

DATED

2016

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

- and -

(2) ◆

**MODEL PRODUCTION
SHARING AGREEMENT**

CONTENTS

1.	INTERPRETATION.....	1
2.	SCOPE.....	9
3.	CONDITIONS PRECEDENT AND TERM	10
4.	JOINT OPERATING AGREEMENT AND OPERATOR.....	12
5.	EXPLORATION	13
6.	RELINQUISHMENT	17
7.	DEVELOPMENT	19
8.	PRODUCTION.....	23
9.	COST RECOVERY AND PRODUCTION SHARING.....	24
10.	VALUATION	27
11.	MEASUREMENT OF PETROLEUM	28
12.	PLUGGING AND ABANDONMENT AND DECOMMISSIONING.....	29
13.	RIGHTS AND OBLIGATIONS OF THE CONTRACTOR.....	32
14.	RIGHTS OF THE FEDERAL GOVERNMENT	34
15.	OBLIGATIONS OF THE FEDERAL GOVERNMENT	35
16.	FEDERAL GOVERNMENT PARTICIPATION	36
17.	FACILITIES	37
18.	OFFSHORE OPERATIONS	38
19.	ENVIRONMENTAL PROVISIONS	38
20.	DOMESTIC SUPPLY OBLIGATIONS	40
21.	DATA AND INFORMATION.....	41
22.	REPORTS.....	42
23.	BOOKS, ACCOUNTS AND AUDITS	43
24.	REPORTING	44
25.	TITLE AND RISK TO PETROLEUM	44
26.	EMPLOYMENT AND TRAINING.....	44
27.	TRAINING FUND	45
28.	PREFERENCE FOR SOMALI GOODS AND SERVICES	45
29.	[TECHNOLOGY TRANSFER	46
30.	IMPORTS AND EXPORTS.....	47
31.	EXCHANGE AND CURRENCY CONTROLS	48
32.	FEES AND BONUSES	49
33.	PAYMENTS.....	49
34.	INSURANCE.....	50
35.	LIABILITY	51

36.	INDEMNITY	51
37.	FORCE MAJEURE	52
38.	TERMINATION.....	53
39.	NATURAL GAS	56
40.	UNITISATION.....	58
41.	TAXATION [AND ROYALTIES]	59
42.	ASSIGNMENT AND CHANGE OF CONTROL.....	60
43.	CONFIDENTIALITY.....	62
44.	ECONOMIC STABILISATION	63
45.	WAIVER	64
46.	GOVERNING LAW.....	64
47.	DISPUTE RESOLUTION.....	65
48.	ANTI-CORRUPTION	69
49.	HEADING AND AMENDMENTS	69
	SCHEDULE 1: THE CONTRACT AREA	71
	SCHEDULE 2: ACCOUNTING PROCEDURE	72
	SCHEDULE 3: PARTICIPATION AGREEMENT.....	88
	SCHEDULE 4: CONSEQUENCES OF TERMINATION DUE TO DEFAULT.....	112
	SCHEDULE 5: FORM OF BANK GUARANTEE	113
	SCHEDULE 6: FORM OF PARENT COMPANY GUARANTEE	115
	SCHEDULE 7: MINIMUM WORK AND EXPENDITURE REQUIREMENTS	119
	SCHEDULE 8: PROFIT PETROLEUM SHARING	121

THIS PRODUCTION SHARING AGREEMENT ("Agreement") is made on 2016

BETWEEN:

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

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 2008 Petroleum Law of the Federal Republic of Somalia, 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 and lateral extent and in order to further define the quantity of recoverable Petroleum therein and all activities related thereto;

"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;

"Associated Natural Gas" means:

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

"Authority" means the Somali Petroleum Authority, an authority established under the Act for the regulation of the Petroleum Operations;

"Best Petroleum Industry 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 by maximizing the impact of the Petroleum Operations;

"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 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 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;

¹ INTERNAL DRAFTING NOTE: The World Bank Provisional Report (Part I, Point 3) recommends the Somali Petroleum Corporation to be retained as a commercial entity, with no regulatory functions. Since the future regulatory set-up is currently unknown, this draft does not cater for such situation, but it rather follows the current regulatory regime (which in some circumstances is not entirely clear on the division of functions). Should there occur changes in the Somali regulation (following the recommendations from the World Bank), this document would need to be adjusted to reflect it.

"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 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;

"Commercial Assessment Period" means the period commencing, at the request of the Contractor, at the time when 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 5.4, and which can be produced commercially according to the Best Petroleum Industry 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 Commercial Field, saved and not used in Petroleum Operations;

"Commercial Field" means the geological structure or feature which hosts one or more reservoirs from which Petroleum Production may be commercially undertaken through a defined set of facilities;

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

"Constitution" means the Constitution of the Federal Republic of Somalia;

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

"Contract Year" means 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;

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

"Cost Petroleum" has the meaning set out in sub-clause 9.1.1;

"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;

"Crude Oil Field" means:

- (a) a single reservoir; or
- (b) multiple reservoirs grouped on, or related to, the same geographical structure or stratigraphic conditions,

from which Crude Oil and Associated Gas may be produced;

"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 the fund established [in accordance with the principles set out in the Decommissioning Security Agreement] to cover the Decommissioning Costs;

"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;

"Decommissioning Security Agreement" means an agreement between the Ministry and the Contractor referred to in sub-clause 3.1.1.5);

"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 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 Petroleum Industry Practices 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 3.3.1;

"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 7 hereof;

"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 an occurrence of Petroleum recovered at the surface which was not previously known to have existed and which is measurable by conventional petroleum industry practices;

"Drilling Permit" means a permit issued by the Authority, which allows the Contractor to conduct drilling operations of an individual Well that includes construction of a Well, a Well site and access road to the Well site, and the ability of the Contractor to move and use facilities, equipment, supplies, and materials to the Well site during drilling, monitoring, Appraisal and evaluation activities of Petroleum Operations;

"Economic Limit" means that point in the life of the Commercial 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;

"Effective Date" means the date falling [90] days after the Execution Date;

"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, areal 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;
- (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 and Appraisal Costs" means all the costs and expenditures incurred by the Contractor when carrying out Exploration or Appraisal (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;

"Federal Government Default Termination Amount" has the meaning set out in schedule 4 hereof;

"Field" means a Gas Field or a Crude Oil Field from which Petroleum is produced;

"Fiscal Year" means a period of 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) a single reservoir; or
- (b) multiple reservoirs grouped on, or related to, the same geographical structure or stratigraphic conditions,

from which Non-Associated Gas may be produced;

["Indemnification Fund Agreement" means an agreement between the Ministry and the Contractor referred to in sub-clause 3.1.1.5];

"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:

- (c) ceasing to remain in full force and effect, or
- (d) 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
- (e) 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
- (f) 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;

"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 Commercial Field without excessive rate of decline in reservoir pressure, and consistent with the Best Petroleum Industry 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;

"Notification Date" has the meaning set out in sub-clause 44.6;

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

"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 official body (whether federal, regional or local) or other relevant governmental entity for the Contractor or for the performance of the Petroleum Operations;

"Participating Interest" has the meaning set out in sub-clause 16.1;

"Participation Agreement" has the meaning set out in sub-clause **Hata! Başvuru kaynağı bulunamadı.**;

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

"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 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;

"Plugging and Abandonment Permit" means a permit issued by the Authority, which allows the Contractor to conduct plugging and abandonment operations of an individual Well, which includes the proper methodology as approved by the Authority, and complete restoration of the individual Well site and Well site access road and removal of all equipment, supplies and materials used during the drilling and Production licensed Petroleum Operations;

"Production" includes, but is not limited to, operations and all activities related thereto carried out for Petroleum exploitation and production after the Minister of Petroleum'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);

"Production Permit" means a permit issued by the Authority, which allows the Contractor to conduct Production of an individual Well and includes and not limited to the system of Production facilities, such as tank batteries, Production units, Flow Lines, and other equipment, as deemed necessary, to conduct Production;

"Production Plan" means a plan for the Production of the Development Area, as determined in accordance with sub-clause 8.2;

"Profit Gas" means the remaining available Natural Gas, after the Contractor has taken the Cost Gas pursuant to sub-clause 9.3;

"Profit Oil" means the remaining available Crude Oil, after the Contractor has taken the Cost Oil pursuant to sub-clause 9.3;

"Profit Petroleum" has the meaning set out in schedule 8;

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

"Retention Area" has the meaning set out in sub-clause 6.4;

"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);

"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;

"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;

"Threshold Amount" has the meaning set out in sub-clause 44.3;

"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;

"Underground Injection Control Well Permit" means a permit issued by the Authority, which allows the Contractor to convert an individual existing Well to a Brine injection Well for the disposal of Brine and liquid waste and includes all facilities necessary to conduct safe injection operations;

"Uplift" has the meaning set out in sub-clause 9.1.3;

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

"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 reservoir, other than a seismic hole or a structure test hole or a stratigraphic test hole; and

"Work Programme" means a statement itemising the Petroleum Operations to be carried out pursuant to the Agreement during any relevant period of time.

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 Minister of Petroleum, 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, clause 5.2.5 and clause 34, 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 the bank guarantee in accordance with sub-clause 5.2.6; [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; [and]
 - 3.1.1.5 the Indemnification Fund Agreement and the Decommissioning Security Agreement having been entered into and in full force and effect].
- 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, clause 5.2.5 and clause 34 shall terminate and be of no further force and effect.

3.2 Exploration Period

- 3.2.1 The Contractor is authorised to conduct the Exploration within the Contract Area during an initial Exploration period of [three] Contract Years from the Effective Date.
- 3.2.2 The Contractor shall commence with the Exploration not later than [180] following the Effective Date.
- 3.2.3 Upon written application by the Contractor made not later than [30] days prior to the expiry of the initial Exploration period, the Minister of Petroleum shall, *provided that* the Contractor has fulfilled all of its minimum work and expenditure obligations under the Agreement, grant a first additional Exploration period of [two] Contract Years.
- 3.2.4 Upon written application by the Contractor made not later than [30] days prior to the expiry of the first additional Exploration period hereof, the Minister of Petroleum shall, *provided that* the Contractor has fulfilled all of its minimum work and expenditure obligations under the Agreement, grant a second additional Exploration period of [two] Contract Years.
- 3.2.5 In order to enable the Contractor to complete the works at the end of the second additional Exploration period, the Minister of Petroleum shall, on written application by the Contractor made not later than [90] days before the expiry of that 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 [365] days.

3.3 Development and Production Period

- 3.3.1 Unless extended in accordance with the provisions of clause 2, the Agreement shall expire automatically at the end of the initial Exploration period or at the end of any additional Exploration period, except as to any Development Area. However, if the Contractor reports that a Commercial Discovery has been made before the expiry of the initial Exploration period stipulated in sub-clause 3.2 hereof or any additional Exploration period thereof, the Agreement shall not expire in respect to the relevant Development Area, but shall continue as to such Development Area for a term of up to [25] Calendar Years from the date of the Development Plan for that Development Area is adopted pursuant to sub-clause 7.2.4 hereof ("**Development and Production Period**").
- 3.3.2 If the Contractor has fulfilled all of its obligations for the applicable term of the Agreement, the Contractor may request an extension in relation to the Development Area for a further period of up to [10] Calendar Years. The Minister of Petroleum shall act upon such request in accordance with the Act and Regulations.

4. JOINT OPERATING AGREEMENT AND OPERATOR

4.1 Where the Contractor consists of more than one Person:

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

4.1.2 the Persons shall enter into a Joint Operating Agreement binding the Persons constituting the Contractor,

4.1.3 the Contractor shall:

4.1.3.1 provide a copy of the Joint Operating Agreement (including any amendment thereof) to the Minister of Petroleum for approval within [20] days of submission. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [20] days following submission to the Minister of Petroleum without the Minister of Petroleum either approving or refusing grant of approval, the Joint Operating Agreement (including any amendment thereof) shall be deemed approved by the Minister of Petroleum. The Minister of Petroleum may require alterations to be made to the Joint Operating Agreement. 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. 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; and

4.1.3.2 nominate, and the Authority shall approve within [20] days of submission, the Operator (including any change of the Operator). If the Authority has good cause for refusal (such to be notified to the Contractor), the Authority may refuse grant of approval within the same period of time. In case of expiry of the period of [20] days following submission to the Authority without the Authority either approving or refusing grant of approval, the Operator (including any change of the Operator) shall be deemed approved by the Authority.

4.1.4 The Operator shall:

4.1.4.1 supervise the Petroleum Operations on behalf of the Contractor;

- 4.1.4.2 represent the Contractor in all matters related to the Agreement; and
- 4.1.4.3 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.
- 4.1.5 The obligations, liabilities, acts and omissions of the Operator are considered the obligations, liabilities, acts and omissions of the Contractor.
- 4.1.6 If the Minister of Petroleum determines that the Operator is no longer competent to be the Operator, the Minister of Petroleum may, by written notice to the Operator and the entities constituting the Contractor, request that a new Operator shall be proposed. The Contractor must then within [30] days propose to the Minister of Petroleum a new Operator. If the Contractor does not put forward a proposal for a new Operator or a proposed Operator is not approved, the Minister of Petroleum may, by written notice to the Operator and the entities constituting the Contractor, revoke the authorisation and terminate the Agreement due to the Contractor's default.

5. EXPLORATION

5.1 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 Authority to the Contractor of a reconnaissance authorisation.

5.2 Minimum Work and Expenditure Obligations

- 5.2.1 The Contractor shall carry out the minimum work and expenditure obligations listed in schedule 7.
- 5.2.2 The fulfilment of the minimum work obligations applicable to the relevant Exploration period shall not relieve the Contractor of the corresponding expenditure obligation therein.
- 5.2.3 If, in the relevant Exploration period, the Contractor carries out more work and expenditure than is required under this clause, the excess shall be credited to the minimum work and expenditure requirement applicable to the following period and, to the extent in excess of such requirement, shall be further carried forward.
- 5.2.4 The minimum Exploration expenditure is expressed in US dollars of the Calendar Year of the Effective Date. In any Contract Year of either the initial Exploration period or of any additional Exploration period, for the purpose of comparison of the actual costs incurred and paid by the Contractor with the minimum Exploration expenditure, the actual costs incurred and paid by the Contractor for seismic operations and the drilling of Exploratory Wells during that Contract Year shall be converted into constant US dollars by dividing the costs, by the Discount Rate.
- 5.2.5 The Contractor shall submit a revised programme and a Budget in the event that the Contractor may incur additional expenditure in relation to the initial minimum expenditure obligation.

- 5.2.6 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, no later than [30] days of the Effective Date of the first day of such extension period, in substantially the form of schedule 5, submit to the Federal Government an unconditional and irrevocable bank guarantee in respect of its minimum work and expenditure requirements during the relevant Exploration period (including any additional Exploration period) , as the same may be reduced in accordance with sub-clause 5.2.6 hereof. Without prejudice to the preceding sentence, the minimum amount of the bank guarantee shall be, in each relevant Exploration period (including any additional Exploration period), the minimum expenditure amount applicable to such Exploration period. The costs of provision of a bank guarantee may not be included in Petroleum Costs and are not subject to cost recovery under sub-clause 9.1.
- 5.2.7 If at the end of the initial Exploration period, or of any additional Exploration period, or upon the date of termination of the Agreement, whichever occurs first, the Contractor has not fulfilled its minimum work obligations and/or its minimum expenditure obligations:
- 5.2.7.1 the Federal Government shall have the right to call on the said bank guarantee for the payment thereunder to the Federal Government of the full amount of the shortfall; and
- 5.2.7.2 if and to the extent that the amount of the said bank guarantee does not cover the entire shortfall, the Contractor shall promptly, but not later than [30] days of written demand, pay to the Federal Government (or as directed by the Federal Government) the minimum monetary obligation in respect of the work not carried out multiplied by the Discount Rate calculated on the last month of that Exploration period, and/or the shortfall (if any) between the amount expended and the minimum monetary obligation for that Exploration period, multiplied by the Discount Rate.
- 5.2.8 The amount of any bank guarantee given pursuant to this clause 5 shall be reduced by the Contractor in discharge of its obligations under this clause 5 as follows:
- 5.2.8.1 during the initial Exploration period - US dollars ◆ at completion of the activities set out in sub-clause 1.1 of schedule 7 and the fulfilment by the Contractor of the minimum expenditure requirement set out in sub-clause 2.1 of schedule 7;
- 5.2.8.2 during the first additional Exploration period - US dollars ◆ at completion of activities set out in sub-clause 1.2 of schedule 7 and the fulfilment by the Contractor of the minimum expenditure requirement set out in sub-clause 2.2 of schedule 7;
- 5.2.8.3 during the second additional Exploration period - US dollars ◆ at completion of activities set out in sub-clause 1.3 of schedule 7 and the fulfilment by the Contractor of the minimum expenditure requirement set out in sub-clause 2.3 of schedule 7.

5.3 Exploration Work Programme and Detailed Budget

- 5.3.1 The Contractor shall:
- 5.3.1.1 not later than [◆] days after the Effective Date, submit, and make a presentation to the Minister of Petroleum about, a detailed written report containing the Exploration Work Programme and detailed Budget for the first Contract Year; and
 - 5.3.1.2 not later than [90] days before the end of each Contract Year, submit, and make a presentation to the Minister of Petroleum about, a detailed written report containing the Exploration Work Programme and detailed Budget for the next Contract Year.
- 5.3.2 The Minister of Petroleum may, within [◆] days of the receipt of the draft annual Exploration Work Programme and detailed Budget, submit to the Contractor suggested modifications and revisions thereto. The Contractor shall consider the inclusion of such suggested modifications and revisions against the Best Petroleum Industry Practice and shall provide the Minister of Petroleum with the Exploration Work Programme and detailed Budget which the Contractor has finalised following receipt of such suggested modifications and revisions.
- 5.3.3 After finalisation of the annual Exploration Work Programme and detailed Budget, the Contractor may make changes thereto, *provided that* they do not materially affect the original objectives of the Exploration Work Programme and detailed Budget.
- 5.3.4 The finalised annual Exploration Work Programme and detailed Budget is subject to written approval by the Minister of Petroleum, which approval shall be granted within [30] days of the submission thereof to the Minister of Petroleum (unless otherwise agreed in writing). If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission to the Minister of Petroleum without the Minister of Petroleum either approving or refusing grant of approval, the finalised annual Exploration Work Programme and detailed Budget shall be deemed approved by the Minister of Petroleum.

