

## CHAPTER 308 - Petroleum (Exploration and Production) Act

*Commencement Date: 11/16/1986*

### **An Act of Parliament to regulate the negotiation and conclusion by the Government of petroleum agreements relating to the exploration for, development, production and transportation of, petroleum and for connected purposes**

Short title

1. This Act may be cited as the Petroleum (Exploration and Production) Act.

Interpretation

2. In this Act, unless the context otherwise requires—

"block" means a block constituted as provided by section 7;

"contractor" means the person with whom the Government concludes a petroleum agreement;

"crude oil" means—

(a) all hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric conditions of temperature and pressure;

(b) asphalt and ozokerites; and

(c) the liquid hydrocarbons known as distillate or condensate or natural gas liquids obtained from natural gas by condensation or extraction;

"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;

"petroleum" means mineral oil and includes crude oil, natural gas and hydrocarbons produced or capable of being produced from oil shales or tar sands;

"petroleum agreement" means the agreement, contract, or other arrangement between the Government and a contractor to conduct operations in accordance with the provisions of this Act;

"petroleum operations" means all or any of the operations related to the exploration for, development, extraction, production, separation and treatment, storage, transportation and sale or disposal of, petroleum up to the point of export, or the agreed delivery point in Kenya or the point of entry into a refinery, and includes natural gas processing operations but does not include petroleum refining operations.

Property in petroleum

3. All petroleum existing in its natural condition in strata lying within Kenya and the continental shelf is vested in the Government, subject to any rights in respect thereof which, by or under any other written law, have been or are granted or recognized as being vested, in any other person.

#### Petroleum operations

4.(1) No person shall engage in any petroleum operations in Kenya without having previously obtained the permission of the Minister in such manner, in such form and on such terms as are prescribed by this Act and by regulations made thereunder.

(2) All petroleum operations shall be conducted in accordance with the provisions of this Act, the regulations made thereunder and the terms and conditions of a petroleum agreement.

(3) The Government may conduct petroleum operations either—

(a) through an oil company established by the Government to conduct those operations; or

(b) through contractors in accordance with petroleum agreements; or

(c) in such other manner as may be necessary or appropriate.

(4) Subject to this Act and the regulations made thereunder, the Government may authorize a contractor to engage in petroleum operations within a specified area, in accordance with the terms and conditions set out in the petroleum agreement.

(5) Notwithstanding the provisions of this section, the Government may grant to any person, other than the contractor, a permit for the prospecting and mining of minerals or other natural resources other than petroleum or the conduct of operations other than petroleum operations within an area which is the subject of a petroleum agreement, provided that the prospecting, mining and the other operations shall not interfere with petroleum operations.

#### Powers of the Minister

5.(1) The Minister may, on behalf of the Government, negotiate, enter into and sign petroleum agreements with a contractor and petroleum agreements shall, subject to the provisions of this Act, be in the prescribed form.

(2) For the purpose of obtaining geological information, the Minister may grant non-exclusive exploration permits, in respect of areas specified therein, under which a person may enter upon an area and prospect and carry out geological and geophysical surveys.

(3) The Minister—

(a) shall make available model petroleum agreements to potential contractors as a basis for the negotiation for petroleum agreements;

(b) shall negotiate petroleum agreements with potential contractors by such procedures as secure the most favourable conditions for the Government, except that the Minister may cause any investigations, negotiations or consultations to be made or carried out as he considers necessary before entering into a petroleum agreement and may reject any application made by a potential contractor if satisfied that the rejection is in the best interest of the Government;

- (c) shall supervise petroleum operations carried out under a petroleum agreement;
- (d) may take any action, decision, or give any permission or consent or exercise any other control as may be necessary or desirable for the purposes of this Act or the regulations made thereunder.
- (4) The powers of the Minister under this Act to sign or revoke a petroleum agreement shall be exercised by him or a person specially authorized by him in writing.

#### Regulations

6. (1) Subject to this Act, the Minister may make regulations for or with respect to—
- (a) the opening of areas for petroleum operations;
  - (b) the terms and conditions applicable to the grant of exploration permits under section 5 (2);
  - (c) the manner in which applications may be made for petroleum agreements;
  - (d) the periods of time for exploration and production;
  - (e) the minimum exploration work and expenditure obligations to be fulfilled by a contractor;
  - (f) the fees or any other payments to be made by the contractor under a petroleum agreement;
  - {g} the procedures for the assignment of rights and obligations of a contractor under petroleum agreements;
  - (h) the registration of contractors;
  - (i) the manner in which reports, data, information and accounts shall be submitted by the contractor;
  - (j) the procedures of inspection and control of a contractor's operations;
  - (k) the conduct of petroleum operations, conservation of petroleum resources and measures relating to safety, environmental protection and the avoidance of waste, pollution and accidents;
  - (l) procedures regarding the revocation or termination of petroleum agreements.
- (2) Notwithstanding subsection (1), the Minister may make regulations which he considers necessary for giving effect to the provisions of this Act.

#### Constitution of blocks, etc

- 7.(1) For the purposes of this Act, the Minister may, by notice in the Gazette, divide Kenya and the continental shelf into numbered areas, and each area shall be described as a "block".
- (2) The Minister may reserve blocks to be exploited by the Government.
- (3) The Minister may require a contractor to relinquish portions of a block to which a petroleum agreement relates in the manner specified in the agreement.

#### Financial and technical ability of contractors

**8.**The Government shall enter into petroleum agreements only with contractors who have the financial ability, technical competence and professional skills necessary to fulfil the obligations under the petroleum agreement.

#### General terms and conditions of petroleum agreements

**9.(1)** Notwithstanding any other written law and subject to this Act, there shall be implied in every petroleum agreement an obligation on the contractor to—

- (a) perform certain minimum work and incur certain minimum expenditure during the course of exploration operations;
- (b) report the discovery of the existence of any petroleum to the Minister;
- (c) present to the Minister a development plan in respect of any commercial field and promptly take all steps that are reasonable to develop and produce that field;
- (d) present to the Minister a work programme and budget for each year of operation;
- (e) keep accurate books of accounts and records of petroleum operations;
- (f) conduct petroleum operations in accordance with sound professional and technical skills and adopt measures necessary for the conservation of petroleum and other resources and the protection of the environment and human life;
- {g} give preference to the employment of and training of Kenyan nationals in petroleum operations;
- (h) give preference to the use of products, equipment and services locally available;
- (i) indemnify the Government against all claims made by third parties, in respect of any injury, damage or loss caused by, or resulting from, the conduct of any operations carried out by the contractor or subcontractors pursuant to the provisions of any petroleum agreement;
- (j) furnish such other information and reports concerning petroleum operations as the Minister may require.

#### Access to private land

**10.(1)** Where a contractor intends to enter upon any private land for the purposes of conducting petroleum operations, he shall give not less than forty-eight hours' notice of his intention to the occupier, and if practicable to the owner, of the land and shall, if required by the owner or occupier, give security in such sum and by way of such means as the Minister may direct for meeting any compensation payable under subsection (2).

(2) Whenever, in the course of carrying out petroleum operations, any disturbance of the rights of the owner or occupier of private land, or damage to the land, or to any crops, trees, buildings, stock or works therein or thereon is caused, the contractor shall be liable on demand to pay to the owner or occupier such compensation as is fair and reasonable having regard to the extent of the disturbance or damage and to the interest of the owner or occupier in the land.

(3) If the contractor fails to pay compensation when demanded under subsection (2), or if the owner or occupier is dissatisfied with the amount of compensation offered to him, the owner or occupier may, within six months of the date on which the demand or offer is made, take proceedings before a court of

competent jurisdiction for the determination and recovery of compensation (if any) properly payable under subsection (2).

(4) For the purpose of this section, "private land" means land privately owned and land the subject of a grant, lease or licence from the Government.

#### Training Fund

**11.(1)** There shall be established a training fund for the purpose of training Kenyan nationals in the petroleum industry.

(2) All moneys raised by the contractors as a training contribution shall be paid into the training fund.

(3) No money shall be withdrawn from the training fund except as may be authorized by the Minister.

(4) All moneys from the training fund shall be used only for the purpose for which the fund is created.

(5) For the purposes of this section, the training contribution shall be such amount as is specified in the petroleum agreement.

