

SCHEDULE
REPUBLIC OF KENYA
MODEL PRODUCTION SHARING CONTRACT

TABLE OF CONTENTS

PART I – SCOPE AND INTERPRETATION

1. Scope
2. Interpretation

PART II – TERM, EXPLORATION, OBLIGATIONS AND TERMINATION

3. Term
4. Contract Area Surrender
5. Minimum Exploration Work and Expenditure Obligations
6. Surface Fees and Signature Bonus
7. Termination

PART III – RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

8. Rights of the Contractor
9. General Standards of Conduct
10. Joint liability and Indemnity
11. Wells and Surveys
12. Offshore Operations
13. Upstream Petroleum Operations Facilities
14. Data and Samples
15. Reports
16. Environmental Provisions

17. Plugging and Abandonment and Decommissioning Operations
18. Insurance

PART IV – LOCAL CONTENT

19. Adherence to Laws and Regulations
20. Employment and Training of Kenyans
21. Training Fund
22. Preference for Kenyan Goods and Services
23. Technology Transfer
24. Record Keeping and Reports

PART V – RIGHTS AND OBLIGATIONS OF THE GOVERNMENT

25. Rights of the Government
26. Obligations of the Government

PART VI – WORK PROGRAMME, DEVELOPMENT AND PRODUCTION

27. Exploration Work Programme and Detailed Budget
28. Discovery and Appraisal Work Programme
29. The Development Plan and Annual Work Programme and Budget
30. Unitization
31. Marginal and Non-commercial Discoveries
32. Natural Gas
33. Production Levels and Annual Production Programme
34. Measurement of Petroleum
35. Valuation of Crude Oil and Natural Gas

**PART VII – COST RECOVERY, PRODUCTION SHARING, TAXATION,
GOVERNMENT PARTICIPATION AND DOMESTIC SUPPLY OBLIGATIONS**

- 36. Cost Recovery and Uplift
- 37. Profit Petroleum Sharing and R-Factor
- 38. Production Sharing
- 39. Taxation
- 40. Title and Risk to Petroleum
- 41. Government Participation
- 42. Domestic Supply Obligations

**PART VIII – BOOKS, ACCOUNTS, AUDITS, IMPORTS, EXPORTS AND
FOREIGN EXCHANGE**

- 43. Books, Accounts and Audits
- 44. Exports and Imports
- 45. Exchange and Currency Controls

PART IX – GENERAL

- 46. Payments
- 47. Assignment
- 48. Manager, Advocate and Joint Operation Agreement
- 49. Confidentiality
- 50. Force majeure
- 51. Waiver
- 52. Governing Law
- 53. Dispute Resolution
- 54. Notices
- 55. Headings and Amendments

APPENDICES

“A” The Contract Area

“B” Accounting Procedure

“C” Participation Agreement

PRODUCTION SHARING CONTRACT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AND

.....

This CONTRACT, is made and entered into on the 20..... by and between the Government of the Republic of Kenya (hereinafter referred to as the “Government”) represented for the purpose of this contract by the Cabinet Secretary for the time being responsible for Petroleum (hereinafter referred to as the “Cabinet Secretary”) and..... incorporated under the Laws of Kenya..... and having a registered place of business at, Kenya (hereinafter referred to as the “Contractor” which expression includes its successors and assignees).

(Note: to be amended in case of a Contractor consisting of several entities.)

The Government and the Contractor herein are referred to either individually as “Party” or collectively as “Parties”.

WITNESSETH:

WHEREAS the title to all petroleum existing in its natural condition in the territory of Kenya is vested in the Government; and

WHEREAS the Government wishes to promote and encourage the exploration and the development of Petroleum throughout the contract area; and

WHEREAS the contractor desires to join and assist the Government in accelerating the exploration and development of the potential Petroleum within the contract area; and

WHEREAS the contractor has the financial ability, technical competence and professional skills necessary to carry out the upstream petroleum operations hereinafter described; and

WHEREAS in accordance with the Petroleum (Exploration, Development and Production) Act, enacted by the Parliament of the Republic of Kenya, agreements, in the form of production sharing contracts, may be entered into between the Government and contractors;

NOW THEREFORE, the Parties hereby agree as follows—

PART I

INTERPRETATION AND SCOPE

1. Scope

- (1) This contract is a production sharing contract made pursuant to the Act and regulations.
- (2) Subject to this contract, the contractor shall—
 - (a) have the exclusive right to carry on upstream petroleum operations for the duration of the contract at its sole cost, risk and expense; and shall therefore have an economic interest in the development of petroleum in the contract area;
 - (b) provide all capital, machinery, equipment, facilities, technology and personnel necessary for the conduct of upstream petroleum operations;
 - (c) as further provided in this contract, share in the petroleum from the contract area; and
 - (d) be responsible to the Government for the execution of upstream petroleum operations in accordance with the provisions of this contract.
 - (e) Without prejudice to the contractor's position as an independent contractor hereunder, the extent and character of such work to be done by the contractor shall be subject to the general supervision, review and approval by the Cabinet Secretary, to whom the contractor shall report and be responsible as set forth herein and in the Act and regulations.
- (3) The contractor is not authorized to carry on upstream petroleum operations in any part of Kenya outside the contract area other than in accordance with an authorization granted under the provisions of the Act.
- (4) This contract does not authorize the contractor to process and conduct upstream petroleum operations beyond the delivery point.

2. Interpretation

(1) 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;

“**Act**” means the Petroleum (Exploration, Development and Production) Act;

“**affiliate**” means a person directly or indirectly controlling or controlled by or under direct or indirect common control with another person;

“**appointee**” means a body corporate wholly owned or controlled by the Government, and appointed for the purposes of this contract;

“**arm’s length price**” means arm’s length price as defined in the Income Tax Act;

“**associated natural gas**” means (i) any natural gas dissolved in crude oil under reservoir conditions and (ii) any residue gas remaining after the extraction of crude oil from a reservoir;

“**Authority**” means the Authority established under the Act for the regulation of the upstream petroleum operations;

“**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);

“**best petroleum industry practices**” means such practices, methods, standards, and procedures generally accepted and followed internationally by prudent, diligent, skilled and experienced operators in the upstream petroleum operations, including practices, methods, standards, and procedures intended to:

(a) conserve petroleum by maximizing recovery of petroleum in a technically and economically sustainable manner;

(b) promote operational safety and prevention of accidents; and

(c) protect the environment by maximizing the impact of upstream petroleum operations;

“**block**” means acreage as defined by specific geographic coordinates for purposes of upstream petroleum operations as provided by section 51 of the Act;

“**brine**” means all saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well stimulation, production of oil or gas, or plugging of a well.

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for petroleum;

“**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 assessment period**” means the period commencing, at the request of the contractor, at the time when report regarding the evaluation work programme relating to the discovery of non-associated natural gas has been submitted by the contractor;

“**commercial discovery**” means a discovery of petroleum which has been duly evaluated in accordance with the provisions of clause 28, and which can be produced commercially according to best petroleum industry practice, after the consideration of all pertinent technical and economic data;

“**commercial production**” means the quantity of petroleum produced on a regular basis from a commercial field, saved and not used in upstream petroleum operations;

“**commercial field**” means the geological structure or feature which hosts one or more reservoirs from which petroleum production may be commercially undertaken through a defined set of facilities;

“**conservation of petroleum resources**” means prevention and minimization of wastage of petroleum, protection of correlative rights and maximization of ultimate economic recovery.

“**Constitution**” means the Constitution of the Republic of Kenya;

“**contract area**” means the area covered by this contract, and described in Appendix “A”, and any such area as may be modified in accordance with the terms of this contract, including through amendments, surrender, withdrawal, extension, or otherwise;

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

“**contractor**” means the contractor as defined in the Act;

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

“**crude oil**” means all hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric conditions of temperature and pressure, and the liquid hydrocarbons known as distillates or condensate or natural gas liquids obtained from natural gas by condensation or extraction;

“**decommissioning**” means abandonment, recovery and removal and disposal, or if applicable re-deployment, of wells, flow lines, pipelines, facilities, infrastructure and assets related to upstream petroleum operations;

“**decommissioning costs**” means all the costs and expenditures incurred by the contractor when carrying out decommissioning operations, including those defined in the accounting procedure;

“**decommissioning plan**” means the plan for the decommissioning, abandonment, recovery and removal, or if applicable redeployment, of wells, flow lines, pipelines, facilities, infrastructure, and assets related to upstream petroleum operations;

“**delivery point**” means the point at which petroleum passes through the intake valve of the pipeline, vessel, vehicle or craft at a terminal, refinery, processing plant in Kenya or such other point as may be agreed by the Government and the contractor, with such point to be specified in the production sharing contract;

“**development area**” means the area delimited in a development plan adopted under clause 29 hereof;

“**development costs**” means all the costs and expenditures incurred by the contractor when carrying out development operations, including those defined in the accounting procedure;

“**drilling permit**” means a permit issued by the Authority, which allows the contractor to conduct drilling operations of an individual well that includes construction of a well, a well site and access road to the well site, and the ability of the contractor to move and use facilities, equipment, supplies, and materials to the well site during drilling, monitoring, appraisal and evaluation activities of upstream petroleum operations;

“**economic limit**” means that point in the life of the field where expected revenue to the contractor from upstream petroleum operations is insufficient to cover the operating costs to continue upstream petroleum operations in accordance with the requirements of the contract;

“**effective date**” means the date falling ninety days after this Contract has been executed by the contractor and the Government when the contractor shall commence operations;

“**equity participant**” means any person who is for the time being a component of the contractor, and its successors or any assignee(s) of its interest in the contract or under this contract, provided that the assignment of any such interest is accomplished pursuant to the provisions of clause 47 hereof;

“**execution date**” means the date this contract has been signed by the contractor and the Government;

“**exploration and appraisal costs**” means all the costs and expenditures incurred by the contractor when carrying out exploration or appraisal operations, including those defined in the accounting procedure;

“**exploration operations**” include geological, geochemical and geophysical surveys and analysis, aerial mapping, investigations of subsurface geology, stratigraphic test drilling, drilling exploratory wells, mud and wireline logging and work necessarily 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;

“facility” includes:

- (a) any structure, device, roads, or other associated installations or infrastructure including wells, flow lines, pipelines, separators, storage tanks, drilling rigs, gas processing plants, rail stations, pump stations, compressor stations and equipment constructed, placed or used in order to carry out petroleum operations;
- (b) vessel, vehicle or craft when stationary and used for drilling or support of ongoing upstream petroleum operations; and
- (c) vessel, vehicle or craft for transportation of petroleum in bulk when connected to a facility for loading of petroleum;

“first production” means, with respect to a development area, the moment when commercial production of crude oil or non-associated natural gas (as the case may be) first commences from that development area, by flowing at the rate forecast in the development plan without interruption for a minimum of forty-eight (48) hours;

“fiscal year” means a period of twelve (12) consecutive months corresponding to the year of income as defined in the Income Tax Act;

“flow line” or **“gathering line”** means those segments of pipe complete with equipment, such as pumping or compressor stations, separators, storage tanks, communication systems and valves, for transporting petroleum from the wellhead in the contract area to the junction of a trunk pipeline or a transmission pipeline;

“Income Tax Act” means the Income Tax Act of Kenya as amended from time to time;

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

“**local content**” means the use of Kenyan local expertise, goods and services, people, businesses and financing for the systematic development of national capacity and capabilities for the enhancement of the Kenyan economy;

“**Market Evaluation Report**” means a report for a potentially commercial natural gas discovery by the contractor identifying potential market for natural gas, expected volumes for such market, infrastructure potentially required to access such market and expectations of price for the natural gas supplied to such market;

“**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 best petroleum industry practice;

“**ministry**” means the Ministry for the time being responsible for petroleum in Kenya;

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

“**non-associated natural gas**” means any natural gas that is not associated natural gas;’

“**operator**” means the designated entity that is responsible for managing the day to day operation of oil and gas exploration, development and production;

“**person**” means any natural or juridical person;

“**petroleum**” means all hydrocarbons and includes crude oil and natural gas, whether capable of being produced from conventional and unconventional reservoirs, including shale oil, oil shale, shale gas, coal bed methane gas, tar sands, and other sources of hydrocarbon reserves;

“**petroleum agreement**” means the agreement, contract, license or other arrangement between the National Government and a contractor to conduct upstream petroleum operations in accordance with the provisions of the Act.

“**petroleum costs**” means expenditure made and obligations incurred and paid by the contractor in carrying out upstream petroleum operations hereunder, determined in

accordance with the accounting procedure attached hereto in Appendix “B” and made a part hereof;

“**upstream petroleum operations**” means all or any of the operations related to the exploration, development, production, separation and treatment, storage and transportation of petroleum up to the agreed delivery point;

“**plugging and abandonment permit**” means a permit issued by the Authority, which allows the contractor to conduct plugging and abandonment operations of an individual well, which includes the proper methodology as approved by the Authority, and complete restoration of the individual well site and well site access road and removal of all equipment, supplies and materials used during the drilling and production licensed upstream petroleum operations;

“**production costs**” means all the costs and expenditures incurred by the contractor when carrying out production operations, including those defined in the accounting procedure;

“**production permit**” means a permit issued by the Authority, which allows the contractor to conduct production operations of an individual well and includes and not limited to the system of production facilities, such as tank batteries, production units, flow lines and gathering lines, and other equipment, as deemed necessary, to conduct production activities;

“**production sharing contract**” means a petroleum agreement between the Government of the Republic of Kenya and a contractor, which enables the contractor to explore, develop and produce petroleum within a contract area;

“**regulations**” means the Regulations made under the Act as from time to time amended;

“**revenue**” means the expected revenues derived from the conveyance and sale of petroleum at the delivery point together with any firm tariff income earned by the field facilities, if any;

“**semester**” means a period of six (6) consecutive months, commencing with the first day of January or the first day of July of a calendar year.

“underground injection control well” or “UIC well” means an individual non-commercial existing well that is converted to a brine injection well for the sole purpose of disposal of brine and liquid waste and includes all facilities necessary to conduct safe injection operations.

“underground injection control well permit” means a permit issued by the Authority, which allows the contractor to convert an individual existing well to a brine injection well for the disposal of brine and liquid waste and includes all facilities necessary to conduct safe injection operations.

“well” means any borehole, whether drilled or bored, within Kenya for production, extraction, or injection of any petroleum or liquids, excluding fresh water to be used as such, but including natural or artificial brines and well treatment chemicals.

PART II

TERM, EXPLORATION OBLIGATIONS AND TERMINATION

3. 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 on the effective date.
- (3) Upon written application by the contractor made not later than thirty (30) days prior to the expiry of the initial exploration period, the Cabinet Secretary shall, if the contractor has fulfilled its work and expenditure obligations under this contract, grant a first additional exploration period ofcontract years.
- (4) Upon written application by the contractor made not later than thirty (30) days prior to the expiry of the first additional exploration period hereof, the Cabinet Secretary 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 at the end of the second additional exploration period, the Cabinet Secretary shall, on written application by the contractor made not later than ninety

(90) days before the expiry of that exploration period, grant an extension for such period as may be necessary for the contractor to complete the drilling and testing of the well, which the contractor shall carry out continuously and diligently, which in any event shall not extend such period by more than one hundred and twenty (120) days.

- (6) Unless extended in accordance with the provisions of clause 3, this contract shall expire automatically at the end of the initial exploration period or at the end of any additional exploration period, except as to any development area. However, if the contractor reports, pursuant to sub-clause 28(8) hereof, that a commercial discovery has been made before the expiry of the initial exploration period stipulated in sub-clause 3(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 up to twenty five (25) years from the date of the development plan for that development area is adopted under sub-clause 29(4) hereof.
- (7) In the event that the contractor has fulfilled all its obligations for the specified term of the contract, the contractor may request an extension of the development area for a further period not exceeding ten (10) years. The Cabinet Secretary shall consider such a request in accordance with the provisions of the Act.

4. Contract Area Surrender

- (1) The contractor shall surrender—
- (a) At least twenty five percent (25%) of the net area determined by subtracting the development areas from the original contract area at or before the end of the initial exploration period;
 - (b) An additional of at least twenty five percent (25%) of the net area determined by subtracting the development areas from the remaining part of the original contract area at or before the end of the first additional exploration period; and
 - (c) At or before the end of the second additional exploration period, all of the remaining contract area that is not a development area.

- (2) 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 4(1).
- (3) The shape and size of an area surrendered shall be in a contiguous area of which its longer side shall not be more than three (3) times its shorter side, and shall be approved by the Cabinet Secretary, approval which shall not be unreasonably withheld.
- (4) The contractor shall give one (1) year's written notice of surrender in respect of a producing field and thirty (30) days 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.
- (5) No surrender made in accordance with this clause shall relieve the contractor of;
 - (a) its obligations to comply with the minimum exploration work and expenditure required in clause 5; or
 - (b) any other obligations which may have accrued prior to the date of surrender.
- (6) Upon surrender of any contract area the contractor shall perform all necessary clean-up activities and undertake all necessary restoration and reclamation measures in accordance with the best petroleum industry practices and the relevant laws.
- (7) It shall be a requirement for the portion surrendered under this clause to have geological and geophysical data which the contractor shall be under obligation to submit at the time of surrender.

5. 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) in the event this contract relates to an onshore block, carry out geological, geochemical and geophysical studies, comprising;
 - a. the compilation of a technical database;
 - b. the performance of a remote sensing study, and
 - c. a field visit to verify initial geological, geochemical and geophysical work and remote sensing results and plan for two dimensional seismic acquisition;

- (ii) carry out a data search for existing data specific to the contract area, including-
 - a. well data, if available;
 - b. seismic data and gravity data, if available; and
 - c. reprocess seismic data, gravity and magnetic data, if available;
 - (iii)kms of seismic with a minimum expenditure of U.S. dollars
 - (iv) drilling of exploratory wells to a minimum depth of 3,000 meters per well with a minimum expenditure of U.S. dollars for each well;
- (b) during the first additional exploration period of..... contract years 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 ofcontract years drilling of exploratory wells to a minimum depth of meters per well with a minimum expenditure of U.S. dollars for each well.
- (2) The fulfillment of all work obligations shall not relieve the contractor of the corresponding expenditure obligation therein.
- (3) If the drilling of an exploratory well is discontinued, prior to reaching the minimum depth herein specified, because that well has encountered the basement, an impenetrable substance or any condition which in accordance with best petroleum industry practice would make it unsafe or impractical to continue drilling, the minimum depth obligation in respect of that well shall be deemed to be fulfilled.
- (4) An appraisal well drilled to appraise and evaluate a commercial discovery under an Appraisal Work Programme pursuant to sub-clauses 28(2)and (4) shall not be considered to be an exploratory well for the purpose of fulfilling the required number of exploratory wells.

- (5) The minimum exploration expenditure set forth in sub-clause 5(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 “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.
- (6) The contractor shall submit a revised programmed and a budget in the event that the contractor may incur additional expenditure in relation to the initial minimum expenditure obligation.
- (7) On or before the commencement of the initial exploration period or of any additional exploration period the contractor shall provide a security of 50% Bank Guarantee and another 50% by the parent company, in a form acceptable to the Cabinet Secretary, guaranteeing the contractor’s minimum work and expenditure obligations under sub-clause 5(1) hereof.
- (8) 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 5(1) hereof, and/or its minimum expenditure obligations under sub-clauses 5(1) and 5(5) 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 defined in sub-clause 5(5) 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 5(5), and the minimum monetary obligation for that exploration period, multiplied by the discount rate, as defined herein above.

6. Surface Fees and Signature Bonus

- (1) The contractor shall pay, on or before the beginning of the relevant contract year to the Government, the following surface fees—

- i. U.S. dollars per square kilometre per year for the initial exploration period;
 - ii. U.S. dollars per square kilometre per year for the first additional exploration period; and
 - iii. U.S. dollars per square kilometre per year for the second additional exploration period or any extension thereof.
- (2) The said payments 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 6(1) is not refundable and a late payment shall attract interest in accordance with sub-clause 46(2) hereof.
- (4) A signature bonus of U.S. dollars shall be payable to the Ministry by the contractor upon execution of the contract by the Cabinet Secretary.