5.4 **Discovery and Appraisal**

- 5.4.1 The Contractor shall notify the Minister of Petroleum of a Discovery of Petroleum and shall forthwith, but not later than [30] days after completion and testing of such Exploratory Well, submit an initial Discovery report with all relevant information to the Minister of Petroleum.
- 5.4.2 If the Contractor considers that the Discovery merits Appraisal, it shall submit and orally present to the Minister of Petroleum, within [90] days following the date of submission of the Discovery report, a detailed statement of the Appraisal Work Programme and Budget, which shall provide for the expeditious Appraisal of the Discovery and the provisions of sub-clauses 5.3.3 and 5.3.4 shall apply to the Appraisal Work Programme and Budget.
- 5.4.3 The Minister of Petroleum shall review the submitted Appraisal Work Programme and Budget and within [90] days of submission, may request for amendment of the Appraisal Work Programme and Budget. Failing notice by the Minister of Petroleum to the Contractor requesting amendment to the Appraisal

Work Programme and Budget within [90] days of its submission to the Minister of Petroleum, the relevant Appraisal Work Programme and Budget shall be deemed approved by the Minister of Petroleum immediately upon the expiry of the said period.

- 5.4.4 After the Appraisal Work Programme and Budget have been adopted by the Minister of Petroleum, the Contractor shall within [60] days evaluate the Discovery. Where Appraisal requires more time, the Minister of Petroleum may, upon request by the Contractor, extend the available time for a period reasonably required to expeditiously complete Appraisal.
- 5.4.5 If, at the end of the Exploration period, a Discovery has been made, but there has been insufficient time for the Contractor (acting, and having acted, in accordance with the Agreement) to Appraise such Discovery, the Minister of Petroleum 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 [six] months.
- 5.4.6 The Contractor shall, not more than [90] days after the Appraisal is completed, report to the Minister of Petroleum 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 commercial or whether further Appraisal is required.
- 5.4.7 If the Appraisal report relating to a Discovery states that the Contractor is of the opinion that the Discovery is non-commercial, the Contractor and the Minister of Petroleum shall meet to discuss in good faith ways in which it might be possible to proceed with the development of such Discovery on a commercial basis, including, without limitation, by way of amending the Agreement (but, for avoidance of doubt, the Minister of Petroleum shall be under no obligation whatsoever to agree to any such amendments proposed by the Contractor or *vice versa*).
- 5.4.8 If the Contractor reports that the Discovery is a Commercial Discovery, the Development Plan shall be submitted to the Minister of Petroleum for approval, which approval shall be granted within [60] days of the completion of the Appraisal Work Programme (unless otherwise agreed in writing), and, upon written request by the Contractor, the term of the Agreement shall be extended, if necessary, in respect of the area of that Commercial Discovery. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [60] days following submission to the Minister of Petroleum without the Minister of Petroleum either approving or refusing grant of approval, the Development Plan shall be deemed approved by the Minister of Petroleum.

5.5 Marginal and Non-commercial Discoveries

- 5.5.1 Where the Contractor determines that a Discovery is marginal or non-commercial, the Contractor may propose a modification to the Agreement, based

on an alternative economic evaluation and after consideration, the Minister of Petroleum may accept or reject the proposed modification of the Agreement.

- 5.5.2 Unless otherwise agreed in writing, if the Contractor fails to commence the evaluation of a Commercial Discovery within 24 months following the notice of a Commercial Discovery, or if within 24 months following the completion of an evaluation of the Work Programme the Contractor considers the Commercial Discovery does not merit development, the Minister of Petroleum 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). Any such relinquishment by the Contractor shall be credited in accordance with sub-clause 6.1.2.

6. RELINQUISHMENT

6.1 Periodic Relinquishments

- 6.1.1 The Contractor shall relinquish:
- 6.1.1.1 at least [25]% of the net area determined by subtracting the Development Areas from the original Contract Area at or before the end of the initial Exploration period;
 - 6.1.1.2 an additional of at least [25]% of the net area determined by subtracting the Development Areas from the remaining part of the original Contract Area at or before the end of the first additional Exploration period; and
 - 6.1.1.3 at or before the end of the second additional Exploration period, all of the remaining Contract Area that is not a Development Area.
- 6.1.2 The Contractor may at any time, with at least three months' prior written notice to the Authority, 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 6.1.
- 6.1.3 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 Minister of Petroleum (such approval not being unreasonably withheld, delayed or conditioned).
- 6.1.4 The Contractor shall give [one] Calendar Year's written notice of relinquishment in respect of the Commercial Field and [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.
- 6.1.5 No relinquishment made in accordance with this clause shall relieve the Contractor of:

- 6.1.5.1 its obligations to comply with the minimum Exploration work and expenditure set out in clause 5; or
- 6.1.5.2 any other obligations or liabilities that have accrued prior to the date of relinquishment.
- 6.1.6 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.
- 6.1.7 It shall be a requirement for the portion relinquished under this sub-clause 6.1 to have geological and geophysical data which the Contractor shall be under obligation to submit at the time of relinquishment.

6.2 Final Relinquishment

- 6.2.1 Subject to sub-clause 5.4.5, the Contractor shall, at the expiry of the Exploration period, relinquish all of the Contract Area other than such part thereof as is the Development Area.
- 6.2.2 Except with the consent of the Authority, the Development Area shall be deemed to be relinquished on the earlier of:
 - 6.2.2.1 Production from the Development Area ceasing permanently or for a continuous period of 12 months (or, if because of Force Majeure, 24 months or such longer period as determined by the Federal Government, in consultation with the Contractor); and
 - 6.2.2.2 the expiry of the Development and Production Period.

6.3 General

- 6.3.1 This Agreement shall terminate in respect of a part of the Contract Area which is relinquished.
- 6.3.2 Relinquishment of all or part of the Contract Area is without prejudice to the obligations of the Contractor to Decommission.

6.4 Retention Area

- 6.4.1 If the Appraisal of a Discovery 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] Calendar Years, the Minister of Petroleum may, at the request of the Contractor, declare a Retention Area in respect of it for that period.
- 6.4.2 This clause 6 (other than sub-clause 6.2.2) applies to and in respect of a Retention Area as it does to and in respect of a Development Area for as long as, during that period, the Contractor diligently seeks to make it commercially viable and demonstrates to the Minister of Petroleum that it is doing so.
- 6.4.3 The Retention Area consists 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 Minister of Petroleum may exclude deeper formations in which no

Discovery has been made. The Minister of Petroleum, 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.

- 6.4.4 The Retention Area shall be deemed to have been relinquished at the earlier of:
- 6.4.4.1 expiry of the period mentioned in sub-clause 6.4.1;
 - 6.4.4.2 the Contractor ceasing to meet its obligations under sub-clause 6.4.2; and
 - 6.4.4.3 the Contractor declaring a Commercial Discovery in respect of it and the Minister of Petroleum declaring a Development Area as a consequence thereof.

7. DEVELOPMENT

7.1 Wells and Surveys

- 7.1.1 Unless such notice is waived, the Contractor shall not drill a Well or borehole or recommence drilling after a [180] days' cessation without [30] days' prior notification to the Minister of Petroleum and the Authority, which notice shall set forth the Contractor's reasons for undertaking such drilling and shall contain a copy of the drilling programme.
- 7.1.2 The design and construction of a Well or borehole and the conduct of drilling shall be subject to and in accordance with the Drilling Permit and the Best Petroleum Industry Practice.
- 7.1.3 Production of a Well shall be in accordance with the Production Permit and the Contractor shall produce the Well using the Best Petroleum Industry Practice and the Conservation of Petroleum Resources principles.
- 7.1.4 Conversion and operation of a Well to an Underground Injection Control Well shall be in accordance with the Underground Injection Control Well Permit and the Contractor shall only inject Brine and liquid waste into the Well, as permitted, in accordance with the Best Petroleum Industry Practice.
- 7.1.5 Plugging and abandonment of a Well shall be in accordance with the Plugging and Abandonment Permit, in accordance with the Best Petroleum Industry Practice.
- 7.1.6 The Contractor shall not:
 - 7.1.6.1 plug and abandon a Well or remove any permanent form of casing therefrom, without giving [48] hours prior notification to the Authority, 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

- 7.1.6.2 commence drilling, re-enter or plug a Well unless a representative of the Federal Government (either directly or through the Authority) has been given a reasonable opportunity to be present.
- 7.1.7 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.
- 7.1.8 The Contractor shall, within [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 Authority may require the Contractor to plug and abandon the Well, at the Contractor's expense, by notifying the Contractor within [30] days after such termination or expiry is effected or at least [90] days prior to relinquishment of a Development Area.
- 7.1.9 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 Minister of Petroleum (in consultation with the Authority) 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:
- 7.1.9.1 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;
- 7.1.9.2 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);
- 7.1.9.3 if the Petroleum Operations undertaken under this sub-clause 7.1.9 result in a Commercial Discovery which the Contractor elects to evaluate and/or develop as a Commercial Field, the Contractor shall reimburse, within [30] days of the notification made by the Contractor, the Federal Government [600]% 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.
- 7.1.10 The Contractor shall give the Minister of Petroleum and Authority [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 Minister of Petroleum may (but is not obliged to) waive this notice period.

7.2 Development Plan

- 7.2.1 The Development Plan shall be submitted by the Contractor to the Authority for review and to Minister of Petroleum for approval. The Development Plan shall be based on sound engineering and economic principles and the Best Petroleum Industry Practice and shall consider the Maximum Efficient Rate of Production appropriate to the Commercial Discovery.
- 7.2.2 The Development Plan submitted by the Contractor to the Minister of Petroleum 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.
- 7.2.3 Without prejudice to the generality of sub-clause 7.2.1, the Development Plan shall include:
- 7.2.3.1 a description of the proposed Commercial Discovery in the Development Area that is identified for the Development Plan;
- 7.2.3.2 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;
- 7.2.3.3 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;
- 7.2.3.4 the Decommissioning Plan, in such detail as the Authority may require, including, in accordance with clause 12, 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;
- 7.2.3.5 a detailed social and environmental impact assessment (prepared in accordance with the then applicable international standards,

requirements and guidelines and the Best Petroleum Industry 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 Commercial Field;

7.2.3.6 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);

7.2.3.7 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 Petroleum Industry Practice;

7.2.3.8 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) 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;

7.2.3.9 the Contractor's complete finance program for the annual Development and Production Work Programme and Budget;

7.2.3.10 details and copies of all contracts, agreements and other arrangements for the sale of Petroleum at the Delivery Point;

7.2.3.11 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

7.2.3.12 such other data and information as Law or as the Minister of Petroleum reasonably requires in relation to the Development Plan.

7.2.4 The Authority and the Contractor shall jointly consider the Development Plan within [90] days of submission thereof. The Authority may, within that period of [90] days (unless otherwise agreed in writing) submit to the Contractor its suggested modifications and revisions to the proposed Development Plan and/or the requested Development Area, in which case the period for adoption of the Development Plan shall be extended for another [90] days. The Contractor shall consider the inclusion of the suggested modifications and revisions against the Best Petroleum Industry Practice. The Development Plan shall be adopted by

mutual agreement of the Parties (such agreement not to be unreasonably withheld, delayed or conditioned). The adoption 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. From time to time, and in the like manner, the Contractor may submit, for the approval by the Authority, amendments to or updates of the Development Plan. In determining whether to approve the proposed Development Plan (or any amendment or update thereof), the Authority shall give due consideration to the Contractor's proposal to secure the implementation of the Decommissioning Plan in respect to the Development Area. The Authority shall specify in writing its reasons for not approving the Development Plan (or any amendment or update thereof).

7.2.5 After the Development Plan has been adopted, the Contractor shall proceed without undue delay to implement the Development and Production of Petroleum in accordance with the Development Plan.

7.3 Development and Production Work Programme and Budget

7.3.1 The annual Development and Production Work Programme and Budget shall commence within [180] days from the date of adoption of the Development Plan. The Contractor shall submit and make a detailed presentation to the Minister of Petroleum and the Authority, prior to 1st October of each Calendar Year following the adoption of the Development Plan, a detailed report of the annual Development and Production Work Programme and Budget for the next Calendar Year and the provisions of sub-clauses 5.4.2 and 5.4.3 shall apply *mutatis mutandis* to the annual Development and Production Work Programme and Budget. Each detailed report of the annual Development and Production Work Programme and Budget shall, 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.

7.3.2 Where the Development extends into the area to which the Commercial Discovery relates, *provided that* the extension lies wholly within the Contract Area at that date, subject to the advice by the Authority, the Minister of Petroleum shall adjust the relevant Development Area to include that extension, as determined by the analysis of all the relevant available data and information.

7.3.3 The Contractor shall, not later than [30] days after the approval of the first Development Plan, provide, in substantially form of schedule 6, an unconditional and irrevocable parent company guarantee from a Person acceptable to the Minister of Petroleum in respect of all its obligations under the Agreement and, if entered into, the Participation Agreement, beyond the scope of minimum work and expenditure obligations (which shall, for the avoidance of doubt, include all obligations of the Operator). The failure of the Contractor to comply with its obligations under this Agreement (and/or, if entered into, the Participation Agreement) shall entitle the Federal Government to exercise its rights under such parent company guarantee.

8. PRODUCTION

8.1 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. The Production shall commence not later than the date set out in the Development Plan.

8.2 Production Levels and Annual Production Plan

- 8.2.1 The Contractor shall produce Petroleum at the Maximum Efficient Rate and follow the Conservation of Petroleum Resources principles, all in accordance with the Best Petroleum Industry Practice.
- 8.2.2 Prior to 1st October of each Calendar Year following the commencement of the Commercial Production, the Contractor shall submit and orally present to the Minister of Petroleum and the Authority, a detailed statement of the annual Production Plan and Budget for the next Calendar Year, and the provisions of sub-clauses 5.4.2 and 5.4.3 shall apply *mutatis mutandis* to such annual Production Plan and Budget.
- 8.2.3 The Contractor shall endeavour to produce in each Calendar Year the forecast quantity estimated in the annual Production Plan and Budget.
- 8.2.4 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 40.

9. COST RECOVERY AND PRODUCTION SHARING

9.1 Cost Recovery

- 9.1.1 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, supplemented by the Uplift referred to in sub-clause 9.1.3, by taking and separately disposing of an amount equal in value to a maximum of [70]% of each category of all Petroleum produced from the Contract Area during that Fiscal Year and not used in Petroleum Operations. Such cost recovery Petroleum, including the recovered Uplift, is the "**Cost Petroleum**" consisting of two categories, the Cost Oil and the Cost Gas.
- 9.1.2 The Petroleum Cost may be recovered in the following manner:
- 9.1.2.1 The Petroleum Cost, with the exception of the Development Costs, incurred in respect of the Contract Area, 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; and
- 9.1.2.2 The Development Costs incurred in respect of each Development Area shall be recoverable in five Fiscal Years at an annual rate of 20%, by straight-line amortisation at that rate starting either in the Fiscal Year in which such Development Costs are incurred or the Fiscal Year in which Commercial Production from that Development Area commences, whichever is the later.
- 9.1.2.3 For the purpose of this clause only, the "**Development Costs**" has the meaning set out in the Accounting Procedure (schedule 2).

- 9.1.2.4 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.
- 9.1.2.5 To the extent that, in a Fiscal Year, the Petroleum Costs and the Uplift that are recoverable, according to sub-clauses 9.1.2.1, 9.1.2.2 and 9.1.3, exceed the value of all Cost Oil or Cost Gas for such Fiscal Year under sub-clause 9.1, 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.
- 9.1.2.6 To the extent that, in a Fiscal Year, the Petroleum Costs and the Uplift that are recoverable, according to sub-clauses 9.1.2.1, 9.1.2.2 and 9.1.3, 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 8).
- 9.1.2.7 For the purpose of valuation of the Cost Oil and the Cost Gas, the relevant provisions of clause 10 shall apply.
- 9.1.2.8 The cost recovery of Petroleum and the Uplift shall be in the following priority order:
- (a) the Production Costs;
 - (b) the Exploration Costs;
 - (c) the Development Costs;
 - (d) the Uplift; and
 - (e) the Decommissioning Costs.
- 9.1.2.9 The Contractor shall keep detailed accounts of the Cost Petroleum classified into the Exploration Costs, the Development Costs, the Production Costs and the Decommissioning Costs, in accordance with the Accounting Procedure.
- 9.1.2.10 The Petroleum Costs are not recoverable against other Contract Areas held by the Contractor in Somalia.
- 9.1.2.11 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.
- 9.1.3 An amount equal to [15]% of the Development Costs related to a Development Area incurred and paid during a given Fiscal Year shall be referred to as "**Uplift**" for that Development Area and the Fiscal Year. Such Uplift regarding the Development Costs of one Fiscal Year shall be recoverable under sub-clauses 9.1 and 9.1.2 in five equal instalments starting in the Fiscal Year in which the related Development Costs are incurred or the Fiscal Year in which Commercial Production for that Development Area commences, whichever is the later. The

Uplift shall be applicable only to the Development Costs incurred in the first five Fiscal Years of an approved Development Plan, starting the Fiscal Year of its date of approval.

9.2 Profit Petroleum Sharing and R-Factor

The Parties shall share Profit Petroleum in accordance with the provisions set out in schedule 8.

9.3 Production Sharing

9.3.1 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 9.1) and for the Profit Petroleum (in accordance with sub-clause 9.1).

9.3.2 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.

9.3.3 Within [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 and the Uplift, shall be prepared and any necessary adjustments shall be promptly made.

9.4 Lifting

9.4.1 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, which will be considered as Crude Oil for purposes of sharing thereof between the Parties.

9.4.2 The Contractor and the Minister of Petroleum shall, from time to time, make such arrangements between them as are reasonable necessary, in accordance with the Best Petroleum Industry Practices, for the separate lifting of the Parties' respective shares of Petroleum.

9.4.3 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.

9.4.4 If so directed by the Minister of Petroleum 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.

- 9.4.5 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.
- 9.4.6 When the Minister of Petroleum elects not to take and receive in kind any part of a category of the Federal Government's share of the Profit Oil, the Minister of Petroleum shall notify the Contractor three months before the commencement of each Semester of a Calendar Year, specifying the quantity of Production. 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 Minister of Petroleum'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".
- 9.4.7 The price paid by the Contractor for the Federal Government's share of the Profit Oil shall be the price established according to clause 10. The Contractor shall pay the Federal Government on a monthly basis, such payments to be made within [30] days after the end of the month in which the Production occurred.
- 9.4.8 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.
- 9.4.9 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 the Crude Oil Delivery Point and the 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).

10. VALUATION

- 10.1 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:
- 10.1.1 where there have been sales of Crude Oil produced from the Contract Area to third parties at Arm's Length during that Calendar Quarter, 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
- 10.1.2 where there have been no sales of Crude Oil produced from the Contract Area to third parties at Arm's Length during that Calendar Quarter, the value shall be the "fair market value" 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 [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.

