



**NIGERIA - SAO TOME AND PRINCIPE  
JOINT DEVELOPMENT AUTHORITY**

**MODEL PSC**

**MODEL PRODUCTION SHARING CONTRACT BETWEEN THE JOINT AUTHORITY AND  
(CONTRACTORS)**

**CLAUSE I**

**DEFINITIONS**

As used in this Contract, unless otherwise specified, the following terms shall have the respective meaning herein ascribed to them:

- (a) "Accounting Procedure" means the Rules and Procedures as set forth in Annex 1 and attached to and forming part of this Contract.
- (b) "Affiliate" means, a company or other entity that controls or is controlled by a Party to this Contract, or which is controlled by a company or other entity which controls a Party to this Contract, it being understood that control shall mean ownership by one company or entity of at least 50% of:
  - (i) the voting stock, if the company is a corporation issuing stock or;
  - (ii) the controlling rights or interests, if the entity is not a Corporation.
- (c) "Available Crude Oil" means, the Crude Oil won and saved from the Contract Area
- (d) "Barrel" means, a Quantity or Unit of Crude Oil, equal to forty-two (42) United States gallons at the temperatures of sixty degrees (60\*) Fahrenheit at normal atmospheric pressure.
- (e) "Budget" means, the cost estimate of items included in a Work Programme.
- (f) "Calendar Year" means, a period of twelve (12) months commencing from January 1 and ending the following December 31, according to the Gregorian Calendar.
- (g) "Capital Cost" means those expenditures incurred and obligations made in accordance with Article II.2 of the Accounting Procedures (Annex 1).
- (h) "Concession Rentals" means, the rents payable on the OPLS and OMLS under the Petroleum Regulations 2003.
- (i) "Contract Area" means, the area of the OPL or any OML derived therefrom.
- (j) "Contract Year" means, a period of twelve (12) consecutive months according to the Gregorian Calendar. from the Effective Date of this Contract or from the anniversary of the Effective Date.

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- (k) "Cost Oil" means, the quantum of Available Crude Oil allocated to the CONTRACTOR for recovery of Operating Cost after the allocation of Royalty Oil to the JDA.
- (l) "Crude Oil" means, the liquid petroleum which has been treated but not refined and includes condensates but excludes basic sediments and water.
- (m) "Development Area" means the extent of the whole area within the contract area capable of production from the deposit(s) identified in a commercial discovery and agreed upon by the JDA and the Contractor following such commercial discovery.
- (n) "Effective Date" means, the Date of this Contract.
- (o) "Gross Negligence" means any act or failure to act of any Senior Supervisory Personnel (whether sole, joint or concurrent) by any person or entity which was intended to cause, or which was in reckless disregard of or wanton indifference to, harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity.
- (p) "Lifting Procedure" means, the Rules and Procedures set forth in Annex 3 and attached to and forming part of this Contract.
- (q) "Natural Gas" means, all gaseous hydrocarbons produced in association with the Crude Oil or from reservoirs which produce mainly gaseous hydrocarbons.
- (r) "Oil Mining Lease" ("OML") means, a Lease granted by the JDA under the Petroleum Regulations 2003 of the Joint Development Zone, to a lessee to search for win, work, carry away and dispose of petroleum.
- (s) "Oil Prospecting License" ("OPL") means, a License granted by the JDA under the Petroleum Regulations 2003 of the Joint Development Zone, to a licensee to prospect for Petroleum.
- (t) "Operating Costs" means expenditures incurred and obligations made as determined in accordance with Article II of the Accounting Procedure.
- (u) "Parties" means, the JDA and the CONTRACTOR or Contractors as the case may be.
- (v) "Petroleum Operations" means, the winning or obtaining and transportation of petroleum or chargeable oil in JDZ by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of business carried on by the

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company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company;

- (w) "Tax" or "Petroleum Tax" means, the tax pursuant to the Tax Regulations 2003 of the JDZ.
- (x) "Proceeds" means, the amount in U.S Dollars determined by multiplying the Realizable Price by the number of Barrels of Available Crude Oil lifted by either Party.
- (y) "Profit Oil" means, the balance of Available Crude Oil after the allocation of Royalty Oil, Tax Oil, and Cost Oil.
- (z) "Realizable Price" means, the Price in U.S. Dollars per Barrel determined pursuant to Clause 10.
- (aa) "Royalty" means, the amount payable as Royalties to the JDA as defined in the Petroleum Regulations 2003 of the JDZ,.
- (ab) "Royalty Oil" means, the quantum of Available Crude which will generate an amount of Proceeds equal to the actual payment of Royalty and Concession Rentals.
- (ac) "Tax Oil" means, the quantum of Available Crude Oil allocated to the JDA which will generate an amount of Proceeds equal to the actual payment of Tax.
- (ad) "Work Programme" means, the statement itemizing the Petroleum Operations to be carried out in the Contract Area for the required period as defined in Clause 6.

Reference to the singular includes a reference to the plural and vice versa. The headings used in this Contract are for convenience only and shall not be used to construe or interpret the Contract.

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**CLAUSE 2**

**BONUSES**

- 2.1 **Signature Bonuses**  
The CONTRACTOR shall pay to the JDA, a Signature Bonus of the amount of \_\_\_\_\_ million US dollars within thirty (30) days after the signing of this Contract.
- 2.2 **Production Bonus**  
The CONTRACTOR shall pay to the JDA a Production Bonus of \_\_\_\_\_ million U.S. Dollars on attainment of cumulative production of \_\_\_\_\_ million Barrels of Crude Oil in the Contract Area from fields discovered after the Effective Date.
- 2.3 The Production Bonus provided for in this Clause 2.2 hereof shall be payable within 30 days of such production level being first attained.
- 2.4 The Signature and Production Bonuses provided for in this Clause 2 hereof shall not be recoverable as Cost Oil nor tax deductible.

**CLAUSE 3**

**SCOPE**

This Contract is a Production Sharing Contract, governed in accordance with the terms and provisions hereof. Petroleum Operations and provision of financial and technical requirements by the CONTRACTOR under this Contract shall be with the prior approval of or in prior consultation with the JDA as required under this Contract. The JDA, as holder of all rights in and to the Contract Area, hereby appoints and constitutes the CONTRACTOR, the exclusive company(ies) to conduct Petroleum Operations in the Contract Area.

- 3.1 During the term of this Contract the total Available Crude Oil shall be allocated to the Parties in accordance with the provisions of the Accounting Procedure Annex 1 and the Allocation Procedure Annex 2.
- 3.2 The CONTRACTOR together with Affiliates shall provide funds and bear the risk of Operating Costs and the risk required to carry out Petroleum Operations and shall therefore have an economic interest in the development of Crude Oil and Natural Gas.
- 3.3 The CONTRACTOR shall be engaged in Petroleum Operations pursuant only to the "Petroleum Regulations 2003" and "Tax Regulations 2003" of the JDZ.



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**CLAUSE 4**

**TERM**

- 4.1 (a) The term of this Contract, subject to clauses 19 and 20 herein, shall be for twenty eight (28) years from the Effective Date, inclusive of eight (8) years Exploration period under an OPL and twenty (20) years of Development and Production Period under an OML.
- (b) CONTRACTOR is authorized to conduct Exploration Operations for a period of eight (8) years from the Effective Date ("Exploration Period") as follows:
- (i) CONTRACTOR shall commence Operations not later than thirty (30) days after the Effective Date.
  - (ii) The eight (8) years Exploration Period shall be divided into three separate phases as follows:
    - Phase I - four (4) years from the Effective Date.
    - Phase II - From the end of Phase I until two (2) years after the end of Phase I.
    - Phase III - From the end of Phase II until two (2) years after the end of Phase II.
- (c) Provided CONTRACTOR has fulfilled its obligations relative to the current Phase of the Exploration Period as described in paragraphs 6.2 hereof, CONTRACTOR may enter the next Phase by notifying JDA in writing at least thirty (30) days before the end of the current Phase of its election to enter the next Phase.
- (d) At the end of 20 years of the Development and Production Period, the Contractor may seek renewal of the OML and if granted this contract shall at the option of the contractor be extended for the duration of such renewal.

**CLAUSE 5**

**RELINQUISHMENT OF AREAS**

- 5.1 Subject to Clauses 19 and 20, the duration of the OPL relating to this Contract shall be for a period of eight (8) years from the Effective Date.
- 5.2 The following relinquishment provisions shall apply:
- (a) 25% of the contract area shall be relinquished at the end of phase I of the OPL

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- (b) A further 25% of the Contract Area shall be relinquished upon converting to an OML.
- 5.3 Any relinquished area shall revert to the JDA.
- 5.4 The fifty percent (50%) of the Contract Area to be relinquished shall be agreed by both Parties.
- 5.5 The retained area (OML) has to be a single continuous unit
- 5.6 Notwithstanding the provisions of clauses 5.1 and 5.3 hereabove, the whole Contract Area, except the surface areas of any field in which petroleum has been discovered in Commercial Quantity either developed or undeveloped whether in production or not, shall revert to the JDA if the CONTRACTOR has failed to substantially execute the agreed Work Programme as contained in Clause 6.

**CLAUSE 6**

**MINIMUM WORK PROGRAMME AND EXPENDITURE**

- 6.1 Within two (2) months after the Effective Date and thereafter at least three (3) months prior to the beginning of each year the contractor shall prepare and submit for review and approval by the Management Committee, pursuant to Clause 7, a Work Programme and Budget for the Contract Area setting forth the Petroleum Operations which the contractor proposes to carry out during the ensuing year, or in case of first Work Programme and Budget, during the remainder of the current year. The Management Committee shall review and approve such Work Programme and Budget in accordance with the provisions of Annex 4 (The Management Committee) prior to submission of the Work Programme and Budget to the JDA.
- 6.2 The Minimum Work Commitments for each Phase are as follows:
  - (a) Phase I - During Phase I, CONTRACTOR shall:
    - (i) Drill \_\_\_\_\_ Exploration Wells on the Contract Area to the T/D established in the Approved Annual Work Program. Upon approval by the JDA, 3D seismic data equivalent to the cost of one well may be acquired by the contractor as a substitute for a second well.
    - (ii) Acquire and process seismic data within the Contract Area as CONTRACTOR deems necessary; provided that if CONTRACTOR elects to conduct a 3-D seismic survey prior to drilling the Exploration Wells provided in (i) above, then upon CONTRACTOR's notice to JDA of such



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election, the 3-D seismic survey shall be deemed to be a firm commitment under the Contract and in such case the Exploration Wells provided in (i) above shall be commenced within eighteen (18) months after CONTRACTOR's completion of interpretation of the 3-D seismic survey.

(iii) In any event all Exploration Wells referred to in this Section (i) of Clause 6.2 (a) shall be drilled within Phase I of the Exploration Period.

(b) Phase II – If CONTRACTOR elects to enter Phase II, then during Phase II CONTRACTOR shall drill \_\_\_\_\_ Exploration Wells on the Contract Area to the T/D established in the Approved Annual Work Program.

(c) Phase III – If CONTRACTOR elects to enter Phase III, then during Phase III CONTRACTOR shall drill \_\_\_\_\_ Exploration Wells on the Contract Area to the T/D established in the Approved Annual Work Program.

**6.3 Minimum Financial Commitment**

(a) CONTRACTOR shall be obligated to incur the following Minimum Financial Commitment:

Phase I -	US\$ _____ million
Phase II -	US\$ _____ million
Phase III -	US\$ _____ million

(b) If CONTRACTOR fulfills the Minimum Work Commitment set forth in (a) of Clause 6.2 for each Phase of the Exploration Period, then CONTRACTOR shall be deemed to have satisfied the Minimum Financial Commitment for each such Phase.

(c) If CONTRACTOR fails to complete the Minimum Work Commitment for any Phase and such Commitment has not been moved to the next Phase with the consent of JDA, then CONTRACTOR shall pay the JDA (i) the difference between the Minimum Financial Commitment for the then current Phase and the amount actually expended in Petroleum Operations for such Phase, or (ii) US\$ \_\_\_\_\_ million for each Exploration Well not drilled in the then current Phase, whichever is the greater amount, as liquidated damages in full and final settlement of all potential claims for breach of Contract and, subject to Clause 19.1 (b), the Contract shall terminate.

**6.4** CONTRACTOR shall be excused from any delay or failure to comply with the terms and conditions of Clause 6.2 and 6.3: (i) during any period of Force Majeure; or (ii) if the



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Management Committee denies CONTRACTOR permission to drill at a specific location. The time for performing any incomplete Minimum Work Commitments for any Phase and the term of this Contract shall be extended by the following periods in the circumstances set out in (i) and (ii) above:

- (a) With respect to (i) above, for the period during which Force Majeure is in existence;
  - (b) With respect to (ii) above, for a reasonable time to permit CONTRACTOR to specify another drilling location satisfactory to CONTRACTOR.
- 6.5 If any circumstance described in (i) or (ii) above is not resolved within the time periods specified above, then after consultation with JDA, CONTRACTOR shall be relieved of any unfulfilled obligations and the Contract shall terminate.
- 6.6 Any unfulfilled Minimum Work Commitment in any Phase may, with the written consent of JDA, be added to the Minimum Work Commitment for the next succeeding Phase.
- 6.7 Expenditures or work by CONTRACTOR over and above the Minimum Work Commitments or Minimum Financial Commitment for any Phase shall be credited against and reduce the Minimum Work Commitment or Minimum Financial Commitment for the next succeeding Phase.
- 6.8 For the purposes of determining whether an Exploration Well or an Appraisal Well has been drilled in accordance with the Minimum Work Commitment, such a well shall be deemed drilled if T/D is reached or if any one of the following events occurs prior to reaching T/D:
- a) A Discovery is made and further drilling may cause irreparable damage to such Discovery; or
  - b) Basement is encountered; or
  - c) JDA and CONTRACTOR agree the well is drilled for the purpose of fulfilling the obligation to complete the Minimum Work Commitment; or
  - d) Technical difficulties are encountered which, in the judgment of CONTRACTOR and in accordance with reasonable and prudent international oilfield practice, makes further drilling impracticable, uneconomic, unsafe or a danger to the environment.
- 6.9 The Exploration Period provided in Clause 6.2, may be extended for an additional 6 months to conclude the drilling and testing of any well for which operations have been

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commenced by the end of Phase III of such period; provided that if no Commercial Discovery of Petroleum has been declared by CONTRACTOR during the Exploration Period, as may be extended, this Contract shall terminate.