7. Termination

- (1) Subject to the provisions of the Act, the Cabinet Secretary may terminate this contract by giving the contractor written notice, if the contractor—
- (a) fails to make any payment to the Government as required under this contract for a period exceeding thirty (30) days;
 - (b) becomes insolvent, makes a composition with creditors or goes into liquidation other than for reconstruction or amalgamation; or
 - (c) fails to provide or maintain the security and insurance stipulated in this contract; or
 - (d) is in material breach of any other obligation under the Act, regulations or this contract.
- (2) The period of notice in respect of sub-clauses 7(1)(a) and (c) hereof shall be thirty (30) days, and in any other case ninety (90) days, but if the contractor remedies the breach within the period of the notice, the Cabinet Secretary shall withdraw the notice. Where the Cabinet Secretary reasonably believes that the contractor is using its best efforts to remedy the default, the Cabinet Secretary may withdraw the notice, accordingly.

- (3) When this contract is terminated or expires in whole or in part, the contractor shall conclude the upstream 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 Cabinet Secretary, which shall not be unreasonably withheld, and for the purpose of this sub-clause 7(4) the term “control” shall have the same meaning as set forth in the definition of an affiliate in clause 2.

PART III

RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

8. Rights of the Contractor

- (1) The contractor shall have the right to carry out the upstream petroleum operations within the contract area, subject to the provisions of this contract and applicable law for the term hereof.
- (2) The contractor is granted the right, subject to applicable law, to enter upon the contract area and conduct upstream 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 upstream 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 Cabinet Secretary shall recommend to the relevant authorities to grant the necessary permit to the contractor to access-
 - (i) water in the contract area for the purpose of the upstream 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;
 - (ii) security within the contract area, and;
 - (iii) any other services the contractor may require in performance of upstream operations.
- (4) The contractor may, for the purpose of the upstream petroleum operations, use gravel, sand, clay and stone in the contract area but not without consent or license granted under the relevant law.

- (5) Further to the provisions of section 110 of the Act and subject to the provisions of the Constitution and any written laws, the contractor may exercise all rights granted to it by this contract.

9. General Standards of Conduct

- (1) The contractor shall carry out the upstream petroleum operations diligently and in accordance with the provisions of this contract, best petroleum industry practice and applicable law.
- (2) Without limiting the foregoing, the contractor shall, in accordance with the Act and regulations—
- (a) maintain adequate financial, technical and professional capacity throughout the contract period;
 - (b) at all times ensure that any sub-contractor or agent of the contractor acting on its behalf possesses the necessary skills and qualifications to perform the work;
 - (c) ensure that all facilities, such as machinery, plant, equipment, materials, supplies and installations used by the contractor in connection with the upstream petroleum operations are of proper and accepted construction standard and are kept in good repair;
 - (d) use the resources of the contract area as productively as possible and ensure that petroleum discovered and produced are properly contained during upstream petroleum operations, and brine, drilling fluids, mud or any other liquids, solids or waste substances are properly contained and disposed of during upstream petroleum operations;
 - (e) prevent damage to producing formations and to adjacent strata which bear petroleum, brine or fresh water, and prevent brine, fresh water and petroleum entering through wells into strata bearing petroleum, except where: (i) approved brine and liquid waste injection well operations, and (ii) secondary and tertiary recovery operations are being conducted;
 - (f) properly confine petroleum and brine in steel storage tanks constructed for that purpose, and not place petroleum, brine and drilling fluids in open drilling pits and earthen reservoirs for storage or drilling, completions and production operations except temporarily in an emergency;

- (g) dispose of oil, brine, salt water and other liquid and solid waste in accordance with best petroleum industry practice, to avoid damage to the environment and pollution; and
- (h) comply with the applicable laws of environment protection, health and safety.

10. 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 and subsurface of a contract area including domestic animals, wildlife, trees, crops, buildings, roads, surface waters, underground water aquifers, soils, facilities and infrastructure and other property thereon, and shall forthwith repair any loss or damage caused, and shall pay full and reasonable compensation for any loss suffered as determined by an internationally recognized independent expert appointed by both parties.
- (3) The Cabinet Secretary may, if he has reasonable cause to believe that the upstream 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 upstream 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 Cabinet Secretary with evidence of those insurances before the upstream petroleum operations begin.
- (5) The contractor shall indemnify, defend and render the Government free from all claims and damage which, but for the conduct of the upstream petroleum operations by the contractor or a sub-contractor, would not have arisen or occurred.

11. Wells and Surveys

- (1) Unless such notice is waived, the contractor shall not drill a well or borehole or recommence drilling after a one hundred and eighty (180) days' cessation without thirty (30) days' prior notification to the Cabinet Secretary and the Authority which notice shall set forth the

contractor's reasons for undertaking such drilling and shall contain a copy of the drilling programme.

- (2) The design and construction of a well or borehole and the conduct of drilling shall be in accordance with the drilling permit issued by the Authority and best petroleum industry practice.
- (3) No borehole or well in a contract area shall be drilled without a drilling permit from the Authority, which may give special considerations of the distance of the contract boundary area.
- (4) Production of a well shall be in accordance with the production permit issued by the Authority and the contractor shall produce the well using best petroleum industry practice and conservation of petroleum resources principles;
- (5) Conversion and operation of a well to an underground injection control well shall be in accordance with the underground injection control well permit issued by the Authority and the contractor shall only inject brine and liquid waste into the well, as permitted, using best petroleum industry practice;
- (6) Plugging and abandonment of a well shall be in accordance with the plugging and abandonment permit issued by the Authority using best petroleum industry practice;
- (7) The contractor shall not-
 - (a) plug and abandon a well or remove any permanent form of casing therefrom, without giving forty eight (48) hours prior notification to the Authority, and an abandoned well shall be securely plugged to prevent environmental damage, pollution, sub-sea damage, or water entering or escaping from the strata penetrated; or
 - (b) commence drilling, re-enter or plug a well unless a representative of the Authority has been given a reasonable opportunity to be present.
- (8) The contractor shall state, in its application to plug and abandon a well on land, whether that well is capable of providing fresh water supply.
- (9) The contractor shall, within sixty (60) days of termination or expiry of this contract or the surrender of part of the contract area, deliver up all productive wells, in the 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 Authority may require the contractor to plug and abandon the well at the contractor's expense by notifying the contractor within thirty (30) days after such termination or expiry is effected or at least ninety (90) days prior to surrender of a development area.

- (10) Where the contractor applies to permanently plug and abandon an exploratory or an appraisal well in which petroleum of potentially commercial significance has not been found, the Cabinet Secretary in consultation with the Authority may request the contractor to deepen or sidetrack that well and to test the formations penetrated as a result of such operation, or to drill another exploratory or appraisal well within the same prospect area, subject to the following provisions—
- (a) any such additional upstream petroleum operations shall be at the sole cost, risk and expense of the Cabinet Secretary 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 upstream petroleum operations or if it is not commercially, technically or operationally feasible;
 - (c) in the event that the upstream petroleum operations undertaken under this sub-clause 11(10) result in a commercial discovery which the contractor elects to evaluate and/or develop as a commercial field, the contractor shall reimburse the Government six hundred per cent (600%) 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 operation on this commercial discovery at the sole cost, risk and expense of the Government.
- (11) The contractor shall give the Cabinet Secretary and Authority thirty (30) days notice of any proposed seismic and/or geophysical surveys, which notice shall contain complete details of the programme to be conducted. At the request of the contractor, the Cabinet Secretary may waive the notice period.

12. Offshore Operations

- (1) The contractor shall ensure that facilities 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 Cabinet Secretary;
 - (c) illuminated between sunset and sunrise in a manner approved by the Kenya Ports Authority and Kenya Maritime Authority; and
 - (d) kept in good repair and working order.
- (2) The contractor shall pay compensation as determined by expert for any damage to and/or any interference with, including but not limited to fishing rights caused by the upstream petroleum operations.

13. Upstream Petroleum Operations Facilities

- (1) With the written consent of the Cabinet Secretary, which consent shall not be unreasonably withheld, the contractor shall have the right to construct access roads, drill water wells and to place facilities necessary to conduct the upstream petroleum operations, including but not limited to storage tanks, flow lines, shipment installations, transmission pipelines, water pipelines and cables, located inside or outside the contract area. Such consent of the Cabinet Secretary may be conditional on the use by other contractors of the excess capacity, if any, of those facilities. Where the Cabinet Secretary 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 contractors on the construction and operation of such common facilities.
- (2) Other contractors may use the facilities of the contractor on payment of a reasonable compensation which includes a reasonable return on investment to the contractor and provided that the use does not unreasonably interfere with the contractor's upstream petroleum operations.

- (3) The Cabinet Secretary may after consultation with the Authority and contractor consent to the placement of facilities such as flow lines, transmission pipelines, water pipelines and cables in the contract area by other persons, but those facilities shall not unreasonably interfere with the upstream petroleum operations of the contractor.
- (4) Subject to clause 17, on termination or expiration of this contract or surrender of part of the contract area, the contractor shall remove all petroleum operation facilities 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 Cabinet Secretary, the contractor shall transfer them, at no cost, to the Government, in their current condition in which case the Government shall be responsible for operating, maintaining, plugging and abandoning and decommissioning of such facilities.
- (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 upstream petroleum operations facilities that are situated in the development area or that are related thereto, unless such facilities are or may be utilized by the contractor in upstream petroleum operations under this contract, but the Government may require the contractor to remove the facilities at the cost of the contractor in accordance with clause 17.

14. Data and Samples

- (1) The contractor shall keep logs and records of the well construction, drilling, deepening, perforations, production, plugging and abandonment of boreholes and wells, in accordance with best 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, fresh water aquifers, brine and workable mineral or mine workings encountered; and
 - (d) any other matter related to upstream petroleum operations required by the Cabinet Secretary and Authority.

- (2) The contractor shall record, in an original or reproducible form of good quality, and on seismic tapes where relevant, all geological, geochemical, geophysical and engineering information and data relating to the contract area obtained by the contractor and shall deliver in electronic and hard copies of that information and data, the interpretations thereof and the logs and records of boreholes and wells, to the Authority, in a reproducible form, as soon as is 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 geological analysis, petrological specimens and samples of petroleum, brine and fresh water encountered in a borehole and/or well and, as soon as practicable shall, without charge, give the Authority a representative part of each specimen and/or sample removed, but no specimen or sample shall be exported from Kenya without prior notification to the Authority.
- (4) The contractor shall keep records of and supply data and information concerning the upstream petroleum operations, as requested by the Authority.
- (5) The contractor shall provide data, information and samples to the Authority in a form and manner as prescribed in the Act and regulations.

15. Reports

- (1) The contractor shall supply to the Cabinet Secretary and Authority daily reports on drilling, completions and production operations, and weekly reports on exploration including seismic and geophysical operations.
- (2) The contractor shall report in writing to the Cabinet Secretary and Authority the progress of the upstream petroleum operations according to the following schedule—
 - (a) within thirty (30) days from the last day of March, June, September and December, covering the previous ninety (90) days;
 - (b) within ninety (90) days of the last day of December, covering the previous year;
 - (c) within ninety (90) days 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 upstream 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 on upstream petroleum operations in accordance with the accounting procedure;
- (d) a plat map including a record of coordinates including all pits, boreholes, wells and facilities used for upstream petroleum operations;
- (e) on expiry or termination of this agreement details of the upstream petroleum operations including all the matters described in paragraphs (a) to (d); and
- (f) all information required by clause 14 not hitherto supplied.

16. Environmental Provisions

- (1) During the performance of the upstream petroleum operations, the contractor shall comply with environmental principles and safeguards prescribed in the Environmental Management and Coordination Act and regulations made thereunder and all other relevant laws and shall take reasonable measures to ensure the protection of the environment and prevention of pollution, in accordance with the best petroleum industry practice in similar physical and ecological environments.
- (2) Prior to surrendering a portion of the contract area, the contractor shall take reasonable measures to abandon the area to be surrendered in accordance with best petroleum industry practice in similar physical and ecological environments. Such measures shall include removal and closure of facilities, material and equipment together with reasonable measures necessary for the preservation of fauna, flora and ecosystems, all in accordance with best petroleum industry practice in similar physical and ecological environments. The contractor shall only be responsible for site restoration or environmental damage to the extent the same pertains solely and directly to upstream petroleum operations conducted pursuant to this contract.
- (3) The contractor shall take reasonable precautions and measures in accordance with the Kenyan laws and best petroleum industry practice in similar physical and ecological environments to prevent any pollution which may arise directly or indirectly as a result of the upstream

petroleum operations and to protect the environment (fauna and flora), water sources and any other natural resources when carrying out upstream petroleum operations.

- (4) The contractor shall, in accordance with best petroleum industry practice in similar physical and ecological environments, respect the preservation of property, agricultural areas, and fisheries, when carrying out upstream petroleum operations.
- (5) The contractor shall conduct a strategic environmental and social impact assessment and submit the report thereof to the National Environmental Management Authority within one hundred and eighty (180) days after the effective date. Such environmental and social impact assessment shall establish the effect of upstream petroleum operations to be undertaken under this contract on the environment, human beings, livestock, wildlife, or marine life, and shall include emergency and accident response plans.
- (6) The contractor shall take reasonable measures to minimize any adverse material impact on national parks and nature reserves which may arise directly as a result of the upstream petroleum operations, in accordance with best petroleum industry practice in similar physical and ecological environments.
- (7) If a contractor's failure to comply with the requirements of this clause 16 results in pollution the contractor shall, in accordance with best petroleum industry practice, promptly take all necessary measures to control the pollution. If such pollution results directly from the gross negligence or willful misconduct of the contractor, the cost of clean-up and repair activities shall be borne by the contractor and shall not be included as petroleum costs under this contract.
- (8) The contractor shall notify the Authority within forty eight (48) hours in writing in the event of any emergency or major accident and shall take such action as may be prescribed by the Government's emergency procedures, the contractor's emergency and accident response plans developed pursuant to sub-clause 16(5), and by best petroleum industry practices.
- (9) If the contractor does not act promptly so as to control, clean up, or repair any pollution or damage, the Authority may, after giving the contractor reasonable notice under the circumstances, take any actions that are necessary in accordance with best petroleum industry

practices and the costs and expenses of such actions shall be borne by the contractor and shall not be cost recoverable.

- (10) The contractor is not responsible for any pre-existing environmental conditions or any acts of unrelated third parties.

17. Plugging and Abandonment and Decommissioning Operations

(1) Decommissioning Costs-

- (a) The decommissioning plan is to form part of the development plan, and shall include a schedule for the amortization of costs and recovery of costs, which are estimated to be incurred when the development is decommissioned.
- (b) The contractor shall exercise its judgment in good faith to book sufficient accruals for future plugging and abandonment and decommissioning operations to cover the expenses which are expected to be incurred under the decommissioning plan. The contractor shall examine on an annual basis, the estimated costs of plugging and abandonment and decommissioning operations and, if appropriate, revise them and submit them to the Authority for approval.
- (c) The contractor shall commence booking accruals for plugging and abandonment and decommissioning costs in the first calendar quarter in which the ratio of cumulative production to overall recoverable reserves reaches fifty (50%) percent, or ten years before the expiry of the production permit whichever is earlier.
- (d) All plugging and abandonment and decommissioning costs allocated to the decommissioning fund shall be recoverable as petroleum costs at the time that the accrual is entered in the books.

- (e) The contractor shall book an accrual on a calendar quarter basis for the amount of future plugging and abandonment and decommissioning costs according to the following formula:

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

Where:

FTA is the amount to be accrued for future plugging and abandonment and decommissioning costs in respect of the relevant calendar quarter.

ECA is the total estimated cost of plugging and abandonment and decommissioning operations established pursuant to this clause 17.

CPP is the volume of petroleum produced during the calendar quarter in which the plugging and abandonment and decommissioning accrual was booked.

PRR is the contractor's estimated remaining recoverable reserves at the end of the calendar quarter in which the plugging and abandonment and decommissioning accrual was booked; as such estimates may be revised by contractor from time to time.

AFB is the accrued decommissioning fund at the end of the previous calendar quarter including accrued interest on the escrow account established under sub-clause 17(5).

(2) Commencement of plugging and abandonment and decommissioning operations-

- (a) Plugging and abandonment and decommissioning shall be scheduled to occur after a producing field reaches its economic limit.
- (b) On or before the start of the 720 calendar day period prior to the expected start date of plugging and abandonment and decommissioning, the Authority shall notify the contractor which of the facilities and assets identified in the development plan shall not be plugged and abandoned and decommissioned, but which shall revert to the ownership of the Government in accordance with clause 13 of this contract. No further funds to cover plugging and abandonment and decommissioning costs shall be reserved or accrued for

the facilities and assets so identified and a corresponding adjustment shall be made, if necessary, by the contractor.

- (c) If the Cabinet Secretary in consultation with the authority elects not to use the facilities and assets identified in the development plan in sub-clause 17(2)(b) of this contract, the Authority shall have the right to require the contractor to remove them at the contractor's expense in accordance with the decommissioning plan, it being understood that the plugging and abandonment and decommissioning operations shall be carried out by the contractor in accordance with best petroleum industry practice, this contract and in accordance with the time schedule and conditions defined in the decommissioning plan which shall have been approved.

(3) Plugging and abandonment and decommissioning upon termination of development area-

- (a) If the contractor recommends plugging and abandonment and or decommissioning of facilities assets or wells belonging to it in connection with a termination of a development area, pursuant to clause 4(4) of this contract, the Government may elect to take ownership of and continue using such facilities, assets and wells by giving the contractor written notice of such decision within sixty (60) calendar days of the Government's receipt of the contractor's notice of relinquishment. Upon so notifying the contractor, which notification is effective as of the effective date of the contractor's relinquishment, the Government shall take ownership of, and be responsible for, plugging and abandonment and decommissioning of such facilities, assets and wells.
- (b) If the Government does not elect to continue using such facilities, assets or wells, the contractor shall be responsible for their plugging and abandonment and decommissioning upon termination of this contract or of the development area within the corresponding development area. The contractor may in consultation with Government defer the plugging and abandonment and decommissioning operations for a reasonable length of time if this would result in operational efficiencies, which minimize the cost for all parties.

(4) Facilities, assets and wells, which the Government continues to use -

With respect to any facilities, assets or wells which the Government elects to own pursuant to this contract:

- (a) The Government shall conduct such continued use and/or plug and abandon or decommission in accordance with best petroleum industry practice and in such a manner that does not interfere with continuing upstream petroleum operations; and
- (b) The Government may plug and abandon and decommission such facilities, assets and wells as and when the Government decides.

(5) Disbursements of funds for plugging and abandonment and decommissioning costs –

- (a) The Contractor shall advise the Government on an annual basis its best estimate of the projected date of plugging and abandonment of individual wells and decommissioning of the producing field based on the then current estimate of when the economic limit will be reached according to the then current production forecast and realized petroleum prices.
- (b) As and when the contractor commences booking accruals pursuant to these provisions, the Contractor and the Government shall cause the accrued costs of plugging and abandonment and decommissioning operations to be set aside in a separate USDollar interest bearing escrow account in the joint names of the contractor and the Government, established at a mutually acceptable financial institution in Nairobi, Kenya to be used solely for paying the decommissioning costs. The account is to be funded on a quarterly basis by the contractor and the Government, where the Government is participating, in proportion to the contractor's then current participating interest under this contract and out of its share of ongoing cost petroleum and profit petroleum attributable to the contractor and the Government entities, or by cash payment if production is insufficient. A final reconciliation shall be submitted to all entities and the Government following completion of all plugging and abandonment and decommissioning operations and adjustments made in accordance with sub-clause 17(6) below.

(6) Adjustments to accruals for plugging and abandonment and decommissioning costs -

- (a) If excess accruals which were booked in the decommissioning fund for plugging and abandonment and decommissioning costs remain following completion of all plugging

and abandonment and decommissioning operations, then such excess funds shall be distributed to the contractor and the Government (where the Government has participating interest) as if such funds represented profit petroleum in the calendar quarter in which plugging and abandonment and decommissioning is completed.

- (b) Any plugging and abandonment and decommissioning cost accruals which have been booked in the decommissioning fund for purposes of removing facilities or assets that the Government decides should not be removed shall be paid by the contractor to the Government (where the Government has participating interest) concurrently with the transfer of ownership of such facility, asset or well to the Government. The Government represents that the transferred funds shall only be used in respect of its plugging and abandonment and decommissioning operations.
- (c) If the amounts accrued for plugging and abandonment and decommissioning costs are insufficient to complete the plugging and abandonment and decommissioning activities, additional funds for such activities shall be provided from a portion of crude oil or natural gas which the contractor is entitled to receive under this contract from any development area, or if no production is available, by cash payment by the contractor and the Government (where the Government has participating interest) in the same ratio as would be applicable for distribution of excess amounts under sub-clause 17(6)(a).

