

**EXPLORATION AND PRODUCTION  
CONCESSION CONTRACT**

**BETWEEN**

**THE GOVERNMENT  
OF THE REPUBLIC OF MOZAMBIQUE**

**AND**

**“XYZ”**

**AND**

**“ABC”**

**FOR**

**“ONSHORE/OFFSHORE” BLOCK  
REPUBLIC OF MOZAMBIQUE**

## Table of Contents

Article	Subject	Page
	Parties	1
	Preamble	2
1	EPC Documents	3
2	Definitions	4
3	EPC Rights and their Duration	8
4	Work Commitment during Exploration Period	12
5	Conduct of Petroleum Operations	18
6	Commercial Discovery and Development	20
7	Relinquishment of Areas	22
8	Records and Reports	23
9	Cost Recovery and Production Entitlement	25
10	Valuation of Petroleum	32
11	Fiscal Terms and Other Charges	36
12	Production Bonuses	46
13	Lifting Arrangements	47
14	Conservation of Petroleum and Prevention of Loss	48
15	Decommissioning	49
16	Insurance	52
17	Natural Gas	55
18	Employment and Training	58
19	Indemnification and Liability	60
20	Title	61

<b>Article</b>	<b>Subject</b>	<b>Page</b>
21	Rights of Inspection	62
22	Accounting and Audits	63
23	Confidentiality	64
24	Assignment	66
25	Force Majeure	68
26	Foreign Exchange Control	70
27	Nature and Extent of the Rights of the Concessionaire	73
28	Protection of the Environment	80
29	Surrender and Cancellation	83
30	Consultation, Arbitration and Independent Expert	88
31	Applicable Law	92
32	Language	93
33	Joint Operating Agreement	94
34	Future Agreements	95
35	Notices	96

## **Annexes**

Annex "A"	Description of the EPC Area
Annex "B"	Map of the EPC Area
Annex "C"	Accounting and Financial Procedures
Annex "D"	Form of Bank Guarantee
Annex "E"	Form of Parent Company Guarantee
Annex "F"	Joint Operating Agreement

## Parties

This Exploration and Production Concession Contract (“EPC”) is made subject to applicable law on the .....day of ....., 2008:

- (a) THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE, hereinafter referred to as “the Government” and herein represented by the Minister of Mineral Resources; and
- (b) “XYZ”, a corporation established under the laws of ..... and having a branch office duly registered in Mozambique, hereinafter referred to as “xyz” and herein represented by its appointed representative; and
- (c) “ABC”, a company established in accordance with the laws of the Republic of Mozambique, hereinafter referred to as “abc” and herein represented by its Chairman.

”xyz” and “abc” shall hereinafter be referred to as the “Concessionaire”. The Concessionaire and the Government shall hereinafter collectively be referred to as the “Parties” and individually as “Party”.

## **Preamble**

WHEREAS, applicable petroleum law provides that all Petroleum resources in the soil and the subsoil of the land territory, in the seabed of internal waters and the territorial sea, in the exclusive economic zone and on the continental shelf, are the property of the Republic of Mozambique;

WHEREAS, pursuant to applicable petroleum law, the Government has the authority to ensure the implementation of the policy for Petroleum Operations and has for the purpose of this EPC appointed the Ministry of Mineral Resources, hereinafter referred to as "MIREM", to carry out certain functions for and on behalf of the Government as hereafter specified;

WHEREAS, the Government desires to award to "xyz" and "abc" the right to undertake Petroleum Exploration, Development and Production in certain areas subject to the jurisdiction of the Republic of Mozambique;

WHEREAS, the Concessionaire is willing, on certain terms and conditions stipulated to undertake Petroleum Exploration, Development and Production in the EPC Area and has for such purpose technical competence and adequate financial resources;  
and

WHEREAS, the applicable petroleum law provides that Petroleum Exploration, Development and Production shall be carried out under a concession;

NOW THEREFORE it has been concluded as follows:

**Article 1**  
**EPC Documents**

The EPC consists of this EPC main document and the following Annexes, which form an integral part hereof:

Annex "A"	Description of the EPC Area
Annex "B"	Map of the EPC Area
Annex "C"	Accounting and Financial Procedure
Annex "D"	Form of Bank Guarantee
Annex "E"	Form of Parent Company Guarantee
Annex "F"	Joint Operating Agreement

Subject to the conclusion of the EPC, the Concessionaire shall submit a signed joint operating agreement in the form substantially set out in in Annex " F", for which Government approval is a condition under this EPC.

In the event of conflict between the provisions of the EPC main document and its Annexes, the EPC main document shall prevail.

## **Article 2**

### **Definitions**

Definitions stipulated in applicable petroleum law currently Law no. 3/2001 of 21 February and Decree No. 24/2004 of 20 August apply to this EPC unless the context otherwise requires. Words and phrases used in this EPC including its Annexes shall have the following meanings:

*“Affiliated Company”* means, in relation to any Person constituting the Concessionaire, any parent company which directly or indirectly controls such Person or any company which is directly controlled by such Person or any company which is controlled, directly or indirectly, by any such parent company.

For the purpose of the foregoing definition:

- (a) 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
- (b) 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.

*“Attributable Expenditure”* means an expenditure incurred by the Concessionaire on Exploration Operations but excluding any expenditure incurred by the Concessionaire in conducting any Appraisal Programme or drilling any Appraisal Well.

*“Commercial Assessment Period”* applies to a Discovery Area and means the period commencing, at the request of the Concessionaire, at the time when the appraisal report regarding the Appraisal Programme relating to the Discovery of non-Associated Natural Gas has been submitted by the Concessionaire.

*“Commercial Production”* means production of Petroleum and delivery of the same at the Delivery Point under a programme of production and sale as provided for in a Development Plan as amended from time to time.

*“Cost Petroleum”* means the portion of Petroleum Produced available to the Concessionaire to cover the costs and expenses incurred in carrying out the Petroleum Operations as stipulated in the EPC.

*“Decommissioning Fund”* means the fund established to cover the costs of decommissioning operations.

*“Delivery Point”* means in the case of Natural Gas the inlet flange of the transmission pipeline, and in the case of Crude Oil the inlet flange of the lifting tankship or, in either case, such other point as may be agreed by MIREM and the Concessionaire.

*“Discovery Area”* means an area which extends laterally to cover, so far as the boundaries of the EPC Area permit, any Block which contains the geological feature (as mapped with the relevant seismic data), or any part thereof, in which the Discovery is located. In the absence of adequate seismic data, and until such data becomes available, the Discovery Area shall be construed to mean the Block in which the Discovery well is located and the Blocks immediately surrounding such Block.

*“Effective Date”* means the first day of the month following the date on which this EPC has been signed by the Government and the Concessionaire and the ruling of the Administrative Tribunal has been obtained.

*“EPC Area”* means onshore/offshore ..... as described in Annex A and depicted in Annex B. The applicable Petroleum Law and its provisions on the date of signature of this EPC regulating Petroleum Operations using the term "Contract Area" shall be applied mutatis mutandis unless otherwise defined.

*“Evaluation Period”* means the period, following a notice by the Concessionaire that it has made a Discovery, within which the Concessionaire is required to inform MIREM whether such Discovery is of potential commercial interest.

*“Exclusive Petroleum Operations”* means those Petroleum Operations carried out pursuant to applicable law and this EPC chargeable to the account, benefit and liability of less than all Persons constituting the Concessionaire under this EPC.

*“Expatriate Personnel”* means any employee of any Person constituting the Concessionaire, of an Affiliated Company of any such Person or of any Subcontractor, provided such employee is not a citizen of the Republic of Mozambique and whose contract of employment provides for the payment or the reimbursement of the cost of his passage to and from the Republic of Mozambique.

*“Exploration Operations”* means operations conducted hereunder for or in connection with Exploration for Petroleum in the EPC Area and includes operations conducted to carry out an Appraisal Programme or to drill any Appraisal Well.

*“Exploration Period”* means any relevant period of Exploration set out in this EPC.

*“Exploration Well”* means any well, the purpose of which at the time of the commencement of drilling is to explore for an accumulation of Petroleum, which accumulation was at that time unproven by drilling.

*“MIREM”* means the Ministry of Mineral Resources or any other person or entity appointed to administer and regulate Petroleum Operations for and on behalf of the Government under the EPC whose identity has been notified in writing to the Concessionaire.

*“Participating Interest”* means the percentage interest portion, as further described in Article 3.2, of each Person constituting the Concessionaire in the rights, privileges, duties and obligations derived from this EPC.

*“Person”* means any natural person or any corporation, association, partnership, joint venture or entity which is considered a legal entity under the law of Mozambique or the laws of the country pursuant to which such corporation, association, partnership, joint venture or entity is governed.

*“Petroleum Production Tax”* means the Imposto sobre a Produção de Petróleo as defined by applicable law.

*"Petroleum Produced "* means Petroleum which has been extracted from a reservoir, initially separated and processed into Crude Oil, condensate or Natural Gas delivered to the Delivery Point appropriate for onwards transportation in bulk or through a pipeline. The same applies to "Crude Oil Produced", Condensate Produced" and "Natural Gas Produced" as the case may be.

*"Profit Petroleum"* means that portion of Disposable Petroleum, in excess of Cost Petroleum, which is allocated to the Parties under the terms of the EPC.

*"Subcontractor"* means any Person retained by the Concessionaire to carry out any part of the Petroleum Operations.

*"State Participating Interest"* means the share of the Participating Interest owned by an entity holding such share on behalf of the Government.

*"Wellhead"* means the inlet flange of the first valve after the wellhead production manifold.

**Article 3**  
**EPC Rights and their Duration**

- 3.1 This EPC :
- (a) is a concession awarded pursuant to Petroleum Law No. 3/2001 of 21 February, which authorises the conduct of certain Petroleum Exploration, Development and Production activities in the EPC Area as defined herein;
  - (b) confers on the Concessionaire, subject to applicable law and the terms and conditions set forth in this EPC, an exclusive right to conduct Petroleum Operations in order to produce Petroleum from resources originating from one or more Petroleum Deposit in the subsoil of the seabed within the limits of the EPC Area;
  - (c) save where access to an existing Oil Pipeline or Gas Pipeline System is available on reasonable commercial terms, confers a non- exclusive right subject to applicable law to construct and operate an Oil Pipeline or Gas Pipeline System for the purpose of transporting Petroleum Produced from Petroleum Deposits under this EPC.
- 3.2 (a) Prior to this EPC reaching the Effective Date this EPC has to be approved by the Council of Ministers, the appurtenant agreements to this EPC have to be signed by the Concessionaire, and the ruling of the Administrative Tribunal has to be obtained.
- b) On the Effective Date the respective Participating Interests of “xyz” and “abc” is ... percent (...%) and .... percent (...%) respectively.
- 3.3 The rights and obligations of the Concessionaire shall commence on the Effective Date and shall subsist:
- (a) during the Exploration Period; and
  - (b) subject to terms and conditions as hereinafter provided, during the Development and Production Period;

provided that obligations of the Concessionaire which have accrued hereunder before the end of any relevant Exploration Period or an applicable Development and Production Period shall, notwithstanding that this EPC has otherwise been cancelled subject to applicable law or the terms and conditions of this EPC, continue to be binding on the Concessionaire for the period provided by the applicable law and for the purpose of any claim in respect thereof, the provisions of Article 30 shall continue to apply.

3.4 The first Exploration Period shall commence on the Effective Date. Unless the EPC is terminated earlier in accordance with its terms, it shall continue for a period of ..... (..... ) months.

3.5 Where the Concessionaire desires to extend the Exploration Period the Concessionaire shall submit a notice to MIREM to that effect. Such notice has to be submitted not later than thirty (30) days before the expiry of the first Exploration Period or any subsequent Exploration Period would otherwise expire. Provided that the Concessionaire has fulfilled, or is deemed to have fulfilled, its obligations under the first Exploration Period, the Concessionaire is entitled:

(a) at the end of the first Exploration Period, to a second Exploration Period of ..... (..... ) months; and

(b) at the end of the second Exploration Period, to a third Exploration Period of ..... (.....) months; and

(c) to the rights referred to in Article 3.6; and

(d) to such additional period of time that may be necessary to give effect to Article 25.4 on force majeure.

3.6 Extensions shall be granted in the following situations:

(a) Where pursuant to Article 6 the Concessionaire has notified MIREM that it has made a Discovery, the Exploration Period shall not, in respect of the Discovery Area to which that Discovery relates, terminate before the end of the Evaluation Period.

- (b) Where before the end of the Evaluation Period the Concessionaire has pursuant to Article 6 notified MIREM that a Discovery is of potential commercial interest, the Exploration Period shall not in respect of the Discovery Area to which that Discovery relates terminate before approval of the Development Plan.
  - (c) Where pursuant to Article 17.3 the Commercial Assessment Period has commenced in respect of a Discovery of Natural Gas, the Exploration Period shall not, in respect of the Discovery Area to which that Discovery relates, terminate so long as that Commercial Assessment Period continues.
  - (d) Where the work program of the Concessionaire due to reasons beyond the reasonable control of the Concessionaire has been delayed due to the inability to secure appropriate equipment necessary to conduct Petroleum Operations (including but not limited to drill ships, drill barges and seismic vessels) the Concessionaire shall notify MIREM and when required for the Concessionaire to complete the obligatory Exploration work commitment submit a properly reasoned request for such extension that may be necessary to allow the completion of such Exploration work program. MIREM shall without undue delay consider and respond to such request and if not granted give grounds for refusing to grant the extension;
- 3.7 Where the Concessionaire has not prior to expiry of the last Exploration Period given notice to MIREM a Declaration of Commerciality, the Concessionaire shall at the end of that Period have no further rights or obligations in the EPC Area or under this EPC except as specifically provided herein.
- 3.8 Where, during a relevant Exploration Period the Concessionaire has given to MIREM a Declaration of Commerciality by notice, the Concessionaire shall, in respect of the Development and Production Area to which any such notice relates, continue at the end of the Exploration Period to have rights and obligations hereunder for so long as the Development and Production Period for that Development and Production Area subsists.

- 3.9 A “Development and Production Period” shall commence with respect to each Development and Production Area on the date on which the Development Plan for that Development and Production Area has been approved in accordance with applicable law, and notice to that effect has been given to the Concessionaire and, unless this EPC is sooner terminated in accordance with its terms and applicable law, shall, in respect of the Development and Production Area to which the said notice relates, continue to subsist for a Development and Production Period of ..... (....) years and for such additional periods that may be necessary to give effect to Article 25.4.

**Article 4**  
**Work Commitment during Exploration Period**

- 4.1 The Concessionaire shall, in the discharge of its obligations to carry out Exploration Operations, carry out the work stipulated in this EPC unless otherwise provided or pay to the Government not less than the sums set forth below in this Article. The Exploration work commitments stipulated in this Article may not be performed individually or collectively by the Concessionaire as Exclusive Petroleum Operations.
- 4.2 During the first Exploration Period of ..... (....) months, the Concessionaire shall conduct the following Exploration work commitment:
- a) [insert the description of Exploration work programme]
  - b)
  - c)

In case of non-performance of any part of the Exploration work commitment described in this Article 4.2, save for exemptions listed in this Article, and in the manner provided by this Article, the maximum amount of any guarantee or the maximum amount to be paid by the Concessionaire to the Government (hereinafter referred to as "Minimum Expenditure") for this Period shall be ..... United States dollars (USD ....).