- 10.2 If the Minister of Petroleum and the Contractor cannot reach an agreement on the value of Crude Oil, or in case of inactivity of the Minister of Petroleum preventing the Parties from reaching an agreement on the value of Crude Oil, within [30] days of the end of any Calendar Quarter, such determination shall be made by the sole expert in accordance with clause 47.
- 10.3 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 10.1 and 10.2. Any adjustment to provisional calculation and payment, if necessary, shall be made within [30] days after such applicable value is finally determined.
- 10.4 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 Minister of Petroleum shall have the right to review and approve Natural Gas sales contracts.
- 10.5 The Contractor shall deliver to the Minister of Petroleum and the Authority 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:
- 10.5.1 quantities of Crude Oil sold by the Contractor during the preceding month constituting Arm's Length sales, together with the corresponding sale prices;
 - 10.5.2 quantities of Crude Oil sold by the Contractor during the preceding month to the Contractor's Affiliates, together with the corresponding sale prices;
 - 10.5.3 inventory in storage belonging to the Contractor at the beginning and at the end of the relevant month; and
 - 10.5.4 quantities of Natural Gas sold by the Contractor and the Federal Government, together with sale prices realised.

11. MEASUREMENT OF PETROLEUM

- 11.1 The Contractor shall, prior to installation, submit to the Authority for approval the processes, procedures, systems and technologies for determining the volume and quality of Petroleum produced.
- 11.2 The instruments used for measuring Petroleum produced shall be calibrated in accordance with Law and the Best Petroleum Industry Practice.

- 11.3 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 Petroleum Industry Practice and approved by the Authority.
- 11.4 The Federal Government (either directly or through the Authority) 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.
- 11.5 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.
- 11.6 The Minister of Petroleum and the Contractor shall determine, when approving the Development Plan related to a Commercial Field, the measurement point at which Production shall be measured and the respective shares of Petroleum allocated.

12. PLUGGING AND ABANDONMENT AND DECOMMISSIONING

12.1 Decommissioning Costs

- 12.1.1 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.
- 12.1.2 The Contractor shall exercise its reasonable judgment in good faith to book sufficient accruals for future plugging and abandonment and Decommissioning to cover the expenses which are expected to be incurred under the Decommissioning Plan. 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 Authority for approval, which approval shall be granted within [30] days of submission. If the Authority has good cause for refusal (such to be notified to the Contractor), the Authority may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission to the Authority without the Authority 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 Authority.
- 12.1.3 The Contractor shall commence booking accruals for plugging and abandonment and Decommissioning Costs at the earlier of:
- 12.1.3.1 the first Calendar Quarter in which the ratio of cumulative production to overall recoverable reserves reaches [50]%; and
- 12.1.3.2 the 10th anniversary prior to the expiry of the Production Permit.
- 12.1.4 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.

- 12.1.5 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 12.5.

12.2 **Plugging and Abandonment and Decommissioning**

- 12.2.1 Plugging and abandonment and Decommissioning activities shall commence on the earlier of:
- 12.2.1.1 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
 - 12.2.1.2 the date when the Commercial Field reached its Economic Limit.
- 12.2.2 On or before the start of the [720] day period prior to the expected start date of plugging and abandonment and Decommissioning, the Federal Government (either directly or through the Authority) 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 17 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.
- 12.2.3 If the Minister of Petroleum (in consultation with the Authority) elects not to use the facilities and assets identified in the Development Plan in sub-clause 12.2.2, the Federal Government (either directly or through the Authority) 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 Petroleum Industry Practice, the Agreement and the time schedule and conditions defined in the approved Decommissioning Plan.

12.3 Plugging and Abandonment and Decommissioning upon Termination of Development Area

12.3.1 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 6.1.4 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 [60] days of the Authority'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.

12.3.2 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 [180] days, if this would result in operational efficiencies that minimise the cost for both Parties.

12.4 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:

12.4.1 shall conduct such continued use and/or plug and abandon or decommission in accordance with the Best Petroleum Industry Practice and in such a manner that does not interfere with the continuing Petroleum Operations; and

12.4.2 may plug and abandon and decommission such facilities, assets and Wells as and when the Federal Government decides.

12.5 Disbursements of funds for plugging and abandonment and Decommissioning Costs

12.5.1 The Contractor shall advise the Minister of Petroleum on an annual basis its best estimate of the projected date of plugging and abandonment of individual Wells and Decommissioning of the Commercial 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).

12.5.2 Once the Contractor commences booking accruals, the Contractor and the Minister of Petroleum 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 Interest 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 Minister of Petroleum, following completion of all plugging and abandonment and Decommissioning operations and adjustments made in accordance with sub-clause 12.6.

12.6 Adjustments to accruals for plugging and abandonment and Decommissioning Costs

12.6.1 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 the Profit Petroleum in the Calendar Quarter in which plugging and abandonment and Decommissioning is completed.

12.6.2 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 decides should not be removed shall be paid by the Contractor to the Federal Government (where the Federal Government has Participating Interest) 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.

12.6.3 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 12.6.1.

13. RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

13.1 Rights of the Contractor

13.1.1 The Contractor has the right to carry out (through the Operator and/or Operator's agents, contractors and subcontractors) the Petroleum Operations within the Contract Area for the term of the Agreement, subject to the Agreement and Law.

13.1.2 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 subcontractors does not relieve the Operator (or the Contractor) of any obligation or liability under the Agreement.

13.1.3 The Contractor has been granted the right, subject to Law, to freely access and operate within the Contract Area and any facilities associated with Petroleum Operations wherever they may be located; 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.

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 easements and rights of way may be granted to other Persons for the benefit of land adjacent to the Contract Area.

13.1.4 The Minister of Petroleum shall recommend to the relevant Somali official body (whether federal, regional or local) to grant the necessary Permit to the Contractor to access-

13.1.4.1 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 settlement or cattle watering place of the water supply to which they are accustomed;

13.1.4.2 security within the Contract Area; and

13.1.4.3 any other services the Contractor may reasonably require for the purpose of performance of the Petroleum Operations.

13.1.5 Subject to the provisions of the Agreement, the Contractor may freely select its suppliers, contractors and sub-contractors.

13.2 **General Standards of Conduct and Obligations of the Contractor**

13.2.1 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 Petroleum Industry Practice, the Act, Regulations and other Law.

13.2.2 Without limiting the foregoing, the Contractor shall:

13.2.2.1 maintain adequate financial, technical and professional capacity throughout the term of the Agreement;

13.2.2.2 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;

13.2.2.3 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;

13.2.2.4 supply all the technical expertise, including the use of the foreign personnel required for the performance of the Petroleum Operations;

13.2.2.5 within three months following the Effective Date, open an office in Somalia and keep it during the term of the Agreement;

- 13.2.2.6 provide working conditions, living accommodations 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 Petroleum Industry Practices;
- 13.2.2.7 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;
- 13.2.2.8 use the resources of the Contract Area as productively as possible and ensure that Petroleum discovered and produced are 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;
- 13.2.2.9 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;
- 13.2.2.10 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;
- 13.2.2.11 dispose of oil, Brine, salt water and other liquid and solid waste in accordance with the Best Petroleum Industry Practice, to avoid damage to the environment and pollution;
- 13.2.2.12 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 Minister of Petroleum 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
- 13.2.2.13 comply with Somali Local Content policies, laws and Regulations, as amended or issued from time to time (including, without limitation, Law and the Best Petroleum Industry Practice related to environmental protection, health, safety and quality).

14. RIGHTS OF THE FEDERAL GOVERNMENT

14.1 The Federal Government:

- 14.1.1 may acquire a part of the Contract Area for a public purpose (other than searching for or extracting Petroleum), but not to the extent that will prevent the carrying out of the Petroleum Operations within the Contract Area; and
 - 14.1.2 shall not, without good cause, acquire a part of the Contract Area on which the Petroleum Operations are in progress.
- 14.2 Subject to other provisions of this Agreement, the Contractor shall not carry out the Petroleum Operations on such part acquired by the Federal Government, but may:
- 14.2.1 enter upon that part, but not materially interfere with the public purpose; and
 - 14.2.2 carry out directional drilling from an adjacent part.
- 14.3 The Minister of Petroleum and the Authority (or a Person authorised by the Minister of Petroleum or the Authority 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.
- 14.4 Without limiting the right of the Federal Government to claim breach of the Agreement by the Contractor, the Minister of Petroleum 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 Minister of Petroleum 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 Minister of Petroleum directly in the execution of such obligation. The Minister of Petroleum may give written notice to perform an obligation at any time, but not later than [90] days after the termination or expiry of the Agreement or the relinquishment of a part of the Contract Area.

15. OBLIGATIONS OF THE FEDERAL GOVERNMENT

- 15.1 The Federal Government may, at the request of the Contractor, make available to the Contractor such land as the Contractor may reasonably require 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.
- 15.2 The Contractor shall pay or reimburse the Federal Government any reasonable compensation (calculated in accordance with the Law or, in the absence of its regulation in the Law, the international standards, regulations and guidelines and the Best Petroleum Industry Practice) that may be required for the setting apart, use or acquisition of any land for the Petroleum Operations.
- 15.3 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 Minister of Petroleum in writing of the need to set apart such land, as provided for in Law.
- 15.4 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.

- 15.5 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.
- 15.6 Subject to the national security requirements and the Somali immigration laws and regulations, 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).

16. FEDERAL GOVERNMENT PARTICIPATION

- 16.1 The Federal Government may elect to participate in the Petroleum Operations in any Development Area and acquire an interest of up to [30]% ("**Participating Interest**") of the total interest in that Development Area. The Federal Government may participate either directly or through [a national oil company of Somalia / the Authority].
- 16.2 The Federal Government shall exercise the right to participate by giving notice to the Contractor within [180] days from the date the Development Plan. 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. The Federal Government's participation shall be effective from the date the Development Plan is adopted.
- 16.3 If the Federal Government exercises its right to participate in a Development Area, the Federal Government and the Contractor shall, within [90] days after notice to the Contractor under sub-clause 16.2, enter into the participation agreement, in the form set out in schedule 3 hereof ("**Participation Agreement**").
- 16.4 The Federal Government shall, in exercise of its right to participate in a Development Area,:
- 16.4.1 have the right to a vote in proportion to its Participating Interest with respect to all decisions taken under the Participation Agreement;
 - 16.4.2 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. The Contractor shall not be obligated to market the Federal Government's share of Petroleum corresponding to the Federal Government's Participating Interest in that Development Area;
 - 16.4.3 assume its share of costs, expenses and obligations incurred in respect of that Development Area, from the Effective Date of assuming the Participating Interest, *pro-rata* to its Participating Interest;
 - 16.4.4 own the Participating Interest in all assets acquired for the Petroleum Operations in or related to the Development Area;
 - 16.4.5 reimburse the Contractor, without interest, *pro-rata* to the Federal Government's Participating Interest, its share of all costs, expenses and expenditure (such, for avoidance of doubt, not to include those incurred for and during Appraisal) incurred in respect of the Development Area from the date the Development Plan for that Development Area has been adopted to the date the Federal Government exercises its right to participate in that Development Area. This reimbursement

shall be made within [90] days after the Federal Government exercises its right to participate.

17. FACILITIES

- 17.1 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.
- 17.2 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.
- 17.3 Subject to prior written consent by the Minister of Petroleum (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.
- 17.4 Where the Minister of Petroleum 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.
- 17.5 Other Persons may 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.
- 17.6 The Minister of Petroleum may (after consultation with the Authority and 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.
- 17.7 Subject to clause 12,² 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 [365] days,:
- 17.7.1 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

² INTERNAL DRAFTING NOTE: The World Bank Provisional Report (Part 3, point 1.2) suggests different trigger of the transfer of facilities into the ownership of the Federal Government (i.e. date when the Contractor recovered the costs of acquisition of such facilities; the date of acquisition of facilities; date of entry of facilities into Somalia; date of commencement of Production; date of approval of the Development Plan in relation to facilities). To discuss advantages and disadvantages of early acquisition by the Federal Government of ownership over the facilities.

Area) in accordance with the Best Petroleum Industry Practice and the time schedule and conditions defined in the Decommissioning Plan; or

- 17.7.2 upon written notice by the Minister of Petroleum 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.
- 17.8 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 [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 12.

18. OFFSHORE OPERATIONS

- 18.1 The Contractor shall ensure that facilities erected offshore in Somalia's territorial waters shall be:
- 18.1.1 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 Petroleum Industry Practice;
 - 18.1.2 fitted with navigational aids approved by the Minister of Petroleum;
 - 18.1.3 illuminated between sunset and sunrise in a manner approved by the Somalia ports and maritime authorities; and
 - 18.1.4 kept in good repair and working order.
- 18.2 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.

19. ENVIRONMENTAL PROVISIONS

- 19.1 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 Petroleum Industry Practice.

- 19.2 Without limiting the generality of foregoing, in carrying out the Petroleum Operations, the Contractor shall:
- 19.2.1 in accordance with Best Petroleum Industry 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;
 - 19.2.2 observe Law of general application in force from time to time in Somalia for the protection of the environment;
 - 19.2.3 comply strictly with the obligations relating to the protection of the environment it has assumed under any approved Development Plan.
- 19.3 The Contractor shall take all necessary and adequate steps in accordance with the Best Petroleum Industry Practices to:
- 19.3.1 ensure, if the Contractor is otherwise legally responsible, proper compensation for injury to Persons or damages to property resulting from the Petroleum Operations;
 - 19.3.2 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
 - 19.3.3 rehabilitate, at its own cost, all areas that suffer environmental damage as a result of the Petroleum Operations.
- 19.4 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 Petroleum Industry 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 Petroleum Industry 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.
- 19.5 The Contractor shall conduct a strategic environmental and social impact assessment and, within [90] days after the Effective Date, submit the report thereof to [*insert name of the relevant Somali environmental authority*] for approval, which approval shall be granted within the period of [30] days of submission. If [*insert name of the relevant Somali environmental authority*] has good cause for refusal (such to be notified to the Contractor), [*insert name of the relevant Somali environmental authority*] may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission to [*insert name of the relevant Somali environmental authority*] without [*insert name of the relevant Somali environmental authority*] either approving or refusing grant of approval, the report shall be deemed approved by [*insert name of the relevant Somali environmental authority*]. 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.

- 19.6 In case of damage to environment, human beings, livestock, wildlife or marine life resulting from the performance of Petroleum Operations, the Contractor shall, in accordance with the Best Petroleum Industry Practice, promptly take all necessary actions and measures to control and clean-up and repair such damage. The cost of clean-up and repair activities and measures shall be borne entirely by the Contractor and shall not be (in whole or part) treated as and included into the Petroleum Costs.
- 19.7 The Contractor shall notify [*insert name of the relevant Somali environmental authority*] and the Authority within [48] 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 19.5) and the Best Petroleum Industry Practice.
- 19.8 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 Petroleum Operations, the Authority may, after giving the Contractor reasonable notice under the circumstances, take any corrective actions or measures that are necessary in accordance with the Best Petroleum Industry Practice. The direct, actual, reasonable and documented costs and expenses of such actions shall be borne entirely by the Contractor, shall not be (in whole or part) treated as and included into the Petroleum Costs and shall be promptly paid to the Federal Government.
- 19.9 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 is 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.
- 19.10 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.
- 19.11 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.
- 19.12 The Contractor shall not be liable for any pre-existing environmental conditions and any environmental damages caused by acts of third parties (other than the Contractor's Affiliates, contractors, sub-contractors or agents).

20. DOMESTIC SUPPLY OBLIGATIONS

- 20.1 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 20.

- 20.2 In each Calendar Year, the Minister of Petroleum shall notify the Contractor not less than [365] days prior to the beginning of that Calendar Year, of the domestic supply requirement.
- 20.3 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 9.3) and in the form of the Federal Government's participation share (under clause 16). For the purpose of this sub-clause, "domestic consumption" does not include Crude Oil and/or Natural Gas refined in Somalia for export.
- 20.4 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 10. Such sales to the Federal Government shall be invoiced monthly and shall be paid within [60] days of receipt of the invoice, unless other terms and conditions are agreed in writing.
- 20.5 With the prior written consent of the Minister of Petroleum, 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.
- 20.6 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 16.
- 20.7 If Natural Gas can be produced from the Contract Area, the obligation of the Contractor to supply Natural Gas to the domestic market shall be agreed upon by the Parties in writing, when approving the Development Plan related to such Production, after taking into consideration, to the extent possible, principles similar to those provided for in sub-clauses 20.1 and 20.2.
- 20.8 In case of war or imminent expectation of war or grave national emergency, the Minister of Petroleum 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,
- 20.8.1 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 [30] days after delivery in US dollars at a bank outside Somalia designated by the Contractor; and
- 20.8.2 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 the production.

21. DATA AND INFORMATION

- 21.1 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 Minister of

Petroleum related to the Contract Area and areas adjacent to the Contract Area, in consideration of the payment of required fees under the Agreement.

- 21.2 The Contractor shall promptly provide the Minister of Petroleum, 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.
- 21.3 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 21.
- 21.4 The Contractor acknowledges the proprietary rights of the Federal Government in all data and information referred to in this clause 21 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.
- 21.5 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 Minister of Petroleum (which shall not be unreasonably withheld, delayed or conditioned).
- 21.6 The Contractor may disclose information as and to the extent required by a regulatory or judicial authority having proper jurisdiction over the Contractor, *provided that* the Minister of Petroleum is first notified of such disclosure and of the information so disclosed.
- 21.7 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. REPORTS

- 22.1 The Contractor shall supply to the Minister of Petroleum and the Authority daily reports on drilling, completions and Production operations, and weekly reports on Exploration (including seismic and geophysical operations).
- 22.2 The Contractor shall report in writing to the Minister of Petroleum and the Authority the progress of the Petroleum Operations according to the following schedule:
- 22.2.1 within [30] days from the last day of March, June, September and December, covering the previous [90] days;
- 22.2.2 within [90] days of the last day of December, covering the previous Calendar Year; and

- 22.2.3 within [90] days of the date of expiry or termination of the Agreement.
- 22.3 A report under sub-clause 22.2 shall contain, in respect of the period which it covers:
- 22.3.1 details of the Petroleum Operations carried out and the factual information obtained;
 - 22.3.2 a description of the area in which the Contractor has operated;
 - 22.3.3 an account of the revenue, costs and expenditure on the Petroleum Operations in accordance with the Accounting Procedure;
 - 22.3.4 a plat map (including a record of coordinates, including all pits, boreholes, Wells and facilities) used for the Petroleum Operations;
 - 22.3.5 on expiry or termination of the Agreement, details of the Petroleum Operations, including all the matters described in sub-clauses 22.3.1 to 22.3.4; and
 - 22.3.6 all information required by clause 21 not hitherto supplied.
- 22.4 Subject to clause 42, the Contractor shall report in writing to the Minister of Petroleum and the Authority any change in the Contractor and its parent company.