#### ***SCHEDULE***

### **PART I**

#### **SCOPE AND INTERPRETATION**

##### **1 SCOPE**

This contract is a production sharing contract, in accordance with the provisions herein contained.

The Contractor shall—

(a) be responsible to the Government for the execution of the petroleum operations contemplated hereunder in accordance with the provisions of this contract and is hereby appointed and constituted the exclusive legal entity to conduct petroleum operations in the contract area for the term hereof;

(b) provide all capital, machinery, equipment, technology and personnel necessary for the conduct of petroleum operations;

(c) bear the risk of petroleum costs required in carrying out petroleum operations and shall therefore have an economic interest in the development of the petroleum deposits in the contract area. Such costs shall be included in petroleum costs recoverable as provided in clause 27 hereof.

During the term of this contract, the total production achieved in the conduct of the petroleum operations shall be divided between the parties hereto in accordance with the provisions of clause 27 hereof.

##### **2 INTERPRETATION**

In this contract, words in the singular include the plural and vice versa, and except where the context otherwise requires:

"accounting procedure" means the accounting procedures and requirements set out in Appendix "B" attached hereto and made an integral part hereof;

"the Act" means the Petroleum (Exploration and Production) Act;

"affiliate" means a person directly or indirectly controlling or controlled by or under direct or indirect common control with another person, and "control" means the ownership of at least fifty per cent (50%) of voting rights in that person;

"barrel" means a quantity consisting of 158.987 litres at standard atmospheric pressure of 1.01325 bars and temperature of fifteen degrees centigrade (15°C);

"calendar quarter" or "quarter" means a period of three (3) consecutive months commencing with the first day of January, April, July and October;

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

"commercial discovery" means a discovery of petroleum which has been duly evaluated in accordance with the provisions of clause 19, and which can be produced commercially according to good international 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 discovery, saved and not used in petroleum operations;

"Constitution" means the Constitution of the Republic of Kenya;

"contract area" means the area covered by this contract, and described in Appendix "A" and any part thereof not previously surrendered;

"contract year" means twelve (12) consecutive calendar months from the effective date or from the anniversary thereof;

"contractor" means the contractor, its successors or any assignee or assignees of any interest of the contractor under this contract, provided that the assignment of any such interest is accomplished pursuant to the provisions of clause 35 hereof;

"crude oil" means all hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric pressure, asphalt ozokerites and the liquid hydrocarbons known as distillates or natural gas liquids obtained from natural gas by condensation or extraction;

"development area" means the area delimited in a development plan adopted under clause 20 hereof;

"effective date" means the date this contract is executed by the Government and the contractor;

"exploration operations" include geological and geophysical surveys and analyses, aerial mapping, investigations of subsurface geology, stratigraphic test drilling, drilling exploratory wells, and work necessary connected therewith;

"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;

"fiscal year" means a period of twelve (12) consecutive months corresponding to the year of income

as denned in the Income Tax Act of Kenya;

"Income Tax Act" means the Income Tax Act, as from time to Gap. 470. time amended;

"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 good international petroleum industry practice;

"Minister" means the Minister for the time being responsible for energy or his designated representative;

## PART II—TERM, EXPLORATION, OBLIGATIONS AND TERMINATION

### PART II

#### TERM, EXPLORATION OBLIGATIONS AND TERMINATION

##### 2. TERM

(1) The contractor is authorized to conduct exploration operations within the contract area during an initial exploration period of ..... contract years from the effective date.

(2) The contractor shall begin exploration operations within three (3) months of the effective date.

(3) Upon written application by the contractor made not later than one (1) month prior to the expiry of the initial exploration period, the Minister shall, if the contractor has fulfilled his work and expenditure obligations under this contract, grant a first additional exploration period of ..... contract years.

(4) Upon written application by the contractor made not later than one (1) month prior -to the expiry of the first additional exploration period hereof, the Minister shall, if the contractor has fulfilled its work and expenditure obligations under this contract, grant a second additional exploration period of ..... , contract years.

(5) In order to enable the contractor to complete the drilling and testing of an exploratory well actually being drilled or tested as the end of the second additional exploration period, the Minister shall, on written application by the contractor made not later than three (3) months before She expiry of that exploration period, unless another period of notice is agreed, extend the period in which the work is to be expeditiously completed. which in any event shall not extend such period by more than four (4) months.

(6) This contract shall expire automatically at the end of the initial exploration period or of any additional exploration period, except as to any development area. If the contractor reports, pursuant to sub-clause 19 (6) hereof, that a commercial discovery has been made before the expiry of the initial exploration period stipulated in sub-clause 2 (1) hereof or any additional exploration period thereof, this contract shall not expire in respect to the relevant development area, but shall continue as to such development area for a term of ..... years from the date the development plan for that development area is adopted under sub-clause 20 (3) hereof.

##### 3. SURRENDER

(1) The contractor shall surrender:

- (a) ..... per cent (.....%) of the original contract area at or before the end of the initial exploration period
- (b) ..... per cent (.....%) of the original contract area al or before the end of the first additional exploration period.
- (2) When calculating a surrender under sub-clause 3 (1), a development area shall be excluded from the original contract area.
- (3) The contractor may surrender a part of the contract area and such a voluntary surrender shall be credited against the next surrender obligation of the contractor under sub-clause 3 (1).
- (4) The shape and size of an area surrendered shall be approved by the Minister, which approval shall not be unreasonably withheld.
- (5) The contractor shall give one (1) year's written notice of surrender in respect of a commercial discovery which is producing or has produced petroleum and one (1) month written notice of surrender in respect of any other part of the contract area. In case of a surrender of the entire contract area the contract shall terminate.
- (6) No surrender shall reduce the minimum amount of exploration work and expenditure fixed in clause 4.

#### 4. MINIMUM EXPLORATION WORK AND EXPENDITURE OBLIGATIONS

- (1) The contractor shall carry out the following minimum work and expenditure obligations—
  - (a) during the initial exploration period of ..... contract years—
    - (i) ..... km of seismic with a minimum expenditure of U.S. dollars .....
    - (ii) drilling of ..... exploratory wells to a minimum depth of ..... meters per well with a minimum expenditure of U.S. dollars ..... for each well;
  - (b) during the first additional exploration period of ..... contract years:
    - (i) drilling of ..... exploratory wells to a minimum depth of ..... meters per well with minimum expenditure of U.S. dollars ..... for each well;
  - (c) during the second additional exploration period of ..... contract years—
    - (i) drilling of ..... exploratory wells to a minimum depth of ..... meters per well with a minimum expenditure of U.S. dollars ..... for each such well.
- (2) The fulfilment of any work obligation shall not relieve the Contractor of he corresponding expenditure obligation therein and vice-versa.
- (3) If the drilling of an exploratory well is discontinued, prior o reaching the minimum depth herein specified, because that well has encountered the basement, an impenetrable substance or any condition which in accordance with good international 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.



A well drilled to evaluate a discovery under an evaluation work programme pursuant to sub-clauses 19 (2) and 19 (3) shall not have to satisfy the requirement to drill an exploratory well, except with the written consent of the Minister.

(4) The minimum exploration expenditure set forth in sub-clause 4 (1) are expressed in ..... U.S. dollars of the 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 U.S. dollars by dividing the costs, by the number (hereinafter referred to as the "discount rate") which is the sum of one (1) 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.

(5) If during either the initial exploration period or the first additional exploration period, the contractor exceeds the minimum work obligation or incurs expenditure in accordance with sub-clause

4 (4) exceeding the minimum expenditure obligations for such exploration period, then such excess may be credited toward the respective obligation of the next succeeding additional exploration period or periods.

(6) On or before the commencement of the initial exploration period or of any additional exploration period the contractor shall provide a security, in a form acceptable to the Minister, guaranteeing the contractor's minimum work and expenditure obligations under sub-clause 4 (1) hereof,

(7) If at the end of either the initial exploration period or of any additional exploration period or upon the date of termination of this contract, whichever occurs first, the contractor has not fulfilled its minimum work obligations under sub-clause 4 (1) hereof, and/or its minimum expenditure obligations under sub-clauses 4 (1) and 4 (4) hereof, the contractor shall pay to the Government the minimum monetary obligation in respect of the work not carried out multiplied by the discount rate, as denned in sub-clause 4 (4) and calculated on the last month of that exploration period, and/or the shortfall, if any, between the amount expended, in accordance with sub-clause 4 (4), and the minimum monetary obligation for that exploration period, multiplied by the discount rate, as denned hereabove.

