

**JOINT OPERATING AGREEMENT**

FOR

UKCS LICENCE NO. P.[ ]

BLOCK [ ]

BETWEEN

[ ] LIMITED

AND

[ ] LIMITED

**Note:** this document should be used in conjunction with the accompanying Guidance Notes which are available from the OGUK website.

## **Contents**

<b>Clause</b>	<b>Title</b>	<b>Page</b>
1.	Definitions and Interpretation	1
2.	Duration	9
3.	Scope and Understanding	10
4.	Interests of the Participants	11
5.	The Operator	11
6.	Authorities and Duties of the Operator	15
7.	Rights of the Participants	22
8.	Insurance and Litigation	23
9.	The Joint Operating Committee	26
10.	Exploration and Appraisal Programmes and Budgets	34
11.	Development Programmes and Budget	36
12.	Production Programmes and Budgets	38
13.	Decommissioning Programme and Budget	40
14.	General Provisions Relating to Budgets	42
15.	Sole Risk	43
16.	Costs and Accounting	58
17.	Default	58
18.	Disposal of Petroleum	65
19.	Data and Confidentiality	65
20.	Public Announcements	67
21.	Outgoings and Grants	67
22.	Covenant, Undertaking and Relationship	68
23.	Assignment and Encumbrance	72
24.	Withdrawal	74
25.	Force Majeure	76
26.	Disposal of Joint Property and Decommissioning	76
27.	Intellectual Property	77
28.	The Contracts (Rights of Third Parties) Act 1999	78
29.	Applicable Law	78
30.	Notices	78
31.	Miscellaneous	79

<b>Schedule A</b>	81
Joint Operating Agreement	81
UKCS Licence No. P[    ]	81
Block [    ]	81
Accounting Procedure	81
1.        Purpose and Intent	82
2.        Responsibilities	82
3.        Accounting Basis	83
4.        Funding and Finance Fee	84
5.        Billing Statements	85
6.        Materials	86
7.        Audit	87
8.        Definitions	89
<b>Schedule B</b>	90
Trust Deed	90
1.        Definitions	92
2.        Declaration of Trust	93
3.        Covenants and Undertakings	94
4.        Indemnity	94
5.        Periodic Payments	95
6. <i>Stratigraphically Divided Areas</i>	95
7.        Assignment	96
8.        Miscellaneous	97
<b>Schedule C</b>	101
Decommissioning Security Agreement	101
<b>Schedule D</b>	102
Associated Agreements	102



**THIS AGREEMENT** is made on the            day of            20

**BETWEEN:**

- (1) [                            ] a company registered in [                            ] (company number [                            ]) whose registered office is at [                            ] (“                            ”); and
- and
- (2) [                            ] a company registered in [                            ] (company number [                            ]) whose registered office is at [                            ] (“                            ”).

**WHEREAS:**

- A. The Participants are the present holders of the Licence;
- B. The This Agreement is entered into by the Participants for the purposes of regulating operations under the Licence and of defining their respective rights, interests, duties and obligations in connection with the Licence and in connection with all Petroleum produced under the Licence; and
- C. The Secretary has granted approval to this Agreement by virtue of the issue of the Open Permission (Operating Agreements) effective from 28 April 2003 the provisions of which apply to the terms of this Agreement.<sup>1</sup>

**NOW IT IS HEREBY AGREED AS FOLLOWS:-**

**1. Definitions and Interpretation**

**1.1 Definitions**

In this Agreement, where the context admits:

“Accounting Procedure” means the procedure set out in Schedule A.<sup>2</sup>

“Acts” means the Petroleum Act 1998 and the Continental Shelf Act 1964 and any regulations issued under them.

“Advance” means each payment of cash required to be made pursuant to a Cash Call.

“AFE” means authority for expenditure.

“Affiliate” means:

- (a) if the Participant is a subsidiary of another company the Participant’s ultimate holding company and any subsidiary (other than the Participant itself) of the Participant’s ultimate holding company; or
- (b) if the Participant is not a subsidiary of another company any subsidiary of the Participant;

---

<sup>1</sup> See Guidance Notes regarding the Open Permission.

<sup>2</sup> Note that there are two forms of Accounting Procedure available for use in conjunction with this standard agreement – a short form version which is incorporated into this document or a longer form version (closer to the Accounting Procedure attached to the 20<sup>th</sup> Round JOA) which is available separately on the Oil and Gas UK website. See further comment in the Guidance Notes.

and for the purposes of this definition the terms “holding company” and “subsidiary” shall have the meanings given to them by section 1159 Companies Act 2006.<sup>3</sup>

“Agreement” means this Agreement and includes its recitals and the Schedules.

“Agency Personnel” means secondees or other individuals performing work or services ordinarily performed by employees where such secondees or other individuals are under the direction and control of a Participant or Affiliate.

“Applicable Anti-Bribery Law” means any laws, regulations and other legally binding measures relating to bribery, corruption or similar activities of (i) the United Kingdom, including without limitation the Bribery Act 2010; (ii) any country or countries in which any of the obligations of this Agreement are performed.

[[OPTION A

and/or (iii) for each Participant, any country or countries of such Participant’s (but for the avoidance of doubt, not of any other Participant’s) place of incorporation, principal place of business, and/or place of registration as an issuer of securities and/or any country or countries of such Participant’s ultimate parent company’s place of incorporation, principal place of business, and/or place of registration as an issuer of securities.]]

[[OPTION B

and/or (iii) for all Participants, any country or countries of any Participant’s place of incorporation, principal place of business, and/or place of registration as an issuer of securities, and/or in any country or countries of any Participant’s ultimate parent company’s place of incorporation, principal place of business, and/or place of registration as an issuer of securities.]]<sup>4</sup>

“Appraisal Drilling” has the meaning assigned to it in clause 15.1(b)(vi).

[[“Associated Agreement” means any agreement between all of the Participants in their capacity as such (or the Operator on behalf of all of the Participants) and one or more third parties (including a Participant acting in a capacity other than as a Participant), in which the Operator acts on behalf of all the Participants and which would not otherwise fall within the scope of this Agreement, but excluding any agreement which the Participants have expressly agreed in writing should not be so brought.]]<sup>5</sup>

OR

[[“Associated Agreement” means the agreements listed in Schedule D together with any other agreement subsequently executed by all of the Participants in their capacity as such (or the Operator on behalf of all of the Participants) and one or more third parties (including a Participant acting in a capacity other than as a Participant), in which the Operator acts on behalf of all the Participants and which the Participants agree shall be brought within the scope of this Agreement as an Associated Agreement.]

“Budget” means any budget in respect of a Programme.

“Bribe” means to do anything that would amount to an offence under Applicable Anti-Bribery Law (including anything which would be an offence under the Bribery Act 2010 if

---

<sup>3</sup> See Guidance Notes regarding the reference to the Companies Act 2006.

<sup>4</sup> See Guidance Notes on the use of this definition

<sup>5</sup> See Guidance Notes regarding the use of this term.

the person concerned were subject to the jurisdiction of the UK courts); and “Bribes”, “Bribed”, “Bribery”, “Bribing” and other variants of “Bribe” shall be construed accordingly.

“Cash Call” means any request for payment of cash in advance made by the Operator to the Participants in connection with the Joint Operations or, where the context so requires, to the Sole Risk Participant in connection with any Sole Risk Project.

“Competent Authority” means (i) any person having legal, executive and/or regulatory authority and/or enforcement powers (including any public body or authority responsible for the investigation and/or prosecution of criminal offences) over a Participant or any of its Affiliates providing services in connection with Joint Operations; and/or (ii) any court of law or tribunal with jurisdiction over a Participant or any of its Affiliates providing services in connection with Joint Operations.

“Consequential Loss” means any indirect or consequential loss howsoever caused or arising whether under contract, by virtue of any fiduciary duty, in tort or delict (including negligence), as a consequence of breach of any duty (statutory or otherwise) or under any other legal doctrine or principle whatsoever whether or not recoverable at common law or in equity. “Consequential Loss” shall be deemed to include, without prejudice to the foregoing generality, the following to the extent to which they might not otherwise constitute indirect or consequential loss:

- (a) loss or damage arising out of any delay, postponement, interruption or loss of production, any inability to produce, deliver or process hydrocarbons or any loss of or anticipated loss of use, profit or revenue;
- (b) loss or damage incurred or liquidated or pre-estimated damages of any kind whatsoever borne or payable, under any contract for the sale, exchange, transportation, processing, storage or other disposal of hydrocarbons;
- (c) losses associated with business interruption including the cost of overheads incurred during business interruption;
- (d) loss of bargain, contract, expectation or opportunity;
- (e) damage to any reservoir, geological formation or underground strata or the loss of hydrocarbons from any of them;
- (f) any other loss or anticipated loss or damage whatsoever in the nature of or consequential upon the foregoing.

“Continuing Part” shall have the meaning given to it in the Licence.

“Conversion Rate” means the mean of the spot selling and buying rates for transaction between the two currencies in question as openly quoted by [insert Operator’s bank and branch] at 10.30am London time on the relevant date (or, if no such rates were quoted on that date, on the next following date on which such rates were quoted).

“Decommissioning” means the decommissioning and/or dismantling and/or demolition and/or removal and/or disposal of Joint Property or any part of it including any operations carried out in connection with or in contemplation of the foregoing (including planning, acquiring long-lead items and maintenance of the Joint Property following cessation of production but pending commencement of decommissioning operations) together with any necessary site reinstatement all as may be required under

- (a) Legislation and any notices, orders, recommendations and guidelines (including guidelines issued by the International Maritime Organisation or the Ospar Commission) made under any Legislation; and/or

- (b) the Licence; and/or
- (c) this Agreement; and/or
- (d) other agreements entered into by all the Participants or by the Operator on behalf of all the Participants;

but excluding, if the Joint Property is not wholly removed, any residual liability, and necessary continuing maintenance and insurance costs in relation to it.

“Decommissioning Budget” means a budget put forward by the Operator in accordance with clause 13 to provide for the removal and disposal of Joint Property and the provision of the necessary financial obligations and liabilities associated with facilities not wholly removed.

“Decommissioning Security Agreement” means the decommissioning security agreement to be entered into pursuant to clause 26.3 as it may be amended from time to time.

“Decommissioning Plan” has the meaning given to it in the Decommissioning Security Agreement.

“Decommissioning Programme” means a programme approved in accordance with clause 13 to provide for the removal and disposal of Joint Property and performance of the obligations and liabilities associated with facilities not wholly removed.

“Default Notice” has the meaning assigned to it in clause 17.1.

“Defaulting Participant” has the meaning assigned to it in clause 17.1.

“Development Plan” means a programme of development works to which the Secretary has given consent or which the Secretary has served in accordance with [Clause 17] of the Licence and “submission of a Development Plan” includes the formal and informal submissions of documentation to the Secretary in order to seek development and production consent for a Discovery.

“Discovery” means any discovery of reserves of Petroleum.

“Dollars” or “\$” means dollars of the United States of America.

“Early Surrender Area” shall have the meaning given to it in the Licence.

“Environmental Loss” means any loss or damage (other than Consequential Loss) or any claim by or liability to any person, whether a Participant or not, (including any award of damages and any legal or other costs and expenses incurred in respect thereof and any payments made pursuant to clauses 8.2.1 and/or 8.2.3) in any such case caused by a discharge of Petroleum, pollutants or other contaminants into or onto any medium (including the sea, land, surface water, ground water and/or air) including (i) injury or damage to, or destruction of, natural resources or real or personal property; (ii) the cost of pollution control, clean-up, containment and removal; and (iii) the cost of restoration of natural resources; and (iv) to the extent recoverable under an indemnity at law, fines, penalties or other assessments.<sup>6</sup>

“Further Term” means any continuation or extension of the Licence beyond the Second Term granted by the Secretary pursuant to Clause [5] of the Licence.

“Good Oilfield Practice” means the application of those methods and practices

---

<sup>6</sup> See Guidance Notes on the inclusion of this definition and the amendments to clauses 6.2.4 and 22.2.2.



customarily used in good and prudent oil and gas field practice in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions.

“Group” shall mean in relation to any Participant, the Participant, its Affiliates and any of the directors, officers, employees and/or Agency Personnel of the Participant or its Affiliates.

“Indebtedness” means any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent, sole or joint.

“Initial Term” means the period specified as such in Schedule [ ] of the Licence.

“Intellectual Property” means literary and artistic works (including but not limited to designs, manuals, computer programmes, databases, scientific and technical information) inventions, mask works, semiconductor topographies, know-how and other material protected by law.

“Intellectual Property Rights” means patents, design rights, copyright, database rights, utility models, semiconductor topography rights, rights in know-how and confidential information whether registered or unregistered anywhere in the world, and applications for any of the foregoing, and any other form of protection afforded by law to a person to allow such person to prevent the use of Intellectual Property owned by such person without consent.

“Invoice” means any invoice presented for payment by the Operator to a Participant in accordance with the provisions of the Accounting Procedure in connection with Joint Operations.

“Joint Account” means the account established and maintained by the Operator to record all Advances, Cash Calls, Invoice payments, expenditures and Receipts in the conduct of the Joint Operations.

“Joint Operations” means all operations which are conducted by the Operator on behalf of all of the Participants in accordance with this Agreement after the date of commencement of this Agreement as provided in clause 2.

“Joint Operating Committee” means the committee established pursuant to clause 9.1.

“Joint Petroleum” means all Petroleum won and saved under the Joint Operations.

“Joint Property” means all property acquired or held for use in connection with the Joint Operations.

“Legislation” means the Acts and all other relevant international treaties binding in the United Kingdom, national and local laws, by-laws, regulations, decisions and judgments of any competent authority.<sup>7</sup>

“Licence” means the United Kingdom Petroleum Production Licence No. [ ] dated [ ] and effective as of [ ] issued by the Secretary as amended, supplemented or extended from time to time and shall include any other licence issued to the Participants in substitution or partial substitution for it.<sup>8</sup>

---

<sup>7</sup> See Guidance Notes for the relationship of this definition and the definition of legislation in the DSA.

<sup>8</sup> See Guidance Notes on the need for amendment of this definition and the definition of Licence Area if the JOA does not from the outset apply to the entire area of the Licence.

“Licence Area” means the area for the time being covered by the Licence [[excluding any area in which the Participants have no beneficial interest and which has become subject to a separate joint operating agreement pursuant to Clause 9.10.2]]<sup>9</sup>.

“Material” means property, facilities, equipment or supplies.

“Month” means a calendar month.

[[“New Area” means:

- (i) that part of the Licence Area in respect of which a Participant proposes to transfer all or part of its Percentage Interest without transferring all of its Percentage Interest in the remainder of the Licence Area; or
- (ii) at any given time, any part of the Licence Area, being delimited by surface area but applying only to that interpreted closure of any geological structure or stratigraphic trap in which the reservoir or reservoirs exist, which is subject to development by less than all Participants and in which the entire Percentage Interest is owned by those of the Participants carrying out the development.]]<sup>10</sup>

“Non-Defaulting Participant” has the meaning assigned to it in clause 17.2(a).

“Non-Operator” means a Participant other than the Operator.

“Non-Sole Risk Participants” shall have the meaning assigned to it in clause 15.2.5.

“Oil and Gas UK” means that representative organisation trading as Oil and Gas UK.

“Operator” means the Participant for the time being designated as such under clause 5, acting in that capacity and not as the owner of a Percentage Interest.

“Operator Group” has the meaning assigned to it in clause 6.2.4.

“Outgoing Operator” has the meaning assigned to it in clause 5.7.1.

“Participant” means a party to this Agreement and its respective successors and assigns.

“Participant Group” has the meaning assigned to it in clause 22.2.2.

“Passmark” shall have the meaning given to it in clause 9.8.2.

“Percentage Interest” means for each of the Participants the undivided percentage interest held from time to time by it pursuant to this Agreement in the Licence in so far as it relates to the Licence Area [[or, where the context so requires, in any New Area]].

“Petroleum” has the meaning assigned to it under the Licence.

“Phase” means any of Phase A, Phase B or Phase C.

“Phase A” means [that period of the Initial Term, if any, specified as such in Schedule [5] to the Licence].