18. Insurance

- (1) The contractor shall take up and maintain, in respect of upstream petroleum operations, all insurance required by applicable Kenyan law and, as the Government and the contractor may agree from time to time. Such insurance shall be of the type and in such amount as is required by applicable law and is customary in accordance with best petroleum industry practices, and at least include insurance against the following risks:
 - (a) loss or damage to all installations and equipment which are owned or used by the contractor in the upstream petroleum operations;
 - (b) pollution caused in the course of the upstream petroleum operations by the contractor for which the contractor may be held responsible;

- (c) property loss or damage or bodily injury suffered by any third party in the course of the upstream petroleum operations by the contractor for which it may be liable to indemnify the Government;
 - (d) the cost of removing damaged facilities and cleaning up operations following an accident in the course of the upstream petroleum operations by the contractor; and
 - (e) the contractor's liability for its employees engaged in the upstream petroleum operations.
- (2) The contractor shall give preference to Kenyan insurance companies.
 - (3) In relation to development and production operations, the contractor shall submit to the Government a programme for the provision of an "All Risks" insurance which may, *inter alia*, cover physical damage to the facilities under construction and installation as well as legal liabilities arising out of the development and production operations.
 - (4) The contractor shall require its sub-contractors to carry equivalent insurance of the type and in such amount as is required by applicable law and is customarily in accordance with best petroleum industry practice.
 - (5) Any insurance policy relating to this contract shall name the Government as an additional insured party and shall include a waiver of subrogation protecting the Government against any claim, loss and damage resulting from any petroleum operation conducted by or on behalf of the contractor under this contract, to the extent that the contractor is liable for such claim, loss or damage under this contract. The contractor shall not be liable for any claims arising from negligence or willful misconduct of the Government.
 - (6) Upon its written request, the Government shall be provided with insurance certificates, including necessary details, for any insurance policy maintained by the contractor which relates to this contract.

PART IV
LOCAL CONTENT

19. Adherence to Laws and Regulations

- (1) The contractor shall comply with all the Kenyan local content policies, laws and regulations as amended from time to time.

20. Employment and Training of Kenyans

- (1) In accordance with the provisions of the Act and regulations, the contractor and its sub-contractors shall employ Kenyans in the upstream petroleum operations and shall, until the expiry or termination of this contract, conduct training courses and programmes that will progressively increase employment of Kenyans.
- (2) The training courses and programmes in sub-clause 20(1) above shall be established and conducted in consultation with the Cabinet Secretary.
- (3) The contractor shall ensure that Kenyan nationals are selected and trained consistent with contractor's performance standards in relation to activities referred at sub-clause 23(3).

21. Training Fund

- (1) In addition to the obligation under sub-clause 20(1) and commencing on the effective date, the contractor shall for the purposes of section 88 of the Act contribute to the Government a minimum of U.S. dollars per year for the Government training fund established under section 88(2) of the Act.
- (2) The contractor's obligation under sub-clause 21(1) shall be increased to a minimum of U.S dollars per year commencing with the adoption of the first development plan under sub-clause 29(3).
- (3) The Training Fund shall be managed by the Cabinet Secretary in accordance with the Energy and Petroleum Policy, the Act and regulations.

22. Preference for Kenyan Goods and Services

- (1) The contractor and its sub-contractors shall maximize to the satisfaction of the Authority the usage of Kenyan goods and services, businesses and financing.
- (2) The contractor and its sub-contractors shall give preference to Kenyan materials and supplies for use in upstream petroleum operations in accordance with the provisions of the Act and regulations.
- (3) The contractor and its sub-contractors shall give preference to Kenyan contractors for services connected with upstream petroleum operations in accordance with the provisions of the Act and regulations.
- (4) The contractor and its sub-contractors shall procure supplies and services from locations in Kenya, where practicable, in accordance with the provisions of the Act and regulations.
- (5) The contractor shall—
 - (a) on or before the beginning of each calendar year to which it applies, submit to the Cabinet Secretary and Authority a tentative schedule of the contemplated services and supply contracts with an estimated value exceeding the equivalent of U.S. 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 U.S. dollar per contract, undertake to select its contractors and sub-contractors from adequately qualified indigenous Kenyan companies by means of competitive bidding or by another appropriate method in accordance with best petroleum industry practice;
 - (c) as soon as practicable after their execution, provide to the Cabinet Secretary and the Authority a copy of each contract, requiring a payment in US dollars or equivalent and a brief description of the efforts made to find a Kenyan supplier or service contractor;
 - (d) the minimum amount specified under this sub-clause 22(5) may be changed from time to time by the regulations made under the Act.

- (6) The contractor shall give equal treatment to local enterprises by ensuring access to all tender invitations and by including high weighting on local value added in the tender evaluation criteria.

23. Technology Transfer

- (1) The contractor and its sub-contractors shall develop a Technology Transfer Programme in accordance with the Energy and Petroleum Policy, the Act and regulations to promote the transfer of technology and skills on upstream petroleum operations to indigenous Kenyan employees and government officials.
- (2) The Technology Transfer Programme shall be aimed at building and developing in Kenya specialized technical, management and professional skills relevant to upstream petroleum operations and any necessary facilities requisite for advancement of technical skills in upstream petroleum operations.
- (3) The contractor shall transfer to Kenyans technology and business expertise in all areas of upstream petroleum operations including but not limited to:
- (i) Fabrication;
 - (ii) Information Technology support, including seismic data acquisition, processing and interpretation support;
 - (iii) Operations and maintenance support;
 - (iv) Maritime services;
 - (v) Business support services, including insurance, accounting, human resource services, consulting, marketing, legal and contract negotiations;
 - (vi) Financing;
 - (vii) Trading;
- (4) In addition to the requirements in sub-clause 23(3) above the contractor shall develop indigenous Kenyans to take more value-added, analytical and decision making roles in areas, such as-
- (i) a technical or professional nature including general management, design engineering, project management, seismic data processing, human resource development, legal, economics, auditing and accounting; and

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

24. Record Keeping and Reports

- (1) In accordance with its obligations under the Energy and Petroleum Policy, the Act and regulations the contractor shall maintain records to facilitate the determination of the local content of expenditure incurred in respect of upstream petroleum operations.
- (2) These records shall include supporting documentation certifying the cost of local materials, labour and services used and shall be subject to audit by the Authority.
- (3) Pursuant to sub-clause 24(1) the contractor shall prepare and submit reports to the Authority in accordance with the specified timeframe in the regulations.

PART V

RIGHTS AND OBLIGATIONS OF THE GOVERNMENT

25. 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 upstream petroleum operations within the contract area, and the Government shall not, without good cause, acquire a part of the contract area on which upstream petroleum operations are in progress.
- (2) The contractor shall not carry out upstream petroleum operations on such an acquired part 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.
- (3) The Cabinet Secretary and the Authority, or a person authorized by the Cabinet Secretary or the Authority in writing, may at all reasonable times inspect any upstream 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 upstream petroleum operations, subsistence and accommodation and pay all reasonable expenses directly connected with the inspection.

- (4) The Cabinet Secretary 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 Cabinet Secretary may execute the obligation for which the contractor shall pay forthwith amounts expended by the Cabinet Secretary in the execution of the obligations. The Cabinet Secretary may give written notice to perform an obligation at any time but not later than ninety (90) days after the termination or expiry of this contract or the surrender of a part of the contract area.

26. 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 upstream petroleum operations in accordance with Chapter Five(5) of the Constitution and the relevant land laws and where the land is private land, the Government may, subject to section 118 of the Act, acquire the land in accordance with the applicable laws.
- (2) 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 upstream petroleum operations.
- (3) Where the contractor has occupied Community Land for the purpose of the upstream petroleum operations before that land has been set apart, the contractor shall notify the Cabinet Secretary in writing of the need to set apart such land as provided for under Chapter Five of the Constitution and any other applicable land laws.
- (4) 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 upstream 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.

- (5) The Government shall at all times give the contractor the right of ingress to and egress from the contract area and the facilities wherever located for the conduct of upstream petroleum operations.
- (6) Subject to the national security requirements and the Kenyan Immigration Laws and Regulations, the Government shall not unreasonably refuse to issue and/or renew entry and work permits for technicians and managers employed in the upstream petroleum operations by the contractor or its sub-contractors and their dependants.

PART VI

WORK PROGRAMME, DEVELOPMENT AND PRODUCTION

27. Exploration Work Programme and Detailed Budget

- (1) The contractor shall submit in writing and make a presentation to the Cabinet Secretary thirty (30) days after the effective date, a detailed report of the exploration work programme and detailed budget for the first contract year.
- (2) The contractor shall submit in writing and make a presentation to the Cabinet Secretary ninety (90) days before the end of each contract year, a detailed report of the exploration work programme and a detailed budget for the next contract year.
- (3) The Cabinet Secretary may submit to the contractor, within thirty (30) days of the receipt of the annual exploration work programme and budget, suggested modifications and revisions thereof. The contractor shall consider the inclusion of such suggested modifications and revisions in light of best petroleum industry practice and shall provide the Cabinet Secretary 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 Cabinet Secretary.
- (5) The agreed final work programme and budget shall be approved by the Cabinet Secretary in writing.

28. Discovery and Appraisal Work Programme

- (1) The contractor shall in accordance with section 64(1) of the Act, notify the Cabinet Secretary of a discovery of petroleum and shall forthwith submit an initial discovery report with all relevant information to the Cabinet secretary not later than thirty (30) days after completion and testing of such exploration well.
- (2) If the contractor considers that the discovery merits appraisal, it shall submit and orally present to the Cabinet Secretary within ninety (90) days following the date of submission of the discovery report, a detailed statement of the appraisal work programme and budget which shall provide for the expeditious appraisal of the discovery and the provisions of sub-clauses 27(3) and 27(4) shall apply to the appraisal work programme and budget.
- (3) The Cabinet Secretary shall review the submitted appraisal programme and within ninety (90) days of submission, the Cabinet Secretary may request for amendment of the appraisal programme.
- (4) After the appraisal work programme and budget have been adopted by the Cabinet Secretary, the contractor shall within ninety (90) days evaluate the discovery and where appraisal warrants more time, then the Cabinet secretary may upon request by the contractor, extend such time for a period reasonably required to expeditiously complete appraisal work.
- (5) In the event of a discovery in the last year of the second additional exploration period, the Cabinet Secretary 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 appraisal work programme and budget with respect to such discovery and to determine whether or not the discovery is commercial but in any event, such extension to the second additional exploration period shall not exceed..... months.
- (6) The contractor shall, not more than ninety (90) days after the appraisal is completed, report to the Cabinet Secretary the commercial prospects of the discovery, including all relevant technical and economic data. Including but not limited to location, areal extent, lateral extent, thickness, estimate of in-place and recoverable petroleum and their determination of whether

the discovery is commercial, or whether further appraisal is required by submitting for approval to the cabinet secretary a supplementary appraisal report.

- (7) If the appraisal report relating to a particular discovery states that the contractor is of the opinion that the discovery is non-commercial, the contractor and the Cabinet Secretary shall meet to discuss in good faith ways in which it might be possible to proceed with the development of such discovery on a commercial basis, with the possibility of amending the terms of this contract, but for avoidance of doubt, the Cabinet Secretary shall be under no obligation whatsoever to agree to any such amendments proposed by the contractor or vice versa.
- (8) If the contractor reports under sub-clause 28(6) that the discovery is a commercial discovery, a development plan shall be submitted to the Cabinet Secretary for approval within one hundred and eighty (180) days of the completion of the appraisal work programme unless otherwise agreed, and upon written application of the contractor, the term of this contract shall be extended by the Cabinet Secretary, if necessary, in respect of the area of that commercial discovery, provisionally established in accordance with the adoption of a development plan.

29. The Development Plan and Annual Work Programme and Budget

- (1) The field development plan shall be submitted by the contractor to the Authority for review which shall advise Cabinet Secretary for approval. This field development plan shall be based on sound engineering and economic principles and in accordance with best 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 Cabinet Secretary shall contain 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.
- (3) Except with the consent of the Cabinet Secretary, and without prejudice to the generality of sub-clause 29(1), the development plan shall include:
 - (a) A description of the proposed commercial discovery in the development area that is identified for the development and management programme;

- (b) Details of the following upstream petroleum operations:
- (i) geologic, seismic, and geophysical exploration analysis and appraisal, including production simulation profiles;
 - (ii) proposed well locations and production, treatment, storage and transportation facilities to be located in the development area;
 - (iii) spacing, well construction, drilling process, casing and cement programs, well logs, completion methods, and production operations of the wells required for production of petroleum in the development area;
 - (iv) facilities for transporting petroleum from the Development Area to the Crude Oil Delivery Point and the Natural Gas Delivery Point;
 - (v) identification of any alternative markets and sales of all petroleum resources, especially natural gas;
- (c) The initial production profiles for all petroleum reserves in the commercial discovery, including the production life, the commencement of production, and the anticipated daily rates of petroleum production;
- (d) The decommissioning plan, in such detail, as the Authority requires, including in accordance with clause 17 a calculation of the quarterly accrual charges to be paid by the contractor to the decommissioning fund for individual well plugging and abandonment operations and overall field decommissioning costs;
- (e) A detailed environmental impact assessment for the commercial discovery, which identifies current and possible environmental issues and concerns and a plan for ensuring environmental compliance during the life of the field;
- (f) A contractor's proposal for ensuring the safety, health, security and welfare of persons and facilities in or about the proposed upstream petroleum operations;
- (g) The contractor's proposals for stimulating local content, including:
- (i) maximizing the procurement and use of Kenyan goods and services in upstream petroleum operations to local communities;

- (ii) identifying specific skills' training programs and technical courses that shall directly translate to the employment of citizens of Kenya and shall ensure occupational health and safety requirements, fairness in gender practices, and career advancement opportunities;
 - (iii) coordination with stakeholders and local communities in open and timely posting of job descriptions and minimum skills' requirements for employment to fully address local content issues and concerns;
 - (h) The contractor's complete finance program for the Annual Development Work Programme and Budget;
 - (i) Details and copies of all contracts, agreements and arrangements for the sale of petroleum at the identified delivery point;
 - (j) Such other data and information as the law requires and as the Cabinet Secretary otherwise requires and is relevant to the development plan.
- (4) The Authority and the contractor shall jointly consider the development plan within ninety (90) days of submission thereof and the Authority may within that period, unless otherwise agreed, submit suggested modifications, justifications and revisions thereof. The contractor shall consider the inclusion of such suggested modifications and revisions in the light of best petroleum industry practice, and the development plan shall be adopted by mutual agreement.
- (5) Where the Authority proposes no modifications and revisions, the development plan of the contractor shall be adopted ninety (90) days after its submission unless it is adopted by mutual agreement of the parties before that period has elapsed. The ninety (90) days period for analysing the proposed development plan shall be extended for an additional period of up to ninety (90) days, if the Authority so notifies the contractor.
- (6) After a development plan has been adopted, the contractor shall proceed promptly and without undue delays, to implement the development plan in accordance with best petroleum industry practice. The Annual Development Work Programme and Budget shall commence within one hundred and eighty (180) days from the date of adoption of the development plan.
- (7) In connection therewith, the contractor shall submit and make a detailed presentation to the Cabinet Secretary and Authority, prior to the first day of October of each year following the

adoption of the development plan, a detailed report of the Annual Development Work Programme and Budget for the next calendar year and the provisions of sub-clauses 27(3) and 27(4) shall apply *mutatis mutandis* to any proposed revision to the development plan and to the Annual Development Work Programme and Budget.

- (8) Where the development operations extend into the area to which the commercial discovery relates, provided that the extension lies wholly within the contract area at that date, subject to the advice by the Authority the Cabinet Secretary shall adjust the relevant development area to include that extension as determined by the analysis of all the relevant available data and information.

30. Unitization

Where a petroleum deposit in a contract area extends beyond the said contract area, the same shall be developed pursuant to a unitization agreement in accordance with section 72 of the Act.

31. 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 Cabinet Secretary may accept or reject the proposed modification.
- (2) Unless otherwise agreed, if the contractor fails to commence the evaluation of a commercial discovery within two (2) years following the notice of a commercial discovery, or if within two (2) years following the completion of an evaluation work programme the contractor considers the commercial discovery does not merit development, the Cabinet Secretary may request the contractor to surrender the area corresponding to such commercial 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 4(2) hereof.

32. Natural Gas

- (1) The contractor shall have the right to use natural gas extracted from reservoirs within the contract area for the upstream petroleum operations in the contract area, included but not limited to power generation, pressure maintenance, and recycling and re-injection operations.
- (2) The terms and conditions relating to the use and production of associated natural gas shall be as follows-
 - (a) In the event the contractor elects to process and sell associated natural gas, the contractor shall notify the Government and, for the purposes of cost recovery and entitlement of production, such associated natural gas shall be treated by the parties in the same manner as other natural gas.
 - (b) In the event the contractor elects not to process and sell associated natural gas and where that natural gas is not used for the purposes specified in sub-clause 32(1), the Government 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 not be limited to, any engineering studies, new facilities and equipment required for the gathering, transport, processing and utilization thereof and the operations and maintenance of the same shall be at the sole risk, cost and expense of the Government; provided that such offtake does not significantly disrupt or delay the conduct of the upstream petroleum operations.
 - (c) The contractor may return associated natural gas, not used for the purposes specified in sub-clause 32(1), taken by the Government pursuant to sub-clause 32(2)(b), or sold by the contractor pursuant to sub-clause 32(2)(a), to the subsurface structure, and the costs of such re-injection shall be recoverable to the extent that such re-injection is included in the development plan.
- (3) The terms and conditions relating to the evaluation work programme and the commercial assessment of the production and sale of non-associated natural gas shall be as follows:
 - (a) On completion of an evaluation work programme relating to a discovery of non-associated natural gas made by the contractor, the commercial assessment period in respect of such discovery shall, if requested by the contractor, commence for a period of (..) years,

exercisable at the sole option of the contractor. An extension may be granted upon application by the contractor to the Government, for a second period of up to (..) years. An appraisal report submitted under this clause 32 shall include the estimated recoverable reserves, projected delivery rate and pressure, quality specifications and other technical and economic factors relevant to the determination for available market for such non-associated natural gas. The contractor shall, at any time during the commercial assessment period, inform the Government by notice that the petroleum reservoir located in any discovery of non-associated natural gas made by the contractor in respect of which an appraisal report has been submitted, is commercial.

- (b) If the contractor does not request for a commercial assessment period pursuant to clause 32(3)(a) above within ninety (90) days from the date on which the appraisal report was submitted, the contractor shall inform the Government by notice whether any discovery of non-associated natural gas made by the contractor in respect of which an appraisal report has been submitted, is commercial.
 - (c) Where the contractor pursuant to this clause 32 gives notice that any discovery of non-associated natural gas, made by the contractor is commercial, that notice shall, for the purpose of this contract, be a notice of commercial discovery, and processing and utilization shall follow a development plan approved in accordance with clause 29.
- (4) The commercial assessment period shall end on the first to occur of:
- (a) the date following that on which the contractor gives a notice of commercial discovery under sub-clause 32(3); or
 - (b) the date that the contractor voluntarily surrenders that portion of the contract area to which the commercial assessment period relates; or
 - (c) expiry of the period to which contractor is entitled to under sub-clause 32(3).
- (5) The contractor shall be deemed to have relinquished all rights to the discovery of non-associated natural gas if it has not given a notice of commercial discovery under sub-clause 32(3) by the end of the commercial assessment period or the earlier relinquishment of that portion of the contract area.
- (6) Where the discovery is a natural gas discovery, the contractor shall-

- (a) prepare a report (Market Evaluation Report) identifying potential market for natural gas, expected volumes for such market, infrastructure potentially required to access such market, expectations of price for the natural gas supplied to such market and identify options including time frames for marketing the natural gas within three (3) years after the discovery evaluation is completed.
 - (b) be responsible for investigating market opportunities and shall seek to develop a market for non-associated natural gas produced from any development area and shall sell such non-associated natural gas on a joint dedicated basis on terms common to all the parties constituting the contractor. Every contract for the sale of such non-associated natural gas made by the contractor under this clause 32 shall be subject to approval by the Cabinet Secretary. In applying for such approval the contractor shall demonstrate to the Cabinet Secretary that the prices and other terms of sale of such non-associated natural gas represents the market value obtainable for such non-associated natural gas taking into consideration a fair market cost for transporting such non-associated natural gas from the delivery point to the purchaser and having regard to the alternative uses and markets that can be developed for such non-associated natural gas.
- (7) With its application for approval of any gas sales contract, pursuant to sub-clause 32(5), the contractor may apply in respect of any development area from which non-associated natural gas will be produced for sale under that gas sales contract, for an extension of the development period specified in sub-clause 3(6) and where such extension is necessary to facilitate the sale of gas under any such gas sales contract, the Cabinet Secretary shall grant such necessary extension.
- (8) Flaring of natural gas
- (a) Flaring of natural gas in the course of the activities provided for under this contract, is prohibited except:
 - (i) short-term flaring necessary for production testing,
 - (ii) when required for emergency or safety reasons, or
 - (iii) with the prior authorization of the Authority, in each case in accordance with the Act, regulations and best petroleum industry practices.