## 5. SURFACE FEES

(1) The contractor shall pay, on or before the beginning of the relevant contract year to the accounting officer of the Ministry, the following surface fees:

— U.S. dollars ..... per hectare per year for the initial exploration period;

— U.S. dollars ..... per hectare per year for the first additional exploration period; and

— U.S. dollars ..... per hectare per year for the second additional exploration period or any extension thereof.

(2) The surface fees shall be calculated on the basis of the surface area of the contract area on the date those payments are due.

(3) A fee payable under sub-clause 5 (1) is not refundable and a late payment shall attract interest in accordance with sub-clause 34 (2) hereof.

## 6. TERMINATION

(1) The Minister may terminate this contract by giving the contractor written notice, if the contractor—

(a) fails to make any payment to the Government or the Minister required under this contract for a period exceeding one (1) month;

(b) is in material breach of any other obligation under this contract; or

(c) becomes insolvent, makes a composition with creditors, or goes into liquidation other than for reconstruction or amalgamation.

(2) The period of notice in respect of sub-clause 6 (1) (a) hereof shall be one (1) month, and in any other case three (3) months, but if the contractor remedies the breach within the period of the notice, the Minister shall withdraw the notice. Where the Minister reasonably believes that the contractor is using its best efforts to remedy the default, the Minister may extend the notice, accordingly.

(3) When this contract is terminated or expires in whole or in part, the contractor shall conclude the petroleum operations in the area as to which this contract has terminated or expired in an orderly manner minimizing harm to the Government and third parties.

(4) Where control over one of the entities constituting the contractor is changed, the continuation of the contract shall be subject to the consent of the Minister, which shall not be unreasonably withheld, and for the purpose of this sub-clause 6 (4) the term "control" shall have the same meaning as set forth in the definition of an affiliate in sub-clause 1 (2)

## PART III—RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

### 7. RIGHTS OF THE CONTRACTOR

(1) The contractor shall have the right to carry out the petroleum operations within the contract area, subject to the provisions of this contract for the term hereof.

(2) The contractor is granted the right to enter upon the contract area and conduct petroleum operations there, but 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.

(3) The Minister shall obtain on behalf of the contractor, any permit necessary to enable the contractor to use the water in the contract area for the purpose of the petroleum operations but 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-

(4) The contractor may, for the purpose of the petroleum operations, use gravel, sand, clay and stone in the contract area- but not in—

(a) Trust land without a licence granted under section 37 of the Trust Land Act;

(b) other private land without the consent of the owner; and

(c) a beach, foreshore or reef without the consent of the Minister.

(5) Subject to the provisions of section 10 of the Act and of regulation 6 of the Regulations made thereunder, and subject to the provisions of sections 115 and 118 of the Constitution and Part IV of the Trust Act, the contractor may exercise all rights granted to him by this contract.

## 8. GENERAL STANDARDS OF CONDUCT

(1) The contractor shall carry out the petroleum operations diligently and in accordance with good international petroleum industry practice.

(2) In particular, the contractor shall—

(a) ensure that all machinery, plant, equipment and installations used by the contractor in connection with the petroleum operations are of proper and accepted construction and are kept in good repair;

(b) use the resources of the contract area as productive as possible and ensure that petroleum discovered and produced, or mud or any other fluids or substances do not escape or waste:

(c) prevent damage to adjacent strata which bear petroleum or water, and prevent water entering through wells into strata bearing petroleum, except where water injection method's are used for secondary recovery operations;

(d) properly confine petroleum in receptacles constructed for that purpose, and not place crude oil in an earthen reservoir except temporarily in an emergency; and

(e) dispose of waste oil, salt water and refuse in accordance with good international petroleum industry practice, avoiding pollution.

## 9. JOINT LIABILITY AND INDEMNITY

(1) Where the contractor consists of more than one person their liability shall be Joint and several.

(2) The contractor shall cause as little damage as possible to the surface of a contractor area and to trees, crops, buildings and other property thereon, shall forthwith repair any damage caused, and shall pay reasonable compensation for any loss suffered.

(3) The Minister may, if he has reasonable cause to believe that the petroleum operations may endanger persons or property, cause pollution, harm marine life or interfere with navigation and fishing, order the contractor to take reasonable remedial measures or order the contractor to discontinue the relevant petroleum operations until such measures, or mutually agreed alternatives thereto, are implemented.

(4) The contractor shall maintain appropriate and adequate third party liability insurance and workmen's compensation insurance and shall provide the Minister with evidence of those insurances before the petroleum operations begin.

(5) The contractor shall indemnify, defend and render the Government harmless from all claims and damage which, but for the conduct of the petroleum operations by the contractor or a sub-contractor, would not have arisen or occurred.

## 10. WELLS AND SURVEYS

(1) Unless such notice is waived, the contractor shall not drill a well or borehole or recommence drilling after a six (6) months' cessation without thirty (30) days' prior notification to the Minister which notice shall set forth the Contractor's reasons for undertaking such well and shall contain a copy of the drilling programme.

(2) The design of a well or borehole and the conduct of drilling shall be in accordance with good international petroleum industry practice.

(3) No borehole or well shall be drilled so that any part thereof is less than five hundred (500) metres from a boundary of the contract area. without the consent in writing of the Minister, which consent shall not be unreasonably withheld.

(4) The contractor shall not, except where there is danger or a risk of significant economic loss—

(a) abandon a well or remove any permanent form of casing therefrom, without giving forty-eight (48) hours prior notification to the Minister, and an abandoned well shall be securely plugged to prevent pollution, sub-sea damage, or water entering or escaping from the strata penetrated: or

(b) commence drilling, re-enter or plug a well unless a representative of the Minister has been given a reasonable opportunity to be present.

(5) The contractor shall state, in its application to abandon a well on land, whether that well is capable of providing a water supply.

(6) The contractor shall, within two (2) months of termination or expiry of this contract or the surrender of part of the contract area, deliver up all productive wells, in said surrendered area, in good repair and working order together with all casings and installations which cannot be moved without damaging the well. but the Minister may require the contractor to plug the well at the contractor's expense by notifying the contractor within thirty (30) days after such termination or expiry is effected or at least three (3) months prior to surrender of a development area.

(7) Where the contractor applies to permanently abandon an exploratory well in which petroleum of potentially commercial significance has not been found, the Minister 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 within the same prospect area, subject to the following provisions:

(a) Any such additional petroleum operations shall be at the sole cost, risk and expense of the Minister and shall be paid for in accordance with the accounting procedure. The Government shall advance to the contractor the funds necessary to conduct the operations.

(b) The contractor shall not undertake such additional work if it will interfere with the conduct of the contractor's petroleum operations or if it is not technically or operationally feasible.

(c) In the event that the petroleum operations undertaken under this sub-clause 10 (7) result in a discovery which the contractor elects to evaluate and/or develop as a commercial field, the contractor shall reimburse the Government ..... per cent (.....%) of the costs and expenses incurred by the Government for the conduct of the operations and such sum shall be paid within thirty (30) days of the notification made by the contractor. If the contractor does not make such election, the Government shall have the right to continue the petroleum operations on this discovery at the sole cost, risk and expense of the Government.

(8) The contractor shall give the Minister thirty (30) days; notice of any proposed geophysical survey, which notice shall contain complete details of the programme to be conducted. At the request of the contractor, the Minister may waive the notice period.

## 11. OFFSHORE OPERATIONS

(1) The contractor shall ensure that works and installations erected offshore in Kenya's territorial waters and exclusive economic zone shall be—

(a) constructed, placed, marked, buoyed, equipped and maintained so that there are safe and convenient channels for shipping;

(b) fitted with navigational aids approved by the Minister;

(c) illuminated between sunset and sunrise in a manner approved by the managing director, Kenya Ports Authority; and

(d) kept in good repair and working order.

(2) The contractor shall pay compensation for any interference with fishing rights caused by the petroleum operations.

## 12. FIXTURES AND INSTALLATIONS

(1) With the written consent of the Minister, which consent shall not be unreasonably withheld, the contractor shall have the right to construct roads, drill water wells and to place fixtures and installations necessary to conduct the petroleum operations, including but not limited to storage tanks, shipment installations, pipelines, cables or similar lines, located inside or outside the contract area. The consent of the Minister may be conditional on the use by other producers of the excess capacity, if any, of those facilities. Where the Minister and the contractor agree that a mutual economic benefit can be achieved by constructing and operating common facilities, the contractor shall use its best efforts to reach agreement with other producers on the construction and operation of such common facilities.