“Phase B” means [that period of the Initial Term, if any, specified as such in Schedule [5] to the Licence].

“Phase C” means [that period of the Initial Term specified as such in Schedule [5] to the

---

<sup>9</sup> These words should be deleted if the option at clause 9.10 is not adopted.

<sup>10</sup> See Guidance Notes on the use of this term.

Licence].

“Policies and Procedures” means an anti-Bribery policy and any related procedures as amended, varied or supplemented from time to time, including policies, procedures and controls relating to accounting, approval and recording of financial transactions; risk assessment and mitigation; training of personnel; due diligence on third-party engagements/contracts; gifts and hospitality, promotional expenditures, sponsorship and charitable donations; and promoting and monitoring compliance.

“Pounds” or “£” means pounds sterling of the United Kingdom.

“Producing Part” shall have the meaning given to it in the Licence.

“Programme” means any programme of Joint Operations.

“Quarter” means a period of three Months ending on 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September or 31<sup>st</sup> December in any Year.

“Receipts” includes but is not limited to, grants received from any governmental agency or body in the United Kingdom or of the European Union and monies (or the monetary value of other consideration) arising from the sale of Joint Property.

“Run-Down Period” has the meaning given to it in the Decommissioning Security Agreement.

“Second Term” means the term of years specified in the Licence as being the period for which the Licence may be continued next after the expiry of the Initial Term.

“Secretary” means in relation to the Licence, the “Minister” as defined therein, or, in relation to the exercise of functions under the Acts, the person designated to exercise such functions, as the case may be.

“Senior Managerial Personnel” means in relation to any Participant, any person employed by it or any of its Affiliates as a director or other corporate officer or senior manager. For the purposes of this definition, “senior manager” shall mean only:

- (a) in relation to the Operator, [[any member of the management committee comprised of senior managers which has overall responsibility for the management of the assets and interests of [ ] Limited and its subsidiaries (at the date of this Agreement known as the “[ ] Executive Committee”) and/or any person employed by the Operator or its Affiliates who directly reports to any such committee or to the board of directors or to any member of either in his capacity as a member of such committee or board]] OR [[any person of the rank of [ ] or above]] OR[[ any person having direct responsibility for the conduct of all Joint Operations]]; and
- (b) in relation to any Non-Operator, [[any member of any committee or board performing the same or substantially the same function as the board of directors or the management committee referred to in (a) above and any person employed by such Non-Operator or its Affiliates who directly reports to any such committee or board or to any member of either of them in his capacity as a member of such committee or board]] OR [[any person having direct responsibility for the rights and responsibilities of such Non-Operator under this Agreement]].<sup>11</sup>

“Simple Majority” means one or more Participants holding in aggregate more than fifty

---

<sup>11</sup> See Guidance Notes on the options in this definition.

per cent (50%) of the Percentage Interests of those entitled to vote.

“Sole Risk Development” shall have the meaning assigned to it in clause 15.1(d).

“Sole Risk Drilling” shall have the meaning assigned to it in clause 15.1(b).

“Sole Risk Interests” shall have the meaning assigned to it in clause 15.2.1.

“Sole Risk Participant” shall have the meaning assigned to it in clause 15.2.1.

“Sole Risk Project” shall have the meaning assigned to it in clause 15.1.

“Sole Risk Seismic” shall have the meaning assigned to it in clause 15.1(a).

“Sole Risk Testing” shall have the meaning assigned to it in clause 15.1(c).

“SONIA” means, with respect to any day, the Sterling Overnight Index Average rate published for such day by the Bank of England as the administrator of the benchmark (or a successor administrator), on their website. If on any such day there is no publication, the rate shall be the rate for the immediately preceding publication date. If SONIA is below zero for any day during the relevant period, SONIA will be deemed to be zero for that day. If the resulting SONIA rate is in excess of that permitted by applicable law, then the SONIA rate applied shall be the maximum permitted by applicable law. If SONIA publication permanently ceases, it shall be replaced for the purposes of this Agreement by its successor benchmark rate nominated or recommended by the Bank of England (or a successor administrator).

“SONIA Compounded in Arrears” means the following calculation rounded to four (4) decimal places:

$$SONIA \text{ Compounded in Arrears} = \left[ \prod_{i=1}^{d_0} \left( 1 + \frac{SONIA_i \times n_i}{365} \right) - 1 \right] \times \frac{365}{d}$$

Where:

“ $d_0$ ”, for any calculation period, is the number of London banking days in the relevant calculation period;

“ $i$ ” is a series of whole numbers from one to  $d_0$ , each representing the relevant London banking days in chronological order from, and including, the first London banking day in the relevant calculation period;

“ $SONIA_i$ ”, for any day “ $i$ ” in the relevant calculation period, is a reference rate equal to the daily SONIA rate;

“ $n_i$ ” is the number of calendar days in the relevant calculation period on which the rate is  $SONIA_i$ ; and

“ $d$ ” is the number of calendar days in the relevant calculation period.

“Surrendered Part” shall have the meaning given to it in the Licence.

“Third Term” means any continuation or extension of the Licence beyond the Second Term granted by the Secretary pursuant to Clause [8] of the Licence.

“Wilful Misconduct” means an intentional or reckless disregard by Senior Managerial Personnel of Good Oilfield Practice or any of the terms of this Agreement in utter disregard of avoidable and harmful consequences but shall not include any act, omission, error of judgement or mistake made in the exercise in good faith of any function, authority or discretion vested in or exercisable by such Senior Managerial Personnel and which in

the exercise of such good faith is justifiable by special circumstances, including safeguarding of life, property or the environment and other emergencies.

“Working Day” means a day, other than a Saturday or Sunday, on which banks in the cities of both London and Aberdeen are normally open for business.

“Work Obligations” means those obligations set out in Schedule [3] to the Licence and any conditions referred to in clause 9.9.1(b) as such may be amended from time to time.

“Year” means a calendar year.

## **1.2 Interpretation**

In this Agreement:

- 1.2.1 Reference to any statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument as from time to time amended, extended or re-enacted.
- 1.2.2 Reference to the singular includes the plural and vice versa.
- 1.2.3 Reference to any gender includes a reference to all other genders.
- 1.2.4 Unless the context otherwise requires, reference to any clause is to a clause of this Agreement.
- 1.2.5 Reference to “include” means “including but not limited to”.
- 1.2.6 The headings are used for convenience only and shall not affect the construction or validity of this Agreement.
- 1.2.7 [References to the calculation of interest using SONIA Compounded in Arrears shall allow for the Participants to calculate the applicable rate by using an on-line calculator, including those offered by NatWest Markets and IHS Markit, provided that the calculation in the definition of “SONIA Compounded in Arrears” is adhered to.]

## **2. Duration**

- 2.1 This Agreement shall be deemed to have commenced on [ ] and shall, subject to clauses 2.2 and 19, continue for so long as the Licence remains in force and until all Joint Property has been disposed of, Decommissioning has been completed and final settlement has been made between the Participants in accordance with their respective rights and obligations hereunder.
- 2.2 If obligations and liabilities arising out of the existence of Joint Property are in the opinion of the Operator likely to exist beyond completion of Decommissioning and final settlement [[the Participants shall enter into a separate agreement with respect to meeting such obligations and liabilities failing which]]:
  - (a) the Operator shall give notice to the Participants of the relevant circumstances and this Agreement shall remain in full force and effect and its provisions shall apply mutatis mutandis to the requirement of the Participants to meet such obligations and liability; and
  - (b) this Agreement shall, for such purposes, survive the surrender of the Licence Area or the determination of the Licence and in such event, the Percentage Interests of the Participants for such purposes shall be deemed to be the Percentage Interests

as they were at the date of such surrender or determination.<sup>12</sup>

### **3. Scope and Understanding**

#### **3.1 Scope**

- 3.1.1 The scope of this Agreement shall extend to:
- (a) the exploration for, and the appraisal, development and production of, Petroleum under the Licence;
  - (b) without prejudice to clause 18, the treatment, storage and transportation of Petroleum using Joint Property;
  - (c) [[without prejudice to clause 18, the consideration of technical and operational issues in connection with the treatment, storage and transportation of Petroleum using third party infrastructure;]]<sup>13</sup>
  - (d) [[the consideration of technical and operational issues in connection with the use of Joint Property by third parties;]]<sup>14</sup>
  - (e) the decommissioning or other disposal of Joint Property;
  - (f) the conditions for the carrying out of Sole Risk Projects in the Licence Area; and
  - (g) [[the administration of the Associated Agreements and the performance of the functions thereunder ascribed to the Operator]].
- 3.1.2 [[Without prejudice to clause 3.1.3 and Clause 3.1.1(g),]] this Agreement shall not extend to:
- (a) any joint financing arrangements or any joint marketing or joint sales of Petroleum;
  - (b) the consideration of any commercial terms in connection with the treatment, storage and transportation of Petroleum under the Licence using third party infrastructure;
  - (c) the consideration of any commercial terms in connection with the use of Joint Property by third parties.
- 3.1.3 [[Where the Operator represents the Participants in relation to any Associated Agreement, unless otherwise agreed in such Associated Agreement;
- (a) the responsibility and liability of the Operator in relation to such Associated Agreement shall be in accordance with this Agreement; and
  - (b) the liability of the Participants under any Associated Agreement shall be apportioned in accordance with their Percentage Interests.]]<sup>15</sup>
- 3.1.4 [The Operator shall prepare and issue a revised Schedule D to the Participants promptly following the execution of any agreement which the Participants have agreed shall be incorporated as an Associated Agreement under this

---

<sup>12</sup> See Guidance Note on this optional clause.

<sup>13</sup> See Guidance Note on this optional clause.

<sup>14</sup> See Guidance Note on this optional clause.

<sup>15</sup> See Guidance Note for explanation of intentions behind this optional clause.

Agreement.]

### **3.2 Understanding**

This Agreement represents the entire understanding of and agreement between the Participants in relation to the matters dealt with in this Agreement, and supersedes all previous understandings and agreements, whether oral or written, relating to such matters. Each Participant agrees that it has not been induced to enter into this Agreement in reliance upon any statement, representation, warranty or undertaking other than as expressly set out in this Agreement, and to the extent that any such representation, warranty or undertaking has been given, the relevant Participant unconditionally and irrevocably waives all rights and remedies which it might otherwise have had in relation to it. Nothing in this clause shall however operate so as to exclude any right any Participant may have in respect of statements fraudulently made or fraudulent concealment.

## **4. Interests of the Participants**

Subject to the provisions of this Agreement, the Licence, all Joint Property, all Joint Petroleum and all costs and obligations incurred in, and all rights and benefits arising out of, the conduct of the Joint Operations shall be owned and borne by the Participants in proportion to their respective Percentage Interests which at the date of this Agreement are as follows:-

[        ]	[        ]	percent
[        ]	[        ]	percent
TOTAL	100.0	percent

## **5. The Operator**

### **5.1 Designation**

[        ] is hereby designated and agrees to act as the Operator under this Agreement for the purposes of the exploration for and the production of Petroleum within the Licence Area.

### **5.2 Resignation**

[[Subject to clause 5.6.]]<sup>16</sup>, the Operator shall have the right to resign:

5.2.1 at the end of any Month by giving not less than one hundred and eighty (180) days notice to the Participants or such shorter period of notice as the Joint Operating Committee may decide; [[or

5.2.2 in the event of agreeing to assign its entire interest as Participant pursuant to clause 23, at the end of any Month by giving not less than ninety (90) days notice to the other Participants or such shorter period of notice as the Joint Operating Committee may decide.]]<sup>17</sup>

---

<sup>16</sup> If the option is adopted as set out in clause 5.6 of allowing the licence to be abandoned if no Non-Operator is prepared to take on operatorship then the words "Subject to clause 5.6" must be retained in this clause as, in such a situation, the resigning Operator remains in position until the licence is so abandoned and the affairs of the Participants have been settled.

<sup>17</sup> Some parties like to see a shorter period for resignation of the Operator where the Operator is at the same time selling its entire interest in the Licence (and therefore it is quite likely that the purchaser will seek appointment as operator and the parties will be looking to conclude the transfer of both interest and operatorship speedily). This is therefore included as an option.

### **5.3 Removal**

- 5.3.1 The Operator may be removed at the end of any Month by the Joint Operating Committee giving not less than sixty (60) days notice to it if:
- (a) the Joint Operating Committee determines that the Operator has committed any material breach of, or failed to observe or perform any material obligation on its part contained in, this Agreement [[or the Decommissioning Security Agreement]]<sup>18</sup> and such breach or failure has not been remedied to the reasonable satisfaction of the Joint Operating Committee within twenty-eight (28) days of receipt by the Operator of a notice from the Joint Operating Committee requiring the Operator to remedy the breach or failure, or within such longer period as may be specified in the said notice; or
  - (b) the aggregate Percentage Interest of the Operator and any Affiliate of the Operator falls to less than [words] per cent ([numbers]%).
- 5.3.2 The Operator may be removed forthwith upon the Joint Operating Committee giving notice to it if:-
- (a) the Operator is unable to pay its debts as they fall due within the meaning of section 123(1)(e) of the Insolvency Act 1986 (but as if the words “if it is proved to the satisfaction of the court that” were deleted) or has a voluntary arrangement proposed under section 1 of the Insolvency Act 1986 or admits in writing its inability to pay its debts as they mature or declares a moratorium on the payment of all or a substantial part of its Indebtedness or makes a general assignment for the benefit of creditors or applies for winding-up or liquidation proceedings or is successfully put into forced or voluntary liquidation (except for the purpose of voluntary reorganisation not involving the insolvency of the Operator); or
  - (b) the Operator or any creditor or shareholder of the Operator petitions or applies to any court, tribunal or authority for the appointment of, or the Operator has or suffers to be appointed, any examiner, administrator, administrative receiver, receiver, liquidator, trustee or similar officer of it, its undertaking or any substantial part of its assets (and in the case of a petition or application by a creditor, such petition or application is not dismissed within fifteen (15) Working Days of it being presented or made); or
  - (c) the Operator (or its directors) files with the court a notice of intention to appoint an administrator under the Insolvency Act 1986; or
  - (d) the Operator shall suffer a distress, execution, sequestration or other process or any of the foregoing is being levied or enforced upon or sued out against the whole or a substantial part of the assets, rights or revenues of the Operator, and such distress, execution, sequestration or other process is not dismissed or released within fifteen (15) Working Days; or
  - (e) any act or event shall occur or any proceedings shall be taken having the same or similar effect to those described in (a) to (d) above (and whether or not pursuant to the Insolvency Act 1986 as amended and/or supplemented by the Insolvent Partnerships Order 1994) in relation to any

---

<sup>18</sup> This wording is an alternative to including 5.3.2(j) depending on whether the parties wish a breach of the DSA to lead to immediate removal or removal on 60 days notice.



partnership or unregistered company of which the Operator is a member;  
or

- (f) the Operator otherwise enters into any settlement or takes any corporate action or the Operator or any creditor or shareholder of the Operator takes any steps in relation to the Operator under any law, regulation or decree of any applicable jurisdiction whether now or hereafter in effect relating to or which has an equivalent effect to any of clauses 5.3.2 (a), (b), (c), (d) or (e) above taking into account the grace period provided for in clauses 5.3.2 (b) and (d) ; or
- (g) the Operator and its Affiliate(s) cease to hold any Percentage Interest ; or
- (h) the Secretary withdraws his approval of the Operator; or
- (i) [[the Operator has committed an act of Wilful Misconduct; or]]<sup>19</sup>
- (j) [[the Operator has failed to carry out any of its obligations under the Decommissioning Security Agreement in any material respect.]]<sup>20</sup>

**5.4** The Operator shall have no claim against the Participants as a consequence of the resignation or removal of the Operator but such resignation or removal shall be without prejudice to any rights, obligations or liabilities which accrued during the period when the Operator acted as such. If the Operator resigns before the completion of all Work Obligations, it shall not be entitled to any costs or expenses incurred in connection with the change of operatorship but if the Operator resigns thereafter or is removed, it shall be entitled to charge to the Joint Account such costs and expenses incurred in connection with the change of operatorship as may be approved by the Joint Operating Committee (such approval not to be unreasonably withheld), provided that the Operator shall not be entitled to charge such costs to the Joint Account where it is removed pursuant to clauses 5.3.1(a), [[5.3.2(i) or 5.3.2(j)]]<sup>21</sup>.