- (b) The contractor shall submit such request to the Authority, which shall include an evaluation of reasonable alternatives to flaring that have been considered along with information on the amount and quality of natural gas involved and the duration of the requested flaring.

33. Production Levels and Annual Production Programme

- (1) The contractor shall produce petroleum at the maximum efficient rate and follow conservation of petroleum resources principles in accordance with best 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 Cabinet Secretary and the Authority, a detailed statement of the annual production programme and budget for the next calendar year, and the provisions of sub-clause 27(3) and (4) shall apply to the Annual Production Programme and Budget.
- (3) The contractor shall endeavor 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 34.

34. Measurement of Petroleum

- (1) The contractor shall, prior to installation, submit to the Authority for approval the processes, procedures, systems and technologies for determining the volume and quality of petroleum produced.
- (2) The instruments used for measuring petroleum produced shall be calibrated in accordance with the Weights and Measures Act.
- (3) The volume and quality of petroleum produced and saved from the contract area shall be measured by methods and equipment customarily used in best petroleum industry practice and approved by the Authority.

- (4) The Authority shall approve and inspect the methods and equipment used for measuring the volume and determining the quality of petroleum and shall appoint an inspector to supervise the measurement of volume and determination of quality of petroleum.
- (5) Where the method of measurement has caused an overstatement or understatement of a share of the production, the error shall be presumed to have existed since the date of the last calibration of the measurement devices, unless the contrary is shown, and an appropriate adjustment shall be made for the period of error.
- (6) The Cabinet Secretary and the contractor shall determine, when approving the development plan related to a commercial field, the measurement point at which production shall be measured and the respective shares of petroleum allocated.

35. Valuation of Crude Oil and Natural Gas

- (1) The value of crude oil, for all purposes under this contract, shall be denominated in USDollars and shall be calculated each calendar year on a quarterly basis, adjusted at the Crude Oil Delivery Point as follows—
 - (a) where there have been sales of crude oil produced from the contract area to third parties at arm's length during that calendar quarter, the value shall be the weighted average per unit price actually paid in those sales, at the 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 adjustments for grade, gravity and quality of such crude oil transaction where the seller and the buyer are independent of one another and do not have, directly or indirectly, any common interest; or
 - (b) where there have been no sales of crude oil produced from the contract area to third parties at arm's length during that calendar quarter, the value shall be the "fair market value" determined as the average per unit prevailing market price, actually paid during that calendar quarter in arm's length sales for export under term contracts of at least ninety (90) days between unrelated purchasers and sellers, for crude oil produced in Kenya and in the major crude oil producing countries, and adjusted for grade, gravity and quality 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.

- (2) Where the Cabinet Secretary and the contractor cannot reach an agreement on the value of crude oil within thirty (30) days of the end of any calendar quarter, such determination shall be made by an internationally recognized expert appointed by the Cabinet Secretary in consultation with the Authority and the contractor, but if they fail to agree within thirty (30) days on the appointment of such expert, then by the Secretary General of 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.
- (3) Pending the determination of the value of crude oil for a calendar quarter, the value of crude oil determined for the preceding calendar quarter shall be provisionally applied to make calculation and payment during such calendar quarter until the applicable value for that calendar quarter is finally determined pursuant to sub-clause 35(1). Any adjustment to provisional calculation and payment, if necessary, shall be made within thirty (30) days after such applicable value is finally determined.
- (4) Natural gas shall be valued based on the actual proceeds received for sales, provided that, for sales of natural gas between the contractor and any affiliate, the value of such natural gas shall not be less than the then prevailing fair market value for such sales of natural gas taking into consideration, to the extent possible, such factors as the market, the quality and quantity of natural gas and other relevant factors reflected in natural gas pricing. The Cabinet Secretary shall have the right to review and approve natural gas sales contracts.
- (5) The Contractor shall deliver to the Cabinet Secretary and Authority monthly statements showing calculations of the value of petroleum produced and sold from the contract area, which statement shall include but not limited to the following information:
 - (a) quantities of crude oil sold by the contractor during the preceding month constituting arm's length sales together with corresponding sale prices;

- (b) quantities of crude oil sold by the contractor during the preceding month to the contractor's related parties together with the corresponding sale prices;
- (c) inventory in storage belonging to the contractor at the beginning and at the end of the month; and
- (d) quantities of natural gas sold by the contractor and the Government, together with sale prices realized.

PART VII
COST RECOVERY, PRODUCTION SHARING, TAXATION, GOVERNMENT
PARTICIPATION AND DOMESTIC SUPPLY OBLIGATIONS

36. Cost Recovery and Uplift

- (1) Subject to the provisions of this contract, the contractor shall be entitled to recover the petroleum costs incurred and paid by the contractor pursuant to the provisions of this contract and duly entered in the contractor's books of accounts, supplemented by the Uplift referred to in sub-clause 36(3), by taking and separately disposing of an amount equal in value to a maximum of sixty percent (60%) of each category of all petroleum produced from the contract area during that fiscal year and not used in upstream petroleum operations. Such cost recovery petroleum, including the recovered Uplift, is hereinafter referred to as "Cost Petroleum" consisting of two (2) categories, Cost Oil and Cost Gas.
- (2) The petroleum costs may be recovered in the following manner:
 - (a) The petroleum costs, with the exception of development costs, incurred in respect of the contract area, shall be recoverable either in the fiscal year in which these costs are incurred or the fiscal year in which commercial production occurs, whichever is the later; and
 - (b) Development costs incurred in respect of each development area shall be recoverable in five (5) fiscal years at an annual rate of twenty percent (20%) by straight-line amortization at that rate starting either in the fiscal year in which such development costs are incurred or the fiscal year in which commercial production from that development area commences, whichever is the later.

- (c) For the purpose of this clause, "development costs" shall have the meaning referred to in the Accounting Procedure (Appendix "B").
- (d) The development costs and production costs incurred in respect of a development area shall not be recoverable until commercial production from that development area commences.
- (e) To the extent that, in a fiscal year, the petroleum costs and Uplift that are recoverable, according to sub-clauses 36(2)(a), 36(2)(b) and 36(3), exceed the value of all Cost Oil or Cost Gas for such fiscal year under sub-clause 36(1), the excess shall be carried forward for recovery by the contractor in the next succeeding fiscal year or fiscal years until fully recovered, but in no case after the termination of this contract.
- (f) To the extent that, in a Fiscal Year, the petroleum costs and the Uplift that are recoverable, according to sub-clauses 36(2)(a), 36(2)(b) and 36(3), are less than the maximum value of the Cost Petroleum as specified in sub-clause 36(1), the excess shall become part of, and be included in the profit petroleum as provided for in sub-clause 37 hereafter.
- (g) For the purpose of valuation of Cost Oil and Cost Gas, the relevant provisions of clause 35 hereof shall apply.
- (h) The cost recovery of petroleum and Uplift shall be recovered in the following priority order:
1. Production Costs
 2. Exploration Costs
 3. Development Costs
 4. Uplift
 5. Decommissioning Costs
- (i) For the application of this contract, the contractor shall keep detailed accounts of Cost Petroleum classified into Exploration Costs, Development Costs, Production Costs and Decommissioning Costs in accordance with the Accounting Procedure.
- (j) The petroleum costs under this contract are not recoverable against other contract areas held by the contractor in Kenya.
- (k) In the event that the contractor produces crude oil and natural gas from the contract area, the petroleum costs incurred by the contractor shall be classified in the accounts as Cost Oil and

Cost Gas when required in accordance with the principles provided for in the Accounting Procedure.

- (3) An amount equal to fifteen percent (15%) of the development costs related to a development area incurred and paid during a given fiscal year shall be referred to as “Uplift” for that development area and fiscal year. Such Uplift regarding the development costs of one fiscal year shall be recoverable under sub-clauses 36(1) and 36(2) in five (5) equal installments starting in the fiscal year in which the related development costs are incurred or the fiscal year in which commercial production for that development area commences, whichever is the later. The Uplift shall be applicable only to the development costs incurred in the first five (5) fiscal years of an approved development plan starting the fiscal year of its date of approval.

37. Profit Petroleum Sharing and R-Factor

- (1) Each category of the total petroleum produced and saved from the contract area and not used in upstream petroleum operations or commercial production less the Cost Petroleum as specified in sub-clauses 36(1) and 36(2), shall be referred to as the profit petroleum and each category of profit petroleum shall be shared, taken and disposed of separately by the Government and the contractor on a quarterly basis, according to the value of the R-Factor in respect of the contract area as determined at the end of the preceding Calendar Quarter;

or

Petroleum Profit = Commercial Production – Cost Petroleum

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

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

whereby:

X is equal to the Contractor’s *Cumulative Cash Inflows* at the end of the preceding Calendar Quarter

and

Y is equal to the Contractor’s *Cumulative Cash Outflows* at the end of the preceding Calendar Quarter

or

$$R = \frac{X}{Y} = \frac{\textit{Cumulative Cash Inflows}}{\textit{Cumulative Cash Outflows}}$$

For purposes of the R-factor determination in sub-clause 37(1)(1):

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

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

plus

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

minus

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

minus

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

or

$$\textit{Cumulative Cash Inflows} = \textit{Cost Petroleum} + \textit{Profit Petroleum} - \textit{Production Costs} - \textit{Decommissioning Costs}$$

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

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

plus

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

or

Cumulative Cash Outflows = Exploration Costs + Development Costs

[Note: the following calculation];

Development Costs = 20% per year x 5 years [in sub-clause 36(2)(b)]

- ii. The share of each category of Profit Petroleum to which each Party shall be entitled during a Calendar Quarter in relation to the value of the R-Factor determined at the end of the preceding Calendar Quarter shall be equal to the quantities of crude oil and natural gas resulting from the application of the relevant percentage indicated below:

R-factor	Government's share	Contractor's share
Less than 1.0	50%	50%
Equal to or greater than 1.0 and less than 2.5	65%	35%
Equal to or greater than 2.5*	[75]%	[25]%

- iii. For each Quarter, starting from the Quarter commercial production starts, the contractor shall calculate the R-Factor applicable to the relevant Quarter within thirty (30) days of the beginning of such Quarter and submit the determination to the Cabinet Secretary;
- iv. In the event that the contractor is unable to calculate the R-Factor for the relevant Quarter before an allocation of Profit Oil or Profit Gas for such Quarter must be made, then the percentage for allocation of Profit Oil and/or Profit Gas, as the case may be, for the previous Quarter shall be used for the relevant Quarter;
- v. If the allocation of Profit Oil or Profit Gas, as the case may be, in the previous Quarter and the relevant Quarter is the same, then no adjustment shall be made;
- vi. If the allocation of the Profit Oil or Profit Gas, as the case may be, in the two Quarters is different, then the contractor shall make any adjustments to the Parties' respective shares of Profit Oil or Profit Gas, as the case may be, to restore them to the position that they would have been in had the R-Factor for the relevant Quarter been available from the start of such Quarter; and
- vii. If at any time an error occurs in the calculation of the R-Factor, resulting in a change in the percentage share of Profit Oil and/or Profit Gas, the necessary correction shall be

made and any adjustments shall apply from the Quarter in which the error occurred. The party having benefited from a surplus of Profit Petroleum shall surrender such surplus to the other Party, beginning from the first day of the Quarter following the Quarter in which the error was recognized.

38. Production Sharing

- (1) Crude oil and natural gas production shall be respectively disaggregated into Cost Oil and Profit Oil and Cost Gas and Profit Gas, using the relevant percentage calculated quarterly for Cost Petroleum in accordance with sub-clause 36(1), and for Profit Petroleum in accordance with sub-clause 36(4).
- (2) Cost Petroleum and Profit Petroleum calculations, respectively disaggregated into Cost Oil, Cost Gas, Profit Oil and Profit Gas, shall be done quarterly on an accumulative basis during a given fiscal year. To the extent that actual quantities, costs and expenses are not known, provisional estimates of such data based on the adopted annual production Work Programme and Budget under clause 33 shall be used.
- (3) Within sixty (60) days of the end of each Fiscal Year, a final calculation of each category of Cost Petroleum and Profit Petroleum based on actual crude oil production and natural gas production, in respect of that Fiscal Year and recoverable petroleum costs and Uplift, shall be prepared and any necessary adjustments shall be promptly made.
- (4) If so directed by the Cabinet Secretary, the contractor shall be obligated to lift and market part or the entire Government share of each category of Profit Petroleum and any Government or Appointee Participating Interest share of petroleum in a development area.
- (5) If any party fails to lift and market their share of petroleum, the contractor may lift and market such party's share on its behalf.
- (6) When the Cabinet Secretary elects not to take and receive in kind any part of a category of the Government share of Profit Oil, the Cabinet Secretary 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 Cabinet Secretary's consent. The contractor shall have the right and obligation to market the Government's share at the then prevailing "fair market price".

- (7) The price paid by the contractor for the Government share of Profit Oil shall be the price established according to clause 35. The contractor shall pay the Government on a monthly basis, such payments to be made within thirty (30) days after the end of the month in which the production occurred.
- (8) In the event of commercial production of natural gas, the parties shall agree when the development plan related to such commercialization is adopted on the rules applicable to the disposal of the Government share of Profit Gas.
- (9) At a reasonable time prior to the scheduled date of commencement of commercial production, the parties shall agree to procedures covering the scheduling, storage and lifting of petroleum produced from and sold at the agreed upon Crude Oil Delivery Point and Natural Gas Delivery Point.

39. Taxation

- (1) The Contractor shall be subject to and shall comply with the requirements of the tax laws in force in Kenya.
- (2) In the event of any assignment or transfer of a participating interest under clause 47, the contractor, or the entity within the contractor, assigning or transferring an interest under this contract, shall comply with the requirements of the income tax laws in force in Kenya imposing taxes on capital gains.
- (3) It is understood and agreed that the portion of each category of the Profit Petroleum which the Government is entitled to take and receive for a given fiscal year, and which is calculated under clause 37 shall be exclusive of all taxes payable by the contractor.
- (4) The contractor agrees to pay and discharge as and when due such taxes due on its profit oil. The contractor shall prepare and file tax returns as provided for in the tax laws. The receipts shall be issued by the duly constituted authority for the collection of Kenya taxes.
- (5) In accordance with the laws of Kenya, where the contractor consists of more than one entity, the tax liabilities of each entity under this clause 39 shall be individual, notwithstanding clause

10, and the provisions of this clause 39 shall apply, *mutatis mutandis*, to each such entity, including for filing an individual tax return or complying with any tax liabilities in respect of an assignment of an interest in the contract by a person.

40. Title and Risk to Petroleum

- (1) The title in the contractor's share of petroleum shall pass to the contractor (and risk therein shall remain with the contractor) when it is delivered at the Crude Oil Delivery Point and the Natural Gas Delivery Point. Title in the Government's share of petroleum taken by the contractor pursuant to sub-clauses 38(6), (5), (6) and (7) shall pass to the contractor when it is delivered at the Crude Oil Delivery Point and the Natural Gas Delivery Point.
- (2) Notwithstanding sub-clause 40(1), petroleum shall be at the risk of the contractor until it is delivered at the Crude Oil Delivery Point and the Natural Gas Delivery Point. The contractor shall defend, indemnify and hold harmless the Government from all claims asserted in respect of petroleum wherein the risk is with the contractor.

41. Government Participation

- (1) The Government may elect to participate in the upstream 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 a National Oil Company.
- (2) The Government shall exercise the right to participate by giving notice to the contractor within one hundred and eighty (180) days from the date the development plan for a development area is adopted under sub-clause 29(4). 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, in a format as prescribed in

Appendix “C” and made a part hereof, within ninety (90) days after notice to the contractor under sub-clause 41(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 41(2), pro-rata in its participating interest;
 - (d) own a participating interest share in all assets acquired for upstream petroleum operations in or related to the development area;
 - (e) reimburse the contractor, without interest, pro-rata to the Government participating interest, its share of all costs, expenses and expenditure incurred in 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 ninety (90) days after the Government exercises its right to participate.

42. Domestic Supply Obligations

- (1) The contractor shall have the obligation to supply in priority crude oil and/or natural gas 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 Cabinet Secretary shall notify the contractor not less than ninety (90) days prior to the beginning of that calendar year, of the domestic supply requirement.

The maximum amount of crude oil and/or natural gas that the Government 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 and/or natural gas domestic consumption in Kenya multiplied by a fraction, the numerator of which is the average crude oil and/or natural gas production from the contract area and the denominator of which is the total crude oil and/or natural gas production from all producers in Kenya, over the amount of crude oil and/or natural gas available to the Government from the contract area as in the form of Government share of production under clause 38 and in the form of Government participation share under clause 41. For the purpose of this sub-clause, "domestic consumption" does not include crude oil and/or natural gas refined in Kenya for export.

- (3) When the contractor is obligated to supply crude oil or natural gas for domestic consumption in Kenya, the price paid by the Government shall be calculated in accordance with clause 35. 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 Cabinet Secretary the contractor may comply with this clause by importing crude oil or natural gas and recovery of the same amount from subsequent production, 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 herein and "contractor" does not include the Government where the Government has participated under clause 41.
- (6) In the event that natural gas can be produced from the contract area, the obligation of the contractor to supply natural gas to the domestic market shall be agreed upon by the parties when approving the development plan related to such gas production, after taking into consideration, to the extent possible, principles similar to those provided for in sub-clauses 42(1) and (2).

PART VIII

BOOKS, ACCOUNTS, AUDITS, IMPORTS, EXPORTS AND FOREIGN EXCHANGE

43. Books, Accounts and Audits

- (1) The contractor shall keep books and accounts in accordance with the accounting procedure and shall submit to the Cabinet Secretary and Authority a statement of those accounts, not more than ninety (90) days after the end of each calendar year.
- (2) 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 and considered as recoverable cost.
- (3) The Government may audit the books and accounts within seven (7) calendar years of the period to which they relate, and shall complete that audit within two (2) calendar years.
- (4) In the absence of an audit within seven (7) calendar years or in the absence of notice to the contractor of a discrepancy in the books and accounts within eight (8) calendar years of the period to which the audit relates the contractor's books and accounts shall be deemed correct.
- (5) Nothing in this clause shall be construed as limiting the right of the Government or Officer of Government or a Government Agency pursuant to any power granted by law, to audit or cause to be audited the books of any contractor or operator.

44. Exports and Imports

- (1) Save for 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 or to otherwise dispose of the same subject to the limitations and conditions set out in the East African Community Customs Management Act, 2004; the Customs and Excise Act; the Value Added Tax Act; and any other tax law in force in Kenya. The change of ownership of crude oil will occur at the Crude Oil Delivery Point and the change of ownership of natural gas will occur at the Natural Gas Delivery Point.

- (2) The contractor and its sub-contractors engaged in carrying out upstream petroleum operations under this contract shall be permitted, subject to the limitations and conditions set out in East African Community Customs Management Act, 2004, the Customs & Excise Act and the Value Added Tax Act, 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 upstream petroleum operations under this contract. However, the contractor and its sub-contractors shall give preference to Kenyan goods and services in accordance with clause 22 hereof. In relation to materials, equipment and supplies imported or to be imported pursuant to sub-clause 44(2), when the Authority or his representative has certified that they are to be used solely in carrying out upstream petroleum operations under this contract, the contractor and its sub-contractors shall make such imports subject to—
- (a) approval of import licence;
 - (b) exchange control approval, subject to the provisions of clause 45 hereof; or
 - (f) independent inspection outside of Kenya by general superintendence or other inspecting body, appointed by the Government.
- (3) The actual costs of contracts for technical and other services entered into by the contractor for upstream petroleum operations and for materials purchased by the contractor for use in upstream petroleum operations shall be recoverable, provided that those services and materials are reasonably required for upstream 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.
- (4) The contractor and its sub-contractors may sell in Kenya all imported items which are no longer needed for upstream petroleum operations. However, if such imports were exempt from customs duty and VAT, the seller shall fulfill all formalities required in connection with the payment of duties, taxes, fees and charges imposed on such sales.
- (5) Subject to sub-clauses 13(4) and 13(5), a contractor and its contractors and subcontractors may export from Kenya subject to applicable tax laws, all previously imported items which are no longer required for the conduct of upstream petroleum operations under this contract.