(2) Other producers may only use the facilities of the contractor where there exists excess capacity and on payment of a reasonable compensation which includes a reasonable return on investment to the contractor and provided the use does not unreasonably interfere with the contractor's petroleum operations.

(3) The Minister may consent to the laying of pipelines, cables and similar lines in the contract area by other persons, but those lines shall not unreasonably interfere with the petroleum operations of the contractor.

(4) On termination or expiration of this contract or surrender of part of the contract area, the contractor shall remove the above-ground plant, appliances and installations from the contract area or the part surrendered other than those that are situated in or related to a development area or, at the option of the Minister, the contractor shall transfer them, at no cost, to the Government, in the condition that they are then in.

(5) When the rights of the contractor in respect of a development area terminate, expire or are surrendered, the contractor shall transfer to the Government, at no cost, the plant, appliances and installations that are situated in the development area or that are related thereto, unless such plant, appliances and installations are or may be utilized by the contractor in petroleum operations under this

contract, but the Government may require the contractor to remove the surface installations at the cost of the contractor.

### 13. LOCAL EMPLOYMENT AND TRAINING

(1) The contractor, its contractors and sub-contractors shall, where possible, employ Kenya citizens in the petroleum operations, and until the expiry or termination of this contract, shall train those citizens. The training programme shall be established in consultation with the Minister.

(2) In addition to the obligation under sub-clause 13 (1) and commencing on the effective date, the contractor shall for the purposes of section 11 of the Act contribute or hold to the order of the Ministry a minimum of ..... thousand U.S. dollars per year for the Ministry training fund established under section 11 (1) of the Act. The contractor's obligation hereunder shall be increased to a minimum of ..... thousand U.S. dollars per year commencing with the adoption of the first development plan under sub-clause 20 (3).

### 14. DATA AND SAMPLES

(1) The contractor shall keep logs and records of the drilling, deepening, plugging or abandonment of boreholes and wells, in accordance with good international petroleum industry practice and containing particulars of—

- (a) the strata and sub-soil through which the borehole or well was drilled;
- (b) the casing, tubing and down-hole equipment and alterations thereof, inserted in a borehole or well;
- (c) petroleum, water, workable mineral or mine workings encountered; and
- (d) any other matter reasonably required by the Minister.

(2) The contractor shall record, in an original or reproducible form of good quality, and on seismic tapes where relevant, all geological and geophysical information and data relating to the contract area obtained by the contractor and shall deliver a copy of that information and data, the interpretations thereof and the logs and records of boreholes and wells, to the Minister, in a reproducible form, as soon as practicable after that information, those interpretations and those logs and records come into the possession of the contractor.

(3) The contractor may remove, for the purpose of laboratory examination or analysis, petrological specimens or samples of petroleum or water encountered in a borehole or well and, as soon as practicable shall, without charge, give the Minister a representative part of each specimen and sample removed, but no specimen or sample shall be exported from Kenya without prior notification to the Minister.

(4) The contractor shall keep records of and supply information concerning the petroleum operations, reasonably requested by the Minister, if the data or information necessary to comply with the request are readily available.

## 15. REPORTS

(1) The contractor shall supply to the Minister daily reports on drilling operations and production operations, and weekly reports on geophysical operations.

(2) The contractor shall report in writing to the Minister the progress of the petroleum operations according to the following schedule—

(a) within one (1) month of the last day of March, June, September and December, covering the previous three (3) months;

(b) within three(3) months of the last day of December, covering the previous year;

(c) within three (3) months of the date of expiry or termination of this contract.

(3) A report under sub-clause 15 (2) shall contain, in respect of the period which it covers—

(a) details of the petroleum operations carried out and the factual information obtained;

(b) a description of the area in which the contractor has operated;

(c) an account of the expenditure of petroleum operations in accordance with the accounting procedure;

(d) a map indicating all boreholes, wells and other petroleum operations;

(e) on expiry or termination of this agreement details of the petroleum operations including all the matters described in paragraphs (a) to (d); and

(f) all information required by clause 14 not hitherto supplied.

## PART IV—RIGHTS AND OBLIGATIONS OF THE GOVERNMENT

### 16. RIGHTS OF THE GOVERNMENT

(1) The Government 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 petroleum operations within the contract area, and the Government shall not, without good cause, acquire a part of the contract area on which petroleum operations are in progress.

The contractor shall not carry out petroleum operations on such an acquired art but may—

(a) enter upon that part but not materially interfere with the public purpose; and

(b) carry out directional drilling from an adjacent part.

(2) The Minister, or a person authorized by him 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 sub-contractors' staff for

transport to the petroleum operations, subsistence and accommodation and pay all reasonable expenses directly connected with the inspection.

(3) The Minister may require the contractor to perform an obligation under this contract by giving reasonable written notice, and if the contractor fails to comply with the notice, the Minister may execute any necessary works for which the contractor shall pay forthwith. The Minister may give notice to execute works at any time but not later than three (3) months after the termination or expiry of this contract or the surrender of a part of the contract area.

## 17. OBLIGATIONS OF THE GOVERNMENT

(1) The 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 petroleum operations and—

(a) where the land is Trust Land, the Government shall, subject to sub-clause 17 (2), set apart such Trust Land in the contract area in accordance with the Trust Land Act and Chapter IX of the Constitution;

(b) where the land is private land, the Government may, subject to section 10 of the Act, acquire the land in accordance with the applicable laws;

(c) the contractor shall pay or reimburse the Government any reasonable compensation that may be required for the setting apart, use or acquisition of any land for the petroleum operations.

(2) Where the contractor has occupied Trust Land for the purpose of the petroleum operations before that land has been set apart, the contractor shall notify the Minister in writing of the need to set apart such land before the end of the two-year period referred to in section 115 of the Constitution.

(3) The Government shall grant or cause to be granted to the contractor, its contractors and sub-contractors such way-leaves, easements, temporary occupation or other permissions within and without 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 point of delivery of petroleum.

(4) The Government shall at all times give the contractor the right of ingress to and egress from the contract area and to and from Immigration Act, and Regulations of Kenya in particular, the facilities wherever located for the conduct of petroleum operations.

(5) Subject to the usual national security requirements and the Immigration Act and Regulations of Kenya in particular, the Government shall not unreasonably refuse to issue and/or renew entry permits for technicians and managers employed in the petroleum operations by the contractor or its sub-contractors and their dependants.

## PART V—WORK PROGRAMME, DEVELOPMENT AND PRODUCTION

### 18. EXPLORATION WORK PROGRAMME



(1) The contractor shall submit and orally present to the Minister one (1) month after the effective date, detailed statement of the exploration work programme and budget for the first contract year.

(2) The contractor shall submit and orally present to the Minister three (3) months before the end of each contract year, a detailed statement of the exploration work programme and budget for the next contract year.

(3) The Minister may submit to the contractor, within thirty (30) days of the receipt of the annual exploration work programme and budget, suggest modifications and revisions thereof. The contractor shall consider the inclusion of such suggested modifications and revisions in light of good international petroleum industry practice and shall provide the Minister with the exploration work programme and budget which the contractor has adopted.

(4) After adoption of the annual exploration work programme and budget, the contractor may make changes to that annual exploration work programme and budget if those changes do not materially affect the original objectives of that exploration work programme and budget, and shall state the reasons for those changes to the Minister.

#### 19. DISCOVERY AND EVALUATION WORK PROGRAMME

(1) The contractor shall in accordance with section 9 (b) of the Act, notify the Minister of a discovery of petroleum and shall report to the Minister all relevant information.

(2) If the contractor considers that the discovery merits evaluation, it shall submit and orally present to the Minister a detailed statement of the evaluation work programme and budget which shall provide for the expeditious evaluation of the discovery and the provisions of sub-clauses 18 (3) and 18 (4) shall apply to the evaluation work programme and budget.

(3) After the evaluation work programme and budget have been adopted, the contractor shall diligently evaluate the discovery without undue interruption.

(4) In the event of a discovery in the last year of the second additional exploration period, the Minister shall, at the request of the contractor, extend the term of the second additional exploration period in respect to the prospective area of the discovery and for the period of time reasonably required to expeditiously complete the adopted evaluation 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 ..... months.