- 6.10 Within thirty (30) days from the execution of this contract, CONTRACTOR shall submit a Performance Bond from a reputable international institution to cover the amount of USD ..... million agreed in the Work Programme for up to the fourth (4th) year. Should the CONTRACTOR satisfy the conditions for continuing exploration after the fourth year pursuant to Clause 6.2, another Bond for USD .....million shall be submitted within thirty (30) days from the date of the grant of the extension by the Authority to cover the agreed Work Programme for the 5<sup>th</sup> to the 6<sup>th</sup> years. Should the Contractor be accorded to enter a third phase of Exploration, another Bond for USD .....million shall be submitted within thirty (30) days from the date of the grant of the 2<sup>nd</sup> extension, to cover the agreed Work Programme for the 7<sup>th</sup> to 8<sup>th</sup> years. The Performance Bond shall be on a reducing balance basis.
- 6.11 Within thirty days from the execution of this Contract, Contractor shall, where applicable, submit a Parental Guaranty from its mother company valid up to four (4) years after the term of this Contract.

**CLAUSE 7**

**MANAGEMENT COMMITTEE**

- 7.1 A Management Committee shall be established within thirty (30) days from the date of execution of this Contract for the purpose of providing orderly direction of all matters pertaining to the Petroleum Operations and Work Programme.
- 7.2 The powers and duties of the Management Committee are as stated in Annex 4.

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**CLAUSE 8**

**RIGHTS AND OBLIGATIONS OF THE PARTIES**

8.1 In accordance with this Contract, the JDA shall:

- (a) pursuant to Clause 13 jointly work with the contractor's professional staff in the Exploration, Petroleum Engineering, Facilities/Material, Legal, Finance and Environmental and Safety Departments and other areas in the Petroleum Operations
- (b) assist and expedite the contractor's execution of Petroleum Operations and Work Programmes including, but not limited to, assistance in supplying or otherwise making available all necessary visas, work permits, rights of way and easements as may be requested by the contractor (expenses incurred by the JDA at the contractor's request in providing such assistance shall be reimbursed to the JDA by the contractor in accordance with Clause 11 herein). This reimbursement will be made against the invoice and shall be in U.S. Dollars computed at the rate of exchange on the date the expense was incurred). The contractor shall include such reimbursements in the Operating Costs;
- (c) have the right to recover from contractor all costs approved by the Management Committee which are reasonably incurred for purposes of Petroleum Operations in the Contract Area;
- (d) have title to and shall keep copies of all data resulting from the Petroleum Operations including but not limited to geological, geophysical, engineering, well logs, completion, production, operations, status reports and any other data as the contractor may compile during the term hereof, provided however, that the contractor shall keep and use such original data during the term of this Contract and the JDA shall have access to such original data during the term of this Contract;
- (e) not exercise all or any of its rights or authority over the Contract Area in derogation of the rights of the contractor; and

8.2 In accordance with this Contract, the contractor shall:

- (a) pay to the JDA in a timely manner, all Bonuses, Royalties, Concession Rentals and Tax accruing out of the Petroleum Operations.

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- (b) provide all necessary funds for payment of Petroleum Operating Costs including, but not limited to, funds required to provide all materials, equipment, supplies, and technical requirements (including personnel) purchased, paid for or leased in Foreign Currency;
- (c) provide such other funds for the performance of Work Programmes including payments to third parties who perform services in accordance with terms contained therein as sub-contractors;
- (d) prepare Work Programmes and Budgets and carry out approved Work Programmes in accordance with internationally acceptable petroleum industry practices and standards with the objective of avoiding waste and obtaining maximum ultimate recovery of Crude Oil at minimum costs;
- (e) apply for conversion of the OPL to OML and shall exercise all the rights and comply with all the obligations of the Licensee or Lessee under the Petroleum Regulations 2003.
- (f) ensure that all leased equipment paid for in Foreign Currency and brought into the Joint Development Zone for Petroleum Operations are treated in accordance with the terms of the applicable leases;
- (g) have the right of ingress to and egress from the Contract Area and to and from facilities therein located at all times during the term of this Contract;
- (h) submit to the JDA for permanent custody copies of all geological, geophysical, drilling, well production, operating and other data and reports as it may compile during the term hereof and at the end of the Contract surrender all original data and reports to the JDA.
- (i) prepare estimated and final tax returns and submit same to the JDA on a timely basis in accordance with the Tax Regulations 2003.
- (j) have the right to lift in accordance with Annex 3 and freely export and to retain abroad the receipts from the sale of Available Crude Oil allocated to it here under;
- (k) prepare and carry out plans and programmes for industry training and education of nationals of Nigeria and São Tomé e Príncipe for all job classification with respect to Petroleum Operations in accordance with the Petroleum Regulations 2003 of the JDZ;
- (l) employ only such personnel as required to conduct the Petroleum Operations in a prudent and cost effective manner giving preference to nationals of Nigeria and São Tomé e Príncipe.;

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- (m) give preference to such goods which are available in Nigeria and São Tomé e Príncipe or services that can be rendered by nationals of Nigeria and São Tomé e Príncipe, provided they meet the specifications and the standards of the goods and services;
- (n) the contractor and its sub-contractors shall, as the case may be, pay all charges and fees as are imposed by law in Nigeria or São Tomé e Príncipe, subject to the provisions of this Contract. the contractor and its sub-contractors shall not be treated differently from any other companies and their sub-contractors engaged in similar Petroleum Operations in the Zone.
- (o) indemnify and hold the JDA harmless against all losses, damages, injuries, expenses, actions of whatever kind and nature including but not limited to legal fees and expenses suffered by the JDA or any third party where such loss, damage, injury is as the result of Gross Negligence of the contractor or its sub-contractors;
- (p) determine with the JDA aspects of any field development under this Contract and thereafter agree with the JDA on the development decision prior to the development of a field in the Contract Area.
- (q) not exercise all or any rights or authority over the Contract Area in derogation of the rights of the JDA.
- (r) In the event of any emergency requiring immediate operational action, take all actions it deems proper or advisable to protect the interests of the Parties and any costs so incurred shall be included in the Operating Costs. Prompt notification of any such action taken by the contractor and the estimated cost shall be given to the other Party within forty-eight (48) hours of becoming aware of the event,

**CLAUSE 9**

**RECOVERY OF OPERATING COSTS AND SHARING OF PETROLEUM PRODUCTION**

- 9.1 The allocation of Available Crude Oil shall be on a development area basis for Royalty Oil, Cost Oil and Tax Oil and on a contract area basis for Profit Oil. This allocation of Available Crude shall be in accordance with the Accounting procedure (Annex 1), the Allocation Procedure (Annex 2) and this Clause 9 as follows:
- (a) Royalty Oil shall be allocated to the JDA in such quantum as will generate an amount of proceeds equal to the actual Royalty payable during each month and the Concession Rental payable annually;

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- (b) Cost Oil shall be allocated to the contractor in such quantum as will generate an amount of proceeds sufficient for recovery of Petroleum Operations costs in the OPL and any OMLs derived therefrom. All costs will be recovered in U.S. Dollars through Cost Oil allocation.
- (c) Cost Oil shall not be more than 80% of gross proceeds less deduction of Royalty Oil in any accounting period.
- (d) Tax Oil shall be allocated to the JDA in such quantum as will generate an amount of proceeds equal to the Tax liability payable during each month;
- (e) Reasonable seismic acquisition and processing costs incurred on the relevant OPL prior to the Effective Date of this Contract shall be recoverable and count toward satisfying the minimum Work Programme.
- (f) Profit Oil, being the balance of Available Crude Oil after deducting Royalty Oil, Cost Oil, and Tax Oil, shall be allocated to each Party pursuant to the Accounting Procedure (Annex 1). Contractor's share of Profit Oil (P%) shall be calculated in accordance with the following sliding scale:

R < 1.2	P = 80
1.2 < R < 2.5	P = 25% + {[(2.5 - R) / (2.5 - 1.2) * (80% - 25%)]}
R > 2.5	P = 25

Where:  $R = \frac{\text{Cumulative Cost Recovery} + (\text{Cumulative Investor Profit Share})}{\text{Cumulative Capital Costs} + \text{Cumulative Operating Costs}}$

$P = \text{Contractor's share of profit in \%}$

- 9.2 The quantum of Available Crude Oil to be allocated to each Party under this Contract shall be determined at the fiscalisation point.
- 9.3 Each Party shall take in kind or cash, lift and dispose of its allocation of Available Crude Oil in accordance with the Lifting Procedure (Annex 3). In the event of any reconciliation, the records of the JDA shall be the official records.
- 9.4 Allocation of Royalty Oil and Tax Oil shall be applied towards the payment to the JDA Royalty, Concession Rentals, and Tax.
- 9.5 Either Party may at the request of the other, lift the other Party's Available Crude Oil pursuant to Clause 9.3 and the lifting Party within sixty (60) days shall transfer to the account of the non-lifting Party the proceeds of the sale to which the non-lifting Party is entitled. Overdue payments shall bear interest at the rate of one (1) month LIBOR plus two percent (2%).

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- 9.6 The contractor may purchase any portion of the JDA's allocation of Available Crude Oil from the Contract Area under the JDA's terms and conditions including valuation and pricing of the Crude Oil as applicable to third party buyers of the JDA's Crude Oil.
- 9.7 The Parties shall meet on a monthly or quarterly basis to reconcile all crude oil produced, allocated and lifted during the period in accordance with Article III (7) of Annex 3.

**CLAUSE 10**

**VALUATION OF PETROLEUM PRODUCTION**

- 10.1 Petroleum production sold to third parties shall be valued in accordance with the following procedures:
- (a) On the attainment of commercial production, each Party shall engage the services of an independent laboratory of good repute to determine the assay of the new Crude Oil.
  - (b) When a new Crude Oil stream is produced, a trial marketing period shall be designated which shall extend for the first six (6) months period during which such new stream is lifted or for the period of time required for the first ten (10) liftings, whichever is longer. During the trial marketing period the Parties shall:
    - (i) collect samples of the new Crude Oil upon which the assays shall be performed as provided in Clause 10.1 (a) above;
    - (ii) determine the approximate quality of the new Crude Oil by estimating the yield values from refinery modeling;
    - (iii) share in the marketing such that each Party markets approximately an equal amount of the new crude oil and to the extent that one Party lifts the other Party's allocation of Available Crude Oil, payments therefor, shall be made in accordance with Clause 9.5;
    - (iv) provide information to a third party who shall compile the information and maintain all individual Party information confidential with regards to the marketing of the new Crude Oil including documents which verify the sales price and terms of each lifting;
    - (v) apply the actual F.O.B. sales price to determine the value for each lifting which F.O.B. sales pricing for each lifting shall continue after the trial marketing period until the Parties agree to a valuation of the new Crude Oil

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but in no event longer than ninety (90) days after conclusion of the trial marketing period.

- (c) As soon as practicable but in any event not later than sixty (60) days after the end of the trial marketing period, the Parties shall meet to review the assay, yield, and actual sales data. Each Party may present a proposal for the valuation of the new Crude Oil. A valuation formula for the Realizable Price shall be agreed to by the Parties not later than 9 months after the first lifting. Such valuation formula shall be in accordance with the Realizable Price provisions established by the Management Committee. It is the intent of the Parties that such prices shall reflect the true market value based on arm's length transactions for the sale of the new Crude Oil. The valuation formula as determined hereinbefore (including the product yield values) shall be mutually agreed within thirty (30) days of the aforementioned meeting failing which, determination of such valuation shall be as provided in Clause 10.2.
- (d) Upon the conclusion of the trial marketing period, the Parties shall be entitled to lift their allocation of Available Crude Oil pursuant to Clause 9 and the Lifting Procedure.
- (e) When a new Crude Oil stream is produced from the Contract Area and is commingled with an existing Crude Oil produced which has an established Realizable Price basis then such basis shall be applied to the extent practicable for determining the Realizable Price of the new Crude Oil. The Parties shall meet and mutually agree on any appropriate modifications to such established valuation basis, which may be required to reflect any change in the market value of the Crude Oils as a result of commingling.

10.2 If in the opinion of either Party an agreed price valuation method fails to reflect the market value of a Crude Oil produced in the Contract Area, then such Party may propose to the other Party modifications to such valuation method once in every six (6) months but in no event more than twice in any calendar year. The Parties shall then meet within thirty (30) days of such proposal and mutually agree on any modifications to such valuation within thirty (30) days from such meeting, failing which, determination of such valuation shall be referred to a mutually agreed independent expert for his opinion.

10.3 Segregation of Crude Oils of different quality and/or grade shall be by agreement of the Parties taking into consideration, among other things, the operational practicality of segregation and the cost benefit analysis thereof. If the Parties agree on such segregation the following provisions shall apply:

- (a) Any and all provisions of the Contract concerning valuation of Crude Oil shall separately apply to each segregated Crude Oil produced;



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- (b) Each grade or quality of Crude Oil produced and segregated in a given year shall contribute its proportionate share to the total quantity designated in such year as Royalty Oil, Cost Oil, Tax Oil and Profit Oil.

**CLAUSE 11**

**PAYMENT**

- 11.1 The contractor shall make all payments to the JDA for which it is liable under this contract in United States dollars or some other currency agreed between the contractor and the JDA. Payments shall be made to a bank designated by the JDA. Where a payment is made in currency other than United States dollars, the exchange rate used to convert the United States dollars liability into that currency shall be the exchange rate set down on the day of payment by a bank designated by the JDA.
- 11.2 The JDA shall make all payments to the contractor in United States dollars or some other currency agreed between the contractor and the JDA. Where a payment is made in currency other than United States dollars, the exchange rate used to convert the United States dollar liability into that currency shall be the exchange rate set down on the day of payment by a bank designated by the JDA. Overdue payments shall bear interest at the annual rate of one (1) month LIBOR plus 2%.
- 11.3 Any payments required to be made pursuant to this contract shall be made within ten (10) days following the end of the month in which the obligation to make such payments is incurred.

