plan, a separate Joint Account shall be maintained for each Development Area;

**"Joint Property"** means all property acquired and held in connection with Petroleum Operations under the Agreement;

**"Material"** means personal property, including supplies and equipment, acquired and held for use in Petroleum Operations;

**"Non-operator(s)"** means the entities constituting the Contractor other than the Operator, and the Federal Government when it participates.

Words not defined herein, but which are defined in the Agreement, shall have the meanings ascribed to them therein.

##### 1.1.2 Precedence of document

In the event of conflict between the provisions of this Accounting Procedure and the provisions of the Agreement, the provisions of the Agreement shall prevail.

#### 1.2 Accounting obligations of the Contractor

1.2.1 The Contractor shall maintain financial accounts necessary to record in reasonable detail the transactions relating to Petroleum Operations which shall be prepared in accordance with the International Financial Reporting Standards (IFRS).

1.2.2 Within ninety (90) days after the Effective Date, the Contractor shall submit for approval to the SPA, and discuss with the SPA and any Somali tax authority(ies), a proposed outline of a chart of accounts, detailed classification of costs, costs centres, books, records, statements and reports to be established in accordance with the Agreement and this Accounting Procedure. Following such discussion and approval by the SPA, which approval shall be granted within thirty (30) days of submission, the Contractor shall provide copies of the comprehensive charts of accounts and the manuals to be used, which may be revised from time to time by mutual agreement. If the SPA has reasonable grounds for refusal (such to be notified to the Contractor),

the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of thirty (30) days following submission to SPA without SPA either approving or refusing grant of approval, the approval shall be deemed granted by SPA.

- 1.2.3 The Contractor shall provide details of the financial accounts in the form of monthly statements which shall:
  - 1.2.3.1 reflect all charges and credits related to Petroleum Operations;
  - 1.2.3.2 be prepared on an accrual basis so that expenditure is recorded as incurred when title to goods passes, or when work is executed; and
  - 1.2.3.3 present the total accounts for the Contract Area and each Development Area and the share of each Non-operator.
- 1.2.4 In addition, when the Contractor is constituted by more than one entity, each such entity shall provide details of its financial accounts related to the Petroleum Operations.

### 1.3 **Language and units of accounts**

- 1.3.1 All books and accounts shall be maintained in the English language, US dollars and (Somali Shillings, if and when Somali Shillings become a viable currency and in which case using the average monthly exchange rate from CFC Stanbic Bank), *provided that* the US dollar accounts will prevail in case of conflict. Where necessary for clarification, the Contractor may also maintain accounts and records in other language and currencies.
- 1.3.2 It is the intent of this Accounting Procedure that neither the Federal Government nor the Contractor should experience an exchange gain or loss at the expense of, or to the benefit of, the other. However, should there be any gain or loss from exchange of currency, it shall be credited or charged to the accounts under the Agreement.

### 1.4 **Audit and inspection rights of the Federal Government**

- 1.4.1 The Federal Government, upon thirty (30) days advance written notice to the Contractor, shall have the right, at its sole expense, to audit the Joint Account and related records for any Calendar Year or portion thereof within the two Calendar Years period following the end of such Calendar Year. Notice of any exception to the Contractor's accounts of any Calendar Year must be submitted to the Contractor within three Calendar Years from the end of such Calendar Year.
- 1.4.2 For purposes of auditing, the Federal Government may examine and verify, at reasonable times, all charges and credits relating to the Petroleum Operations such as books of account, accounting entries, Material records and inventories, vouchers, payrolls, invoices and any other documents, correspondence and records necessary to audit and verify the charges and credits. Furthermore, the auditors shall have the right in connection with such audit, to visit and inspect at reasonable times, all sites, plants, facilities, warehouses and offices of the Contractor directly or indirectly serving the Petroleum Operations including visiting personnel associated with those operations.

- 1.4.3 All agreed adjustments resulting from an audit shall be rectified promptly in the Contractor's accounts, and any consequential adjustments to payments due to the Contractor or the Federal Government, as the case may be, shall be made promptly. Any unresolved dispute arising in connection with an audit shall be referred to arbitration in accordance with clause 47 (Dispute Resolution) of the Agreement, and until such dispute is resolved the Contractor shall maintain the relevant documents in connection with such unresolved dispute and shall permit inspection thereof.
- 1.4.4 Notwithstanding anything to the contrary in the Agreement, disputes relating to tax shall be resolved through the tax disputes resolution processes as provided in the relevant tax laws.
- 1.4.5 The Contractor shall appoint an independent auditor of international standing approved by the SPA to audit annually the accounts and records of Petroleum Operations and report thereon, and the cost of such audit and report shall be chargeable to the Joint Account.

## 1.5 **Revision of accounting procedure**

- 1.5.1 This Accounting Procedure may be revised from time to time by an instrument in writing signed by both the Parties.
- 1.5.2 The Parties agree that if any procedure established herein proves unfair or inequitable to any Party, the Parties shall meet and in good faith discuss and use all reasonable endeavours to agree on the changes necessary to correct that unfairness or inequity.

## 2. **Classification of expenditures among cost centres**

- 2.1 The detailed categories of Petroleum Costs shall be agreed pursuant to paragraph 1.2.2 of this Schedule 2 and shall include the following main categories:
- 2.1.1 Exploration Costs incurred for the Exploration;
- 2.1.2 Development Costs incurred for the Development;
- 2.1.3 Production Costs incurred for the Production; and
- 2.1.4 Decommissioning Costs incurred for Decommissioning.
- 2.2 Exploration Costs, in respect of the Contract Area, are those costs which relate to the Exploration incurred in accordance with an approved annual Exploration and Appraisal Work Programmes and Budget. They include for the purposes of accounting the evaluation operations in respect of a Discovery.
- 2.3 Development Costs, in respect of a Development Area, are those costs incurred in respect of the activities carried out in accordance with the approved Development Plan and the relevant annual Development and Production Work Programmes and Budgets, and consists of:
- 2.3.1 before the commencement of Commercial Production in a Development Area, those costs whether of a capital or operating nature, which relate to the Development; and
- 2.3.2 from the commencement of Commercial Production in a Development Area, those costs of a capital nature only, which relate to the continuation of the Development of

the Commercial Discovery and investments for the recovery of Petroleum from such Discovery.