(5) The contractor shall, not more than three (3) months after the evaluation is completed, report to the Minister the commercial prospects of the discovery, including all relevant technical and economic data.

(6) If the contractor reports under sub-clause 19 (5) that the discovery is a commercial discovery, a development plan shall be submitted to the Minister within six (6) months of the completion of the evaluation work programme unless otherwise agreed, and upon written application of the contractor, the term of this contract shall be extended by the Minister, if necessary, in respect of the area of that Commercial Discovery, provisionally established in accordance that commercial discovery, provisionally established in accordance the adoption of a development plan.

## 20. DEVELOPMENT PLAN AND DEVELOPMENT WORK PROGRAMME

(1) The contractor shall prepare, in consultation with the Minister, the development plan based on sound engineering and economic principles and in accordance with good international petroleum industry practice and considering the maximum efficient rate of production appropriate to the commercial discovery.

(2) The development plan submitted by the contractor to the Minister shall contain—

(a) details of the proposed development area, relating to the commercial discovery which 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;

(b) proposals relating to the spacing, drilling and completion of wells and the facilities and installations required for the production, storage and transportation of petroleum;

(c) a production forecast and an estimate of the investment and expenses involved; and

(d) an estimate of the time required to complete each phase of the development plan.

(3) The Minister and the contractor shall jointly consider the development plan within sixty (60) days of submission thereof and the Minister may within that period, unless otherwise agreed, submit suggested modifications and revisions thereof. The contractor shall consider the inclusion of such suggested modifications and revisions in light of the good international petroleum industry practice, and the development plan shall be adopted sixty (60) days after receipt by the contractor of those suggested modifications and revisions, unless another development plan is adopted by mutual agreement before that period has elapsed.

Where the Minister proposes no modifications and revisions, the development plan of the contractor shall be adopted sixty (60) days after its submission unless it is adopted by mutual agreement before that period has elapsed.

(4) After a development plan has been adopted, the contractor shall use its best efforts to proceed, promptly and without undue interruption, to implement the development plan in accordance with good international petroleum industry practice. Development work shall commence within six (6) months of the date of adoption of the development plan.

In connection therewith, the contractor shall submit and orally present to the Minister, prior to the first day of October of each year following the adoption of a development plan, a detailed statement of the annual development work programme and budget for the next calendar year and the provisions of sub-clauses 18 (3) and 18 (4) shall apply to the development plan and to the annual development work programme and budget.

(5) Where the development operations result in an extension to the area to which the commercial discovery relates within the contract area, the Minister shall adjust the relevant development area to include that extension as determined by the analysis of all the relevant available information.

## 21. UNITIZATION

(1) Where the recoverable reserves of a commercial discovery extend into an area adjacent to the contract area, the Minister may require the contractor to produce petroleum therefore in co-operation with the contractor of the adjacent area. Where non-commercial deposits of petroleum in the contract

area if exploited with deposits in an area adjacent to the contract area, would be commercial, the Minister may make a similar requirement to the contractor of that adjacent area.

(2) If the Minister so requires, the contractor shall in co-operation with the contractor of the adjacent area, submit within six (6) months, unless otherwise agreed, a proposal for the joint exploitation of the deposits, for the approval of the Minister.

(3) If the proposal is not submitted or approved, the Minister may prepare his own proposal, in accordance with good international petroleum industry practice, for the joint exploitation of the recoverable reserves, and the Minister's proposal unless another proposal is mutually agreed, shall be adopted by the contractor, subject to sub-clause 21 (4), and subject to the adjacent contractor's acceptance of the same proposal. The reasonable costs of preparing the proposal shall be divided equally between the contractor and the adjacent contractor.

(4) The provisions of the proposal for joint exploitation shall prevail over this contract, where those provisions do not reduce the financial benefits to the parties under this contract.

## 22. MARGINAL AND NON-COMMERCIAL DISCOVERIES

(1) Where the contractor determines that a discovery is marginal or non-commercial, the contractor may propose a modification to this contract, based on an alternative economic evaluation and after consideration the Minister may accept or reject the proposed modification.

(2) Unless otherwise agreed, if the contractor fails to commence the evaluation of a discovery within ..... years following the notice of discovery, or if within ..... years following the completion of an evaluation work programme the contractor considers the discovery does not merit development, the Minister may request the contractor to surrender the area corresponding to such discovery and the contractor shall forfeit any rights relating to any production therefrom. The area subject to such surrender 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 surrender by the contractor shall be credited in accordance with sub-clause 3 (3) hereof.

## 23. NATURAL GAS

(1) Where natural gas is discovered and the contractor and the Minister agree that it may be economically processed and utilized other than in secondary recovery operations, that processing and utilization shall follow a development plan approved in accordance with clause 20.

(2) The contractor shall return associated natural gas, not required for use in petroleum operations or sold, to the subsurface structure, but if such natural gas cannot be economically used or sold or returned to the subsurface structure, the contractor shall, after expiry of a sixty (60) days' notice to the Minister giving reasons why such natural gas cannot be economically used or sold or returned to the subsurface structure, be entitled to flare such associated natural gas in accordance with good international petroleum industry practice. Notwithstanding anything in this clause to the contrary, associated natural gas may be flared at any time if necessary for the conducting of well and production tests and during any emergency.

(3) Where the contractor does not consider that it is economical to process and utilize associated natural gas and where that natural gas is not required for use in petroleum operations, the Minister may at the field separator, process and utilize that natural gas without compensation but the Government

shall pay for all costs and expenses related thereto which shall include, but shall not be limited to, any engineering studies, new fixtures, equipment and installations required for the gathering, transport, processing and utilization thereof and the operation and maintenance of same shall be at the sole risk, cost and expense of the Government.

(4) Where the contractor considers that it is economical to produce natural gas, the contractor agrees to sell all or part of its share of natural gas to the Government, provided that the parties agree upon the price, volume and terms of sale.

#### 24. PRODUCTION LEVELS AND ANNUAL PRODUCTION PROGRAMME

(1) The contractor shall produce petroleum at the maximum efficient rate in accordance with good international petroleum industry practice.

(2) Prior to the first day of October of each year following the commencement of commercial production, the contractor shall submit and orally present to the Minister, a detailed statement of the annual production programme and budget for the next calendar year, and the provisions of sub-clause 18 (3) and (4) shall apply to the annual production programme and budget.

(3) The contractor shall endeavour to produce in each calendar year the forecast quantity estimated in the annual production programme.

(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 this contract in accordance with clause 25.

#### 25. MEASUREMENT OF PETROLEUM

(1) The volume and quality of petroleum produced and saved from the contract area shall be measured by methods and appliances customarily used in good international petroleum industry practice and approved by the Minister.

(2) The Minister may inspect the appliances used for measuring the volume and determining the quality of petroleum and may appoint an inspector to supervise the measurement of volume and determination of quality.

(3) Where the method of measurement, or the appliances used therefor, have 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.

(4) The Minister and the contractor shall determine the measurement point at which production shall be measured and the respective shares of Petroleum allocated.

#### 26. VALUATION OF CRUDE OIL AND NATURAL GAS

(1) The value of crude oil, for all purposes under this contract, shall be denominated in United States dollars and shall be calculated each calendar quarter as follows—

(a) if 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 F.O.B. point of export or at the point that title and risk- pass to the buyer, adjusted for grade, gravity and quality of such crude oil as well as for transportation costs and other appropriate adjusted for grade, gravity and quality of such crude oil saction where the seller and the buyer are independent of one another and do not have, directly or indirectly, any common interest;

(b) if 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 ninety (90) days between unrelated purchasers and sellers, for crude oil produced in Kenya and in the major rude oil producing countries, and adjusted for grade, gravity and duality of such crude oil as well as for 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 quarter.

If the Minister and the contractor cannot reach agreement on the value of crude oil within thirty (30) days of the end of any calendar quarter, such determination shall be made by an internationally recognized expert appointed by the contractor and the Minister, but if they fail to agree within thirty (30) days on the appointment of such expert, then by -the International Chamber of Commerce. The expert shall report his determination within twenty (20) days of his appointment and his determination shall be final and binding upon the Government and the contractor.