### **5.5 Election of Successor**

As soon as practicable after notice is duly given as to the resignation or removal of the Operator under clauses 5.2 or 5.3, a new Operator shall, subject to its acceptance of the position under the terms of this Agreement and subject to any necessary approval of the Secretary, be selected by the Joint Operating Committee to assume the position of the Operator upon the effective date of the resignation or removal . If by the effective date of any resignation or removal of the Operator under clauses 5.2 or 5.3, no such selection shall have been made, the Non-Operator having the largest Percentage Interest [[and willing to assume the position of Operator]]<sup>22</sup> (and in the event of two or more such Non-Operators with identical Percentage Interests that Non-Operator having held such Percentage Interest for the longest time) shall be appointed and assume the position of Operator, subject to any necessary approval of the Secretary.

---

<sup>19</sup> There is an option here to make Wilful Misconduct by the Operator a cause for immediate removal. Alternatively, if these words are deleted then any Wilful Misconduct is assumed also to be a breach of the Operator's obligations under the JOA which would justify removal under 5.3.1.

<sup>20</sup> See note to clause 5.2.2.

<sup>21</sup> Delete these cross-references if the optional clauses 5.3.2 (i) and/or (j) are not used.

<sup>22</sup> If it is decided by the negotiating parties that the specified Participant must take on the role of Operator if the then current Operator resigns or is removed then the words in square brackets here should be deleted as should clause 5.6, and references to it in 5.7.1. If they are not deleted, then the risk arises that no Participant will be willing to act and therefore the Licence must be abandoned – in this case the optional clause 5.6 will need to be retained.

**5.6** [[If no Non-Operator is willing to assume the position of Operator or no Non-Operator is approved as Operator by the Secretary, the Participants shall be deemed to have decided to abandon the Joint Operations and to surrender the Licence in so far as it relates to the Licence Area. In such event:

5.6.1 in the case of the resignation of the Operator, the Operator that has resigned; or

5.6.2 in the case of the removal of the Operator, the Non-Operator having the largest Percentage Interest (and in the event of two or more such Non-Operators that Non-Operator having held such Percentage Interest for the longest time);

shall be the Operator for the purpose of effecting such surrender and administering the disposal of Joint Property and due settlement in accordance with the rights and liabilities of the Participants under this Agreement.]]<sup>23</sup>

## **5.7 Transfer of Responsibilities**

5.7.1 [[Except where clause 5.6.1 applies,]]<sup>24</sup> upon the effective date of resignation or removal of the Operator (the “**Outgoing Operator**”) under clause 5.2, the Outgoing Operator shall hand or deliver to, or relinquish custody in favour of, the new Operator selected or appointed to succeed it under clause 5.5 [[or 5.6, as the case may be]]<sup>25</sup>, all funds relating to the Joint Accounts, all Joint Property, all Joint Petroleum and all books, records and inventories relating to the Joint Operations other than those books, records and inventories maintained by the Outgoing Operator as the owner of a Percentage Interest. The Outgoing Operator shall further use its reasonable endeavours to transfer to the aforesaid new Operator, effective as of the effective date of such resignation or removal, its rights as the Operator under all contracts exclusively relating to the Joint Operations and the aforesaid new Operator shall assume all obligations of the Outgoing Operator under them. The new Operator and the Outgoing Operator shall co-operate to ensure a smooth transition of operatorship. Pending such transfer and in relation to all other contracts relating to the Joint Operations (to the extent such so relate) the Outgoing Operator shall hold its rights and interests as the Operator from such effective date for the account and to the order of the new Operator.

5.7.2 Without prejudice to any liability of the Outgoing Operator arising prior to such effective date (subject always to clause 6.2.4), the Outgoing Operator shall, from such effective date, no longer have any responsibility or authority as Operator.

5.7.3 The Joint Operating Committee shall have the option to order an audit of the Joint Account and an inventory of all Joint Property and all Joint Petroleum and, if conducted, such inventory shall be used in the return of and the accounting for the said Joint Property and Joint Petroleum by the Outgoing Operator for the purposes of the transfer of responsibilities under this clause 5.7. Such option shall be exercised as soon as practicable after the date on which the Outgoing Operator is required to transfer its responsibilities as provided in clause 5.7.1 by notice given by the Joint Operating Committee. All costs and expenses incurred in connection with such audit and inventory shall be for the Joint Account (except where the Outgoing Operator is removed pursuant to clause 5.3.1(a) [[or

---

<sup>23</sup> This provision is intended to ensure that the joint venture is never left without an operator – see Guidance Notes.

<sup>24</sup> Delete if clause 5.6 is not used.

<sup>25</sup> Delete if clause 5.6 is not used.

5.3.2 (i) or (j)]<sup>26</sup> in which case such costs and expenses shall be borne by the Outgoing Operator).<sup>27</sup>

**5.8** In respect of any vote of the Joint Operating Committee on any matter under this clause (including on the giving of any notice under clauses 5.3.1 or 5.3.2), other than pursuant to clause 5.3.1 (b), the Participant which is the Operator (or in the case of clause 5.7.3, the Outgoing Operator) and any Participant which is an Affiliate of the Operator (or in the case of clause 5.7.3, the Outgoing Operator) shall not be entitled to vote and clause 9.8.2 shall apply.

## **6. Authorities and Duties of the Operator**

### **6.1 Rights**

6.1.1 Subject to all the provisions of this Agreement, the Operator has the right and is obliged to conduct the Joint Operations by itself, its agents or its contractors under the overall supervision and control of the Joint Operating Committee.

6.1.2 If the Operator does not conduct any of the Joint Operations itself, it shall nevertheless remain responsible for such operations as the Operator as and to the extent provided under this Agreement.

### **6.2 Responsibilities**

6.2.1 Subject to the overall supervision of the Joint Operating Committee the responsibilities of the Operator in relation to Joint Operations shall include, but not be limited to:-

- (a) the preparation of Programmes, Budgets and AFEs;
- (b) the implementation of such Programmes and Budgets as shall, together with the relevant AFEs, have been approved by the Joint Operating Committee;
- (c) the prompt provision to each of the Participants of reports, data and information;
- (d) the planning for and obtaining of all requisite services and Material;
- (e) the direction and control of statistical and accounting services;
- (f) the provision of all technical and advisory services required for the efficient performance of the Joint Operations;
- (g) the preparation of a Development Plan and its submission to the Secretary; and
- (h) the determination of the Run-Down Period and the preparation of the Decommissioning Programme and its submission to the Secretary.

6.2.2 The Operator shall

- (a) conduct the Joint Operations in a proper and workmanlike manner in accordance with Good Oilfield Practice;

---

<sup>26</sup> Delete these cross-references if the optional clauses 5.3.2 (i) and/or (j) are not used.

<sup>27</sup> An automatic inventory on change of operator, as was stipulated in the 20th round JOA, was no longer thought to be necessary and therefore the clause has been amended to require a positive vote for such an inventory. Under Clause 5.8, the Operator will have no vote on this issue.

- (b) conduct the Joint Operations in compliance with the requirements of the Acts, the Licence and any other applicable Legislation;
- (c) do or cause to be done, with due diligence, all such acts and things within its control as may be necessary to keep and maintain the Licence in force and effect; and
- (d) save as may otherwise be expressly provided under this Agreement (including the Accounting Procedure), neither gain nor suffer a loss in such capacity as a result of acting as Operator in the conduct of Joint Operations.

6.2.3 The Operator shall establish and maintain appropriate business standards, procedures and controls including those necessary to avoid any conflict between the interests of its employees, contractors and agents, and the interests of the Participants in the conduct of Joint Operations.

6.2.4 **Liability of the Operator**

The Operator shall not be liable for and each Participant (including for the avoidance of doubt the Participant designated as Operator) shall defend, indemnify and hold the Operator, its Affiliates and any of the directors, officers and employees or Agency Personnel of the Operator or its Affiliates (together the “**Operator Group**”) harmless:

- (a) (save as provided in clauses 6.2.4(b) and 6.2.4(c) below), to the extent of the indemnifying Participant’s Percentage Interest share from and against any loss, damage or claim by or liability to any person, whether a Participant or not, (including any award of damages and any legal or other costs and expenses incurred in respect of such claim or liability) which arises, whether directly or indirectly, out of the performance, non-performance or misperformance by any member of the Operator Group of any of the duties or obligations of the Operator hereunder [[or when acting on behalf of the Participants under any Associated Agreement]]<sup>28</sup>, irrespective of negligence and/or breach of duty (whether statutory or otherwise) on the part of any member of the Operator Group, except only for any such loss, damage, claim or liability resulting from or arising out of:
  - (i) the Wilful Misconduct of the Operator; or
  - (ii) the failure of the Operator to obtain or maintain any insurance which it is required to obtain and maintain under clause 8.1.1, except where the Operator has used all reasonable endeavours to obtain or maintain any such insurance but has been unable to do so and has promptly notified the Participants participating or proposing to participate therein;
- (b) from and against any Consequential Loss which such Participant may suffer or incur arising, directly or indirectly, out of the performance, non-performance or misperformance by any member of the Operator Group of any of the duties or obligations of the Operator hereunder [[or when acting on behalf of the Participants under any Associated Agreement]]<sup>29</sup> even in the event of the negligence and/or breach of duty (whether statutory or

---

<sup>28</sup> These words should be deleted if the option to include Associated Agreements within the scope of the agreement at 3.1.3 has not been taken up.

<sup>29</sup> See previous footnote regarding Associated Agreements.

otherwise) and/or Wilful Misconduct of the Operator; and

- (c) from and against:
  - (i) any elements of Environmental Loss which such Participant may suffer or incur; and
  - (ii) to the extent of the indemnifying Participant's Percentage Interest share, any elements of Environmental Loss suffered or incurred by any member of the Operator Group (acting in such capacity)

in either case arising, directly or indirectly, out of the performance, non-performance or misperformance by any member of the Operator Group of any of the duties or obligations of the Operator hereunder [[or when acting on behalf of the Participants under any Associated Agreement]]<sup>30</sup> even in the event of the negligence and/or breach of duty (whether statutory or otherwise) and/or Wilful Misconduct of the Operator.

### **6.3 Liens and Encumbrances**

The Operator shall, in so far as it may be within its control, keep all Joint Property and all Joint Petroleum free from all liens, charges and encumbrances which might arise by reason of the conduct of the Joint Operations.

### **6.4 Employees and Contract Personnel**

Subject to the provisions of any approved Programme and Budget, the Operator shall determine the number of employees employed, and persons hired under contracts for services, by the Operator in connection with the Joint Operations. Subject to the provisions of clause 6.11, the Operator shall also determine their selection, hours of work and remuneration.

### **6.5 Commitments for Material and Services**

6.5.1 The entire provisions of this clause 6.5 shall remain subject always to clause 6.10.2.

6.5.2 In connection with work to be carried out pursuant to an approved Programme and Budget or AFE:

- (a) subject to clause 6.5.2 (b) the Operator, or any Affiliate of the Operator, may supply necessary Material and services whether owned, leased or otherwise, from its own resources and shall charge the costs to the Joint Account in accordance with the Accounting Procedure;
- (b) in the event that the Operator, or any Affiliate of the Operator, proposes to supply Material and/or services from its own resources which it estimates will cost more than [ ] the Operator shall obtain the approval of the Joint Operating Committee prior to supplying such Material and/or services;
- (c) to the extent that the Operator, or any Affiliate of the Operator, does not supply Material or services from its own resources, it shall award the contract for the supply of such Materials and services to third parties subject, where applicable, to the procedures hereafter set out in this clause 6.5.

6.5.3 The Operator or any of its Affiliates shall have the authority to obtain Materials

---

<sup>30</sup> See previous footnote regarding Associated Agreements.

and/or services for Joint Operations pursuant to contracts awarded or to be awarded to a third party where the Materials and/or services to be provided will be provided to more than one field and/or more than one operator. For any such contract, in the event that the cost to the Joint Account will or is likely to exceed [ ] per annum or is likely to exceed [ ] over its expected duration the Operator shall obtain the approval of the Joint Operating Committee prior to the obtaining of such Materials and/or services. The Operator shall not be obliged to divulge to the Joint Operating Committee details which it reasonably considers to be of a commercially sensitive nature (for example and without limitation, itemised rates, prices, price-structures and incentives) in relation to any such multi-field and multi-operator agreements under which it requires to obtain Materials and/or services and which it considers are confidential between itself and its contractors provided that such details may be audited under paragraph 7 of the Accounting Procedure to ensure that all cost elements, including incentives and benefits have been apportioned as expressly agreed by the Joint Operating Committee, or in the absence of any such agreement, in a fair and equitable manner across all fields and/or operators who are using the Materials and/or services under the relevant contract.<sup>31</sup>

- 6.5.4 Subject to clause 6.5.3, in the case of any proposed contract to be awarded to a third party where the commitment will or is likely to exceed [ ] Pounds (£[ ]) the Operator shall unless the Joint Operating Committee otherwise decides:
- (a) [[upon request supply the Non-Operators with copies of tender documents;]]<sup>32</sup>
  - (b) put out such contracts to competitive tender;
  - (c) report details of all bids received, and promptly provide the Non-Operators (when requested) with copies of the terms of any recommended contract(s);
  - (d) obtain the approval of the Joint Operating Committee prior to the award of a contract [[provided that any Participant which fails to respond to the Operator's request for such approval within ten (10) Working Days shall be deemed to have given such approval]]<sup>33</sup>; and
  - (e) promptly supply the Non-Operators (when requested) with conformed copies of the contract and of any subsequent revisions to it.
- 6.5.5 Subject to clause 6.5.3, in the case of any proposed contract to be awarded to a third party where the commitment will or is likely to exceed [ ] Pounds (£[ ]) but less than *[insert figure from clause 6.5.4]* the Operator shall unless the Joint Operating Committee otherwise decides:
- (a) put out such contract to competitive tender; and
  - (b) award the contract provided that if the contract is awarded to a person other than the lowest priced technically or operationally acceptable bidder the Operator shall obtain the prior approval of the Joint Operating Committee before awarding the contract [[provided that any Participant which fails to respond to the Operator's request for such approval within

---

<sup>31</sup> See Guidance Notes for discussion on this issue.

<sup>32</sup> An option is offered here depending on the degree of scrutiny the Non-Operators require over contracts being awarded by the Operator for Joint Operations.

<sup>33</sup> See Guidance Notes regarding option of deemed consent.

ten (10) Working Days shall be deemed to have given such approval.]]<sup>34</sup>

- 6.5.6 With respect to any proposed contract to be awarded to a third party not falling under clauses 6.5.3, 6.5.4 or 6.5.5, the Operator shall obtain competitive tenders except where the Operator considers that it is impractical or inefficient to do so.
- 6.5.7 The Operator shall use its reasonable endeavours to ensure that any contract entered into by it can be freely assigned to any successor Operator in the event of the resignation or removal of the Operator under clauses 5.2 and 5.3.
- 6.5.8 The Operator shall act as agent of the Participants in dealings with contractors and shall use reasonable endeavours to include in all contracts made pursuant to this Agreement, a provision which ensures that the Operator makes the contract on behalf of all the Participants. The Operator shall use reasonable endeavours to include in all such contracts provisions in the following or similar form for which purpose "COMPANY" refers to the Operator and "CO-VENTURERS" refers to the Non-Operators:

"The COMPANY enters into the CONTRACT for itself and as agent for and on behalf of the other CO-VENTURERS. Notwithstanding the above:

- (a) the CONTRACTOR agrees to look only to the COMPANY for the due performance of the CONTRACT and nothing contained in the CONTRACT will impose any liability upon, or entitle the CONTRACTOR to commence any proceedings against any CO-VENTURER other than the COMPANY;
- (b) the COMPANY and only the COMPANY is entitled to enforce the CONTRACT on behalf of all CO-VENTURERS as well as for itself. For that purpose the COMPANY shall commence proceedings in its own name to enforce all obligations and liabilities of the CONTRACTOR and to make any claim which any CO-VENTURER may have against the CONTRACTOR.
- (c) all losses, damages, costs (including legal costs) and expenses recoverable by the COMPANY pursuant to the CONTRACT or otherwise shall include the losses, costs (including legal costs) and expenses of the COMPANY's CO-VENTURERS and AFFILIATES except that such losses, damages, costs (including legal costs) and expenses shall be subject to the same limitations or exclusions of liability applicable to the COMPANY or the CONTRACTOR under the CONTRACT."