- 4.3 During the subsequent second Exploration Period of .... (....) months, the Concessionaire shall conduct the following Exploration work commitment:
- a) [insert the description of Exploration work programme]
  - b)

In case of non-performance of any part of the Exploration work commitment described in this Article 4.3, save for exemptions listed in this Article, and in the manner provided by this Article, the maximum amount of any guarantee or the maximum amount to be paid by the Concessionaire to the Government (hereinafter referred to as "Minimum Expenditure") for this period shall be ..... United States dollars (USD .....).

4.4 During the subsequent third Exploration Period of .... (.....) months, the Concessionaire shall conduct the following Exploration work commitment:

- a) [insert the description of Exploration work programme]
- b)
- c)

In case of non-performance of any part of the Exploration work commitment described in this Article 4.4, save for exemptions listed in this Article, and in the manner provided by this Article, the maximum amount of any guarantee or the maximum amount to be paid by the Concessionaire to the Government (hereinafter referred to as "Minimum Expenditure") for this period shall be ..... United States dollars (USD .....).

4.5 Should any well forming part of the Exploration work commitments provided for in Articles 4.2, 4.3 and 4.4 be abandoned, for any reason other than a reason specified in Article 4.6 below, before reaching the defined objectives of such well, the Concessionaire shall drill a substitute well. In this event the relevant Exploration Period shall be extended by a reasonable period of time as MIREM may agree to allow the drilling and evaluation of the substitute well.

4.6 Unless otherwise approved by MIREM, any well which forms part of the Exploration work commitments provided for in Articles 4.2, 4.3 and 4.4 shall be drilled to such depth as set forth in those Articles, unless before reaching the required depth:

- (a) further drilling would in the reasonable opinion of the Concessionaire present an obvious danger, due to such events as, but not limited to, the presence of abnormal pressure or excessive losses of drilling mud;
- (b) impenetrable formations are encountered;
- (c) Petroleum bearing formations are encountered which require protecting, thereby preventing planned depths from being reached; or

- (d) MIREM agrees to terminate the drilling operation.
- 4.7 In circumstances which the Concessionaire is permitted pursuant to Article 4.6 to drill any well to a lesser depth than required pursuant to Article 4.2, 4.3, 4.4 and 4.5, the Concessionaire shall be deemed to have satisfied all the Concessionaire's obligations in respect of that well.
- 4.8 During the drilling of Exploration Wells hereunder, the Concessionaire shall, in accordance with applicable law, keep MIREM informed of the progress of each well and shall:
- (a) as soon as reasonably possible, consult with MIREM regarding any proposed well testing programme;
  - (b) test potentially commercially viable horizons, in the opinion of the Concessionaire and after consultation with MIREM, within the EPC Area indicated by wireline logging or by other means of formation evaluation; and
  - (c) promptly undertake a technical evaluation of the said test results and of all other relevant subsurface data and submit the same to MIREM as soon as it has been completed.
- 4.9 The Minimum Expenditure obligations set forth in Articles 4.2, 4.3 and 4.4 shall not in respect of any Exploration Period be satisfied unless the total Attributable Expenditure for each Exploration Period equals or exceeds the amount of the Minimum Expenditure for that period; provided, however, that if, at the end of any Exploration Period, the work commitments for that period has been completed to the reasonable satisfaction of MIREM, the expenditure incurred by the Concessionaire during that period shall be deemed to equal or exceed the Minimum Expenditure for that period as specified in Articles 4.2, 4.3 and 4.4.
- 4.10 (a) Minimum Expenditure guarantee

Without prejudice to the joint and several liability of the Persons constituting the Concessionaire, each of the Persons constituting the Concessionaire

shall by no later than thirty (30) days after the Effective Date, and where this EPC has been extended pursuant to Article 3.5, on the first day of such extension period, provide, in substantially the form shown in Annex “D”, an unconditional and irrevocable bank guarantee in respect of its Participating Interest share and the relevant portion of Carry of the Minimum Expenditure for the initial Exploration Period or, as the case may be, the Minimum Expenditure obligations for the second or third Exploration Period, as the same may have been reduced by the provisions of Article 4.11. For the purpose of this Article 4.10 (a), where a Person constituting the Concessionaire has undertaken to fund payments in respect of Minimum Expenditure which would otherwise have been payable by another Person constituting the Concessionaire, the share of Minimum Expenditure of that Person constituting the Concessionaire giving that undertaking will be deemed to include the share of Minimum Expenditure for which such other Person constituting the Concessionaire would have been liable if no such undertaking had been given.

4.10 (b) Parent Company guarantee

Without prejudice to the joint and several liability of the Persons constituting the Concessionaire, the Operator shall by no later than thirty (30) days after the approval of the first Development Plan provide, in substantially the form shown in Annex “E”, an unconditional and irrevocable parent company guarantee from an entity acceptable to MIREM in respect of all its obligations under this EPC beyond the scope of the Minimum Expenditure guarantee.

4.11 The amount of any bank guarantee given pursuant to Article 4.10(a) shall be reduced by the Concessionaire in discharge of its obligations under Articles 4.2, 4.3 and 4.4 as follows:

- (i) during the first Exploration Period:
  - .....United States dollars (USD .....) at completion of Article 4.2;
- (ii) during the second Exploration Period:
  - ..... United States dollars (USD ....) at completion of Article 4.3;
- (iii) during the third Exploration Period:

- ..... United States dollars (USD .....) at completion of Article 4.4

4.12 If, at the end of the first Exploration Period or at the end of any Exploration Period, the Attributable Expenditure incurred by the Concessionaire during that period does not and is not, pursuant to Article 4.2, 4.3 and 4.4, deemed to equal or exceed the Minimum Expenditure for that period, MIREM shall notify the Concessionaire and the Concessionaire shall, unless the full amount of the shortfall has been met by the Concessionaire within thirty (30) days of such notification, have the right to call on said guarantee for the payment thereunder to MIREM of the full amount of the shortfall.

4.13 In the event where the number of Exploration Wells drilled by the Concessionaire and/or the amount of seismic data acquired during any Exploration Period exceed the number of wells and/or the amount of seismic data acquired provided for in the work commitments for that period, as specified in Articles 4.2, 4.3 and 4.4, the number of additional Exploration Wells drilled and/or the amount of seismic data acquired by the Concessionaire during such Exploration Period may be carried forward and treated as work undertaken in discharge of the Concessionaire's commitment to drill Exploration Wells and/or seismic data acquired during the succeeding period; provided, however, if by reason of the provisions of this Article the work commitments of the Concessionaire for any Period as specified in Articles 4.2, 4.3 and 4.4 has been fully discharged by the Concessionaire before that period commences, the Concessionaire, after consultation with MIREM, shall adopt a work commitment for the period in question so as to ensure the continuity of Petroleum Operations in, or in connection with, the EPC Area during that period.

4.14 Except as otherwise provided, nothing in Article 4.12 or Article 4.13 shall be read or construed as extinguishing, postponing or modifying any commitment of the Concessionaire to carry out seismic surveys or to drill Exploration Wells pursuant to this Article.

4.15 Neither the Appraisal Wells nor seismic surveys carried out pursuant to an Appraisal Programme drawn up pursuant to Article 6.2 nor the expenditure incurred by the Concessionaire in carrying out such Appraisal Programme

shall be treated as discharging in whole or in part the Minimum Expenditure obligations set out in Articles 4.2, 4.3 and 4.4.

- 4.16 Within forty six (60) days of the Effective Date for so long as an Exploration Period subsists and at least ninety (90) days prior to the end of each calendar year or at such other times as may be approved in advance by MIREM, the Concessionaire shall prepare in reasonable detail and submit to MIREM an Exploration work programme and budget for the remaining portion of the calendar year or, for the subsequent calendar year(s), and a proposed structure for the Concessionaire's organisation for the conduct of Exploration Operations in the EPC Area.
- 4.17 The work programme and budget prepared by the Concessionaire shall be consistent with obligations under this EPC and shall set forth the Petroleum Operations which the Concessionaire proposes to carry out during the remaining portion of the calendar year or for subsequent calendar year(s). The Concessionaire shall consider any recommendations made by MIREM in respect thereof and after making such revisions thereto as the Concessionaire considers appropriate submit the revised annual work programme and budget to MIREM for information.
- 4.18 The Concessionaire may at any time amend the work programme and budget submitted in accordance with Articles 4.16 and 4.17, provided that the amended work programme and budget are:
- (a) prepared in reasonable detail and submitted to MIREM, whose recommendations in respect thereof shall be considered by the Concessionaire; and
  - (b) consistent with the Concessionaire's obligations under this Article; and
  - (c) submitted to MIREM for information once the Concessionaire has made such revisions as it deems appropriate after consideration of any recommendations made by MIREM.

**Article 5**  
**Conduct of Petroleum Operations**

- 5.1 The Concessionaire shall carry out Petroleum Operations in the EPC Area:
- (a) diligently and with due regard to Good Oilfield Practice;
  - (b) subject to applicable law; specifically the Petroleum Law and the Regulations for Petroleum Operations;
  - (c) in accordance with environmental and safety standards generally accepted in the international petroleum industry and applicable from time to time in similar circumstances;
  - (d) in respect of any Development and Production Area in compliance with the Development Plan for that Development and Production Area.
- 5.2 Where the Concessionaire is more than one Person any obligation of the Concessionaire hereunder shall be a joint and several obligation of the Persons who constitute the Concessionaire, save for the following each of which shall be a several obligation of each of those Persons:
- (a) the obligation to pay corporate income tax or any other tax assessed and levied on profit or net income;
  - (b) the obligation to observe stipulations relating to confidentiality as set out in Article 23 save in respect of their application to anything performed or to be performed by the Operator in his capacity as such; and
  - (c) the obligation to observe stipulations relating to foreign exchange as set out or referred to in Article 26 save in respect of their application to any actions performed or to be performed by the Operator in his capacity as such.
- 5.3 ..... shall be the Operator. No change of the Operator may take effect unless it has been approved in writing by MIREM.

5.4 Throughout the period of this EPC, the Concessionaire or where more than one Person constitutes the Concessionaire, the Operator shall ensure that it has a general manager or another appointed representative who shall reside in the Republic of Mozambique or such other country as may be mutually agreed by all Parties. The Concessionaire or, as the case may be, the Operator shall appoint the general manager or other representative and shall notify MIREM of the identity of the individual so appointed within one hundred and twenty (120) days after the Effective Date. If for any reason the individual so appointed ceases to be the general manager, the Concessionaire or, as the case may be, the Operator shall as soon as practicable appoint a replacement acceptable to MIREM and shall notify MIREM of the identity of the replacement.

**Article 6**  
**Commercial Discovery and Development**

- 6.1 Where, in the course of the Petroleum Operations, a Discovery of Petroleum is made in the EPC Area, the Concessionaire shall as soon as reasonably possible by written notice inform MIREM whether or not, in its opinion, the said Discovery is of potential commercial interest.
- 6.2 For a Discovery of potential commercial interest the Concessionaire shall promptly prepare an Appraisal Programme and, after consultation with MIREM, carry out such Appraisal Programme and submit a report of the appraisal activities to MIREM within three (3) months after the completion of the Appraisal Programme.
- 6.3 The Concessionaire shall submit to MIREM for Government consideration and approval a Development Plan for a proposed Development and Production Area for the Discovery, so as to include such a Development and Production Area in a single area, so far as the boundaries of the EPC Area permit, the entire area of the Petroleum reservoir or reservoirs in respect of which a Declaration of Commerciality has been given. MIREM shall consider without undue delay the proposed Development Plan submitted by the Concessionaire. If MIREM is unable to complete consultation with concerned relevant authorities within twelve (12) months from receipt of the proposed Development Plan submitted by the Concessionaire for approval, then MIREM shall notify the Concessionaire and shall when possible indicate when it is expected that the consultation process shall be completed.
- 6.4 If Commercial Production of a Discovery has not commenced within a period of ... (....) years for Crude Oil and ..... (...) years for non-Associated Natural Gas, or such longer period as may be specified in an approved Development Plan, from the date on which the Development Plan is approved, then the rights and obligations of the Concessionaire over the Development and Production Area to which the Discovery relates shall be extinguished as though the said area had been surrendered pursuant to Article 29. Such period may be extended:

- (a) by any period that may be necessary to commence Commercial Production where the Concessionaire commenced promptly to implement the Development Plan as soon as the Development Plan was approved and has continued to diligently implement the Development Plan but at the end of .... (....) years or such longer period as is specified in the approved Development Plan, has not yet commenced Commercial Production; or
- (b) by the period of time that the commencement of Commercial Production has been delayed for lack of any approval or permit required to be obtained from the Government or any agency thereof after the implementation of the Development Plan has begun and prior to the commencement of Commercial Production and such delay is not attributable to actions or omissions which are within the reasonable control of the Concessionaire; or
- (c) by any period that may be necessary to give effect to Article 25.4.

**Article 7**  
**Relinquishment of Areas**

7.1 Where, pursuant to a request by the Concessionaire under Articles 3.5 (a) and (b), the Exploration Period is extended at the end of the first Exploration Period, the Concessionaire shall relinquish its rights:

- (a) at the commencement of the second Exploration Period of .... (...) months in respect of a portion of the EPC Area so that the area retained, excluding what is already included in a Development and Production Area or in a Discovery Area, does not exceed .... per cent (...%) of the EPC Area on the Effective Date;
- (b) at the commencement of the third Exploration Period of ..... (...) months in respect of a portion of the EPC Area so that the area retained, excluding what is already included in a Development and Production Area or in a Discovery Area, does not exceed ..... percent (...%) of the EPC Area on the Effective Date, as reduced under item (a) above;
- (c) at the end of the third Exploration Period in respect of the remainder of the EPC Area other than any Development and Production Areas or any area in respect of which the Exploration Period has been further extended pursuant to Articles 3.5 (c) and (d).

7.2 For the purpose of this Article, a Discovery Area shall not include any area which relates to a Discovery in respect of which:

- (a) the Concessionaire has notified MIREM that the Discovery is not considered to be of potential commercial interest, is not commercial or is no longer considered to be commercial, or
- (b) a Development and Production Area has previously been delineated.

**Article 8**  
**Records and Reports**

- 8.1 The Concessionaire shall prepare and, at all times while this EPC is in force, maintain accurate and up-to-date records of its operations in the EPC Area. The Concessionaire shall also furnish MIREM with such available information, data and reports relating to the Petroleum Operations, as well as assessments and interpretations relating to the Petroleum Operations all of which as MIREM may reasonably require.
- 8.2 Well logs, maps, magnetic tapes, core and cutting samples and other geological and geophysical information obtained by the Concessionaire in the course of carrying out the Petroleum Operations shall be submitted to MIREM and, save as provided in Article 8.3 or authorised pursuant to Article 23, may not be published, reproduced or otherwise dealt with without the consent of MIREM.
- 8.3 The Concessionaire may retain for its own use copies of material constituting Documentation, with the approval of MIREM, and retain for its own use original material constituting Documentation; provided that samples equivalent in size and quality or, where such material is capable of reproduction, copies have been supplied to MIREM. The Concessionaire may freely export for processing or laboratory examination or analysis samples or other original materials constituting Documentation; provided that samples equivalent in size and quality or, where such material is capable of reproduction, copies of equivalent quality have first been delivered to MIREM.
- 8.4 The Concessionaire shall keep MIREM currently advised of all major developments taking place during the course of the Petroleum Operations and without prejudice to the generality of the foregoing the Concessionaire shall:
- (a) within forty five (45) days after the end of each calendar quarter prepare and deliver a progress report to MIREM which shall contain a narrative report of activities hereunder during such calendar quarter with plans and maps showing the places where the work described was done; and

- (b) within four (4) months after the end of each calendar year prepare and deliver to MIREM an annual report which shall consolidate and where necessary revise and amplify the quarterly progress reports furnished in respect of that calendar year.