(2) Pending the determination of the value of crude oil for a calendar quarter, the value of crude oil determined for the preceding calendar quarter will 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-clause 26 (1). Any adjustment to provisional calculation and payment, it necessary, will be made within thirty (30) days after such applicable value is finally determined.

(3) 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, the quality and quantity of natural gas and other relevant factors reflected in natural gas pricing.

## PART VI—COST RECOVERY, PETROLEUM SHARING, MARKETING AND PARTICIPATION

### 27.COST RECOVERY, PRODUCTION SHARING AND INCOME TAX.

(1) Subject to the auditing provisions under clause 30, the contractor shall recover the petroleum costs, in respect of all petroleum operations, incurred and paid by the contractor pursuant to the provisions of this contract and duly entered in the contractor's books of account, 'by talking and separately disposing

of an amount equal in value to a maximum of ..... per cent (.....%) per fiscal year of all crude oil produced and saved from the contract area during that fiscal year and not used in petroleum operations. Such cost recovery crude oil is hereinafter referred to as "cost oil".

(2) Petroleum costs may be recovered from cost oil in the following manner—

incurred in respect of (he contract area, shall be recoverable either in the fiscal year in which these costs are incurred and paid or the fiscal year in which commercial production occurs, whichever is the later; and

(b) capital expenditure incurred in respect of each development area shall be recoverable at a rate of twenty per cent (20%) per annum based on amortization at that rate starting either in the fiscal year in which such capital expenditure are incurred and paid or the fiscal year in which commercial production from that development area commences, which-ever is the later.

For the purpose of this clause, "capital expenditure" shall mean the qualifying expenditure, other than "intangible drilling costs," that is expenditure that has no salvage value, including expenditure on labour, fuel, repairs, maintenance, hauling, mobilization and demobilization and supplies and materials, other than supplies and materials for well casings or other well fixtures, which is for or incidental to drilling, cleaning, deepening, completing or abandoning wells and is incurred in respect of—

(i) the determination of well locations, geological and .geo-physical studies, and topographical and geographical surveys preparatory to drilling;

(ii) the drilling, shooting, testing and cleaning of wells; and

(iii) the clearing, draining and levelling of land, road-building and laying of foundations.

(c) To the extent that, an a fiscal year, the petroleum costs recoverable according to sub-clauses 27 (2) (a) and 27 (2) (6) exceed the value of all cost oil for such fiscal year, the excess shall be carried forward for recovery y the contractor in the next succeeding fiscal year or fiscal years until fully recovered. but in no case after the termination of this contract.

(a) To the extent that, in a fiscal year, the petroleum costs recoverable according to sub-clauses 27 (2) (a) and 27 (2) (A) are less than the maximum value of the Cost Oil as specified in sub-clause 27 (1), the excess shall become part of, and be included in the profit oil as provided for in sub- clause 27 (3) hereafter.

(e) For the purpose of valuation of cost oil, the provisions of clause 26 hereof shall apply.

3. The total crude oil produced and saved from the contract area and not used in petroleum operations less the cost oil as specified in sub-clauses 27 (1) and 27 (2), shall be referred to as the profit oil and shall be shared, taken and disposed of separately by the Government and contractor according to increments of profit oil as follows:

<i>Increments of Profit Oil</i>	<i>Government share</i>	<i>Contractors share</i>
First 20,000 Barrels per day	%	%
Next 30,000 Barrels per day	%	%
Next 50.000 Barrels per day	%	%
Any volume over first 100,000 Barrels per day	%	%

For the purpose of this sub-clause, increments of profit oil shall be calculated by considering the total crude oil produced and saved from the contract area less the quantity of cost oil required to satisfy recoverable costs, expenses and expenditures according to sub-clauses 27 (1) and 27 (2).

(4) With respect to sub-clauses 27 (1), 27 (2) and 27 (3), cost oil and profit oil calculations shall be done quarterly on an accumulative basis. 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 24 shall be used. Within sixty (60) days of the end of each fiscal year, a final calculation of cost oil and profit oil based on actual crude oil production in respect of that fiscal year and recoverable petroleum costs shall be prepared and any necessary adjustments shall be made.

(5) The contractor shall be subject to and shall comply with the requirements of the income tax laws in force in Kenya which impose taxes on or are measured by income or profits.

The portion of crude oil which the Government is entitled to take and receive under sub-clause 27(3) shall be inclusive of all of all taxes based on income or profits, including specifically tax payable under the Income Tax Act, and dividend tax imposed by Kenya on any distribution of income or profits by the contractor, but shall exclude the tax paid by the contractor on, 'behalf' of petroleum service sub-contractors.

The Government agrees to pay and discharge as and when due such taxes for account of the contractor, and the Minister agrees to furnish the contractor with proper receipts from the Government evidencing the payment of all such taxes on contractor's behalf for each fiscal year. The contractor shall prepare and file a Kenya income tax return for each fiscal year within four (4) months after the close of each fiscal year. The receipts furnished by the Minister evidencing payment of such taxes shall correspond to the amount of taxes payable on behalf of the contractor by the Government.

The receipts shall be issued by the duly constituted authority for the collection of Kenya income taxes and shall be furnished within three (3) months after the date the contractor files its Kenya income tax return for the fiscal year.

All taxes paid by the Government in the name and on behalf of the contractor shall be considered income to the contractor for the fiscal year to which the tax payments relate-

(6) The contractor, if so directed by the Minister, shall be obligated to lift and market part or all of the Government share of profit oil.

When the Minister elects not to take and receive in kind any part of the Government share of profit oil, the Minister shall notify the contractor three(3) months before the commencement of each semester of a calendar year, specifying the quantity of production and such notice shall be effective for the ensuing semester. Any sale by the contractor of the Government share of profit oil shall not be for a term of more than one (1) year without the Minister's consent.

The price paid by the contractor for the Government share of profit oil shall be the price established according to clause 26. The contractor shall pay the Government on a monthly basis, such payment to be made within thirty (30) days after the end of the month in which the production occurred.

(7) At a reasonable time prior to the scheduled date of commencement of commercial production, the parties shall agree on procedures covering the scheduling, storage and lifting of petroleum produced from the agreed upon point of export or delivery.

(8) In the event that the contractor elects to produce a national gas discovery, the petroleum costs incurred by the contractor and directly attributable to the discovery and production of such natural gas

shall be recovered from part thereof. The parties agree that the Government and the contractor shall share the natural gas produced and saved and not used in petroleum operations in accordance and on an equivalent basis with the percentage allocations provided for cost recovery and production sharing of crude oil under this clause.

For this purpose, six thousand (6,000) cubic feet of natural gas at a temperature of 15 degrees centigrade and pressure of one atmosphere shall be deemed to be equivalent to one (1) barrel of crude oil.

## 28. GOVERNMENT PARTICIPATION

(1) The Government may elect to participate in the petroleum operations in any development area and acquire an interest of up to ..... per cent (....%) (hereinafter referred to as "Participating Interest") of the total interest in that development area. The Government may participate either directly or through an appointee-

"Appointee" means a body corporate wholly owned or controlled by the Government, and appointed for the purposes of this contract.

(2) The Government shall exercise the right to participate by giving notice to the contractor within six (6) months from the date the development plan for a development area is adopted under sub-clause 20 (3). Such notice shall specify the Participating Interest that the Government has elected in that development area. If the Government exercises its option to participate, the contractor (or each entity constituting the contractor pro-rata) shall transfer to the Government that percentage interest specified by the Government.

The Government's participation shall be effective from the date the development plan hereof is adopted.

(3) If the Government exercises its right to participate in a development area, the Government and the contractor shall execute the Participation Agreement, attached hereto as Appendix "C" and made a part thereof, within three (3) months after notice to the Contractor under sub-clause 28 (2).

(4) The Government shall, in exercise of its right to participate in a development area—

(a) have the right to a vote in .proportion .to its .participating interest with respect to all decisions taken under the participation agreement;

(b) own and separately take and dispose of its share in the petroleum produced and saved to which the contractor is entitled under this contract, corresponding to its participating interest in that development area. The contractor shall not be obligated to market the Government's share of petroleum corresponding to the Government's participating interest in that development area;

(c) assume its share of costs, expenses and obligations incurred in respect of that development area, from the effective date of its participation as defined in sub-clause 28 (2), pro-rata in its participating interest; ( petroleum operations in or related to the development area;

(d) reimburse the contractor, without interest, pro-rata to the Government participating interest, its share of all costs, expenses and expenditure incurred n respect of the development area from the date the development plan for that development area has been adopted to the date the Government exercises its right to participate in that development area-



This reimbursement shall be made within three (3) months after the government exercises its right to participate.