**CLAUSE 12**

**TITLE TO EQUIPMENT/ABANDONMENT**

- 12.1 The contractor shall finance the cost of purchasing all equipment to be used in Petroleum Operations in the Contract Area pursuant to the Work Programme and such equipment shall become the property of the JDA on arrival in the Zone. The contractor and the JDA shall have the right to use such equipment exclusively for Petroleum Operations in the Contract Area during the Term of this Contract. Should the JDA desire to use such equipment outside the Contract Area, such use shall be subject to terms and conditions agreed by the Parties, provided that it is understood that Petroleum Operations hereunder shall take precedence over such use by the JDA. The contractor shall only lease equipment with the approval of the JDA, such approval not to be unreasonably withheld if such lease is in the best interest of the Petroleum Operations.

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- 12.2 The contractor's right to use such purchased equipment shall cease with the termination or expiration (whichever is earlier) of this Contract.
- 12.3 The provisions of Clause 12.1 with respect to the title of property passing to the JDA shall not apply to leased equipment belonging to local or foreign third parties, and such equipment may be freely exported from the Zone in accordance with the terms of the applicable lease.
- 12.4 Subject to Clause 12.2 hereof, all fixed assets purchased or otherwise acquired by the contractor for the purposes of Petroleum Operations hereunder shall become the property of the JDA. Upon termination of this Contract pursuant to Clause 19 the contractor shall hand over possession of such fixed assets to the JDA.
- 12.6 During the term of this Contract, any agreed sales of equipment, land, fixed assets, materials and machinery acquired for the purpose of the Petroleum Operations hereunder shall be conducted by the contractor on the basis of the highest price obtainable and the proceeds of such sale shall be credited to the Petroleum Operations.
- 12.7 The expenditure for abandonment will be estimated on the basis of technical studies by the Contractor to be agreed by the Management Committee
- (i) The agreed amount shall be set aside on a field by field basis commencing at the start of production and at a rate to be agreed by the Management Committee. Such rate shall take into account the relationship between the estimated total abandonment cost and the anticipated production revenues, to be reviewed on an annual basis as part of the budgeting process.
- (ii) If the Management Committee does not agree on the amount to be set aside within 120 days from commencement of production, the Contractor shall set aside a minimum of U\$ 0.20 per barrel on a quarterly basis per field. The Contractor shall place the funds to be set aside in an escrow account with a first class commercial bank.

**CLAUSE 13**

**EMPLOYMENT AND TRAINING OF PERSONNEL**

- 13.1 Each calendar year, the contractor shall submit a detailed programme for recruitment and training for the following calendar year in respect of its personnel from Nigeria and São Tomé e Príncipe in accordance with the Petroleum Regulations 2003.
- 13.2 Qualified nationals from Nigeria and/or São Tomé e Príncipe shall be employed in all non-specialized positions.

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- 13.3 Qualified nationals from Nigeria and or São Tomé e Príncipe shall also be employed in specialized positions such as those in exploration, drilling, engineering, production, environmental safety, legal and finance etc. The contractor shall have the right, subject to applicable laws, rules and regulations, to employ non-nationals of either of the States Parties in such specialized positions where qualified individuals are not available provided that the contractor shall recruit and train nationals from Nigeria and or São Tomé e Príncipe for such specialized positions such that the number of Expatriate staff shall be kept to a minimum.
- 13.4 Pursuant to Clause 8.1(b) competent professionals of the JDA shall be assigned to work with the contractor and such personnel and the contractor's personnel shall not be treated differently with regards to salaries and other benefits. The contractor and JDA shall mutually agree on the numbers of JDA's staff to be assigned to the Petroleum Operations. The costs and expenses of such JDA personnel shall be included in Operating Costs.
- 13.5 The parties shall agree on the organizational chart of the contractor which shall include nationals of Nigeria and São Tomé e Príncipe staff in key positions.
- 13.6 No Nigerian or Sao Tomean employed under this Contract shall be disengaged without the prior written approval of the JDA

**CLAUSE 14**

**BOOKS AND ACCOUNTS, AUDIT AND OVERHEAD CHARGES**

**14.1 Books and Accounts**

- (i) The contractor shall be responsible for keeping complete books of accounts consistent with modern petroleum industry and accounting practices and procedures. The statutory books and accounts of this Contract shall be kept in U.S. Dollars. All other books of accounts as the contractor may consider necessary shall also be kept in U.S. Dollars. Officials of the JDA and the contractor shall have access to such books and accounts. The accountants of JDA attached pursuant to Clause 13 shall participate in the preparation of same.
- (ii) All statutory books of account shall be kept at the registered address of the contractor in Nigeria or S. Tomé e Príncipe as the case may be.

**14.2 Audits**

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- (i) The JDA shall have the right to inspect and audit the accounting records relating to this Contract for any calendar year by giving thirty (30) days written notice to the contractor and the contractor shall facilitate the work of such inspection and auditing; provided however that such inspection and auditing shall be carried out within two (2) calendar years following the end of the calendar year in question, and if not, the books and accounts relating to such calendar year shall be deemed to be accepted by the Parties as satisfactory. Any exception must be made in writing within ninety (90) days following the end of such audit and failure to give such written notice within such time shall establish the correctness of the books and accounts.
- (ii) The JDA may undertake the inspection and audit in Clause 14.2(i) above either through its own personnel or through a qualified firm of chartered accountants registered in Nigeria, Sao Tomé and Principe or elsewhere appointed for the purpose by the JDA; provided, however, that the transportation and per diem costs of the JDA's own personnel shall be borne by the Contractor as general administrative costs and shall be cost recoverable. For the qualified firm of chartered accountants, the costs shall be borne by the JDA.
- (iii) Notwithstanding that the said period of twenty four (24) months may have expired, if the Contractor has been found guilty of Gross Negligence, the JDA shall have the right to conduct further audit to the extent required to investigate such Gross Negligence in respect of any earlier periods; provided, however, that the costs of such investigations shall be borne by the JDA.

**14.2 Materials**

The contractor shall maintain physical and accounting controls of materials in stock in accordance with general practice in the international petroleum industry. The contractor shall make a total inventory at least once in a calendar year and shall give the JDA a four (4) week written notice prior to such inventory. The JDA and or its external auditors shall be entitled to observe such inventory. The JDA may however carry out partial or total check of such inventories at its own expense, whenever it considers necessary, provided such exercise does not unreasonably disrupt Petroleum Operations.

**14.3 Home Office Overhead Charges**

The contractor shall include the following percentages on total annual capital expenditure as overhead charges in calculating total operating costs.

<b>Expenditure Tranche (\$ Million)</b>	<b>% Capex of Operating Costs</b>
< 200	1.00
= or > 200 and < 400	0.75
= or > 400 and < 500	0.50
= or > 500	0.00

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**CLAUSE 15**

**ROYALTY AND TAXES**

**15.1 Royalty**

Royalty rates shall be as provided in the Petroleum Regulations 2003.

**15.2 Tax**

(a) Tax shall be in accordance with the Tax Regulations 2003.

(b) The Tax rate applicable to the Contract Area shall be 50% flat rate of the chargeable profits for the duration of the Contract.

15.3 The contractor shall pay to the JDA, all Royalty, Concession Rentals and Tax out of available Crude Oil allocated to it under Clause 9.1 of this Contract.

15.4 The Realizable Price established in accordance with Clause 10 of this Contract shall be used in determining the amount payable on Royalty and Tax in respect of Crude Oil produced and lifted pursuant to this Contract. The parameters for new Crude Oil streams produced from the Contract Area shall also be determined in accordance with the provisions of Clause 10 of this Contract.

**CLAUSE 16**

**INSURANCE**

16.1 All property acquired under the provisions of this Contract shall be adequately insured with an insurance company of good repute by the contractor in consultation with the JDA, in the names of the Parties with limits of liability not less than those required by good international petroleum industry practice. The premium for such policies shall be included in Operating Costs. All policies shall name the JDA as a co-insured with a waiver of subrogation rights in favor of the Contractor

16.2 In case of loss or damage to property, indemnification paid by the insurance companies shall be entirely received by the contractor for Petroleum Operations. The contractor shall determine whether the lost or damaged property should be repaired replaced or abandoned. If the decision is to repair or replace, the contractor shall immediately replace or repair such lost or damaged property. Any excess cost of repair or replacement above the amount reimbursed by the insurance companies shall be regarded as Operating Costs. If the cost of repair is less than the amount reimbursed by insurance companies, the difference shall be deducted from operating costs. If the

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decision is to neither repair nor replace then the proceeds of any coverage shall be credited to Operating Cost. In the event that the loss or damage is attributable to the contractor's Gross negligence, the excess cost of replacement or repair shall not be reimbursed as Operating Cost.

- 16.3 The contractor shall take out and maintain an insurance policy covering any and all damages caused to third parties as a direct or indirect result of the contractor's Petroleum Operations.
- 16.4 All insurance policies under this Clause 16 shall be based on good international petroleum industry practice, and shall be taken out in either Nigeria or S. Tomé e Príncipe except for those concerning risks for which the contractor cannot obtain coverage in which shall be taken out abroad, to the extent required by law.
- 16.5 In entering into contracts with any sub-contractor for the performance of Petroleum Operations, the contractor shall require such sub-contractor to take out adequate insurance in accordance with Clauses 16.1 and 16.3 above and to properly indemnify the JDA and the contractor for any damage done and to properly indemnify and hold the JDA and the contractor harmless against claims from third parties.
- 16.6 The contractor, shall maintain other insurance policies required under the laws of Nigeria and S. Tomé e Príncipe..

**CLAUSE 17**

**CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS**

- 17.1 The contractor and the JDA shall keep information furnished to each other in connection with Petroleum Operations and all plans, maps, drawings, designs, data, scientific, technical and financial reports and other data and information of any kind or nature relating to Petroleum Operations including any discovery of Petroleum as strictly confidential, for all times, and shall ensure that their entire or partial contents shall under no circumstances be disclosed in any announcement to the public or to any third party without the prior written consent of the other Party.

The provisions of this Clause 17 shall not apply to disclosure to:

- (a) Subcontractors, Affiliates, assignees, auditors, financial consultants or legal advisers, provided that such disclosures are required for the effective performances of the aforementioned recipients' duties related to Petroleum Operations;
- (b) Comply with statutory obligation or the requirements of any governmental agency or the rules of a stock exchange on which a Party's stock is publicly traded in

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which case the disclosing Party will notify the other Party of any information so disclosed prior to such disclosure.

- (c) Financial institutions involved in the provision of finance for the Petroleum Operations hereunder provided, in all such cases, that the recipients of such data and information agree in writing to keep such data and information strictly confidential.
  - (d) A third party for the purpose of negotiating an assignment of interest hereunder provided such third party executes an undertaking to keep the information disclosed confidential.
- 17.2 The Parties shall take necessary measures in order to make their employees, agents, representatives, proxies and sub-contractors comply with the same obligation of confidentiality provided for in this Clause 17.
- 17.3 The provisions of this Clause 17 shall terminate five years after the expiration of this Contract.
- 17.4 The Parties shall use best endeavors to ensure that their respective servants, employees, agents and sub-contractors shall not make any reference in public or publish any notes in newspapers, periodicals or books nor divulge, by any other means whatsoever, any information on the activities under the Petroleum Operations, or any reports, data or any facts and documents that may come to their knowledge by virtue of this contract, without the prior written consent of the other Party.
- 17.5 The contractor shall submit to the JDA all statutory reports and information for review.

**CLAUSE 18**

**ASSIGNMENT**

- 18.1 The contractor shall not sell, assign, transfer, convey or otherwise dispose of part or all of its rights and interest under this Contract to other parties, including Affiliates, without a prior written notice to and without prior written consent of the JDA which consent shall not be unreasonably withheld
- 18.2 If the written consent by the JDA is given, the assigning contractor Party shall be relieved of its liability to the extent of the assignment of its rights and obligations under this Contract.
- 18.3 Any request for consent to assign or dispose of as, aforesaid, made by the contractor to the JDA shall include the deed of assignment and other relevant information relating to

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financial and corporate standing of the assignee, and its capability to contribute to the Petroleum Operations under this Contract.

**CLAUSE 19**

**TERMINATION**

- 19.1 The JDA shall be entitled to terminate this Contract with the Contractor if any of the following events occur.
- (a) The contractor defaults in the performance of any of its obligations set forth in Clause 8 herein.
  - (b) The contractor has failed to substantially execute the minimum Work Programmes and/or has failed to meet the financial commitments described in Clause 6.3.
  - (c) The contractor assigns its rights and interests under this Contract without a prior written notice and prior written consent of the JDA.
  - (d) The contractor is adjudged insolvent or bankrupt by a Court of competent jurisdiction in either Nigeria or S. Tomé e Príncipe.
  - (e) The contractor liquidates or terminates its corporate existence
  - (f) Warranties made by the contractor under Clause 23 herein are found to be untrue when they were made.
- 19.2 Termination for any of the events specified in Clause 19.1 (d) and (e) above, shall be with immediate effect and the JDA may by written notice to the Contractor declare the Contract terminated. Termination as to one contractor Party shall not constitute termination as to the other Contractor Party(ies).
- 19.3 If following a contractor's default the JDA cancels a contract held jointly by more than one contractor, the JDA shall offer a new contract for that area to any contractor(s) not in default, as far as possible on similar terms to those of the previous contract. The offer may be subject to:
- (a) a requirement that the offeree(s) remedy any consequences of the default;
  - (b) the acceptance by the offeree(s) of a suitable replacement contractor identified by or acceptable to the JDA.