- 2.4 Production Costs, in respect of a Development Area, are those costs of an operating nature only, excluding Development Costs and Decommissioning Costs, which relate to the Production carried out from the commencement of Commercial Production in respect of such Development Area in accordance with approved annual Production Work Programmes and Budgets.
- 2.5 Decommissioning Costs, in respect of a Development Area, are those costs or contributions to the Decommissioning Fund related to abandonment and Decommissioning operations set out in clause 12 of the Agreement.
- 2.6 The Petroleum Costs in each category of costs that cannot be related to a certain area and the general and administrative costs referred to in paragraph 3 shall be allocated to categories of costs and to area in accordance with the approved methods set out in paragraphs 2.7 and 2.8 of this Schedule.
- 2.7 The Petroleum Costs shall be allocated among the categories of Petroleum Operations in the following manner:
  - 2.7.1 the Exploration, subdivided further into:
    - 2.7.1.1 aerial, geological, geochemical, and other surveys;
    - 2.7.1.2 each individual seismic survey;
    - 2.7.1.3 each individual Exploratory Well or Appraisal Well;
    - 2.7.1.4 infrastructure such as roads, airstrips;
    - 2.7.1.5 support facilities such as warehouses, including an allocation of common service costs (costs related to various Petroleum Operations); and
    - 2.7.1.6 an allocation of the general and administrative costs
  - 2.7.2 the Development up to the Delivery Points, subdivided further into:
    - 2.7.2.1 aerial, geological, geochemical, geophysical and other surveys;
    - 2.7.2.2 each individual development Well;
    - 2.7.2.3 Flow Lines;
    - 2.7.2.4 Field facilities;
    - 2.7.2.5 tank farms and other storage facilities for Petroleum;
    - 2.7.2.6 pipelines and trunks;
    - 2.7.2.7 infrastructure;
    - 2.7.2.8 support facilities, including an allocation of common service costs (costs related to various Petroleum Operations);

- 2.7.2.9 an allocation of the general and administrative costs; and
- 2.7.2.10 other development operations, including engineering and design studies.
- 2.7.3 Production operations, subdivided in the same manner as the Development.
- 2.7.4 Decommissioning operations subdivided in the same manner as the Development.
- 2.8 Petroleum Costs shall be allocated to Crude Oil and Natural Gas, where both products are being produced and saved. Such allocation shall be made in accordance with the following principles:
  - 2.8.1 where costs are exclusively related to either Crude Oil or Natural Gas, such costs shall be allocated completely to the respective category.
  - 2.8.2 where costs can be attributed to both Crude Oil and Natural Gas, the costs shall be allocated pursuant to the method agreed by the Parties in accordance with the Best International Practice.

### 3. **Costs, expenses, expenditure and credits of the Contractor and non-recoverable costs**

Subject to the provisions of the Agreement, the Contractor shall bear and pay the below mentioned costs and expenses necessary to conduct Petroleum Operations. Such Petroleum Costs are recoverable by the Contractor in accordance with the provisions of the Agreement when incurred under approved annual Work Programmes and Budgets and duly entered in the Joint Account.

#### 3.1 **Labour and related costs**

Salaries and wages of employees of the Operator and its Affiliate(s) for portion of their time spent performing management, administrative, legal, accounting, treasury, tax, employee relations, computer services, engineering, geological, geophysical, and all other functions for the benefit of Petroleum Operations, whether temporarily or permanently assigned to the Contract Area, as well as the cost of employee benefits, customary allowances and personal expenses incurred under the usual practice of the Operator and its Affiliate(s) and amounts imposed by Governmental Authorities, which are applicable to such employees.

#### 3.2 **Material**

- 3.2.1 The cost of Material, equipment and supplies purchased or furnished by the Operator for use in Petroleum Operations shall be charged to the Joint Account on the basis set forth below. So far as it is reasonably practical and consistent with efficient and economical operations, only such Material shall be purchased for or transferred to the Joint Property as may be required for immediate use and/or for approved Work Programmes and the accumulation of surplus stock shall be avoided.
- 3.2.2 Except as otherwise provided in sub-clause 3.2.3 below, Material purchased, leased or rented shall be charged at the actual net cost incurred by the Operator. "Net cost" shall include, but shall not be limited to, such items as vendor's invoice price, transportation, duties, fees and applicable taxes less all discounts actually received.
- 3.2.3 Material purchased or transferred from the Contractor or its Affiliate(s) shall be charged at the prices specified here below:

- 3.2.3.1 New Material (condition "A") shall be valued at the current international net cost which shall not exceed the price prevailing in Arm's Length transactions on the open market;
- 3.2.3.2 Used Material (conditions "B", "C" and "D"):
- (a) Material which is in sound and serviceable condition and is suitable for re-use without reconditioning shall be classified as condition "B" and priced at 75% of the current price of new Material defined in sub-clause 3.2.3.1 above;
  - (b) Material which cannot be classified as condition "B" but which after reconditioning will be further serviceable for its original function shall be classified as condition "C" and priced at 50% of the current price of new Material as defined in sub-clause 3.2.3.1 above. The cost of reconditioning shall be charged to the reconditioned Material, *provided that* the value of condition "C" Material plus the cost of reconditioning do not exceed the value of condition "B" Material;
  - (c) Material which cannot be classified as condition "B" or condition "C" shall be classified as condition "D" and priced at a value commensurate with its use.