## 29. DOMESTIC CONSUMPTION

(1) The contractor shall have the obligation to supply in priority crude oil for domestic consumption in Kenya and shall sell to the Government that portion of the contractor's share of production which is necessary to satisfy the domestic supply requirement in accordance with the following provisions.

(2) In each calendar year, the Minister shall notify the contractor not less than three (3) months prior to the beginning of that calendar year, of the domestic supply requirement. The maximum amount of crude of that the Minister may require from the contractor's share of production shall be calculated each calendar quarter, and shall be equal to the excess of total crude oil domestic consumption in Kenya multiplied by a fraction, the numerator of which is the average crude oil production from the contract area and the denominator of which is the total crude oil production from all producers in Kenya, over the amount of crude oil available to the Government from the contract area as in the form of Government share of production under clause 27 and in the form of Government participation share under clause 28.

For the purpose of this sub-clause, "domestic consumption" does not include crude oil refined in Kenya for export.

(3) When the contractor is obligated to supply crude oil for domestic consumption in Kenya, the price paid by the Government shall be calculated in accordance with clause 26. Such sales to the Government shall be invoiced monthly and shall be paid within sixty (60) days of receipt of the invoice, unless other terms and conditions are mutually agreed.

(4) With the written consent of the Minister the contractor may comply with this clause by importing crude oil and exporting the same amount, but appropriate adjustments shall be made in price and volume to reflect transportation costs, differences in quality, gravity and terms of sale,

(5) In this clause, "Government" includes an Appointee as defined in sub-clause 28 (1) and "contractor" does not include the Government where the Government has participated under clause 28.

## PART VII—BOOKS, ACCOUNTS, AUDITS, IMPORTS, EXPORTS AND FOREIGN EXCHANGE

### 30. BOOKS, ACCOUNTS AND AUDITS

(1) The contractor shall keep books and accounts in accordance with the accounting procedure and shall submit to the Minister a statement of those accounts, not more than three (3) months after the end of each calendar year.

(2) At the request of the Minister, the contractor shall appoint an independent auditor of international standing, approved by the Government to audit annually the books and accounts of the

contractor and report thereon; and the cost of such audit shall be at the charge of the contractor.

(3) The Government may audit the books and accounts within two (2) calendar years of the period to which they relate, and shall complete that audit within one (1) calendar year.

(4) In the absence of an audit within two (2) calendar years or in the absence of notice to the contractor of a discrepancy in the books and accounts within three (3) calendar years of the period to which the audit relates the contractor's books and accounts shall be deemed correct.

### 31. PREFERENCE TO KENYAN GOODS AND SERVICES

(1) The contractor, its contractors and sub-contractors shall give preference to Kenyan materials and supplies for use in petroleum operations as long as their prices, quality, quantities and timeliness of delivery are comparable with the prices, quality quantities and timeliness of delivery of non Kenyan materials and supplies.

(2) The contractor, its contractors and sub-contractors shall give preference to Kenyan contractors for services connected with petroleum operations as long as their prices, performance and timeliness are comparable with the prices, performance and timeliness of non-Kenyan service contractors,

(3) The contractor, its contractors and sub-contractors shall provide supplies and services from bases in Kenya where practicable.

(4) The contractor shall—

(a) on or before the beginning of each calendar year to which it applies, submit to the Minister a tentative schedule of the contemplated service 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;

(b) 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 companies by means of competitive bidding or by another appropriate method in accordance with good international petroleum industry practice;

(c) as soon as practicable after their execution, provide to the Minister a copy of each contract, requiring a payment in a currency other than Kenya Shillings and a brief description of the efforts made to find a Kenyan supplier or service contractor;

(d) the minimum amount specified under this sub-clause 31 (4) may be changed from time to time by mutual agreement.

### 32. EXPORTS AND IMPORTS

(1) Except as to the petroleum to be delivered to the Government pursuant to the terms of this contract, the contractor shall own and receive its share of petroleum produced from the contract area and shall be entitled to export such petroleum without restriction and free of taxes, charges, fees, duties or levies of any kind or to otherwise freely dispose of same.

(2) The contractor and the contractors and sub-contractors engaged in carrying out petroleum operations under this contract shall be permitted to import into Kenya 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 petroleum operations under this contract. Such materials, equipment and supplies shall be exempt from all customs duties. However, the contractor and its contractors and sub-contractors shall give preference to Kenyan goods and services in accordance with clause 31 hereof.

(3) In relation to materials, equipment and supplies imported or to be imported pursuant to sub-clause 32 (2), when a responsible representative of the Ministry has certified that they are to be used solely in carrying out petroleum operations under this contractor, the contractor and its contractors and sub-contractors shall be entitled to make such imports without having to obtain—

(a) any approval of import licence, provided, however, that an application has been duly made;

(b) any exchange control approval, subject to the provisions of clause 33 hereof; or

(c) any inspection outside of Kenya by general superintendence or other inspecting body, acting for the time being, appointed by the Government.

(4) The actual costs of contracts for technical and other services entered into by the contractor for petroleum operations and for materials purchased by the contractor for use in petroleum operations shall be recoverable, provided that those services and materials are reasonably required for petroleum operations and provided further that the prices paid by the contractor are no higher than those currently prevailing in normal arm's length transactions of the open market for comparable services and materials.

(5) Each expatriate employee of the contractor, its contractors and sub-contractors shall be permitted to import and shall be exempt from all customs duties with respect to the reasonable importation of household goods and personal effects, including one (1) automobile, provided however that such properties are imported within three (3) months of their arrival or such longer period as the Government may in writing determine.

(6) The contractor and its contractor and sub-contractors and their expatriate employees may sell in Kenya all imported items which are no longer 'needed for petroleum 'operations'. However, if such imports were exempt from customs duties, the seller shall fulfil all formalities required in connection with the payment of duties, taxes, fees and charges imposed on such sales.

(7) Subject to sub-clauses 12 (4) and 12 (5), contractor and its contractors and sub-contractors and their expatriate employees may export from Kenya, exempt of all export duties, taxes, fees and charges, all previously imported items which are no longer required for the conduct 'of petroleum operations under this contract.

(8) "customs duties", as that term is used herein, shall include all duties, taxes on imports (except those charges paid to the Government for actual services rendered), which are payable as a result of the importation of the item or items under consideration.

### 33. EXCHANGE AND CURRENCY CONTROLS

(1) As long as the Contractor meet's its obligations to the Government in terms of tax payments or any other payments contemplated by this Contract, and as long as the Contractor complies with sub-clause 33 (2) hereafter and is not in a material breach with this Contract, the Government shall by appropriate legal notice grant effective upon the effective date of this contract the contractor freedom to—

(a) open and freely maintain external accounts inside Kenya and foreign, bank accounts outside Kenya in accordance with Exchange Control Notice No. 3 issued under the Exchange Control Act, Chapter 113 of the Laws of Kenya:

(b) receive, retain outside Kenya and freely dispose of foreign currencies received by it outside Kenya, including the proceeds 'of sales of petroleum hereunder, and contractor

shall not be obligated to remit such proceeds to Kenya with the exception of those proceeds as may be needed to meet in Kenya its expenses and payments to the Government;

(c) pay directly outside Kenya for purchases of goods and services necessary to carry out petroleum operations hereunder;

(d) pay its expatriate employees working in Kenya in foreign currencies outside of Kenya. Such expatriate employees shall be only required to bring into Kenya such foreign exchange as required to meet their personal living expenses and to meet payments of Kenyan taxes;

(e) freely repatriate abroad all proceeds from contractor's petroleum operations in Kenya, including but not limited to proceeds from the sale of assets and Petroleum; and

(/)have rates of exchange for purchase or sale of currency in Kenya, not less favourable to the contractor than those granted to any investor in Kenya.

(2) In order to keep the Government and the Central Bank of Kenya informed of its prospective and actual foreign exchange transactions, 'the contractor shall inform the government and the Bank in writing and in such form and detail as the Government or the Bank may request—

(a) of the location of the contractor's bank accounts in Kenya and abroad, which latter accounts shall be opened in banks approved by the Central Bank of Kenya;

(b) annually, before the commencement of each calendar year. of the Contractor's estimated receipts and disbursements of foreign exchange by principal headings during the year (which statement may be amended from time to time if this appears necessary); and

(c) quarterly, within thirty (30) days of the end of each calendar quarter, of he contractors actual receipts and disbursements of foreign exchange by principal headings during the preceding quarter.