## Article 9

### Cost Recovery and Production Entitlement

- 9.1 The Concessionaire shall bear and pay all costs incurred in carrying out the Petroleum Operations in which the Concessionaire participates, and the Concessionaire shall recover such costs, to the extent permitted by the EPC including the provisions of Annex “C” of this EPC, (hereinafter referred to as “Recoverable Costs”), and shall be remunerated exclusively by means of an entitlement to quantities of Petroleum to which the Concessionaire is entitled as herein provided.
- 9.2 The provisions related to cost recovery and profit entitlement set out in this Article shall apply to Petroleum provided that the Government and the Concessionaire shall have title in undivided participating entitlement to the Petroleum available for sale in any given period. Unless otherwise instructed by the Government the sale of such Petroleum shall take place on a joint dedicated basis by the Concessionaire and the Concessionaire will hold those entitlements in undivided proportions equal to the proportions in which during that period each Party was entitled to Disposable Petroleum. Such instructions shall not affect volumes of Petroleum subject to contract. Accordingly, the proceeds from the sale on a joint dedicated basis of Petroleum in any given period shall be divided between the Government and the Concessionaire in the proportions in which they had title in undivided entitlements to the Petroleum sold.
- 9.3 From the total quantity of Petroleum Produced, the Concessionaire may take a portion thereof necessary to discharge the Concessionaire’s obligation for the Petroleum Production Tax. The balance of Petroleum Produced remaining after the aforesaid portion of the Petroleum Production Tax has been set aside is hereinafter referred to as “Disposable Petroleum”.
- 9.4 (a) For purposes of the R-factor calculation, Disposable Petroleum and Cost Petroleum shall be calculated in respect of the whole of the EPC Area.
- (b) Insofar as permitted by applicable law and this EPC, all costs incurred by the Concessionaire in relation to Petroleum Operations shall be recovered from Disposable Petroleum as available at the Delivery Point.

(c) In addition, and in the event the Government and/or the Concessionaire elect to take Profit Petroleum in kind, the Concessionaire shall, for accounting and reporting purposes, record Cost Petroleum separately:

- (i) in respect of each Development and Production Area, and
- (ii) in the form of liquids and gas, on a pro-rata basis relative to the volumes of Petroleum Produced.

For the purposes of this EPC, condensate shall be taken in liquids or gas on the basis of its character at the Delivery Point.

9.5 For each calendar year, all Recoverable Costs incurred by the Concessionaire in relation to Petroleum Operations in the EPC Area shall be limited to .....percent ( .....%) of Disposable Petroleum.

9.6 The Cost Petroleum for any quarter calculated in the manner aforesaid shall be increased by:

- (a) the amount of any contributions made by the Concessionaire into the Decommissioning Fund during such quarter; and
- (b) the costs incurred by the Concessionaire during such quarter to implement an approved Decommissioning Plan prepared pursuant to applicable law and the provisions of Article 15 save to the extent that, such costs have been funded by withdrawals from the Decommissioning Fund; and
- (c) provided that in no event shall the Cost Petroleum exceed the Disposable Petroleum.

9.7 Costs, to the extent permitted by the provisions of Annex "C" of this EPC, shall subject to Article 9.8, be recovered from Cost Petroleum:

- (a) in respect of the amount of Development and Production Capital Expenditures stipulated in Annex “C” of this EPC incurred during each calendar year, by the recovery of such amount at a maximum yearly rate of twenty five (25 %) on a linear depreciation basis, beginning in the calendar year in which such amount is incurred or in the calendar year in which Commercial Production commences, whichever is later;
- (b) in respect of costs attributable to Exploration as stipulated in Annex “C” of this EPC (hereinafter referred to as “Exploration Costs”), by the recovery of the full amount in the calendar year in which they were incurred or in the calendar year in which Commercial Production commences, whichever is later; and
- (c) in respect of operating costs attributable to Petroleum Operations stipulated as Operating Costs in Annex “C” to this EPC (hereinafter referred to as “Operating Costs”) (including any contributions into the Decommissioning Fund pursuant to applicable law, the provisions of Article 15 and including any costs incurred by the Concessionaire to implement an approved Decommissioning Plan prepared pursuant to the provisions of applicable law save to the extent, in either case, that such costs have been funded by withdrawals from the Decommissioning Fund), by the recovery of the full amount in the calendar year in which they were incurred.

9.8 To the extent that Recoverable Costs in any year exceed the value of Cost Petroleum available in that year, the unrecovered excess shall be carried forward for recovery in the next succeeding year or years until fully recovered.

9.9 The quantity of Cost Petroleum to which the Concessionaire is entitled in any year shall be established on the basis of the value of the Petroleum Produced during such year, and determined in accordance with Article 10.

9.10 The “Profit Petroleum”, shall be shared between the Government and the Concessionaire according to a scale varying with the value of the R-Factor, where:

(a)  $R\text{-Factor} = (\text{Cumulative Cash Inflows})_n /$

(Cumulative Capital Expenditures) n

- (b) Cumulative Cash Inflows n =
- Cumulative Cash Inflows (n-1)
  - + Concessionaire's portion of Profit Petroleum n
  - + Concessionaire's Cost Petroleum n
  - Operating Costs n
  - Computed Corporate Income Tax n
- (c) Cumulative Capital Expenditures n =
- Cumulative Capital Expenditures (n-1)
  - + Exploration Costs n
  - + Development and Production Capital Expenditures n

Where:

n is the current year; and (n-1) is the previous year;

Concessionaire's Cost Petroleum is the amount of Recoverable Costs actually recovered;

Computed corporate income tax is the Concessionaire's corporate income tax obligation computed according to applicable tax law and Article 11.

For the purpose of calculating the R-Factor, the first year (n=1) shall be the year during which the Effective Date occurs. Any Capital Expenditures incurred prior to the Effective Date shall not be deemed for the purpose of the R-Factor calculation to have been incurred during the quarter for the Effective Date.

The R-Factor shall be calculated on the last day of each calendar year and the applicable ratio shall determine the sharing of Profit Petroleum throughout the following calendar year.

The scale for Profit Petroleum is as follows:

R-Factor	Government's Portion	Concessionaire's Portion
less than 1	..... %	..... %
equal to or greater than 1 and less than 1.5	..... %	..... %
equal to or greater than 1.5 and less than 2	..... %	..... %
Equal to or greater than 2 and less than 2.5	..... %	..... %
Equal to or greater than 2.5	..... %	..... %

- 9.11 (a) If there is a breach of the warranty set out in Article 11.6 or in the event that after the Effective Date there is a change in the laws of the Republic of Mozambique of the kind referred to in Article 11 and as a result the Parties meet to agree on changes to be made to this EPC then during the period starting when the change in the law comes into effect and ending when an agreement between the Parties is reached pursuant to Article 11, the portion of Profit Petroleum to which the Concessionaire and the Government would otherwise be entitled shall be adjusted so that the net revenues to be received by the Concessionaire from Petroleum Operations are the same as they would have been if no change in the law had taken place.
- (b) Where the Parties have reached agreement on the changes to be made to this EPC pursuant to Article 11, this EPC will be deemed to stand amended to the extent necessary to give effect to that agreement in accordance with its terms.
- 9.12 Concessionaire's Cost Petroleum and Profit Petroleum calculations shall be done for each calendar year on a cumulative basis. To the extent that actual quantities and expenses are not known, provisional estimates based on the approved work program and operating and capital budgets shall be used. Until such time as the value of Petroleum attributable to a calendar year is determined, the calculations will be based on the value of such Petroleum during the preceding calendar year and in the absence of such value, on the value agreed between MIREM and the Concessionaire. Adjustments shall be made during the succeeding calendar year based on actual Petroleum quantities, prices and expenses in relation to such calendar year.

9.13 Any Person constituting the Concessionaire, excluding “abc” or a “Permitted Assignee”, shall pay all costs properly incurred under this EPC in relation to the State Participation Interest (herein referred to as “Carry”) subject to the following conditions:

- a) In the event of a third party other than an entity holding a State Participating Interest or a Permitted Assignee has acquired a Participating Interest in the EPC from any Person constituting the Concessionaire, such third party shall be obliged to take over a proportionate share of the Carry.
- b) A State Participating Interest totally or partially transferred to a non-Permitted Assignee may only become effective provided all outstanding amounts relating to the transferred interest and not yet reimbursed to the Concessionaire subject to Carry have been paid by the non-Permitted Assignee to Concessionaire proportionally to their respective Participating Interests. The share of any future Carry, to be paid by each Concessionaire subject to Carry, shall be calculated according to the new composition of the Concessionaire subject to Carry.
- c) The Carry shall be limited to all costs incurred by the Concessionaire in discharging its obligations under this EPC, up to and including the date upon which the first Development Plan has been approved.
- d) The Carry shall be used exclusively to pay for costs properly incurred under this EPC in relation to the State Participating Interest. Save for in respect of a transfer to a Permitted Assignee, “abc” may not assign directly or indirectly the benefits derived under the Carry. Any transfer of a Participating Interest subject to the Carry requires the prior written approval of MIREM. The term “Permitted Assignee” means for the purpose of this Article the Government or a Mozambican Person wholly owned and controlled by the Government.
- e) From the date of commencement of Commercial Production, “abc” and any entity designated by the Government to manage the State Participation Interest portion shall reimburse in full the Carry in cash or

in kind to the Persons (other than “abc” or a Permitted Assignee) constituting the Concessionaire. Such reimbursement shall be calculated as and taken from the Cost Petroleum of said Person having benefited from the Carry. All Carry amounts owed up to approval of the first Development Plan shall be subject to payment of interest in United States dollars, compounded quarterly, calculated at the LIBOR rate (as defined in and determined in accordance with Article 28.7) plus one (1) percentage point, from the date such costs are incurred by the Persons (other than “abc” or a Permitted Assignee) constituting a Concessionaire until reimbursed in full.

**Article 10**  
**Valuation of Petroleum**

- 10.1 The value of Petroleum referred to in Articles 9 and 11 shall, to the extent such Petroleum consists of Crude Oil, be determined at the end of each calendar month commencing with the calendar month in which Commercial Production of Crude Oil begins. To the extent that such Petroleum consists of Natural Gas, the value of Natural Gas shall be determined at the end of each calendar month commencing with the calendar month in which commercial delivery at the Delivery Point begins.
- 10.2 A value for each separate export grade of Crude Oil will be :
- (a) in the case of sales to non-Affiliated Companies, the weighted average price per barrel at the Delivery Point of each separate export grade of Crude Oil being the FOB ( as such term is defined in Incoterms 2000) price, at which such Crude Oil has been sold by the Concessionaire during that calendar month; or
  - (b) If the Concessionaire sells the Crude Oil to a third party on terms different from FOB (as such term is defined in Incoterms 200), then for the purpose of this EPC, a calculated net-back FOB price shall be applied. The net-back FOB price shall be established by deducting from the agreed price the actual and direct costs incurred by the Concessionaire in fulfilling the obligations under their sales contract in addition to those obligations included under a FOB contract.
  - (c) in the case of sales to Affiliated Companies, such price as agreed between MIREM and the Concessionaire on the basis of adding the following two factors together:
    - (i) the weighted average calendar month FOB price for Brent rated Crude Oil, or such other appropriate marker Crude Oil for the production in question for the

period in question. The weighted average will be based on the days in each calendar month when a closing price is reported in Platts Oilgram price report. Days such as weekends and holidays with no price reports will be ignored;

- (ii) a premium or discount to the price of the Brent rated Crude Oil, or such other appropriate marker Crude Oil for the production in question to be determined by reference to the quality of the Crude Oil Produced from the EPC Area and the cost of moving such Crude Oil to the market.

10.3 In any case in which MIREM and the Concessionaire are unable to agree a price under Article 10.2 (c), in order to determine the premium or discount referred to therein the following procedures shall be undertaken:

- (a) MIREM and the Concessionaire shall submit to each other their assessments of the premium or discount together with an explanation of the key factors taken into consideration in assessing the premium or discount;
- (b) if the premium or discount submitted by each of MIREM and the Concessionaire are within ten United States cents (10 US ¢) per barrel of each other the average will be taken for the purposes of setting the final value of the Crude Oil;
- (c) if the premium or discount submitted by each of MIREM and the Concessionaire differ by more than ten United States cents (10 US ¢) per barrel each will resubmit a revised premium or discount to the other on the third (3rd) business day after the first exchange of information;
- (d) if the premium or discount submitted by each of MIREM and the Concessionaire on the second exchange of information are within ten United States cents (10 US ¢) per barrel of each other the average will be taken for the purposes of setting the final value of Crude Oil;

- (e) if the premium or discount submitted on the second exchange of information differ by more than ten United States cents (10 US ¢) per barrel the matter shall, in accordance with Article 30.6, be referred for determination by a sole expert who shall establish a price based on the criteria set out in Article 10.2(c) but always within the range established by the Parties under Article 10.3(d).

10.4 The value calculated for Natural Gas Produced from reservoirs within the EPC Area shall be:

- (a) in the case of sales to non-Affiliated Companies, the weighted average price per Gigajoule of commercial specification Natural Gas at the Delivery Point at which such Natural Gas has been delivered by the Concessionaire during that calendar month, shall be the weighted average price per Gigajoule of all other commercial specification Natural Gas delivered during the same calendar month from reservoirs subject to the jurisdiction of the Republic of Mozambique and the weighted average of posted or publicly available prices for alternative fuels to Natural Gas for large scale industrial consumers including power generators in the market where such has been delivered to ultimate customers.
- (b) in the case of sales to Affiliated Companies, such price as stipulated in sub-paragraph a) above for sales to non-Affiliated Companies or such price agreed between MIREM and the Concessionaire.

10.5. In the event that the Government enters into a commercial Gas and/or Crude Oil Sales Agreement with the Concessionaire for the purchase by the Government of Crude Oil and/or Natural Gas from the Concessionaire, such sales shall be at a price no higher than the price of Crude Oil and/or Natural Gas sold to Affiliated Companies from the EPC Area as determined in terms of this Article 10.



**Article 11**  
**Fiscal Terms and Other Charges**

- 11.1 The Concessionaire and its Subcontractors shall, save to the extent they are exempt therefrom, be subject to all applicable legislation of the Republic of Mozambique which impose taxes, duties, levies, charges, fees or contributions, except to the extent that it is exempt there from.
- 11.2 During the five (5) years from the approval of the Development Plan related to this EPC, the Concessionaire and its Subcontractors are entitled to the rights of Tax and Customs Incentives in terms of Law No. 3/2001, of 21 February as defined in the Law No. 13/2007, of 27 June, regulating fiscal incentives for Petroleum activities. The Concessionaire and its Subcontractors shall be exempt from the following taxes, duties, imposts, and other charges:
- (a) Customs duties with regard to the importation of goods destined to be used in Petroleum Operations, classified as class “K” in the customs tariff in accordance with article 7 paragraph a) of the Law No. 13/2007, of 27 June;
  - (b) Customs duties with regard to importation of explosives, detonators, rakes and similar machines and devices to blow explosives, as well as equipment and devices for topographical, geodesic and geological recognition on shore and offshore to be used for Petroleum Operations in accordance with article 7 paragraph b) of the Law No. 13/2007, of 27 June;;
  - (c) Duties and custom and fiscal charges on goods temporarily imported to be used in Petroleum Operations in accordance with applicable fiscal regulation (Pauta Aduaneira), approved by the Decree No. 39/2002, of 26 December; and
  - (d) The imports and exports referred to in the preceding paragraphs shall also benefit during the same period an exemption from the Value Added Tax (VAT) and as provided in the Law No. 15/2002, of 26 June in accordance with article 7 clause 2 of the Law No. 13/2007, of 27 June.