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- 19.4 This Article is without prejudice to any obligations to which the other contractor(s) may be liable under the original Production Sharing Contract.
- 19.5 If the cause for termination is an event specified in Clause 19.1(a) the JDA shall give written notice thereof to the contractor to remedy such default within a period not more than 30 days of receipt of JDA's notice or such additional days as the JDA deems appropriate in the circumstances. If upon the expiration of the said period such default has not been remedied or removed, the JDA may by written notice to the contractor declare the Contract terminated.
- 19.6 Except such rights of the contractor that may have accrued prior to the date of termination, the contractor's rights shall cease upon the termination of this Contract. Such termination shall take place without prejudice to any other rights or remedies, which may be available to either Party.
- 19.7 Without prejudice to all other rights of the JDA herein contained, the contractor shall upon the termination of this Contract permit inspection, copying and auditing of its accounts and records for the Petroleum Operations.
- 19.8 Upon completion of the stipulated work programme and minimum financial commitment, the contractor shall have the right, at its sole discretion to relinquish its rights and to terminate this Contract without further obligations or liabilities upon giving a 90 day notice to the JDA.
- 19.9 This Contract shall terminate if no Petroleum is found in the Contract Area after eight years from the Effective Date and no OML is issued.

**CLAUSE 20**

**FORCE MAJEURE**

- 20.1 Any failure or delay on the part of either party in the performance of its obligations or duties under this Contract shall be excused to the extent attributable to force majeure. A force majeure situation includes delays, defaults or inability to perform under this contract due to any event beyond the reasonable control of either Party. Such event may be, but is not limited to, any act, event, happening, or occurrence due to natural causes; and acts or perils of navigation, fire, hostilities, war (declared or undeclared), blockage, labor disturbances, strikes riots, insurrection, civil commotion, quarantine restrictions, epidemics, storms, floods, earthquakes, accidents, blowouts, lightning, and, acts of or orders of Government.

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- 20.2 If operations are delayed, curtailed or prevented by force majeure, then the time for carrying out the obligation and duties thereby affected, and rights and obligations hereunder, shall be extended for a period equal to the period of such delay
- 20.3 The Party who is unable to perform its obligations as a result of the force majeure shall promptly notify the other Party thereof not later than forty-eight (48) hours after the establishment of the commencement of the force majeure, stating the cause, and both parties shall do all that is reasonably within their powers to remove such cause.
- 20.4 The contractor's failure or inability to find Crude Oil in commercial quantity for reasons other than as specified in Clause 20.1 hereof shall not be deemed force majeure.

**CLAUSE 21**

**LAWS AND REGULATIONS**

- 21.1 This Contract shall be governed by and construed in accordance with the applicable Laws in the Joint Development Zone.
- 21.2 Subject to principles of International Law and commercial transactions no term or provision of this Contract including the agreement of the parties to submit to arbitration hereunder, shall prevent or limit the JDA from exercising its sovereign rights.
- 21.3 All affairs related to this Contract shall be conducted in the language in which this Contract was drawn up.

**CLAUSE 22**

**NATURAL GAS**

- 22.1 If the contractor discovers a commercially viable quantity of Natural Gas, the contractor shall have the right to develop, commercialize, recover the costs and share in the profits of a development on terms to be mutually agreed and which shall be consistent with the principles, mechanics and intent of the Petroleum Regulations, Tax Regulations and this Contract.
- 22.3 Notwithstanding the provisions of Clause 22.1 hereof, the contractor may utilize, at no cost any proportion of the produced Natural Gas required as fuel for production operations; gas recycling, gas injection, gas lift, or any other Crude Oil enhancing recovery schemes, stimulation of wells necessary for maximum Crude Oil recovery in the field discovered and developed by the contractor and such usage shall be with prior written consent of the JDA, which consent shall not be unreasonably withheld.

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- 22.4 The attainment of recovery of Crude Oil through an efficient, economic and technically acceptable method shall always be paramount in all decisions regarding associated Natural Gas. However, prior to the commencement of production of Crude Oil from the Contract Area, the contractor shall submit to the JDA, a programme for the utilization of any Natural Gas associated with Crude Oil which has been discovered from the Contract Area.

**CLAUSE 23**

**REPRESENTATIONS AND WARRANTIES**

- 23.1 In consideration of the JDA entering into this Contract, the Contractor warrants as follows:
- (a) The Contractor has the power to enter into and perform this Contract and has taken all necessary action to execute, deliver and perform the Contract in accordance with the terms herein contained and has been granted all concessions, licenses, permits and authorization on Petroleum Operations.
  - (b) The execution, delivery and performance of this Contract by the Contractor will not contravene in any respect, any of the provisions of:
    - (1) any law or regulations or order of any Governmental Authority, Agency or Court applicable to or by which the Contractor may be bound;
    - (2) any mortgage, contract or other undertaking or instrument to which the Contractor is a party or which is binding upon it or any of its respective revenues or assets.
  - (c) Full disclosure has been made to the JDA prior to the Effective Date of all facts in relation to the Contractor and its financial condition and affairs as are material and ought properly to be made known to the JDA.
  - (d) That the Contractor, together with its Affiliates has the funds both in foreign and local currencies to carry out Petroleum Operations under this Contract.
  - (f) The representations and warranties set out above shall remain for the duration of this Contract.

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**CLAUSE 24**

**CONCILIATION AND ARBITRATION**

- 24.1 Should there be a difference or dispute between the parties concerning the interpretation or performance of this contract such that this dispute cannot be resolved by mutual consent, the parties shall refer the matter to an independent expert.
- 24.2 Where an independent expert is used, the JDA and the Contractor shall furnish the expert with all written information which he may reasonably require for his opinion. The cost of the services of the expert, if appointed, shall be shared equally between JDA and the Contractor.
- 24.3 If the difference or dispute cannot be settled by amicable agreement or through an independent expert, then either Party may serve on the other a demand for arbitration.
- 24.4 Within thirty (30) days of such demand being served, each Party shall appoint an arbitrator and the two arbitrators thus appointed shall within a further thirty (30) days appoint a third arbitrator. If the arbitrators do not agree on the appointment of such third arbitrator, or if either Party fails to appoint the arbitrator to be appointed by it, such arbitrator or third arbitrator shall be appointed in accordance with the rules of UNCITRAL Arbitration Rules administered by the AACCL Centre for International Commercial Dispute Settlement, Lagos on the application of the other Party (notice of the intention to apply having been duly given in writing by the applicant Party to the other Party). The third arbitrator when appointed shall convene meetings of the arbitration panel and act as chairman thereat. If an arbitrator refuses or neglects to act or is incapable of acting or dies, a new arbitrator shall be appointed in his place and the above provisions of appointing arbitrators shall govern the appointment of any such new arbitrator or arbitrators.
- 24.5 The arbitration award shall be binding upon the Parties and the judgement upon the award rendered by the arbitrators may be entered in a court having jurisdiction thereof. Each Party shall pay its own attorney's fees and costs no matter which side prevails. This arbitration shall be determined using the rules of the UNCITRAL Arbitration Rules in effect at the time of the arbitration.
- 24.6 The venue of the arbitration shall be Lagos.

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**CLAUSE 25**

**EFFECTIVE DATE**

- 25.1 This Contract shall come into force and effect on the Effective Date.
- 25.2 This Contract shall not be amended or modified in any respect except by mutual consent, in writing, of the Parties hereto.

**CLAUSE 26**

**REVIEW/RE-NEGOTIATION OF CONTRACT AND FISCAL TERMS**

- 26.1 The Parties agree that the commercial terms and conditions of this contract are based on the existing fiscal terms in accordance with the provisions of the Petroleum Regulations dated the 4<sup>th</sup> of April, 2003. If such fiscal terms are changed, the Parties agree subject to Clause 26.3, to review the terms and conditions of this contract affected by such changes to align such terms and conditions with the fiscal terms.
- 26.2 The terms of this contract have been negotiated and agreed having due regard to the terms of the Tax Regulations dated the 4<sup>th</sup> of April, 2003.
- 26.3 If at any time or from time to time, there is a change in legislation or regulations which materially affect the commercial benefit afforded the Contractor under this Contract, the Parties will consult each other and shall agree to such amendments to this contract as are necessary to restore as near as practicable such commercial benefits which existed under the contract as of the effective date.

**CLAUSE 27**

**OPERATOR**

The contractor under this contract comprises of the following entities whose participating interest is stated below:

..... is the lead Contractor Party and is designated the Operator under the Contract to execute on contractors' behalf, the Petroleum Operations in the Contract Area.

The Operator, on behalf of the contractor shall have the exclusive control and administration of the Petroleum Operations. The Operator, on behalf of the contractor and within the limits defined by the Management Committee and this Contract, shall



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execute contracts, incur expenses, make commitments, and implement other actions in connection with the Petroleum Operations.

**CLAUSE 28**

**CONFLICT OF INTERESTS**

- 28.1 Each Party represents and warrants that it did not engage any person, firm or company as a commission agent for purposes of this Contract and that it has not given or offered to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of significant value, as an inducement or reward for doing or forbearing to do any action or take any decision in relation to the Contract, or for showing or forbearing to show favour or disfavour to any person in relation thereto.
- 28.2 Each Party further represents that it shall not either directly or indirectly give to any person, director, employee, representative or agent of the other Party or any government official any commission, fee rebate, gift or any entertainment of significant cost or value, and shall not procure the services of any commission agent or other third party to give any such gift, fee, reward, concession, bribe, entertainment of significant cost or value or anything of similar nature, for the purpose of influencing or inducing positively or adversely the award of the Contract or doing any act in connection with the Contract.

**CLAUSE 29**

**NOTICES**

- 29.1 Any notice required to be given by each Party to the other shall be in writing and shall be deemed to have been duly given and received if sent by fax, e-mail (confirmed by mail) or registered post to, or hand delivered at the following registered offices:

The Nigeria – S. Tomé e Príncipe :  
Joint Development Authority,  
Plot 1101 Aminu Kano Crescent, Wuse II, Abuja

Fax: .....

e-mail Address: .....

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THE CONTRACTOR:

(named entities)

THE MANAGING DIRECTOR

.....

29.2 Each Party shall notify the other promptly of any change in the above address.

IN WITNESS WHEREOF THE PARTIES herein have caused this agreement to be executed the day and year first above written.

SIGNED AND DELIVERED for and on behalf of  
The Nigeria – S. Tomé e Príncipe Joint Development Authority

By: .....

Name: .....

Designation:

In the presence of:

Name: .....

Signature: .....

Designation: .....

Address: .....



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SIGNED AND DELIVERED for and on behalf of

By: .....

Name: .....

Designation: MANAGING DIRECTOR

In the presence of:

Name: .....

Signature: .....

Designation: .....

APPROVED BY THE Joint Ministerial Council

This ..... Day of .....

Signature: .....

Name: .....

Signature: .....

Name: .....



## ANNEX 1

### TO THE PRODUCTION SHARING CONTRACT BETWEEN THE JDA AND CONTRACTORS

#### ACCOUNTING PROCEDURE

##### Article I

##### **General Provisions**

1. Definitions

This accounting procedure attached to and forming a part of the Contract is to be followed and observed in the performance of either Party's obligations there under. The defined terms appearing herein shall have the same meaning as is ascribed to them in the Contract.

2. Accounts and Statements

CONTRACTOR's accounting records and books shall be kept as provided under Clause 14.1 of the Contract in accordance with generally accepted and recognized accounting standards, consistent with modern petroleum industry practices and procedures. All original books of accounts together with original supporting documentation shall be kept and maintained at the Registered Offices of the CONTRACTOR in Nigeria or Sao Tome and Principe.

3. Others

In the event of a conflict of the terms of this procedure and the Contract the terms of the Contract shall apply.

##### Article II

##### Operating Costs

Operating Costs shall be defined as all costs, expenses paid and obligations incurred in carrying out Petroleum Operations and shall consist of (1) Non-capital costs, and (2) Capital costs.

1. Non-capital Costs

Non-capital costs mean those Petroleum Operating Costs incurred that are chargeable to the current year's operations. Non-capital costs include, but are not limited to the following:

- (a) General office expenses - office, services and general administration services pertaining to Petroleum Operations including but not limited to, services of legal, financial, purchasing, insurance, accounting, computer, and personnel department; communications, transportation, rental of specialized equipment, scholarships, charitable contributions and educational awards.
- (b) Labour and related costs - salaries and wages, including bonuses, of employees of the CONTRACTOR who are directly engaged in the conduct of Petroleum Operations, whether temporarily or permanently assigned, irrespective of the location of such employee including but not limited to, the costs of employee benefits, customary allowance and personal expenses incurred under the CONTRACTOR'S practice and policy, and amounts imposed by applicable Governmental authorities which are applicable to such employees.

These costs and expenses shall include:

- (i) Cost of established plans for employee group life insurance, hospitalization, - pension, retirement, savings and other benefit plans;
  - (ii) Cost of holidays, vacations, sickness and disability benefits
  - (iii) Cost of living, housing and other customary allowances;
  - (iv) Reasonable personal expenses, which are reimbursable under the CONTRACTOR'S standard personnel policies;
  - (v) Obligations imposed by Governmental authorities;
  - (vi) Cost of transportation of employees, other than as provided in paragraph (c) below, as required in the conduct of Petroleum Operations; and
  - (vii) Charges in respect of employees temporarily engaged in Petroleum Operations, which shall be calculated to reflect the actual costs thereto during the period or periods of such engagement.
- (c) Employee relocation costs - costs for relocation, transportation and transfer of employees of CONTRACTOR engaged in Petroleum Operations including but not limited to the cost of freight and passenger service of such employees' families and their personal and household effects together with meals, hotel and other expenditures related to such transfer incurred with respect to:
- (i) employees of the CONTRACTOR within Nigeria or Sao Tome and Principe including expatriate employees, engaged in Petroleum Operations;
  - (ii) transfer to Nigeria or Sao Tome and Principe for engagement in Petroleum Operations;
  - (iii) relocation costs and other expenses incurred in the final repatriation or transfer of the CONTRACTOR'S expatriate employees and families in the case of such employees' retirement, or separation from the CONTRACTOR, or in case of such employees' relocation to the CONTRACTORS' point of origin. Provided that relocation costs incurred in moving an expatriate employee and his family beyond point of origin, established at the time of his transfer to Nigeria or S. Tome and Principe, will not be recoverable as Operating Cost .
  - (iv) Nigerian or Santomean employees on training assignments outside the Contract Area.
- (d) Services provided by third parties - cost of professional, technical, consultation, utilities and other services procured from third party sources pursuant to any contract or other arrangements between such third parties and the CONTRACTOR for the purpose of Petroleum

Operations.