#### 3.2.4 Inventories

- 3.2.4.1 At reasonable intervals, inventories shall be taken by the Operator of all Controllable Material. The Operator shall give 90 days' written notice of intention to take such inventories to allow the SPA and Non-operator(s) to be represented when any inventory is taken. Failure of any Party to be represented after due notice given shall bind such Party to accept the inventory taken by the Operator.
- 3.2.4.2 The Operator shall clearly state the principles upon which valuation of the inventory has been based.
- 3.2.4.3 Whenever there is a sale or change of interest in the Joint Property, a special inventory may be taken by the Operator, provided the seller and/or purchaser of such interest agrees to bear all of the expense thereof. In such cases, both the seller and the purchaser shall be entitled to be represented and shall be governed by the inventory so taken.

### 3.3 **Transportation and employee relocation costs**

- 3.3.1 Transportation of Material and other related costs such as origin services, expediting, crating, dock charges, forwarder's charges, surface and air freight, and customs clearance and other destination services.
- 3.3.2 Transportation of employees as required in the conduct of Petroleum Operations, including employees of the Operator's Affiliate(s) whose salaries and wages are chargeable under sub-clause 3.1 and 3.4.2.
- 3.3.3 Relocation costs of the Contract Area vicinity of employees permanently or temporarily assigned to Petroleum Operations. Relocation costs from the Contract

Area vicinity, except when an employee is re-assigned to another location classified as a foreign location by the Operator. Such costs include transportation of employees' families and their personal and household effects and all other relocation costs in accordance with the usual practice of the Operator and its Affiliate(s).

### **3.4 Services**

3.4.1 The actual costs of contract services, professional consultants, and other services performed by Third Parties other than services provided by the Contractor or its Affiliate(s), but the prices paid by the Contractor shall not be higher than those generally charged for comparable services.

3.4.2 Costs of technical services, such as but not limited to, engineering, and related data processing, performed by the Contractor and its Affiliate(s) for the direct benefit of Petroleum Operations, engineering and related data processing, performed by the Contractor provided such costs shall not exceed those currently prevailing if performed by Third Parties in Arm's Length transaction for like services.

3.4.3 Costs of use of equipment and facilities for the direct benefit of the Petroleum Operations, furnished by Contractor or its Affiliate(s) at rates commensurate with the cost of ownership, or rental, and the cost of operation thereof, but such rates shall not exceed those currently prevailing in the general vicinity of the Contract Area in Arm's Length transactions on the open market for like services and equipment.

### **3.5 Damages and losses to Joint Property**

All costs or expenses necessary for the repair or replacement of Joint Property resulting from damages or losses incurred by fire, flood, storm, theft, accident, or any other cause, except insofar as those costs and expenses are caused by the wilful misconduct of the Operator. The Operator shall furnish the Federal Government and Non-operator(s) written notice of damages or losses for each damage or loss in excess of fifty thousand US dollars (USD 50,000) as soon as the loss has come to the notice of the Contractor.

### **3.6 Insurance**

Premiums for insurance required under the Agreement, *provided that* a Party not participating in such insurance shall not share in the costs unless such insurance is compulsory under the Laws of Somalia and provided further, that if such insurance is wholly or partly placed with an Affiliate of the Contractor such premiums shall be recoverable only to the extent generally charged by competitive insurance companies other than an Affiliate of the Contractor.

### **3.7 Legal expenses**

All costs or expenses of litigation or legal services otherwise necessary or expedient for the protection of the Joint Property or other interest in the Contract Area, including but not limited to legal counsel's salaries and fees, court costs and cost of investigation or procuring evidence. These services may be performed by the Operator's legal staff or an outside firm as necessary.

### **3.8 Duties and taxes**

All duties, taxes, fees, and Federal Governmental assessments of every kind and nature which have been paid by the Contractor with respect to the Agreement unless specifically excluded under the Agreement.

### **3.9 Offices, camps and miscellaneous facilities**

Cost of establishing, maintaining and operating the offices, sub-offices, camps, warehouses, housing and other facilities in Somalia directly serving Petroleum Operations. The costs shall be allocated to the operations served on an equitable basis.

### **3.10 General and administrative expenses**

3.10.1 This charge shall be made monthly for services of all personnel and officers of the Operator and its Affiliate(s) outside Somalia and those not otherwise provided herein. It shall include services and related office costs of personnel performing management, administrative, legal, accounting, treasury, tax, employee relations, computer services, purchasing, engineering, geological, geophysical, and all other functions for the direct benefit of Petroleum Operations. General and administrative expenses incurred wholly and exclusively for the Somali operations are wholly deductible. General and administrative expenses which have not been incurred wholly and exclusively incurred for Somali operations will be charged on an allocation criteria provided by the Contractor subject to approval of the SPA and Somali tax authorities (acting jointly), which approval shall be granted within thirty (30) days of submission. provided that foreign overhead costs for general administration expenses in excess of 1% of the total recoverable costs shall be cost non-recoverable. If the SPA and Somali tax authorities have reasonable grounds for refusal (such to be notified to the Contractor), the SPA and Somali tax authorities (acting jointly) may refuse grant of approval within the same period of time. In case of expiry of the period of thirty (30) days following submission without the SPA and Somali tax authorities (acting jointly) either approving or refusing grant of approval, their approval shall be deemed granted.

3.10.2 Within ninety (90) days following the end of each quarter, the Operator shall determine the actual costs incurred in performing such services, and shall charge or credit the Joint Account for the difference between the actual cost incurred for the quarter and the provisional rate charged during the quarter.

3.10.3 On request of the Federal Government or a Non-operator, the Operator shall make available at its Somali office all supporting documents used for the determination of the charges. Such documents shall include but shall not be limited to time allocation reports prepared by employees providing services described in part, cash vouchers supporting cash expenses included in the overhead pool, inter-company billings supporting charges for services provided by Operator's Affiliates (e.g. building rentals, telecommunications paid by the Operator's parent company), summary or impersonalised computer run supporting salaries, wages and employee benefits and other such documents as may be mutually agreed.