11.3 The Expatriate Personnel of the Concessionaire and its Subcontractors shall be exempt under this EPC from customs duties and other levies payable on the importation of personal and household effects of Expatriate Personnel and their dependants imported into the Republic of Mozambique on first arrival, provided that those customs duties shall become payable on such items upon their sale in the Republic of Mozambique to a person who is not exempt from such duties. The Expatriate Personnel shall have the right to export from the Republic of Mozambique free of any customs duties and levies the aforesaid personal and household effects imported by them, within the conditions stipulated in the customs tariff approved by Decree No. 32/2002, of 26 december.

11.4 For the purpose of this EPC, the listed imposts ("Listed Imposts") are:

(a) The Corporate Income Tax (IRPC) which shall be levied in accordance with Decree No. 21/2002, of 30 July, as the same may be amended from time to time but always subject to Articles 11.9 and 9.12, and shall be payable by the Concessionaire or, where the Concessionaire is more than one Person, payable by each of the Persons constituting the Concessionaire who shall be separately assessed and charged. The following provisions shall apply to IRPC levied in respect of income derived from Petroleum Operations hereunder:

(i) In determining the net income of the Concessionaire for the purposes of calculating IRPC in any fiscal year, or if the Concessionaire is more than one Person, the net income of any Person constituting the Concessionaire, depreciation shall be applied as follows:

(aa) Depreciation shall be deducted at the rates indicated below, beginning in the year in which the expenditure is incurred or Commercial Production commences, whichever year is the later:

- in respect of expenditure on Exploration Operations, including the drilling of Exploration and Appraisal Wells, at one hundred percent (100%);

- in respect of capital expenditure on Development and Production Operations at the annual rate of twenty five percent (25%) of such expenditure on a linear depreciation basis;
- in respect of operating expenditure, at one hundred percent (100%).

(bb) The Concessionaire, or if the Concessionaire is more than one Person, any Person constituting the Concessionaire, may in any year elect to defer depreciation wholly or partly. In exercising the election to defer, the Concessionaire, or if the Concessionaire is more than one Person, any Person constituting the Concessionaire, shall notify the competent entity in the Ministry of Finance not later than end of February after the end of the year in question, of its intention to defer depreciation. In such notice, the Concessionaire, or if the Concessionaire is more than one Person, any Person constituting the Concessionaire, shall specify:

- the rate at which it intends to depreciate expenditure on Exploration Operations or operating expenditures during the year in question, such rate not being in excess of one hundred percent (100%); and
- the rate at which it intends to depreciate capital expenditure on Development and Production Operations during the year in question, such rate not being in excess of twenty five percent (25%).

The rate notified by the Concessionaire or, if the Concessionaire is more than one Person, any Person constituting the Concessionaire shall only apply to the year specified in the notice. Depreciation in future years shall be made at the rate set in Article 11.4 (a)(i)(aa) unless a further written notice under this article is submitted.

- (ii) Deferred depreciation, being the difference between the allowed rate and the rate notified by the Concessionaire, or if the Concessionaire is more than one Person, any Person constituting the Concessionaire, as the rate it intends to use during the year in question, may be taken as a deduction against net income in any future year. The Concessionaire, or if the Concessionaire is more than one Person, any Person constituting the Concessionaire, shall notify the competent entity in the Ministry of Finance in writing not later than the end of February after the end of the year in question of its intent to take such deferred depreciation during such year;
  - (iii) For the purpose of calculating liability for IRPC, a loss incurred by the Concessionaire in any year may be carried forward for up to five (5) years after the year in which such loss is incurred.
  - (iv) In order to determine IRPC taxable base, the competent authority in the Ministry of Finance can proceed with correction in accordance with IRPC Code. When the prices of transfer and subcapitalization resulting from special relations between affiliated companies that differ from those with independents.
- (b) Customs Duties and other levies and taxes not otherwise exempted under this Article 11;
  - (c) Levies, charges, fees or contributions which are non discriminatory and are levied in return for the provision of specific identifiable services or goods by the Republic of Mozambique or use of facilities owned by the Republic of Mozambique or any state company, such as without limitation, water, electricity, port usage and similar services or goods;
- 11.5 (a) In accordance with the applicable petroleum legislation, the Concessionaire shall deliver to the Government in kind as Petroleum Production Tax:
- (i) in respect of Natural Gas produced from deposits in the EPC Area, a quantity of six percent (6%);

- (ii) in respect of Crude Oil produced from deposits in the EPC Area, a quantity of ten percent (10%) ;
  
- (b) The Concessionaire shall, pursuant to applicable legislation deliver to the competent entity in the Ministry of Finance and MIREM, not later than the 20<sup>th</sup> (twentieth) day of each calendar month and with respect to the previous month, a statement of:
  - (i) the quantity of Crude Oil and the quantity of Natural Gas produced in that calendar month;
  - (ii) the quantities of Crude Oil and the quantities of Natural Gas sold in that calendar month;
  - (iii) the quantities of Crude Oil held in storage at the beginning and the end of the calendar month;
  - (iv) the quantity of Crude Oil and the quantity of Natural Gas inevitably lost;
  - (v) the quantity of Crude Oil and the quantity of Natural Gas flared, escaped, re-injected or used in Petroleum Operations;
  - (vi) the quantity of Crude Oil and the quantity of Natural Gas on which Petroleum Production Tax is due;
  - (vii) the quantity of Petroleum Production Tax deliverable for that calendar month and the particulars of the calculation thereof; and
  - (viii) any other information relevant for the calculation of Petroleum Production Tax for Crude Oil and for Natural Gas.
  
- (c) The Government may, in lieu of the Petroleum Production Tax deliverable in cash referred to in this Article 11.5, by one hundred and eighty (180) days notice require the Concessionaire to pay to the Government each month fully or partly in kind in accordance with applicable law the relevant percentage of

the value, ascertained in accordance with the provisions of Article 11, of the Crude Oil and the Natural Gas which has been produced from the EPC Area in that month.

- (d) The Petroleum Production Tax for a given calendar month in respect of Crude Oil and in respect of Natural Gas and the respective payments in cash are deliverable or payable before the end of the following calendar month.
  - (e) Payment in kind of the percentage specified in the relevant notice given under Article 11.5(c) shall continue until the Government delivers a further written notice as provided in Article 11.5(c) providing revised instructions to the Concessionaire.
- 11.6 The Government warrants that in respect of Petroleum Operations or income derived from Petroleum Operations, on the Effective Date there were no taxes, duties, levies, charges, fees or contributions other than the listed imposts and the taxes in respect of which the Concessionaire and its Subcontractors are exempt under Articles 11.2 and 11.3.
- 11.7 In the exercise of its rights and benefits regarding the exemption from customs duties on import and export stipulated under this Article, the Concessionaire shall comply with the applicable procedures and formalities duly imposed by applicable law.
- 11.8 Nothing in the provisions set out in this Article 11 shall be read or construed as imposing any limitation or constraint on the scope, or due and proper enforcement, of Mozambican law of general application which does not discriminate, or have the effect of discriminating, against the Concessionaire, and provides in the interest of safety, health, welfare or the protection of the environment for the regulation of any category of property or activity carried on in Mozambique; provided, however, that the Government will at all times during the life of the Petroleum Operations ensure in accordance with Article 28, that measures taken in the interest of safety, health, welfare or the protection of the environment are in accordance with standards generally accepted from time to time in the international petroleum industry and are not unreasonable.

11.9 In the event that, after the Effective Date, any other tax is introduced in the Republic of Mozambique which is not of the type set out in Article 11 and, as a result, there is an adverse effect of a material nature on the economic value derived from the Petroleum Operations by the Concessionaire, the Parties will, as soon as possible thereafter, meet to agree on changes to this EPC which will ensure that the Concessionaire obtains from the Petroleum Operations, following such changes, the same economic benefits as it would have obtained if the change in the law had not been effected.

**Article 12**  
**Production Bonuses**

The Concessionaire shall pay the following production bonuses, which payments shall not be a recoverable cost for the purposes of Annex “C” of this EPC:

	<b>Production Bonuses payable in United States dollars</b>
At the Commencement of Initial Commercial Production	United States dollars .... (USD ....)
When production from the EPC Area first reaches twenty five thousand (25,000) BOE per day average for a month	United States dollars ..... (USD ....)
When production from the EPC Area first reaches each further tranche of fifty thousand (25,000) BOE per day average for a month	United States dollars .... (USD ....)

For the purpose of this:

- (i) “Commencement of Initial Commercial Production” means the date on which Commercial Production has been sustained for a period of thirty (30) consecutive days from the EPC Area; and
- (ii) “BOE” means the equivalent number of Barrels of Crude Oil resulting when Natural Gas is converted to Crude Oil on the basis of one (1) Barrel of Crude Oil for each six thousand (6,000) standard cubic feet of Natural Gas.

**Article 13**  
**Lifting Arrangements**

- 13.1 (a) The Concessionaire shall subject to provisions regulating the production and sale of Petroleum be entitled to lift, dispose and export freely its entitlement to Petroleum Produced under this EPC.
- (b) Each Party shall take its entitlement to Petroleum consistent with Good Oilfield Practices at an approximately regular rate throughout each calendar year.
- (c) Not later than ninety (90) days prior to the date scheduled for the commencement of Commercial Production, the Parties shall establish offtake procedures covering the scheduling, storage and lifting of Petroleum and such other matters as the Parties shall agree. Such procedures shall be consistent with Good Oilfield Practices.

13.2 Notwithstanding Article 9.2 or instructions given in accordance with Article 9.2, the Government may by six (6) months notice given to the Concessionaire or Operator, require the Concessionaire or Operator to sell on behalf of the Government during the succeeding calendar year(s) unless otherwise instructed the whole or any portion of the volume of Petroleum Production Tax taken in kind, and when applicable, Profit Petroleum not previously committed to which the Government is entitled pursuant to this EPC during said succeeding calendar year(s). The quantity of such Petroleum Production Tax taken in kind and Profit Petroleum, which the Government desires to sell shall be specified in said notice. The Concessionaire or Operator shall sell that quantity of Petroleum on the open market at the best price reasonably obtainable and remit the proceeds of the sale directly and forthwith to the Government. The Concessionaire or Operator shall not charge the Government for any fees incurred for selling Petroleum of the Government.

## Article 14

### Conservation of Petroleum and Prevention of Loss

- 14.1 The Concessionaire shall, before carrying out any drilling, prepare and submit for review by MIREM a well programme including a contingency plan designed to achieve rapid and effective emergency response in the event of a blow-out or fire, escape, waste or loss of Petroleum or damage to Petroleum bearing strata.
- 14.2 In the event of a blow-out or fire, escape, waste or loss of Petroleum or damage to Petroleum bearing strata, the Concessionaire shall notify MIREM within twenty four (24) hours of becoming aware of such occurrence and promptly implement the relevant contingency plan and as soon as practicable thereafter submit a full report thereon to MIREM.
- 14.3 Without prejudice to the obligations of the Concessionaire under Article 29, in the case of relinquishment or surrender by the Concessionaire or termination of the rights of the Concessionaire pursuant to this EPC, the Concessionaire shall within ninety (90) days from the date of such relinquishment, surrender or termination, in respect of the whole of the EPC Area or, as the case may be, any part of the EPC Area which has been relinquished or surrendered:
- a) plug or close off, in a manner consistent with Good Oilfield Practices, all wells drilled as part of the Petroleum Operations unless otherwise agreed between MIREM and the Concessionaire.
  - (b) take all necessary actions , in accordance with Good Oilfield Practices, to prevent hazards to human life or to the property of others or the environment resulting from conditions in the EPC Area or, as the case may be, any part thereof caused by Petroleum Operations, being conditions which were or ought with reasonable diligence to have been evident at the time of relinquishment, surrender or termination.

## **Article 15**

### **Decommissioning**

15.1 If in the reasonable expectation of the Concessionaire, the Concessionaire will cease to produce Petroleum under this EPC from the EPC Area, the EPC expires, is cancelled or surrendered pursuant to the procedure stipulated in this EPC and applicable law the Concessionaire shall submit to MIREM for approval a Decommissioning Plan. The Decommissioning Plan shall be prepared in accordance with applicable law and shall include, but not be limited to:

- (a) particulars, separately set out in respect of each Development and Production Area, of measures to be taken, to effect decommissioning including but not limited to:
  - (i) decommissioning of equipment and installations for each Development and Production Area;
  - (ii) timely removal of equipment and installations not required for ongoing Petroleum Operations in any other Development and Production Area; and
  - (iii) any other steps that may reasonably be required in order to prevent hazard to human life, or to the property of others or to the environment.
- (b) estimates of the time required to complete operations under the plan;
- (c) a budget for operations under the plan, including particulars of the costs of decommissioning equipment and installations;
- (d) a schedule of the work programme with related costs to be drawn from the Decommissioning Fund in order to meet the costs of implementing the plan; and
- (e) such environmental, engineering and feasibility studies as may be necessary to support the proposed plan.

15.2 The Decommissioning Plan shall be prepared in compliance with applicable law and the provisions of Article 28 and shall ensure that decommissioning is

conducted in a manner which will give effect to standards generally recognised as applicable in the international petroleum industry and the Concessionaire's standards for decommissioning.

- 15.3 In the event that the Concessionaire does not submit a Decommissioning Plan to MIREM within the time allowed MIREM may serve upon the Concessionaire a notice requiring the Concessionaire to submit to MIREM, within a period of ninety (90) days from date on which the notice was served, a Decommissioning Plan. If within that period no Decommissioning Plan is submitted, MIREM may commission consultants of international standing to prepare a Decommissioning Plan.
- 15.4 A Decommissioning Plan prepared by a consultant in accordance with applicable law and this Article shall be implemented by the Concessionaire in accordance with its terms as though it were an obligation of the Concessionaire set forth in Article 28. The cost of commissioning engineering consultants to prepare a consultant's plan shall be payable by the Concessionaire to the Government.
- 15.5 In the event that the Concessionaire considers that production from a Development and Production Area will cease before a Decommissioning Plan has been prepared, decommissioning measures for that Development and Production Area will be prepared by the Concessionaire in accordance with the requirement for decommissioning set out in this Article, and where those measures have been approved by MIREM will take effect as an amendment to the Development Plan for that Development and Production Area.
- 15.6 Not later than at the commencement of Petroleum production from reserves within the EPC Area, the Concessionaire shall establish in a bank of its choice an interest bearing United States dollar account or such other currency account to be mutually agreed by the Parties to be denominated as the Decommissioning Fund into which the Concessionaire shall set aside from time to time funds to be able to cover the decommissioning costs calculated in accordance with this EPC to meet the estimated costs of implementing an approved Decommissioning Plan. At the time of establishment of the account for the Decommissioning Fund the Concessionaire shall deposit US dollars ..... (USD ....) or equivalent if an alternative currency is agreed.