(3) Subject to the obligation to give preference to Kenyan goods and services as stipulated under clause 31, the contractor shall have the right to enter all contracts and sub-contracts necessary to carry out petroleum operations, without prior approval by the Central Bank of Kenya or any other Government agency. The Government reserves the right to inspect the records or documentation related to such contracts and sub-contracts and, in accordance with clause 30, to appoint independent auditors to examine the accounts of the contractor, and the contractor shall provide a copy of such contracts within thirty (30) days after their execution, provided however that where the Government disputes anything in the contracts, the value in dispute shall not be included, until the dispute has been resolved, in

- (a) the qualifying expenditure under the Income Tax Act;
- (b) the Certificate of Approved Enterprise; and
- (c) the qualifying payment under the Exchange Control act.

(4) The Government shall grant to to the contactor a Certificate of Approved Enterprise in accordance with the Foreign Investments Protection Act, Chapter 518 of the Laws of Kenya. The amount recognized by the certificate 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 this contract, provided however that the contractor shall not repatriate any proceeds of sale of an asset forming part of either—

- (a) qualifying expenditure under the Income Tax Act;
- (6) any asset subject to a Certificate of Approved Enterprise;

without written approval and the necessary amendments to the relevant certificate. Proceeds arising from any other source may be repatriated after a senior Officer of the Ministry, duly authorized in that behalf, has certified that such repatriation is in order.< Control Exchange under paymen?t qualifying>

## PART VIII—GENERAL

### 34. PAYMENTS

- (1) All sums due to the Government or if the contractor shall be paid in United States dollars or other currency agreed to by the Government and the Contractor.
- (2) Any late payment shall attract interest at ..... per cent (.....%) per annum.

### 35. ASSIGNMENT

- (1) After notice to the Minister the contractor may assign part or all of rights and obligations under this contract to an affiliate without the prior approval of the Minister, provided such assignment shall result in the assignor and the assignee being jointly and severally liable for all of the assignor's obligations hereunder.
- (2) The contractor may assign to a person other than an affiliate part or all of its rights and obligations under this contract with the consent of the Minister, which shall not be unreasonably withheld and which shall be granted or refused within thirty (30) days of receipt by the Minister of notice from the contactor that it intends to make such an assignment, but the Minister may require such an assignee to provide a guarantee for the performance of the obligations of the contractor.
- (3) The contractor shall report to the Minister any material changes in the corporate structure, ownership and financial position of the contractor and its parent company.

### 36. MANAGER, ATTORNEY AND JOINT OPERATION AGREEMENT

- (1) The contractor shall notify the Minister, before the petroleum operations begin, of the name and address of the person resident in Kenya who will supervise the petroleum operations, and prior notice of any subsequent change shall be given to the Minister.
- (2) The contractor shall appoint an advocate resident in Kenya with power of representation in all matters relating to this contract. of which appointment the Minister shall be notified before the petroleum operations begin, and prior notice of any subsequent change shall be given to the Minister.
- (3) Where the contractor consists of more than one person, the contractor shall deliver to the Minister a copy of the Joint Operating agreement between those persons, as soon as it is available.

### 37. CONFIDENTIALITY

- (1) All information which the contractor may supply to the Government under this contract shall be supplied at the expense of the contractor and the government shall keep that information confidential, and shall not disclose it other than to a person employed by or on behalf of the Government, except with the consent of the contractor which consent shall not unreasonably withheld,
- (2) Notwithstanding sub-clause 37 (1), the Minister may use any information supplied, for the purpose of preparing and publishing reports and returns required by law, and for the purpose of preparing and publishing reports and surveys of a general nature.
- (3) The Minister may publish any information which relates to a surrendered area at any time after the surrender, and in any other case, three (3) years after the information was received unless the Minister determines, after representations by the contractor, that a longer period shall apply.
- (4) The Government shall not disclose, without the written consent of the contractor, to 'any person, other than a person employed by or on behalf of the Government, know-how and proprietary technology which the contractor may supply to the Minister.

### 38. FORCE MAJEURE

- (1) In this clause, force majeure means an occurrence beyond the reasonable control of the Minister or the Government or the contractor which prevents any of them from performing their obligations under this contract
- (2) Where the Minister, the Government or the contractor is prevented from complying with this contract by force majeure, the person affected shall promptly give written notice to the other and the obligations of the affected person shall be suspended, provided that that person shall do all things reasonably within its power to remove such cause of force majeure. Upon cessation of the force majeure event, the person no longer affected shall promptly notify the other persons.
- (3) Where the person not affected disputes the existence of force majeure, that dispute shall be referred to arbitration in accordance with clause 41.
- (4) Where an obligation as suspended by force majeure for more than one (1) year, the parties may agree to terminate this contract by notice in writing without further obligations.

(5) Subject to sub-clause 38 (4), the term of the contract shall be automatically extended for the period of the force majeure.

### 39. WAIVER

A waiver of an obligation of the contractor shall be in writing, signed by the Minister, and no waiver shall be implied if the Minister does not exercise a remedy under this contract.

### 40. GOVERNING LAW

(1) This contract shall be governed by, interpreted and construed in accordance with the laws of Kenya.

(2) The contractor agrees that it will obey and abide by all laws and regulations in force in Kenya.

(3) If after the effective date of this contract the economic benefits of a party are substantially affected by the promulgation of new laws and regulations, or of any amendments to the applicable laws and regulations of Kenya, the parties shall agree to make the necessary adjustments to the relevant provisions of this contract, observing the principle of the mutual economic benefits of the parties.

### 41. ARBITRATION

(1) Except as otherwise provided in this contract, any question or dispute arising out of or in relation to or in connection with this contract shall, as far as possible, be settled amicably. Where no settlement is reached within thirty (30) days from the date of the dispute or such other period as may be agreed upon by the parties, the dispute shall be referred to arbitration in accordance with the UNCITRAL arbitration rules adopted by the United Nations Commission on International Trade Law.

(2) The number of arbitrators shall be three (3) and shall be appointed as follows—

(a) each party shall appoint one (1) arbitrator and so notify the other party of such appointment and those two (2) arbitrators shall appoint the third arbitrator.

(b) if any of the arbitrators shall not have been appointed within thirty (30) days, either party may request in writing the Secretary-General of the International Centre for Settlement of Investment Disputes to appoint the arbitrator or arbitrators not yet appointed and to designate an arbitrator to be the Chairman of the arbitral tribunal. The Secretary-General shall forthwith send a copy of that request to the other Party.

The Secretary-General shall comply with the request within thirty (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.

(c) Arbitrators shall be chosen from countries other than those of which the parties are nationals,

(d) If an arbitrator fails or is unable to act, his successor will be appointed in the same manner as the arbitrator whom he succeeds.

(3) The arbitration shall take place in Nairobi, Kenya and shall be in English.

(4) The decision of a majority of the arbitrators shall be final and binding on the parties.

(5) Any judgment upon the award of the arbitrators may be entered in any court having jurisdiction in respect thereof.

#### 42. NOTICES

(1) Any notice and other communication under this contract shall be in writing and shall be delivered by hand, sent by registered post, by telegram or telex to the following address of the other.

To the Government:

To the Contractor:

(2) A notice shall be effective on receipt.

(3) Any notice given by telex or telegram shall be promptly confirmed by letter signed 'by the party giving the notice.

(4) The Government and the contractor may at any time and from time to time change its authorized representative or its address herein on giving the other ten (10) days notice in writing to such effect.

#### 43. HEADING AND AMENDMENTS

(1) Headings are inserted in this contract for convenience only and shall not affect the construction or interpretation hereof.

(2) This contract shall not be amended, modified or supplemented except by an instrument in writing signed by the parties.

Signed on the day and year first before written:

For the Government .....

The Minister .....

For the Contractor

Note: Appendices to each petroleum agreement will—

(a) identify the block to which the petroleum agreement relates (Appendix "A");

(b) provide for the accounting procedures to be followed by the contractor (Appendix "B"); and

(c) specify the terms and conditions of participation (Appendix "C").