- (6) In the event that equipment and materials are required for subsequent upstream petroleum operations by another contractor in another contract area other than the contract area for which they were imported, a permit may be issued by the relevant authority upon application by the contractor for such equipment and materials to be used for the purpose stated.
- (7) “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.

45. Exchange and Currency Controls

- (1) As long as the contractor meets 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 45(2) hereafter and is not in a material breach with this contract, the Government shall by appropriate legal notice grant the contractor, upon the effective date of this contract, the freedom to—
- (a) open and freely maintain accounts inside Kenya and foreign bank accounts outside Kenya in accordance with Central Bank of Kenya (the Bank) laws and regulations issued under the Exchange and Currency control 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 a 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 upstream 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 the contractor's upstream petroleum operations in Kenya, including but not limited to proceeds from the sale of assets and Petroleum; and
 - (f) 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 (the Bank) 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 Bank;
 - (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 the contractor's 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 22, the contractor shall have the right to enter all contracts and sub-contracts necessary to carry out upstream petroleum operations, without prior approval by the Bank 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 43, 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 respect of—
- (a) the qualifying expenditure under the Income Tax laws and regulations;
 - (b) the Certificate of Approved Enterprise; and
 - (d) the qualifying payment under the Exchange and Currency control laws and regulations.

- (4) The Government shall grant to the contractor a Certificate of Approved Enterprise in accordance with the Foreign Investments Protection 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 laws and regulations;
 - (b) 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 the Government has certified that such repatriation is in order.

PART IX

GENERAL

46. Payments

- (1) All sums due to the Government or the contractor shall be paid in USD or other currency agreed to by the Government and the contractor.
- (2) Any late payment due to the Government shall attract interest at the rate of LIBOR plus three percent (3%) per annum.

47. Assignment

- (1) After notice to the Cabinet Secretary the contractor may assign part or all of its rights and obligations under this contract to an affiliate with the prior approval of the Cabinet Secretary, 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, and other direct and indirect transfers of interest or participation in the contract may be transferred, in each case with the consent of the Cabinet Secretary, which consent shall not be unreasonably withheld and which shall be granted or refused within ninety(90) days of receipt by the Cabinet Secretary of notice from the

contractor that it intends to make such an assignment, but the Cabinet Secretary 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 Cabinet Secretary any material changes in the corporate structure, ownership and financial position of the contractor and its parent company.
- (4) The contractor shall report to the Cabinet Secretary any Change in Control in its corporate structure, including a Change in Control outside Kenya arising by acquisition or exchange of shares, which shall be deemed and treated as an assignment within Kenya for the purposes of clause 47. Any Change in Control shall be subject to the prior consent of the Cabinet Secretary.
- (5) The contractor shall furnish to the Cabinet Secretary copies of all agreements and deeds related to an assignment.
- (6) At any time at which the contractor is constituted by more than one entity, the reference in clause 47 to “the Contractor” shall be construed as a reference to each one of those entities.
- (7) Any assignment pursuant to this clause shall be fully disclosed by the assignor to the Kenyan tax authority. Any tax arising from any assignment pursuant to the Income Tax Act shall be paid by the assignor in the manner specified in the Income Tax Act.
- (8) An assignment under clause 47 means any assignment or transfer, sale or merger, directly or indirectly, including by Change in Control, of any right, power or interest in the contract area and this contract.

48. Manager, Advocate and Joint Operation Agreement

- (1) The contractor shall notify the Cabinet Secretary, before the upstream petroleum operations begin, of the name and address of the person resident in Kenya who will supervise the upstream petroleum operations, and prior notice of any subsequent change shall be given to the Cabinet Secretary.
- (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 Cabinet Secretary shall be notified before the upstream petroleum operations begin, and prior notice of any subsequent change shall be given to the Cabinet Secretary.

- (3) Where the contractor consists of more than one person, the contractor shall deliver to the Cabinet Secretary a copy of the Joint Operating Agreement between those persons.
- (4) The appointment of an operator by a contractor and any change in operator shall be subject to prior approval by the Cabinet Secretary.

49. Confidentiality

- (1) All information (including the data, samples and reports referred to in clauses 14 and 15) which the contractor may supply to the Government under this contract shall be supplied at the expense of the contractor.
- (2) The parties shall keep the information that the other party may supply under this contract confidential, and shall not disclose it to any other person other than to a person employed by or on behalf of the party except where such information is required to be published in accordance with the provisions of the Constitution or by a lawful order issued by a court of competent jurisdiction to disclose, except with the consent of the other party which consent shall not unreasonably be withheld.
- (3) Notwithstanding sub-clause 49(2), the Cabinet Secretary 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.
- (4) The Cabinet Secretary 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 Cabinet Secretary determines, after presentation by the contractor, that a longer period shall apply.
- (5) This contract is a public document and the Government shall have the right to publish and keep it publicly available. The Government may publish such information concerning this contract as may be required by the laws of Kenya, including for purposes of obtaining ratification of the contract by Parliament in accordance with Article 71 of the Constitution, or in accordance with internationally accepted standards and norms concerning transparency in the extractive industries..

50. Force Majeure

- (1) In this clause, force majeure means an occurrence beyond the reasonable control of the Cabinet Secretary or the Government or the Authority or the contractor which prevents any of them from performing their obligations under this contract.
- (2) Where the Cabinet Secretary, 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 53.
- (4) Where an obligation is 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 50(4), the term of the contract shall be automatically extended for the period of the force majeure.

51. Waiver

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

52. 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 shall 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.

- (4) Nothing in this clause shall be interpreted as imposing any limitation or constraint on the scope or due and proper enforcement of the laws of Kenya of general application and which are in the interest of health, safety, conservation, or the protection of the environment for the regulation of any category of property or activity carried on in Kenya; provided, however, that the Government shall at all times during the conduct of upstream petroleum operations ensure in accordance with clause 16, that measures taken in the interest of health, safety, conservation or the protection of the environment are in accordance with best petroleum industry practices.
- (5) The decisions of the Cabinet Secretary under the contract shall be taken and made in accordance with the provisions of the Act and regulations.

53. Dispute Resolution

Amicable Settlement

- (1) Except as otherwise provided in this contract, any difference or dispute arising out of or in relation to or in connection with this contract shall, as far as possible, be settled amicably. If any difference or dispute remains unresolved, either party shall have the right to serve upon the other party a detailed statement stating the issues in dispute. Within fourteen (14) days of receipt of the statement or other mutually agreed period, the Cabinet Secretary and the chief executive of the contractor shall meet to resolve the difference or dispute. Where no settlement is reached within thirty (30) days from the date of the meeting, either party shall have the right, subject to clause (2), to have such difference or dispute be resolved through arbitration in accordance with UNCITRAL arbitration rules adopted by the United Nations Commission on International Trade Law.

Expert Determination

- (2) In lieu of resorting to arbitration, the Cabinet Secretary and the contractor, where they consider appropriate, by mutual agreement, may refer the dispute for determination by a sole expert to be appointed by agreement of the parties. In such case, the parties shall agree on the terms of reference for the expert determination, schedule and other procedural matters. The decision of the sole expert shall be final and binding. The sole expert shall make a

determination within ninety (90) days of his appointment. Where the sole expert fails to make a determination within the allotted time, either party may call for the matter to be resolved through arbitration as provided herein below.

Arbitration

- (3) The arbitration procedure shall commence by a written request of either party (applicant party) to the UNCITRAL with a simultaneous notification to the other party. The arbitration proceedings shall commence within sixty (60) days of the date of receipt of that request by the UNCITRAL.
- (4) 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 and the Secretariat of the UNCITRAL of such appointment within thirty (30) days of the expiry of the period specified in sub-clause 53(3).
 - (b) where the applicant party fails to appoint its arbitrator within the thirty (30) day period, it shall be deemed to have abandoned its application.
 - (c) where the defending party has not appointed its arbitrator within thirty (30) days following the receipt of the notice, the applicant party may request the UNCITRAL to appoint an arbitrator within thirty (30) days of the date of receipt of that request by the UNCITRAL.
 - (d) within forty five (45) days after the appointment of the last arbitrator, the two arbitrators shall select, by mutual agreement, a third arbitrator, who shall be designated as the chairman of the arbitral tribunal.
 - (e) where the two arbitrators fail to select the third arbitrator, either party may request in writing the Secretary General of the International Centre for Settlement of Investment Disputes to appoint the third arbitrator. The Secretary General shall forthwith send a copy of that request to the other party. The Secretary General shall comply with the request within 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.

- (5) The arbitrators shall not be of the same nationality as either of the parties. If any arbitrator fails or is unable to act, his successors shall be appointed in the same manner as the arbitrator whom he succeeds.
- (6) The arbitrators shall hear and determine the matter within ninety (90) days of the appointment of the third arbitrator. The decision of the majority of the arbitrators shall be final and binding on the parties and shall be enforceable under the laws of the Republic of Kenya. Any party may apply to a court of competent jurisdiction for enforcement of such award. The arbitration award may take the form of an order to pay a sum of money, or to perform an act, or to refrain from an act, or any combination of such orders. Notwithstanding the foregoing, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrators.
- (7) The place of arbitration proceedings shall be Nairobi, Kenya. The language used for the proceedings shall be English language.
- (8) The applicable laws shall be the laws of the Republic of Kenya, and the provisions of this contract shall be interpreted in accordance with those laws.
- (9) Each party shall pay for its own counsel and other costs, however, the cost of the arbitral tribunal shall be allocated in accordance with the decision of the arbitral tribunal. The costs of the sole expert shall be borne equally by both parties. The costs incurred in arbitration or the sole expert determination shall not be recoverable costs under the contract.
- (10) The parties shall continue to perform their respective obligations under the contract during any sole expert or arbitration proceedings.
- (11) The right to arbitrate differences or disputes arising out of this contract shall survive the termination of this contract.

Notices

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

To the Government:

Ministry of Energy & Petroleum
FAO Hon Cabinet Secretary
Kenyatta Avenue
P.O. Box 30582-00100
Nairobi, Kenya

To the Contractor:

.....
.....

(2) A notice shall be effective on receipt.

(3) Any notice, if sent by facsimile, shall be deemed received by the party to whom it was addressed on the first business day after the day upon which the facsimile was received. Any notice, if by personal delivery to any party, shall be deemed to be received by the addressee on the date of delivery, if that date is a business day, or otherwise, on the next business day following. In the event that a notice sent by facsimile includes a request for confirmation of the receipt thereof, such a confirmation shall be sent no later than one (1) business day after receipt of the notice. The contractor may at any time and from time to time change its authorized representative or its address herein on giving the Government ten (10) days notice in writing to such effect.

54. 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.
- (3) In the event of a conflict between the provisions of this contract and its Appendices, the provisions of this contract shall prevail.
- (4) In the event one of the provisions of this contract is or becomes invalid, illegal or unenforceable, such provision shall be deemed severed from this contract and the remaining provisions of this contract shall continue in full force and effect.
- (5) This contract shall be executed in six (6) originals, four (4) for the Government and two (2) for the contractor.

Signed on the day and year first before written:

SIGNED by the duly authorized Representative of the]
GOVERNMENT]
.....]
THE CABINET SECRETARY].....
] sign
In the presence of: -]
]]
.....]
PRINCIPAL SECRETARY]

SEALED with the common seal of **CONTRACTOR**]

.....]

seal

In the presence of: -]

Director.....]

sign

name

Director.....]

sign

name

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”).

APPENDIX “A”

THE CONTRACT AREA

(The Area to which the Petroleum Agreement relates)

APPENDIX “B”

ACCOUNTING PROCEDURE

TABLE OF CONTENTS

PART I – GENERAL PROVISIONS

- 1.1. Interpretation.
- 1.2. Accounting obligations of the contractor.
- 1.3. Language and units of accounts.
- 1.4. Audits and inspection rights of the Government.
- 1.5. Revision of accounting procedure.

PART II – CLASSIFICATION OF EXPENDITURES AMONG COST CENTRES

PART III – COSTS, EXPENSES, EXPENDITURE AND CREDITS OF THE CONTRACTOR AND NON-RECOVERABLE COSTS

- 3.1. Labour and related costs.
- 3.2. Material.
- 3.3. Transportation and employees relocation costs.
- 3.4. Services.
- 3.5. Damages and losses to joint property.
- 3.6. Insurance.
- 3.7. Legal expenses.
- 3.8. Duties and taxes.

3.9. Offices, camps and miscellaneous facilities.

3.10. General and administrative expenses.

3.11. Other expenditure.

3.12. Credits under the contract.

3.12. No duplication of charges and credits.

3.14 Non-recoverable costs and expenses.

PART IV – FINANCIAL REPORTS TO THE CABINET SECRETARY

1. PART I - GENERAL PROVISIONS

The purpose of this accounting procedure is to establish methods and rules of accounting for upstream petroleum operations and the principles set forth herein shall apply to upstream petroleum operations pursuant to the production sharing contract (hereinafter referred to as the “Contract”), to which this Appendix is attached.

1.1. INTERPRETATION

1.1.1. DEFINITIONS—

“**controllable material**” means material which the operator subjects to record control and inventory. A list of types of such material shall be furnished to the Government and non-operator(s);

“**joint account**” means the set of accounts maintained by the operator to record all expenditure and other transactions under the provisions of the contract. Such accounts will distinguish between exploration, evaluation, development, decommissioning and production costs. After adoption of a development plan a separate joint account shall be maintained for each development area;

“**joint property**” means all property acquired and held in connection with upstream petroleum operations under the contract;

“**material**” means personal property, including supplies and equipment, acquired and held for use in upstream petroleum operations;

“**non-operator(s)**” means the entities constituting the contractor other than the operator, and the Government when it participates.

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

1.1.2. PRECEDENCE OF DOCUMENT

In the event of conflict between the provisions of this accounting procedure and the provisions of the contract, the provisions of the contract shall prevail.

1.2. ACCOUNTING OBLIGATIONS OF THE CONTRACTOR

- 1.2.1. The contractor shall maintain financial accounts necessary to record in reasonable detail the transactions relating to upstream petroleum operations which shall be prepared in accordance with the International Financial Reporting Standards (IFRS).
- 1.2.2. Within ninety (90) days after the Effective Date, the contractor shall submit for approval to the Cabinet Secretary, and discuss with the Cabinet Secretary and the Kenyan tax authority(ies), a proposed outline of a chart of accounts, detailed classification of costs, costs centres, books, records, statements and reports to be established in accordance with the Contract and this accounting procedure. Following such discussion and approval, the contractor shall provide copies of the comprehensive charts of accounts and the manuals to be used, which may be revised from time to time by mutual agreement.
- 1.2.3. The contractor shall provide details of the financial accounts in the form of monthly statements which shall—
 - (a) reflect all charges and credits related to upstream petroleum operations;
 - (b) be prepared on an accrual basis so that expenditure is recorded as incurred when title to goods passes, or when work is executed; and
 - (c) present the total accounts for the contract area and each development area and the share of each non-operator.
- 1.2.4. In addition, when the contractor is constituted by more than one entity, each such entity shall provide details of its financial accounts related to the upstream petroleum operations.

1.3. LANGUAGE AND UNITS OF ACCOUNTS

- 1.3.1. All books and accounts shall be maintained in the English language, United States Dollars and Kenya Shillings provided that the United States Dollar accounts will prevail in case of conflict. Where necessary for clarification, the contractor may also maintain accounts and records in other language and currencies.
- 1.3.2. It is the intent of this accounting procedure that neither the Government nor the contractor should experience an exchange gain or loss at the expense of, or to the benefit of, the other. However, should there be any gain or loss from exchange of currency, it shall be credited or charged to the accounts under the contract.

1.4. AUDITS AND INSPECTION RIGHTS OF THE GOVERNMENT

- 1.4.1. The Government, upon thirty (30) days advance written notice to the contractor, shall have the right at its sole expense to audit the joint account and related records for any calendar year or portion thereof within the seven (7) year period following the end of such year. Notice of any exception to the contractor's accounts of any calendar year must be submitted to the contractor within eight (8) years from the end of such year.
- 1.4.2. For purposes of auditing, the Government may examine and verify, at reasonable times, all charges and credits relating to the upstream petroleum operations such as books of account, accounting entries, material records and inventories, vouchers, payrolls, invoices and any other documents, correspondence and records necessary to audit and verify the charges and credits. Furthermore, the auditors shall have the right in connection with such audit, to visit and inspect at reasonable times, all sites, plants, facilities, warehouses and offices of the contractor directly or indirectly serving the upstream petroleum operations including visiting personnel associated with those operations.
- 1.4.3. All agreed adjustments resulting from an audit shall be rectified promptly in the contractor's accounts, and any consequential adjustments to payments due to the contractor or the Government, as the case may be, shall be made promptly. Any unresolved dispute arising in connection with an audit shall be referred to arbitration in accordance with clause 53 of the contract, and until such dispute is resolved the contractor

shall maintain the relevant documents in connection with such unresolved dispute and shall permit inspection thereof.

- 1.4.4. Disputes relating to tax shall be resolved through the tax disputes resolution processes as provided in the relevant tax laws.
- 1.4.5. The contractor shall appoint an independent auditor of international standing approved by the Cabinet Secretary to audit annually the accounts and records of upstream petroleum operations and report thereon, and the cost of such audit and report shall be chargeable to the joint account.

1.5. REVISION OF ACCOUNTING PROCEDURE

- 1.5.1. By mutual agreement between the Government and the contractor, this accounting procedure may be revised from time to time by an instrument in writing signed by both the parties.
- 1.5.2. The parties agree that if any procedure established herein proves unfair or inequitable to any party, the parties shall meet and in good faith agree on the changes necessary to correct that unfairness or inequity.

2. PART II - CLASSIFICATION OF EXPENDITURES AMONG COST CENTRES

- 2.1. The detailed categories of petroleum costs shall be agreed pursuant to sub-clause 1.2.2 of this Annex B and shall include the following main categories-
 - 2.1.1. exploration costs incurred for exploration operations;
 - 2.1.2. development costs incurred for development operations;
 - 2.1.3. production costs incurred for production operations;
 - 2.1.4. decommissioning costs incurred for decommissioning operations;
 - 2.1.5. Uplift.
- 2.2. Exploration costs, in respect of the contract area, are those costs which relate to exploration operations incurred in accordance with an approved annual exploration and appraisal work programmes and budget. They include for the purposes of accounting the evaluation operations in respect of a discovery.

- 2.3. Development costs, in respect of a development area, are those costs incurred in respect of the activities carried out in accordance with an approved development plan and the relevant annual development work programmes and budgets, and consists of:
 - 2.3.1. Before the commencement of commercial production in a development area, those costs whether of a capital or operating nature, which relate to development operation; and
 - 2.3.2. From the commencement of commercial production in a development area, those costs of a capital nature only, which relate to the continuation of the development of the commercial discovery and investments for the recovery of petroleum from such discovery.
- 2.4. Production costs, in respect of a development area, are those costs of an operating nature only, excluding development costs and decommissioning costs, which relate to production operations carried out from the commencement of commercial production in respect of such development area in accordance with approved annual production work programmes and budgets.
- 2.5. Decommissioning costs, in respect of a development area, are those costs or contributions to the decommissioning fund related to abandonment and decommissioning operations set out in clause 17 of the Contract.
- 2.6. The Petroleum costs in each category of costs that cannot be related to a certain area and the general and administrative costs referred to in Part III shall be allocated to categories of costs and to area in accordance with the approved methods set out in sub-clause 2.7 and 2.8.
- 2.7. The petroleum costs shall be allocated among the categories of upstream petroleum operations in the following manner:
 - 2.7.1. Exploration operations, subdivided further into:
 - 2.7.1.1. Aerial, geological, geochemical, and other surveys;
 - 2.7.1.2. Each individual seismic survey;
 - 2.7.1.3. Each individual exploratory well or appraisal well;
 - 2.7.1.4. Infrastructure such as roads, airstrips;

- 2.7.1.5. Support facilities such as warehouses, including an allocation of common service costs (costs related to various upstream petroleum operations);
- 2.7.1.6. An allocation of the general and administrative costs; and
- 2.7.1.7. The exploration operations;
- 2.7.2. Development operation up to the delivery points, subdivided further into:
 - 2.7.2.1. Aerial, geological, geochemical, geophysical and other surveys;
 - 2.7.2.2. Each individual development well;
 - 2.7.2.3. Flow lines and gathering lines;
 - 2.7.2.4. Field facilities;
 - 2.7.2.5. Tank farms and other storage facilities for petroleum;
 - 2.7.2.6. Pipelines and trunks;
 - 2.7.2.7. Infrastructure;
 - 2.7.2.8. Support facilities, including an allocation of common service costs (costs related to various upstream petroleum operations);
 - 2.7.2.9. An allocation of the general and administrative costs; and
 - 2.7.2.10. Other development operations, including engineering and design studies.
- 2.7.3. Production operations, subdivided in the same manner as development operations.
- 2.7.4. Decommissioning operations subdivided in the same manner as development operations.
- 2.8. Petroleum costs shall be allocated to crude oil and natural gas, where both products are being produced and saved. Such allocation shall be made in accordance with the following principles:
 - 2.8.1. Where costs are exclusively related to either crude oil or natural gas, such costs shall be allocated completely to the respective category.
 - 2.8.2. Where costs can be attributed to both crude oil and natural gas, the costs shall be allocated pursuant to the method agreed by the parties in accordance with best petroleum industry practices.