23. BOOKS, ACCOUNTS AND AUDITS

- 23.1 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 Law and shall, not later than [90] days after the end of each Calendar Year, submit to the Minister of Petroleum and the Authority a statement of those accounts and a consolidated annual report of its parent company.
- 23.2 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 report thereon. The cost of such audit shall be borne by the Contractor and considered as recoverable cost under the Agreement.
- 23.3 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 seven Calendar Years of the end of the period to which they relate, and shall complete such audit within [180] days. The Contractor shall provide the Minister of Petroleum with any required explanations as soon as possible (and in any case not later [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.
- 23.4 In the absence of an audit performed within seven Calendar Years or in the absence of notice to the Contractor of a discrepancy in the books and accounts within eight 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.
- 23.5 Nothing in this clause shall be construed as limiting the right of the Federal Government or the Authority, pursuant to any power granted by Law, to audit or cause to be audited the books of the Contractor or the Operator.

24. REPORTING

- 24.1 Without prejudice to the reporting obligations existing under the Act and Regulations, in accordance with the Best Petroleum Industry Practice, the Contractor shall regularly inform the Minister of Petroleum of the performance of the Petroleum Operations and immediately of the accidents or dangerous occurrences which have occurred (if any).
- 24.2 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 Minister of Petroleum.
- 24.3 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 Authority. The Contractor shall prepare and submit to the Authority reports concerning the Local Content in accordance with the timeframe set out in the Regulations.

25. TITLE AND RISK TO PETROLEUM

- 25.1 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 9.4.6, 9.4.5, 9.4.6 and 9.4.7 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.
- 25.2 Notwithstanding sub-clause 25.1, Petroleum shall be at the risk of the Contractor until it is delivered at the Crude Oil Delivery Point, respectively the Natural Gas Delivery Point. 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.

26. EMPLOYMENT AND TRAINING

- 26.1 In accordance with the Act and Regulations, the Contractor shall employ Somali citizens residing in Somalia in the Petroleum Operations. 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.
- 26.2 The training courses and programmes in sub-clause 26.1 shall be established and conducted in consultation with and subject to approval by the Minister of Petroleum, which approval shall be granted within [15] days of the end of the consultation period. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [15] days following submission to Minister of Petroleum without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum.

- 26.3 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.
- 26.4 If so requested in writing by the Minister of Petroleum, the Contractor shall, not later than [90] days of the end of the preceding Calendar Year, submit to the Minister of Petroleum an annual report on the employment of Somali citizens residing in Somalia and the training courses and programmes held in the preceding Calendar Year.

27. TRAINING FUND

- 27.1 In addition to the obligation under sub-clause 26.1 and commencing on the Effective Date, the Contractor shall contribute to the Federal Government a minimum of US dollars [200,000] per Calendar Year for the Federal Government training fund established under the Act. The obligation of the Contractor under this sub-clause 27.1 is considered the minimum expenditure obligation.
- 27.2 The amounts payable by the Contractor under this clause 27 may be included in Petroleum Costs for the purpose of cost recovery under sub-clause 9.1, but the late payment thereof shall attract interest in accordance with sub-clause 33.2 hereof
- 27.3 The training fund shall be managed by the Minister of Petroleum in accordance with the Act and Regulations.

28. PREFERENCE FOR SOMALI GOODS AND SERVICES

- 28.1 If so required by the Act and Regulations and subject to sub-clause 27.1, the Contractor shall (and shall ensure that and its contractors and sub-contractors shall):

- 28.1.1 maximise the usage of Somali goods, services and businesses; and/or
- 28.1.2 give preference to Somali materials and supplies for use in the Petroleum Operations; and/or
- 28.1.3 give preference to Somali contractors for services connected with the Petroleum Operations,

if the Somali goods, services, businesses, materials and supplies are of the same quality when compared to other sources thereof.

- 28.2 The Contractor shall:

- 28.2.1 on or prior to the start of each Calendar Year to which it applies, submit to the Minister of Petroleum and the Authority 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;
- 28.2.2 for contracts with an estimated value exceeding the equivalent of US dollar ◆ 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 Petroleum Industry Practice;

28.2.3 as soon as practicable after their execution, provide to the Minister of Petroleum and the Authority a copy of each contract requiring a payment in US dollars or equivalent and a brief description of the efforts made to find a Somali supplier or contractor.

28.3 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.

29. TECHNOLOGY TRANSFER

29.1 The Contractor shall (and shall ensure that its sub-contractors shall) develop a technology transfer programme in accordance with the Act and Regulations 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 the Federal Government officials.

29.2 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.

29.3 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,:

29.3.1 fabrication;

29.3.2 information technology support (including seismic data acquisition, processing and interpretation support);

29.3.3 operations and maintenance support;

29.3.4 maritime services;

29.3.5 business support services, including insurance, accounting, human resource services, consulting, marketing, legal and contract negotiations;

29.3.6 financing; and

29.3.7 trading.

29.4 In addition to the requirements set forth in sub-clause 29.3, 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:

29.4.1 a technical or professional nature (including general management, design engineering, project management, seismic data processing, human resource development, legal, economics, auditing and accounting); and

29.4.2 business strategic skills (including leadership, business development, executive management, commercial, analytical, negotiating, strategy development and trading know how and acumen).

30. IMPORTS AND EXPORTS

- 30.1 The Contractor (including its contractors and sub-contractors engaged in carrying out of the Petroleum Operations) has the unrestricted right to:
- 30.1.1 import into Somalia; and
 - 30.1.2 subject to sub-clauses 17.7 and 17.8, 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) (to be) used solely in carrying out the Petroleum Operations under the Agreement.
- 30.2 The import and export of materials, equipment and supplies (including, but not limited to, machinery, vehicles, consumable items, movable property and any other articles) (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.
- 30.3 The Contractor shall (and shall ensure that and its sub-contractors shall) give preference to Somali goods and services in accordance with clause 28.
- 30.4 [In relation to materials, equipment and supplies imported or to be imported pursuant to sub-clause 30.1, when the Authority 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:
- 30.4.1 approval of an import licence;
 - 30.4.2 an exchange control approval, subject to the provisions of clause 31; or
 - 30.4.3 independent inspection outside of Somalia by an inspecting body appointed by the Federal Government.]
- 30.5 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.
- 30.6 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).
- 30.7 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.

31. EXCHANGE AND CURRENCY CONTROLS

- 31.1 As long as the Contractor makes all tax and other payments due under the Agreement, complies with sub-clause 31.2 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:
- 31.1.1 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;
 - 31.1.2 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);
 - 31.1.3 pay directly outside Somalia for purchases of services and materials necessary to carry out the Petroleum Operations;
 - 31.1.4 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;
 - 31.1.5 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
 - 31.1.6 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.
- 31.2 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,—
- 31.2.1 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;
 - 31.2.2 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
 - 31.2.3 quarterly, within [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.
- 31.3 Subject to its obligations under clause 28, 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, any Federal Government entity or other body having authority in Somalia on the federal, regional or local level. The Federal Government reserves the right to inspect the records or documentation related to such contracts and sub-

contracts and, in accordance with clause 21, to appoint independent auditors to examine the accounts of the Contractor, and the Contractor shall provide a copy of such contracts within [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.

31.4 The Federal Government shall grant to the Contractor any certificate or other document required in accordance with the foreign investments laws of Somalia. 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:

31.4.1 qualifying expenditure under Somali tax laws and regulations;

31.4.2 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.

32. FEES AND BONUSES

32.1 The Contractor shall pay, on or before the beginning of the relevant Contract Year, to the Federal Government, the following surface fees:

32.1.1 US dollars [10] per square kilometre per Calendar Year occurring during the Exploration period (including any additional or extension periods); and

32.1.2 US dollars [100] per square kilometre per Calendar Year occurring during the Development and Production period.

32.2 These payments shall be calculated on the basis of the surface area of the Contract Area on the date the payments are due.

32.3 A signature bonus in the amount of US dollars [200,000] shall be paid by the Contractor to the Ministry promptly upon execution of the Agreement by the Parties.

32.4 The Contractor shall contribute to the Federal Government a minimum of US dollars [200,000] per Calendar Year for the Federal Government local communities fund established under the Act. The Contractor's obligation shall be increased to a minimum of US dollars [500,000] per Calendar Year commencing with the adoption of the first Development Plan.

32.5 Fees and bonuses payable under clause 32 (other than the surface fees set out in sub-clause 32.1 and the contribution to the local communities fund as set out in sub-clause 32.4) may not be included in Petroleum Costs for the purpose of cost recovery under sub-clause 9.1 and a late payment shall attract interest in accordance with sub-clause 33.2 hereof.

33. PAYMENTS

33.1 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.

33.2 Any late payment due to the Federal Government or the Contractor shall attract interest at the rate of LIBOR plus [3] % per annum.

34. INSURANCE

34.1 The Contractor shall obtain and maintain, in respect of the Petroleum Operations, all insurance required by applicable Laws 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 by applicable Laws and, unless, after using best endeavours, impossible to obtain at any time or from time to time, shall be in accordance with the Best Petroleum Industry Practice and shall include insurance against the following risks:

34.1.1 loss or damage to all installations and equipment which are owned or used by the Contractor in performance of the Petroleum Operations;

34.1.2 pollution and other environmental risks resulting from the Petroleum Operations, for which the Contractor may be held responsible;

34.1.3 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;

34.1.4 the cost of removing damaged facilities and cleaning up operations following an accident in the course of the Petroleum Operations by the Contractor; and

34.1.5 the Contractor's liability for its employees engaged in the Petroleum Operations.

34.2 The Contractor shall also maintain appropriate and adequate third party liability insurance and workmen's compensation insurance and shall provide the Minister of Petroleum with evidence of those insurances before the start of the Petroleum Operations.

34.3 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.

34.4 In relation to the 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 the Development and the Production.

34.5 The Contractor shall require its sub-contractors to carry equivalent insurance of the type and in such amount as is required by Law and is customarily in accordance with the Best Petroleum Industry Practice.

34.6 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.

34.7 Upon its written request, 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.

35. LIABILITY

- 35.1 Except as specifically provided herein, neither Party shall be liable to the other Party for the other Party's Consequential Loss; however, nothing in this clause 35 shall relieve either Party from any express obligation under the Agreement to make a payment to the other Party when due.
- 35.2 Neither Party shall have any liability to the other Party except pursuant to, or for breach of, the Agreement, *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.
- 35.3 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.

36. INDEMNITY

- 36.1 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.
- 36.2 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.
- 36.3 Upon payment of any indemnification by a Party pursuant to sub-clause 36.1 or sub-clause 36.2, 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.
- 36.4 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 36. 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 [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 36.4 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.

- 36.5 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. 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.

37. FORCE MAJEURE

- 37.1 **"Force Majeure"** means an event or circumstance or combination of events or circumstances beyond the reasonable control of the Federal Government (including the Minister of Petroleum and the Authority) 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:

37.1.1 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;

37.1.2 lightning, earthquake, tsunami, flood, storm, cyclone, typhoon or tornado; epidemic or plague; explosion, fire, blowout or chemical contamination; medical failure; down hole blockage; and

37.1.3 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.

- 37.2 Where a Party is (wholly or partially) unable to perform its obligations under the Agreement due to Force Majeure:

37.2.1 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;

37.2.2 the affected Party shall use all reasonable endeavours to mitigate the effects of a Force Majeure event; and

37.2.3 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.

- 37.3 No Party may claim Force Majeure as a reason for the failure to timely pay any monies due pursuant to this Agreement.
- 37.4 If the non-affected Party disputes the existence of Force Majeure, such dispute shall be referred to arbitration in accordance with clause 47.
- 37.5 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 [◆] months, each 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 however shall relieve a Party of the obligations and liabilities which arose or accrued prior to the occurrence of the Force Majeure event.
- 37.6 When the Agreement is terminated in accordance with sub-clause 37.5, the Contractor shall conclude the Petroleum Operations in the area in relation to which the Agreement terminated in an orderly manner, by minimising disruption and harm to the Federal Government and third parties.
- 37.7 Subject to sub-clause 37.5, the term of the Agreement shall be automatically extended for the period of the Force Majeure.

38. TERMINATION

38.1 Termination due to Contractor Breach

- 38.1.1 Subject to the provisions of the Act, the Minister of Petroleum may terminate the Agreement by giving the Contractor written notice, if the Contractor—
- 38.1.1.1 fails to make any material payment to the Federal Government as required under the Agreement for a period exceeding [30] days from the date of such payment became due;
 - 38.1.1.2 becomes insolvent, makes a composition with creditors or goes into liquidation (other than for the purpose of restructuring or amalgamation);
 - 38.1.1.3 fails to provide or maintain the bank guarantee, parent company guarantee and/or insurance required by the Agreement;
 - 38.1.1.4 fails to comply with clause 42;
 - 38.1.1.5 is in material breach of any other obligation under the Act, Regulations or the Agreement, which has not been remedied within [30] days after notice from the Federal Government giving reasonable details of the breach by the Contractor and demanding remedy thereof; or
 - 38.1.1.6 any representation or warranty made by or deemed to be made by the Contractor hereunder is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made.
- 38.1.2 The period of termination notice in respect of sub-clauses 38.1.1.1, 38.1.1.3 and 38.1.1.4 hereof shall be [30] days, and in any other case [90] days. If the

Contractor remedies the breach within the period of termination notice, the Minister of Petroleum shall withdraw the termination notice. If the Minister of Petroleum reasonably believes that the Contractor is using its best endeavours to remedy the breach, the Minister of Petroleum may (but is not obliged to) withdraw the termination notice.

38.1.3 When the Agreement is terminated in accordance with sub-clause 38.1, 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.

38.1.4 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 38.1 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 17.7 and sub-clause 17.8) 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.

38.2 Termination due to Federal Government Breach

38.2.1 The Contractor may terminate the Agreement by giving the Contractor written notice, if the Federal Government —

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

38.2.1.2 is in material breach of any other obligation under the Act, Regulations or the Agreement not remedied within [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 [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 [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 [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

38.2.1.3 any expropriation, compulsory acquisition or nationalization by the Federal Government or any authority of (a) any ordinary share capital, or (b) any material asset, interest or right of the Contractor; or

38.2.1.4 any Change in Law or Lapse of Consent occurred that:

- (a) has a Material Adverse Effect in excess of the amount set out in clause 44, which is not compensated in accordance with clause 44;
- (b) makes unenforceable, invalid or void any material obligation of the Federal Government under or pursuant to the Agreement;
- (c) 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
- (d) 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 [180] days without an arrangement being provided to exempt the Contractor from all such restrictions and limitations; or

38.2.1.5 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.

38.2.2 The period of termination notice in respect of sub-clauses 38.2.1.1 and 38.2.1.2 shall be [30] days, and in any other case [90] days. 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.

38.2.3 The exercise of the right of the Contractor to terminate the Agreement due to the Federal Government's default in accordance with this sub-clause 38.2 does not preclude the Contractor from exercising other of its rights and remedies that are provided herein 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.

38.2.4 Without limiting the generality of sub-clause 38.2.3, upon the occurrence of a breach by the Federal Government Default, which is not cured within the applicable cure period, the Contractor may, at its option, invoke the application of clause 44 of the Agreement, in which case such clause 44 shall apply on the Parties *mutatis mutandis*, and seek the compensation from the Federal Government in accordance with clause 44 of the Agreement.

38.2.5 In the event the Contractor terminates the Agreement as a result of the Federal Government's default, then the Federal Government (or its designee) shall purchase the Termination Transfer Assets for the Federal Government Default Termination Amount, in accordance with schedule 4 hereof.

- 38.2.6 Notwithstanding anything to the contrary in the Agreement, the Agreement will terminate only upon receipt of the entire amount of the Federal Government Default Termination Amount by the Contractor.
- 38.3 The termination of the Agreement for any reason shall be without prejudice to the rights and obligations expressed in the Act and Regulations or the Agreement to survive termination, or the rights and obligations accrued thereunder prior to termination, including, without limitation, 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. NATURAL GAS**
- 39.1 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).
- 39.2 The terms and conditions relating to the use and Production of Associated Natural Gas shall be as follows:
- 39.2.1 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 other Natural Gas.
- 39.2.2 If Contractor elects not to process and sell Associated Natural Gas not used for the purposes specified in sub-clause 39.1 or sub-clause 39.2.3 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.
- 39.2.3 The Contractor may re-inject any Associated Natural Gas not used for the purposes specified in sub-clause 39.1, taken by the Federal Government pursuant to sub-clause 39.2.2 or sold by the Contractor pursuant to sub-clause 39.2.1, 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.
- 39.3 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:
- 39.3.1 On completion of the evaluation Work Programme relating to a Discovery of Non-Associated Natural Gas made by the Contractor, 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 39 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.

- 39.3.2 If the Contractor does not request for a Commercial Assessment Period pursuant to clause 39.3.1 within [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.
- 39.3.3 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 7.
- 39.4 The Commercial Assessment Period shall end on the first to occur of:
- 39.4.1 the date following that on which the Contractor gives a notice of Commercial Discovery under sub-clause 39.3; or
- 39.4.2 the date that the Contractor voluntarily relinquishes that portion of the Contract Area to which the Commercial Assessment Period relates; or
- 39.4.3 expiry of the period to which Contractor is entitled to under sub-clause 39.3.
- 39.5 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 39.3 by the end of the Commercial Assessment Period or the earlier relinquishment of that portion of the Contract Area.
- 39.6 Where the Discovery is a Natural Gas Discovery, the Contractor shall:
- 39.6.1 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
- 39.6.2 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. Every contract for the sale of such Non-Associated Natural Gas made by the Contractor under this clause 39 shall be subject to approval by the Minister of Petroleum, such approval to be granted within [10] days of submission. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [10] days following submission to Minister of Petroleum without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum. In applying for such approval, the Contractor shall demonstrate to the Minister of Petroleum 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.

- 39.7 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 Minister of Petroleum shall grant such necessary extension.
- 39.8 Flaring of Natural Gas in the course of the activities provided for under the Agreement, is prohibited except:
- 39.8.1 short-term flaring necessary for Production testing;
 - 39.8.2 when required for emergency or safety reasons; or
 - 39.8.3 with the prior authorisation of the Authority,

in each case in accordance with the Act, Regulations and the Best Petroleum Industry Practice. Breach of this provision represents a breach of the Contractor's material obligation under this Agreement entitling the Minister of Petroleum to draw under the parent company guarantee provided by the Contractor hereunder.