### **3.11 Other expenditure**

3.11.1 All contributions to the training fund set out in clause 27 of this Agreement.

3.11.2 All surface fees set out in clause 32.1 of the Agreement.

3.11.3 50% of the signature bonus set out in clause 32.3 of the Agreement.

3.11.4 All contributions to the local communities fund set out in clause 32.6 of this Agreement.

- 3.11.5 Other reasonable expenditure not covered or dealt with in the foregoing provisions which are incurred by the Operator and its Affiliate(s) for the necessary, proper, economical and efficient conduct of Petroleum Operations only with the approval by the SPA, which approval shall be granted within 30 days of submission. If the SPA has reasonable ground for refusal (such to be notified to the Contractor), the SPA may refuse grant of approval within the same period of time. In case of expiry of the period of 30 days following submission without the SPA either approving or refusing grant of approval, the approval shall be deemed granted.
- 3.11.6 Interest and financing charges incurred on loans or other forms of financial accommodation raised by the Contractor for expenditure in Petroleum Operations under the Agreement shall be non-recoverable costs in accordance with sub-clause 3.14 below.

### **3.12 Credits under the Agreement**

- 3.12.1 The net proceeds of the following transactions shall be credited to the account for cost recovery purposes under the Agreement:
- 3.12.1.1 the net proceeds of any insurance or claim in connection with the Petroleum Operations or any assets charged to the accounts under the Agreement;
  - 3.12.1.2 Revenue received from other Parties for the use of property or assets charged to the accounts under the Agreement;
  - 3.12.1.3 any adjustment received by the Contractor from the suppliers/manufacturers or their agents in connection with defective equipment or Material the cost of which was previously charged by the Contractor under the Agreement;
  - 3.12.1.4 rentals, refunds or other credits received by the Contractor which apply to any charge which has been made to the accounts under the Agreement;
  - 3.12.1.5 proceeds from all sales of surplus Material or assets charged to the account under the Agreement; and
  - 3.12.1.6 the prices originally charged to the accounts under the Agreement for inventory Materials subsequently exported from Somalia.

### **3.13 No duplication of charges and credits**

Notwithstanding any provision to the contrary in this Accounting Procedure, it is the intention that there shall be no duplication of charges or credits in the accounts under the Agreement.

### **3.14 Non-recoverable costs and expenses**

- 3.14.1 Costs and expenses not specifically identified as recoverable in this clause shall not be recoverable by the Contractor. Such non-recoverable costs and expenses include, but are not limited to, the following:

- 3.14.1.1 taxes on income or profit paid to any Somali Government Authority (except taxes and duties that may be included in the costs of Material and equipment purchased for Petroleum Operations);
- 3.14.1.2 any payment made to the Federal Government by reason of the failure of the Contractor to fulfil its minimum work and expenditure obligations in respect of the Initial Exploration Period, the first additional Exploration Period, or the second additional Exploration Period under the Agreement;
- 3.14.1.3 the cost of any letter of guarantee (if any) required under the Agreement;
- 3.14.1.4 50% of the signature bonus set out in clause 32.3 of the Agreement;
- 3.14.1.5 costs of marketing or transportation of Petroleum beyond the Delivery Point;
- 3.14.1.6 interest, arrangement costs and any foreign exchange costs relating to loans or other financing arrangements raised by the Contractor for capital expenditure in Petroleum Operations under the Agreement;
- 3.14.1.7 any accounting provision for depreciation and/or amortization, excluding any depreciation and/or amortization expressly permitted under the Agreement;
- 3.14.1.8 costs incurred before the Effective Date;
- 3.14.1.9 any foreign exchange and currency hedging costs;
- 3.14.1.10 donations or charitable contributions and/or services relating to public relations;
- 3.14.1.11 costs that were not incurred within an approved Annual Work Program and Budget, as revised, or are of a category not permitted by the Agreement;
- 3.14.1.12 Decommissioning Costs actually incurred which have been effectively funded from the Decommissioning Fund through contributions made to such Decommissioning Fund which are already recovered when those Decommissioning Costs are incurred;
- 3.14.1.13 costs in excess of those in line with the international market price for goods or services of similar quality supplied on similar terms prevailing at the time such goods or services were obtained or ordered by the Contractor;
- 3.14.1.14 any costs not reasonably required for the Petroleum Operations;
- 3.14.1.15 expenditures on research and development of new equipment, Materials and techniques;
- 3.14.1.16 costs for which the records do not exist or which are not adequately documented;

- 3.14.1.17 costs of arbitration and expert determination pursuant to clauses 10 and 47 of the Agreement in respect of any dispute under the Agreement;
- 3.14.1.18 fines and penalties imposed under the Laws of Somalia;
- 3.14.1.19 costs due to a violation to the Agreement or the laws and Regulations applicable to the Petroleum Operations, including any amount spent on indemnities or penalties arising from the non-fulfilment of contractual obligations, such as any payment made to the Federal Government by reason of the failing of the Contractor to fulfil its minimum Exploration work and expenditure obligations under the Agreement;
- 3.14.1.20 costs incurred as a result of wilful misconduct or negligence of the Contractor, its agents or sub-contractors, including any payments for damages under the Agreement;
- 3.14.1.21 the acquisition costs or any other payments or charges in relation with the transfer of an interest in accordance with clause 42 of the Agreement, including but not limited to any payments of considerations, private overriding royalties net profits and interests;
- 3.14.1.22 save to the extent provided in clause 32.6 of the Agreement, corporate social responsibility costs or social infrastructure costs; and
- 3.14.1.23 any recoverable costs recovered elsewhere under the Laws of Somalia.

