

MOZAMBIQUE FOURTH LICENSING ROUND

**AGREEMENT FOR THE LICENSE OF
INP DATA PACKAGES**

BETWEEN

INSTITUTE NATIONAL PETROLEUM

AND

XXXX Company

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INTRODUCTION

This License Agreement (“Contract”) for the use of INP technical data is made and entered into effective _____ of _____, 2009 by and between Instituto Nacional de Petróleo, Republic of Mozambique, duly authorized and qualified to transact business under the laws of the Republic of Mozambique, and with its registered address at Prédio Montepio, Avenida Fernão de Magalhães 34, 1st floor, P.O. box 4724 Maputo, Mozambique, hereinafter referred to as “INP”, and XXXX, with its registered address at XXXX. INP and XXXX are collectively referred to herein as the “PARTIES” or individually as “PARTY”.

Article 1. NATURE OF THE CONTRACT

- 1.01 It is anticipated that XXXX, may wish to license from INP at various times non-exclusive data packages ("Data") from the areas of the Republic of Mozambique, which is owned by the Republic of Mozambique and for which the INP warrants it has the right to sell these Data.
- 1.02 Whenever, at XXXX request, INP furnishes and delivers such Data to XXXX, such Data will be received by XXXX subject to the terms and conditions of this Contract and any Supplement thereto. Under separate cover, INP will send XXXX a supplemental agreement ("Supplement") which shall be considered part of this Contract. In the absence of such Supplement, a letter of agreement ("Letter") exchanged between the PARTIES will be an acceptable substitute. Each Supplement or Letter shall contain the following minimum information:
- Data Package Name and Location
 - Description of the Data
 - Data Delivery Options / Details
 - Costs
 - Invoicing and Payment

Article 2. TERMS OF THE DELIVERY

- 2.01 INP will deliver appropriate Data to XXXX or its representative in Maputo.

- 2.02 Time of delivery: INP will start copying work immediately after receipt of XXXX executed Supplement and shall deliver Data when copying work is finished.
- 2.03 Point of departure: INP Offices, Maputo, Republic of Mozambique
Destination: XXXX
- 2.04 Notification about delivery. After dispatching Data INP shall send a notification to XXXX, by email, including the courier AWB No. if applicable.
- 2.05 Inspection and Acceptance of the Data. The Data delivered to XXXX, under this Contract shall be accompanied by a transmittal form that lists all the Data shipped. XXXX, shall inspect the delivered material within 10 days after receipt and shall immediately notify INP in writing of any deficiencies. Having been notified of deficiencies INP shall as soon as possible remedy them and make available for XXXX, new copies of the Data free of charge.

Article 3. PAYMENT

- 3.01 Under separate cover, INP will send to XXXX, at its address identified in Article 11, invoice(s) for the amount of the Data License fee and a separate invoice(s) for reasonable reproduction, and handling charges, as applicable. Such invoice(s) will reference this Contract and the Supplement or Letter covering particular Data.
- 3.02 All payments are required to be made in U.S. Dollars to the location indicated in each Supplement or invoice. The full amounts invoiced for the Data purchase fee will be payable to INP by XXXX and shall not be subject to any withholding, except for withholding instructed by authorities.

Article 4. GENERAL

- 4.01 XXXX shall not have access to original Data, but upon request, may obtain copies of all available raw Data with respect to the Data, such as, but not limited to, magnetic tapes, logs, notes, etc., at rates not to exceed the fair market rate for such reproduction services at the time of the request. XXXX 's use of the tapes and other data so obtained and the information contained thereon shall be restricted to the same rights as herein granted for the use of the Data under this Contract.
- 4.02 The Data delivered hereunder are, to the best of the knowledge, information and belief of INP, accurately prepared in accordance with accepted practice of the

- geophysical profession, but INP makes no representation or warranty of any kind or description in respect thereto and such Data will be delivered hereunder according to the Contract, with the understanding that any action XXXX may take based thereon shall be at its own responsibility.
- 4.03 There is no understanding or agreement relative to this Contract that is not fully expressed herein and no modifications, amendments or addendum to this Contract may be effected unless such is in writing and signed by an authorized representative of both PARTIES. This Contract may also be superseded with another contract by the mutual consent of the PARTIES.
- 4.04 This Contract shall inure to the benefit of and be binding upon the PARTIES hereto, their respective successors and assigns, except that this Contract shall not be assigned or transferred by XXXX, except as expressly authorized herein, without the written consent of INP.