3. PART III – COSTS, EXPENSES, EXPENDITURE AND CREDITS OF THE CONTRACTOR AND NON-RECOVERABLE COSTS

Subject to the provisions of the contract, the contractor shall bear and pay the following costs and expenses necessary to conduct upstream petroleum operations. Such petroleum costs are recoverable by the contractor in accordance with the provisions of the contract when incurred under approved annual Work Programmes and Budgets and duly entered in the Joint Account.

3.1. LABOUR AND RELATED COSTS

3.1.1. Salaries and wages of employees of the operator and its affiliate(s) for portion of their time spent performing management, administrative, legal, accounting, treasury, tax, employee relations, computer services, engineering, geological, geophysical, and all other functions for the benefit of petroleum operation, whether temporarily or permanently assigned to the contract area, as well as the cost of employee benefits, customary allowances and personal expenses incurred under the usual practice of the operator and its affiliate(s) and amounts imposed by governmental authorities, which are applicable to such employees.

3.2. MATERIAL

3.2.1. The cost of material, equipment and supplies purchased or furnished by the operator for use in upstream petroleum operations shall be charged to the joint account on the basis set forth below. So far as it is reasonably practical and consistent with efficient and economical operations, only such material shall be purchased for or transferred to the joint property as may be required for immediate use and/or for approved work programmes and the accumulation of surplus stock shall be avoided.

3.2.1.1. Except as otherwise provided in sub-clause 3.2.1.2 below, material purchased, leased or rented shall be charged at the actual net cost incurred by the operator. “Net cost” shall include, but shall not be limited to, such items as vendor’s invoice price, transportation, duties, fees and applicable taxes less all discounts actually received.

3.2.1.2. Material purchased or transferred from the contractor or its affiliate(s) shall be charged at the prices specified here below—

- 3.2.1.2.1. New material (condition “A”) shall be valued at the current international net cost which shall not exceed the price prevailing in normal arm’s length transactions on the open market;
- 3.2.1.2.2. Used material (conditions “B”, “C” and “D”)—
 - 3.2.1.2.2.1. material which is in sound and serviceable condition and is suitable for re-use without reconditioning shall be classified as condition “B” and priced at seventy-five per cent (75%) of the current price of new material defined in clause 3.2.1.2.1 above;
 - 3.2.1.2.2.2. material which cannot be classified as condition “B” but which after reconditioning will be further serviceable for its original function shall be classified as condition “C” and priced at fifty percent (50%) of the current price of new material as defined in clause 3.2.1.2.1 above. The cost of reconditioning shall be charged to the reconditioned material provided that the value of condition “C” material plus the cost of reconditioning do not exceed the value of condition “B” material;
 - 3.2.1.2.2.3. material which cannot be classified as condition “B” or condition “C” shall be classified as condition “D” and priced at a value commensurate with its use.

3.2.2. INVENTORIES

- 3.2.2.1. At reasonable intervals, inventories shall be taken by the operator of all controllable material. The operator shall give ninety (90) days’ written notice of intention to take such inventories to allow the Cabinet Secretary and non-operator(s) to be represented when any inventory is taken. Failure of any party to be represented after due notice given shall bind such party to accept the inventory taken by the operator.
- 3.2.2.2. The operator shall clearly state the principles upon which valuation of the inventory has been based.
- 3.2.2.3. Whenever there is a sale or change of interest in the joint property, a special inventory may be taken by the operator, provided the seller and/or purchaser of such interest agrees to bear all of the expense thereof. In such cases, both the seller and the purchaser shall be entitled to be represented and shall be governed by the inventory so taken.

3.3. TRANSPORTATION AND EMPLOYEE RELOCATION COSTS

- 3.3.1. Transportation of material and other related costs such as origin services, expediting, crating, dock charges, forwarder's charges, surface and air freight, and customs clearance and other destination services.
- 3.3.2. Transportation of employees as required in the conduct of upstream petroleum operations, including employees of the operator's affiliate(s) whose salaries and wages are chargeable under sub-clause 3.1.1 and 3.4.2.
- 3.3.3. Relocation costs of the contract area vicinity of employees permanently or temporarily assigned to upstream petroleum operations. Relocation costs from the contract area vicinity, except when an employee is re-assigned to another location classified as a foreign location by the operator. Such costs include transportation of employees' families and their personal and household effects and all other relocation costs in accordance with the usual practice of the operator and its affiliate(s).

3.4. SERVICES

- 3.4.1. The actual costs of contract services, professional consultants, and other services performed by third parties other than services provided by the contractor or its affiliate(s), but the prices paid by the contractor shall not be higher than those generally charged for comparable services.
- 3.4.2. Costs of technical services, such as but not limited to, engineering, and related data processing, performed by the contractor and its affiliate(s) for the direct benefit of upstream petroleum operations, engineering and related data processing, performed by the contractor provided such costs shall not exceed those currently prevailing if performed by third parties in normal arm's length transaction for like services.
- 3.4.3. Costs of use of equipment and facilities for the direct benefit of the upstream petroleum operations, furnished by contractor or its affiliate(s) at rates commensurate with the cost of ownership, or rental, and the cost of operation thereof, but such rates shall not exceed those currently prevailing in the general vicinity of the contract area in normal arm's length transactions on the open market for like services and equipment.

3.5. DAMAGES AND LOSSES TO JOINT PROPERTY

- 3.5.1. All costs or expenses necessary for the repair or replacement of joint property resulting from damages or losses incurred by fire, flood, storm, theft, accident, or any other cause, except insofar as those costs and expenses are caused by the willful misconduct of the operator. The operator shall furnish the Government and non-operator(s) written notice of damages or losses for each damage or loss in excess of fifty thousand U.S. dollars (U.S.\$50,000) as soon as the loss has come to the notice of the contractor.

3.6. INSURANCE

- 3.6.1. Premiums for insurance required under the contract, provided that a party not participating in such insurance shall not share in the costs unless such insurance is compulsory under the laws of Kenya and provided further, that if such insurance is wholly or partly placed with an affiliate of the contractor such premiums shall be recoverable only to the extent generally charged by competitive insurance companies other than an affiliate of the contractor.

3.7. LEGAL EXPENSES

- 3.7.1. All costs or expenses of litigation or legal services otherwise necessary or expedient for the protection of the joint property or other interest in the contract area, including but not limited to legal counsel's salaries and fees, court costs and cost of investigation or procuring evidence. These services may be performed by the operator's legal staff or an outside firm as necessary.

3.8. DUTIES AND TAXES

- 3.8.1. All duties, taxes (except taxes based on income, profit or gains), fees, and governmental assessments of every kind and nature which have been paid by the contractor with respect to the Contract unless specifically excluded under this Contract.

3.9. OFFICES, CAMPS AND MISCELLANEOUS FACILITIES

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

3.10. GENERAL AND ADMINISTRATIVE EXPENSES

- 3.10.1. This charge shall be made monthly for services of all personnel and officers of the operator and its affiliate(s) outside Kenya and those not otherwise provided herein. It shall include services and related office costs of personnel performing management, administrative, legal, accounting, treasury, tax, employee relations, computer services, purchasing, engineering, geological, geophysical, and all other functions for the direct benefit of upstream petroleum operations. General and administrative expenses incurred wholly and exclusively for the Kenyan operations are wholly deductible. General and administrative expenses which have not been incurred wholly and exclusively for Kenyan operations will be charged on an allocation criteria provided by the contractor subject to approval of the Cabinet Secretary and Kenyan Tax Authorities.
- 3.10.2. Within ninety (90) days following the end of each quarter, the operator shall determine the actual costs incurred in performing such services, and shall charge or credit the joint account for the difference between the actual cost incurred for the quarter and the provisional rate charged during the quarter.
- 3.10.3. On request of the Government or a non-operator, the operator shall make available at its Kenyan office all supporting documents used for the determination of the charges. Such documents shall include but shall not be limited to time allocation reports prepared by employees providing services described in part, cash vouchers supporting cash expenses included in the overhead pool, inter-company billings supporting charges for services provided by operator's affiliates (e.g. building rentals, telecommunications paid by the operator's parent company), summary or impersonalized computer run supporting salaries, wages and employee benefits and other such documents as may be mutually agreed.

3.11. OTHER EXPENDITURE

- 3.11.1. Other reasonable expenditure not covered or dealt with in the foregoing provisions which are incurred by the operator and its affiliate(s) for the necessary, proper, economical and efficient conduct of upstream petroleum operations only with the approval by the Cabinet Secretary.

3.11.2. Interest and financing charges incurred on loans or other forms of financial accommodation raised by the contractor for expenditure in upstream petroleum operations under the contract shall be non-recoverable costs in accordance with sub-clause 3.14 below.

3.12. CREDITS UNDER THE CONTRACT

3.12.1. The net proceeds of the following transactions shall be credited to the account for cost recovery purposes under the contract—

3.12.1.1. the net proceeds of any insurance or claim in connection with the upstream petroleum operations or any assets charged to the accounts under the contract;

3.12.1.2. revenue received from other parties for the use of property or assets charged to the accounts under the contract;

3.12.1.3. any adjustment received by the contractor from the suppliers/manufacturers or their agents in connection with defective equipment or material the cost of which was previously charged by the contractor under the contract;

3.12.1.4. rentals, refunds or other credits received by the contractor which apply to any charge which has been made to the accounts under the contract;

3.12.1.5. proceeds from all sales of surplus material or assets charged to the account under the contract; and

3.12.1.6. the prices originally charged to the accounts under the contract for inventory materials subsequently exported from Kenya.

3.13. NO DUPLICATION OF CHARGES AND CREDITS

3.13.1. Notwithstanding any provision to the contrary in this accounting procedure, it is the intention that there shall be no duplication of charges or credits in the accounts under the contract.

3.14. NON-RECOVERABLE COSTS AND EXPENSES

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

- 3.14.1.1. taxes on income or profit paid to any Government authority (except taxes and duties that may be included in the costs of material and equipment purchased for upstream petroleum operations);
- 3.14.1.2. any payment made to the Government by reason of the failure of the contractor to fulfill its minimum work and expenditure obligations in respect of the initial exploration period, the first additional exploration period, or the second additional exploration period under the contract;
- 3.14.1.3. the cost of any letter of guarantee, if any, required under the contract;
- 3.14.1.4. the signature bonus set out in clause 6 of the contract;
- 3.14.1.5. the surface fees set out in clause 6 of the contract;
- 3.14.1.6. training fees and other related costs.
- 3.14.1.7. costs of marketing or transportation of petroleum beyond the delivery point;
- 3.14.1.8. interest, arrangement costs and any foreign exchange costs relating to loans or other financing arrangements raised by the contractor for capital expenditure in upstream petroleum operations under the contract;
- 3.14.1.9. any accounting provision for depreciation and/or amortization, excluding any depreciation and/or amortization expressly permitted under the contract;
- 3.14.1.10. costs incurred before the Effective Date;
- 3.14.1.11. Any foreign exchange and currency hedging costs;
- 3.14.1.12. Donations or charitable contributions and/or services relating to public relations;
- 3.14.1.13. Costs that were not incurred within an approved Annual Work Program and Budget, as revised, or are of a category not permitted by this Contract;

- 3.14.1.14. Decommissioning Costs actually incurred which have been effectively funded from the Decommissioning Fund through contributions made to such Fund which are already recovered when those Costs are incurred;
- 3.14.1.15. Costs in excess of those in line with the international market price for goods or services of similar quality supplied on similar terms prevailing at the time such goods or services were obtained or ordered by the contractor;
- 3.14.1.16. Any costs not reasonably required for the upstream petroleum operations;
- 3.14.1.17. Expenditures on research and development of new equipment, materials and techniques;
- 3.14.1.18. Costs for which the records do not exist or which are not adequately documented;
- 3.14.1.19. Costs of arbitration and expert determination pursuant to clauses 35 and 53 of the Contract in respect of any dispute under this Contract;
- 3.14.1.20. Fines and penalties imposed under the laws of Kenya;
- 3.14.1.21. Costs due to a violation to this Contract or the laws and regulations applicable to the upstream petroleum operations, including any amount spent on indemnities or penalties arising from the non-fulfillment of contractual obligations, such as any payment made to the Government by reason of the failing of the contractor to fulfill its minimum exploration work and expenditure obligations under the Contract;
- 3.14.1.22. Costs incurred as a result of willful misconduct or negligence of the contractor, its agents or subcontractors, including any payments for damages under the Contract;
- 3.14.1.23. The acquisition costs or any other payments or charges in relation with the transfer of an interest in accordance with clause 47 of the Contract, including but not limited to any payments of considerations, private overriding royalties net profits and interests;
- 3.14.1.24. Corporate Social Responsibility Costs or Social Infrastructure Costs; and
- 3.14.1.25. any recoverable costs recovered elsewhere under the Kenyan laws.

4. PART IV – FINANCIAL REPORTS TO THE CABINET SECRETARY

- 4.1. The reporting obligations provided for in this Part shall, unless the contrary is stated, apply to the operator.
- 4.2. The operator shall submit annually to the Cabinet Secretary the following—
 - 4.2.1. the annual work programme and budget three (3) months before the beginning of the year to which they apply and the budget shall be analyzed by item within the exploration programme, evaluation programme, development programme, production programme and decommissioning programme and show for each major budget item, with reasonable detail, the following—
 - 4.2.1.1. latest forecast of cumulative petroleum costs anticipated at the start of the budget year;
 - 4.2.1.2. cumulative expenditure anticipated at the end of each quarter of the budget year; and
 - 4.2.1.3. expenditure anticipated in future years to complete the budget item.
 - 4.2.2. a schedule of the service and supply contracts, to be let during the forthcoming year which require payment in foreign currency exceeding the equivalent of two hundred thousand U.S. Dollars (USD200,000.00) per contract, showing the anticipated tender date and approximate value and the goods or services to be provided;
 - 4.2.3. the audit report required by sub-clause 1.4.5. of this accounting procedure, stating whether in the opinion of the auditors of the contract—
 - 4.2.3.1. the last annual expenditure report and records reflect a true and fair view of the actual expenditure of the contractor in accordance with the provisions of the contract;
 - 4.2.3.2. the reports on petroleum revenue submitted truly and fairly determine the arm's length value of disposals of Petroleum during the year.
- 4.3. The operator shall submit quarterly within thirty (30) days of each quarter to the Cabinet Secretary:
 - 4.3.1. a report of expenditure and receipts under the contract analyzed by budget item showing—
 - 4.3.1.1. actual expenditure and receipts for the quarter in question;
 - 4.3.1.2. actual cumulative Petroleum cost to date;

- 4.3.1.3. latest forecast cumulative cost at the year end;
- 4.3.1.4. variations between budget costs and actual costs and explanations thereof; and
- 4.3.1.5. with effect from adoption of the development plan, the total payroll costs segregated between Kenyan and non-Kenyan personnel and the total expenditure segregated between Kenyan and non-Kenyan goods and services;
- 4.3.2. a cost recovery statement containing the following information, disclosing costs incurred and recovered as attributed to either exploration, development, production or decommissioning activities—
 - 4.3.2.1. recoverable petroleum costs carried forward from the previous quarter, if any;
 - 4.3.2.2. recoverable petroleum costs incurred and paid during the quarter;
 - 4.3.2.3. total recoverable petroleum costs for the quarter ((4.3.2.1) plus (4.3.2.2) above);
 - 4.3.2.4. quantity and value of cost Petroleum taken and separately disposed of by the contractor for the quarter;
 - 4.3.2.5. volume and value of Petroleum recovered for the quarter;
 - 4.3.2.6. amount of recoverable petroleum costs to be carried forward into the next quarter, if any; and
 - 4.3.2.7. value of Government’s share of production taken by the contractor pursuant to clause 38 of the contract.
- 4.4. A copy of each contract for goods or services valued in excess of Five Hundred Thousand U.S. Dollars (USD 500,000.00) shall be provided to the Cabinet Secretary as soon as practicable after its execution, together with a contract summary containing—
 - 4.4.1. a description of the goods or services to be provided;
 - 4.4.2. the approximate consideration for the contract;
 - 4.4.3. the names of proposed bidders, contractors or suppliers; and
 - 4.4.4. a brief description of the efforts made to find a Kenyan supplier or contractor including the names of businesses considered and the reasons for rejecting them.

- 4.5. After the commencement of production the operator shall, within fifteen (15) days after the end of each month, submit a production report to the Cabinet Secretary showing for each development area the quantity of petroleum—
 - 4.5.1. held in stocks at the beginning of the month;
 - 4.5.2. produced during the month;
 - 4.5.3. lifted and by whom during the month;
 - 4.5.4. lost and consumed in upstream petroleum operations during the month; and
 - 4.5.5. held in stocks at the end of the month.
- 4.6. A lifting party shall submit, within fifteen (15) days after the end of each month, a report to the Cabinet Secretary stating—
 - 4.6.1. the quantities and sales value of arm's length petroleum sales made in that month;
 - 4.6.2. the quantities, sales value and arm's length value of disposals of petroleum other than by sale at arm's length during the month; and
 - 4.6.3. the total petroleum revenue for that month.
- 4.7. The Contractor shall deliver to the Cabinet Secretary monthly statements showing calculations of the value of Petroleum produced and sold from the Contract Area, and each Development Area, which statements shall include, *inter alia*, the following information:
 - 4.7.1. Quantities of crude oil and/or natural gas sold by the contractor during the preceding month constituting arm's length sales together with corresponding sale prices;
 - 4.7.2. Quantities of crude oil and/or natural gas sold by the contractor during the preceding month that did not constitute arm's length sales together with corresponding sale prices;

APPENDIX “C”
PARTICIPATION AGREEMENT
TABLE OF CONTENTS

1. Interpretation.
 2. Participating interests and commencement.
 3. Operator and duties of the Operator.
 4. Operating committee and work programmes.
 5. Costs and expenses.
 6. Payments to the operator.
 7. Materials and equipment.
 8. Relationship of the parties and tax provisions.
 9. Surrenders and transfers.
 10. Disposal of production.
 11. Sole risk operations.
 12. Confidentiality.
 13. Liability.
 14. Governing law.
 15. Arbitration.
 16. Force majeure.
 17. Notices.
 18. Term.
 19. Final provisions.
- Exhibit “A”—Accounting procedure

PARTICIPATION AGREEMENT

This Participation Agreement, made and entered into on this day of, 20....., by and between the Government of the Republic of Kenya (hereinafter referred to as the “Government”) represented for the purpose of this agreement by the Cabinet Secretary for the time being responsible for petroleum (hereinafter referred to as the “Cabinet Secretary”) and

..... incorporated under the laws of Kenya and having established a place of business at, Kenya (hereinafter referred to as the “Contractor”).

WHEREAS the Government and the contractor have entered into a production sharing contract (referred to as the “Contract” which expression includes its successors and assigns), to which this Appendix is attached;

WHEREAS the Government may decide to exercise its option under clause 41 of the Contract; and

WHEREAS the Parties wish to set forth the terms and conditions under which the Government has agreed to participate in the upstream petroleum operations in each case such option is exercised;

NOW, THEREFORE, the Parties agree as follows—

1. Interpretation

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

“**AFE**” means an authorization for expenditure;

“**Government**” includes an appointee as defined in the Contract;

“**joint account**” means the accounts maintained by the operator to record all transactions related to operations in the participation area under this Participation Agreement;

“**joint property**” means all property acquired and held for use in connection with operations under this Participation Agreement;

“**non-operator**” means a party other than the operator;

“**operating committee**” means the committee established by clause 4 hereof;

“**operator**” means the party designated to conduct the upstream petroleum operations, pursuant to clause 3 hereof and its successors and assignees;

“**participating interest**” means the respective undivided interest of each of the parties as it may exist at any given time in the participation area and under this Participation Agreement;

“**participation area**” means a development area in which the Government elects to participate under the Contract;

“**participation dates**” means the effective date of participation by the Government as defined in sub-clause 41(2) of the Contract;

“**participation work programme**” means a programme of the upstream petroleum operations under this Participation Agreement;

“**parties**” means, collectively, the Government and the entities constituting the contractor, their respective successors or assignees;

“**party**” means anyone of the parties;

“**year**” means calendar year.