15.7 The calculation of the amounts to be set aside for estimated future Decommissioning costs into the Decommissioning Fund shall be governed as follows:

- a) The estimates of: (i) the recoverable reserves and the projected production schedule, and (ii) total decommissioning costs for the Concessionaire's proposed decommissioning solution as well as reasonable alternative decommissioning solutions shall be submitted for MIREM approval. MIREM shall based on the proposals from the Concessionaire select a preliminary decommissioning solution to form the basis for the calculation of decommissioning costs to be covered by a Decommissioning Fund created for the purpose of covering such decommissioning costs. Adequate provisions for successive revisions of such estimates shall when required herein, required by applicable law or deemed necessary by the Concessionaire due to substantial changes in fact, also be included in any updated Decommissioning Plan.
  
- b) In the event in any calendar year in which the Concessionaire did not submit to the MIREM a revised Decommissioning Plan or the total estimated decommissioning cost, Concessionaire shall update the value of the latest total estimated decommissioning cost preliminary approved by MIREM in order to account for the escalation of such approved estimated decommissioning costs in the period between the calendar year in which such costs were estimated and the then current calendar year. For this purpose, and for each calendar year, the applicable annual United States dollar escalation index shall be based on the "Producers Price Index for the Drilling of Oil and Gas Wells" as , published by the United States Bureau of Labour Statistics. The annual index to be used in year "n" shall be determined by difference between the annual index relating to the year in which the latest approved estimate is determined and the same annual index relating such year "n". In the event the above United States Bureau of Labour Statistics ceases, for any reason whatsoever, to publish the Producers Price Index for the Drilling of Oil and Gas Wells or when an alternative currency is selected, Parties shall determine either an alternative independent internationally recognised source, or an alternative representative index.

15.8 The Concessionaire will not withdraw money from the Decommissioning Fund save for the purpose of meeting the costs of implementing an approved

Decommissioning Plan and all statements relating to the Decommissioning Fund provided by the bank from time to time shall be copied to MIREM.

- 15.9 Payments into the Decommissioning Fund shall be cost recoverable in accordance with provisions applicable to this EPC.
- 15.10 Costs incurred by the Concessionaire to implement an approved Decommissioning Plan shall be cost recoverable in accordance with provisions in that regard set out in Article 9 and for the purpose of IRPC shall be treated as an operating expense save where, in either case, such costs have been funded by withdrawals from the Decommissioning Fund.
- 15.11 Any funds which have been cost recovered remaining in the Decommissioning Fund after the approved Decommissioning Plan has been completed shall be treated as Profit Petroleum and the remaining balance shall be shared in accordance with the provision of Article 9.10.
- 15.12 In the event that at the time of implementing the Decommissioning Plan there are insufficient funds available in the Decommissioning Fund to fund the operations of that plan, the shortfall shall be met in full by the Concessionaire.

**Article 16**  
**Insurance**

- 16.1 The Concessionaire shall effect and maintain, in respect of Petroleum Operations, unless otherwise agreed between the Parties, all insurance required by applicable Mozambican law and, in the event that the insurance is procured from a jurisdiction other than the Republic of Mozambique, the applicable law of such other jurisdiction and such other insurance as MIREM and the Concessionaire may agree from time to time. Such insurance shall at least include insurance against the following risks:
- (a) loss or damage to all Installations and equipment which are owned or used by the Concessionaire in the Petroleum Operations;
  - (b) pollution caused in the course of the Petroleum Operations by the Concessionaire for which the Concessionaire may be held responsible;
  - (c) property loss or damage or bodily injury suffered by any third party in the course of the Petroleum Operations by the Concessionaire for which the Concessionaire may be liable to indemnify the Government;
  - (d) the cost of removing wrecks and cleaning up operations following an accident in the course of the Petroleum Operations by the Concessionaire; and
  - (e) the Concessionaire's and/or the Operator's liability for its employees engaged in the Petroleum Operations.
- 16.2 In relation to Development and Production Operations, the Concessionaire shall submit to MIREM a programme for the provision of an "All Risks" insurance which may, inter alia, cover physical damage to the facilities under construction and installation as well as legal liabilities arising out of the Development and Production Operations.
- 16.3 Any insurance required to be effected by the Concessionaire pursuant to the provision of Articles 16.1 and 16.2 may, at the Concessionaire's discretion and

subject to the approval of MIREM, be provided by one or more of the following options:

- (a) non-insurance wherein the Concessionaire itself carries the risks and no premia are charged; provided, however, that in the case of any losses or damages resulting from a risk where the Concessionaire has elected to non-insure, such losses or damages shall not be considered as Recoverable Costs for the purpose of Annex "C" of this EPC;
- (b) insurance through an insurance company wholly owned by the Operator or the Concessionaire in which case the premia charged shall be at prevailing international insurance market rates;
- (c) the Concessionaire utilising for the benefit of Petroleum Operations insurance which is placed as part of a global coverage in which case the premia charged shall be at the rates obtained for such global coverage; or
- (d) subject to Article 19, insurance through the international insurance markets at prevailing rates, provided that:
  - (i) an insurance company wholly owned by the Operator or a Person constituting the Concessionaire may participate in any internationally placed insurance or reinsurance; and
  - (ii) the Concessionaire shall have the option to tender and effect all appropriate reinsurance for any insurance placed through insurance companies registered in the Republic of Mozambique.

16.4 Unless otherwise approved by MIREM, the Concessionaire shall competitively tender all renewable insurances placed into the international markets at least once every three (3) years.

16.5 The Concessionaire shall require its Subcontractors to carry equivalent insurance of the type and in such amount as is required by applicable law and is customary in the international petroleum industry in accordance with Good Oilfield Practices.

**Article 17**  
**Natural Gas**

- 17.1 The Concessionaire shall have the right to use Natural Gas extracted from reservoirs within the EPC Area for the Petroleum Operations in the EPC Area including but not limited to power generation, pressure maintenance and recycling operations.
- 17.2 The terms and conditions relating to the use and production of Associated Natural Gas shall be as follows:
- (a) In the event the Concessionaire elects to process and sell Associated Natural Gas, the Concessionaire shall notify MIREM and, for the purposes of cost recovery and entitlement of production, such Natural Gas shall be treated by the Parties in the same way as other Natural Gas.
  - (b) In the event the Concessionaire elects not to process and sell Associated Natural Gas not used for purposes stipulated in Article 17.1 or paragraph (c) below, the Government may offtake without any payment to the Concessionaire but at the Government's sole risk and cost, such Natural Gas at the gas/oil separator; provided that such offtake does not seriously disrupt or delay the conduct of the Petroleum Operations.
  - (c) The Concessionaire may re-inject any Associated Natural Gas which is not taken by Government pursuant to paragraph (b) above, used for Petroleum Operations or processed and sold by the Concessionaire, or taken by Government in accordance with paragraph b) above, and the costs of such disposal Gas shall be recoverable to the extent that such re-injection is included in the Development Plan.
- 17.3 The terms and conditions relating to the Appraisal Program and the commercial assessment of the production and sale of non-Associated Natural Gas shall be as follows:
- (a) On completion of an Appraisal Programme relating to a Discovery of non-Associated Natural Gas made by the Concessionaire and the submission of an appraisal report thereon the "Commercial Assessment Period" shall,

if the Concessionaire so requests, commence and shall continue in respect of any Discovery Area for a period of .... (..) years, exercisable at the sole option of the Concessionaire. An extension may be granted upon application by the Concessionaire to the Government, for a second period of up to .... (...) years. An appraisal report submitted under this Article shall include the estimated recoverable reserves, projects delivery rate and pressure, quality specifications and other technical and economic factors relevant to the determination of a market for available Natural Gas. The Concessionaire may, at any time during the Commercial Assessment Period, inform MIREM by notice that the Petroleum Reservoir located in any Discovery of non-Associated Natural Gas made by the Concessionaire in respect of which an appraisal report has been submitted, is commercial.

- (b) If the Concessionaire does not request a Commercial Assessment Period pursuant to paragraph (a) above within ninety (90) days from the date on which the appraisal report was submitted, the Concessionaire shall inform MIREM by notice whether any Discovery of non-Associated Natural Gas made by the Concessionaire in respect of which an appraisal report has been submitted, is commercial.

Where the Concessionaire pursuant to this Article gives notice that any Discovery of non-Associated Natural Gas made by the Concessionaire is commercial, that notice shall, for the purpose of this EPC, be a notice of Commercial Discovery.

17.4 The Commercial Assessment Period shall end on the first to occur of:

- (a) the date following that on which Concessionaire gives a notice of Commercial Discovery under Article 17.3;
- (b) the date that the Concessionaire voluntarily surrenders the Discovery Area to which the Commercial Assessment Period relates; or
- (c) expiry of the Period to which Concessionaire is entitled to under Article 17.3.

17.5 The Concessionaire shall be deemed to have relinquished all rights to the Discovery of non-Associated Natural Gas if it has not given a notice of

Commercial Discovery under Article 17.3 by the end of the Commercial Assessment Period or earlier relinquishment of that portion of the EPC Area.

- 17.6 The Concessionaire shall be responsible for investigating market opportunities and seek to develop a market for non-Associated Natural Gas produced from any Development and Production Area and shall sell such non-Associated Natural Gas on a joint dedicated basis on terms common to all the parties constituting the Concessionaire. Every contract for the sale of such non-Associated Natural Gas made by the Concessionaire under this Article shall be subject to approval by MIREM. In applying for such approval the Concessionaire shall demonstrate to MIREM that the prices and other terms of sale of such Natural Gas represents the market value obtainable for such Natural Gas taking into consideration a fair market cost for transporting such Natural Gas from the Delivery Point to the purchaser and having regard to the alternative uses and markets that can be developed for such Natural Gas.
- 17.7 With its application for approval of any gas sales contract, pursuant to Article 17.6, the Concessionaire may apply in respect of any Development and Production Area from which non-Associated Natural Gas will be produced for sale under that gas sales contract, for an extension of the Development and Production Period and where such extension is necessary to facilitate the sale of gas under any such gas sales contract MIREM will grant the necessary extension.

**Article 18**  
**Employment and Training**

- 18.1 Subject to the Government's security review of any individual entering Mozambique and the procedures and formalities of the law relating to immigration the Government shall provide the necessary permits or other approvals required for the employment and admission into the Republic of Mozambique of Expatriate Personnel employed by the Concessionaire or its Subcontractors for the purpose of this EPC.
- 18.2 In the conduct of the Petroleum Operations, the Concessionaire shall endeavour to utilise citizens of the Republic of Mozambique having appropriate qualifications to the maximum extent possible at all levels of its organisation, as Sub-Contractors or employed by Sub-Contractors. In this connection, the Concessionaire shall, in consultation with MIREM, propose and carry out an effective training and employment programme for its Mozambican employees in each phase and level of operations, taking account of the requirements of safety and the need to maintain reasonable standards of efficiency in the conduct of the Petroleum Operations. Such employees may be trained in the Republic of Mozambique or abroad as required by the training programmes prepared by the Concessionaire.
- 18.3 The Concessionaire shall co-operate with MIREM in giving a mutually agreed number of Government employees the opportunity to participate in training activities provided by the Concessionaire or any of its Affiliated Companies for their employees, specifically for Government employees.
- 18.4 In order for MIREM to monitor the fulfilment of the employment and training obligations contained in this Article, the Concessionaire shall annually submit its recruitment and training programmes to MIREM.
- 18.5 The Concessionaire shall pay .... United States dollars (USD.....) to the Government. This amount which payment may be used as institutional support to the Government entities involved in promotion and administration of Petroleum Operations. Such payment shall be made within thirty (30) days from the Effective Date to such Government entities in accordance with the instruction provided by the representative of the Government designated in this EPC.

- 18.6 (a) During the Exploration Period, the Concessionaire shall pay to the Government .....United States dollars (USD ...) per year, to be spent on training support programmes within the Government. The first payment shall be made on the first anniversary of the Effective Date of this EPC and subsequent payment shall be made on the subsequent anniversaries thereof.
- b) During the Development and Production Period, the Concessionaire shall pay to the Government ..... United States dollars (USD ...) per year to be spent on training and institutional support programmes within the Government. The first payment shall be made within thirty (30) days from the approval of the first Development Plan and subsequent payments shall be made on the subsequent anniversaries thereof .
- c) The Concessionaire shall pay to the Government .... United States dollars (USD ...) per year during the term of this EPC, for social support projects for the citizens of the Republic of Mozambique in areas where Petroleum Operations take place. The first payment shall be made on the first anniversary of the Effective Date of this EPC and each subsequent payment shall be made on the subsequent anniversaries thereof.
- 18.7 The Concessionaire shall include as part of the Development Plan proposals for the activities required to satisfy the obligations contained in Article 18.3 during the Development and Production Period.
- 18.8 The sums expended by the Concessionaire to satisfy the obligations contained in this Article shall be recoverable costs for the purpose of Annex "C" of this EPC.

**Article 19**  
**Indemnification and Liability**

- 19.1 The Concessionaire shall indemnify and hold the Government harmless from and against any and all claims instituted against the Government by third parties in respect of injury, loss or damage caused by the Concessionaire in the conduct of the Petroleum Operations in which the Concessionaire participates, provided that the claims are duly qualified by a third party or the Government. In no case shall the Concessionaire's liability under this Article shall include punitive damages.
- 19.2 The Government shall indemnify and hold the Concessionaire, its Subcontractors and any of its Affiliated Companies harmless from and against any and all claims instituted against the Concessionaire, its Subcontractors and any of its Affiliated Companies by third parties in respect of injury, loss or damage caused by the acts or omissions of the Government in its commercial capacity.
- 19.3 Except as provided for in Article 19.8 no Party hereto shall settle or compromise any claim for which another Party is responsible hereunder without the prior written consent of such other Party, and in the event that it does so, the indemnity aforesaid shall not have effect in relation to the claim so settled or compromised.
- 19.4 Notwithstanding anything to the contrary in this EPC, the Concessionaire, its Subcontractors and any of its Affiliated Companies carrying out such Petroleum Operations on behalf of the Concessionaire shall not be liable to the Government and the Government shall not be liable to the Concessionaire, for consequential loss or damage including but not limited to inability to produce Petroleum, loss of production, loss of profit or punitive damages.
- 19.5 Subject to Article 19.4, in carrying out Petroleum Operations under this EPC the Concessionaire shall be liable for any injury, loss or damage suffered by the Government and caused by the Concessionaire or by any Affiliated Company or Subcontractor carrying out Petroleum Operations on behalf of the Concessionaire if such injury loss or damage is the result of the

Concessionaire's, the Affiliated Company's or the Subcontractor's failure to meet the standards required by this EPC and the applicable law.