Article 5. ANTI CORRUPTION CLAUSE

- 5.01 No officer, employee, or agent of INP shall pay any commissions, fees, or grant any rebates to any employee or officer of XXXX nor favour any employee or officers of XXXX with gifts or entertainment of significant cost or value nor enter into any business arrangements with employees or officers of XXXX other than as a representative of XXXX without XXXX's written approval. Any representative or representatives authorized by XXXX may audit any and all records of INP in connection with the data delivered hereunder for the sole purpose of determining whether there has been compliance with this paragraph. INP shall promptly notify XXXX of any violation of this paragraph. Similarly, no officer, employee or agent of INP shall request or accept any commissions, fees, gifts, entertainment or anything of value from XXXX, its employees, officers or agents.
- 5.02 Neither XXXX nor its Affiliated Companies will make any offer, payment, gift, promise to pay or authorize any payment of money or anything of value, directly or indirectly, to or for the use or benefit of any official or employee of any governmental entity or instrumentality thereof, including any employee of a state-owned company such as INP or a national oil and gas company, or to or for the use or benefit of any political party, official or candidate unless such offer, payment, gift, promise or authorization is lawful under the written laws and regulations of Mozambique.

Article 6. INDEMNITY

- 6.01 INP will protect, defend and hold XXXX harmless from and against any and all claims, demands, liability, suits, and judgments which may be made or established against XXXX by any third party or employee of INP arising out of or related to the conduct by INP of its operations in acquiring and processing the Data pursuant hereto, provided XXXX notifies INP promptly in writing of any such claim against it and gives INP authority, information and assistance (at INP's expense) for the defence or assistance in defence of such proceeding. XXXX may be represented by its own counsel (at XXXX's expense), and may participate in proceedings to which it and INP are defendants without compromising this indemnity.
- 6.02 INP represents that all Data and information subject hereto was obtained under proper consents from the holder of patents and trade secrets, if any, concerning any of the instruments, equipment, methods and procedures used in acquiring such Data and information. INP hereby protects, indemnifies and holds XXXX harmless from and against any claim, demand, liability, damages and judgments resulting from any alleged infringement of patents or trade secrets arising out of the use by INP of such instruments, equipment, methods or procedures.

Article 7. APPLICABLE LAW

This Contract shall be governed by the laws of the Republic of Mozambique.

Article 8. ARBITRATION

- 8.01 A dispute shall be resolved, if possible, by negotiation between the Parties. A notice of the existence of a dispute shall be given by a Party to another in accordance with the provisions of Article 11. In the event that no agreement is reached within thirty (30) days after the date one Party notifies the other that a dispute exists, or such longer period that is granted by the other Party in accordance with the provisions of Article 11, either Party shall have the right to have such dispute determined by arbitration as provided for in this Article 8. Arbitration as aforesaid shall be the exclusive method of determining a dispute under this Contract.
- 8.02 The Parties shall submit any dispute arising out of or in connection with this Contract which cannot be resolved by negotiation as provided in clause 8.01 to arbitration as hereinafter provided:
- (a) all disputes referred to arbitration shall be finally settled under the UNCITRAL Arbitration Rules in force at the Effective Date;
 - (b) the seat of the arbitration shall be Oslo, Norway, the law of the merits of the arbitration shall be Mozambique law and the law governing the arbitration agreement shall be Norwegian law. The arbitration shall be conducted in the English language. The English version of this Contract signed by the Parties shall be used as the official translation in arbitral proceedings;
 - (c) award by an arbitrator or arbitrators shall be final and binding on all Parties;
 - (d) the arbitral panel shall be composed of three (3) arbitrators to be appointed in accordance with the UNCITRAL Rules; provided that, upon mutual agreement of both Parties, the arbitration may be conducted by a sole arbitrator under the UNCITRAL Rules. Unless both Parties have agreed that the dispute shall be settled by a sole arbitrator, the claimant Party shall nominate in the notice of arbitration, and the respondent Party shall nominate within thirty (30) days of such notice, one (1) arbitrator pursuant to the UNCITRAL Rules. The arbitrators so nominated shall agree on a third arbitrator, who shall act as Chairman of the arbitral tribunal, within a period of not more than thirty (30) days from the date on which the two arbitrators have been appointed. If either Party fails to nominate an arbitrator as provided above, or if the arbitrators nominated by the Parties fail to agree on a third arbitrator within the period specified above, then the Secretary-General of the Permanent Court of Arbitration of The Hague upon request of either Party shall make such appointments as necessary in accordance with the UNCITRAL Rules. If both Parties have agreed that the dispute shall be settled by a sole arbitrator, the sole arbitrator shall be nominated by agreement between them; provided that, if the Parties are unable to agree on a nominee for sole