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

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

2. Participation Interests and Commencement

2.1. When and if the Government elects, pursuant to clause 41 of the contract, to participate in upstream petroleum operations in a participation area, each entity constituting the contractor shall assign proportionately to the Government a part of its interest in the development area so that the rights, interest and obligations of the contractor and the Government in such area shall be owned and borne as of the participation date in undivided interests as follows—

Government:..... per cent (.....%) or such lesser amount as may be elected in accordance with clause 41 of the Contract; and

Contractor: per cent (.....%) or such greater amount as may remain after the Government’s election.

- 2.2. In the event a party shall transfer in whole or in part its participating interest pursuant to clause 47 of the Contract and clause 9 of this Participation Agreement, the participating interest of the parties therein shall be revised accordingly.

3. Operator and duties of the Operator

- 3.1. The operator shall be the party acting as operator on the participation date and the operator shall have the rights and obligations of a non-operator in respect of its participating interest.
- 3.2. The operator shall serve as operator until it resigns or is removed pursuant to the provisions of this clause, or until it ceases to hold a participating interest hereunder. In the event that an operator assigns the whole of its participating interest hereunder to one of its affiliates, such affiliate shall become operator hereunder in the former’s place.
- 3.3. Upon the affirmative vote of all the non-operators, the operator shall be removed as operator in case of any one of the following—
- 3.3.1. bankruptcy of the operator or its parent company;
 - 3.3.2. assignment for the benefit of the operator’s creditors;
 - 3.3.3. appointment of a receiver or manager with respect to the whole or any part of the property or assets of the operator;
 - 3.3.4. entitlement of any person other than an affiliate of the operator to appoint a majority of the members of the board of directors of the operator by reason of any act, default or neglect of the operator;
 - 3.3.5. failure without justification by the operator to pay a sum due to or in the name of the joint account for more than sixty (60) days;

- 3.3.6. the operator's material breach of this Participation Agreement which remains without a remedy for more than thirty (30) days after the operator is notified by non-operators of such breach; or
- 3.3.7. reduction in the operator's participating interest to per cent (.....%) or less.
- 3.4. An operator may at any time resign as operator by giving to the other parties notice in writing of such resignation. Such resignation shall be effective one hundred and eighty (180) days after the date of notice thereof or on the date on which a successor operator appointed by the parties (other than the operator) shall be ready and able to assume the obligations of operator in accordance with all the provisions of this Participation Agreement, whichever shall first occur.
- 3.5. Should an operator so resign or be removed, a successor operator shall immediately be appointed by the operating committee. A party having been removed as operator may not vote to succeed itself as operator. Such appointment shall be made by a vote of at least two (2) of the remaining parties holding not less than the percentage figure of the remaining participating interests set out in clause 4.6. For the purpose of this clause 3.5, operator includes any of its affiliates holding a participating interest in this Participation Agreement.
- 3.6. Removal or resignation of an operator shall not in any way affect its rights or obligations as a non-operator party to this Agreement. On the effective date of removal or resignation, the operator shall deliver to the successor operator any and all funds, equipment, materials, appurtenances, books, records, data, interpretations, information and rights acquired by and in the custody of the operator for the joint account of the parties (including available petroleum not delivered to the parties), shall, with the successor operator, prepare an inventory of joint property, adjusting the joint account accordingly, and shall co-operate as far as possible in effecting a smooth transfer of operating responsibilities.
- 3.7. An operator that is removed under Article 3.3.7 hereof may charge to the joint account all reasonable and necessary expenditure incurred in demobilizing and repatriating personnel and equipment.

- 3.8. The operator shall have control of the upstream petroleum operations in the participation area and shall have exclusive custody of all materials, equipment and other property acquired thereof, and shall perform the duties under this Participation Agreement diligently and in accordance with best petroleum industry practice, and sound and accepted engineering, management and accounting principles. The operator shall not be liable to any non-operator for any acts or omissions, claims, damages, losses or expenses, in connection with or arising out of this Participation Agreement or the contract or upstream petroleum operations save those caused by gross negligence or willful misconduct of the operator.
- 3.9. The operator shall—
 - 3.9.1. consult with non-operators and advise them of all matters arising from the upstream petroleum operations;
 - 3.9.2. comply with the decisions of the operating committee;
 - 3.9.3. keep the participating interests and all property acquired or used free from liens, except for those authorized by clause 6 hereof; and
 - 3.9.4. pay the costs of the upstream petroleum operations under this Participation Agreement promptly and make proper charges to non-operators.
- 3.10. The operator shall submit a copy of an AFE to the non-operators for each budget item of capital expenditure in the approved participation work programme and budget that costs more than U.S. dollars..... (U.S.D.....).

Where it is necessary to complete an expenditure in a budget item in the approved participation work programme, the operator may exceed the budget for the budget item by the lesser of ten per cent (10%) thereof or U.S. dollars..... (U.S.D.....) and shall report promptly such excess expenditure to the non-operators.

The operator may spend not more than U.S.dollars..... (U.S.D.....) on upstream petroleum operations in the participation area not included in an approved participation work programme, provided that such expenditure shall not be for items previously rejected by the operating committee. The operator shall report promptly that expenditure to the non-operators and, if it is approved in accordance with clause 4(6), the operator may make further

expenditure thereon or on other items not exceeding U.S. dollars..... (U.S.D.....)in that year.

The limits in this subsection may be changed from time to time by the operating committee.

In the case of emergency, the operator may make such immediate expenditure and take such immediate action as may seem necessary for the protection of life or property or the prevention of pollution and such emergency expenditure shall be reported promptly to the parties by the operator.

3.11. A non-operator may inspect the participation area, the upstream petroleum operations, and the books, records and other information of the operator pertaining thereto.

The operator shall supply to a non-operator by telephone, telefax email, registered post or courier, daily reports on drilling, and such other reports in writing normally provided by an operator to a non-operator in the international petroleum industry, including but not limited to reports on well tests and core analysis, and copies of drilling logs, well surveys and velocity surveys. The operator shall furnish any other information reasonably requested by non-operator, if such information is readily available.

3.12. The operator shall obtain and maintain all insurance required by law and such other insurance as the operating committee may from time to time determine, provided that, in respect of such other insurance, any party may elect not to participate provided such party gives notice to that effect to the operator. The cost of insurance in which all the parties are participating shall be for the joint account and the cost of insurance in which less than all the parties are participating shall be charges to such parties individually. The operator shall, in respect of any insurance—

3.12.1. promptly inform the parties participating therein when it is taken out and supply them with copies of the relevant policies when the same are issued;

3.12.2. arrange for the parties participating therein, according to their respective participating interests, to be named as co-insured's on the relevant policies with waivers of subrogation in favour of the parties; and

3.12.3. duly file all claims and take all necessary and proper steps to collect any proceeds and, if all the parties are participating therein, credit them to the joint account or, if less than all the parties are participating therein, credit them to the participating parties.

Subject as stipulated above, any of the parties may obtain such insurance as it deems advisable for its own account at its own expense providing such insurance is acceptable under the applicable law.

If the operator is unable to obtain such other insurance required by the operating committee, it shall so advise the parties and thereafter, it shall be discharged of its obligation to obtain such insurance.

The operator shall take all reasonable steps to ensure that all contractors (including sub-contractors) performing work in respect of the upstream petroleum operations and the joint property obtain and maintain all insurance required by the law and obtain from their insurers a waiver of subrogation in favour of the parties.

3.13. The operator may prosecute, defend and settle claims and litigations arising out of the upstream petroleum operations and may compromise or settle such claims or litigations which involve an amount not exceeding the equivalent of one hundred thousand U.S. dollars (US \$100,000.00) without the approval of the operating committee. Any claim or litigation involving an amount in excess of the equivalent of one hundred thousand U.S. dollars (U.S. \$100,000.00) shall be reported promptly to the non-operators and a non-operator shall have the right to be represented by its own counsel at its expense in the compromise, settlement or defense of such claims or litigation.

3.14. The operator shall fulfill the reporting obligations of the Contractor unless otherwise stipulated in this Participation Agreement and the Contract.

4. Operating Committee and Work Programmes

4.1. The parties shall establish an operating committee to supervise and control the upstream petroleum operations. The operating committee shall consist of one representative appointed by each of the parties provided always that more than one of the parties may appoint the same representative who shall represent them separately.

- 4.1.1. Each party shall, as soon as possible after the date of this Participation Agreement, give notice to all the other parties of the name of its representative and of an alternate on the operating committee. Such representative may be replaced, from to time, by like notice. Representatives may bring to meetings of the operating committee such advisers as they consider necessary. The representative of a party or, in the absence of the representative, his alternate, shall be deemed authorized to represent and bind such party with respect to any matter which is within the powers of the operating committee. The representative of the party which is the operator shall be the chairman of the operating committee and shall report the proceedings.
- 4.2. Except as otherwise provided in this Participation Agreement, the powers and duties of the operating committee shall include—
 - 4.2.1. the consideration and determination of all matters relating to general policies, procedures and methods of operation hereunder;
 - 4.2.2. the approval of any public announcement or statement regarding this Participation Agreement or the upstream petroleum operations;
 - 4.2.3. the consideration, revision and approval or disapproval, of all proposed participation work programmes, budgets and AFE's prepared and submitted to it pursuant to the provisions of this Participation Agreement;
 - 4.2.4. the determination of the timing and location of all wells drilled under this Participation Agreement and any change in the use or status of a well;
 - 4.2.5. the determination of whether the operator will represent the parties regarding any matters or dealings with the Cabinet Secretary, any other governmental authorities or third parties in so far as the same relate to the upstream petroleum operations, provided that there is reserved to each party the unfettered right to deal with the Cabinet Secretary or any other governmental authorities in respect of matters relating to its own participating interest; and
 - 4.2.6. the consideration and, if so required, the determination of any other matter relating to the upstream petroleum operations which may be referred to it by the parties or any of them or which is otherwise designated under this Participation Agreement for reference to it.

- 4.3. The operator shall, when requested by a representative of any party, call a meeting of the operating committee. The operator may do so at any time to keep the parties informed on the upstream petroleum operations.
- 4.4. A request to call a meeting of the operating committee shall state the purpose of that meeting and, except in an emergency, the operator shall give the parties at least fifteen (15) days' written notice with an agenda of the meeting, but where a meeting is called in an emergency, the operator shall give as much notice thereof as possible by telephone or email, and except with the consent of all the parties, the business of a meeting shall be only that for which it was called.
- 4.5. The operator may, instead of calling a meeting, submit matters to the parties by written notice, upon which each party may vote within the period prescribed in the notice which shall not be less than three (3) days or more than fifteen (15) days from the date notice is received. Failure of a party to vote within the above time limits shall be deemed a negative vote.
- 4.6. Each party shall have a voting interest equal to its participating interest. Unless otherwise provided in this Participation Agreement, all decisions of the operating committee shall be made by the affirmative vote of at least two (2) parties holding not less thanper cent (..... %) of the participating interests.
- 4.7. The operator shall, at least one hundred and twenty (120) days before the end of each year, submit to the parties for approval a participation work programme and budget, which shall contain details of the upstream petroleum operations to be carried out in the next year and allocation of funds therefor including administrative overheads and third party expenditure, in accordance with the accounting procedure attached to this Participation Agreement as exhibit "A".
- 4.8. Unless unanimously agreed at least sixty (60) days prior to the beginning of the year, the operator shall call a meeting of the operating committee to discuss and approve a participation work programme and budget for the ensuing year and such work programme and budget shall be approved not later than thirty (30) days prior to the commencement of such year and the decision of the operating committee shall bind the parties. Upon

approval of such work programme and budget the operator is hereby authorized and obliged to proceed with it in accordance with such approval.

- 4.9. Such approved participation work programme and budget may be reviewed and revised from time to time by the operating committee. Any party may in writing request a review of an approved participation work programme or budget, or of a project within a programme, if that project costs more than U.S. dollars (U.S.D.....), and the request shall state the objections of the party, which shall be considered by the operating committee, who may amend the participation work programme or budget.

5. Costs and Expenses

- 5.1. Except as otherwise specifically provided in the contract and this Participation Agreement, all cost and expenses incurred by the operator in the conduct of operations hereunder shall be borne by the parties in proportion to their respective participating interests set forth in clause 2.
- 5.2. All costs and expenses incurred by the operator in the conduct of upstream petroleum operations hereunder shall be determined and settled in accordance with best internationally accepted accounting practice consistent with the provisions of the contract and its accounting procedure as complemented by the provisions of exhibit "A" to this Participation Agreement and the operator shall keep its records of costs and expenses in accordance therewith.

6. Payments to the Operator

- 6.1. A non-operator shall pay its share of an expenditure relating to the petroleum operation, within fifteen (15) days of receipt of the account of the operator.
- 6.2. The operator may, upon twenty (20) days' written notice, request a non-operator to advance a share of the estimated expenditure for the following month, stipulating the due date of payment, provided however that such due date of payment shall not be before the first banking day of that month and the operator shall include with such notice an estimate of the cash calls for the next ninety (90) days, Operator's estimate of expenditure shall not

exceed the approved year's budget. The operator may, at any time upon fifteen (15) days' written notice, request additional advances to cover unforeseen expenditure.

- 6.3. Cash requirements shall be specified by the operator in the currencies required for the upstream petroleum operations and the non-operators shall advance their shares in the currencies specified.
- 6.4. If any non-operator's advances for a given month exceed its share of cash disbursements for the same month, the next succeeding cash advance, after such determination, shall be reduced accordingly. However, non-operator(s) may request that excess advances be refunded. The operator shall make such refund within fifteen (15) days after date of such notice.
- 6.5. Where a party is in default of payment, the operator and the non-defaulting parties shall have, as security for amounts due hereunder from a defaulting non-operator, a lien on the participating interest share, the interest in material and equipment acquired for the upstream petroleum operations and upon the proceeds from the sale of petroleum, of that non-operator, and a non-operator shall have for amounts due hereunder, a similar lien on the same interests and property of the operator.
- 6.6. A lien may be exercised by a non-defaulting party by collecting the amount due from a purchaser of Petroleum and the statement of the operator of the amount due shall be proof thereof.
- 6.7. A late payment shall attract at LIBOR plus three per cent (3%) orper cent (.....%), whichever is the greater, compounded monthly and calculated from the due date of payment. A payment not received within seventy-two (72) hours of the due date shall accrue interest from the due date and the non-paying party shall be deemed to be in default from the due date of the payment.
- 6.8. A party which remains in default for five (5) days shall have no right to vote at any operating committee meeting held during the period of the default but shall be bound by all decisions of the operating committee made during such period, and the defaulting party's participating interest shall be deemed to be vested pro rata in the non-defaulting parties for voting purposes during the continuation of the default.

- 6.9. Where a party fails to pay an amount required to be paid hereunder, and remains in default for ninety (90) days, the participating interest share of the defaulting party may be declared forfeit by the non-defaulting parties, unless the amount due is an advance and the defaulting party provides an irrevocable letter of credit or other security, acceptable to the operator, for the amount due.
- 6.10. When the participating interest share of a defaulting party is declared forfeited, the operator shall give notice thereof to all the parties, and that share shall vest ratably, unless otherwise agreed, in the non-defaulting parties without payment of compensation and the defaulting party shall at its sole expense take all steps necessary to vest that share accordingly, and the defaulting party hereby appoints the operator to act as its advocate to execute any and all documents required to effect such transfer. Notwithstanding the transfer of a defaulting party's participating interest share in accordance with the foregoing, the defaulting party shall remain liable for its proportionate share of the commitments incurred before its rights lapsed.
- 6.11. Where a party is in default of payment, the remaining parties shall advance the operator on demand a share of that payment, in proportion to the participating interests of those parties. Any payments received from a defaulting party shall be credited to the accounts of the non-defaulting parties who advanced funds on behalf of the defaulting party.

7. Materials and Equipment

- 7.1. All materials and equipment acquired by the operator for upstream petroleum operations hereunder shall be owned by the parties in undivided shares in the proportion of their respective participating interests.
- 7.2. Except as may be otherwise approved by the operating committee, the operator shall purchase for the joint account of the parties only such materials and equipment as are reasonably required in the conduct of operation provided for in approved participation work programmes or revisions thereof, the operator shall not stockpile materials or equipment for future use without the approval of the operating committee.
- 7.3. Jointly acquired materials or equipment declared by the operator to be surplus shall be disposed of in such manner as the operating committee may direct; or, if the book value

thereof does not exceed U.S. dollars (U.S.D.....), the operator shall dispose of same in such manner as the operator shall deem appropriate; provided, however, that each Party may, if practicable, separately take or sell and dispose of its interest in such materials or equipment or may by notice in writing, and subject to revocation at will, authorize the operator, for a period or periods of not more than one (1) year each, to sell such materials and equipment for the account of the party or parties giving such authorization. Each party shall have the right to purchase, at the prevailing market price in the area, materials or equipment which the operator has declared to be surplus and which the operator intends to dispose of on the open market.

- 7.4. Subject to the provisions of clause 13 of the Contract, upon termination of this Participation Agreement the operator shall salvage for the joint account all jointly-owned materials and equipment which can reasonably be salvaged, to be disposed of as provided in clause 7.3 hereof.

8. Relationship of the Parties and Tax Provisions

- 8.1. The parties declare that it is not their intention by entering into this Participation Agreement to create or be considered as a partnership or any other similar entity.
- 8.2. Each party shall be responsible for and shall pay its own taxes to the Kenyan authorities on its operations hereunder, subject to the provisions of clause 39 of the Contract recognizing that a party hereunder may be subject to the laws of its place of incorporation in addition to the laws of Kenya.

9. Surrenders and Transfers

- 9.1. Any party desiring that all of the participation area be surrendered voluntarily shall notify the other parties in writing accordingly, specifying its reasons therefor, and thereafter—
- 9.1.1. each party shall within thirty (30) days after receipt of the notice inform the other parties in like manner whether it concurs in or opposes the proposed surrender;
- 9.1.2. if all the parties concur in the proposed surrender, the participation area shall be surrendered as soon as possible under the Contract;
- 9.1.3. if one or more of the parties oppose the proposed surrender, the party or parties desiring to surrender shall, upon request by the opposing parties, transfer and convey without

warranty of title-free and clear of all liens, charges and encumbrances and without right to compensation, all of its or their interest(s) in the participation area and material left thereon to said opposing party or parties, each in the proportion that its or their participating interest(s) hereunder bears to the sum of the participating interests of all the opposing parties, or as otherwise agreed by the opposing parties. The transferring party or parties shall bear—

- 9.1.3.1. its or their participating interest share(s) of costs, expenses and liabilities incurred hereunder which are attributable to the participation area for the period prior to the effective date of such transfer of interest;
- 9.1.3.2. its or their participating interest share(s) of all costs and expenses incurred by the operator after such date under any contracts entered into by the operator in execution of a participation work programme theretofore approved by the operating committee; and
- 9.1.3.3. its or their participating interest share(s) of any accrued obligations under the contract which are not included in (9.1.3.1) or (9.1.3.2) above, but shall thereafter have no further rights or other obligations in connection therewith; and
- 9.1.4. a transfer under clause 9.1.3 above shall be effective as among the parties thirty (30) days after the opposing parties' receipt of the transferring party's first mentioned notice proposing surrender. Thereafter until such transfer has received whatever approvals may be necessary under the provisions of the Contract or applicable law, the transferring party or parties shall hold at most legal, but not equitable, title to the interest(s) transferred for the benefit of the opposing party or parties. The transferring party or parties receiving the interest(s) transferred shall execute and deliver such documents and do such other acts as may be necessary to give legal effect to such transfer, to obtain all approvals thereof as may be required from the Cabinet Secretary, and otherwise to effectuate the purposes of this clause;
- 9.1.5. notwithstanding the foregoing, if the operating committee determines that per cent (.....%) or more of the estimated, discovered and recoverable reserves under the participation area have been produced, no party shall be allowed to surrender or

required transfer of interest in this Participation Agreement and the Contract without the unanimous consent of all parties.