- (e) Legal expenses - All costs or expenses of handling, investigating, asserting, defending, and settling litigation or claims arising out of or relating to Petroleum Operations or necessary to protect or recover property used in Petroleum Operations including, but not limited to, legal fees, court costs, arbitration costs, cost of investigation or procuring evidence and amount paid in settlement or satisfaction of any such litigation, arbitration or claims in accordance with the provisions of this Contract.
- (f) Head office overhead charge – parent company overhead in the amount specified in Clause 14.3 of the Contract.
- (g) Insurance premiums and settlements - premiums paid for insurance normally required to be carried for the Petroleum Operations together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments, and other expenses, including fees and deductibles relating to the CONTRACTOR'S performance under the Contract.
- (h) Duties and taxes - all duties and taxes, fees and any Government assessments, including but not limited to, gas flare charges, licence fees, custom duties, and any other than Royalty, Tax and Concession Rentals.
- (i) Intangible drilling costs - expenditure for labour, fuel, repairs, maintenance, hauling, and supplies and materials (not including, casing and other well fixtures) which are for or incidental to drilling, cleaning, deepening or completion wells or the preparation thereof incurred in respect of:
  - (i) determination of well locations, geological, geophysical, topographical and geographical surveys for site evaluation preparatory to drilling including the determination of near surface and near sea bed hazards,
  - (ii) cleaning, draining and leveling land, road-building and the laying of foundations,
  - (iii) drilling, shooting, testing and cleaning wells,
  - (iv) erection of rigs and tankage assembly and installation of pipelines and other plant and equipment required in the preparation or drilling of wells producing Crude Oil.
- (j) Geological and geophysical surveys - labour, materials and services used in aerial, geological, topographical, geophysical and seismic surveys incurred in connection with exploration excluding however the purchase of data from the JDA.
- (k) Operating expenses - labour, materials and services used in day to day oil well operations, oil field production facilities operations, secondary recovery operations, storage, transportation, delivering and marketing operations; and other operating activities, including repairs, well workovers, maintenance and

related leasing or rental of all materials, equipment and supplies.

- (l) Exploration, appraisal and development drilling - all expenditures incurred in connection with exploration drilling, and the drilling of the first two appraisal wells in a particular field, and drilling of development wells which are dry, including costs incurred in respect of casing, well cement and well fixtures.
- (m) Abandonment - a provision for all expenditures incurred in connection with the plugging of wells; the removal and disposal of equipment and facilities including well heads, processing and storage facilities, platforms, pipelines, transport and export facilities, roads, buildings, wharves, plants, machinery, fixture, the restoration of sites and structures including the payment of damages to property lessors.

2. Capital Costs

Capital Costs means, without limitations, expenditures, which are subject to a Capital Allowance under the Tax Regulations 2003. Such expenditures normally have a useful life beyond the year incurred and include but not limited to the following:

- (a) Plant expenditures - expenditures in connection with the design, construction, and installation of plant facilities (including machinery, fixtures, and appurtenances) associated with the production, treating, and processing of Crude oil (except such costs properly allocable to intangible drilling costs) including offshore platforms, secondary or enhanced recovery systems, gas injection, water disposal, expenditures for equipment, machinery and fixtures purchased to conduct Petroleum Operations such as office furniture and fixtures, office equipment, barges, floating crafts, automotive equipment, petroleum Operational aircraft, construction equipment, miscellaneous equipment.
- (c) Pipeline and storage expenditure - expenditures in connection with the design, installation, construction of pipeline, transportation, storage, and terminal facilities associated with Petroleum Operations including tanks, metering, and export lines.
- (d) Building expenditure - expenditures incurred in connection with the construction of building, structures or works of a permanent nature including workshops, warehouses, offices, roads, wharves, furniture and fixtures related to employee housing and recreational facilities and other tangible property incidental to construction.
- (e) Drilling expenditures - expenditures for tangible goods in connection with drilling wells such as casing, tubing, surface and sub-surface production equipment, flowlines, instruments; costs incurred in connection with acquisition of rights over the Contract Area.
- (f) Material inventory - cost of materials purchased and maintained as inventory items solely for petroleum Operations subject to the following provisions:
  - (i) The CONTRACTOR shall supply or purchase any materials required for the Petroleum Operations, including those required in the foreseeable

future. Inventory stock levels shall take account of the time necessary to provide the replacement, emergency needs and similar considerations.

- (ii) Materials purchased by the CONTRACTOR for use in the Petroleum Operations shall be valued so as to include invoice price (less prepayment discounts, cash discounts, and other discounts if any) plus freight and forwarding charges between point of supply and point of destination but not included in the invoice price, inspection costs, insurance, custom fees and taxes, on imported materials required for this contract.
- (iii) Materials not available in Nigeria or Sao Tome and Principe supplied by the CONTRACTOR or from its Affiliates stocks shall be valued at the current competitive cost in the international market.
- (iv) The CONTRACTOR shall maintain physical and accounting controls of materials in stock in accordance with general practice in the international petroleum industry. The CONTRACTOR shall make a total inventory at least once a year to be observed by the JDA and its external auditors. The JDA may however carry out partial or total inventories at its own expenses, whenever it considers necessary, provided such exercise does not unreasonably disrupt Petroleum Operations.

### **Article III**

#### **Computation of Royalty, Concession Rentals and PPT**

The CONTRACTOR shall compute the amount of Royalty and Concession Rentals payable by the JDA pursuant to Clause 15 of this Contract. Such amounts shall be computed as provided in the Petroleum Regulations 2003, the Tax Regulations 2003 and the provisions of this Contract as stated in Article IV hereof, the CONTRACTOR shall compute the Royalty payment for remittance to the JDA in a given month based on the prevailing fiscal value of the Crude oil produced during the second preceding month. Annual Concession Rental payments shall be taken into account when such payments are remitted.

### **Article IV**

#### **Accounting Analyses**

1. The Contractor and the JDA shall agree within 60 days on a format for monthly accounting analysis reflecting the volumes lifted in terms of Royalty Oil, Cost Oil, Tax Oil, Profit Oil and proceeds received by each Party.
2. The Realizable Price and the quantities actually lifted by the Parties shall be used to compute the proceeds as reflected in the agreed monthly accounting analysis format in IV(1) above and the allocation of such Proceeds in the categories described under Clause 9.1 of the Contract shall be reflected.
3. The allocation of the quantity of Available Crude Oil to each Party pursuant to Clause 9 of the Contract shall be according to and governed by provisions of the Allocation Procedure.

4. The priority of allocation of the total proceeds for each period shall be as follows:
  - (a) Royalty Oil,
  - (b) Cost Oil,
  - (c) Tax Oil,
  - (d) Profit Oil.
  
5. The amount chargeable to and recoverable from Royalty Oil, Tax Oil and Cost Oil shall be determined as follows:
  - (a) Royalty Oil - The sum of royalties payable during such month, and, where applicable, the annual amount of Concession Rentals as provided under Article III (1) for purposes of Royalty Oil.
  - (b) Cost Oil - The Petroleum Operating Costs applicable to such month for purposes of Cost Oil as follows:
    - (i) Non-Capital Costs shall be the amount recorded in the books and accounts of the CONTRACTOR for such month in accordance with this Accounting Procedure.
    - (ii) Capital Costs recorded in the books and accounts of the CONTRACTOR shall be recoverable in full and chargeable in equal installments over five (5) year period or the remaining life of the Contract, whichever is less. Amortization of such Costs shall be in accordance with the method prescribed under the Schedule of the Tax Regulations 2003, or over the remaining life of the Contract, whichever is less.
    - (iii) Qualifying Pre-Production Costs for the Contract Area shall be in accordance with the Tax Regulations 2003.
  - (c) Tax Oil - The sum of the tax payable for such month as provided under Article III for purposes of Tax Oil.
  - (d) Any carryover from previous months as provided under paragraph 6 of this Article.
  
6. Any amounts chargeable and recoverable in excess of the allocation of Proceeds for the month to Royalty Oil, Tax Oil and Cost Oil shall be carried forward to subsequent months. Carryovers shall be determined as follows:
  - (a) A Royalty Oil value carryover results when the Proceeds for such month are insufficient for recovery of the Royalty Oil due for the month.
  - (b) A Cost Oil value carryover results when the Proceeds remaining after allocating a portion of the proceeds to Royalty Oil is insufficient for recovery of Cost Oil due for the month, including the costs described in Clause 9.1(b) of the Contract.
  - (c) A Tax Oil value carryover results when the Proceeds remaining after allocating a portion of the Proceeds to Royalty Oil and Cost Oil are

insufficient for recovery of the Tax Oil due for the month.

7. Profit Oil results where proceeds remain after allocations to Royalty Oil, and Cost Oil, and Tax Oil pursuant to paragraph 5 of this Article IV. Profit Oil shall be allocated to Clause 9.1 of the Contract

**Article V**  
**Other Provisions**

1. The CONTRACTOR shall open and keep bank accounts in \_\_\_\_\_ and U.S. Dollars where all funds remitted from abroad shall be deposited for the purpose of meeting local expenditures. For purposes of keeping the books of accounts, any Foreign Currency remitted by the CONTRACTOR into \_\_\_\_\_ shall be converted into \_\_\_\_\_ at the monthly exchange rates advised by the JDA
2. The CONTRACTOR shall prepare financial accounting and budget statements in accordance with the JDA's prescribed reporting format.
3. With respect to any agreed sum arising out of this Contract owing between the Parties that is past due, any set-off pursuant to Clause 11.3 of the Contract shall be exercised by giving the other party written notice thereof accompanied by sufficient description of the offsetting sums to allow the Parties to properly account thereof.

The CONTRACTOR, shall report on the cumulative production in the production Area in a format to agreed with the JDA.

## ANNEX 2

### TO THE PRODUCTION SHARING CONTRACT BETWEEN THE JDA AND THE CONTRACTORS

#### ALLOCATION PROCEDURE

##### Article I **Application**

1. This Allocation Procedure ("this Procedure") sets out the methods for the allocation of available Crude Oil from the Contract Area and the Parties shall allocate all lifting of available Crude Oil in accordance with this Procedure and the Contract.
2. In the event that the production of Available Crude Oil is segregated into two or more types or grades, the provisions of this Procedure shall apply separately to each such type or grade. To the extent that distribution on such a basis is impracticable, a separate method for the allocation of such Available Crude Oil shall be agreed upon by the Parties.
3. In the event of a conflict between the terms of this Procedure and the Contract, the terms of the Contract shall prevail.
4. The procedures set forth herein may be amended from time to time by mutual agreement of the parties.

##### Article II **Definitions**

1. The words and expressions defined in the Contract when used herein, shall have the meaning ascribed to them in the Contract. In addition, the following words shall have the meaning set forth below:
  - (a) "**Current Quarter**" means the calendar quarter within which the relevant schedules are prepared and submitted
  - (b) "**Forecast Quarter**" means the first calendar quarter succeeding the Current Quarter;
  - (c) "**Lifting Allocation**" means the quantity of Available Crude Oil, which each Party has the right to take in kind, lift and dispose of in accordance with Clause 9 of the Contract;
  - (d) "**Primary Nominations**" means written statement issued by each Party to the other at least twenty-five (25) days prior to the commencement of each quarter declaring the volume by grade of its



estimated Lifting Allocation which the Party desires to lift during the Forecast Quarter;

- (e) **“Proceeds”** means the amount in U.S Dollars determined by multiplying the Realizable Price by the number of barrels of Available Crude Oil lifted by either Party; and
- (f) **“Proceeds Imbalance”**: means the difference between each Party's Proceeds to which it is entitled and the Proceeds which each Party has received.

### **Article III** **Lifting Allocation**

1. On or before September 30 of every year, the Operator shall advise the Parties of its forecast of the Available Crude Oil to be produced by grades during each month of the first six (6) months of the next ensuing Year.
2. On or before March 31 of every Year, the CONTRACTOR shall advise the ZPC of its forecast of Available Crude Oil to be produced by grades during each month of the six (6) months commencing July 1, of the Year.
3. Thirty-five (35) days before commencement of production from the Contract Area and thereafter thirty-five (35) days prior to the beginning of the Forecast Quarter, the CONTRACTOR through Operator shall notify the JDA of the estimated Lifting Allocation which can be produced and made available for disposal during the Forecast Quarter. Such estimated Lifting Allocation shall take into account any Proceeds Imbalance for the quarter first preceding the Current Quarter and any estimated Proceeds Imbalance for the Current Quarter computed in accordance with paragraph 3 of Article IV. Such notice shall indicate the estimated quantities of Royalty Oil, Tax Oil, Cost Oil and Profit Oil, each Party's estimated Lifting Allocation and the estimated Realizable Price used to prepare such estimated Lifting Allocations.
4. Twenty-five (25) days before the commencement of production from the Contract Area and thereafter not later than twenty-five (25) days before the beginning of Forecast Quarter, each Party shall notify the other of its Primary Nomination of Available Crude Oil which it intends to lift during the Forecast Quarter which shall not exceed its estimated Lifting Allocation. Such notice shall include the information described in Article V. Paragraph 1 of Annex 3 – Uniform Nomination, Ship Scheduling and Lifting Procedure.
5. The estimated Realizable Price to be used by the CONTRACTOR to prepare the Estimated Quarterly Lifting Allocation shall be the Realizable Price of the first month of the Current Quarter.
6. Each Party shall be obliged to lift its own Lifting Allocation in accordance with the Nomination, Ship Schedule and Lifting Procedure (Annex 3). In the event that one

Party lifts the other Party's Lifting Allocation, pursuant to clause 9.5 of the Contract the lifting Party shall pay to the non-lifting Party the applicable Proceeds pursuant to Clause 9.5 of the Contract. In such case, the non-lifting Party shall be treated for all other purpose under this Contract as though it had made such lifting itself.