The Contractor shall submit such request to the Authority, which shall include 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.

40. UNITISATION

- 40.1 Where a Petroleum deposit in the Contract Area extends beyond the Contract Area, the boundaries of the Contract Area into another contract area or a license area, the Contractor shall not develop such petroleum accumulation without seeking an agreement with the contractor or the licensee in the other area. An agreement on the development of the petroleum accumulation to be carried out as single unit shall be submitted to the Minister of Petroleum for approval, which approval shall be granted with [30] days of submission. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission to Minister of Petroleum without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum. In case no such agreement is submitted, the Minister of Petroleum may direct the relevant parties to enter into an agreement to this effect.
- 40.2 Following the Minister of Petroleum's approval of an agreement in accordance with sub-clause 40.1, 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 Minister of Petroleum for approval, which approval shall be granted with [30] days of submission. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission to Minister of Petroleum without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum.

- 40.3 If a Petroleum accumulation in the Contract Area is in proximity to another petroleum accumulation in another area, the Minister of Petroleum 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.
- 40.4 The Contractor shall forthwith notify the Minister of Petroleum where the Contractor discovers that a Petroleum accumulations straddles between an international boundary of the Federal Republic of Somalia and an international boundary of another sovereign state.
- 40.5 The Contractor shall inform the Minister of Petroleum where the Contractor, within the scope of the Agreement, assesses that there may be a potential need for assessing a potential for unification or coordination of the Petroleum Operations for Petroleum accumulations straddling between or in proximity with the international boundary of the Federal Republic of Somalia and an international boundary of another sovereign state.

41. TAXATION AND ROYALTIES

- 41.1 Throughout the term of this Agreement, in conducting of 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 Somali tax laws, regulations and rules related to, and from the payment of:
- 41.1.1 corporate income tax;
 - 41.1.2 value added and alike taxes;
 - 41.1.3 property taxes;
 - 41.1.4 regional, local and municipal taxes;
 - 41.1.5 import and export taxes, duties, levies or other charges; and
 - 41.1.6 other taxes of general application, except for:
 - 41.1.6.1 the withholding tax (at a rate of [◆]% for non-residents, [◆]% for Somali residents[, and [◆ 0%] on dividends]), which withholding tax shall not apply on loan interest[; and
 - 41.1.6.2 the capital gains tax (at a rate of [◆]% 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 gain tax shall apply to direct and indirect assignments or other transfers, but shall not apply to those within the same group of companies].
- 41.2 Without limiting generality of sub-clause 41.1, the Minister of Petroleum shall ensure that the relevant Somali official body (whether federal, regional or local), upon written request by the Contractor, timely issues to the Contractor (or any entity forming part of the Contractor or the Contractor's contractors or sub-contractors) a certificate confirming that Somali corporate income tax has been paid by the Federal Government on behalf of the Contractor (or, as it may be, any entity forming part of the Contractor or the Contractor's contractors or sub-contractors).

- 41.3 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.
- 41.4 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 as provided for in the applicable tax laws. The receipts shall be issued by the relevant Somali official body (whether federal, regional or local).
- 41.5 Where the Contractor consists of more than one entity, the tax liabilities of each entity under this clause 41 shall be several and the provisions of this clause 41 shall apply, *mutatis mutandis*, to each such entity.
- 41.6 The royalties shall be payable by the Contractor in lieu of corporate income taxes (including corporate income taxes on any assignment or transfer of a Participating interest under clause 42) applicable from time to time to the Contractor (including any entity forming part of the Contractor or the Contractor's contractors or sub-contractors) in Somalia. The Contractor shall discharge its obligation to pay royalties in respect of Petroleum produced from the Contract Area by paying, without undue delay following the end of the Fiscal Year of Production, to the Ministry (or as the Ministry may direct) the USD amount equal to [◆] % of the value of Crude Oil and condensates produced, respectively [◆] % of the value of Natural Gas produced (in each case prior to cost recovery).

42. ASSIGNMENT AND CHANGE OF CONTROL

42.1 Assignment by, and change of Control of, the Contractor

- 42.1.1 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 Minister of Petroleum, which approval shall be granted within [30] days of receipt by the Minister of Petroleum of the notice from the Contractor that it intends to make such an assignment. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission to Minister of Petroleum without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum.
- 42.1.2 Subject to sub-clause 42.1.9 below, the Contractor may assign to a Person having technical and financial capacity and professional skills to perform this Agreement (other than an Affiliate) part or all of its rights and obligations under or pursuant to the Agreement with the prior approval of the Minister of Petroleum, which approval shall be granted within [30] days of receipt by the Minister of Petroleum of notice from the Contractor that it intends to make such an assignment. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission to Minister of Petroleum without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum.
- 42.1.3 In case of the proposed assignment to an Affiliate or any other Person (other than in case set out in sub-clause 42.1.8), the Minister of Petroleum may require:

- 42.1.3.1 a proof of technical and financial capacity and professional skills of an assignee; and/or
- 42.1.3.2 a proposed assignee to provide a guarantee and/or other security for the performance of its obligations as the Contractor.
- 42.1.4 The Contractor shall report to the Minister of Petroleum:
 - 42.1.4.1 agreement or other document of preliminary nature (such as, for example, memorandum of understanding or term sheet) entered into by the Contractor in the preparation for assignment;
 - 42.1.4.2 any material changes in the corporate structure, ownership and financial position of the Contractor and its parent company; and
 - 42.1.4.3 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. Any change in Control shall be subject to the prior consent of the Minister of Petroleum (such not to be unreasonably withheld, delayed or conditioned).
- 42.1.5 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 42, subject to prior written approval by the Minister of Petroleum, which approval shall be granted within [30] days of request. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following request to Minister of Petroleum without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum. 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.
- 42.1.6 The Contractor shall furnish to the Minister of Petroleum 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.
- 42.1.7 At any time at which the Contractor is constituted by more than one entity, the reference in sub-clause 42 to "the Contractor" shall be construed as a reference to each one of those entities.
- 42.1.8 An assignment under sub-clause 42 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, those Petroleum or all or any part of the Contractor's rights, interests, benefits, obligations and liabilities under it would, but for this clause 42.1, be held for the benefit of, or be exercisable by or for the benefit of, any other Person.

42.1.9 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 other circumstances is subject to prior written approval of the Minister of Petroleum, which approval shall be granted within [30] days of request. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following request to Minister of Petroleum without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum.

42.2 **Assignment by the Federal Government**

42.2.1 Subject to the Act and Regulations, 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) if the Federal Government can satisfy the Contractor of such proposed assignee's status and ability to observe and perform the Agreement, *provided that* the Federal Government has given 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.

42.3 **Change of the Operator**

42.3.1 No assignment or change of Control shall be effective to transfer to the assignee the function of the Operator without the prior written consent of the Federal Government (such not to be unreasonably withheld, delayed or conditioned).

42.3.2 When submitting a request to the Federal Government for consent to any change of the Operator, the Federal Government shall be provided with evidence of the financial and technical capabilities of the assignee.

43. **CONFIDENTIALITY**

43.1 All information (including the data, information and reports referred to in clauses 21 and 22) which the Contractor supplied to the Federal Government under or in connection with the Agreement are supplied at the sole expense of the Contractor.

43.2 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 published 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) to disclose, except with the consent of the other Party (such not to be unreasonably withheld, delayed or conditioned).

- 43.3 Notwithstanding sub-clause 43.2, the Minister of Petroleum may use any information supplied pursuant the Agreement for the purpose of preparing and publishing reports and returns required by Law.
- 43.4 The Minister of Petroleum 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 Minister of Petroleum (unless the Minister of Petroleum reasonably determines, upon request by the Contractor, that a longer period shall apply).
- 43.5 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.
- 43.6 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 Federal Governmental authority or stock exchange, no Party shall make any public statement or press release without the approval of all the other Party (which shall not be unreasonably withheld, delayed or conditioned).
- 43.7 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 had to expire had there not been early termination.

44. ECONOMIC STABILISATION

- 44.1 Without prejudice to any other rights of the Contractor under the Agreement, in the event of a Change in Law or Lapse of Consent occurring within a period of [12] Calendar Years from the Effective Date that has a Material Adverse Effect, subject to sub-clauses 44.3 to 44.5 (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 Change in Law or Lapse of Consent not occurred or otherwise not been made.
- 44.2 Payment of such compensation shall be due on and from [90] days from the date of notification of a claim made by the Contractor to the Federal Government in respect of such Change in Law or Lapse of Consent, *provided that* such notice is made no earlier than the earliest date for making such notification determined in accordance with sub-clause 44.6.
- 44.3 No obligation shall arise under sub-clauses 44.1 and 44.2 unless the relevant Change in Law or Lapse of Consent (whether along or together) cause a cumulative Material Adverse Effect in excess of USD [300,000] ("**Threshold Amount**"); however, if the Threshold Amount is exceeded then the whole economic impact shall be compensated and not just the portion in excess of the Threshold Amount.
- 44.4 If the Contractor believes that any Change in Law or Lapse of Consent would give rise to a claim by the Contractor pursuant to sub-clauses 44.1 and 44.2, the Contractor shall agree, and the Federal Government shall agree (and shall procure that any authority agrees) that the Agreement shall be automatically amended forthwith to reflect a decrease in the first (or, if greater than it, any subsequent) amount payable by the Contractor under the Agreement.

- 44.5 The Contractor shall not give any notice of any claim under sub-clause 44.1 and 44.2 in respect of any Change in Law or Lapse of Consent until [90] days after the submission by the Contractor of notification of a claim to the Federal Government in relation to Change in Law or Lapse of Consent.
- 44.6 Upon either Party's request, the Federal Government and the Contractor shall endeavour in good faith for a period of [90] days after notification by the Contractor to the Federal Government under clause 44.2 ("**Notification Date**") to agree on any disputed amount of compensation required to restore the economic position of the Contractor.
- 44.7 If agreement is not reached by the Parties (acting in good faith and reasonably) on such disputed amount of compensation within the [90] day period from the Notification Date, then:
- 44.7.1 the Federal Government shall pay any undisputed sum forthwith and thereafter pay such amount as is agreed or determined payable in respect of the disputed sum within [90] days of:
- 44.7.1.1 the date on which the Parties resolve the disputed sum; or
- 44.7.1.2 the date of determination by an arbitrator, if the Parties fail to reach agreement, and the matter has been referred for arbitration;
- 44.7.2 either Party may pursue resolution of the dispute in accordance with the dispute resolution procedure set out herein.
- 44.8 Nothing in this clause 44 shall be interpreted as imposing any limitation or constraint on the scope or due and proper enforcement of the laws of Somalia of general application that are in the interest of health, safety, conservation or the protection of the environment for the regulation of any category of property or activity carried on in Somalia, *provided that* the Federal Government shall at all times during the conduct of Petroleum Operations ensure in accordance with clause 18, that measures taken in the interest of health, safety, conservation or the protection of the environment are in accordance with the Best Petroleum Industry Practice.

45. WAIVER

- 45.1 A waiver of an obligation of the Contractor shall be in writing, signed by the Minister of Petroleum. No waiver shall be implied in case the Minister of Petroleum does not exercise a right or remedy under the Agreement.
- 45.2 Each Party acknowledges that the Agreement constitutes a commercial transaction and that its rights and obligations under the Agreement are of commercial and not governmental nature. To the fullest extent not prohibited by law, each Party hereby irrevocably waives on behalf of itself and all of its assets, any and all immunities for jurisdiction, enforcement and other purpose whatsoever.

46. GOVERNING LAW

- 46.1 The Agreement shall be governed by, interpreted and construed in accordance with the laws of England and Wales.
- 46.2 The decisions of the Minister of Petroleum and the Authority under the Agreement shall be taken and made in accordance with the Act and Regulations.

47. DISPUTE RESOLUTION

47.1 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 [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 [20] days of receipt of the statement or other mutually agreed period, the Minister of Petroleum and the chief executive of the Contractor shall meet to resolve the difference or dispute. Where no settlement is reached within [20] days from the date of the meeting, either Party shall have the right, subject to clause 1, to have such difference or dispute be resolved through arbitration in accordance with UNCITRAL arbitration rules adopted by the United Nations Commission on International Trade Law.

47.2 Expert Determination

Each Party, may refer any dispute or disagreement (with includes any inaction by a Party, the Minister of Petroleum, the Authority or, where applicable, any other Person) concerning:

47.2.1 singular issues that, in the reasonable opinion of the referring Party, can be resolved by expert determination; or

47.2.2 technical/operational issues (including, without limitation, those related to the valuation of Crude Oil and approvals by the Federal Government, the Minister of Petroleum, the Authority or any other Somali official body (whether federal, regional or local) 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 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 Minister of Petroleum, the Authority or, 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 [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.

47.3 Arbitration

47.3.1 The arbitration procedure shall commence by a written request of either Party (applicant Party) to the UNCITRAL with a simultaneous notification to the other Party. The arbitration proceedings shall commence within [60] days of the date of receipt of that request by the UNCITRAL.

- 47.3.2 The number of arbitrators shall be three and shall be appointed as follows:
- 47.3.2.1 each Party shall appoint one arbitrator and so notify the other Party and the Secretariat of the UNCITRAL of such appointment within [30] days of the expiry of the period specified in sub-clause 47.3.1.
 - 47.3.2.2 where the applicant Party fails to appoint its arbitrator within the [30] day period, it shall be deemed to have abandoned its application.
 - 47.3.2.3 where the defending Party has not appointed its arbitrator within [30] days following the receipt of the notice, the applicant Party may request the UNCITRAL to appoint an arbitrator within [30] days of the date of receipt of that request by the UNCITRAL.
 - 47.3.2.4 within [45] days after the appointment of the last arbitrator, the two arbitrators shall select, by mutual agreement, a third arbitrator, who shall be designated as the chairman of the arbitral tribunal.
 - 47.3.2.5 where the two arbitrators fail to select the third arbitrator, either Party may request in writing the Secretary General of the International Centre for Settlement of Investment Disputes to appoint the third arbitrator. The Secretary General shall forthwith send a copy of that request to the other Party. The Secretary General shall comply with the request within [30] days from the receipt thereof or such longer period as the Parties may agree. The Secretary General shall promptly notify the Parties of any appointment or designation made by him pursuant to the aforesaid request.
- 47.3.3 The arbitrators shall not be of the same nationality as either of the Parties. If any arbitrator fails or is unable to act, his successors shall be appointed in the same manner as the arbitrator whom he succeeds.
- 47.3.4 The arbitrators shall hear and determine the matter within [180] days of the appointment of the third arbitrator. The decision of the majority of the arbitrators shall be final and binding on the Parties and shall be enforceable under the laws of the Federal Republic of Somalia. Any Party may apply to a court of competent jurisdiction for enforcement of such award. The arbitration award may take the form of an order to pay a sum of money, or to perform an act, or to refrain from an act, or any combination of such orders. Notwithstanding the foregoing, a Party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrators.
- 47.3.5 The place of arbitration proceedings shall be London, England. The language used for the proceedings shall be the English language.
- 47.3.6 Each Party shall pay for its own counsel and other costs, however, the cost of the arbitral tribunal shall be allocated in accordance with the decision of the arbitral tribunal. The costs incurred in arbitration or the sole expert determination shall not be recoverable costs under the Agreement.
- 47.3.7 The Parties shall continue to perform their respective obligations under the Agreement during any sole expert or arbitration proceedings.

47.3.8 The right of the Parties to arbitrate differences or disputes under or arising out of the Agreement (including, without limitation, the interpretation, implementation or termination thereof) shall survive the termination of the Agreement.

47.4 **Notices**

47.4.1 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 Minister of Petroleum):

[]

[]

[]

Fax: []

Email: []

To the Minister of Petroleum:

[]

[]

[]

Fax: []

Email: []

To the Authority (with a copy to the Minister of Petroleum):

[]

[]

[]

Fax: []

Email: []

To the [insert name of the relevant Somali environmental authority] (with a copy to the Minister of Petroleum):

[]

[]

[]

Fax: []

Email: []

To the Contractor:

[]

[]

[]

Fax: []

Email: []

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

[]

[]

[]

Fax: []

Email: []

47.4.2 A notice shall be effective on receipt.

47.4.3 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. In the event that a notice sent by facsimile or E-mail includes a request for confirmation of the receipt thereof, such a confirmation shall be sent no later than one business day after receipt of the notice. The Contractor may at any time and from time to time change its authorised representative or its address herein on giving the Federal Government [10] days' notice in writing to such effect.

48. ANTI-CORRUPTION

- 48.1 The Contractor 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.
- 48.2 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.
- 48.3 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.
- 48.4 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.

49. HEADING AND AMENDMENTS

- 49.1 Headings are inserted in the Agreement for convenience only and shall not affect the construction or interpretation hereof.
- 49.2 The Agreement shall not be amended, modified or supplemented except by an instrument in writing signed by the Parties.
- 49.3 In the event of a conflict between the provisions of the Agreement and its schedules, the provisions of the Agreement shall prevail.
- 49.4 In the event one of the provisions of the Agreement is or becomes invalid, illegal or unenforceable, such provision shall be deemed severed from the Agreement and the remaining provisions of the Agreement shall continue in full force and effect.
- 49.5 The Agreement shall be executed in six originals, four for the Federal Government and two for the Contractor.

Signed by **◆** for and on behalf of)
the **FEDERAL GOVERNMENT OF**)
SOMALIA in the presence of a witness:)

Signature

Name (block capitals)

Minister of Petroleum

Witness signature

Witness name
(block capitals)

Witness address

.....

.....

Signed by [**◆NAME OF COMPANY**] in the)
presence of a witness:)

)

Signature

Name (block capitals)

[Title]

Witness signature

Witness name
(block capitals)

Witness address

.....

.....

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.

TABLE OF CONTENTS

1.	GENERAL PROVISIONS	74
2.	CLASSIFICATION OF EXPENDITURES AMONG COST CENTRES	76
3.	COSTS, EXPENSES, EXPENDITURE AND CREDITS OF THE CONTRACTOR AND NON-RECOVERABLE COSTS	78
4.	FINANCIAL REPORTS TO THE MINISTER OF PETROLEUM.....	84
1.	INTERPRETATION.....	90
2.	PARTICIPATION INTERESTS AND COMMENCEMENT	91
3.	OPERATOR AND DUTIES OF THE OPERATOR.....	91
4.	OPERATING COMMITTEE AND WORK PROGRAMMES	94
5.	COSTS AND EXPENSES.....	96
6.	PAYMENTS TO THE OPERATOR.....	96
7.	MATERIALS AND EQUIPMENT	97
8.	RELATIONSHIP OF THE PARTIES AND TAX PROVISIONS.....	98
9.	RELINQUISHMENTS AND TRANSFERS.....	98
10.	DISPOSAL OF PRODUCTION.....	100
11.	SOLE RISK OPERATIONS.....	101
12.	CONFIDENTIALITY.....	103
13.	LIABILITY	104
14.	GOVERNING LAW.....	104
15.	ARBITRATION	104
16.	FORCE MAJEURE	104
17.	NOTICES.....	104
18.	TERM	106
19.	FINAL PROVISIONS	106

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 [90] days after the Effective Date, the Contractor shall submit for approval to the Minister of Petroleum, and discuss with the Minister of Petroleum 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 Minister of Petroleum, which approval shall be granted within [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 Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission to Minister of Petroleum without Minister of Petroleum either

approving or refusing grant of approval, the approval shall be deemed granted by Minister of Petroleum.