- 19.6 Any claim pursued by any third parties which would entitle any of the Parties (together the "Indemnified Party") of this EPC to be indemnified by any of the other Parties of this EPC (together the "Indemnifying Party") shall be promptly communicated by notice Indemnifying Party so that the Indemnifying Party may promptly intervene in the claim and pursue its defence. Such notice shall include a description of the third Party claim and shall be accompanied by copies of all relevant papers received by the Indemnified Party and its counsel with respect to such third party claim. The Indemnified Party shall cooperate with the Indemnifying Party and its counsel in contesting such third party claim. If the Indemnifying Party fails promptly to communicate by notice as provided above and thereby causes the Indemnifying Party not to be able to properly pursue its defence, shall lose its rights to the indemnification under this Article.
- 19.7 If within thirty (30) days of receipt of such claim notice, the Indemnifying Party notifies the Indemnified Party that it elects to assume the defense of such claim, then the Indemnifying Party shall have the rights to defend, at its cost and expense, such claim by all appropriate proceedings including compromise or settlement thereof, so long as any settlement agreement does not provide for a result in any continuing liability or obligation on the Indemnified Party in respect of such third party claim.
- 19.8 If the Indemnifying Party fails timely to elect to assume the defense of such claim, then the Indemnified Party shall have the right to defend at the sole cost and expense of the Indemnifying Party the third party claim by all appropriate proceedings including any compromise or settlement thereof.

## **Article 20**

### **Title**

- 20.1 Title to the Concessionaire's entitlement of Petroleum Produced under this EPC shall pass to the Concessionaire at the Wellhead. Thereafter the Government and the Concessionaire shall own the Petroleum jointly, and in undivided shares, until each takes individual title to and delivery of its entitlement of Petroleum Produced at the Delivery Point.
- 20.2 The Concessionaire shall finance the cost of all facilities and equipment to be used in Petroleum Operations. Subject to applicable law and this Article the Concessionaire shall have the right to use such facilities and equipment for Petroleum Operations during the term of this EPC and any extensions thereof until the EPC expires, is surrendered or cancelled, in which case the title to said facilities and equipment at the option of the Government and without additional compensation may be transferred to the Government.
- 20.3 Concessionaire shall be the owner of facilities and necessary appurtenant equipment for the purpose and use in Petroleum Operations under this EPC unless otherwise approved by the Government. The provisions of Article 20.2 above with respect to the title of property passing to the Government shall not apply to equipment approved by the Government as belonging to third parties. Moveable facilities and equipment owned by foreign third parties may be freely exported from the Republic of Mozambique in accordance with the terms of the relevant agreement.
- 20.4 Third parties may subject to terms and conditions stipulated by applicable petroleum law have the right to the use available spare capacity of facilities and necessary appurtenant equipment on terms and conditions to be agreed between the parties and acceptable to the Government. Such terms and conditions shall include a tariff that shall represent the payment for the Concessionaire's cost of additional investments required for facilitating such third party use as well as operational costs and a profit element reflecting the risk taken by the owner of the facilities. The tariff for third party use of facilities and appurtenant equipment shall be subject to approval by the Government. When the parties can not agree to access or a reasonable tariff for third party use, the matter may, be settled by: (a) an independent commission of three

(3) members selected in accordance with Articles 30.3(i), 30.5 and 30.6; (b) arbitration or (c) the competent judicial authorities.

20.5 Third party use of facilities and necessary appurtenant equipment shall only take place when such third party use is not materially negatively affecting Concessoinaire Petroleum Operations and is feasible from a technical, environmental and safety point of view.

**Article 21**  
**Rights of Inspection**

MIREM shall have the right at its own cost, save for transport and accommodation to be provided by the Concessionaire, to post duly appointed representatives on site on a permanent basis at metering stations, provided that the number of such appointed representatives shall be as many as may be agreed by MIREM and the Concessionaire, and the representatives shall not interfere with any Petroleum Operations.

**Article 22**  
**Accounting and Audits**

- 22.1 The Concessionaire shall be responsible for maintaining accounting records of all costs, expenses and credits of the Petroleum Operations in accordance with the provisions of Annex "C" of this EPC. The said accounting records shall be kept in the Republic of Mozambique.
- 22.2 MIREM shall have the right to audit and inspect the Concessionaire's accounting records in accordance with the provisions of Annex "C".

**Article 23**  
**Confidentiality**

- 23.1 This EPC, the Documentation and other records, reports analyses, compilations, data, studies and other materials (in whatever form maintained, whether documentary, computer storage or otherwise) are confidential (hereinafter referred to as "Confidential Information") and except as authorised by applicable law or this Article shall not be disclosed to any third party without the prior written consent of the Parties hereto, which consent shall not be unreasonably withheld or delayed.
- 23.2 Nothing in this Article shall prevent the disclosure of Documentation, excluding the Concessionaire's interpretations and assessments, to a third party by MIREM:
- (a) if it relates to an area which is no longer part of the EPC Area; or
  - (b) with the written consent of the Concessionaire, which shall not be unreasonably withheld or delayed if, in the judgment of Government, the Documentaion might have significance for the assessment of prospectivity in an adjoining area over which Government is offering Exploration rights.
- 23.3 Restrictions on disclosure imposed by this Article 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 EPC or to the Petroleum Operations;
  - (b) to a Subcontractor, or consultant in connection with the conduct of Petroleum Operations;
  - (c) by the Concessionaire or Operator to a third party where such disclosure is essential to the safe conduct of Petroleum Operations;
  - (d) to an Affiliated Company;

- (e) by the Concessionaire to a third party for the purpose of entering into a contract for data exchange with another entity operating in Mozambique where all data exchanged relates to Petroleum Operations within Mozambique;
- (f) by any Person constituting the Concessionaire to a bona fide intending assignee of an interest under this EPC or an interest in any Person constituting the Concessionaire;
- (g) to a third party in connection with and for the purpose of the sale or proposed sale of Petroleum from the EPC Area;
- (h) to a third party in connection with the financing or proposed financing of Petroleum Operations;
- (i) which is required by any applicable law or by the rules or regulations of any recognised stock exchange on which shares of the disclosing Party or any of its Affiliated Companies are listed; or
- (j) if, and to the extent that, it is already public knowledge without improper disclosure hereto.

Any Confidential Information disclosed pursuant to paragraphs (b), (d), (e), (f) or (h) of this Article 23.3 shall be disclosed on terms that ensure that such Confidential Information is treated as confidential by the recipient.

23.4 None of the Persons constituting the Concessionaire shall be required to disclose any of its proprietary technology or that of their Affiliated Companies or proprietary technology of a third party licensed to the Persons constituting the Concessionaire or the Operator.

**Article 24**  
**Assignment**

- 24.1 Subject to Article 9.13 and this Article the Concessionaire, and where the Concessionaire is more than one Person, every Person who constitutes the Concessionaire, may assign to another Person its rights and obligations hereunder or an undivided proportionate part thereof. The same applies to other direct and indirect transfers of interest or participation in the EPC, including, inter alia, assignment of shareholdings or any legal instrument which provides or may provide decisive control over a Person constituting the Concessionaire or its Participating Interest in this EPC. Save as provided in Article 24.2, an assignment shall require the prior written consent of the Minister of Mineral Resources.
- 24.2 No consent shall be required by the Minister of Mineral Resources in case of an assignor who is not in material breach of any of the terms and conditions hereof in respect of an assignment:
- (a) as a result of an Assignment Notice served on a Defaulting Participant under this EPC; or
  - (b) if required to give effect to the default procedures under a joint operating agreement concluded in relation to the Petroleum Operations.
- 24.3 Each assignment made pursuant to this Article shall be effected by an instrument in writing to be executed by the assignee on terms whereby such assignee accepts and agrees to become a Person constituting the Concessionaire and to be bound by the terms and conditions of this EPC including all appurtenant documents required by an administrative decision or applicable law and free of any transfer charge or fees.
- 24.4 No unitisation pursuant to this EPC or applicable law or any adjustment to the portion of the unitised Discovery allocated to the EPC Area shall be considered to be an assignment under this Article.

**Article 25**  
**Force Majeure**

- 25.1 The non-performance or delay in performance, wholly or in part, by the Government or the Concessionaire of any obligation under this EPC excepting an obligation to make payments hereunder, shall be excused if, and to the extent that, such non-performance or delay is caused by Force Majeure.
- 25.2 For the purpose of this EPC, the term Force Majeure means any cause or event beyond the reasonable control of, and not brought about at the instance of, the Party claiming to be affected by such event, and which has caused the non-performance or delay in performance. Without limitation to the generality of the foregoing, events of Force Majeure shall include natural phenomena or calamities including but not limited to, epidemics, earthquakes, storms, lightning, floods, fires, blowouts, wars declared or undeclared, transboundary hostilities, blockades, civil unrest or disturbances, labour disturbances, strikes, quarantine restrictions and unlawful acts of Government.
- 25.3 The Party claiming suspension of its obligations under this EPC on account of Force Majeure shall:
- (a) promptly notify the other Parties of the occurrence thereof;
  - (b) take all actions that are reasonable and if necessary, legal actions, to remove the cause of Force Majeure but nothing herein shall require the Concessionaire, subject to applicable law, to resolve any labour dispute except on terms satisfactory to the Concessionaire; and
  - (c) upon removal or termination thereof, promptly notify the other Parties and take all reasonable action for the resumption of the performance of its obligations under this EPC as soon as possible after the removal or termination of Force Majeure.
- 25.4 Where under this EPC the Concessionaire is required or has the right to do any act or to carry out any programme within a specified period or the rights

of the Concessionaire hereunder are to subsist for a specified period, the specified period shall be extended so as to take reasonable account of any period during which by reason of Force Majeure the Concessionaire has been unable to carry out the programme necessary to exercise a right, carry out its obligations or enjoy its rights hereunder.

- 25.5 Where a Force Majeure situation continues for more than fifteen (15) consecutive days, the Parties shall meet forthwith in order to review the situation and to agree on the measures to be taken for the removal of the cause of Force Majeure and for the resumption in accordance with the provisions of this EPC of the performance of the obligations hereunder.

## Article 26

### Foreign Exchange Control [wording subject to Bank of Mozambique approval]

26.1 The Concessionaire shall at all times comply with the procedures and formalities relating to dealings in foreign exchange which may be in force in the Republic of Mozambique from time to time and the Government undertakes to ensure that those procedures and formalities will not in any way diminish the rights accorded to the Concessionaire under clauses 26.2 to 26.8.

26.2 The Concessionaire shall have the right but not the obligation:

- (a) to open and keep one or more accounts denominated in Mozambican currency with any bank in the Republic of Mozambique authorised by Banco de Moçambique for this purpose and to dispose freely of the sums deposited therein without restriction.

Such accounts may be credited only with:

- (i) the proceeds of the conversion into Mozambican currency pursuant to Article 26.2(c) of United States dollar funds deposited in the accounts referred to in Article 26.2(b);
  - (ii) the unused balance of any sum drawn from such account; and
  - (iii) amounts received in Mozambican currency in respect of funds related to Petroleum Operations including sale of Petroleum or of any rental, refund or other credit received by the Concessionaire which apply to any charge made to the accounts under this EPC.
- (b) to open and keep one or more accounts denominated in United States dollars, with any bank in the Republic of Mozambique authorised by Banco de Moçambique for this purpose, to freely import and deposit into such account funds required for the conduct of Petroleum Operations and to freely dispose of the sums deposited therein

without restriction, provided always that such accounts are credited only with sums deposited in United States dollars;

- (c) to purchase Mozambican currency from banks in the Republic of Mozambique, exchange houses, other financial institutions or elsewhere, authorised by Banco de Moçambique for this purpose.

26.3 (a) The Concessionaire and the Operator acting on behalf of the Concessionaire shall have the right to open and keep up to four (4) accounts (as well to open and keep further accounts outside the Republic of Mozambique with the prior consent of the Banco de Moçambique) with any bank outside the Republic of Mozambique, in any foreign currency, and freely dispose of the sums deposited therein without restriction, with funds related to Petroleum Operations. Such accounts, however, shall not be credited with the proceeds of the sale of Mozambican currency without the prior consent of the Banco de Moçambique except for funds generated by the sale of Petroleum within the Republic of Mozambique, or of assets held in respect of Petroleum Operations, which may be credited to the aforesaid accounts without the need for prior consent.

- (b) Save in respect of funds needed by the Concessionaire to discharge its obligations under this EPC to the Government, which payments may be made out of proceeds deposited in such offshore accounts, the Concessionaire shall have the right to retain abroad all proceeds and payments under this EPC received in said bank accounts, and to dispose freely of the same without any obligation to convert the whole or any part of such proceeds and payments to Mozambican currency or to otherwise repatriate the same or any part thereof to the Republic of Mozambique; provided, however, that subject to applicable law, the estimated amount of tax due in respect of the Concessionaire's share of Profit Petroleum shall be remitted to an account in the Republic of Mozambique within forty-five (45) days, and all amounts to which the Government is entitled shall be remitted to the Republic of Mozambique within thirty (30) days.

(c) All payments to the Government and to "abc" shall be made in United States dollars, unless the Parties have agreed otherwise, to two accounts domiciled in the Republic of Mozambique, the first to be indicated by the Government and the other by "abc".

(d) The Concessionaire shall be obliged to report periodically on the operation of the accounts referred to in clause 26.3(a), above. Specifically, the Concessionaire shall copy the Government on monthly bank statements received. The Government shall be entitled to audit such accounts. Amounts spent on any such audits shall be cost recoverable. The Concessionaire shall waive banking confidentiality as to the Government in respect of such accounts in order to facilitate any such audits.

26.4 Subject to withholding tax due, any non-resident Subcontractor and any of the Expatriate Personnel of the Concessionaire, the Operator or of any Subcontractors, shall be entitled to receive in any currency other than Mozambican currency the whole or any part of his compensation outside the Republic of Mozambique. All payments to resident Subcontractors shall be made exclusively in Mozambique.

26.5 This foreign exchange regime shall not apply to "abc" or its legal successor, in the event that same is a Mozambican Person, as a Person constituting Concessionaire under this EPC, which shall be subject to the regime set forth in applicable law.

26.6 Subject to clause 26.3(b), above, the Concessionaire may receive, remit and retain abroad and freely dispose of all or any part of the proceeds realised from the sale of its share of Petroleum, including the portion of Crude Oil for the recovery of costs and the Profit Petroleum to which it is entitled.

26.7 Subject to withholding tax due, the Concessionaire shall have the right freely to declare and pay dividends to their shareholders and to remit the same to a place outside Mozambique, under the terms of the applicable law.

26.8 The Government and the Concessionaire shall develop procedures under which amounts demonstrably expended under this EPC that are cost

recoverable, as well as such further amounts demonstrably expended as may be classifiable as capital expense under applicable law, shall be entitled to capital registration notwithstanding the account from which the corresponding payments were made.

## **Article 27**

### **Nature and Extent of the Rights of the Concessionaire**

- 27.1 Subject to any right that the Government may have under the laws of Mozambique for imperative reasons in the national interest to acquire Petroleum to which the Concessionaire holds title, and the right of the Government to collect Petroleum Production Tax in kind pursuant to Article 11.6 (d), the Concessionaire may, by export or otherwise, freely sell or otherwise dispose of its entitlement to Petroleum as provided for in this EPC.
- 27.2 The rights granted under this EPC to the Concessionaire and its Subcontractors shall include the right of use and enjoyment of the land and maritime areas encompassed in the EPC Area, for the purpose of conducting Petroleum Operations. For that purpose Concessionaire may construct and operate such works, facilities, platforms, structures and pipelines as may be necessary. Such rights to be exercised by the Concessionaire provided, however, that the lawful occupier of any land in the EPC Area shall retain any rights he may have to graze stocks upon or cultivate the surface of the land, except to the extent that such grazing or cultivation interferes with Petroleum Operations in any such area. Further more, for the purpose of conducting Petroleum Operations, Concessionaire and its Subcontractors may conduct and operate works, facilities, platforms, structures and pipelines necessary in the EPC Area. Such rights to be exercised by the Concessionaire, provided, however, that Persons shall retain rights they may have to fishing or aquaculture, except to the extent such activities interferes with Petroleum Operations in such area.
- 27.3 The right of the Concessionaire to use the land, maritime areas or sea bed shall continue to apply to acreage initially included within the EPC Area but subsequently relinquished in accordance with the terms of this EPC, where such use is reasonably necessary for purposes of conducting Petroleum Operations in the EPC Area then remaining under this EPC.
- 27.4 For the purposes of carrying out Petroleum Operations, the Concessionaire and any Subcontractors shall have at all times access to and from the EPC Area and to any other area in the Republic of Mozambique where the Concessionaire has acquired or constructed facilities, subject to Article 27.8 (f) and (g).