**Article IV**  
**Adjustments of lifting Allocations**

1. On or before thirty-five (35) days prior to the last day of the Current Quarter, the Lifting Allocation for the first preceding quarter thereto shall be computed and the Proceeds Imbalance determined and agreed to by the JDA.
2. On or before thirty-five day prior to the last day of the Current Quarter, the Proceeds Imbalance for the Current Quarter shall be estimated, taking into account the actual Proceeds Imbalance computed for the first preceding quarter under paragraph 1 of this Article IV.
3. The Proceeds Imbalance for the first preceding quarter computed under paragraph 1 above and the estimated Proceed Imbalance for the Current Quarter computed under paragraph 2 above shall be taken into account by the Parties by debiting or crediting such Proceeds Imbalances to each Party's share of the estimated Lifting Allocation for the Forecast Quarter filed by dividing the respective Proceeds Imbalance by the Realizable Price applicable for the period in question.
4. Notwithstanding the reports required to be kept by the CONTRACTOR pursuant to Article IV in Annex 3, the CONTRACTOR shall keep complete records of all liftings. At the end of each quarter, the Parties will meet to reconcile the Lifting Allocations and the actual lifting with a view to making adjustments as appropriate. If any disagreement arises with respect to such reconciliation, the area of disagreement shall be mutually resolved by the Parties, in accordance with the official records of the JDA.
5. All Lifting Allocations and actual lifting shall be audited at the end of each calendar year by a mutually acceptable independent auditor.

**Article V**  
**Scheduling Details**

1. **Scheduling Notification** - At least twenty-five (25) days prior to the beginning of a calendar month, the ZPC shall notify the CONTRACTOR of its proposed tanker schedule for that calendar month specifying the following:
  - (a) A loading date range of ten (10) days for each tanker lifting;
  - (b) The desired parcel size for each lifting in Barrels, subject always to change within a range of plus or minus five percent (5%) by the party so nominating;
  - (c) The tanker's name or To Be Named (TBN) for each tanker lifting. Tanker nomination made as TBN shall be replaced at least five (5) working days prior to the accepted date range, unless a shorter time is acceptable to the CONTRACTOR; and
  - (d) Documentation instructions shall be given for each lifting not later than four (4) days prior to the first day of the accepted date range for the tanker in question.
2. **Tanker Substitution** - Either Party may substitute another tanker to lift its nominated volume of Crude Oil, provided such substituted tanker has the same arrival date range as the originally scheduled tanker and all other provisions of this Annex are complied with.
3. **Overlapping Date Ranges** - In the event the Combined: lifting Schedule contains overlapping accepted date ranges, the tanker which gives its Notice of Readiness (NOR) and has provided all documentation and obtained clearances first within such accepted date ranges shall be loaded first, unless urgent operational requirements dictate otherwise in which case, demurrage shall be borne by Petroleum Operations and charged to Operating Costs.
4. **Confirmation of Lifting Schedules** - At least fifteen (15) days prior to the beginning of a calendar month, the CONTRACTOR shall either confirm the feasibility of the proposed monthly lifting schedules or, alternatively, advise necessary modifications to such schedules. Such confirmation which shall be in the form of combined lifting schedule, should include a loading date range of three (3) days for each lifting, the first day being the earliest date of arrival and the third day being the latest date of arrival.
5. **Operational Delays** - The Parties recognize that occasionally environmental and technical problems in the Contract Area may cause delays and/or disruptions in the combined lifting schedule. The CONTRACTOR shall promptly notify the JDA of such delays and/or disruptions; and the projected termination of each of such delays and/or disruptions and advise the JDA of the revised combined lifting schedule. In the event such notification does not allow for a revised combined lifting schedule on the part of the JDA, then any resultant costs will be charged to Operating Costs.

6. **Estimated Delayed Arrival of a Tanker** - Whenever it becomes apparent that a tanker will not be available as scheduled or will be delayed, the Party utilizing such tanker shall notify the other Party of the circumstances and expected duration of the delays. Upon assessing the impact that the Delay will have upon the Combined Lifting Schedule and Production during the current and/or next month, the CONTRACTOR shall make appropriate revision(s) to the Combined Lifting Schedule to avoid disruption in production. In the event that any Party fails to lift its Nominated Share-of Production in any month/quarter due to circumstances beyond the Party's control or difficulties in maintaining the lifting schedule, that party shall have the right during the following quarter/month to lift the unlifted quantities
7. **Tanker Standards** - All tankers nominated for lifting by any Party shall conform to the International regulations and standards concerning size, equipment, safety, maintenance and the like adopted by the CONTRACTOR for the Terminal in question and by the appropriate authority. Failure of a tanker to meet such standards shall not excuse the nominating Party from the applicable consequences provided in the Contract.
8. **Destination of Crude Oil** - The CONTRACTOR shall at all times disclose the destination of the Crude Oil lifted under this Contract.

**ANNEX 3**

**TO THE PRODUCTION SHARING CONTRACT BETWEEN  
THE JDA AND THE CONTRACTORS**

**UNIFORM NOMINATION, SHIP SCHEDULING AND LIFTING  
PROCEDURE**

**Article 1  
Application**

1. This Annex 3 sets out the procedure for the nomination, ship scheduling and lifting of Available Crude Oil from the Contract area.
2. Pursuant to Clause 8.3 of the contract the JDA and the CONTRACTOR have the right to nominate, lift and separately disposed of their agreed allocation available Crude Oil produced and saved from the contract area.
3. The procedure set herein may be amended from time to time by the mutual agreement of the parties.

In the event of a conflict between the terms of this annex D and the contract, the terms of the contract shall apply.

**Article II  
Definition and Terminology**

1. Words and expressions in this annex shall have the meanings ascribed to them in the Contract. In addition, the following words shall have the following meanings:
  - (a) "Available Production" means the quantity of petroleum which can be efficiently and economically produced and saved from the producing wells subject to any limitations imposed by any government authority or other technical limitation resulting from operation.
  - (b) "Technical allowable Production" means the quantity of petroleum from time to time determined by the JDA as being the quantity that may produced from the contract area on a well by well basis for particular period.
  - (c) "Commercial Production Quota" means the quantity of petroleum from time to time fixed or advised by the JDA as the permissible quantity that may be produced from the contract Area on a crude stream basis for a particular month/quarter.
  - (d) "Actual Production" means the quantity of petroleum which is produced from the contract Area on a monthly/quarterly basis.
  - (e) "Available Monthly Scheduling Quantities" means each party's allocation of the available production for the calendar months plus opening stock.
  - (f) "Combined Lifting Schedule" means the lifting programmes of the parties for a given calendar month/quarter as prepared by the CONTRACTOR and agreed

to by the parties.

- (g) "Opening Stock" means the quantity of crude Oil that each party may carry forward to the succeeding month, recognizing the difficulty in lifting precisely the available monthly scheduling quantity. This quantity, which excludes un pump able dead -stock, should not be such as to cause a production shut-in through reaching maximum stock levels where of course the provisions of article v will apply. The Quantity also includes credits/debits accruing after reconciliation with available crude Oil.

**Article III**  
**Production/Notice of Availability**

1. The CONTRACTOR shall endeavor to produce the aggregate volume of Oil nominated by the parties as provided in this contract.
2. In the event that available crude oil is segregated into two or more grades the provisions of this annex shall apply separately to each such grade. To the extent that distributions on such a basis is impracticable, separate arrangement for sharing of such available crude Oil shall be agreed upon by the parties.
3. On or before September 30 of every year, the CONTRACTOR shall advise the parties of its forecast of the available production to be produced by grades during each month of the first six (6) months of the next ensuing year.
4. On or before March 31 of every year, the CONTRACTOR shall advise the JDA of its forecast of the available production to be produced by grades during each month of six months commencing July 1, of the year.
5. Where for operational reason the CONTRACTOR cannot exactly produce at the anticipated Commercial production quota, the CONTRACTOR shall notify the JDA promptly of any required changes exceeding 2% of the quantities originally notified. In any event, when actual production for the month/quarter is known each party's allocation will be re-calculated and the differences between actual production and commercial Production quota will be credited/debited to each party, and shall form the party's entitlement for the following month or quarter except in the case of production shut-ins where the provisions of section 6 will apply.
6. Twenty-Five (25) days before the commencement of production from the contract Area and thereafter not later than ~~twenty-five~~ (25) days before the beginning of each month, each party shall notify the other of its primary nomination of available crude Oil which it intend(s) to lift during the ensuing month, which shall not exceed its monthly allocation of Commercial production quota plus opening stock.
7. At the end of each month or quarter, as may be agreed, parties will meet to reconcile Available monthly scheduling quantities with actual Available crude lifted and adjustments made where necessary. All entitlement shall be audited at the end of each calendar year by a mutually acceptable independent auditor.

8. The CONTRACTOR shall keep complete records of all lifting and provide same to the JDA in accordance with article III & IV of this Annex.

**Article IV**  
**The CONTRACTOR'S Reports**

1. The CONTRACTOR shall, not more than fifteen (15) working days after the end of each calendar month, and quarter, prepare and furnish to the JDA a written statement showing in respect of the month and quarter respectively:
  - (a) Production Quota: each party's allocation of commercial production quota;
  - (b) Lifting against Available Crude Oil;
  - (c) Each party's allocation of Available Crude Oil;
  - (d) Quantity of Crude Oil in Stock for each party at the end of the said calendar month or quarter; and
  - (e) Any production losses attributable to Crude Oil used in petroleum operations.
  - (f) Cumulative production
2. In the event the JDA disagrees with any of the CONTRACTOR's reports, the area of the disagreement shall be mutually resolved by the CONTRACTOR and the JDA. The CONTRACTOR shall thereafter prepare a revised report to reflect the changes agreed.
3. The CONTRACTOR must also endeavor to send consistent statistical data to the different reporting bodies and should adhere to agreed formats of reporting.

**Article VI**  
**Production Decreases/Increases Subsequent to Nomination**

1. Production decreases occurring after lifting nominations have been scheduled and not resulting from the fault of either Party shall be shared by the Parties in proportion to their respective nominations.
2. Production increases occurring after lifting nominations have been confirmed by the CONTRACTOR shall be shared by the respective parties, in proportion to their respective agreed allocation.
3. To the extent that field operations permit, a party shall have the right to adjust its nomination during a month following confirmation of lifting schedule provided that the nominations, entitlements and lifting of the other party are not affected thereby without their express written consent. Adjusted nominations shall always be within the limits of the Party's allocated portion of the Commercial Production Quota, plus Opening Stock.

4. Any production decrease caused by or resulting directly from the actions of one party shall not affect the availability or entitlement of the other party. The CONTRACTOR will, to the greatest extent possible, endeavour not to affect the lifting of the other party.
5. For the avoidance of doubt each Party's agreed allocations shall be based on actual Production.

**Article VII**  
**Delivery Terms and Conditions**

1. Tanker Notification: The Parties shall report, or cause the tankers nominated for lifting pursuant to this Annex D to report, by radio/telex to the CONTRACTOR of each tanker's schedule arrival date and hour as follows:
  - (a) Seven (7) days before estimates arrival, or upon clearing at least port if there is less than seven (7) days steaming time before estimated arrival;
  - (b) Seventy-Two (72) hours before estimated arrival;
  - (c) Forty-eight (48) hours before estimated arrival;
  - (d) Twenty-four (24) hours before estimated arrival; and
  - (e) At any other time(s) between the seventy-two (72) hours notice, forty-eight (48) hours and twenty-four (24) hours notice when estimated arrival is to be revised- by more than twelve (12) hours from that most recently notified or after that revised by more than one-half hour.

Parties shall also cause such tanker so nominated, or their agent, to report by radio/telex to the relevant Port Head Official at the port at least seventy-two(72) hours before each tanker's schedule arrival date giving the tanker's name, call sign, ETA at the port(s), cargo tonnage to be loaded, number of crew, health status, whether or not a doctor is on board and request for "Free Pratique".

2. Notice of Readiness: Upon arrival at the designated safe anchorage at the port or upon the time of boarding of the Mooring master, whichever is earlier, the master of the tanker shall give the CONTRACTOR a Notice of Readiness (NOR) by radio or by letter, as appropriate, confirming that the tanker is ready to load cargo, berth or no berth. Laytime, as herein provided, shall commence upon the expiration of six (6) running hours after receipt by the Loading Terminal of such notice, or upon the tanker's completion of mooring at the sea loading terminal, whichever first occurs. However, where delay is caused to the tanker detting into berth after giving NOR for any reason over which neither the CONTRACTOR nor the loading terminal has control, such delay shall not count as used laytime. In addition time used by tanker while proceeding to berth or awaiting entry and Free Pratique by customs after the expiration of six (6) running hours free time, shall not count as used laytime.
3. Early Tanker Arrival: Notwithstanding the provisions of Article VII.2 above, if the tanker arrives and tender NOR to load prior to its agreed date range, the CONTRACTOR shall endeavour to load tanker on arrival or as soon thereafter as possible and laytime shall only commence when loading commences. If, however, the CONTRACTOR is unable to accept tanker for loading prior to the agreed date range, laytime shall commence at 0600



hours, local time on the first day of the agreed date range or when the loading commence, whichever comes first.

4. Late Tanker Arrival: If tanker arrives and tender NOR to load after its accepted date range and other tankers (having arrived during their accepted date range), are either loading or waiting to load the loading tanker shall be governed by the earliest availability of crude and loading slot, and laytime shall commence only when loading commences.

Laytime: The CONTRACTOR shall be allowed laytime in running hours equal to one-half of the voyage laytime permitted under worldscale, or such other freight scale that is issued in replacement thereof, for loading a full cargo and pro rata thereof for a part cargo, with minimum of eighteen (18) hours. Sundays and Holidays included, any delay due to the fault of the tanker or its facilities to load cargo within the time allowed shall not count as used laytime. If rules of the Owner of the vessel or Regulations of Government or appropriate Government Agencies prohibit loading of the cargo at any time, the time so lost shall not count as used laytime. Time consumed loading or discharging ballast or discharging slops shall not count as used laytime. Laytime shall continue until hoses have disconnected.

Laytime allowed for loading a full cargo is "36 running hours" with a provision for pro-rating the laytime in the case of vessels loading part cargo. When a vessel is loading one parcel only and operations commence ahead of the acceptance date there is no demurrage involved unless the vessels completes cargo after the permissible laytime, commencing 0001 hours more than one parcel and more than one acceptance date is awarded, the demurrage will not count unless the total loading is completed after the expiry of the permissible laytime for the last parcel, counting 0001 hours on the last acceptance date.