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, *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 **Audits and inspection rights of the Federal Government**

1.4.1 The Federal Government, upon [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 seven 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 eight 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 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 Minister of Petroleum 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 sub-clause 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;

2.1.4 Decommissioning costs incurred for Decommissioning; and

2.1.5 Uplift.

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 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 Part III shall be allocated to categories of costs and to area in accordance with the approved methods set out in sub-clauses 2.7 and 2.8.
- 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);
 - 2.7.1.6 an allocation of the general and administrative costs; and
 - 2.7.1.7 the Exploration.
 - 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 Commercial 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 Petroleum Industry 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 Federal 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 Minister of Petroleum 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 (US \$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 directly serving Petroleum Operations. The costs shall be allocated to the operations served on an equitable basis. The foreign overhead costs in excess of [1] % of the total recoverable costs are cost non-recoverable.

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 for Somali operations will be charged on an allocation criteria provided by the Contractor subject to approval of the Minister of Petroleum and Somali tax authorities (acting jointly), which approval shall be granted within [30] days of submission. If the Minister of Petroleum and Somali tax authorities have good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum 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 [30] days following submission without Minister of Petroleum and Somali tax authorities (acting jointly) either approving or refusing grant of approval, their approval shall be deemed granted.

3.10.2 Within [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 (eg 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 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 Minister of Petroleum, which approval shall be granted within [30] days of submission. If the Minister of Petroleum has good cause for refusal (such to be notified to the Contractor), the Minister of Petroleum may refuse grant of approval within the same period of time. In case of expiry of the period of [30] days following submission without Minister of Petroleum either approving or refusing grant of approval, the approval shall be deemed granted.
- 3.11.2 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 Federal 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 the signature bonus set out in clause 32.3 of the Agreement;
 - 3.14.1.5 the surface fees set out in clause 32.1 of the Agreement;
 - 3.14.1.6 training fees and other related costs.
 - 3.14.1.7 costs of marketing or transportation of Petroleum beyond the Delivery Point;
 - 3.14.1.8 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;
 - 3.14.1.9 any accounting provision for depreciation and/or amortization, excluding any depreciation and/or amortization expressly permitted under the Agreement;
 - 3.14.1.10 costs incurred before the Effective Date;
 - 3.14.1.11 any foreign exchange and currency hedging costs;
 - 3.14.1.12 donations or charitable contributions and/or services relating to public relations;
 - 3.14.1.13 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;
 - 3.14.1.14 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;

- 3.14.1.15 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;
- 3.14.1.16 any costs not reasonably required for the Petroleum Operations;
- 3.14.1.17 expenditures on research and development of new equipment, Materials and techniques;
- 3.14.1.18 costs for which the records do not exist or which are not adequately documented;
- 3.14.1.19 costs of arbitration and expert determination pursuant to clauses 10 and 47 of the Agreement in respect of any dispute under the Agreement;
- 3.14.1.20 fines and penalties imposed under the laws of Somalia;
- 3.14.1.21 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;
- 3.14.1.22 costs incurred as a result of wilful misconduct or negligence of the Contractor, its agents or subcontractors, including any payments for damages under the Agreement;
- 3.14.1.23 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;
- 3.14.1.24 Corporate Social Responsibility Costs or Social Infrastructure Costs; and
- 3.14.1.25 any recoverable costs recovered elsewhere under the Somali laws.

4. **Financial reports to the Minister of Petroleum**

- 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 Minister of Petroleum 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 USD [200,000.00] 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 [30] days of each quarter to the Minister of Petroleum:
 - 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 Minister of Petroleum 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 [15] days after the end of each month, submit a Production report to the Minister of Petroleum 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 [15] days after the end of each month, a report to the Minister of Petroleum 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 Minister of Petroleum 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: PARTICIPATION AGREEMENT

This Participation Agreement, made and entered into on this ◆ day of 20◆, by and between the Federal Government of the Federal Republic of Somalia ("**Federal Government**"), represented by the Minister of Petroleum of the Federal Republic of Somalia ("**Minister of Petroleum**"); and

◆, a company incorporated under the laws of Somalia, having its established place of business at ◆, Somalia, represented by [◆] ("**Contractor**").

TABLE OF CONTENTS

1.	INTERPRETATION.....	90
2.	PARTICIPATION INTERESTS AND COMMENCEMENT	91
3.	OPERATOR AND DUTIES OF THE OPERATOR.....	91
4.	OPERATING COMMITTEE AND WORK PROGRAMMES	94
5.	COSTS AND EXPENSES.....	96
6.	PAYMENTS TO THE OPERATOR.....	96
7.	MATERIALS AND EQUIPMENT	97
8.	RELATIONSHIP OF THE PARTIES AND TAX PROVISIONS.....	98
9.	RELINQUISHMENTS AND TRANSFERS.....	98
10.	DISPOSAL OF PRODUCTION.....	100
11.	SOLE RISK OPERATIONS.....	101
12.	CONFIDENTIALITY.....	103
13.	LIABILITY	104
14.	GOVERNING LAW.....	104
15.	ARBITRATION	104
16.	FORCE MAJEURE	104
17.	NOTICES.....	104
18.	TERM	106
19.	FINAL PROVISIONS	106

Background

- A **Whereas** the Federal Government and the Contractor have entered into a production sharing agreement (as amended and/or restated from time to time, the "**Agreement**");
- B **Whereas** the Federal Government may decide to exercise its option under clause 16 of the Agreement; and
- C **Whereas** the Parties wish to set forth the terms and conditions under which the Federal Government has agreed to participate in the Petroleum Operations in case such option is exercised.

Now the Parties agree as follows:

1. **Interpretation**

- 1.1 In this Participation Agreement, words in the singular include the plural and *vice versa*, and except where the context otherwise requires:

"**AFE**" means an authorisation for expenditure;

"**Federal Government**" includes an Appointee, as defined in the Agreement;

"**Joint Account**" means the accounts maintained by the Operator to record all transactions related to operations in the Participation Area under this Participation Agreement;

"**Joint Property**" means all property acquired and held for use in connection with operations under this Participation Agreement;

"**Non-operator**" means a Party other than the Operator;

"**Operating Committee**" means the committee established by clause 4 hereof;

"**Operator**" means the Party designated to conduct the Petroleum Operations, pursuant to clause 3 hereof (including its successors and permitted assignees);

"**Participating Interest**" means the respective undivided interest of each of the Parties as it may exist at any given time in the Participation Area and under this Participation Agreement;

"**Participation Area**" means a Development Area in which the Federal Government elects to participate under the Agreement;

"**Participation Dates**" means the Effective Date of participation by the Federal Government as defined in sub-clause 16.2 of the Agreement;

"**Participation Work Programme**" means a programme of the Petroleum Operations under this Participation Agreement;

"**Parties**" means, collectively, the Federal Government and the entities constituting the Contractor (including respective successors and permitted assignees);

"**Party**" means anyone of the Parties;

1.2 Words not defined in this Participation Agreement but which are defined in the Agreement have the meanings given to them in the Agreement.

1.3 In the event of any conflict between the Agreement and this Participation Agreement, the Agreement shall prevail and this Participation Agreement shall be deemed amended accordingly.

2. **Participation Interests and Commencement**

2.1 When and if the Federal Government elects, pursuant to clause 16 of the Agreement, to participate in Petroleum Operations in a Participation Area, each entity constituting the Contractor shall assign proportionately to the Federal Government a part of its interest in the Development Area, so that the rights, interest and obligations of the Contractor and the Federal Government in such area shall be owned and borne as of the participation date in undivided interests as follows:

2.1.1 Federal Government: ◆ % (or such lesser amount as may be elected in accordance with clause 16 of the Agreement); and

2.1.2 Contractor: ◆ % (or such greater amount as may remain after the Federal Government's election).

2.2 In the event a Party shall transfer in whole or in part its Participating Interest pursuant to clause 42 of the Agreement and clause 9 of this Participation Agreement, the Participating Interest of the Parties therein shall be revised accordingly.

3. **Operator and duties of the Operator**

3.1 The Operator shall be the party acting as Operator on the participation date and the Operator shall have the rights and obligations of a Non-operator in respect of its Participating Interest.

3.2 The Operator shall serve as Operator until it resigns or is removed pursuant to the provisions of this clause, or until it ceases to hold a Participating Interest hereunder. In the event that an Operator assigns the whole of its Participating Interest hereunder to one of its Affiliates, such Affiliate shall become Operator hereunder in the former's place.

3.3 Upon the affirmative vote of all the Non-operators, the Operator shall be removed as Operator in case of any one of the following:

3.3.1 bankruptcy of the Operator or its parent company;

3.3.2 assignment for the benefit of the Operator's creditors;

3.3.3 appointment of a receiver or manager with respect to the whole or any part of the assets or interests of the Operator;

3.3.4 entitlement of any Person (other than an Affiliate of the Operator) to appoint a majority of the members of the board of directors of the Operator by reason of any act, default or neglect of the Operator;

3.3.5 failure, without acceptable justification, by the Operator to pay a sum due to or in the name of the Joint Account for more than [60] days;

- 3.3.6 the Operator's material breach of this Participation Agreement which remains without a remedy for more than [30] days after the Operator is notified by Non-operators of such breach; or
- 3.3.7 reduction in the Operator's Participating Interest to ◆ % or less.
- 3.4 An Operator may at any time resign as Operator by giving to the other Parties notice in writing of such resignation. Such resignation shall be effective on the later of:
- 3.4.1 the date falling [180] days after the date of notice thereof; or
- 3.4.2 the date on which a successor Operator appointed by the Parties (other than the Operator) shall be ready and able to assume the obligations of Operator in accordance with all the provisions of this Participation Agreement.
- 3.5 If an Operator so resigns or is removed, a successor Operator shall immediately be appointed by the Operating Committee. A Party having been removed as Operator may not vote to succeed itself as Operator. Such appointment shall be made by a vote of at least two of the remaining Parties holding not less than the percentage figure of the remaining Participating Interests set out in clause 4.6. For the purpose of this clause 3.5, "Operator" includes any of its Affiliates holding a Participating Interest in this Participation Agreement.
- 3.6 Removal or resignation of an Operator shall not in any way affect its rights or obligations as a Non-operator Party to the Agreement. On the effective date of removal or resignation, the Operator shall deliver to the successor Operator any and all funds, equipment, materials, appurtenances, books, records, data, interpretations, information and rights acquired by and in the custody of the Operator for the Joint Account of the Parties (including available Petroleum not delivered to the Parties), shall, with the successor Operator, prepare an inventory of Joint Property, adjusting the Joint Account accordingly, and shall co-operate as far as possible in effecting a smooth transfer of operating responsibilities.
- 3.7 An Operator that is removed may charge to the Joint Account all reasonable and necessary expenditure incurred in demobilising and repatriating its personnel and equipment.
- 3.8 The Operator shall have control of the Petroleum Operations in the Participation Area and shall have exclusive custody of all materials, equipment and other property acquired thereof, and shall perform the duties under this Participation Agreement diligently and in accordance with the Best Petroleum Industry Practice, Law and sound and accepted engineering, management and accounting principles. The Operator shall not be liable to any Non-operator for any acts or omissions, claims, damages, losses or expenses, in connection with or arising out of this Participation Agreement or the Agreement or Petroleum Operations, save those caused by gross negligence or wilful misconduct of the Operator.
- 3.9 The Operator shall:
- 3.9.1 consult with Non-operators and advise them of all matters arising from the Petroleum Operations;
- 3.9.2 comply with the decisions of the Operating Committee;
- 3.9.3 keep the Participating Interests and all property acquired or used for the purpose of Petroleum Operations free from liens, except for those authorised by clause 6 hereof; and

- 3.9.4 pay the costs of the Petroleum Operations under this Participation Agreement promptly and make proper charges to Non-operators.
- 3.10
- 3.10.1 The Operator shall submit a copy of an AFE to the Non-operators for each Budget item of capital expenditure in the approved Participation Work Programme and Budget that costs more than US dollars ◆ (USD ◆).
- 3.10.2 Where it is necessary to complete an expenditure in a Budget item in the approved Participation Work Programme, the Operator may exceed the Budget for the Budget item by the lesser of [10]% thereof or US dollars ◆ (USD ◆) and shall report promptly such excess expenditure to the Non-operators.
- 3.10.3 The Operator may spend not more than US dollars ◆ (USD ◆) on Petroleum Operations in the Participation Area not included in an approved Participation Work Programme, *provided that* such expenditure shall not be for items previously rejected by the Operating Committee. The Operator shall report promptly that expenditure to the Non-operators and, if it is approved in accordance with clause ◆ , the Operator may make further expenditure thereon or on other items not exceeding US dollars ◆ (USD ◆) in that Calendar Year.
- 3.10.4 The limits in this sub-clause 3.10 may be changed from time to time by the Operating Committee.
- 3.10.5 In the case of emergency, the Operator may make such immediate expenditure and take such immediate action as may seem necessary for the protection of life or property or the prevention of pollution and such emergency expenditure shall be reported promptly to the Parties by the Operator.
- 3.11 A Non-operator may inspect the Participation Area, the Petroleum Operations, and the books, records and other information of the Operator pertaining thereto. The Operator shall supply to a Non-operator by telephone, telefax email, registered post or courier, daily reports on drilling, and such other reports in writing normally provided by an Operator to a Non-operator in the international Petroleum industry, including but not limited to reports on Well tests and core analysis, and copies of drilling logs, Well surveys and velocity surveys. The Operator shall furnish any other information reasonably requested by Non-operator, if such information is readily available.
- 3.12
- 3.12.1 The Operator shall obtain and maintain all insurance required by Law and such other insurance as the Operating Committee may from time to time determine, *provided that*, in respect of such other insurance, any Party may elect not to participate if such Party gives notice to that effect to the Operator. The cost of insurance in which all the Parties are participating shall be for the Joint Account, and the cost of insurance in which less than all the Parties are participating shall be charges to such Parties individually. The Operator shall, in respect of any insurance:

- 3.12.1.1 promptly inform the Parties participating therein when it is taken out and supply them with copies of the relevant policies when the same are issued;
 - 3.12.1.2 arrange for the Parties participating therein, according to their respective Participating Interests, to be named as co-insured's on the relevant policies with waivers of subrogation in favour of the Parties; and
 - 3.12.1.3 duly file all claims and take all necessary and proper steps to collect any proceeds and, if all the Parties are participating therein, credit them to the Joint Account or, if less than all the Parties are participating therein, credit them to the participating Parties.
- 3.12.2 Subject as stipulated above, any of the Parties may obtain such insurance as it deems advisable for its own account at its own expense providing such insurance is acceptable under the Law.
- 3.12.3 If the Operator is unable to obtain such other insurance required by the Operating Committee, it shall so advise the Parties and thereafter, it shall be discharged of its obligation to obtain such insurance.
- 3.12.4 The Operator shall take all reasonable steps to ensure that all contractors (including sub-contractors) performing work in respect of the Petroleum Operations and the Joint Property obtain and maintain all insurance required by Law and obtain from their insurers a waiver of subrogation in favour of the Parties.
- 3.13 The Operator may prosecute, defend and settle claims and litigations arising out of the Petroleum Operations and may compromise or settle such claims or litigations which involve an amount not exceeding the equivalent of US\$ [500,000.00] without the approval of the Operating Committee. Any claim or litigation involving an amount in excess of the equivalent of US\$ [500,000.00] shall be reported promptly to the Non-operators and a Non-operator shall have the right to be represented by its own counsel at its expense in the compromise, settlement or defence of such claims or litigation.
- 3.14 The Operator shall fulfil the reporting obligations of the Contractor unless otherwise stipulated in this Participation Agreement and the Agreement.

4. Operating Committee and Work Programmes

- 4.1 The Parties shall establish an Operating Committee to supervise and Control the Petroleum Operations. The Operating Committee shall consist of one representative appointed by each of the Parties provided always that more than one of the Parties may appoint the same representative who shall represent them separately. Each Party shall, as soon as possible after the date of this Participation Agreement, give notice to all the other Parties of the name of its representative and of an alternate on the Operating Committee. Such representative may be replaced, from to time, by like notice. Representatives may bring to meetings of the Operating Committee such advisers as they consider necessary. The representative of a Party or, in the absence of the representative, his alternate, shall be deemed authorised to represent and bind such Party with respect to any matter which is within the powers of the Operating Committee. The representative of the Party which is the Operator shall be the chairman of the Operating Committee and shall report the proceedings.

- 4.2 Except as otherwise provided in this Participation Agreement, the powers and duties of the Operating Committee shall include:
- 4.2.1 the consideration and determination of all matters relating to general policies, procedures and methods of operation hereunder;
 - 4.2.2 the approval of any public announcement or statement regarding this Participation Agreement or the Petroleum Operations;
 - 4.2.3 the consideration, revision and approval or disapproval, of all proposed Participation Work Programmes, Budgets and AFE's prepared and submitted to it pursuant to the provisions of this Participation Agreement;
 - 4.2.4 the determination of the timing and location of all Wells drilled under this Participation Agreement and any change in the use or status of a Well;
 - 4.2.5 the determination of whether the Operator will represent the Parties regarding any matters or dealings with the Minister of Petroleum, any other Federal Governmental authorities or third Parties in so far as the same relate to the Petroleum Operations, *provided that* there is reserved to each Party the unfettered right to deal with the Minister of Petroleum or any other Federal Governmental authorities in respect of matters relating to its own Participating Interest; and
 - 4.2.6 the consideration and, if so required, the determination of any other matter relating to the Petroleum Operations which may be referred to it by the Parties or any of them or which is otherwise designated under this Participation Agreement for reference to it.
- 4.3 The Operator shall, when requested by a representative of any Party, call a meeting of the Operating Committee. The Operator may do so at any time to keep the Parties informed on the Petroleum Operations.
- 4.4 A request to call a meeting of the Operating Committee shall state the purpose of that meeting and, except in an emergency, the Operator shall give the Parties at least [15] days' written notice with an agenda of the meeting, but where a meeting is called in an emergency, the Operator shall give as much notice thereof as possible by telephone or email, and except with the consent of all the Parties, the business of a meeting shall be only that for which it was called.
- 4.5 The Operator may, instead of calling a meeting, submit matters to the Parties by written notice, upon which each Party may vote within the period prescribed in the notice which shall not be less than three days or more than [15] days from the date notice is received. Failure of a Party to vote within the above time limits shall be deemed a negative vote.
- 4.6 Each Party shall have a voting interest equal to its Participating Interest. Unless otherwise provided in this Participation Agreement, all decisions of the Operating Committee shall be made by the affirmative vote of at least two Parties holding not less than ◆ % of the Participating Interests.
- 4.7 The Operator shall, at least [120] days before the end of each Calendar Year, submit to the Parties for approval a Participation Work Programme and Budget, which shall contain details of the Petroleum Operations to be carried out in the next Calendar Year and allocation of funds therefor including administrative overheads and third Party expenditure, in accordance with the Accounting Procedure attached to this Participation Agreement as appendix 1.