#### 4. **Financial reports to the SPA**

- 4.1 The reporting obligations provided for in this Part shall, unless the contrary is stated, apply to the Operator.
- 4.2 The Operator shall submit annually to the SPA the following:
  - 4.2.1 the annual Work Programme and Budget three months before the beginning of the Calendar Year to which they apply and the Budget shall be analysed by item within the Exploration programme, evaluation programme, Development Plan and Decommissioning Plan and show for each major Budget item, with reasonable detail, the following:
    - 4.2.1.1 latest forecast of cumulative Petroleum Costs anticipated at the start of the Calendar Year;
    - 4.2.1.2 cumulative expenditure anticipated at the end of each Quarter of the Calendar Year; and
    - 4.2.1.3 expenditure anticipated in future Calendar Years to complete the Budget item.
  - 4.2.2 a schedule of the service and supply contracts, to be let during the forthcoming Calendar Year which require payment in foreign currency exceeding the equivalent of two hundred thousand US dollars (USD 200,000) per contract, showing the anticipated tender date and approximate value and the goods or services to be provided;

- 4.2.3 the audit report required by sub-clause 1.4.5 of this Accounting Procedure, stating whether in the opinion of the auditors of the Agreement:
  - 4.2.3.1 the last annual expenditure report and records reflects a true and fair view of the actual expenditure of the Contractor in accordance with the provisions of the Agreement;
  - 4.2.3.2 the reports on Petroleum Revenue submitted truly and fairly determine the Arm's Length value of disposals of Petroleum during the Calendar Year.
  
- 4.3 The Operator shall submit Quarterly within thirty (30) days of each Quarter to the SPA:
  - 4.3.1 a report of expenditure and receipts under the Agreement analysed by Budget item showing:
    - 4.3.1.1 actual expenditure and receipts for the Quarter in question;
    - 4.3.1.2 actual cumulative Petroleum cost to date;
    - 4.3.1.3 latest forecast cumulative cost at the Calendar Year's end;
    - 4.3.1.4 variations between Budget costs and actual costs and explanations thereof; and
    - 4.3.1.5 with effect from adoption of the Development Plan, the total payroll costs segregated between Somali and non-Somali personnel and the total expenditure segregated between Somali and non-Somali goods and services;
  
  - 4.3.2 a cost recovery statement containing the following information, disclosing costs incurred and recovered as attributed to either Exploration, Development, Production or Decommissioning —
    - 4.3.2.1 recoverable Petroleum Costs carried forward from the previous Quarter, if any;
    - 4.3.2.2 recoverable Petroleum Costs incurred and paid during the Quarter;
    - 4.3.2.3 total recoverable Petroleum Costs for the Quarter ((4.3.2.1) plus (4.3.2.2) above);
    - 4.3.2.4 quantity and value of cost Petroleum taken and separately disposed of by the Contractor for the Quarter;
    - 4.3.2.5 volume and value of Petroleum recovered for the Quarter;
    - 4.3.2.6 amount of recoverable Petroleum Costs to be carried forward into the next Quarter, if any; and
    - 4.3.2.7 value of Federal Government's share of Production taken by the Contractor pursuant to clause 9.3 of the Agreement.

- 4.4 A copy of each contract for goods or services valued in excess of five hundred thousand US dollars (USD 500,000.00) shall be provided to the SPA as soon as practicable after its execution, together with a contract summary containing:
- 4.4.1 a description of the goods or services to be provided;
  - 4.4.2 the approximate consideration for the Agreement;
  - 4.4.3 the names of proposed bidders, contractors or suppliers; and
  - 4.4.4 a brief description of the efforts made to find a Somali supplier or contractor including the names of businesses considered and the reasons for rejecting them.
- 4.5 After the commencement of Production the Operator shall, within fifteen (15) days after the end of each month, submit a Production report to the SPA showing for each Development Area the quantity of Petroleum:
- 4.5.1 held in stocks at the beginning of the month;
  - 4.5.2 produced during the month;
  - 4.5.3 lifted and by whom during the month;
  - 4.5.4 lost and consumed in Petroleum Operations during the month; and
  - 4.5.5 held in stocks at the end of the month.
- 4.6 A lifting Party shall submit, within fifteen (15) days after the end of each month, a report to the SPA stating:
- 4.6.1 the quantities and sales value of Arm's Length Petroleum sales made in that month;
  - 4.6.2 the quantities, sales value and Arm's Length value of disposals of Petroleum other than by sale at Arm's Length during the month; and
  - 4.6.3 the total Petroleum Revenue for that month.
- 4.7 The Contractor shall deliver to the SPA monthly statements showing calculations of the value of Petroleum produced and sold from the Contract Area, and each Development Area, which statements shall include, inter alia, the following information:
- 4.7.1 quantities of Crude Oil and/or Natural Gas sold by the Contractor during the preceding month constituting Arm's Length sales together with corresponding sale prices; and
  - 4.7.2 quantities of Crude Oil and/or Natural Gas sold by the Contractor during the preceding month that did not constitute Arm's Length sales together with corresponding sale prices.

### SCHEDULE 3: CONSEQUENCES OF TERMINATION DUE TO DEFAULT

1. The Federal Government shall purchase the Termination Transfer Assets for the Federal Government Default Termination Amount.
2. **"Federal Government Default Termination Amount"** means an amount equal to the sum of:
  - (a) the Debt Due; plus
  - (b) the Termination Costs; plus
  - (c) any early repayment charges payable to the lenders under the financing documents for financing of the Petroleum Operations; plus
  - (d) 100% of the Equity,

where:

**"Debt Due"** has the same meaning as set out in this Schedule 3;

**"Equity"** means the capital of the Contractor to its Shareholders in respect of their respective investment in the Contractor (including a shareholder loans which, on its terms, is subordinated to all indebtedness and liabilities of the Contractor);

**"Shareholder"** means each shareholder that holds one or more share in the share capital of the Contractor.

**"Termination Costs"** means:

- (a) all income, receipts, sales, value added, transfer, property or other taxes and any other costs imposed on the Contractor by the Federal Government as a result of termination of the Agreement, transfer of right, title and interest in the Termination Transfer Assets to the Federal Government (or its nominee); and
  - (b) all amounts payable by the Contractor with respect to termination of any related agreement (including any contract with any of its contractor and sub-contractors) in relation to the Petroleum Operations
3. In calculating all amounts payable pursuant to this Schedule 3, there shall be no double-counting of the components making up any such amounts.
  4. All payments under this Schedule 3 shall be made in US dollars. If relevant amounts incurred in a currency other than US dollars shall be converted at an exchange rate between US dollars and the relevant currency available on the day prior to the day on which payment is due and payable.