## **6.6 Representation of the Participants**

- 6.6.1 Unless otherwise directed by the Joint Operating Committee, the Operator shall represent the Participants regarding any matters or dealings with the Secretary and other governmental authorities or third parties in so far as they relate to the Joint Operations, provided that there is reserved to each Participant the unfettered right to deal with the Secretary or any other governmental authorities in respect of matters relating to its own Percentage Interest. Save for any routine correspondence which the Operator is obliged by legislation to submit to the Secretary and other governmental authorities, the Operator shall provide to each Participant in advance a copy of any material correspondence which it proposes to provide to the Secretary or any other governmental authorities or any third parties in relation to the Joint Operations and shall obtain the consent of each Participant to the content of any such correspondence which purports to

---

<sup>34</sup> See previous footnote.

represent the views of such Participant.

- 6.6.2 Where the Operator has been informed or has reason to believe that matters of material importance to the Participants are to be discussed at a meeting, it shall give as much advance notice as is reasonably practicable to the Participants of such meeting together, where practicable, with any agenda, briefing papers or presentation materials and shall consult with the Participants in relation to such meeting and report promptly thereafter. Any Participant shall be entitled to attend such meeting.

## **6.7 Records**

The Operator shall prepare and maintain separate books, records and inventories of the Joint Operations which shall be kept in compliance with the Accounting Procedure and with due regard to the requirements of the Acts, the Licence, and all applicable Legislation.

## **6.8 Reports**

The Operator shall:-

- (a) promptly provide each Participant with daily drilling reports and daily production reports or access to real time information regarding production of Joint Petroleum and such other reports as the Joint Operating Committee may decide and, at the sole cost of the Participant requesting them, such additional reports as such Participant may reasonably request; and
- (b) make all reports concerning the Joint Operations to the appropriate governmental authorities in a timely manner as required under the Acts and the Licence and, concurrently therewith, furnish copies of all such reports to all the Participants.

## **6.9 Consultation and Information**

- 6.9.1 The Operator shall freely consult with the Participants and keep them informed of matters concerning the Joint Operations.

6.9.2 Without prejudice to the generality of clause 6.9.1, the Operator shall:-

- (a) inform each Participant of all logging, coring, testing and such other Joint Operations as the Joint Operating Committee may decide with such advance notice as is practicable in the circumstances, so that each Participant may, subject to clause 7.3, have one or more representatives present on location during the conduct of such operations; and
- (b) subject to the terms of any contract under which they were procured, promptly provide each Participant with any and all seismic data, access to core samples, copies of all well logs and core analyses relating to the Joint Operations and with such other data and information (including but not limited to, engineering, geological, geophysical and technical data) relating to the Joint Operations as the Joint Operating Committee may decide and, in addition, at the sole cost of the Participant requesting same, such additional data and information as such Participant may reasonably request.

## **6.10 Expenditures and Actions**

- 6.10.1 The Operator is authorised to make such expenditures, incur such commitments for expenditures and take such actions as may be authorised by the Joint



Operating Committee in accordance with clauses 10 to 14 provided that nothing contained in this clause 6.10.1 shall derogate from the Operator's duties under clause 6.5.

- 6.10.2 The Operator is also authorised to make any expenditures or incur commitments for expenditures or take actions it deems necessary in the case of emergency for the safeguarding of lives or property or the prevention of pollution. The Operator shall promptly notify all the Participants of any such circumstances and the amount of expenditures and commitments for expenditure so made and incurred and actions so taken.

## **6.11 [[Secondment**

- 6.11.1 The Participants agree that in certain circumstances a collaborative effort between them may be beneficial to Joint Operations. Such collaborative effort may include the secondment by a Non-Operator of personnel to the Operator's organisation:

- (a) to work on a term assignment as a member of a project team; or
- (b) to fill organisational positions;

in respect of Joint Operations. The length of any assignment shall be agreed between the Non-Operator and the Operator. Notwithstanding the foregoing, the Non-Operator shall have the right on giving three (3) months notice, to withdraw its employee from any such assignment.

The Operator shall have the right to require the removal of any person seconded to its organisation for reasonable cause.

- 6.11.2 In respect of any person seconded to the Operator's organisation under clause 6.11.1 for the period of such secondment:

- (a) such person shall remain the employee of the Participant which seconded him and such Participant shall remain responsible for all the legal obligations of an employer associated with such employment;
- (b) all costs associated with the employment of such person (including salary and employee benefits) and all costs associated with his secondment to the organisation of the Operator shall be chargeable to the Joint Account; and
- (c) all work undertaken by such person shall be Joint Operations and accordingly the Operator shall retain overall responsibility for such work and such person (and the Participant which seconded him) shall benefit from all indemnities and limitations of liability applying to the Operator hereunder, including those set forth in clause 6.2.4 in relation to such work.]]<sup>35</sup>

## **6.12 Health, Safety and Environment**

- 6.12.1 [[Not later than [30th November] in each Year]] following approval of a Development Plan, the Operator shall prepare and submit to the Joint Operating Committee for its [approval/review] a plan of Health, Safety and Environment ("HSE") matters containing the policies which will govern the Joint Operations and the objectives and targets [[for the following Year]]. Such HSE plan will take

---

<sup>35</sup> See Guidance Notes on this clause.

into account any policies, objectives and targets decided by the Joint Operating Committee and will include an assessment of the health, safety and environmental impact of the Joint Operations.<sup>36</sup>

6.12.2 The Operator shall report regularly on the implementation of the HSE plan referred to above and shall promptly advise the Joint Operating Committee of any matter arising out of or in connection with Joint Operations which may affect such plan such as an occurrence that could have a negative impact on the environment or could cause any serious illness, injury or death.

6.12.3 The Operator shall prepare and submit to the Joint Operating Committee for its approval a programme for regular HSE audits to be performed by the Operator. Each Participant shall have the right to join such audit upon reasonable notice given to the Operator. The costs of conducting an HSE audit shall be charged to the Joint Account.

**6.13** The Operator shall establish and maintain an alcohol and drugs policy and enforcement procedure, which prohibits employees and agents, contractors and subcontractors and invitees in any area in which Joint Operations are being undertaken from:

- (a) performing services while under the influence of alcohol or any controlled substance;
- (b) misusing legitimate drugs or possessing, using, distributing or selling illicit or unprescribed controlled substances; or
- (c) [[save in limited circumstances under arrangements approved by the Operator's management]]<sup>37</sup> possessing, using, distributing or selling alcoholic beverages.

## **7. Rights of the Participants**

### **7.1 Reservation of Rights**

Subject as otherwise provided in this Agreement, each Participant reserves all its rights under the Licence.

### **7.2 Inspection Rights**

Without prejudice to the provisions of paragraph 7 of the Accounting Procedure, each Participant shall have the right to inspect, at all reasonable times during normal business hours, all books, records and inventories of any kind or nature maintained by or on behalf of the Operator and relating to the Joint Operations other than those books, records and inventories maintained by the Operator as the owner of a Percentage Interest, provided that such Participant gives the Operator not less than fifteen (15) Working Days prior notice of the date upon which it desires to make such inspection and identified the person or persons to conduct such inspection. Each Participant shall have the right to make copies of such books, records and inventories at the sole cost of such Participant.

### **7.3 Access Rights**

7.3.1 Each Participant shall have the right, at all reasonable times and at its sole risk and expense, of access to the Licence Area and/or the Joint Operations and/or the place of storage of samples obtained as a result of Joint Operations provided

---

<sup>36</sup> See Guidance Notes for a discussion on this clause.

<sup>37</sup> Companies have differing cultures with regard to alcohol in the onshore workplace. In order to accommodate those differing cultures an option has been included in 6.13(c).

such Participant gives the Operator reasonable notice of the date such access is required and identifies the representative or representatives to whom such access is to be granted. If any Participant wishes access to be given to more than one representative at a time the Operator shall not be required to grant such access for the additional representatives if, and to the extent that, the granting of such access will interfere with the conduct of the Joint Operations.

7.3.2 In the case of access to offshore operations:

- (a) the Participant shall provide evidence that any representative wishing to gain access holds a current and valid certificate fully compliant with statutory and regulatory requirements for individuals travelling to an offshore installation and, where applicable, staying overnight; and
- (b) the Operator shall, at the cost of the Joint Account, provide facilities to gain such access in transportation engaged thereon and also provide accommodation offshore in so far as the provision of such facilities and accommodation shall not interfere with the conduct of the Joint Operations.

7.3.3 The Participants shall procure that their representatives shall comply with all safety procedures notified to the Participants by the Operator which are implemented from time to time by the Operator whilst at the relevant location of Joint Operations.

## **8. Insurance and Litigation**

### **8.1 Insurance**

8.1.1 The Operator shall obtain and maintain, in respect of the Joint Operations and the Joint Property, all insurance required under the Licence or any other applicable law or as may be required by any contract entered into by the Operator in furtherance of Joint Operations and such other insurance as the Joint Operating Committee may from time to time determine. Except in respect of any insurance which the Operator must take out in its own name, and subject to clause 8.1.3, any Participant may elect not to participate in the insurance to be taken out by the Operator under this clause provided such Participant gives notice to that effect to the Operator and does nothing which may interfere with the Operator's negotiations for such insurance for the other Participants. The cost of insurance in which any of the Participants are participating shall be charged to the Participants so participating in proportion to their respective Percentage Interests. The Operator shall, in respect of all insurance obtained pursuant to this clause 8.1.1:-

- (a) upon request from any Participants provide to such Participants a copy of the levels of coverage and the general conditions of the relevant policies when they are issued;
- (b) (except for employer's liability or similar insurance) arrange for the Participants participating in it, according to their respective Percentage Interests, to be named as co-insureds on the relevant policies with waivers of subrogation in favour of the Participants with respect to Joint Operations; and
- (c) duly file all claims and take all necessary and proper steps to collect any proceeds and, if all the Participants are participating in it, credit them to the Joint Account or, if less than all the Participants are participating in it,

credit them to the participating Participants.

- 8.1.2 Any of the Participants may obtain such other insurance as it deems advisable for its own account at its own expense. In the arranging of such other insurance that Participant shall ensure it does not interfere with nor prejudice the arrangement of any insurance by the Operator or any other Participant. Such insurance shall contain a waiver of subrogation by the insurer in favour of the Operator and/or the other Participants.
- 8.1.3 Each of the Participants electing not to participate in those insurances in respect of which non-participation is permitted pursuant to clause 8.1.1 shall, in respect of its Percentage Interest share of any liability which may arise in connection with the Joint Operations and/or Joint Property, obtain and maintain equivalent insurance (to include waivers of subrogation in favour of the other Participants), or produce such evidence of financial responsibility, as may from time to time be reasonably required by the Joint Operating Committee. Each of the Participants shall, as and when required by the Joint Operating Committee produce to it such evidence as it may reasonably require to establish:
- (a) that such insurance or other evidence of financial responsibility is being maintained; and
  - (b) the security and creditworthiness of such insurance or financial responsibility.
- 8.1.4 The Operator shall promptly on request provide such details relating to the Joint Operations and/or Joint Property as a Participant may reasonably require in order to arrange any insurances pursuant to clauses 8.1.2 and/or 8.1.3.
- 8.1.5 The Operator shall take reasonable steps to ensure that all contractors (including sub-contractors) performing work in respect of the Joint Operations and the Joint Property obtain and maintain all insurance required under the Acts, the Licence or any other applicable Legislation and such other insurances as the Joint Operating Committee may from time to time determine. The Operator shall in respect of all insurance obtained by such contractors (including sub-contractors):-
- (a) if requested by any Participant, supply such Participant with evidence that it has been effected and is being maintained; and
  - (b) take reasonable steps to arrange for such contractors (including sub-contractors) to obtain from their insurers a waiver of subrogation in favour of the Participants.
- 8.1.6 The Operator shall, without prejudice to any other obligations of the Operator or rights of the Participants hereunder, give prompt notice to the Participants of and shall allow the Participants or their insurers to investigate, subject to the provisions of clause 7.3, any incident that has resulted in a fatality, serious injury, material pollution incident or a material loss.
- 8.1.7 The Operator shall provide all information requested by any Participant effecting separate insurance to assist such Participant's insurers' investigation of any claims notified pursuant of clause 8.1.6.

## **8.2 OPOL**

- 8.2.1 The Operator as a party to the Offshore Pollution Liability Agreement dated 4 September 1974 (as amended from time to time) ("**OPOL**") and as a member of the Offshore Pollution Liability Association Limited (the "**Association**"), agrees

that it, as the Operator for the Joint Operations, will be bound by and will comply with the provisions from time to time of OPOL, the memorandum and articles of association and the rules of the Association.

- 8.2.2 The Operator shall make OPOL applicable to such Offshore Facilities (as defined in OPOL) as are used for the purpose of the Joint Operations.
- 8.2.3 Any payments made by the Operator under Clause IV of OPOL and/or under article 4.3 of the articles of association of the Association, as well as under any other provisions of either OPOL or of the memorandum or articles of association or the rules of the Association which arise out of the foregoing provisions of this clause 8.2 and fall due while it remains the Operator shall be for the Joint Account provided always that no Participant shall be under any obligation to reimburse the Operator in respect of payments resulting from a Sole Risk Project in which it is not a Sole Risk Participant.
- 8.2.4 The Non-Operators hereby agree to execute and promptly provide to the Operator such forms (including the Non-Operator's Verification of Insurance) and provide such information for establishing their obligations and financial responsibility to meet their Percentage Interest share of claims under OPOL as may be required by the Operator from time to time.
- 8.2.5 Any release obtained by the Operator from Claimants (as defined in OPOL) shall include a release of the Non-Operators as well as the Operator.

### **8.3 Litigation**

- 8.3.1 The Operator shall promptly notify the Participants of:
  - (a) any incidents, accidents or circumstances causing damage to Joint Property, the costs of which may exceed [ ]Pounds ( £[ ] ); and
  - (b) any serious injury or fatality in connection with the Joint Operations;
  - (c) any claim, litigation, demand or judgement relating to the Joint Operations where the total amount in dispute and/or the total amount of damages together with any costs are estimated to exceed [ ]Pounds ( £[ ] ), or such other amount as may from time to time be determined by the Joint Operating Committee.
- 8.3.2 The Operator shall have the authority to prosecute, defend or settle any claim, litigation, lien, demand or judgement relating to the Joint Operations (other than as between the Participants) provided that:-
  - (a) in the case of any litigation (irrespective of the estimated amount of damages and costs) to be prosecuted or defended otherwise than in any court in the United Kingdom the Operator shall have no such authority without the prior approval of all the Participants except such authority as may be necessary:-
    - (i) to prevent judgement being given against the Joint Account while full authority by the Participants is being sought; and
    - (ii) solely to enable the Operator to contest the exercise by the relevant court of jurisdiction in the matter, provided that the Operator first obtains legal advice in the relevant jurisdiction from an appropriate reputable legal practitioner that the contest itself would not constitute submission by the Operator to such jurisdiction; and

- (b) where the total amount in dispute and/or the total amount of damages together with any costs are estimated to exceed [ ]Pounds ( £[ ]), or such other amount as may from time to time be determined by the Joint Operating Committee, the Operator shall have no such authority, save as set out in clause 8.3.2 (a), without the prior approval of the Joint Operating Committee.
- 8.3.3 Any Non-Operator shall promptly notify the other Participants of any claim, litigation, lien, demand or judgement relating to or which may affect the Joint Operations. In so far as such claim, litigation, lien, demand or judgement relates to a matter in respect of which such Non-Operator wishes to be indemnified pursuant to clause 22.2 such Non-Operator shall defend or settle it in accordance with the directions of the Joint Operating Committee (or, in default of any direction from the Joint Operating Committee, at its own discretion acting reasonably and taking into account the interests of the other Participants). Where the Non-Operator is entitled to be indemnified pursuant to clause 22.2, such costs, expenses and damages as are payable pursuant to such defence or settlement so relating shall be for the Joint Account except where such defence or settlement arises in respect of an encumbrance granted by such Participant, in which case it shall be liable for all costs, expenses and damages incurred in respect of it.
- 8.3.4 Notwithstanding the foregoing provisions of this clause 8.3, each Participant having a potential liability in respect thereof shall have the right to participate in any prosecution, defence or settlement conducted in accordance with clause 8.3.2 or 8.3.3 at its sole cost and expense provided that such participation shall not prejudice the interests of the other Participants.
- 8.3.5 For the avoidance of doubt it is hereby declared that the conduct of any litigation involving a Sole Risk Project, other than as between the Participants, shall be at the sole cost and expense of the Participants participating in such Sole Risk Project.