4.8 Unless unanimously agreed at least [60] days prior to the beginning of the Calendar Year, the Operator shall call a meeting of the Operating Committee to discuss and approve a Participation Work Programme and Budget for the ensuing Calendar Year and such work programme and Budget shall be approved not later than [30] days prior to the commencement of such Calendar Year and the decision of the Operating Committee shall bind the Parties. Upon approval of such Work Programme and Budget the Operator is hereby authorised and obliged to proceed with it in accordance with such approval.

4.9 Such approved Participation Work Programme and Budget may be reviewed and revised from time to time by the Operating Committee. Any Party may in writing request a review of an approved Participation Work Programme or Budget, or of a project within a programme, if that project costs more than ◆ US dollars (USD ◆), and the request shall state the objections of the Party, which shall be considered by the Operating Committee, who may amend the Participation Work Programme or Budget.

5. **Costs and Expenses**

5.1 Except as otherwise specifically provided in the Agreement and this Participation Agreement, all cost and expenses incurred by the Operator in the conduct of operations hereunder shall be borne by the Parties in proportion to their respective Participating Interests set forth in clause 2.

5.2 All costs and expenses incurred by the Operator in the conduct of Petroleum Operations hereunder shall be determined and settled in accordance with best internationally accepted accounting practice consistent with the provisions of the Agreement and its Accounting Procedure as complemented by the provisions of appendix 1 to this Participation Agreement and the Operator shall keep its records of costs and expenses in accordance therewith.

6. **Payments to the Operator**

6.1 A Non-operator shall pay its share of an expenditure relating to the Petroleum Operations, within [15] days of receipt of the account of the Operator.

6.2 The Operator may, upon [20] days' written notice, request a Non-operator to advance a share of the estimated expenditure for the following month, stipulating the due date of payment, *provided however that* such due date of payment shall not be before the first banking day of that month and the Operator shall include with such notice an estimate of the cash calls for the next [90] days, Operator's estimate of expenditure shall not exceed the approved Calendar Year's Budget. The Operator may, at any time upon [15] days' written notice, request additional advances to cover unforeseen expenditure.

6.3 Cash requirements shall be specified by the Operator in the currencies required for the Petroleum Operations and the Non-operators shall advance their shares in the currencies so specified.

6.4 If any Non-operator's advances for a given month exceed its share of cash disbursements for the same month, the next succeeding cash advance, after such determination, shall be reduced accordingly. However, Non-operator(s) may request that excess advances be refunded. The Operator shall make such refund within [15] days after date of such notice.

6.5 Where a Party is in default of payment, the Operator and the non-defaulting Parties shall have, as security for amounts due hereunder from a defaulting Non-operator, a lien on the Participating Interest share, the interest in material and equipment acquired for the Petroleum Operations and upon the proceeds from the sale of Petroleum, of that Non-operator, and a

Non-operator shall have for amounts due hereunder, a similar lien on the same interests and property of the Operator.

- 6.6 A lien may be exercised by a non-defaulting Party by collecting the amount due from a purchaser of Petroleum and the statement of the Operator of the amount due shall be proof thereof.
- 6.7 A late payment shall attract at LIBOR plus [3]% or ♦ % , whichever is the greater, compounded monthly and calculated from the due date of payment. A payment not received within [72] hours of the due date shall accrue interest from the due date and the non-paying Party shall be deemed to be in default from the due date of the payment.
- 6.8 A Party which remains in default for [five] days shall have no right to vote at any Operating Committee meeting held during the period of the default but shall be bound by all decisions of the Operating Committee made during such period, and the defaulting Party's Participating Interest shall be deemed to be vested pro rata in the non-defaulting Parties for voting purposes during the continuation of the default.
- 6.9 Where a Party fails to pay an amount required to be paid hereunder, and remains in default for [90] days, the Participating Interest share of the defaulting Party may be declared forfeit by the non-defaulting Parties, unless the amount due is an advance and the defaulting Party provides an irrevocable letter of credit or other security, acceptable to the Operator, for the amount due.
- 6.10 When the Participating Interest share of a defaulting Party is declared forfeited, the Operator shall give notice thereof to all the Parties, and that share shall vest rateably, unless otherwise agreed, in the non-defaulting Parties without payment of compensation and the defaulting Party shall at its sole expense take all steps necessary to vest that share accordingly, and the defaulting Party hereby appoints the Operator to act as its advocate to execute any and all documents required to effect such transfer. Notwithstanding the transfer of a defaulting Party's Participating Interest share in accordance with the foregoing, the defaulting Party shall remain liable for its proportionate share of the commitments incurred before its rights lapsed.
- 6.11 Where a Party is in default of payment, the remaining Parties shall advance the Operator on demand a share of that payment, in proportion to the Participating Interests of those Parties. Any payments received from a defaulting Party shall be credited to the accounts of the non-defaulting Parties who advanced funds on behalf of the defaulting Party.

7. **Materials and Equipment**

- 7.1 All materials and equipment acquired by the Operator for Petroleum Operations hereunder shall be owned by the Parties in undivided shares in the proportion of their respective Participating Interests.
- 7.2 Except as may be otherwise approved by the Operating Committee, the Operator shall purchase for the Joint Account of the Parties only such materials and equipment as are reasonably required in the conduct of operation provided for in approved Participation Work Programmes or revisions thereof, the Operator shall not stockpile materials or equipment for future use without the approval of the Operating Committee.
- 7.3 Jointly acquired materials or equipment declared by the Operator to be surplus shall be disposed of in such manner as the Operating Committee may direct; or, if the book value thereof does not exceed ♦ US dollars (USD ♦), the Operator shall dispose of same in such manner as the Operator shall deem appropriate; provided, however,

that each Party may, if practicable, separately take or sell and dispose of its interest in such materials or equipment or may by notice in writing, and subject to revocation at will, authorise the Operator, for a period or periods of not more than one Calendar Year each, to sell such materials and equipment for the account of the Party or Parties giving such authorization. Each Party shall have the right to purchase, at the prevailing market price in the area, materials or equipment which the Operator has declared to be surplus and which the Operator intends to dispose of on the open market.

7.4 Subject to the provisions of clause 17 of the Agreement, upon termination of this Participation Agreement the Operator shall salvage for the Joint Account all jointly-owned materials and equipment which can reasonably be salvaged, to be disposed of as provided in clause 7.3 hereof.

8. Relationship of the Parties and Tax Provisions

8.1 The Parties declare that it is not their intention by entering into this Participation Agreement to create or be considered as a partnership or any other similar entity.

8.2 Each Party shall be responsible for and shall pay its own taxes to the Somali authorities on its operations hereunder, subject to the provisions of clause 41 of the Agreement recognising that a Party hereunder may be subject to the laws of its place of incorporation in addition to the laws of Somalia.

9. Relinquishment and Transfers

9.1 Any Party desiring that all of the Participation Area be relinquished voluntarily shall notify the other Parties in writing accordingly, specifying its reasons therefor, and thereafter:

9.1.1 each Party shall within [30] days after receipt of the notice inform the other Parties in like manner whether it concurs in or opposes the proposed relinquishment;

9.1.2 if all the Parties concur in the proposed relinquishment, the Participation Area shall be relinquished as soon as possible under the Agreement;

9.1.3 if one or more of the Parties oppose the proposed relinquishment, the Party or Parties desiring to relinquish shall, upon request by the opposing Parties, transfer and convey without warranty of title-free and clear of all liens, charges and encumbrances and without right to compensation, all of its or their interest(s) in the Participation Area and material left thereon to said opposing Party or Parties, each in the proportion that its or their Participating Interest(s) hereunder bears to the sum of the Participating Interests of all the opposing Parties, or as otherwise agreed by the opposing Parties. The transferring Party or Parties shall bear:

9.1.3.1 its or their Participating Interest share(s) of costs, expenses and liabilities incurred hereunder which are attributable to the Participation Area for the period prior to the Effective Date of such transfer of interest;

9.1.3.2 its or their Participating Interest share(s) of all costs and expenses incurred by the Operator after such date under any contracts entered into by the Operator in execution of a Participation Work Programme theretofore approved by the Operating Committee; and

- 9.1.3.3 its or their Participating Interest share(s) of any accrued obligations under the Agreement which are not included in (9.1.3.1) or (9.1.3.2) above, but shall thereafter have no further rights or other obligations in connection therewith; and
- 9.1.4 a transfer under clause 9.1.3 above shall be effective as among the Parties [30] days after the opposing Parties' receipt of the transferring Party's first mentioned notice proposing relinquishment. Thereafter until such transfer has received whatever approvals may be necessary under the provisions of the Agreement or Law, the transferring Party or Parties shall hold at most legal, but not equitable, title to the interest(s) transferred for the benefit of the opposing Party or Parties. The transferring Party or Parties receiving the interest(s) transferred shall execute and deliver such documents and do such other acts as may be necessary to give legal effect to such transfer, to obtain all approvals thereof as may be required from the Minister of Petroleum, and otherwise to effectuate the purposes of this clause;
- 9.1.5 notwithstanding the foregoing, if the Operating Committee determines that
◆ % or more of the estimated, discovered and recoverable reserves under the Participation Area have been produced, no Party shall be allowed to relinquish or required transfer of interest in this Participation Agreement and the Agreement without the unanimous consent of all Parties.
- 9.2 No transfer of any interest under this Participation Agreement and the Agreement shall be made by any Party otherwise than in respect of an undivided interest in all or part of its Participating Interest in this Participation Agreement and the Agreement, and in accordance with the following provisions of this clause 9.
- 9.3 If any Party receives a bona fide offer for the purchase of all or a portion of an offeree Party's Participating Interest in this Participation Agreement and the Participation Area which the offeree Party is willing to accept, the offeree Party shall give notice thereof in writing to the other Parties:
- 9.3.1 such notice shall set forth the identity of the offeror, the terms and conditions (including monetary and other considerations) offered in good faith, and all other relevant particulars;
- 9.3.2 for a period of [30] days next following the receipt of such notice, the other Parties shall have an option to purchase the entire interest proposed to be sold on the same terms offered by the offeror, as set forth in the respective offer;
- 9.3.3 if more than one of the Parties should exercise its right to purchase said interest, each shall have the right to acquire such interest in the proportion that the Participating Interest hereunder of such Party bears to the sum of the Participating Interests of all the Parties exercising such right except as they may otherwise agree;
- 9.3.4 if within such a period of [30] days, none of the other Parties shall exercise its rights to purchase said interest, the sale to said offeror may be made under the terms and conditions set forth in the notice given, *provided that* the sale shall be consummated within six months from the date of such notice and that the sale and any transfer shall be in accordance with the Agreement and Law;

- 9.3.5 for the purposes of this paragraph, an offer to purchase shall also include an acceptance of an entity's offer to sell.
- 9.4 The limitations of clause 9.3 shall not apply to a transfer of a Participating Interest by a Party to an Affiliate of such Party or by the Federal Government to an Appointee, or from an Appointee to another Appointee, nor shall they apply to a transfer of a Participating Interest effected as a result of merger, consolidation, re-organization or sale of capital stock of the parent company of a Party.
- 9.5 Every transfer of a Participating Interest in the Participation Area shall be made expressly subject to this Participation Agreement and shall include a corresponding interest in jointly acquired equipment and facilities. No transfer of an interest hereunder shall be effective unless made by an instrument in writing duly executed by the Parties thereto in accordance with Law, and until the same has received all consents required under this Participation Agreement and the Agreement. A transfer shall provide that the transferor remains liable for obligations incurred before the date of transfer and such obligations shall in addition become the obligations of the transferee. Where, after the transfer, the transferee or transferor owns a Participating Interest of less than [5]%, they shall be jointly represented.
- 9.6 A transfer other than to an Affiliate of an Appointee shall be of sufficient financial standing to meet its Participating Interest share of its obligations under the Agreement and this Participation Agreement. In the event of a transfer of a Participating Interest to an Affiliate of a Party the transferor Party shall remain responsible for the full performance by the Affiliate of the obligations undertaken by the said Party under this Participation Agreement and the Agreement, and if such Affiliate ceases to be an Affiliate, the Participating Interest shall be transferred back to the Party.
- 9.7 In this clause, "transfer" means a transfer, assignment, sale or other disposal of the interest of a Party.
10. **Disposal of Production**
- 10.1 Each Party shall separately own, take in kind and dispose of its Participating Interest share of that portion of the Petroleum produced and saved from the Participation Area to which the Contractor is entitled under clause 9.3 of the Agreement.
- 10.2 Within [six] months following the signing of this Participation Agreement, the Parties shall, in accordance with the provisions of the Agreement and in light of the gathering and transportation facilities available under the adopted Development Plan, in good faith establish a set of rules governing the scheduling, lifting and other necessary provisions for the Crude Oil offtakes of the Parties, consistent with the Best Petroleum Industry Practice, which shall provide, among other things, such detailed terms and procedures as required for:
- 10.2.1 short-term Production forecasts;
 - 10.2.2 nominations and calculation of entitlements;
 - 10.2.3 scheduling of deliveries;
 - 10.2.4 lifting tolerances;
 - 10.2.5 underlift, overlift and make-up provisions;
 - 10.2.6 passage of title and risk;

- 10.2.7 penalties assessable to the Parties which cause shut-in or reductions of Production; and
- 10.2.8 other related matters.

Whatever is mutually agreed by the Parties shall be deemed to form part of this Participation Agreement. The above terms and procedures shall apply separately to each grade of Crude Oil that is segregated and separately stored for off-take.

11. Sole Risk Operations

- 11.1 Any Party may undertake Petroleum Operations at sole risk ("**sole risk project**") in a Participation Area, subject to the provisions of this clause.
- 11.2 The following types of sole risk project may be proposed:
 - 11.2.1 the drilling of a Well or the deepening, side-tracking, completing, plugging back, testing or reworking of an existing Well drilled for the Joint Account of the Parties, in order to test a formation in which no jointly-owned Well has been completed as a Well producing or capable of producing Petroleum;
 - 11.2.2 the installation of Production and transportation facilities.
- 11.3 The conduct of a project in a Development Area may not be the subject of a sole risk notice under this clause until after it has been proposed in complete form to the Operating Committee for consideration pursuant to clause 4 hereof and has not been approved within the period therein provided. In the event that such project fails to obtain the requisite approval of the Operating Committee, then any Party may serve notice on the other Parties of its intention to carry out that project at sole risk. The other Parties may give counter-notice that they wish to participate in the project within [60] days after receipt thereof but, where a drilling rig is on the location and has not been released, the period is reduced to [72] hours after receipt thereof. The periods set forth in this sub-section shall be extended for any period of time mutually agreed by the Parties as necessary or desirable for acquiring or developing additional information on the sole risk project.
- 11.4 If all the other Parties elect to participate in the project identified in the proposing Party's notice within the period thereof provided, such project is considered as being approved by the Operating Committee and the provisions of clause 4.8 of this Participation Agreement shall apply.
- 11.5 In the event that less than all the Parties elect to participate in the project, the Parties which elected to participate ("**sole risk Parties**") shall be entitled to have the sole risk project carried out. The interest of each sole risk Party in a sole risk project shall be in proportion to its Participating Interest in this Participation Agreement, or in such other proportion as the sole risk Parties may agree. Any sole risk project shall be carried out at the sole risk, cost and expense of the sole risk Parties in the proportion of their respective interests.
- 11.6 A sole risk project shall be carried out by the Operator on behalf of the sole risk Parties under the provisions of this participation agreement. No sole risk project may be commenced after [180] days following the expiration of the notice period prescribed in sub-clause 11.3, but the Operator shall commence work as promptly as reasonably possible if the notice period of [72] hours, set forth in sub-clause 11.3, applies. The Operator shall complete the sole risk project with due diligence, *provided that* it does not jeopardise, hinder or unreasonably interfere with Petroleum Operations carried out under the Agreement and adopted by the

Operating Committee pursuant to clause 4 of this Participation Agreement. The sole risk Parties may use for the sole risk project any Production, handling, processing and/or transporting facilities which are Joint Property, subject to a determination by the Operating Committee as to usage fees, availability of capacity and Production compatibility.