- 27.5 The rights of the Concessionaire under Articles 27.2, 27.3, 27.4, 27.6, and 27.8 shall be exercised reasonably so as to affect as little as possible the interests of any lawful occupier of land in the EPC Area.
- 27.6 Where in the course of conducting Petroleum Operations in the EPC Area the Concessionaire causes disturbance to the rights of the lawful occupier of any land or causes damage to his growing crops, trees, buildings, livestock or works, the Concessionaire shall pay to the lawful occupier compensation in respect of such disturbance or damage as Concessionaire may be adjudged liable to pay by final, non-appealable order or judgement of a court or arbitral body under Mozambican jurisdiction.
- 27.7 Where in the course of conducting Petroleum Operations in the EPC Area the Concessionaire causes disturbance to the rights of a Person having their fishing fields or grounds occupied, aquaculture activities limited, fishing or aquaculture equipment moved to less favourable locations from a maritime resource management or commercial point of view, as well as having their equipment, catch or harvest polluted or damaged the Concessionaire shall pay to the Person affected such compensation in respect of such demonstrable disturbance or damage as Concessionaire may be adjudged liable to pay by final, non-appealable order or judgement of a court or arbitral body under Mozambican jurisdiction.
- 27.8 For the purposes described in this Article the following rights are granted to the Concessionaire subject to and in accordance with the provisions of the work programme related thereto and applicable law:
- (a) to drill for and have the free use of water and impound surface waters and to establish systems for the supply of water for the Petroleum Operations and for consumption by its employees and its Subcontractors;
  - (b) with the consent of, and subject to such terms and conditions agreed with, any Person having the right to dispose of such minerals, to carry away and use for Petroleum Operations in Mozambique, materials such as gravel, sand, lime, gypsum, stone and clay; provided that if the Person having the right to dispose of the same is the Government or an agency of Government, then the Concessionaire shall have the use of such minerals for Petroleum Operations as provided by applicable law.

- (c) to erect, set up, maintain and operate engines, machinery, pipelines, gathering lines, umbilicals, storage tanks, compressor stations, pumping stations, houses, buildings and all other constructions, installations, works, platforms, facilities and other fixtures which are required in furtherance of its Petroleum Operations;
- (d) to erect, set up, maintain and operate all communication and transportation systems and facilities but shall not, save for temporary purposes, do so unless drawings of and locations for their sites have been submitted to and approved by the Government, under reasonable conditions of installation and operation of such systems and facilities;
- (e) to erect, maintain and operate harbour and terminal facilities for use exclusively in Petroleum Operations, together with the necessary means of communication and transport between such facilities and any part of the EPC Area; provided that the consent of the Government to the location of such works shall first be obtained;
- (f) with respect to lands located outside of the EPC Area, to have the right of way over land not in the beneficial occupation of any Person and in the case of land in the beneficial occupation of the Government or any State Company, agency or instrumentality of the Government to have right of way on such reasonable terms and conditions as the Government and the Concessionaire may agree; and
- (g) with respect to lands located outside of the EPC Area, to have, otherwise than aforesaid, the use of land necessarily required for the conduct of Petroleum Operations with the agreement of the Person holding a right affected, including the lawful occupier of land or, in the case of unoccupied land or land occupied by the Government or any State Company, agency or instrumentality of the Government on such reasonable terms and conditions as the Government shall specify, provided that if the Concessionaire is unable to reach agreement with the Person so affected on the terms and conditions for the use of any such right including land, the Concessionaire shall immediately notify the Government. If the use of the rights by the Concessionaire is to be of a

temporary nature, not exceeding one (1) year, the Government shall authorise such temporary use upon deposit by the Concessionaire with the Government of a sum by way of compensation to such Person holding the right for loss of use and damage to its interest. If the use is to be for a period longer than one (1) year, the Government shall authorise the use by the Concessionaire of the right in question upon deposit by the Concessionaire with the Government of such sum by way of compensation and shall direct appropriate proceedings to grant the Concessionaire the right to use and legally utilize the right under the applicable law from time to time in force as if the Petroleum Operations were in all respects a work of public utility.

27.9 The Concessionaire shall be subject to the procedures and formalities required by applicable law for the exercise of the rights set forth in this Article.

27.10 (a) In the event that the Government exercises any right it may have under the laws of Mozambique to acquire for imperative reasons in the national interest Petroleum belonging to the Concessionaire, the Government shall give not less than forty five (45) days notice of the exercise of such right and of the volumes it wishes to acquire, and the Concessionaire shall supply the volumes so notified from the Petroleum to which the Concessionaire is entitled under this EPC at the Delivery Point or such point that may be agreed or such point within Mozambican jurisdiction designated by the Government. Additional cost incurred by the Concessionaire in order to deliver such Petroleum at any other point than the Delivery Point with facilities and equipment in place shall be reimbursed to the Concessionaire by the Government and the cost of any new facilities and equipment to be used for such delivery shall be paid by the Government.

(b) The Government shall pay the Concessionaire the full market value of the Petroleum so acquired determined in accordance with Article 10. Payment for the Petroleum so acquired in any calendar month shall be made in United States dollars within thirty (30) days after the end of that calendar month. The Concessionaire may receive, remit and retain abroad and freely dispose of all or any part of the sums so paid.

- (c) The Government shall not exercise its right to acquire Petroleum belonging to the Concessionaire:
  - (i) in respect of any month unless during that month the Government is taking Petroleum Production Tax entirely in kind pursuant to Article 11.5;
  - (ii) unless it is also exercising the same right rateably among all producers of Petroleum within the Republic of Mozambique (to the extent practicable taking into account the geographical location of the production in relation to the geographical location of the requirements).

27.11 The Government undertakes that so long as this EPC subsists:

- (a) The Government, its political subdivisions, agencies and instrumentalities, to the extent that they have or may acquire the power to do so, will not expropriate, nationalise or intervene in the assets, rights, interests or any other property of any kind of the Concessionaire held for the purpose of Petroleum Operations including the rights held by the Concessionaire hereunder.

Without prejudice to the rights of the Government acting through MIREM to regulate Petroleum Operations in the Republic of Mozambique, for the purpose of this undertaking, the Government shall be deemed to have intervened in the property or assets of the Concessionaire if (otherwise than in pursuant of a judgment or in exercise of its rights as a mortgage creditor, or in accordance with the law of insolvency, liquidation or creditor's rights) it assumes power of management over such property or assets or exercises effective control of such property or assets.

- (b) In the event of a breach of Article 27.11(a), nothing in the provisions of Article 19.5 shall be read or construed as preventing consideration of the projected flow of profits (if any) from Petroleum Operations hereunder for the purpose of determining the value of property or assets expropriated, nationalised or made subject to intervention.

- (c) In the event that the Petroleum Law is repealed or amended, the Government undertakes to ensure that this EPC remains in full force and effect provided always that nothing in this provision will be construed as requiring the Government to relieve the Concessionaire from compliance with the provisions of applicable law relating to Petroleum Operations, not inconsistent herewith, which may be in force from time to time.

27.12 (a) Where for the purpose of conducting Petroleum Operations hereunder the Concessionaire, Operator or any Subcontractor requires from MIREM, the Government or from any agency or instrumentality of the Government or from a political subdivision thereof any approvals, licences, permits, authorisations, consents or releases or any assistance, advice or guidance relating to the above, then subject to the terms and conditions of this EPC, the same shall be granted or given expeditiously and without undue delay.

- (b) Without prejudice to the generality thereof, the undertaking set out in Article 27.12(a) shall apply to:

- formalities relating to the import and export of goods including the export of Petroleum Produced hereunder;
- formalities relating to the use by the Concessionaire of any form of transport for the movement of employees, equipment and materials and to the use of communication and port facilities in the Republic of Mozambique;
- the grant of permits or other approvals required for the admission into and employment in the Republic of Mozambique of Expatriate Personnel;
- the grant of land rights or the permits or other approvals necessary for the use of land and maritime areas in accordance with this Article;
- the grant of rights to take or use water;
- procedures and formalities relating to foreign exchange; and
- approval of assignments and, to the extent required, transactions relating to the shares of any Person constituting the Concessionaire.

The Government will expedite all formalities regarding the Concessionaire's registration to do business in Republic of Mozambique and the new registration of any leases, contracts or other documents. The Government will, to the extent that circumstances and resources permit, ensure that the Concessionaire and its employees and property enjoy reasonable protection in Republic of Mozambique.

- 27.13 In the event of changes in Petroleum legislation or in other Mozambican legislation affecting Petroleum Operations that may, individually or in the aggregate, create a material adverse effect to the economic benefits of the Concessionaire or to the Government in terms of this EPC, the Parties shall, as soon as possible after any of the above-mentioned situations occur, meet to verify and agree on the changes, in all cases, that may be required to the EPC in order to restore, as closely as possible, the economic benefits that the Concessionaire would have derived if the change in the legislation had not been effected.

The provisions of this Article shall not be read or construed as imposing any limitation or constraint on the scope, or due and proper enforcement, of Mozambican legislation which does not discriminate, or have the effect of discriminating, against the Concessionaire, and provides for the protection of health, safety, labor or the environment, or for the regulation of any category of property or activity carried on in Mozambique, provided, however, that the Government will at all times during the period of Petroleum Operations ensure that, in accordance with the terms of Article 31, measures taken for the protection of health, safety, labor or the environment are in accordance with standards that are reasonable and generally accepted in the international petroleum industry.

**Article 28**  
**Protection of the Environment**

28.1 The Government will at all times during the life of the Petroleum Operations ensure in accordance with this Article, that measures taken in the interest of safety, health, welfare or the protection of the environment are in accordance with standards generally accepted from time to time in the international petroleum industry and are not unreasonable.

28.2 In carrying out Petroleum Operations hereunder the Concessionaire shall:

- (a) in accordance with accepted standards in the international petroleum industry employ up-to-date techniques, practices and methods of operation for the prevention of environmental damage, the control of waste and the avoidance of unnecessary loss of, or damage to, natural resources;
- (b) observe applicable laws and regulations of general application in force from time to time in the Republic of Mozambique for the protection of the environment; and
- (c) comply strictly with the obligations relating to the protection of the environment it has assumed under any approved Development Plan .

28.3 The Concessionaire undertakes for the purposes of this EPC to take all necessary and adequate steps in accordance with Good Oilfield Practices to:

- (a) ensure, if the Concessionaire is otherwise legally responsible, proper compensation for injury to Persons or damage to property caused by the Petroleum Operations;
- (b) avoid irremediable environmental damage to the EPC Area and adjoining or neighbouring lands and marine areas caused by the Concessionaire's Petroleum Operations; and
- (c) rehabilitate at its own cost all areas that suffer by environmental damage as a result of the Petroleum Operations.

- 28.4 If the Concessionaire fails to comply with the terms of Articles 28.2 or 28.3 or contravenes any law on the prevention of environmental damage and such failure or contravention results in any environmental damage, the Concessionaire shall take all necessary and reasonable measures to remedy such failure or contravention and the effects thereof.
- 28.5 (a) If the Government has reasonable grounds to believe that any works or installations erected by the Concessionaire or any operations carried out by the Concessionaire in the EPC Area are endangering or may endanger Persons or any property of any other Person or is causing pollution or harming wildlife or the environment to a degree which the Government considers unacceptable, the Government shall notify the Concessionaire of its concerns and the Government and the Concessionaire shall immediately consult to agree on remedial measures to be taken by the Concessionaire. Said remedial measures will be undertaken within a reasonable period of time to repair any damage and to prevent further damage to the extent reasonably practicable. If there is a disagreement between the Government and the Concessionaire regarding the existence of a problem of the type described in this Article or the remedial action to be taken by the Concessionaire, such matter shall be submitted to a sole expert for determination pursuant to Article 30.6.
- (b) in the case of any matter referred to a sole expert under Article 28.5(a), if requested by the Government, the Concessionaire shall undertake such temporary measures to address the Government's concerns as may be reasonably requested by the Government.
- 28.6 Without limitation to the generality of Articles 28.2, 28.3, 28.4 and 28.5, the Concessionaire shall cause a consulting firm or individuals, approved by the Government on account of their special knowledge of environmental matters, to carry out an environmental impact study on terms of reference determined by the Concessionaire and approved by the Government, in order to establish what the effect will be on the environment, human beings, wildlife or marine life in the EPC Area in consequence of the Petroleum Operations to be undertaken under this EPC.

- 28.7 If the Concessionaire fails to comply with any terms contained in this Article within a reasonable period of time the Government may, after giving the Concessionaire written notice of such failure to comply and a reasonable period of time necessary to take corrective action, take any action which may be necessary to cure such failure, and recover, immediately after having taken such action, all expenditures incurred in connection with such action from the Concessionaire together with interest at the prevailing LIBOR rate plus one (1) percentage point compounded quarterly and calculated from the date such expenditure is made until repaid. "LIBOR" means the annual rate equal to the three (3) month term London interbank offered rate for United States dollar deposits as published by the Wall Street Journal or, if not published therein, then by the Financial Times of London on the first day of the month following the first date any such expenditure is incurred. Should a rate not be quoted for a relevant date (such as weekends or public holidays), then the first subsequent quoted rate shall be used.
- 28.8 The Concessionaire and MIREM shall notify each other of any environmentally, archaeologically, historically or similarly protected areas or features which might be affected by the Petroleum Operations.
- 28.9 In the event that the Petroleum Operations is intended to be conducted within the boundaries of any protected area within the EPC Area, the Concessionaire shall obtain such additional approvals from the Government, as may be required by applicable law.

**Article 29**  
**Surrender and Cancellation**

29.1 The Concessionaire on giving to MIREM not less than thirty (30) days notice may:

- (a) if its obligations in respect of any Exploration Period have been fulfilled, at any time thereafter surrender its rights in respect of the entire EPC Area with the consequence that no new obligations will thereafter accrue; and
- (b) at any time, surrender its rights in respect of any acreage forming part of the EPC Area with the consequence that no new obligations will thereafter accrue in respect of such acreage; provided, however, that:
  - (i) no surrender by the Concessionaire of its rights over any part of the EPC Area shall relieve the Concessionaire of any of its obligations as set out in Article 4; and
  - (ii) any area surrendered shall be continuously delineated by meridians and parallels of latitude expressed in whole minutes of a degree.