## **9. The Joint Operating Committee**

### **9.1 Establishment and Powers**

There is hereby established a Joint Operating Committee which shall exercise overall supervision and control of all matters pertaining to the Joint Operations. Without limiting the generality of the foregoing, but subject as otherwise provided in this Agreement, the powers and duties of the Joint Operating Committee shall include:-

- (a) the consideration and determination of all matters in general relating to policies, procedures and methods of operation hereunder with the intent that all such operations should be undertaken in a manner consistent with Good Oilfield Practice and in compliance with best practice standards in respect of health and safety and of the environment; and
- (b) the consideration, and, if so required, determination of inter alia the following:
  - (i) exploration, appraisal, development and production strategies;
  - (ii) contract strategy;
  - (iii) decisions as to cessation of production, strategies for Decommissioning and the disposal of Joint Property; and

- (iv) any other matter relating to the Joint Operations which may be referred to it by the Participants or any of them (other than any proposal to amend this Agreement) or which is otherwise designated under this Agreement for reference to it;
- (c) the approval of Programmes and Budgets;
- (d) the amendment of the monetary limits set out in this Agreement from time to time either generally or in respect of particular operations or particular phases of operations, to take account of the general level of inflation and (if appropriate) the prevailing costs of relevant goods and services, at the request of the Operator or any Participant.

## **9.2 Representation**

The Joint Operating Committee shall consist of one representative appointed by each of the Participants provided always that more than one of the Participants may appoint the same representative who shall represent them separately. Each Participant shall, as soon as possible after the date of this Agreement, give notice to all the other Participants of the name of its representative and of an alternate on the Joint Operating Committee. Such representative may be replaced from time to time, by like notice. Representatives may bring to meetings of the Joint Operating Committee such advisers as they consider necessary. The representative of a Participant or, in the absence of the representative, his alternate, shall be deemed authorised to represent and bind such Participant with respect to any matter which is within the powers of the Joint Operating Committee. The Operator shall also be entitled to be represented at meetings of the Joint Operating Committee in its capacity as Operator, but its representative in its capacity as Operator (which may be a different person to its representative in its capacity as Participant) shall have no additional voting rights.

## **9.3 Chairman**

The representative of the Participant which is the Operator shall be the chairman of the Joint Operating Committee.

## **9.4 Meetings**

- 9.4.1 The Joint Operating Committee shall hold meetings every Quarter (or at such other regular intervals as may be decided by the Joint Operating Committee) at the Operator's designated office or at such other place as may be determined by the Joint Operating Committee. The Operator shall call such meetings and shall give at least twenty (20) days notice of the time and date of each meeting, together with an agenda and appropriate data and information relating to the matters to be considered at that meeting. By notice to all the other Participants, any Participant can advise of additional matters which such Participant desires to be considered at the meeting, and provided such notice is given at least ten (10) days before the date of the meeting, those matters will be considered.
- 9.4.2 The Joint Operating Committee shall hold a special meeting upon the request of any of the Participants. Such request shall be made by notice to all the other Participants and state the matters to be considered at that meeting. Upon receiving such request, the Operator shall without delay call a special meeting for a date not less than seven (7) nor more than ten (10) days after receipt of the request.
- 9.4.3 For any meeting of the Joint Operating Committee, the period of notice stipulated above may be waived with the consent of all the Participants.

9.4.4 Any Participant not represented at a meeting may vote on any matter on the agenda for such meeting by either:-

- (a) appointing a proxy in writing; or
- (b) giving notice of such vote to the Operator prior to the submission of such matter for vote at such meeting.

## **9.5 Minutes**

The Chairman of the Joint Operating Committee shall appoint a secretary for the Joint Operating Committee who will prepare the minutes of each meeting and provide each Participant with a copy of them not more than [fourteen (14)] days after the end of the meeting. [[Each Participant shall notify all the other Participants of its approval or disapproval of the minutes within [seven (7)] days of receipt of them. A Participant who fails to so notify will be deemed to have approved the minutes. The approval or disapproval of the minutes as aforesaid shall not affect the validity of any action taken in good faith by the Operator prior to receipt of any such notice on the basis of its understanding of the decisions of the Joint Operating Committee.]]<sup>38</sup>

## **9.6 Action without a Meeting**

9.6.1 The Participants may vote on and determine by notice to the Operator any proposal of which they are given notice by the Operator [[(on its own initiative or on the request of a Participant )]] [[or by a Participant]]<sup>39</sup> and which they could validly determine at a meeting of the Joint Operating Committee if duly held for that purpose. Each Participant shall cast its vote within fourteen (14) days after the proposal is received by it except that where the Participants are requested to vote on and determine any proposal relating to the deepening, side-tracking, testing, plugging back, suspending or abandoning of a well on which drilling equipment is then located or where, in the reasonable opinion of the Operator [[or the Non-Operator notifying the proposal, as the case may be,]] the matter presented for consideration by its nature requires determination in less than fourteen (14) days and such fact and lesser period are so stated in the notice submitting the proposal, the Participants shall cast their votes within such lesser period which shall not be less than forty-eight (48) hours after receipt of the proposal. Failure by a Participant to cast its vote within the relevant period shall be regarded as a vote by that Participant against the proposal.

9.6.2 The Operator will give prompt notice of the results of any such voting to the Participants and any decision so taken shall be binding on the Participants notwithstanding that any Participant may have requested a special meeting to discuss any such proposal under clause 9.4.2.

## **9.7 Sub-Committees**

The Joint Operating Committee may establish such advisory sub-committees as it considers desirable from time to time. Each sub-committee established shall be given written terms of reference and shall be subject to such procedures as the Joint Operating Committee may determine. The meetings of sub-committees will as far as possible be arranged so that the minutes of such meetings can be presented to the Participants in sufficient time for consideration before the next following regular meeting of the Joint Operating Committee.

---

<sup>38</sup> See Guidance Notes for discussion on approval of minutes of meetings.

<sup>39</sup> See Guidance Notes for discussion on the options surrounding initiation of proposals by Non-Operators.



## 9.8 Voting Procedure

- 9.8.1 Unless otherwise provided in this Agreement each Participant shall have a voting interest equal to its Percentage Interest.
- 9.8.2 Unless otherwise expressly provided in this Agreement, all decisions of the Joint Operating Committee shall require the affirmative vote of [ ]<sup>40</sup> or more Participants (and for this purpose a Participant and its Affiliates shall be deemed to be a single Participant) having [individually or] in aggregate a Percentage Interest of at least [ ] percent ( %) (such requirements being referred to as a “**Passmark**”). For the purposes of this clause 9.8.2, if the right of a Participant (or its Affiliates) to vote shall have been excluded pursuant to clauses 5.8, 17.5.1 or 24.3 (g), decisions of the Joint Operating Committee shall be made by the affirmative vote of [ ]<sup>41</sup> or more Participants (and for this purpose a Participant and its Affiliates shall be deemed to be a single Participant) having [individually or] in aggregate a Percentage Interest of at least [insert same figure as for standard Passmark]<sup>42</sup> percent ( %) of the sum of the Percentage Interests of the Participants entitled to vote and references to a “Passmark” shall be interpreted accordingly.
- 9.8.3 The following matters and decisions require the affirmative vote of all Participants entitled to vote:<sup>43</sup>
- (a) the authorising of the Operator to prosecute or defend litigation outside the United Kingdom as set out under clause 8.3.2(a);
  - (b) waiver of the period of notice for a meeting of the Joint Operating Committee as set out under clause 9.4.3;
  - (c) [the decision to seek relief from Work Obligations as set out under clause 9.9.1(a);]
  - (d) [approval of the creation of a New Area as set out under clause 9.10.1;]
  - (e) satisfaction of a Work Obligation by a Sole Risk Project as set out under clause 15.2.4;
  - (f) the decision that the Operator may carry out Sole Risk Development as set out in clause 15.2.9(c);
  - (g) [the decision to abandon the Joint Operations as set out in clause 17.6.2;]
  - (h) approval of the disclosure of confidential information as set out in clause 19.1;
  - (i) approval of the trading of data as set out in clause 19.2;

---

<sup>40</sup> Whether a single Participant should be able to carry a vote is a matter for negotiation – if this is agreed then the figure for Participants in the square brackets should be “one” and the words “individually or” should be included – if the minimum number of Participants for a passmark is two or more then it will always be the aggregate figure which is relevant and the words “individually or” should be deleted.

<sup>41</sup> See previous footnote.

<sup>42</sup> The passmark percentage should be the same in both sets of square brackets – if certain Participants are ineligible to vote then this percentage is applied to a smaller equity. For instance if the passmark was 70% and a 20% party was in default then the passmark would be 70% of the remaining 80% (i.e. 56%).

<sup>43</sup> This clause lists all the clauses in the agreement which require unanimity among the Participants entitled to vote - if any additional issues requiring unanimity are added to the agreement they should also be added here. Some of the provisions referred to here are optional or have the option as to unanimity and are therefore in square brackets – if they are deleted or the option of requiring only a normal passmark is selected in the relevant clause then the clause should be deleted from this list.

- (j) consent to the transfer of an interest under the Licence or this Agreement as set out in clause 23.2;
- (k) any amendment of this Agreement as set out in clause 31.3; [and]
- (l) determination of the Licence as set out in clause 9.9.8[./; and]
- (m) [the decision to seek an amendment to any Work Obligation as set out under clause 9.9.10.]

9.8.4 Subject to clause 11.1.4 [*non-participation in a development Programme and Budget*][and clause 15.9 [*non-consent*]]<sup>44</sup>, all the Participants shall be bound by each decision of the Joint Operating Committee duly made in accordance with the provisions of this Agreement.

9.8.5 Where this agreement provides that the agreement, approval or consent of the Joint Operating Committee is not to be unreasonably withheld or delayed in respect of any matter, then no Participant shall unreasonably withhold or delay its vote in respect of such matter and each Participant shall act reasonably when exercising its right to vote in respect of such matter.

## **9.9 Licence Provisions**

### **9.9.1 Work Obligations**

- (a) In respect of all Work Obligations, the Joint Operating Committee shall, unless and to the extent that [[the Joint Operating Committee decides/all the Participants agree]]<sup>45</sup> to seek relief from such Work Obligations and such relief is obtained from the Secretary, determine the location and the time at which such Work Obligations are to be discharged provided that, if the Joint Operating Committee has not made such determination by a date which is (i) [twelve (12)] Months prior to the expiration of the applicable period for the discharge of any Work Obligation required to be performed in Phase A or [(ii) eighteen (18) Months] prior to the expiration of the applicable period for the discharge of any Work Obligation required to be performed in Phase B or Phase C, the Operator shall promptly propose to the Participants a programme, budget and timetable for the discharge of the Work Obligation in question. Unless within one (1) Month after such proposal Participants holding a Simple Majority agree on an alternative programme, budget and timetable which discharges the Work Obligation (in which case the programme, budget and timetable so agreed shall be deemed to be approved by the Joint Operating Committee), the programme, budget and timetable proposed by the Operator shall be deemed to be approved by the Joint Operating Committee and the Work Obligations shall be performed in accordance with such programme, budget and timetable and shall in any event be commenced not later than a date which will allow timely completion of such Work Obligations before the expiration of the applicable period for the discharge of the Work Obligation.
- (b) Where the Secretary prescribes conditions for the continuation of a Licence in accordance with its terms, any such conditions involving the carrying out of work on the Licence shall be considered as Work

---

<sup>44</sup> This reference is required only if a non-consent provision has been included at 15.9.

<sup>45</sup> There is an option here as to whether a decision to seek relief from Work Obligations should be a decision of the Joint Operating Committee or a unanimous decision.

Obligations as between those Participants who have elected to continue the Licence under clause 9.9.2.

- (c) Where any programme, budget and timetable in respect of Work Obligations is approved or deemed to be approved under clause 9.9.1, clause 10.4 shall apply.
- (d) Where the Secretary seeks the consent of the Participants in accordance with paragraph (5) of Clause [4] of the Licence in relation to a decision that the Licence shall not automatically cease and determine in accordance with paragraphs (1) to (4) of Clause [4] of the Licence, the Operator shall convene a special meeting of the Joint Operating Committee and make a proposal to the Joint Operating Committee as to whether consent should be given. If any one or more Participants agrees that such consent should be given the Operator shall so notify the Secretary. In the case of a notice to be given to the Secretary consenting to the continuation of the Licence, those Participants which have given notice that they wish to withdraw in accordance with clause 24 and voted against the proposal to continue shall withdraw from the Licence (in so far as it relates to the Licence Area) in accordance with clause 24, effective no later than the expiry of the then current Phase or the Initial Term (as the case may be) provided that the Secretary consents to the withdrawal from the Licence effective as of such date of each such Participant

9.9.2 Not less than [six (6) Months] prior to the end of each Phase, or the end of the Second Term, the Operator shall convene a special meeting of the Joint Operating Committee and make a proposal to the Joint Operating Committee as to whether the Licence should be continued into the next Phase or the Second Term or Third term (as the case may be) and what notice, if any, is to be given to the Secretary. If the Operator proposes that the Licence should be continued, such proposal shall include a programme, timetable and budget for the next Phase or the Second Term or Third Term (as the case may be). At each such meeting:

- (a) should no Participant vote to continue or extend the Licence then the Licence shall be determined at the expiration of the applicable term; or
- (b) should any of the Participants vote to continue or extend the Licence, notice to continue the Licence shall be given in accordance with this clause.

9.9.3 In the case of a decision to continue the Licence into Phase C pursuant to clause 9.9.2, those Participants which have voted against the proposal to continue the Licence shall have no vote in the Joint Operating Committee's decision upon the delineation of the Early Surrender Area (if any) to be described in the notice to be given to the Secretary pursuant to Clause [5] of the Licence (which Early Surrender Area shall be determined on the basis of a Simple Majority of the continuing Participants). Any decision on the delineation of the Early Surrender Area shall be subject to the provisions of clause 15.8.9.