6. Demurrage: If the CONTRACTOR is unable to load within the time allowed, the CONTRACTOR shall apply demurrage per running hour (pro rata for a part thereof) for laytime exceeding the allowed Laytime as specified herein. The rate of demurrage will be calculated by multiplying the time by the Average Freight Rate Assessment (AFRA) as determined by the London Tanker Brokers Panel. In the event such determination is no longer available, a freight rate-assessment shall be mutually agreed by the parties; which rate shall be appropriate in relation to the size of the tanker and in demurrage rate according to tanker size as specified in the Worldwide Tanker Normal Freight Scale or such other foreign scale that is issued in replacement thereof. If however, demurrage shall be incurred by reason of fire, storm, explosion, or by strike, picketing, lockout, stoppage or restraint or labour difficulties, or disturbances or by breakdown of machinery or equipment in or about the Loading Terminal, the rate of demurrage as calculated in accordance with the above shall be governed by Force Majeure and shall not attract any demurrage. Demurrage claims must be notified with ninety (90) days from Bill of Lading date.
7. Changes of Berth: The CONTRACTOR shall have the right to shift any vessel from one berth to another. Charges of running lines on arrival at and leaving and berth; wharfage and dockage charges at that berth, and any other extra port charges or port expenses incurred by reason of such shifting at the CONTRACTOR and shall count as used laytime. If, however, it is necessary to shift the vessel from the berth because of breakdown machinery or other

deficiency of the vessel or its crew, the resulting expenses shall be borne by the party whose crude oil is being lifted. The consumed in such circumstances, shall not count as used laytime. However, the vessel shall lose its regular turn in berth. When the vessel is ready to recommence loading, it shall so advise the CONTRACTOR and wait its turn for reberthing and such time after notice is given shall not count as used laytime.

8. Tanker Departure: Tanker shall vacate the berth as soon as loading is complete. The party that schedule such tanker shall indemnify the CONTRACTOR for any direct loss or damage incurred as a result of tanker's failure to vacate the berth promptly including such loss or damage as may be incurred due to resulting delay in the docking of the tanker awaiting the next turn to load at such berth.
9. Loading Hoses: Hoses for loading shall be furnished by the CONTRACTOR and shall be connected and disconnected by the tanker's crew under the supervision of a suitable qualified ship's officer acting on the advice of the Operator's Mooring Master.
10. Partial Cargo: Should the CONTRACTOR supply less than full cargo, for any reasons the tanker shall not be required to proceed to sea until all of her tanks are filled with a combination of cargo and ballast as will place her in a seaworthy condition.

#### **Article VIII** **Crude Oil Quantity And Measurement**

1. Certification - The quantity and origin of each shipment of Crude Oil shall be determined by the appropriate Government authority at the loading Terminal and set forth in standard Certificates of quantity, quality and origin. Each party shall have the right to designate a representative at its own expenses, who shall be supplied by the CONTRACTOR as necessary, to such Partys' representatives to witness the measurements taken at the loading terminal and the taking of the sample to be used supplied to the representative of the party.
2. Acceptance of Certificate - If the party in question does not appoint a representative, or if such representative appointed as aforesaid agrees with the Certificate of Quantity, Quality and Origin of a shipment of crude oil (in which event he shall so indicate by signing the Certificates of Quantity, Quality and Origin), such determinations shall be final and binding on the parties.
3. Refusal of Certificate - If the determination of Quantity, Quality and Origin by the appropriate Government authority has not been approved by such a representative in accordance with Article VIII.2 above and dispute arises concerning the Quality, Quantity and Origin of crude oil, recourse shall be had to mutually agreed independent expert to resolve the dispute on the basis of his expertise. Claims about Quality, Quantity of crude oil, delivered shall be notified within forty-five (45) days from Bill of Lading date. The expert shall be selected on the basis of his special knowledge of the subject matter in this regard and shall be appointed by mutual agreement of the parties. Such expert shall file his conclusions within thirty (30) days after his date of appointment. Any conclusions of such expert shall be binding upon parties.

Pending the determination of the dispute, the tanker may sail, unless the parties agree otherwise.

4. Quantity Determination - The quantity of crude oil lifted shall be determined at the time of loading on the basis of gauging the terminal tanks before and after the lifting of such crude oil, or otherwise by meter reading installed on the loading line from the tanks, as approved by appropriate Government authority. The quantity in barrels of crude oil determined pursuant to the foregoing procedure should be corrected to a temperature of sixty-degree Fahrenheit (60°F) in accordance with the most currently published ASTM-IP Petroleum Measurement Tables. A copy of the concession calculation, if any shall be submitted to the lifting party through it's representative. In addition, the basic sediment and water ("BS&W") content, determined in accordance with Article VII.5 hereof, shall be deducted from the quantity loaded, for purpose of preparing the Bill of Lading for such shipment and for purposes of substantiating claims about Quantity and Quality. Any substantiated loss of crude oil occurring in transit between the point of such determination and delivery shall be borne by the party lifting provided such losses do not result due to differences in method of determining BS&W between the loading and discharge terminal. For differences occurring where same method of determination at both points are used, provisions of Article VIII.3 above shall apply. The retained sample shall be used in determining such loss claims.
5. Quality Determination - The determination of API Gravity and BS&W content shall be made of each shipment of crude oil. BS&W content and API Gravity shall be determined according to standard international practices acceptable to the relevant Government authorities.

Samples - A sample of each shipment of crude oil shall be taken. The sample shall be sealed and retained by the CONTRACTOR for a minimum of ninety (90) days. The lifting party or its representative shall have the right to receive one (1) gallon sealed sample of the crude oil loaded which shall be placed on board the tanker, if so requested.

**ANNEX 4**

**TO THE PRODUCTION SHARING CONTRACT BETWEEN  
THE JDA AND CONTRACTORS**

**MANAGEMENT COMMITTEE MEETING  
PROCEDURES**

**ARTICLE I  
Application**

These Management Committee Meeting Procedures attached to and forming part of the Contract are to be followed for the deliberations and decisions of the meetings of the Management Committee. Words and expressions defined under the Contract, when used herein; shall have the meanings ascribed to them in the Contract. In the event of a conflict between the terms of these Procedures and the Contract, the terms of the Contract shall prevail.

**ARTICLE II  
Powers and Duties of The Management Committee**

The powers and duties of the Management Committee shall include but are not limited to the following:

- (a) The revision, and approval of all proposed Work Programmes and Budgets in accordance with Clause 6.1;
- (b) The revision, and approval of any proposed recommendations made by either Party or by any sub-committee, pursuant to Article VI;
- (c) Ensuring that the CONTRACTOR carries out the decisions of the Management Committee and conducts Petroleum Operations pursuant to this Contract;
- (d) The consideration and decision on matters relating to the relinquishment of areas in the Contract Area pursuant to clause 5; and in accordance with the Petroleum Regulations 2003;
- (e) Settlement of claims and litigation in excess of US \$ ..... , or such other amount as may be approved by the Management Committee in so far as such claims are not covered by policies of insurance maintained under this Contract;
- (f) consideration and approval of the sale or disposal of any items or movable property relating to Petroleum Operations in accordance with the provisions of this Contract, except for items of historic costs of less than US \$ ..... (or such other amount as may be approved by the

Management Committee) provided that any intention to sell or dispose of fixed assets shall be referred to the JDA;

- (g) settlement of unresolved audit exceptions arising from audits as provided for in Clause 14.2 of this Contract;
- (h) ensuring that the CONTRACTOR implements the provisions of the Accounting Procedure (Annex 1), the lifting Procedure (Annex 3), and the Procurement and Project Implementation Procedures (Annex 5) and all amendments and revisions thereto as agreed by the Parties;
- (i) any other matters relating to Petroleum Operations except:
  - (i) those matters, reserved to the Parties in their respective rights pursuant to Clause 8;
  - (ii) those matters elsewhere provided for in this Contract; or
- (j) consideration and approval of the sale or disposal and exchange of information to third parties other than routine exchange of seismic data and other such data commonly exchanged within the industry; and
- (k) consideration and determination of any other matter relating to the Petroleum Operations which may be referred to it by any Party (other than any proposal to amend this Contract) or which is otherwise designated under this Contract for reference to it.

### **ARTICLE III**

#### **Constitution of the Management Committee and Meetings**

1. The Management Committee shall consist of eight (8) persons appointed by the Parties as follows:

JDA -	4
CONTRACTOR -	4
2. Each Party shall designate by notice in writing to the other Party, the names of its representatives to serve as members of Management Committee as provided in Clause 2(a) hereof and their respective alternates, which members or alternates shall be authorised to represent that Party with respect to the decisions of the Management Committee. Such notice shall give the names, titles and addresses of the designated members and alternates.
3. At least fourteen working days prior to each scheduled Management Committee meeting, the secretary shall provide an agenda of matters, with briefs, to be considered during such meeting. Any Party desiring to have other

matters placed on the agenda shall give notice to the other Party not less than seven (7) working days prior to the scheduled meeting. No other matter may be introduced into the agenda thereafter for deliberation at the meeting unless mutually agreed by the Parties. No agenda shall be required in the event of an emergency meeting called pursuant to Article III (7).

4. Either Party may change any of its respective members or alternates as described in Clause III (2) from time to time by notifying the other Party in writing not less than (10) days in advance of the effective date of such change.
5. The JDA shall appoint one of its four members as the Chairman of the Management Committee and the CONTRACTOR shall appoint the secretary. The secretary shall not be a member of the Management Committee but shall keep minutes of all meetings and records of all decisions of the Management Committee. The minutes of each meeting shall be approved by the Management Committee at the next meeting and copies thereof shall be supplied to the Parties. In addition, the secretary shall at each meeting, prepare a written summary of any decision made by the Management Committee for approval and signature by the Parties.
6. Not later than the twenty-eight (28th) day of February of each Year, the Chairman shall prepare and forward to the Parties, a calendar of meetings as agreed by the Management Committee for that Year.
7. The Management Committee shall meet at least once every four (4) calendar months, or at such other intervals or venue as may be agreed by the Management Committee and, in addition, whenever requested by either Party by giving at least twenty-one (21) days notice in writing to the other Party which notice shall specify the matter or matters to be considered at the meeting; or, when summoned by the Chairman or by the CONTRACTOR as an emergency meeting for which no specified notice period shall be required.

#### **ARTICLE IV**

##### **Quorum and Procedures**

1. The quorum for any meeting of the Management Committee shall consist of a minimum of three (3) representatives of the JDA and three (3) representatives of the CONTRACTOR. The Chairman or his alternate and the CONTRACTOR's designated lead representative or his alternate must be present at every Management Committee meetings for a quorum to be formed. If no such quorum is present, the Chairman shall call another meeting of the Management Committee giving at least fourteen (14) days written notice of such meeting.
2. The secretary shall in consultation with the Chairman convene all meetings of the Management Committee other than emergency meetings.

3. Except as may be expressly provided for in this Contract, the Management Committee shall determine and adopt rules to govern its procedures.
4. Members attending a meeting of the Management Committee may be accompanied by advisers and experts to the extent reasonably necessary to assist with the conduct of such meeting. Such advisers and experts shall not vote or in any way participate in decisions, but may contribute in a non-binding way to discussions or debates of the Management Committee.

#### **ARTICLE V**

##### **Decisions of the Management Committee**

1. Except as otherwise expressly provided in this Contract all decisions of the Management Committee shall be made by the unanimous vote of the Parties. If unanimity is not obtained on any matter (including any matter pertaining to a Work Programme or Budget proposed by the CONTRACTOR) to the Management Committee, then the Management Committee shall meet again to attempt to resolve such matter not later than fourteen (14) days after the meeting in which the proposed matter failed to be resolved.
2. Any portion of such proposal that is resolved shall in so far as possible be carried out. At least seven (7) days prior to such second meeting, the Party casting the dissenting vote shall provide to the other Party in writing in reasonable detail the reasons for such dissenting vote. If such reasons are not provided at least seven (7) days prior to such second meeting, then the proposal shall be deemed approved. In such second meeting the agenda shall comprise of such written reasons as provided by the dissenting Party. If unanimity is not obtained in the second meeting, then the Management Committee shall meet a third time within fourteen (14) days after the second meeting.
3. If unanimity is not obtained in the third meeting then the JDA and the CONTRACTOR may agree to appoint an independent qualified expert to advise on the matter, and the experts advice shall be binding on the Parties. In the event of failure of the Parties to agree to the appointment of the said expert the provisions of Clause 24 shall apply.
4. The Parties shall be bound by, and abide by, each decision of the Management Committee duly made in accordance with the provisions of this Article.
5. Any matter which is within the powers and duties of the Management Committee may be determined by the Management Committee without a Management Committee meeting if such matter is submitted in writing by either Party to the other Party with due notice and with sufficient information regarding the matter to be determined so as to enable the Parties to make an informed decision with respect to such matter. The other Party whom the information is submitted shall agree in writing with the proposed request for

the said decision to be carried out subject further to the provision of Clause 5(c) herein.

6. Except for urgent matters referred to in Article V (7) below, each Party shall cast its vote with respect to such matters within twenty one (21) days of receipt of such notice and such manner of determination shall be followed unless a Party objects within fourteen (14) days of receipt of such notice, to having the matter determined in such manner. If any Party fails to vote by the expiry of the twenty one (21) days period for voting,, it shall be deemed to have voted in the affirmative. The Secretary shall promptly advise the Parties of the results of such vote and the Secretary shall draft a resolution to be signed by the Parties as soon as possible.
7. Each Party shall nominate one of its officers as its representative from whom the other Party may seek binding decisions on urgent matters, including, but not limited to ongoing drilling operations, 'by e-mail, by telephone, registered or hand delivered, letter, facsimile transmission, or in person and advise each other in writing of the persons so nominated and any changes thereof.
8. The decisions made pursuant to this Clause 7 shall be recorded in the minutes of the next scheduled meeting of the Management Committee, and shall be binding upon the Parties to the same extent as if the matter had been determined at a meeting of the Management Committee.