- arbitrator within thirty (30) days from the date when the notice of arbitration was given to the respondent Party, then the Secretary-General of the Permanent Court of Arbitration upon request of either Party shall appoint the sole arbitrator in accordance with the UNCITRAL Rules;
- (e) insofar as practicable, the Parties shall continue to implement the terms of this Contract notwithstanding the initiation of arbitral proceedings and any pending disputes; and
 - (f) the provisions set out in this clause 8.02 shall continue after the termination of this Contract where notice of the existence of a dispute was given under clause 8.03 prior to termination.
- 8.03 An award or a decision, including an interim award or decision, in arbitral proceedings pursuant to this Article 8 shall be binding on the Parties and judgment thereon may be entered in any court having jurisdiction for that purpose. Each of the Parties hereby irrevocably waives any defences based upon sovereign immunity and waives any claim to immunity:
- (a) in respect of proceedings to enforce any such award or decision including, without limitation, immunity from service of process and from the jurisdiction of any court; and
 - (b) in respect of immunity from the execution of any such award or decision against the property of the Republic of Mozambique held for a commercial purpose.
- 8.04 The Parties hereby agree not to exercise any right to institute proceedings under any other jurisdiction than Norwegian law to set aside any interim or final arbitral award made pursuant to this Article 8.

Article 9. FORCE MAJEURE

Neither XXXX nor INP shall be responsible for failure to perform in accordance with the terms of this Contract in the event of Force Majeure, that is, in the event the performance is hindered or prevented by strikes, lockouts and like labour problems, civil commotion, acts of war, fire, legal restraints, governmental or like interference, as well as any other causes outside the control of XXXX or INP.

In the event of Force Majeure the PARTY affected by the Force Majeure (the “Affected PARTY”) shall be exonerated from its obligations under this Contract over the whole period of the Force Majeure event, provided that such PARTY

promptly, and in any event no later than 5 (five) days after such event occurs, notifies the other PARTY in writing of such an event and takes all possible measures to minimize damage or loss to the other PARTY and to resume performance under this Contract.

If due to the event of Force Majeure one of the PARTIES fails to perform its obligations over a period of 60 days since the date of its occurrence, the PARTIES shall negotiate within one week after the sixty (60) day period of non-performance in order to determine the course of action to be taken with a view to remedying the situation. If the PARTIES cannot reach agreement on the action to be taken either PARTY shall be entitled to terminate this Contract.

The Affected PARTY shall notify the other PARTY of the cessation of the Force Majeure event within a period of no more than 5 (five) days after such cessation.

Article 10. SPECIAL CONDITIONS

10.01 Terms

- (a) This Contract shall be effective from the date set out above and shall continue in effect until terminated by either of the Parties upon Thirty (30) days written notice. Notwithstanding such termination, and subject to the provisions of this agreement, all terms and conditions hereof regarding restrictions on the use of the Data previously delivered shall nevertheless survive such termination.

- (b) A Supplement or Letter relating to the Data identified therein shall have a perpetual term from the date thereof (unless terminated), and so long thereafter as written notice of the termination is not given by one PARTY to the other, and the Data associated with such Supplement is not returned by XXXX. A Supplement may also be terminated at any time by mutual consent of the PARTIES.

10.02 Restrictions for the use of Data

- 10.02.1 The Data and information delivered hereunder are proprietary to the Republic of Mozambique, and INP possesses full authority to deliver such Data and information. XXXX acknowledges INP may at any time sell the same to other third-parties. XXXX acknowledges that all property and intellectual property rights to the Data and all modifications of, adaptations to and derivatives from the Data, as well as related information, shall rest with/vest in the Government of Mozambique and

agrees to protect and keep the Data confidential during the term of the Contract and thereafter.

10.02.2 XXXX may use such Data on a non-transferable, non-exclusive basis. XXXX shall not have the right to reproduce the Data for distribution or disclosure to anyone except as hereinafter provided, without INP'S prior written consent, but XXXX can make copies of any Data for the sole purpose of using such copies pursuant to the rights granted herein; provided that all such copies shall bear a notice indicating that INP is the owner of the data. The notice may be a copy of the original notice provided by INP or may be in the following form: "WARNING: This Data is owned by and a trade secret of the Government of Mozambique. All rights reserved. The use of this Data is restricted to companies having valid Data Use License agreements for this Data with the Instituto Nacional de Petróleo. The Data may be used, disclosed or transferred only as expressly authorized in the Data Use License agreements. Unauthorized disclosure, use, reproduction, reprocessing, or transfer of this data to or by a third party is strictly prohibited."