#### SCHEDULE 4: FORM OF PARENT COMPANY GUARANTEE

THIS GUARANTEE ("Guarantee") is made the [ ] day of [ ], [ ]

By:

- (1) ♦ , a company incorporated and existing under the laws of ♦ , whose registered office is at ♦ ("Guarantor")

IN FAVOUR OF:

- (2) THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF SOMALIA, represented by the Minister of Petroleum and Mineral Resources ("Federal Government")

WHEREAS:

- (A) The Federal Government and ♦ ("Contractor") have entered into a production sharing agreement dated [ ] ("PSA")[and the participation agreement dated [ ] ("Participation Agreement)];
- (B) Under the PSA, the Contractor has to provide a parent company guarantee to the Federal Government for the performance of its obligations under the PSA[ and the Participation Agreement]; and
- (C) The Guarantor has agreed to guarantee the performance of the Contractor's obligations under the PSA[ and the Participation Agreement].

WITNESSETH:

1. The Guarantor hereby absolutely, irrevocably and unconditionally guarantees as primary obligor and not merely as surety, all obligations assumed by the Contractor under the PSA [and the Participation Agreement] ("Guaranteed Obligations").
2. If the Contractor shall fail to perform any Guaranteed Obligations, the Guarantor shall promptly and in any case no later than 15 days of demand in writing by the Federal Government:
  - 2.1 perform such Guaranteed Obligations to remedy such breach by the Contractor; or
  - 2.2 if such failure or breach is not capable of remedy (in whole or part), pay to the Federal Government (without set-off or counterclaim) the amount that the Contractor has been adjudged to be liable to pay by final, non-appealable order or judgment of a court or an arbitral tribunal of competent jurisdiction, together with all interest (calculated at the interest rate from the date such Guaranteed Obligations were due and the date of payment of such Guaranteed Obligations) and all other sums accrued thereon or relating thereto.
3. No document, proof or other action (other than explicitly provided herein) is necessary as a condition of the Guarantor honouring any and all unfulfilled Guaranteed Obligations pursuant to the provisions hereof. The Guarantor therefore hereby waives any right to require as a condition of its obligations hereunder that presentment or demand be made on the Guarantor.
4. Any demand or other communication made to the Guarantor under this Guarantee shall be delivered or sent by post or facsimile to the Guarantor at its office located at ♦ , or to such other address as may be provided in writing by the Guarantor to the Federal Government for such purpose and shall be deemed to have been made when received by the Guarantor.

5. Any communication made to the Federal Government under this Guarantee shall be delivered or sent by post or facsimile to the Federal Government at its office located at ♦ or to such other address as may be provided in writing by the Federal Government to the Guarantor for such purpose and shall be deemed to have been made when received by the Federal Government.
6. This is to be a continuing Guarantee remaining in full force and effect until the [♦] anniversary of expiry or termination of the PSA [and the Participation Agreement] ("**Expiry Date**"), whether or not this original document is returned to the Guarantor for cancellation. Upon the Expiry Date, this Guarantee shall be released and discharged absolutely, save that this Guarantee will remain in operation even after the Expiry Date in relation to any Guaranteed Obligations incurred prior to the Expiry Date until they have been paid otherwise fulfilled in full.
7. The liability of the Guarantor under this Guarantee shall not be released, affected or discharged by any act, matter or omission which would otherwise have released, affected or discharged the liability of the Guarantor including:
  - 7.1 any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of, or any consent to departure from, the terms of such Guaranteed Obligations including but not limited to the grant of time, concession or other indulgence to the Contractor by the Federal Government or concurring in, accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from a principal debtor or any other person; or
  - 7.2 any present or future guarantee, indemnity, mortgage, charge or other security or right or remedy held by or available to the Federal Government being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Federal Government from time to time dealing with, varying, realizing, releasing or failing to perfect or enforce any of the same; or
  - 7.3 any invalidity, unenforceability, illegality or voidability of the PSA [and/or the Participation Agreement]; or
  - 7.4 any change, restructuring or termination of the corporate structure or existence of the Contractor or the bankruptcy, insolvency, dissolution, reorganisation, moratorium, liquidation or similar proceeding involving the Contractor.
8. No failure on the part of the Federal Government to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.
9. If any performance or payment received by the Federal Government pursuant to the provisions of the PSA[and the Participation Agreement] shall, on the subsequent bankruptcy, insolvency, corporate reorganisation or other similar event of the Contractor, be avoided or set aside under any laws relating to bankruptcy, insolvency, corporate reorganisation or other such similar events, such performance or payment shall not be considered as discharging or diminishing the liability of the Guarantor and this Guarantee shall continue to apply as if such performance or payment had at all times remained owing by the Contractor, *provided that* the obligations of the Guarantor under this paragraph shall, as regards each performance or payment made to the Federal Government which is avoided or set aside, be contingent upon such performance or payment being recovered or reimbursed to the Contractor or other persons entitled through the Contractor.
10. Notwithstanding any performance or payment(s) made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to the rights of the Federal Government against the Contractor and any and all rights of reimbursement or indemnification

against the Contractor or against any other guarantor of all or any part of the Guaranteed Obligations until such time as the Guaranteed Obligations have been satisfied in full. If, notwithstanding the foregoing, any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been satisfied in full, such amount shall be held by the Guarantor in trust for the Federal Government and shall, forthwith upon receipt by the Guarantor, be paid to the Federal Government, to be applied against the Guaranteed Obligations in such order as the Federal Government may determine.