- 9.2. No transfer of any interest under this Participation Agreement and the Contract shall be made by any party otherwise than in respect of an undivided interest in all or part of its participating interest in this Participation Agreement and the Contract, and in accordance with the following provisions of this clause 9.
- 9.3. If any party receives a bona fide offer for the purchase of all or a portion of an offereeparty's participating interest in this Participation Agreement and the participation area which the offereeparty is willing to accept, the offeree party shall give notice thereof in writing to the other parties—
 - 9.3.1. such notice shall set forth the identity of the offeror, the terms and conditions (including monetary and other considerations) offered in good faith, and all other relevant particulars;
 - 9.3.2. for a period of thirty (30) days next following the receipt of such notice, the otherparties shall have an option to purchase the entire interest proposed to be sold on the same terms offered by the offeror, as set forth in the respective offer;
 - 9.3.3. if more than one of the parties should exercise its right to purchase said interest, each shall have the right to acquire such interest in the proportion that the participating interest hereunder of such party bears to the sum of the participating interests of all the parties exercising such right except as they may otherwise agree;
 - 9.3.4. if within such a period of thirty (30) days, none of the other parties shall exercise its rights to purchase said interest, the sale to said offeror may be made under the terms and conditions set forth in the notice given; provided that the sale shall be consummated within six (6) months from the date of such notice and that the sale and any transfer shall be in accordance with the Contract and applicable laws;
 - 9.3.5. for the purposes of this paragraph, an offer to purchase shall also include an acceptance of an entity's offer to sell.
- 9.4. The limitations of clause 9.3 shall not apply to a transfer of a participating interest by a party to an affiliate of such party or by the Government to an appointee, or from an appointee to another appointee, nor shall they apply to a transfer of a participating interest

effected as a result of merger, consolidation, re-organization or sale of capital stock of the parent company of a party.

- 9.5. Every transfer of a participating interest in the participation area shall be made expressly subject to this Participation Agreement and shall include a corresponding interest in jointly acquired equipment and facilities. No transfer of an interest hereunder shall be effective unless made by an instrument in writing duly executed by the parties thereto in accordance with applicable law, and until the same has received all consents required under this Participation Agreement and the Contract. A transfer shall provide that the transferor remains liable for obligations incurred before the date of transfer and such obligations shall in addition become the obligations of the transferee. Where, after the transfer, the transferee or transferor owns a participating interest of less than five per cent (5%), they shall be jointly represented.
- 9.6. A transfer other than to an affiliate of an appointee shall be of sufficient financial standing to meet its participating interest share of its obligations under the Contract and this Participation Agreement. In the event of a transfer of a participating interest to an affiliate of a party the transferor party shall remain responsible for the full performance by the affiliate of the obligations undertaken by the said party under this Participation Agreement and the Contract, and if such affiliate ceases to be an affiliate, the participating interest shall be transferred back to the party.
- 9.7. In this Article, transfer means a transfer, assignment, sale or other disposal of the interest of a party.

10. Disposal of Production

- 10.1. Each party shall separately own, take in kind and dispose of its participating interest share of that portion of the petroleum produced and saved from the participation area to which the contractor is entitled under clause 38 of the Contract.
- 10.2. Within six (6) months following the signing of this Participation Agreement, the parties shall, in accordance with the provisions of the Contract and in light of the gathering and transportation facilities available under the adopted development plan, in good faith establish a set of rules governing the scheduling, lifting and other necessary provisions for

the crude oil offtakes of the parties, consistent with best petroleum industry practice, which shall provide, among other things, such detailed terms and procedures as required for—

10.2.1. short-term production forecasts;

10.2.2. nominations and calculation of entitlements;

10.2.3. scheduling of deliveries;

10.2.4. lifting tolerances;

10.2.5. underlift, overlift and make-up provisions;

10.2.6. passage of title and risk;

10.2.7. penalties assessable to the parties which cause shut-in or reductions of production; and

10.2.8. other related matters.

Whatever is mutually agreed by the parties shall be deemed to form part of this Participation Agreement. The above terms and procedures shall apply separately to each grade of crude oil that is segregated and separately stored for offtake.

10.3. The contractor, if so directed by the Cabinet Secretary, shall be obligated to lift and market part or all of the Government's share of profit crude oil and/or profit natural gas. When the Cabinet Secretary elects not to take and receive in kind any part of the Government's share of profit crude oil and/or profit natural gas, the Cabinet Secretary shall notify the contractor ninety (90) days before the commencement of each half year, specifying the quantity of production and such notice shall be effective for the ensuing half year. Any sale by the contractor of the Government's share of profit crude oil and/or profit natural gas shall not be for a term of more than one (1) year without the Cabinet Secretary's consent.

10.4. In the event of production of associated natural gas or of any discovery of natural gas, the parties shall agree upon appropriate procedures for disposal of any natural gas available under this Participation Agreement and the Contract.

11. Sole Risk Operations

- 11.1. Any party may undertake upstream petroleum operations at sole risk (hereinafter referred to as “sole risk project”) in a participation area, subject to the provisions of this Article.
- 11.2. The following types of sole risk project may be proposed—
 - 11.2.1. the drilling of a well or the deepening, side-tracking, completing, plugging back, testing or reworking of an existing well drilled for the joint account of the parties, in order to test a formation in which no jointly-owned well has been completed as a well producing or capable of producing petroleum;
 - 11.2.2. the installation of production and transportation facilities.
- 11.3. The conduct of a project in a development area may not be the subject of a sole risk notice under this clause until after it has been proposed in complete form to the operating committee for consideration pursuant to clause 4 hereof and has not been approved within the period therein provided. In the event that such project fails to obtain the requisite approval of the operating committee, then any party may serve notice on the other parties of its intention to carry out that project at sole risk. The other parties may give counter-notice that they wish to participate in the project within sixty (60) days after receipt thereof but, where a drilling rig is on the location and has not been released, the period is reduced to seventy-two (72) hours after receipt thereof. The periods set forth in this sub-section shall be extended for any period of time mutually agreed by the parties as necessary or desirable for acquiring or developing additional information on the sole risk project.
- 11.4. If all the other parties elect to participate in the project identified in the proposing party’s notice within the period thereof provided, such project is considered as being approved by the operating committee and the provisions of clause 4.8 of this Participation Agreement shall apply.
- 11.5. In the event that less than all the parties elect to participate in the project, the parties which elected to participate (hereinafter referred to as “sole risk parties”) shall be entitled to have the sole risk project carried out. The interest of each sole risk party in a sole risk project shall be in proportion to its participating interest in this Participation Agreement, or in such other proportion as the sole risk parties may agree. Any sole risk project shall be

carried out at the sole risk, cost and expense of the sole risk parties in the proportion of their respective interests.

- 11.6. A sole risk project shall be carried out by the operator on behalf of the sole risk parties under the provisions of this participation agreement. No sole risk project may be commenced after one hundred and eighty (180) days following the expiration of the notice period prescribed in sub-clause 11.3, but the operator shall commence work as promptly as reasonably possible if the notice period of seventy-two (72) hours, set forth in sub-clause 11.3, applies. The operator shall complete the sole risk project with due diligence provided that it does not jeopardize, hinder or unreasonably interfere with upstream petroleum operations carried out under the Contract and adopted by the operating committee pursuant to clause 4 of this Participation Agreement. The sole risk parties may use for the sole risk project any production, handling, processing and/or transporting facilities which are joint property, subject to a determination by the operating committee as to usage fees, availability of capacity and production compatibility.
- 11.7. In connection with any sole risk project—
 - 11.7.1. the sole risk project will be carried out under the overall supervision and control of the sole risk parties in lieu of the operating committee;
 - 11.7.2. the computation of costs and expenses of the sole risk project incurred by the sole risk parties shall be made in accordance with the principles set out in exhibit “A” attached hereto;
 - 11.7.3. the operator carrying out the sole risk project shall maintain separate books, records and accounts (including bank accounts) for the sole risk project which shall be subject to the same right of examination and audit by the sole risk parties;
 - 11.7.4. the costs and expenses of the sole risk project shall not be reflected in the statements and billings rendered by the operator for upstream petroleum operations under the Participation Agreement; and
 - 11.7.5. if the operator is carrying out a sole risk project on behalf of the sole risk parties, the operator shall be entitled to request the sole risk parties in connection with the sole risk project to advance their share of the estimated expenditure and shall not use joint account

funds or be required to use its own funds for the purpose of paying the costs and expenses of the sole risk project; furthermore the operator shall not be obliged to commence or, having commenced, to continue the sole risk project unless and until relevant advances have been received from the sole risk parties.

- 11.8. The sole risk parties shall indemnify and hold harmless the other parties against all actions, claims, demands and proceedings whatsoever brought by any third party arising out or in connection with the sole risk project and shall further indemnify the other parties against all damages, costs, losses and expenses whatsoever directly or indirectly caused to or incurred by them as a result of anything done or omitted to be done in the course of carrying out such sole risk project.
- 11.9. Subject to the provisions of sub-clause 11.10 below, the sole risk project, including data and information, is wholly owned by the sole risk parties in accordance with the provisions of the Contract, but the sole risk parties shall keep the other parties informed about the project. In the event that such project results in an increase of production of petroleum from the participation area, the portion of such increase which is available to the contractor under the Contract shall be owned solely by the sole risk parties. Each of them shall have the right and obligation to take in kind, and separately dispose of its proportional share of supplementary petroleum production.
- 11.10. Any party or parties which are not participating in the sole risk project may, by giving thirty (30) days' notice to the sole risk parties, become participants in such project, at any time after the sole risk parties have recovered from the supplementary petroleum production the following sums of money to which they are entitled on the project—

In the case of a project under clause 11.2.1 hereof,per cent (%) of the sole risk cost of such project, plus one hundred per cent (100%) of the cost of operating such well incurred by the sole risk parties:

In the case of a project under clause 11.2.2 hereof,per cent (%) of the sole risk cost of such project, plus one hundred percent (100%) of the cost of operating such facilities.

The value of the supplementary production to which a sole risk party is entitled shall be the market value in sales at arm's length, determined in accordance with clause 35 of the Contract.

From and after the election of any party or parties to become participants in such project, all relevant wells, facilities, equipment and other property appurtenant thereto shall be owned jointly by the participating parties and each of the participating parties shall be entitled to receive its proportional share of the supplementary petroleum production.

12. Confidentiality

12.1. All information related to the upstream petroleum operations shall be confidential and shall not be disclosed to a person other than a party except to—

12.1.1. an affiliate;

12.1.2. the Government and other public authorities to the extent necessary for the purpose of any applicable law;

12.1.3. a stock exchange to which a party is obliged to make disclosure;

12.1.4. contractors, consultants, legal counsels or arbitrators of a party, where disclosure is essential;

12.1.5. a bona fide prospective purchaser of an interest of a party in the Contract, but that purchaser shall undertake to treat that information as confidential;

12.1.6. a lender, where disclosure is essential; or

12.1.7. a person to whom disclosure has been agreed by the parties.

12.2. A party making a disclosure to a person described in clause 12.1.5 or 12.1.6 shall give ten (10) days' written notice thereof to the other parties.

12.3. The parties shall consult with each other prior to the release of any public statement or press release, and, except to the extent required by law, rule or regulation of any governmental authority or stock exchange, no party shall make any public statement or press release without the approval of all the other parties, which shall not be unreasonably withheld. The operator shall utilize its best efforts to co-ordinate all such public statements to the end that all parties may effect simultaneous press releases.

12.4. The obligations of the parties under this clause 12 are continuing obligations and any party ceasing to be a party to this Agreement shall remain bound by this clause until this

Agreement is no longer in force between any remaining parties and the Contract has expired.

13. Liability

- 13.1. The parties shall be severally liable in accordance with their respective participating interests to third parties.
- 13.2. Where the Government has nominated an appointee, as defined in the Contract, and the appointee defaults the Government shall be liable.
- 13.3. If, because of the operation of the joint and several liability provisions contained in the Contract, anyone of the parties hereto shall be required to pay in full to the Government or any other party, any sum which, if the liability were several, would be required separately from each of the parties or from one other party only, then the party(ies) shall notify forthwith and request immediate payment of the party(ies) proportionate share according to its participating interest. If within ten (10) days from receipt of said notice, the other party(ies) shall fail to make payment as provided above such party(ies) shall be in default and the provisions of clause 6 above shall apply, this being without prejudice to any other legal remedies available to the non-defaulting party(ies) against the defaulting party(ies).

14. Governing Law

- 14.1. This Participation Agreement shall be governed by and be construed in accordance with the laws of Kenya.

15. Arbitration

- 15.1. A dispute under this Participation Agreement shall be referred to arbitration in accordance with clause 53 of the Contract.

16. Force Majeure

- 16.1. In this clause 16, force majeure means an occurrence beyond the reasonable control of any of the parties which prevents any of them from performing their obligations under this Participation Agreement.

- 16.2. Where a party is prevented from performing an obligation under this Participation Agreement by force majeure, that party shall give written notice to the other parties, and the obligation of the affected party shall be suspended for the period of the force majeure.
- 16.3. The affected party shall promptly notify the other parties when the period of force majeure terminates.
- 16.4. No party may claim force majeure as a reason for the failure to timely pay any monies pursuant to this Participation Agreement.
- 16.5. Where any Party disputes the existence of force majeure, that dispute may be referred to arbitration as provided in clause 53 of the Contract.

17. Notices

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

To the Government
Ministry of Energy and Petroleum,
FAO Hon Cabinet Secretary
Kenyatta Avenue
P.O. Box 30582-00100,
Nairobi, Kenya.
Fax: +254-20-240910
Email: cs@energymin.go.ke

To the Contractor:

.....
.....

- 17.2. A notice shall be effective on receipt.
- 17.3. Any notice, if sent by facsimile, shall be deemed received by the party to whom it was addressed on the first business day after the day upon which the facsimile was received. Any notice, if by personal delivery to any party, shall be deemed to be received by the addressee on the date of delivery, if that date is a business day, or otherwise, on the next business day following. In the event that a notice sent by facsimile includes a request for confirmation of the receipt thereof, such a confirmation shall be sent no later than one (1) business day after receipt of the notice. The contractor may at any time and from time to time change its authorized representative or its address herein on giving the Government ten (10) days notice in writing to such effect.

18. Term

- 18.1. This Participation Agreement shall come into force on the participation date and shall remain in force until—
- 18.1.1. it is terminated by the written consent of all the parties;
- 18.1.2. all the Participating Interests are vested in one party; or
- 18.1.3. the expiration or termination of the Contract.
- 18.2. Before this Participation Agreement is terminated, there shall be a final accounting and settlement of the joint account.

19. Final Provisions

- 19.1. Headings are inserted in this Participation Agreement for convenience only and shall not affect the construction for interpretation hereof.
- 19.2. This Participation Agreement shall not be amended, modified or supplemented except by an instrument in writing signed by the parties.
- 19.3. Subject to the provisions hereof, this Participation Agreement shall inure to the benefit of and be binding upon the successors and assignees of the parties hereto and each of them respectively.

IN WITNESS WHEREOF, the parties hereto have signed this Participation Agreement

on the day and year first above written.

EXHIBIT “A”

ACCOUNTING PROCEDURE

Attached to and made a part of the Participation Agreement.

TABLE OF CONTENTS

SECTION I – GENERAL PROVISIONS

- 1.1. Interpretation.
- 1.2. Statements, billings and adjustments.
- 1.3. Advances and payments.
- 1.4. Audits.

SECTION II – CHARGEABLE COSTS, EXPENDITURE AND CREDITS

1. Section I – General Provisions

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

It is the intent of the parties that no party shall lose or profit by reason of its duties and responsibilities as either operator or as non-operator and that no duplicate charges to the joint account for the same work shall be made.

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

1.1 Interpretation

1.1.1 In this Exhibit—

- (i) “the Agreement” means the Participation Agreement of which this Exhibit forms part;
- (ii) “the Contract” means the production sharing contract to which the Agreement is attached;
- (iii) words and expressions defined in the Agreement, the Contract and its appendices have the meanings therein ascribed to them.

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

1.1.3 By mutual agreement between the parties, this accounting procedure attached to the Agreement may be revised from time to time by an instrument in writing signed by the parties.

1.2 Statements, Billings and Adjustments

1.2.1 The operator shall maintain financial accounts and records necessary to record in reasonable details the transactions relating to upstream petroleum operations under the Agreement which shall be prepared in accordance with generally accepted standards of the International Petroleum Industry. The operator shall upon request by a party furnish a description of its accounting classifications.

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

1.2.3 The operator shall bill the non-operator(s) on or before the last day of each month for their proportionate share of expenditure for the preceding month. Such billings shall be accompanied by statements of all charges and credits to the joint account, summarized in reasonable detail by appropriate accounting classifications indicative of the nature thereof, except that items of controllable material and unusual charges and credits shall be detailed.

1.2.4 The operator shall, upon request by non-operator(s), furnish a description of such accounting classifications.

1.2.5 Amounts included in the billings shall be expressed in the currency in which the operator's records are maintained. In the conversion of currencies when accounting for advances or payments in different currencies as provided for in clause 1.3, or any other currency transactions affecting operations under the Agreement, it is the intent that none of the parties shall experience an exchange gain or loss at the expense of, or to the benefit of, the other parties. It is agreed that any loss or gain to the joint account resulting from the exchange of currency required for operations under the Agreement or from the translations required, shall be charged or credited to the joint account. The operator shall furnish the parties with a

description of the procedure applied by the operator to accomplish said translation or exchange of currencies and provide currency exchange data sufficient to enable non-operator(s) to translate the billings to the currency of the non-operator(s) accounts.

1.2.6 Payment of billings by non-operator(s) shall not prejudice the right of any non-operator(s) to protest or question the correctness thereof; however, all bills and statements rendered to non-operator(s) by the operator during any year shall conclusively be presumed to be true and correct after twenty-four (24) months following the end of any such year, unless within the said twenty-four (24) month period a non-operator takes written exception thereto and makes claim on the operator for adjustment. No adjustment favourable to the operator shall be made unless it is made within the same prescribed period. The provisions of this sub-section shall not prevent adjustments resulting from a physical inventory of the joint property or from a third party claim.

1.3 Advances and Payments

1.3.1 If an operator so requests, non-operator(s) shall advance to the operator the non-operator(s)' share of estimated cash requirements for the succeeding month's operation in accordance with clause 6 of the Agreement. The operator shall make written request for the advance to non-operator(s) at least twenty (20) days prior to the first banking day of such succeeding month. The advance shall not be due and payable before the first banking day of the month for which the advance is requested. The request shall set out the funds in the currencies to be expended as estimated by the operator to be required. The non-operator(s) shall on or before the due date make corresponding advances in the currencies requested by depositing such funds to operator's account at a bank as may be from time to time designated by the operator.

1.3.2 Should the operator be requested to pay any large sums of money for operations under the Agreement, which were unforeseen at the time of providing the non-operator(s) with said monthly estimates of its requirements, the operator may make a written request to the non-operator(s) for special advances covering the non-operators' share of such payments. Non-operator(s) shall advance to operator their share of such advances within fifteen (15) days after date of such notice.

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

1.4 Audits

- 1.4.1 A non-operator, upon at least thirty (30) days' advance written notice to the operator and other non-operator(s), shall have the right at its sole expenses to audit the joint account and related records for any year or portion thereof within the twenty-four (24) month period following the end of such year; however, the conducting of an audit shall not extend the time for the taking of written exception to and the adjustment of accounts as provided for in clause 1.2.5. The operator shall make every reasonable effort to co-operate with the non-operators, and the non-operators shall make every reasonable effort to conduct audits in a manner which shall result in minimum inconvenience to the operator.
- 1.4.2 All adjustments resulting from an audit agreed between the operator and the non-operator conducting the audit shall be rectified promptly in the joint account by the operator and reported to the other non-operator. Any unresolved dispute arising in connection with an audit shall be referred to arbitration in accordance with clause 53 of the Contract.
- 1.4.3 Except as otherwise provided in the Contract, the cost of any audit or verification of the joint account that is for the benefit of all parties shall be chargeable to the joint account if the parties mutually agree.

2 Section 2 – Chargeable Costs, Expenditure and Credits

The operator shall charge the joint account for all those costs and expenditure necessary to conduct upstream petroleum operations under the Agreement pursuant to the provisions of clauses 3.1 to 3.11 of appendix “B” to the contract.

The operator shall credit the joint account for all the proceeds resulting from upstream petroleum operations under the Agreement pursuant to the provisions of clause 3.12 of appendix “B” to the Contract.