In the case of a decision to continue the Licence into the next Phase or into the Second Term pursuant to clause 9.9.2:

9.9.4 (a) those Participants which have given notice that they wish to withdraw in accordance with clause 24 and voted against the continuation of the Licence

shall withdraw from the Licence (in so far as it relates to the Licence Area) in accordance with clause 24, effective no later than the expiry of the then current Phase or the Initial Term (as the case may be) provided that the Secretary consents to the withdrawal from the Licence effective as of such date of each such Participant; and;

(b) without prejudice to the generality of clause 24.3, under no circumstance shall the withdrawing Participants have any liability or responsibility for any Work Obligations to be discharged after such effective date of withdrawal or any rights in respect of them and the continuing Participants shall indemnify each withdrawing Participant against all costs, claims, liabilities and losses in respect of such Work Obligations

- 9.9.5 In the case of a decision to continue the Licence into the Second Term pursuant to clause 9.9.2, those Participants which have voted against the proposal to continue the Licence shall have no vote in the Joint Operating Committee's decision upon the delineation of the Continuing Part to be described in the notice to be given to the Secretary pursuant to Clause [6] of the Licence (which Continuing Part shall be determined on the basis of a Simple Majority of the continuing Participants). Any decision on the delineation of the Continuing Part shall be subject to the provisions of clause 15.8.9.
- 9.9.6 In the case of a decision to continue the Licence after the expiry of the Second Term pursuant to clause 9.9.2, those Participants which have voted against the proposal to continue the Licence shall have no vote in the Joint Operating Committee's decision upon the delineation of the Producing Part to be described in the notice to be given to the Secretary pursuant to Clause [8] of the Licence (which Producing Part shall be determined on the basis of a Simple Majority of the continuing Participants). Any decision on the delineation of the Producing Part shall be subject to the provisions of clause 15.8.9. Those Participants which have voted against the continuation of the Licence shall withdraw from the Licence (in so far as it relates to the Licence Area) in accordance with clause 24, effective no later than the expiry of the Second Term provided that the Secretary consents to the withdrawal from the Licence effective as of such date of each such Participant.
- 9.9.7 In relation to the continuation or extension of the Licence under Clauses [4], [6], [7], [8] or [9] thereof, each of the Participants agrees to execute such documents as may be necessary to effect the continuation of the Licence for the benefit of those Participants desiring to continue the Licence.
- 9.9.8 The affirmative vote of all Participants shall be required to determine the Licence (in so far as it relates to the Licence Area) or surrender any part of the Licence Area under Clause [10] thereof.
- 9.9.9 [The affirmative vote of [[all Participants/Participants holding a Simple Majority]] shall be required to request an extension to any Phase or to the Initial Term, Second Term or Third Term pursuant to Clauses [7] or [9] of the Licence.]<sup>46</sup>
- 9.9.10 [The affirmative vote of [[all Participants/Participants holding a Simple Majority]] shall be required to request an amendment of a Work Obligation.]<sup>47</sup>

---

<sup>46</sup> If this clause is deleted, or if Simple Majority is selected, ensure equivalent clause in 9.8.3 is also deleted. If this clause is deleted, the usual JOC passmark will apply.

<sup>47</sup> If this clause is deleted, or if Simple Majority is selected, ensure equivalent clause in 9.8.3 is also deleted. If this clause is deleted, the usual JOC passmark will apply.

**9.10 [[New Areas<sup>48</sup>**

- 9.10.1 One or more Participants having a beneficial interest in a proposed New Area and wishing to create such New Area by transferring to another Participant or a third party all or part of their respective Percentage Interests in such New Area shall be entitled to do so only upon satisfaction of all of the following requirements:
- (a) those Participants intending to create a New Area (the “**Proposing Participant**”) notifying the other Participants of their intention to create such New Area (the boundaries of which shall be clearly identified);
  - (b) [[the Joint Operating Committee/all the Participants]] approving such New Area;
  - (c) receipt of all necessary third party approvals;
  - (d) the transfer of all or part of the said Proposing Participant’s Percentage Interest in respect of the New Area (the “**Transferred Interest**”) having effect in accordance with clause 23;
  - (e) the party acquiring the Transferred Interest (the “**Acquiring Party**”) assuming all rights, obligations and liabilities under this Agreement insofar as it relates to the New Area in respect of such Transferred Interest (whether actual, accrued, contingent or otherwise or whether arising before, at or after the time of the said transfer) as if the Acquiring Party had at all times been a party to this Agreement insofar as it relates to the New Area in place of the Participant from who it acquired the Transferred Interest.
- 9.10.2 Immediately after the provisions of clause 9.10.1 taking effect, or immediately on approval of a Sole Risk Development, and subject always to clause 15.8.9, this Agreement shall take effect as two (2) separate and distinct agreements as follows:
- (a) one (1) agreement which shall apply as a separate and distinct agreement (the “**New Area JOA**”) between those Participants holding a beneficial interest in the New Area (the “**New Area JOA Participants**”); and
  - (b) the other agreement which shall apply as a separate and distinct agreement (the “**Remaining Area JOA**”) between those Participants holding a beneficial interest in the Remaining Area (the “**Remaining Area JOA Participants**”).
- 9.10.3 The New Area JOA Participants and the Remaining Area JOA Participants (together with any other persons that are licensees of the Licence) shall enter into appropriate trust and indemnity arrangements in respect of the New Area and the Remaining Area which unless agreed otherwise shall be in the form attached hereto as Schedule B.
- 9.10.4 For the avoidance of doubt and subject always to the arrangements described in clause 9.10.3:
- (a) the New Area JOA Participants may amend, supplement, substitute, terminate, restate and novate the New Area JOA without the participation

---

<sup>48</sup> See the discussion in the Guidance Notes regarding the use of this optional clause 9.10

of or reference to the Remaining Area JOA Participants and provided further that the New Area JOA Participants shall have no rights, liabilities or obligations under the Remaining Area JOA unless they currently are or subsequently become party to it; and

- (b) The Remaining Area JOA Participants may amend, supplement, substitute, terminate, restate and novate the Remaining Area JOA without the participation of or reference to the New Area JOA Participants and provided further that the Remaining Area JOA Participants shall have no rights liabilities or obligations under the New Area JOA unless they currently are or subsequently become party to it. ]]

## **10. Exploration and Appraisal Programmes and Budgets**

### **10.1 Annual Programme and Budget**

10.1.1 The Operator shall, in each Year, submit to each of the Participants not later than [1<sup>st</sup> September] a proposed exploration and/or appraisal Programme and Budget for the next Year showing:-

- (a) in the exploration section of the Programme and Budget, the exploration wells to be drilled and other work to be undertaken, specifying in each case where any approval is requested on a contingent basis, dependent on the success of another part of the work programme;
- (b) in the appraisal section of the Programme and Budget, the appraisal wells to be drilled and other work to be undertaken, specifying in each case where any approval is requested on a contingent basis, dependent on the success of another part of the work programme;
- (c) the information required under clause 14; and
- (d) such other information as the Joint Operating Committee may have required the Operator to provide.

10.1.2 The proposed exploration and/or appraisal Programme and Budget shall be subject to consideration, revision and approval by the Joint Operating Committee. The Joint Operating Committee shall consider such exploration and/or appraisal Programme and Budget and make such revisions to it as it may determine as soon as practicable but in any event not later than [1<sup>st</sup> October]. Not later than [1<sup>st</sup> December] the Joint Operating Committee shall approve an exploration and/or appraisal Programme and Budget and such approval shall, subject to clauses 10.2 and 10.3, authorise and oblige the Operator to proceed with the exploration section of the Programme and Budget. The Operator shall not however be authorised nor obliged to proceed with any items identified as contingent items in the Programme and Budget unless and until approved as firm items by the Joint Operating Committee. Notwithstanding the above, where commitments are required prior to approval of the Programme and Budget, the Joint Operating Committee will use reasonable endeavours to approve such commitments in advance of approving the Programme and Budget and in time to allow such commitments to be made and any commitments so approved shall form part of the approved Programme and Budget to which they relate.

10.1.3 In the event of a Discovery, the Operator shall, if the Joint Operating Committee so decides and as soon as practicable after such decision, submit to the Participants an appraisal Programme and Budget to evaluate such Discovery (to the extent not already covered by the Programme and Budget referred to in

clause 10.1.1) which shall to the extent practicable, incorporate the elements referred to in clause 10.1.1 and which shall be subject to consideration, revision and approval by the Joint Operating Committee. The Joint Operating Committee shall, as soon as practicable following submission of the proposed appraisal Programme and Budget consider such Programme and Budget and make such revisions to it as may be agreed. Unless the Joint Operating Committee otherwise decides, the Joint Operating Committee shall approve or reject the proposed appraisal Programme and Budget within ninety (90) days of its submission by the Operator to the Participants and such approval shall, subject to clauses 10.2 and 10.3, authorise and oblige the Operator to proceed with it.

## **10.2 Authorisation for Expenditure**

Except as provided in clause 6.10.2, the Operator shall, before entering into any commitment or incurring any capital expenditure or seismic expenditure in excess of [ ] under an approved exploration and/or appraisal Programme and Budget submit to the Participants an AFE for it in accordance with the Accounting Procedure. To the extent that the Joint Operating Committee approves an AFE, the Operator shall be authorised and obliged, subject to clauses 6.5 and 10.3, to proceed with such commitment or expenditure. The Operator shall prepare and submit to the Participants a separate AFE for each exploration or appraisal well, on a dry-hole basis. Drill stem testing shall be a contingent item.

## **10.3 Review and Amendments**

10.3.1 The Operator shall, as and when required by the Joint Operating Committee, review the approved exploration and/or appraisal Programme and Budget and submit to the Participants a report thereon.

10.3.2 At any time any Participant may, by notice to the other Participants, propose that an approved exploration and/or appraisal Programme and Budget and/or an approved AFE be amended. The Joint Operating Committee shall consider such proposal and, if the Joint Operating Committee so requires, the Operator shall prepare and submit to the Participants a revised exploration and/or appraisal Programme and Budget incorporating any such amendment and showing the matters listed under clause 10.1.1. To the extent that any such amendment or revised exploration and/or appraisal Programme and Budget is approved by the Joint Operating Committee, the approved exploration and/or appraisal Programme and Budget and/or AFE shall be deemed amended accordingly provided always that any such amendment shall not invalidate any authorised commitment or expenditure made by the Operator prior to such amendment.

## **10.4 Work Obligations**

In respect of any Work Obligations which are to be carried out following the procedures laid down in clause 9.9.1 the Operator will include the carrying out of such Work Obligations in the relevant exploration Programme and Budget or propose an amendment to such Programme and Budget to include the carrying out of such Work Obligations and, notwithstanding the foregoing provisions of this clause 10, such Programme and Budget or amendments thereto and any consequent AFE shall, to the extent that they relate to the carrying out of such Work Obligations and unless in either case the Joint Operating Committee otherwise decides within twenty-eight (28) days of their submission to the Participants, be deemed to be approved by the Joint Operating Committee.

## **10.5 Expenditure Overruns**

The Operator shall use reasonable endeavours not to exceed the approved exploration and/or appraisal Budget but shall be entitled without prior approval of the Joint Operating Committee to incur expenditure:

- (a) in excess of an approved AFE up to the lesser of ten per cent (10%) of the amount of the approved AFE and [ ]Pounds (£[ ]); and
- (b) subject to (a) above, in excess of an approved exploration and/or appraisal Budget up to [ ] per cent ([ ]%) of the amount of the approved Budget<sup>49</sup>.

Whenever it appears to the Operator that the over-expenditure for any item will exceed the amount authorised under this clause 10.5, the Operator shall revise the appropriate AFE and/or Budget and will seek the prior approval of the Joint Operating Committee to incur the additional expenditure prior to entering into any further commitment.

## **11. Development Programmes and Budget**

### **11.1 Joint Programme and Budgets**

11.1.1 The Operator shall, if the Joint Operating Committee so decides and as soon as practicable after such decision, submit to the Participants a proposed development Programme and Budget for a Discovery showing:-

- (a) the projects and other work to be undertaken;
- (b) the information required under clause 14;
- (c) the manner in which the development is to be managed with details of the number of employees and contract personnel required;
- (d) an estimate of the date of commencement of production and of the annual rates of production; and
- (e) such other information as the Joint Operating Committee may have required the Operator to provide.

11.1.2 The proposed development Programme and Budget shall be subject to consideration, revision and approval by the Joint Operating Committee. The Joint Operating Committee shall meet to consider such development Programme and Budget as soon as practicable and to make such revisions to it as it may determine. Unless the Joint Operating Committee otherwise decides, the Joint Operating Committee shall approve or reject the development Programme and Budget within ninety (90) days of its submission by the Operator to the Participants.<sup>50</sup>

11.1.3 If a development Programme and Budget is approved by the Joint Operating Committee, each of the Participants shall decide within [ninety (90) days] of such approval, or such longer period as the Joint Operating Committee may decide, whether to participate in respect of its Percentage Interest share in the development of the Discovery and shall inform the other Participants of its decision by notice to them. If all the Participants decide to participate in the development of the Discovery the Operator shall prepare from the said development Programme and Budget a Development Plan for submission to the Secretary. Any such Development Plan shall require the unanimous approval of the participating Participants prior to its submission as aforesaid. If less than all

---

<sup>49</sup> Please see Guidance Note regarding possible additional control on overruns on line items.

<sup>50</sup> Please see discussion in Guidance Notes on proviso to this clause in 20<sup>th</sup> round JOA.



of the Participants decide to participate in the development of the Discovery then clause 15.8.5 shall apply.

- 11.1.4 Upon the Secretary authorising (whether by consenting or approving or serving a Development Plan), the commencement of the development, any of the Participants may, if the Programme and Budget approved by the Joint Operating Committee under clause 11.1.2, has been or is required to be amended (which shall, for the avoidance of doubt, include any change in the date of commencement of the development or the rate at which Petroleum may be produced), by notice to the other Participants given within twenty-eight (28) days following the said authorisation elect not to proceed with the development. If no Participant is entitled to give such notice, or being entitled, no Participant gives such notice, the approved development Programme and Budget (with any amendments as aforesaid) shall be adopted for the development, the Participants shall be obliged to participate in carrying it out and the Operator shall, subject to clauses 11.2 and 11.3, be authorised and obliged to proceed in accordance with it. If any such notice is given the provisions of clause 15.8.6 shall apply.
- 11.1.5 [[Any Participant which, under clause 11.1.4 or clause 15.8 is not participating in the development of the Producing Part delineated for the purposes of [Clause 5] of the Licence shall withdraw from the Licence (in so far as it relates to the Licence Area) and this Agreement in accordance with clause 24.]]<sup>51</sup>

## **11.2 Authorisation for Expenditure**

Except as provided in clause 6.10.2, the Operator shall, before entering into any commitment or incurring any capital expenditure in excess of [ ] with respect to the preparation of a development Programme and Budget or under an approved development Programme and Budget submit to the Participants an AFE for it in accordance with the Accounting Procedure. To the extent that the Joint Operating Committee approves an AFE, the Operator shall be authorised and obliged, subject to clauses 6.5 and 11.3, to proceed with such commitment or expenditure. The Operator shall prepare and submit to the Participants a separate AFE for each development well.

## **11.3 Review and Amendment**

- 11.3.1 The Operator shall, in each Year, review the approved development Programme and Budget and submit to the Participants not later than [1st September] a report thereon together with an update of such development Programme and Budget dealing separately with the next Year and the remaining phases of the approved development Programme and showing the matters listed under clause 11.1.1.
- 11.3.2 At any time any Participant may, by notice to all the other Participants, propose that an approved development Programme and Budget and/or an approved AFE be amended. The Joint Operating Committee shall consider such proposal and, if the Joint Operating Committee so requires, the Operator shall prepare and submit to the Participants a revised development Programme and Budget incorporating any such amendment and showing the matters listed under clause

---

<sup>51</sup> Please note that this clause is only applicable to relatively new licences which have a concept of "Producing Part" and should be deleted if the JOA is being applied to an older licence without this concept. It is not intended to deprive any Participant of residual rights in any remaining area but merely to reflect the reality under the newer licences that the licence will in future apply only to the Producing Part, with the remainder being relinquished. It is therefore felt inappropriate that parties not prepared to participate in the development of the Producing Part should remain on the licence.

11.1.1. To the extent that any such amendment or revised development Programme and Budget is approved by the Joint Operating Committee, the approved development Programme and Budget and/or AFE shall, subject to obtaining any necessary consent of the Secretary, be deemed amended accordingly provided always that any such amendment shall not invalidate any authorised commitments or expenditure made by the Operator prior to such amendment.

#### **11.4 Expenditure Overruns**

The Operator shall use reasonable endeavours not to exceed the approved development Budget but shall be entitled without prior approval of the Joint Operating Committee to incur expenditure:

- (a) in excess of an approved AFE up to the lesser of ten per cent (10%) of the amount of the approved AFE and [ ]Pounds (£[ ]); and
- (b) subject to (a) above, in excess of an approved development Budget up to [ ] per cent ([ ]%) of the amount of the approved Budget <sup>52</sup>.

Whenever it appears to the Operator that the over-expenditure for any item will exceed the amount authorised under this clause 11.4, the Operator shall revise the appropriate AFE and/or Budget and will seek the prior approval of the Joint Operating Committee to incur the additional expenditure prior to entering into any further commitment.