11. The Federal Government shall be entitled to enforce this Guarantee without making any demand on or taking any proceedings against the Contractor.
12. This Guarantee shall be in addition to and not in substitution for any other rights, remedy, security or guarantees which the Federal Government may now or hereafter hold from or on account of the Contractor in respect of that Contractor's obligations under the PSA [and the Participation Agreement] and may be enforced without first having recourse to the same.
13. This Guarantee shall continue to be in effect and be binding on the Guarantor notwithstanding absorption, amalgamation or any other changes in its constitution.
14. This Guarantee shall be binding upon the Guarantor, its successors and assigns and shall inure to the benefit of the Federal Government, its successors and assigns. The Guarantor shall not (without the prior written consent of the Federal Government, such consent not to be unreasonably withheld, delayed or conditioned) assign, novate or transfer to any entity its rights or obligations under this Guarantee. The Federal Government may at any time (without the consent of the Guarantor) assign, novate or transfer any part of its rights under this Guarantee to any person to whom the whole of its rights under the PSA [and the Participation Agreement] are assigned, novated or transferred.
15. The Guarantor shall pay the Federal Government on demand all costs and expenses reasonably incurred by the Federal Government in connection with the enforcement or preservation of its rights hereunder provided that in no event shall the Guarantor be liable for costs and expenses under this clause where payment of such sums would result in the Guarantor's liability under this Guarantee.
16. The Guarantor will pay all monies due from it under this Guarantee free and clear of, and without deduction of, or on account of, either any set-off or counterclaim or any and all present or future taxes, levies, posts, charges, fees, deductions or withholdings except as required by applicable law. If any sums payable hereunder shall be or become subject to any such deductions or withholding, the amount of such payments shall be increased so that the net amount received by the Federal Government shall equal the amount which, but for such deduction or withholding, would have been received by the Federal Government hereunder. In accordance to the applicable law and/or any tax convention to avoid double taxation in force between Somalia and ♦ , the Federal Government hereby will provide the Guarantor with an original certificate of ♦ (or, subsidiarily, a certificate of taxes stating that the Federal Government is subject to ♦ ) issued by the ♦ relevant tax authorities to apply the mentioned tax convention.
17. This Guarantee, and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall in all respects be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.

18. The Guarantor hereby appoints ◆ as its agent for service of process in respect of any proceedings arising hereunder. If for any reason such agent ceases to be able to act as agent or no longer has an address in England, the Guarantor shall forthwith appoint a substitute acceptable to the Federal Government and give notice to the Federal Government of the new agent's name and address.
19. Nothing in this Guarantee shall confer to any Third Party any benefit or the right to enforce any term of this Guarantee.

**IN WITNESS WHEREOF**, this Guarantee has been executed and delivered as a DEED of the date indicated.

**EXECUTED** by

(...)

.....

.....

## SCHEDULE 5: MINIMUM WORK AND EXPENDITURE REQUIREMENTS

1. The Contractor shall have the following minimum work requirement:
  - 1.1 during the Initial Exploration Period of Three (3) Contract Years:
    - 1.1.1 drilling of  $\blacklozenge^1$  Exploratory Wells;
    - 1.1.2  $\blacklozenge^2$  km<sup>2</sup> 3D seismic survey acquired, processed and interpreted.
  - 1.2 during the First Additional Exploration Period of two (2) Contract Years, drilling of at least one (1) Exploratory Well to a minimum depth of [4000] meters per Well.
  - 1.3 during the Second Additional Exploration Period of two (2) Contract Years drilling of at least one (1) Exploratory Wells to a minimum depth of [4000] meters per Well.
2. If the drilling of an Exploratory Well is discontinued, prior to reaching the minimum depth herein specified, because that Well has encountered the basement, an impenetrable substance or any condition which in accordance with the Best *International* Practice would make it unsafe or impractical to continue drilling, the minimum depth obligation in respect of that Well shall be deemed to be fulfilled.
3. An Appraisal Well drilled to appraise and evaluate a Commercial Discovery under an Appraisal Work Programme shall not be considered to be an Exploratory Well for the purpose of fulfilling the required number of Exploratory Wells.

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<sup>1</sup> Note: This is a biddable term as part of the licensing round.

<sup>2</sup> Note: This is a biddable term as part of the licensing round.

## SCHEDULE 6: PROFIT PETROLEUM SHARING

1. [Each category of the total Petroleum produced and saved from the Contract Area and not used in the Petroleum Operations or the Commercial Production less the Cost Petroleum (as specified in sub-clauses 9.1 and 9.1.1.1) shall be referred to as the "Profit Petroleum".
2. Each category of the Profit Petroleum shall be shared, taken and disposed of separately by the Federal Government and the Contractor on a Quarterly basis, according to the value of the R-Factor in respect of the Contract Area, as determined at the end of the preceding Calendar Quarter;

or

**Petroleum Profit = Commercial Production – Cost Petroleum**

3. The R-Factor at a given date shall be calculated as follows:

$$R = \frac{X}{Y}$$

where:

X: is equal to the Contractor's "Cumulative Cash Inflows" at the end of the preceding Calendar Quarter

and

Y: is equal to the Contractor's "Cumulative Cash Outflows" at the end of the preceding Calendar Quarter.