29.2 Unless otherwise provided in this Article, the Government may, by notice to the Concessionaire, cancel this EPC for the reasons given in the applicable laws, including in any of the following events:

- (a) the Concessionaire is in material breach of the terms and conditions of this EPC;
- (b) the Concessionaire fails to materially comply within a reasonable period of time with any final decision reached as a result of arbitration proceedings conducted pursuant to Article 30.2 or fails within a reasonable period of time to accept as final and binding the decision of a sole expert to whom, pursuant to this EPC, any matter has been referred under Article 30; or

- (c) where the Concessionaire is one Person, an order is made or a resolution is passed by a court of competent jurisdiction winding up the affairs of the Concessionaire unless the winding up is for the purpose of amalgamation or reorganisation and the Government has been notified of the amalgamation or reorganisation, or if without the approval of the Government, the majority of the shares in the Concessionaire are acquired by third parties other than an Affiliated Company; or
  - (d) the Concessionaire is more than one Person and all Persons who constitute the Concessionaire are for the purpose of Article 29.3(a) Defaulting Participants.
- 29.3 (a) In the event that more than one Person constitutes the Concessionaire, and in respect of any such Person (hereinafter in this Article referred to as the “Defaulting Participant”), an event occurs of the kind described in Article 29.2(c) or any such Person (also hereinafter referred to as the “Defaulting Participant”) is in material breach of an obligation under this EPC which as provided in Article 5.2(a) is a several obligation, the Government shall not be entitled to cancel this EPC pursuant to Article 29.2 or otherwise, unless all the Persons who constitute the Concessionaire are Defaulting Participants, but may subject to Article 29.4, serve on the Defaulting Participant a notice (hereinafter referred to as an “Assignment Notice”).
- (b) Where an Assignment Notice has been served on a Defaulting Participant, the Defaulting Participant shall forthwith, unconditionally, without consideration, and free from all encumbrances assign its undivided Participating Interest share in this EPC to the other Persons who constitute the Concessionaire (the “Non-Defaulting Participants”) in undivided shares in proportion to the undivided shares in which the Non-Defaulting Participants hold their shares in this EPC, and each of the Non-Defaulting Participants shall be obliged to accept that assignment. A Non-Defaulting Participant accepting such an assignment shall not be responsible for any

obligations of the assigning Defaulting Participant to the Government, or any third party which accrued prior to the assignment.

29.4 The Government may cancel this EPC pursuant to Article 29.2 or serve an Assignment Notice under Article 29.3 only if:

- (a) the Government gives not less than ninety (90) days notice (the "Notice") to the Concessionaire or, as the case may be, the Defaulting Participant, of an intention to cancel this EPC or to serve an Assignment Notice stating in detail in the Notice the alleged material breach or other grounds for cancellation or service of an Assignment Notice relied upon by the Government;
- (b) the Concessionaire or the Defaulting Participant is given a period of thirty (30) days from its receipt of the Notice to provide any information it wishes the Government to consider;
- (c) the Concessionaire or Defaulting Participant is given a period of sixty (60) days from its receipt of the Notice:
  - (i) to cure or remove such material breach or other grounds specified in the Notice for cancellation or service of an Assignment Notice; or
  - (ii) if such material breach or other grounds aforesaid cannot be cured or removed within such sixty (60) day period, to immediately begin efforts to cure or remove the alleged material breach or other grounds aforesaid and to diligently pursue such efforts; or
  - (iii) where it is impossible to cure or remove such material breach or other grounds aforesaid, to pay reasonable compensation to the Government , in respect thereof; and
- (d) the Concessionaire or the Defaulting Participant either:

- (i) has failed within the said sixty (60) days to cure or remove such material breach or other grounds aforesaid pursuant to Article 29.4(c)(i);
- (ii) has failed to diligently pursue efforts to cure or remove such material breach or other grounds aforesaid pursuant to Article 29.4(c)(ii); or
- (iii) in the event that it is impossible to cure or remove such material breach or other grounds aforesaid, has failed within the said sixty (60) days to pay reasonable compensation;

and the Concessionaire or the Defaulting Participant has not commenced arbitration proceedings pursuant to Article 29.5.

29.5 Any dispute between the Parties as to whether :

- (a) there are grounds under Article 29.2 on which this EPC may be cancelled;
- (b) there are grounds under Article 29.3 on which an Assignment Notice may be served on any Person;
- (c) the requirements of Article 29.4(a), (b) and (c) have been satisfied; or
- (d) the Concessionaire or, as the case may be, the Defaulting Participant has remedied or removed a ground in respect of which this EPC may be cancelled under Article 29.2 or an Assignment Notice served under Article 29.3 or whether full, prompt and effective compensation has been paid in respect of grounds for cancellation or the service of an Assignment Notice which are impossible to remedy or remove

shall be referred to arbitration under Article 30.

29.6 (a) Where notice of a dispute has been given by the Concessionaire in respect of any of the matters specified in Article 29.5, the Government shall not pursuant to Article 29.2 cancel this EPC until the matter or

matters in dispute have been resolved by an award and in that event only if cancellation is consistent with the award rendered.

- (b) Where the existence of a material breach of the terms and conditions of this EPC relates to a matter in dispute between the Government and the Concessionaire which has been referred for determination by a sole expert pursuant to Article 30.6, a notice served on the Concessionaire pursuant to Article 29.4 may not rely upon that matter as a reason for the intended cancellation of this EPC until the sole expert has determined the matter and in that event only if to do so would be consistent with the way in which the matter has been so determined.

## **Article 30**

### **Consultation, Arbitration and Independent Expert**

- 30.1 For the purpose of this article, there are two Parties, the Government and the Concessionaire.
- 30.2 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 35. 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 specifically provided for elsewhere in this EPC, either Party shall have the right to have such dispute determined by arbitration or an expert as provided for in this Article 30. Arbitration and expert determination as aforesaid shall be the exclusive method of determining a dispute under this EPC.
- 30.3 Subject to the provisions of this Article 30, and save for any matter to be referred to a sole expert as provided in clause 30.6, the Parties shall submit any dispute arising out of or in connection with this EPC which cannot be resolved by negotiation as provided in clause 30.2 to arbitration as hereinafter provided:
- (a) the dispute shall be submitted to the International Centre for Settlement of Investment Disputes (“ICSID”) for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in accordance with the arbitration rules thereof in effect on the Effective Date (the “Convention”). It is hereby stipulated that the transaction to which this EPC relates is an investment. The Parties agree that ..... shall be treated as a national of ..... for the purposes of ICSID;
  - (b) the seat of the arbitration shall be ....., ....., and the law of the merits of the arbitration shall be Mozambique law. The arbitration shall be conducted in the English language. If for any reason an ICSID arbitral tribunal declines to approve ..... as the place of arbitration, the place of arbitration for that case shall be the Permanent Court of Arbitration

in The Hague. Notwithstanding Article 32, the English version of this EPC signed by the Parties shall be used as the official translation in arbitral proceedings;

- (c) “abc” has been designated to ICSID by the Government in accordance with Article 25(1) of the Convention. The Government has given its approval to this consent to arbitration in accordance with Article 25(3) of the Convention;
- (d) if the dispute is not between one or more Parties who are nationals of a contracting State, on the one hand, and the Government and/or “abc”, on the other hand, or if for any reason ICSID refuses to register a request for arbitration or an arbitral tribunal established in accordance with the ICSID Arbitration Rules determines that the dispute is not within the jurisdiction of ICSID, the dispute shall be settled by arbitration in accordance with the United Nations Commission on International Trade Law (“UNCITRAL”) Arbitration Rules. In the event that UNCITRAL Arbitration Rules shall be applied, the appointing authority shall be the Permanent Court of Arbitration in The Hague;
- (e) an award by an arbitrator or arbitrators shall be final and binding on all Parties;
- (f) the arbitral panel shall be composed of three (3) arbitrators to be appointed in accordance with the ICSID Rules, provided that, upon mutual agreement of both Parties, the arbitration may be conducted by a sole arbitrator appointed under the ICSID Rules. Unless both Parties have agreed that the dispute shall be settled by a sole arbitrator, the claimant Party shall nominate in the request for arbitration, and the respondent Party shall nominate within thirty (30) days of the registration of the request, one (1) arbitrator pursuant to the ICSID Rules. Within a period of thirty (30) days from the date when both arbitrators have accepted their appointments the arbitrators so appointed shall agree on a third arbitrator, who shall act as Chairman of the arbitral tribunal. 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 ICSID shall make such appointments as necessary in accordance with the ICSID 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 subject to acceptance by the nominated arbitrator; provided that if the Parties are unable to agree on a nominee for sole arbitrator within thirty (30) days from the date of the registration of the request, then ICSID shall appoint the sole arbitrator in accordance with the ICSID Rules;

- (g) insofar as practicable, the Parties shall continue to implement the terms of this EPC notwithstanding the initiation of arbitral proceedings and any pending disputes;
- (h) the provisions set out in this Article 30 shall continue after the termination of this EPC; and
- (i) Neither any sole expert nor any arbitrator of the arbitral tribunal, as applicable, shall be of the same nationality as any Party.

30.4 An award or a decision, including an interim award or decision, in arbitral proceedings pursuant to this Article 30 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 in aid of arbitration or 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.

Parties in this clause 30.4 shall be understood to include each entity comprising the Concessionaire.

- 30.5 Any matter in dispute of a technical nature not involving interpretation of law or the application of this EPC and which is required to be referred to a sole expert for determination under the provisions of this EPC, including Articles 10.3 (e) and 28.5 (a) of this EPC and Article 2.1 (e) of Annex "C" or other issues of a substantially equivalent nature to said clauses (or with respect to any other matter which the Parties may otherwise agree to so refer) shall be referred to a sole expert for determination by a Party giving notice to such effect pursuant to Article 35. Such notice shall contain a statement describing the dispute and all relevant information associated therewith. A sole expert shall be an independent and impartial person of international standing with relevant qualifications and experience appointed pursuant to the mutual agreement of the Parties. Any sole expert appointed shall act as an expert and not as an arbitrator or mediator and shall be instructed to endeavour to resolve the dispute referred to him within thirty (30) days of his appointment, but in any event within sixty (60) days of the appointment. Upon the selection of the sole expert, the Party receiving the notice of referral above shall submit its own statement containing all information it considers relevant with respect to the matter in dispute. The decision of the sole expert shall be final and binding and not subject to any appeal, save for fraud, corruption or manifest disregard of applicable procedure of this EPC. If the Parties are unable to agree on the appointment of a sole expert within twenty (20) days after a Party has received a notice of referral under this Article the sole expert shall be selected by the International Chamber of Commerce ("ICC") Centre for Expertise, and the person so selected shall be appointed by the Parties.
- 30.6 The sole expert shall decide the manner in which any determination is made, including whether the Parties shall make oral or written submissions and arguments, and the Parties shall co-operate with the sole expert and provide such documentation and information as the sole expert may request. All correspondence, documentation and information provided by a Party to the sole expert shall be copied to the other Party, and any oral submissions to the sole expert shall be made in the presence of all Parties and each Party shall have a right of response. The sole expert may obtain any independent professional or technical advice as the sole expert considers necessary. The English version of this EPC signed by the Parties shall be used as the official translation in any determination by the sole expert. The fees and expenses of

a sole expert appointed under the provisions of Article 30.5 shall be borne equally by the Parties.

- 30.7 The Parties hereby agree not to exercise any right to institute proceedings to set aside any interim or final arbitral award made pursuant to this Article 30, except that nothing in this Article 30.7 shall be read or construed as imposing any limitation or constraint on either Party's right to seek to nullify any such interim or final arbitral award (a) rendered by an ICSID arbitral tribunal on the limited grounds and in accordance with the procedure set forth in Article 52 of the Convention or (b) rendered by the arbitral tribunal pursuant to the UNCITRAL Arbitration Rules on the limited grounds set forth in Article 52 of the Convention.

**Article 31**  
**Applicable Law**

- 31.1 This EPC shall be governed by and construed in accordance with the laws of the Republic of Mozambique.
- 31.2 (a) The Government and the Concessionaire agree to cooperate on preventing corruption. The Parties undertake to take administrative disciplinary actions and rapid legal measures in their respective responsibilities to stop, investigate and prosecute in accordance with national law any person suspected of corruption or other intentional misuse resource.
- (b) No offer, gift, payments or benefit of any kind, which would or could be construed as an illegal or corrupt practice, shall be accepted, either directly or indirectly, as an inducement or reward for the execution of this EPC.
- (c) The above paragraph (b) is equally applicable to the Concessionaire, its Affiliated Companies, agents, representatives, Subcontractors or consultants when such offer, gift, payments or benefit violate:
- (i) the applicable laws of the Republic of Mozambique;
  - (ii) the laws of the country of formation of the Concessionaire or of its ultimate parent company (or its principal place of business);  
or,
  - (iii) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997, which entered into force on February 15, 1999, and the Convention's Commentaries.
- 31.3 References in this EPC to applicable law are without prejudice to the rights of the Parties under Article 9.11, 11.9 and 27.13, when such applicable law is Mozambican law.

**Article 32**  
**Language**

This EPC has been drawn up in the Portuguese and English languages and three (3) originals of each text have been prepared for signature by the Government and the Concessionaire. One (1) signed original of each text will be retained by the Parties. Both the Portuguese and English text are binding. However, the Portuguese text will prevail in case of conflict.

**Article 33**  
**Joint Operating Agreement**

- 33.1 A joint operating agreement shall be signed between the Persons constituting the Concessionaire immediately upon execution of this EPC.
- 33.2 The joint operating agreement is subject to the approval of the Government and such an approval is a condition for the EPC.
- 33.3 Every other agreement than the joint operating agreement relating to the Petroleum Operations made between the Persons who constitute the Concessionaire shall be consistent with the provisions of this EPC and shall be submitted to MIREM as soon as the same has been executed

**Article 34**  
**Future Agreements**

It is understood that any written agreement which may at any time be concluded between the Concessionaire on the one hand and the Government on the other, as may be required or desired within the context of this EPC shall be deemed to have been approved to the same extent in accordance with applicable law as if it was originally included in this EPC.

## Article 35

### Notices

35.1 All notices, invoices and other communications hereunder shall be deemed to have been properly given or presented, if delivered in writing in person or by courier or sent by facsimile confirmed by courier at the addresses indicated in Article 35.2 with the charges associated with the delivery of the notice, invoice or other communication being paid by the sender.

35.2 All such notices shall be addressed to the Government or the Concessionaire, as the case may be, as follows:

(a) The Government

MINISTÉRIO DOS RECURSOS MINERAIS

Prédio Montepio, Avenida Fernão de Magalhães, 34, 1<sup>st</sup> floor

Caixa Postal 4724

Maputo, Mozambique

Attention : Chairman of the National Petroleum Institute

Telephone : +258 21 320935

Telefax : +258 21 430 850

(b) XYZ

Attention : Position

Telephone : + 258 21

Telefax : + 258 21

(c) ABC

Address

Maputo, Mozambique

Attention : Position

Telephone : +258 21  
Telefax : +258 21

35.3 Subject to Article 35.4 each Party hereto may substitute or change the aforesaid address by giving written notice thereof to the others.

35.4 The Concessionaire shall at all times maintain an address in Maputo for the purpose of service of notice.

IN WITNESS WHEREOF, the Government and the Concessionaire have signed this EPC in three (3) originals in each of the Portuguese and English languages, as of the date first herein above stated.

**The Government of the Republic of Mozambique**

By: \_\_\_\_\_

Name

Minister of Mineral Resources

Date: \_\_\_\_\_

**XYZ**

By: \_\_\_\_\_

Name

Position

Date: \_\_\_\_\_

**ABC**

By: \_\_\_\_\_

Name

Position

Date: \_\_\_\_\_