## **12. Production Programmes and Budgets**

### **12.1 Annual Programme and Budget**

12.1.1 The Operator shall not later than [1<sup>st</sup> September] in the Year prior to the commencement of production and each subsequent Year until cessation of production, submit to the Participants a proposed production Programme and Budget for the next Year showing:-

- (a) the projects and other work to be undertaken;
- (b) the information required under clause 14;
- (c) an estimate of the date of commencement of production (if appropriate) and of the monthly total production for each major production stream and injection stream and the maximum daily rate to be achieved for each such stream in each month; and
- (d) such other information as the Joint Operating Committee may have required the Operator to provide.

12.1.2 The proposed production Programme and Budget shall be subject to consideration, revision and approval by the Joint Operating Committee. The Joint Operating Committee shall meet to consider such production Programme and Budget and make such revisions to it as it may determine as soon as practicable but in any event not later than [1<sup>st</sup> October]. Not later than [1<sup>st</sup> December] the Joint Operating Committee shall approve a production Programme and Budget and such approval shall, subject to clauses 12.2 and 12.3, authorise and oblige the Operator to proceed with it. Notwithstanding the

---

<sup>52</sup> Please see Guidance Note to Clause 10.5 regarding possible additional control on overruns on line items.

above, where commitments are required prior to approval of the Programme and Budget, the Joint Operating Committee will use reasonable endeavours to approve such commitments in advance of approving the Programme and Budget and in time to allow such commitments to be made and any commitments so approved shall form part of the approved Programme and Budget to which they relate. [[If the Joint Operating Committee does not approve a production Programme and Budget by [31<sup>st</sup> December] then, unless otherwise decided by the Joint Operating Committee, the Operator shall continue to operate the Joint Property to produce Petroleum in accordance with the most recently approved production profile for the Field and with Good Oilfield Practice for the next ninety (90) days and shall be entitled to incur operating expenditure (and such capital expenditure as is necessary to maintain assets) in order to do so. If no agreement on a production Programme and Budget is reached during such ninety (90) day period, then at the end of such period the Operator shall cease production.]]<sup>53</sup>

## **12.2 Authorisations for Expenditure**

Except as provided in clause 6.10.2, the Operator shall, before entering into any commitment or incurring any expenditure in excess of [ ] under an approved production Programme and Budget submit to the Participants an AFE for it in accordance with the Accounting Procedure. To the extent that the Joint Operating Committee approves an AFE, the Operator shall be authorised and obliged, subject to clauses 6.5 and 12.3, to proceed with such commitment or expenditure. The Operator shall prepare and submit to the Participants a separate AFE for each production well.

## **12.3 Amendment**

At any time any Participant may, by notice to all the other Participants, propose that an approved production Programme and Budget and/or an approved AFE be amended. The Joint Operating Committee shall consider such proposal and, if the Joint Operating Committee so requires, the Operator shall prepare and submit to the Participants a revised production Programme and Budget incorporating any such amendment and showing the matters listed under clause 12.1.1. To the extent that an amendment is approved by the Joint Operating Committee, the approved production Programme and Budget and/or AFE shall (subject to obtaining any necessary consent of the Secretary) be deemed amended accordingly provided always that any such amendment shall not invalidate any authorised commitment or expenditure made by the Operator prior to such amendment.

## **12.4 Expenditure Overruns**

The Operator shall use reasonable endeavours not to exceed the approved production Budget but shall be entitled without prior approval of the Joint Operating Committee to incur expenditure:

- (a) in excess of an approved AFE up to the lesser of ten per cent (10%) of the amount of the approved AFE and [ ]Pounds (£[ ]); and
- (b) subject to (i) above, in excess of an approved production Budget up to [ ] per cent ([ ]%) of the amount of the approved Budget<sup>54</sup>.

Whenever it appears to the Operator that the over-expenditure for any item will exceed

---

<sup>53</sup> Please see discussion in the Guidance Notes on the use of this optional clause.

<sup>54</sup> Please see Guidance Note to Clause 10.5 regarding possible additional control on overruns on line items.

the amount authorised under this clause 12.4, the Operator shall revise the appropriate AFE and/or Budget and will seek the prior approval of the Joint Operating Committee to incur the additional expenditure prior to entering into any further commitment.

### **13. Decommissioning Programme and Budget**

#### **13.1 Decommissioning Programme and Decommissioning Budget**

13.1.1 The Operator shall, if the Joint Operating Committee so decides and as soon as practicable after such decision, and in any event on its own initiative no later than a date twelve (12) Months prior to the anticipated date of submitting a Decommissioning Programme to the Secretary for approval under the Petroleum Act 1998, submit to the Participants a proposed Decommissioning Programme and Decommissioning Budget which shall be based on and consistent with any Decommissioning Plan last approved, or deemed approved, pursuant to clause 3 of the Decommissioning Security Agreement and which shall, in addition, include provision for any necessary post-Decommissioning monitoring, maintenance and insurance. If no Decommissioning Plan shall have been approved or deemed approved pursuant to clause 3 of the Decommissioning Security Agreement then the Operator shall submit a proposed Decommissioning Programme and Budget showing:-

- (a) the work to be undertaken;
- (b) the information required under clause 14;
- (c) an estimate of the dates on which Decommissioning will commence and be completed;
- (d) all other matters relevant to the proper preparation for and management of Decommissioning, including but not limited to decommissioning options, alternative uses for Joint Property, an assessment of eligibility for derogation from removal obligations, and the salvage value of Joint Property where it cannot be reused;
- (e) such other information as the Joint Operating Committee may have required the Operator to provide.

13.1.2 The proposed Decommissioning Programme and Decommissioning Budget referred to at clause 13.1.1 shall be subject to consideration, revision and approval by the Joint Operating Committee. The Joint Operating Committee shall meet to consider such proposed Decommissioning Programme and Decommissioning Budget as soon as practicable and to make such revisions to it as it may determine. Unless the Joint Operating Committee otherwise decides, the Joint Operating Committee shall approve or reject the proposed Decommissioning Programme and Decommissioning Budget within ninety (90) days of its submission by the Operator and, if approval is given, such approval shall, subject to this clause 13.1, authorise and oblige the Operator to submit such proposed Decommissioning Programme to the Secretary for approval under the Petroleum Act 1998 provided that, if the Joint Operating Committee has not approved such Decommissioning Programme and Decommissioning Budget by a date which is [six (6) Months] prior to the due date for submission of the Decommissioning Programme to the Secretary of State, then unless Participants holding a Simple Majority agree on a Decommissioning Programme and Decommissioning Budget (in which case the Decommissioning Programme and Decommissioning Budget so agreed shall be deemed to be approved by the

Joint Operating Committee), the Decommissioning Programme and Decommissioning Budget proposed by the Operator shall be deemed to be approved by the Joint Operating Committee and the Operator shall be authorised and obliged to submit such proposed Decommissioning Programme to the Secretary for approval under the Petroleum Act 1998.<sup>55</sup>

- 13.1.3 Upon the Secretary approving a Decommissioning Programme the Operator shall, subject to clauses 13.2 and 13.3, be authorised and obliged to proceed with it as approved and with any necessary post-Decommissioning monitoring, maintenance and insurance.

### **13.2 Authorisation for Expenditure**

Except as provided in clause 6.10.2, the Operator shall, before entering into any commitment or incurring any capital expenditure in excess of [ ] under an approved Decommissioning Programme and Decommissioning Budget, submit to the Participants an AFE for it in accordance with the Accounting Procedure. To the extent that the Joint Operating Committee approves an AFE, such approval not to be unreasonably withheld or delayed where the AFE is consistent with the approved Decommissioning Programme and Budget, the Operator shall be authorised and obliged, subject to clauses 6.5 and 13.3, to proceed with such commitment or expenditure.

### **13.3 Amendment**

At any time any Participant may, by notice to all the other Participants, propose that the approved Decommissioning Programme and Decommissioning Budget be amended. The Joint Operating Committee shall consider such proposal and, if the Joint Operating Committee so requires, the Operator shall prepare and submit to the Participants a revised Decommissioning Programme and Decommissioning Budget incorporating any such amendment and showing the matters listed under clause 13.1.1. To the extent that the Joint Operating Committee approves an amendment, the approved Decommissioning Programme and Decommissioning Budget shall be deemed amended accordingly, subject to any necessary approval by the Secretary, provided always that any such amendment shall not invalidate any authorised commitment or expenditure made by the Operator prior to such amendment.

### **13.4 Expenditure Overruns**

The Operator shall use reasonable endeavours not to exceed the approved Decommissioning Budget but shall be entitled without prior approval of the Joint Operating Committee to incur expenditure:

- (a) in excess of an approved AFE up to the lesser of ten per cent (10%) of the amount of the approved AFE and [ ]Pounds (£[ ]); and
- (b) subject to (i) above, in excess of an approved Decommissioning Budget up to [ ] per cent ([ ]%) of the amount of the approved Budget<sup>56</sup>.

Whenever it appears to the Operator that the over-expenditure for any item will exceed the amount authorised under this clause 13.4, the Operator shall revise the appropriate AFE and/or Budget and will seek the prior approval of the Joint Operating Committee to

---

<sup>55</sup> Decommissioning is a legal obligation and therefore the Operator cannot be put in the position of being unable to carry out decommissioning because of the failure of the JOC to agree a programme and budget or to approve an AFE or over-run. This default procedure ensures that a programme and budget are approved or deemed approved under clause 13.1.2 and the provisions for consent not to be unreasonably withheld in clauses 13.2 and 13.4 ensure that AFEs are approved if consistent with the programme and budget and that overruns are approved where necessary to comply with the statutory decommissioning programme.

<sup>56</sup> Please see Guidance Note to Clause 10.5 regarding possible additional control on overruns on line items.

incur the additional expenditure prior to entering into any further commitment, such approval not to be unreasonably withheld or delayed where the over-expenditure is necessary to comply with the Decommissioning Programme approved by the Secretary of State.

## **14. General Provisions Relating to Budgets<sup>57</sup>**

**14.1** Each Budget required under clauses 10 to 13 shall include:

- 14.1.1 an estimate in Pounds of the total cost of the applicable Programme and a sub-division of such total into each main classification and sub-classification of cost to provide a breakdown of the workscope into work elements in sufficient detail to allow adequate cost allocation and control. The estimate for each such classification and sub-classification of cost shall be phased on an accrual basis and shall be shown by Quarter for the first Year and, where applicable, by Year for each subsequent Year of the Programme;
- 14.1.2 an estimate of the amount if in excess of [ ] Pounds (£[ ]) equivalent of each currency other than Pounds in which such total cost is to be paid, together with the exchange rates used. Such estimate shall be phased by Quarter for the first Year and, where applicable, by Year for each subsequent Year of the Programme;
- 14.1.3 the amount of any escalation allowance added;
- 14.1.4 the amount of any contingency allowance added;
- 14.1.5 an estimate of the timing and value of AFEs;
- 14.1.6 an estimate of the cost and the total number of man-Months budgeted; and
- 14.1.7 a statement indicating which budget items, if any, are contingent upon the outcome of other budget items such as the testing of wells;
- 14.1.8 [[an estimate of all amounts over [(£ )] to be charged under any multi-field or multi-operator contract pursuant to clause 6.5.3. ]]<sup>58</sup>

**14.2** In addition, each development Budget required under clause 11 shall include:

- 14.2.1 an estimate of funding currency requirements phased on a cash basis detailing Quarterly requirements for the first Year and annual requirements for each subsequent Year of the development;
- 14.2.2 an estimate of the timing and value of commitments to be made under the development Budget identifying the total commitments under each main classification of cost as provided in clause 14.1.1 in each Quarter of the first Year and in each of the subsequent Years of the development.

**14.3** In addition, each production Budget required under clause 12 shall be divided into capital expenditure and operating expenditure sections and shall include:-

---

<sup>57</sup> The content of this clause was previously found in the Accounting Policy but it was felt to be more helpful to have all of the provisions relative to budgets in one place.

<sup>58</sup> See footnote relating to clause 6.5.3 above.

- 14.3.1 an estimate of payments under any major rental contracts and, where relevant, the production profile upon which these payments have been determined;
- 14.3.2 in the capital expenditure section an estimate of the capital cost to complete activities brought forward commencing in the respective budget Year.
- 14.4** Each review of or amendment to a Budget as provided in clauses 10 to 13 shall include:-
- (a) actual cash payments, net of Receipts and accruals to date;
  - (b) actual commitments to date; and
  - (c) revised estimates of all items detailed in clauses 14.1, 14.2 and 14.3 as appropriate.
- 14.5** The Operator may, with the prior approval of the Joint Operating Committee, transfer sums between Budget sub-classifications after Budgets have been approved.

## **15. Sole Risk**

### **15.1 Sole Risk Projects**

Any Participant may undertake any of the following types of project (each a "**Sole Risk Project**") as a sole risk project subject to the following provisions of this clause:

- (a) subject to clause 15.4, sole risk seismic (including geochemical sampling, gravity and magnetic or other geophysical/geological surveying) ("**Sole Risk Seismic**");
- (b) subject to clause 15.5, sole risk drilling ("**Sole Risk Drilling**") consisting of:-
  - (i) the drilling of an exploratory well or the deepening or side-tracking of a suspended well neither of such wells being inside the interpreted closure (according to the most recent information submitted to the Joint Operating Committee) of any geological structure or stratigraphic trap on which a well has been drilled in which Petroleum of potential commercial significance has been found to be present; or
  - (ii) the drilling of an exploratory well or the deepening or side-tracking of a suspended well inside the interpreted closure (according to the most recent information submitted to the Joint Operating Committee) of any geological structure or stratigraphic trap on which a well has been drilled in which Petroleum of potentially commercial significance has been found to be present and which well is drilled, deepened or side-tracked to a different stratigraphic level to that in which such Petroleum was found to be present within that interpreted closure and which is not completed in the horizon in which such Petroleum was found to be present, provided always that the approval of the Joint Operating Committee shall be required before any such drilling, deepening or side-tracking is carried out; or
  - (iii) the deepening or side-tracking of a well which is in the course of being drilled and which does not form part of a development Programme, provided always that, unless the Joint Operating Committee otherwise decides, any testing programmes by the Participants must have been carried out, the Participants informed of the results and a decision of the Joint Operating Committee taken to abandon the well before any such deepening or side-tracking is carried out; or
  - (iv) the drilling of a well ("**Appraisal Drilling**") inside the interpreted closure of any geological structure or stratigraphic trap on which a well has been drilled

in which Petroleum has been found to be present;

- (c) subject to clause 15.7, sole risk testing and logging (“**Sole Risk Testing**”) consisting of:
  - (i) the testing and logging of intervals by re-entering a suspended well, or
  - (ii) the testing and logging of intervals in a well currently being drilled;
- (d) subject to clause 15.8, sole risk development (“**Sole Risk Development**”) consisting of the development of a Discovery.

## **15.2 General Conditions**

- 15.2.1 Any Sole Risk Project shall be carried out at the sole risk, cost and expense of the Participant proposing such project and any other Participant electing to join such project in accordance with the terms of this clause (each being a “**Sole Risk Participant**”). If a Sole Risk Project is undertaken by more than one Sole Risk Participant the interest in such Sole Risk Project including the risk, cost and rights and obligations pursuant to the Licence as it applies to such Sole Risk Project shall, subject to any subsequent adjustment in the case of Sole Risk Development pursuant to clause 15.8.8 or to full payment being made pursuant to clause 15.6.2, be borne by each Sole Risk Participant in the proportion that its Percentage Interest bears to the sum of the Percentage Interests of the Sole Risk Participants or in such other proportion as the Sole Risk Participants may agree (the “**Sole Risk Interests**”).
- 15.2.2 A Sole Risk Participant shall exercise all necessary precautions to ensure that a Sole Risk Project does not jeopardise, hinder or unreasonably interfere with the Joint Operations provided that a Sole Risk Development shall have priority over Joint Operations approved subsequent to the authorisation of such Sole Risk Development by the Secretary.
- 15.2.3 Subject to clauses 15.4.1(b) and 15.5.1(b), no Sole Risk Project may be carried out if it is substantially similar to or conflicts with all or part of any Programme approved by the Joint Operating Committee and which is still to be carried out at the commencement of the Sole Risk Project.
- 15.2.4 No Sole Risk Project may be carried out which would satisfy an outstanding Work Obligation unless all the Participants agree.
- 15.2.5 A Sole Risk Participant shall:
  - (a) indemnify and hold harmless the other Participants (“**Non-Sole Risk Participants**”) against all actions, claims, demands and proceedings whatsoever brought by any third party (including without limitation any employee of the Sole Risk Participant) arising out of or in connection with the Sole Risk Project;
  - (b) in so far as it may be within its control keep the Licence free from all liens, charges and encumbrances which might arise by reason of the conduct of the Sole Risk Project; and
  - (c) further indemnify the Non-Sole Risk Participants against all damages, costs, losses and expenses whatsoever directly or indirectly caused to or incurred by them as a result of anything done or omitted to be done in the course of carrying out such Sole Risk Project, excepting only damage inflicted to the subsurface including any reservoir.