4. For purposes of the R-factor determination in this sub-clause:

**"Cumulative Cash Inflows"** at the end of the preceding Calendar Quarter are equal to:

Cumulative Contractor Cost Petroleum from the Effective Date to the end of the preceding Calendar Quarter;

plus

Cumulative Contractor Profit Petroleum from the Effective Date to the end of the preceding Calendar Quarter;

or

***Cumulative cash inflows* = Cost Petroleum + Profit Petroleum "Cumulative Cash Outflows"** at the end of the preceding Calendar Quarter are equal to:

Cumulative Recoverable Costs from the Effective Date to the end of the preceding Calendar Quarter

or

***Cumulative Cash Outflows* = Recoverable Costs**

5. The share of each category of the Profit Petroleum to which each Party shall be entitled during a Calendar Quarter in relation to the value of the R-Factor determined at the end of the preceding Calendar Quarter shall be equal to the quantities of Crude Oil and Natural Gas resulting from the application of the relevant profit sharing tranche percentages indicated below:

<b>R-Factor</b>	<b>Federal Government's share</b>	<b>Contractor's Share</b>
"R" less than 1.0	20%	80%
"R" equal to or greater than 1.0 and less than 2.0	$(R-1) \times (\text{Maximum Pct Bid} - 20\%) + 20\%$	100% minus the Federal Government's share
"R" equal to or greater than 2.0	(Maximum Pct Bid)	100% minus the Federal Government's share

6. For each Quarter, starting from the Quarter Commercial Production starts, the Contractor shall calculate the R-Factor applicable to the relevant Quarter within 30 days of the beginning of such Quarter and submit the determination to the SPA;
7. In the event that the Contractor is unable to calculate the R-Factor for the relevant Quarter before an allocation of Profit Oil or Profit Gas for such Quarter must be made, then the percentage for allocation of Profit Oil and/or Profit Gas, as the case may be, for the previous Quarter shall be used for the relevant Quarter;
8. If the allocation of Profit Oil or Profit Gas, as the case may be, in the previous Quarter and the relevant Quarter is the same, then no adjustment shall be made;
9. If the allocation of the Profit Oil or Profit Gas, as the case may be, in the two Quarters is different, then the Contractor shall make any adjustments to the Parties' respective shares of Profit Oil or Profit Gas, as the case may be, to restore them to the position that they would have been in had the R-Factor for the relevant Quarter been available from the start of such Quarter; and
10. If at any time an error occurs in the calculation of the R-Factor, resulting in a change in the percentage share of Profit Oil and/or Profit Gas, the necessary correction shall be made and any adjustments shall apply from the Quarter in which the error occurred. The Party having benefited from a surplus of Profit Petroleum shall relinquish such surplus to the other Party, beginning from the first day of the Quarter following the Quarter in which the error was recognised.]

## SCHEDULE 7: ROYALTIES

1. [Contractor shall pay to Federal Government on or before the twenty-fifth (25<sup>th</sup>) day of each Calendar Month the Royalty based on the gross value of the Petroleum produced in the previous Calendar Month from a Development Area. Where there is more than one Development Area, the Royalty shall be determined separately for each Development Area. For greater certainty, the Production does not include any Petroleum which is reinjected in the Reservoirs or consumed for Petroleum Operations in the Field.
2. The rates of the Royalty shall be:
  - 2.1 an amount based on the average oil price tranche percentage of the gross produced Crude Oil, plus
  - 2.2 an amount based on the average gas price tranche percentage of the gross produced Natural Gas (whether wet Natural Gas, dry Natural Gas, Associated Natural Gas or Non-Associated Natural Gas).
  - 2.3 For liquid hydrocarbons the Royalty is governed by the following oil field (\$/bbl) price tranches:-

<b>Royalty</b>		
<b>Oil Price (\$/bbl)</b>		<b>%</b>
<b>0</b>	<b>40</b>	<b>0.5%</b>
<b>40</b>	<b>50</b>	<b>1.0%</b>
<b>50</b>	<b>60</b>	<b>2.5%</b>
<b>60</b>	<b>70</b>	<b>4.0%</b>
<b>70</b>	<b>80</b>	<b>5.0%</b>
<b>80</b>	<b>&gt;</b>	<b>7.0%</b>

2.4 For gaseous hydrocarbons the Royalty is governed by the following oil field (\$/Mscf) price tranches:-

Royalty		
Gas Price (\$/M scf)		%
>=	<	
0	3	0.5%
3	5	1.0%
5	7.5	2.5%
7.5	12.5	4.0%
12.5	>	5.0%

If the average Oil Field Production Royalty price is equal to or below Tranche level 1, \$40 per barrel, the minimum royalty rate shall be 0.5%. If the calculated average price is between Tranche level 1 and Tranche level 2, \$40-\$50 per barrel the rate shall be determined based on linear interpolation between X% and Y% based on the calculated average price. At Tranche level 2 the minimum royalty rate shall be 1.0%. Between Tranche level 2 and tranche level 3 the rate shall be determined based on linear interpolation between xx% and yy% based on the average price. At Tranche level 3 the minimum royalty rate shall be 2.5%. Between Tranche level 3 and Tranche level 4, the rate shall be based on linear interpolation between xx% and yy% based on the calculated average price. At Tranche level 4, the minimum royalty rate shall be 4.0%. Over Tranche level 5 the minimum rate shall be 5.0%. Calculating the applicable rate in the manner described in this paragraph based on the levels and factor in the table is referred to as the “**Interpolation Procedure**”.

3. The average value of liquid hydrocarbons shall be determined by calculating the average value of the daily price quotations for the previous Calendar Month.
4. Because the Royalty calculation is based on biddable tranches (consistent with the Profit Sharing calculation methodology), the value of X% shall be the percentage bid by the Contractor over and above the minimum percentages on the basis of which the Contractor was awarded this contract.
5. The Royalty for Production from a Gas Field shall be determined based on the above table and based on the Interpolation Procedure adjusted for the gas price tranches and respective minimum percent
6. All payments shall be made in accordance with clause 33.3 of the Agreement.]