#### **ARTICLE VI**

##### **Sub-Committees of the Management Committee**

1. The Management Committee may establish exploration and technical sub-committees and any other advisory subcommittees as it considers necessary from time to time such as finance and budget, and legal/services sub-committees:
2. Each sub-committee established pursuant Article VI (1) shall be given terms of reference and shall be subject to such direction and procedures as the Management Committee may give or determine.
3. The Management Committee shall appoint the members of the sub-committee, which shall comprise of equal representation from the Parties. The Chairman and the secretaries of the sub-committees shall be appointed by the Management Committee.'
4. The deliberations and recommendations of any subcommittee shall be advisory only and shall become binding and effective upon acceptance by the Management Committee.



## ARTICLE VII

### **Consideration of Work Programmes & Budget**

Within eight (8) weeks after a the submission of a Work Programme and Budget by the Contractor, the Management Committee shall meet to consider and approve such submissions. Should the JDA wish to propose a revision as to certain specific features of the said Work Programme, and budget, it shall within the eight (8) weeks after the receipt of such Work Programme and Budget so notify the Contractor in writing specifying in reasonable detail the changes requested and its reasons thereof. The Management Committee shall resolve the request for revisions. If the JDA does not propose any revisions in writing within the eight (8) weeks, then the said Work Programme and budget as submitted shall be approved by resolution of the Management Committee. Any Portion of the Work Programme for which the JDA has not proposed a revision shall insofar as possible be carried out as prescribed therein.

## ANNEX 5

### TO THE PRODUCTION SHARING CONTRACT BETWEEN THE JDA AND CONTRACTORS

#### PROCUREMENT AND PROJECT IMPLEMENTATION PROCEDURES

##### Article I **Application**

- 1.1 These Procurement and Project "Implementation Procedures ("Procedures") shall be followed and observed in the performance of either party's obligations under the Contract. Words and expressions defined under the Contract, when used herein; shall have the meanings ascribed to them in the Contract. In the event of a conflict between the terms of these Procedures and the Contract, the terms of the Contract shall prevail.
- 1.2 These Procedures shall be applicable to all contracts and purchase orders whose values exceed the respective limits set forth in Article 1.3 and which, pursuant thereto, require the prior concurrence of the JDA. These Procedures may be amended from time to time by the parties.
- 1.3 The CONTRACTOR shall have the authority, subject to any limitations or restrictions established by the Management Committee, to enter into any contract or place any purchase order in its own name for the performance of services or the procurement of facilities, equipment, materials or supplies, provided that:
  - (a) Prior approval of the JDA shall be obtained for all foreign contracts and foreign purchase orders awarded to third parties where the cost exceeds US \$..... or ..... in local currency during the exploration phase and US \$.... Or ..... in local currency during development and production phase;
  - (b) Prior approval of the JDA shall be obtained for all local contracts and purchase orders where the cost exceeds .....in local currencies in utilized at the location of the contract or purchase;
  - (c) The amount set forth in Article 1.3(a), (b) and (h) will be reviewed by the Management Committee whenever it becomes apparent to either party that such limits create unreasonable constraints on the Petroleum Operations. In the event of a significant change in the exchange rate of local currencies to U.S Dollar compared to that, which existed on the Effective Date, the Management Committee shall review the limits set forth in Article 1 .3 (a), (b) and (h);
  - (d) Such contracts shall be entered into, and such purchase orders shall be placed with third parties, which in the CONTRACTOR's opinion are technically and financially able to properly perform their obligations;
  - (e) Procedures customary in the oil industry for securing competitive prices shall prevail.
  - (f) The CONTRACTOR shall give preferences to contractors that are companies

organized under the laws of Nigeria or Sao Tome and Principe to the maximum extent possible provided they meet the required standards.

- (g) The CONTRACTOR shall give preferences to such goods which are manufactured or produced in Nigeria or Sao Tome and Principe or services rendered by Nigeria or Sao Tome and Principe provided they meet specifications and standards.
- (h) The above limits and these procedures shall not apply to purchases made for warehouse replenishment stock not exceeding US \$ .....or ..... in local currency nor shall they apply to the purchase of tubulars of less than US \$ ..... or ..... in local currency made in furtherance of planned drilling programmes. Where there U.S. Dollar and local currency components of such purchases, the total shall not exceed the equivalent of US \$.....

## **Article II**

### **Project Implementation Procedure**

- 2.1 The CONTRACTOR realizing the need for a project or contract to which these Procedures apply pursuant to Article 1.3 above, shall introduce it as part of the proposed Work Programme and Budgets to be developed and submitted by the CONTRACTOR to the Management Committee pursuant to Clause 6 of this contract.
  - (a) The CONTRACTOR shall provide adequate information with respect to the project including, without limitation, the following:
    - (i) A clear definition of the necessity and objectives of the project;
    - (ii) Scope of the project; and
    - (iii) Cost estimate thereof.
  - (b) The CONTRACTOR shall transmit the project proposal along with all related documentation to the JDA for consideration.
  - (c) The JDA may make recommendations in writing to the CONTRACTOR regarding the selection, scope and timing of the project. The Management Committee shall consider the proposal and the recommendations of the JDA and shall determine the matter in accordance with Clause 7 and Annex 5 of the contract. Any disputed issues shall be resolved by the Management Committee. If the JDA does not submit any recommendations in writing to the CONTRACTOR within thirty (30) working days of the submission of the project, the project as proposed by the CONTRACTOR shall be so noted in the minutes of the next meeting.
- 2.2 The project as approved pursuant to Article 2.1 above shall form part of the Work Programme and Budget of the Petroleum Operations. Such approval shall also constitute authorizations by the Management Committee to the CONTRACTOR to initiate contracts and purchase orders relevant to the project proposal, subject to the provisions of Article 1.3.

- 2.3 The resources for the project design, supervision, and management shall first be drawn from the CONTRACTOR's available in-house expertise. If the Management Committee approves, such may be performed by the CONTRACTOR's Affiliate under the approved budget for the project. Competent Nigerian or Sao Tomean Engineering/Design companies shall be given priority over others by the Management Committee for such projects. The JDA staff who shall be seconded pursuant to Clause 13.4 of this contract shall be fully involved in the project design, supervision and management.
- 2.4 After approval of the project/budget, the CONTRACTOR shall prepare and transmit to the JDA complete details of the project including, without limitation, the following:
- (a) Project definition;
  - (b) Project Specification;
  - (c) Flow diagrams;
  - (d) Projects implementation schedule showing all phases of the project including, without limitation, engineering design, material/equipment procurement, inspection, transportation, fabrication/construction, installation, testing and commissioning;
  - (e) Major equipment specifications;
  - (f) Cost estimate of the project;
  - (f) An activity status report; and
  - (h) Copies of all approved CONTRACTOR's Authority for Expenditure (AFEs)

**Article III**  
**Contract Tender Procedure**

- 3.1 The following tender procedure shall apply to work/services/supply not directly undertaken by the CONTRACTOR or by the CONTRACTOR's Affiliate:
- (a) The CONTRACTOR shall maintain a list of approved contractors for the purpose of contracts for the Petroleum Operations, (the "Approved Contractors' list"). The JDA shall have the right to nominate contractors to be included/deleted in the list. The JDA and CONTRACTOR shall be responsible for pre-qualifying any contractor to be included in the Approved Contractors' List.
  - (b) Contractors included in the Approved Contractors' List shall be both local and/or overseas contractors or entities. Where regulations require, they shall be registered with the JDA.
  - (c) When a contract is to be bid, the CONTRACTOR shall present a list of proposed bidders to the JDA for concurrence not less than fifteen (15) working days before the issuance of invitations to bid to prospective Contractors. The JDA may propose additional names to be included in

the list of proposed bidders or the deletion of any one thereof. Contract specifications shall be in English and in a recognized format used in the International Petroleum Industry.

- (d) If the JDA has not responded within fifteen (15) working days from the date of the official receipt following the presentation of the list of proposed bidders as aforesaid, the list shall be deemed to have been approved.
- 3.2 The CONTRACTOR shall within its limits in Article 1.3(a), (b) and (h) establish a Tender Committee who shall be responsible for pre-qualifying bidders, sending out bid invitations, receiving and evaluating bids and determining successful bidders to whom contracts shall be awarded.
- 3.3 Analysis and recommendations of bids received and opened by, the Tender Committee shall be sent by the CONTRACTOR to the JDA for approval before a contract is signed within thirty (30) working days from the date of the official receipt. Approval of the CONTRACTOR's recommendations shall be deemed to have been given if the JDA has not responded within the said period.
- 3.4 Prospective vendors/contractors for work estimated in excess of US \$..... for exploration phase and US \$..... for development and production phase shall submit the commercial summary of their bids to the contractor in two properly sealed envelope, one addressed to the CONTRACTOR and one addressed to the JDA. The CONTRACTOR shall retain one and send one to the JDA, properly enveloped, sealed and addressed to JDA.
- 3.5 In all cases in which an offshore CONTRACTOR or its Nigerian or Sao Tomean Affiliate is invited to bid, the CONTRACTOR shall make full disclosure to the JDA of its relationship, if any, with such contractors.
- 3.6 These Procedures may be waived and the CONTRACTOR may negotiate directly with the CONTRACTOR and promptly inform the JDA of the outcome of such negotiations in the following cases:
  - (a) emergency situations; and
  - (b) in work requiring specialized skills, or when special circumstances warrant, upon the approval of the JDA.

#### **Article IV** **General Conditions of Contracts**

- 4.1 The payment terms shall provide, without limitation, that:
  - (a) A minimum of 10% of contract price shall be held as a retention fee until after the end of a guarantee period agreed with the CONTRACTOR which shall vary between six months and twelve months, depending on the project, with the exception of drilling and seismic data acquisition, well surveys and other such services provided that, a CONTRACTOR may be given the option to provide other guarantee equivalent to the 10% retention such as Letter of Credit or Performances Bond; and

- (b) Provision shall be made for appropriate withholding tax as may be applicable.
- 4.2 The language of all contracts shall be English.
- 4.3 (a) The governing law of all agreements signed with subcontractors shall be, to the extent feasible, Nigerian law or Sao Tomean law for work to be conducted in the JDZ, Nigeria or Sao Tome and Principe and for work elsewhere.
- (b) Nigerian law shall apply to subcontractors performing in Nigeria. Sao Tomean Law shall apply to subcontractors performing work in Sao Tome and Principe. In as far as practicable, they shall use Nigerian/Sao Tomean resources both human and material.
- 4.4 Each contract shall provide for early termination where necessary and the CONTRACTOR shall use all reasonable endeavours to obtain a termination provision with minimal penalty.
- 4.5 Contractors shall provide, in the case of a foreign CONTRACTOR, that the local part of the work, in all cases, shall be performed by CONTRACTOR's local subsidiary.

**Article V**  
**Materials and Equipment Procurement**

- 5.1 The CONTRACTOR may, through own in-house or parent company procure materials and equipment subject to conditions set forth in this Article 5.
- 5.2 The provisions of this Article 5 shall not apply to lump sum or turnkey contracts/projects.
- 5.3 In ordering the equipment/materials, the CONTRACTOR shall obtain from vendors/manufactures such rebates/discounts and such warranties / guarantees that such discounts, guarantees and all other grants and responsibilities shall be for the benefit of the Petroleum Operations.
- 5.4 The CONTRACTOR shall:
- (a) By means of established policies and procedure ensure that its procurement efforts provide the best total value, with proper consideration of quality, services, price delivery and Operating Costs to the benefit of the Petroleum Operations;
  - (b) Maintain appropriate records, which shall be kept up to date, clearly documenting procurement activities;
  - (c) Provide quarterly and annual inventory of materials in stock;
  - (d) Provide a quarterly listing of excess materials in its stock list to the

JDA; and

- (e) Check the excess materials listings from other companies, to identify materials available in the country prior to initiating any foreign purchase order.
- 5.5 The CONTRACTOR shall initiate and maintain policies and practices, which provide a competitive environment/climate amongst local and/or overseas suppliers. Competitive quotation processes shall be employed for all local procurement where the estimated value exceeds the equivalent of US \$.....
- (a) Fabrication, wherever practicable shall be done locally. To this effect, the Petroleum Operations recognize and shall accommodate local offers at a premium not exceeding 10%.
  - (b) Subject to Article 3.1(a), the CONTRACTOR shall give preferences to Nigerian or Sao Tomean indigenous contractors in the award of contracts. Contracts within the agreed financial limit of the CONTRACTOR shall be awarded to only competent Nigerian or Sao Tomean indigenous contractors possessing the required skill/capability for the execution of such contracts, the CONTRACTOR shall notify the JDA accordingly.
- 5.6 Analysis and recommendation of competitive quotations of a value exceeding the limits established in Article 1.3 shall be transmitted to the JDA for approval before a purchase order is issued to the selected vendor/manufacturer. Approval shall be deemed to have been given if a response has not been received from the JDA within thirty (30) working days of receipt by the JDA of the said analysis and recommendations.
- 5.7 Pre-inspection of rig, equipment/stock materials of reasonable value shall be jointly carried out factory site and quay before shipment at the request of either party.

#### **Article VI** **Project Monitoring**

- 6.1 The CONTRACTOR shall provide a project report to the JDA.
- 6.2 For major projects exceeding US \$..... equivalent, the CONTRACTOR shall provide to the JDA a detail quarterly report which shall include:
- (a) Approved budget total for each project;
  - (b) Expenditure on each project;
  - (c) Variance and explanations;
  - (d) Number and value of construction change orders;
  - (e) Bar chart of schedule showing work progress and work already completed and schedule of mile-stones and significant events; and
  - (f) Summary of progress during the reporting period, summary of existing problems, if any, and proposed remedial action, anticipated problems,

and percentage of completion.

Provided that the JDA shall have the right to send its own representatives to assess the project based on the report.

- 6.3 In the case of an increase in cost in excess of 10% on the project, the CONTRACTOR shall promptly notify the JDA and obtain necessary budget approval. -
- 6.4 Not later than six (6) months following the physical completion of any major project whose cost exceeds US \$ ..... equivalent, the CONTRACTOR shall prepare and deliver to the JDA a project completion report which shall include the following:
- (a) Cost performance of the project in accordance with the work breakdown at the commencement of the project;
  - (b) Significant variation in any item or sub-item;
  - (a) Summary of problems and expected events encountered during the project; and
  - d) List of excess materials.