- 11.7 In connection with any sole risk project:
- 11.7.1 the sole risk project will be carried out under the overall supervision and control of the sole risk Parties in lieu of the Operating Committee;
 - 11.7.2 the computation of costs and expenses of the sole risk project incurred by the sole risk Parties shall be made in accordance with the principles set out in appendix 1 attached hereto;
 - 11.7.3 the Operator carrying out the sole risk project shall maintain separate books, records and accounts (including bank accounts) for the sole risk project which shall be subject to the same right of examination and audit by the sole risk Parties;
 - 11.7.4 the costs and expenses of the sole risk project shall not be reflected in the statements and billings rendered by the Operator for Petroleum Operations under this Participation Agreement; and
 - 11.7.5 if the Operator is carrying out a sole risk project on behalf of the sole risk Parties, the Operator shall be entitled to request the sole risk Parties in connection with the sole risk project to advance their share of the estimated expenditure and shall not use Joint Account funds or be required to use its own funds for the purpose of paying the costs and expenses of the sole risk project; furthermore the Operator shall not be obliged to commence or, having commenced, to continue the sole risk project unless and until relevant advances have been received from the sole risk Parties.
- 11.8 The sole risk Parties shall indemnify and hold the other Parties harmless against all actions, claims, demands and proceedings whatsoever brought by any third Party arising out or in connection with the sole risk project and shall further indemnify the other Parties against all damages, costs, losses and expenses whatsoever (directly or indirectly) caused to or incurred by them as a result of anything done or omitted to be done by the sole risk Parties in the course of carrying out such sole risk project.
- 11.9 Subject to the provisions of sub-clause 11.10 below, the sole risk project (including data and information) is wholly owned by the sole risk Parties in accordance with the Agreement, but the sole risk Parties shall keep the other Parties informed about the project. In the event that such project results in an increase of Production of Petroleum from the Participation Area, the portion of such increase which is available to the Contractor under the Agreement shall be owned solely by the sole risk Parties. Each of them shall have the right and obligation to take in kind, and separately dispose of its proportional share of supplementary Petroleum Production.
- 11.10 Any Party or Parties which are not participating in the sole risk project may, by giving [30] days' notice to the sole risk Parties, become participants in such project, at any time after the sole risk Parties have recovered from the supplementary Petroleum Production the following sums of money to which they are entitled on the project:

- 11.10.1 in the case of a project under clause 11.2.1 hereof, ♦ % of the sole risk cost of such project, plus [100]% of the cost of operating such Well incurred by the sole risk Parties:
 - 11.10.1.1 in the case of a project under clause 11.2.2 hereof, ♦ % of the sole risk cost of such project, plus [100]% of the cost of operating such facilities;
 - 11.10.1.2 the value of the supplementary Production to which a sole risk Party is entitled shall be the market value in sales at Arm's Length, determined in accordance with clause 10 of the Agreement;
 - 11.10.1.3 from and after the election of any Party or Parties to become participants in such project, all relevant Wells, facilities, equipment and other property appurtenant thereto shall be owned jointly by the participating Parties and each of the participating Parties shall be entitled to receive its proportional share of the supplementary Petroleum Production.

12. Confidentiality

- 12.1 All information related to the Petroleum Operations shall be confidential and shall not be disclosed to a Person other than a Party, except to:
 - 12.1.1 an Affiliate;
 - 12.1.2 the Federal Government and other public authorities, but only to the extent necessary for the purpose of any Law;
 - 12.1.3 a stock exchange to which a Party is obliged to make disclosure;
 - 12.1.4 contractors, consultants, legal counsels or arbitrators of a Party, where disclosure is essential;
 - 12.1.5 a *bona fide* prospective purchaser of an interest of a Party in the Agreement, but that purchaser shall undertake to treat that information as confidential;
 - 12.1.6 a lender, where disclosure is essential; or
 - 12.1.7 a Person to whom disclosure has been agreed by the Parties.
- 12.2 A Party making a disclosure to a Person described in clause 12.1.5 or 12.1.6 shall give [10] days' written notice thereof to the other Parties.
- 12.3 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 Federal Governmental authority or stock exchange, no Party shall make any public statement or press release without the approval of all the other Parties, which shall not be unreasonably withheld. The Operator shall utilise its best endeavours to co-ordinate all such public statements to the end that all Parties may effect simultaneous press releases.
- 12.4 The obligations of the Parties under this clause 12 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 had to expire had there not been early termination.

13. **Liability**

13.1 The Parties shall be severally liable in accordance with their respective Participating Interests to third Parties.

13.2 Where the Federal Government has nominated an Appointee (as defined in the Agreement) and the Appointee defaults, the Federal Government shall be liable.

13.3 If, because of the operation of the joint and several liability provisions contained in the Agreement, anyone of the Parties hereto shall be required to pay in full to the Federal Government or any other Party, any sum which, if the liability were several, would be required separately from each of the Parties or from one other Party only, then the Party(ies) shall notify forthwith and request immediate payment of the Party(ies) proportionate share according to its Participating Interest. If within [10] days from receipt of said notice, the other Party(ies) shall fail to make payment as provided above such Party(ies) shall be in default and the provisions of clause 6 above shall apply, this being without prejudice to any other legal remedies available to the non-defaulting Party(ies) against the defaulting Party(ies).

14. **Governing Law**

This Participation Agreement shall be governed by and be construed in accordance with the laws of England and Wales.

15. **Arbitration**

A dispute under this Participation Agreement shall be referred to arbitration in accordance with clause 47 of the Agreement.

16. **Force Majeure**

16.1 Provisions of clause 37 of the Agreement shall apply hereto *mutatis mutandis*.

17. **Notices**

17.1 All notice and other communication under this Participation Agreement shall be in writing and shall be delivered by hand, sent by registered post, certified post, fax or Email to the following address:

To the Federal Government:

[]

[]

[]

Fax: []

Email: []

To the Minister of Petroleum:

[]

[]

[]

Fax: []

Email: []

To the Contractor:

[]

[]

[]

Fax: []

Email: []

To the Operator:

[]

[]

[]

Fax: []

Email: []

17.2 A notice shall be effective on receipt.

17.3 Any notice, if sent by facsimile or Email, 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 Email 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. In the event that a notice sent by facsimile or Email includes a request for confirmation of the receipt thereof, such a confirmation shall be sent no later than one business day after receipt of the notice. The Contractor may at any time and from

time to time change its authorised representative or its address herein on giving the Federal Government 10 day notice in writing to such effect.

18. **Term**

18.1 This Participation Agreement shall come into force on the participation date and shall remain in force until:

18.1.1 it is terminated by the written consent of all the Parties;

18.1.2 all the Participating Interests are vested in one Party; or

18.1.3 the expiration or termination of the Agreement.

18.2 Before this Participation Agreement is terminated, there shall be a final accounting and settlement of the Joint Account.

19. **Final Provisions**

19.1 Headings are inserted in this Participation Agreement for convenience only and shall not affect the construction for interpretation hereof.

19.2 This Participation Agreement shall not be amended, modified or supplemented except by an instrument in writing signed by the Parties.

19.3 Subject to the provisions hereof, this Participation Agreement shall inure to the benefit of and be binding upon the successors and assignees of the Parties hereto and each of them respectively.

IN WITNESS WHEREOF, the Parties hereto have signed this Participation Agreement on the day and year first above written.

Signed by for and on behalf of)
the **FEDERAL GOVERNMENT OF**)
SOMALIA in the presence of a witness:) Signature

Name (block capitals)
Minister of Petroleum

Witness signature

Witness name
(block capitals)

Witness address

.....

Signed by [◆NAME OF COMPANY] in the)
presence of a witness:)
)

Signature -----

Name (block capitals) -----
[Title]

Witness signature -----

Witness name
(block capitals) -----

Witness address

APPENDIX 1: ACCOUNTING PROCEDURE

Attached to and made a part of the Participation Agreement.

1. **General Provisions**

The purpose of this Accounting Procedure is to establish equitable methods for determining charges and credits applicable to operations under the Participation Agreement.

It is the intent of the Parties that no Party shall lose or profit by reason of its duties and responsibilities as either Operator or as Non-operator and that no duplicate charges to the Joint Account for the same work shall be made.

The Parties agree that if any procedure established herein proves unfair or inequitable to any Party, the Parties shall meet and in good faith endeavour to agree on the changes necessary to correct that unfairness or inequity.

1.1 **Interpretation**

1.1.1 In this appendix:

"Agreement" means the production sharing agreement in relation to which the Participation Agreement is being entered into;

"Participation Agreement" means the Participation Agreement of which this Appendix forms part;

words and expressions defined in the Participation Agreement, the Agreement and its schedules have the meanings in this appendix as ascribed to them herein.

1.1.2 In the event of any conflict between the provisions of the Participation Agreement and this Appendix, the provisions of the Participation Agreement shall prevail.

1.1.3 This Accounting Procedure may be revised from time to time by an instrument in writing signed by the Parties.

1.2 **Statements, Billings and Adjustments**

1.2.1 The Operator shall maintain financial accounts and records necessary to record in reasonable details the transactions relating to Petroleum Operations under the Participation Agreement which shall be prepared in accordance with the Best Petroleum Industry Practices. The Operator shall upon request by a Party furnish a description of its accounting classifications.

1.2.2 Each Party to the Participation Agreement is responsible for preparing its own accounting and tax reports and paying of its own tax obligations to meet Somali requirements. The Operator shall furnish the Non-operator(s) with all reports, statements, billings and accounting documents necessary to maintain their own accounting records.

1.2.3 The Operator shall bill the Non-operator(s) on or before the last day of each month for their proportionate share of expenditure for the preceding month. Such billings shall be accompanied by statements of all charges and credits to the Joint Account, summarised in reasonable detail by appropriate accounting

classifications indicative of the nature thereof, except that items of Controllable Material and unusual charges and credits shall be detailed.

- 1.2.4 The Operator shall, upon request by Non-operator(s), furnish a description of such accounting classifications.
- 1.2.5 Amounts included in the billings shall be expressed in the currency in which the Operator's records are maintained. In the conversion of currencies when accounting for advances or payments in different currencies as provided for in clause 1.3, or any other currency transactions affecting operations under the Participation Agreement, it is the intent that none of the Parties shall experience an exchange gain or loss at the expense of, or to the benefit of, the other Parties. It is agreed that any loss or gain to the Joint Account resulting from the exchange of currency required for operations under the Participation Agreement or from the translations required, shall be charged or credited to the Joint Account. The Operator shall furnish the Parties with a description of the procedure applied by the Operator to accomplish said translation or exchange of currencies and provide currency exchange data sufficient to enable Non-operator(s) to translate the billings to the currency of the Non-operator(s) accounts.
- 1.2.6 Payment of billings by Non-operator(s) shall not prejudice the right of any Non-operator(s) to protest or question the correctness thereof; however, all bills and statements rendered to Non-operator(s) by the Operator during any Calendar Year shall conclusively be presumed to be true and correct after [24] months following the end of any such Calendar Year, unless within the said [24] month period a Non-operator takes written exception thereto and makes claim on the Operator for adjustment. No adjustment favourable to the Operator shall be made unless it is made within the same prescribed period. The provisions of this sub-section shall not prevent adjustments resulting from a physical inventory of the Joint Property or from a third Party claim.

1.3 **Advances and Payments**

- 1.3.1 If an Operator so requests, Non-operator(s) shall advance to the Operator the Non-operator(s)' share of estimated cash requirements for the succeeding month's operation in accordance with clause 6 of the Participation Agreement. The Operator shall make written request for the advance to Non-operator(s) at least [20] days prior to the first banking day of such succeeding month. The advance shall not be due and payable before the first banking day of the month for which the advance is requested. The request shall set out the funds in the currencies to be expended as estimated by the Operator to be required. The Non-operator(s) shall on or before the due date make corresponding advances in the currencies requested by depositing such funds to Operator's account at a bank as may be from time to time designated by the Operator.
- 1.3.2 Should the Operator be requested to pay any large sums of money for operations under the Participation Agreement, which were unforeseen at the time of providing the Non-operator(s) with said monthly estimates of its requirements, the Operator may make a written request to the Non-operator(s) for special advances covering the Non-operators' share of such payments. Non-Operator(s) shall advance to Operator their share of such advances within [15] days after date of such notice.

- 1.3.3 If Non-operators' advances exceed their share of actual expenditure, the next succeeding cash advance, after such determination, shall be reduced accordingly. However, Non-operator(s) may request that excess advances be refunded. The Operator shall make such refund within [15] days after date of such notice.
- 1.3.4 If Non-operators' advances are less than their share of actual expenditure, the deficiency shall, at Operator's option, be added to subsequent cash advance requirements or be paid by Non-operator's within [15] days following Operator's billing to Non-operator(s) of such deficiency.
- 1.3.5 If the Operator does not request Non-operator(s) as provided in clause 1.3.1, to advance their share of estimated cash requirements, Non-operator(s) shall pay their share of actual expenditure within [15] days following date of Operator's billing.
- 1.3.6 Payments of advances or billings shall be made on or before the due date; and if not so paid, the unpaid balance shall be treated as provided under clause 6 of the Participation Agreement.

1.4 Audits

- 1.4.1 A Non-operator, upon at least [30] days' advance written notice to the Operator and other Non-operator(s), shall have the right at its sole expenses to audit the Joint Account and related records for any Calendar Year or portion thereof within the [24] month period following the end of such Calendar Year; however, the conducting of an audit shall not extend the time for the taking of written exception to and the adjustment of accounts as provided for in clause 1.2.5. The Operator shall make every reasonable effort to co-operate with the Non-operators, and the Non-operators shall make every reasonable effort to conduct audits in a manner which shall result in minimum inconvenience to the Operator.
- 1.4.2 All adjustments resulting from an audit agreed between the Operator and the Non-operator conducting the audit shall be rectified promptly in the Joint Account by the Operator and reported to the other Non-operator. Any unresolved dispute arising in connection with an audit shall be referred to arbitration in accordance with clause 47 of the Agreement.
- 1.4.3 Except as otherwise provided in the Agreement, the cost of any audit or verification of the Joint Account that is for the benefit of all Parties shall be chargeable to the Joint Account if the Parties mutually agree.

2. Chargeable Costs, Expenditure and Credits

- 2.1 The Operator shall charge the Joint Account for all those costs and expenditure necessary to conduct Petroleum Operations under the Participation Agreement pursuant to the provisions of clauses 3.1 to 3.11 of schedule 2 to the Agreement.
- 2.2 The Operator shall credit the Joint Account for all the proceeds resulting from Petroleum Operations under the Agreement pursuant to the provisions of clause 3.12 of schedule 2 to the Agreement.

SCHEDULE 4: 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 4;

"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 4, there shall be no double-counting of the components making up any such amounts.
 4. All payments under this schedule 4 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 5: FORM OF BANK GUARANTEE

[Date]

Ministry of Petroleum

[]
[]

Somalia

1. We understand that, on []20[], the Federal Government of the Federal Republic of Somalia ("**Federal Government**") and [] ("**Contractor**") entered into a production sharing agreement in connection with [] block in Somalia ("**PSA**").
2. We, the undersigned [*insert full name of the bank*] ("**Bank**") hereby, save for the conditions stipulated below in clause 5, unconditionally and irrevocably on demand guarantee in favour of the Federal Government the due and punctual payment of all sums owed to the Federal Government and unpaid by the Contractor in respect of the failure of the Contractor to fulfil exploration work and expenditure commitments in relation to the [initial][first additional][second additional] exploration period, as regulated by the PSA, up to the maximum amount of US dollar [].
3. The amount set out in clause 2 above shall be reduced from time to time upon delivery to the Bank of a certificate issued by the Contractor and countersigned by the authorised representative of the Federal Government setting forth the amount of such reduction based on the completion by the Contractor of the corresponding items of the minimum work and expenditure requirements.
4. This bank guarantee shall become effective on the Effective Date of the PSA and shall terminate on the expiry of the [initial][first additional][second additional] or, if applicable, on the expiry of any subsequent exploration period, or such earlier time as the total of the reductions during any particular exploration period equals to the applicable guarantee amount set out in clause 2 above.
5. It is understood that any change, modification, addition or amendment that may be made to the PSA, or any extension of time or waiver granted under the PSA, or any composition or settlement shall not in any way release us from our liability hereunder and we expressly waive our right to consent to or to receive notice of any such change, modification, addition, composition, settlement or forbearance.
6. Demands may be made under this bank guarantee by the Federal Government by delivering to the Bank of the Federal Government's written statement with the certified copy of this bank guarantee plus all amendments thereto approved by the Federal Government (if any) setting forth the amount claimed and certifying that the amount claimed represents the amount due and owing by the Contractor in respect of its failure under the PSA to fulfil the exploration work and expenditure commitments in relation to [initial][first additional][second additional] exploration period or, if applicable, in relation to any subsequent exploration period and:
 - 6.1 the Contractor has failed to incur the minimum work and expenditure commitment, as stipulated in the PSA, in relation to the relevant exploration period;

- 6.2 the Contractor has been notified in writing by the Minister of Petroleum, by registered letter or courier (a copy of which to be attached to such written statement), of its non-compliance and the details thereof, and has been advised that a drawing is being made against this bank guarantee;
- 6.3 the Contractor has been provided 30 days following written notice pursuant to sub-clause 6.2 above of such non-compliance within which to rectify the non-compliance and has failed to do so in its entirety.
7. Upon its cancellation or expiry, this bank guarantee shall be returned to the Contractor.

The duly authorised representative of the Bank has executed this bank guarantee on the [] day of [] 200[].

Sincerely,

for and on behalf
[insert full name of the bank]

SCHEDULE 6: 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 ("**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 7: MINIMUM WORK AND EXPENDITURE REQUIREMENTS

1. The Contractor shall have the following minimum work requirement:
 - 1.1 during the initial Exploration period of [3] Contract Years:
 - 1.1.1 in the event the Agreement relates to an onshore Block, carry out geological, geochemical and geophysical studies, comprising:
 - (a) the compilation of a technical database for the Exploration operations; and
 - (b) a field visit to verify initial geological, geochemical and geophysical work and plan for two dimensional seismic acquisition;
 - 1.1.2 carry out a data search for existing data specific to the Contract Area, including:
 - (a) Well data, if available;
 - (b) seismic data and gravity data, if available; and
 - (c) reprocess seismic data, gravity and magnetic data, if available;
 - 1.1.3 ◆ kms of seismic survey;
 - 1.1.4 drilling of ◆ Exploratory Wells, with a minimum expenditure of US dollars ◆ per Well;
 - 1.2 during the first additional Exploration period of [2] Contract Years, drilling of Exploratory Wells to a minimum depth of ◆ meters per Well, with minimum expenditure of US dollars ◆ per Well;
 - 1.3 during the second additional Exploration period of [2] Contract Years drilling of ◆ Exploratory Wells to a minimum depth of ◆ meters per Well, with a minimum expenditure of US dollars ◆ for each Well.
2. The Contractor shall have a minimum expenditure obligation of:
 - 2.1 US dollars ◆ for the purpose of the minimum work obligations during the initial Exploration period;
 - 2.2 US dollars ◆ for the purpose of the minimum work obligations during the first additional Exploration period; and
 - 2.3 US dollars ◆ for the purpose of the minimum work obligations during the second additional Exploration period.
3. 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 Petroleum Industry 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.

4. 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.

SCHEDULE 8: 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 9.1.2) 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:

- 4.1 "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;

minus

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

minus

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

or

Cumulative cash inflows = Cost Petroleum + Profit Petroleum - Production Costs - Decommissioning Costs

4.2 "Cumulative Cash Outflows" at the end of the preceding Calendar Quarter are equal to:

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

plus

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

or

Cumulative Cash Outflows = Exploration Costs + Development Costs

Development Costs = [20]% per Contract Year x [5] Contract Years

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 percentage indicated below:

R-factor	Federal Government's share³	Contractor's share
"R" less than 1.0	[20]%	[80]%
"R" equal to or greater than 1.0 and less than 2.0	$((R-1) \times (85\%-20\%)) + 20\%$	100% minus the Federal Government's share
"R" equal to or greater than 2.0	[85]%	[15]%

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 Minister of Petroleum;

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.