10.02.3 Restrictions on disclosure imposed by Articles 10.02.1 and 10.02.2 shall not apply to a disclosure made reasonably:

- (a) if it is required for the purpose of any arbitration or legal proceedings or claim relating to this Contract or to the Petroleum Operations;
- (b) to a Subcontractor, or consultant in connection with the conduct of Petroleum Operations;
 “Subcontractor” means any person retained by XXXX to carry out any part of the Petroleum Operations.
- (c) by XXXX to a third party where such disclosure is essential to the safe conduct of Petroleum Operations;
- (d) to an Affiliated Company;
 “Affiliated Company” means any parent company which directly or indirectly controls XXXX or any company which is directly controlled by XXXX or any company which is controlled, directly or indirectly, by any such parent company.

For the purpose of the foregoing definitions:

- (i) a company is directly controlled by another company or companies holding shares or other equity ownership carrying in the aggregate more than fifty percent (50%) of the voting rights exercisable at general meetings; and
- (ii) a particular company is indirectly controlled by a company or companies (“parent company or companies”) if a series of companies can be specified, beginning with the parent company or companies and ending with the particular company, so related that each company of the series, except the parent company or companies, is directly controlled by one or more of the companies earlier in the series.
- (e) to a bona fide intending assignee of an interest under the Exploration and Production Concession Contract ("EPC") granted by the Government of Mozambique to XXXX or an Affiliated Company, or an interest in any person constituting a concessionaire to the EPC;
- (f) which is required by any applicable law or by the rules or regulations of any recognized stock exchange on which shares of the disclosing Party or any of its Affiliated Companies are listed; or
- (g) if, and to the extent that, it is already public knowledge without improper disclosure hereto.

Any Data disclosed pursuant to this clause 10.02.3 shall be disclosed on terms that ensure that such Data are treated as confidential by the recipient.

No company, other than Affiliated Companies to whom XXXX may disclose the Data shall be allowed to retain copies of the Data, any analysis, maps, interpretation or reprocessed versions of the Data.

Any company to whom XXXX may disclose the Data shall acknowledge in writing to XXXX that XXXX has advised such

company in advance of the restricted use of the Data as provided in this Contract and such company must agree to observe all restrictions applicable to XXXX hereunder.

10.02.4 In the event, after the date of this Contract, a third party acquires, either through itself or through an affiliated company (to the third party) (the “Acquiring Entity”):

- substantially all of the assets of XXXX (or its ultimate parent company) by purchase, combination, trade, bankruptcy reorganization or otherwise, or
- direct or indirect control of XXXX, whether by purchase of voting securities, merger, bankruptcy reorganization or otherwise, and if the Acquiring Entity is not, prior to such acquisition/merger, in the business of exploring for, developing or producing hydrocarbons or acquiring, licensing, brokering or otherwise dealing with geophysical data, no transfer fee shall be payable by XXXX or such third party.

However, if the Acquiring Entity is, prior to such acquisition/merger, engaged in the business of exploring for, developing or producing hydrocarbons or acquiring, licensing, brokering or otherwise dealing with geophysical data, XXXX or such Acquiring Entity shall pay to INP the transfer fee detailed in Supplement. However, in the event of any such acquisition/merger, if the Acquiring Entity elects not to utilize the Data licensed to XXXX, the Acquiring Entity shall so advise INP in writing and return such Data and reprocessed Data to INP and provide INP with evidence that same has been purged from the records of XXXX /the Acquiring Entity, at which time this Contract and the rights of XXXX and the Acquiring Entity to utilize such Data/reprocessed Data shall terminate.

Except as expressly permitted in this Clause 10.02.4, neither this Contract, the Data, the reprocessed Data nor the right to use same may be sold, sublicensed, assigned, transferred or otherwise disposed of by XXXX to a third party without the prior written consent of INP which may, if INP at its sole discretion elects to grant such permission, require payment, by XXXX or such third party of the transfer fee detailed in the Supplement.

10.02.5 XXXX agrees that the unauthorized use, disclosure(s), reproduction(s) or publication(s) of said Data will constitute breach of XXXX's obligations

pursuant to this Article 10.02 and will cause the immediate termination of this Contract and will subject XXXX to liability for damages of such breach of obligations and any other applicable legal remedies. Upon such termination, XXXX shall promptly return the Data to INP.

Article 11. NOTICES

Any notice or notices required by the terms of this Contract to be given by XXXX and INP shall be addressed as follows:

XXXX

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

INP

Instituto Nacional de Petróleo
Fernão Magalhães Av. 34, 1st floor
Fax: + 258 21 430 850
PO Box 4724
Maputo – Mozambique

Or at such other address(es) XXXX and INP may from time to time advise each other in writing.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Contract to be executed in duplicate originals.

XXXX

By _____

Signature _____

Title _____

Date _____

Instituto Nacional de Petróleo

By _____

Signature _____

Title _____

Date _____