The approval of a Non-Sole Risk Participant to the conduct of a Sole Risk Project (whether or not such approval is required) shall not constitute a waiver of these provisions.

- 15.2.6 A Sole Risk Participant carrying out Sole Risk Drilling under clause 15.1(b)(iii) shall be entitled to use Joint Property for such Sole Risk Drilling unless the Joint Operating Committee otherwise decides within the period for response to the notice proposing such Sole Risk Drilling provided under clause 15.5.3. A Sole Risk Participant wishing to use Joint Property for a Sole Risk Project other than as aforesaid shall give notice to all the Participants stating the purposes for which the Joint Property is to be used. Within twenty-eight (28) days after such notice, the Joint Operating Committee shall decide whether such Sole Risk Participants shall be authorised to so use Joint Property. In all cases, consent to the use of Joint Property shall not be unreasonably withheld, conditioned or delayed and any charges for such use shall be on a reasonable and equitable basis.<sup>59</sup>
- 15.2.7 A Sole Risk Participant shall be entitled to use for a Sole Risk Project any data and information which it owns jointly with the Non-Sole Risk Participants. Data and information obtained in respect of Sole Risk Seismic, Sole Risk Drilling and Sole Risk Testing shall remain the property of the Sole Risk Participant, until and in the event that one or more of the Non-Sole Risk Participants discharges in full its liability to the Sole Risk Participant under clauses 15.4.5, 15.6.2 or 15.7.6, as the case may be, when such data and information shall become the Joint Property of the Participants discharging such liability and the Sole Risk Participant.
- 15.2.8 A Sole Risk Participant shall make available promptly following completion of Sole Risk Drilling data and information obtained from such Sole Risk Drilling (but for the avoidance of doubt not data and information obtained from Sole Risk Seismic or Sole Risk Testing) and Non-Sole Risk Participants shall have the right on reasonable prior written notice to view but not to copy such data and information at the premises of the Sole Risk Participant within [twenty-eight (28)] days of receipt of notice from the Sole Risk Participant that such data and information is available for inspection and provided that such data and information shall be held strictly confidential by the Non-Sole Risk Participant.<sup>60</sup>
- 15.2.9 Subject to any necessary consent of the Secretary, a Sole Risk Project shall be carried out by the Operator on behalf of the Sole Risk Participant under the provisions of this Agreement provided that, with the exception of any Sole Risk Project involving the use of Joint Property as provided under clause 15.2.6, if the Operator is not participating in the Sole Risk Project:-
- (a) in the case of Sole Risk Seismic, the Sole Risk Participant shall be entitled to carry out the Sole Risk Seismic itself;
  - (b) in the case of Sole Risk Drilling, other than as set out in clause 15.1(b)(iii) the Operator may decline to carry out the Sole Risk Drilling;
  - (c) in the case of Sole Risk Development, the Operator shall not carry out the

---

<sup>59</sup> See discussion in Guidance Notes on this clause.

<sup>60</sup> Data relating to seismic and testing is not revealed except to those parties who choose to buy into it. However, drilling data must be available for inspection as it is impossible for a party to decide whether to buy in and proceed with further drilling or with a development without access to drilling results.

Sole Risk Development unless all the Participants otherwise agree.

In any of such events the Sole Risk Project shall, subject to any necessary consent of the Secretary, be carried out by the Sole Risk Participant, or, if more than one Participant takes part in the Sole Risk Project, the Sole Risk Participant appointed by them and, in respect of the conduct of such Sole Risk Project, such Sole Risk Participant shall, unless the context otherwise requires, be deemed to be the Operator in respect of the independent application of this Agreement as provided in clause 15.2.10.

15.2.10 In connection with any Sole Risk Project:-

- (a) the Sole Risk Project will be carried out under the overall supervision and control of a committee consisting of the Sole Risk Participants in lieu of the Joint Operating Committee;
- (b) the computation of costs and expenses of the Sole Risk Project incurred by the Sole Risk Participants shall be made in accordance with the principles set out in the Accounting Procedure;
- (c) the Operator or the Sole Risk Participant carrying out the Sole Risk Project shall maintain separate books, records and accounts (including bank accounts) for the Sole Risk Project which shall be subject to the same right of examination and audit by the Sole Risk Participants and, so long as they are entitled to elect to participate in the Sole Risk Project, the Non-Sole Risk Participants as those relating to the Joint Operations;
- (d) the costs and expenses of the Sole Risk Project shall not be reflected in the statements and billings rendered by the Operator for the Joint Operations;
- (e) if the Operator is carrying out a Sole Risk Project on behalf of a Sole Risk Participant, the Operator shall be entitled to make Cash Calls on the Sole Risk Participant in connection with the Sole Risk Project and shall not use Joint Account funds or be required to use its own funds for the purpose of paying the costs and expenses of the Sole Risk Project; furthermore the Operator shall not be obliged to commence or, having commenced, to continue the Sole Risk Project unless and until the relevant Advances have been received from the Sole Risk Participant; and
- (f) [[without prejudice to clause 15.8.9]], where the context permits, and until the creation of a New Area pursuant to clause 9.10, the provisions of this Agreement (not including clauses 23 and 24) shall apply mutatis mutandis as between the Operator or the Sole Risk Participant carrying out the Sole Risk Project (as the case may be) and the Sole Risk Participants as if references to Percentage Interests were references to their Sole Risk Interests.

### **15.3 Selection of Sole Risk Projects**

15.3.1 If any Participant wishes to propose the conduct of a Sole Risk Project other than Sole Risk Development and such Sole Risk Project will conflict with Sole Risk Seismic or Sole Risk Drilling or Sole Risk Testing proposed in accordance with clause 15.4 or clause 15.5 or clause 15.7, such Participant shall have the right for a period of five (5) days (or twenty-four (24) hours if the drilling equipment is on location), from receipt of the proposal notice issued pursuant to clauses 15.4.2, 15.5.2, 15.5.3, 15.7.2 or 15.7.3, as the case may be, to propose, by notice to all Participants, its alternate operation. Such alternative proposal

shall contain the information specified in clause 15.4.2, clause 15.5.2, clause 15.5.3, clauses 15.7.2 or 15.7.3, as the case may be.

- 15.3.2 Each of the Participants, other than the respective proposing Participants, shall elect by notice to the Operator whether or not to participate in any of the proposals. Failure to so respond shall be deemed an election not to participate in any proposal.
- 15.3.3 The proposal receiving the largest aggregate Percentage Interest vote shall have priority over any other proposal. If the vote is tied, the Operator shall select one of the proposals gaining the highest aggregate Percentage Interest vote. The Operator shall notify the result of such voting and selection, as the case may be, to all the Participants. Each Participant shall, within two (2) Working Days (or twenty four (24) hours if drilling equipment is on location) notify the Operator whether or not it wishes to participate in the successful proposal. Any Participant failing to respond within such period shall be deemed to have elected not to participate.
- 15.3.4 If the Participants electing to participate in the successful proposal, together with the Participant proposing it, reach a Passmark, the successful proposal shall be carried out by the Operator as part of Joint Operations.
- 15.3.5 If the Participants electing to participate in the successful proposal, together with the Participant proposing it, do not reach a Passmark, the Operator shall (subject to clause 15.2.9) carry out the proposed operation on behalf of the proposing Participant and the Participants voting in favour of it in accordance with the provisions of clause 15.2.

#### **15.4 Sole Risk Seismic**

- 15.4.1 No Sole Risk Seismic may be proposed unless:-
  - (a) such seismic was proposed to the Joint Operating Committee at the time of consideration of the current exploration and appraisal Programme and Budget but was not included in such Programme and Budget; or
  - (b) having been included in the current exploration and appraisal Programme and Budget the Joint Operating Committee has, where an AFE is required, voted against or failed to vote in favour of such AFE (or the relevant part of it) relating to such seismic within twenty-eight (28) days of submission of such AFE to the Participants provided that the decision of the Joint Operating Committee to change the timing of such seismic within the Year to which the current exploration and appraisal Programme relates shall not be a vote against the AFE for the purposes of this clause 15.4.1 (b); or
  - (c) such seismic was proposed to the Joint Operating Committee in reasonably sufficient detail by way of amendment to the current exploration and appraisal Programme and Budget and the Joint Operating Committee has voted against or failed to vote in favour of such seismic within sixty (60) days of submission of such amendment to the Participants.
- 15.4.2 Subject to clause 15.4.1, if a Participant wishes to propose Sole Risk Seismic it shall give notice to the other Participants setting out:-
  - (a) the proposed area of such seismic including line locations (2D); and

- (b) all other relevant information including, but not limited to, the date on which it proposes that the operations should be started, such date being not less than thirty (30) days and not more than one hundred and eighty (180) days from the date of notice.

Each of the Participants receiving such notice shall respond to it, by notice to the other Participants, within twenty-eight (28) days of receipt, electing whether or not to participate. Any Participant failing to respond within the said twenty-eight (28) days shall be deemed to have elected not to participate.

- 15.4.3 If the Participants electing to participate, together with the Participant proposing the Sole Risk Seismic, reach a Passmark, the operations shall be carried out, in accordance with the said notice, by the Operator as part of the Joint Operations as if determined by the Joint Operating Committee and, if appropriate, the current relevant Programme shall be deemed amended accordingly and the Operator shall promptly notify the Participants of the consequential amendments to the current relevant Budget.
- 15.4.4 If the Participants electing to participate, together with the Participant proposing the Sole Risk Seismic, do not reach a Passmark, such Sole Risk Participants may within twenty-eight (28) days following the expiration of the notice given under clause 15.4.2 require the Operator (subject to clause 15.2.9) to undertake the Sole Risk Seismic. The Sole Risk Seismic may not be commenced later than one hundred and eighty (180) days following such notice.
- 15.4.5 If any Participant which was a Non-Sole Risk Participant wishes at any time to acquire the data and information obtained from any Sole Risk Seismic, then such Non-Sole Risk Participant shall pay to the respective Sole Risk Participant (or if more than one Sole Risk Participant, in proportion to their respective Sole Risk Interests) an amount equal to [xxx (X) times] the amount it would have contributed to such Sole Risk Seismic had it originally participated in such Sole Risk Seismic [[together with interest on such amount at a rate equal to [ ] percent ([ ]%) above SONIA Compounded in Arrears from the date on which the costs were incurred to the date the invoice is issued, with a five (5) Working Day lookback]]. Any Participant making such payment shall thereupon become a joint owner of such data and information.<sup>61</sup>
- 15.4.6 [[If Sole Risk Seismic directly results in the drilling of an exploration or appraisal well, either as a part of Joint Operations or by Sole Risk Drilling, any Participant which was a Non-Sole Risk Participant in such Sole Risk Seismic and which participates in such drilling shall pay to the Sole Risk Participant (if more than one, in proportion to their respective Sole Risk Interests) an amount equal to [[xxx (X) times]] the amount it would have contributed to such Sole Risk Seismic had it originally participated in such Sole Risk Seismic, [[together with interest on such amount at a rate equal to [ ] percent ([ ]%) above SONIA Compounded in Arrears from the date on which the costs were incurred to the date the invoice is issued, with a five (5) Working Day lookback]] less any amount which such Participant may have paid pursuant to clause 15.4.5.]]OR [[If Sole Risk Seismic directly results in the drilling of an exploration or appraisal well, either as part of Joint Operations or by Sole Risk Drilling, any Participant which was a Non-Sole Risk Participant in such Sole Risk Seismic and which

---

<sup>61</sup> This clause applies if a party wishes to buy into the seismic data. There is an option here as to whether to apply a multiple to costs – if the multiple is sufficiently high, it may be felt that interest is not necessary, but if there is no or a small multiple then interest may be appropriate.

participates in such drilling shall not be required to pay for the Sole Risk Seismic unless it wishes to acquire the data and information obtained from such Sole Risk Seismic in accordance with 15.4.5.]]<sup>62</sup>

## **15.5 Sole Risk Drilling**

15.5.1 No Sole Risk Drilling under clause 15.1(b)(i), (ii) or (iv) may be proposed unless:-

- (a) such drilling was proposed to the Joint Operating Committee at the time of the consideration of the current exploration and appraisal Programme and Budget but was not included in such Programme and Budget; or
- (b) having been included in the current exploration and appraisal Programme and Budget the Joint Operating Committee has voted against or failed to vote in favour of an AFE (or the relevant part of it) relating to such drilling within twenty-eight (28) days of submission of such AFE to the Participants provided that a decision by the Joint Operating Committee to change the timing of such drilling within the Year to which the current exploration and appraisal Programme and Budget relates shall not be a vote against the AFE for the purpose of this clause 15.5.1(b); or
- (c) such drilling was proposed to the Joint Operating Committee in reasonably sufficient detail by way of amendment to the current exploration and appraisal Programme and Budget and the Joint Operating Committee has voted against or failed to vote in favour of such drilling within sixty (60) days of submission of such amendment to the Participants; or
- (d) in the case only of Sole Risk Drilling under clause 15.1(b)(iv), the Joint Operating Committee has abandoned or completed its appraisal Programme in respect thereof and the Joint Operating Committee has voted against or failed to vote in favour of a proposal to instruct the Operator to prepare a development Programme in respect thereof and no Participant has given notice under clause 15.8.1 that it intends to prepare such a development Programme.

15.5.2 Subject to clause 15.5.1 if a Participant wishes to propose Sole Risk Drilling under clause 15.1(b) (i), (ii) or (iv) it shall give notice to the other Participants setting out:-

- (a) the proposed location, depth and stratigraphic objectives of such drilling; and
- (b) all other relevant information including, but not limited to, the date on which it proposes that operations should be started, such date being not less than [sixty (60)] nor more than [one hundred and eighty (180)]<sup>63</sup> days from the date of the notice.

Each of the Participants receiving such a notice shall respond to it, by notice to the other Participants, within twenty-eight (28) days of receipt, electing whether or not to participate. Any Participant failing to respond within the said twenty-eight (28) days shall be deemed to have elected not to participate. Any Participant which believes that not all relevant information has been provided by

---

<sup>62</sup> Please see the Guidance Notes for a discussion of the options under this clause.

<sup>63</sup> It may be worth considering whether the 180 day limit is appropriate given the pressure on rig availability in recent years.

the proposing party shall within the said twenty eight (28) days notify the proposing Participant as to what additional information it requires, acting reasonably, and no Participant which fails to notify such requirements within such twenty-eight (28) day period shall thereafter be entitled to object that the notice given under this clause failed to provide all relevant information. If further information is provided, the recipient shall have fourteen (14) days from its receipt to elect whether or not to participate.

- 15.5.3 If a Participant wishes to propose Sole Risk Drilling under clause 15.1(b)(iii), such Participant shall give as much notice as possible to the other Participants stating whether it wishes to use Joint Property for such Sole Risk Drilling (and, if so, what items) and setting out such relevant information as is necessary in order to allow the other Participants to consider the proposal and elect whether or not to participate. Each of the Participants receiving such a notice shall respond to it, by notice to the other Participants, within forty-eight (48) hours of receipt (or within such longer period as may be specified in the notice), electing whether or not to participate. Any Participant failing to respond within the said period shall be deemed to have elected not to participate.
- 15.5.4 If the Participants electing to participate under clause 15.5.2 or clause 15.5.3, together with the Participant proposing the Sole Risk Drilling, reach a Passmark, the operations shall be carried out, in accordance with the said notice, by the Operator as part of the Joint Operations as if determined by the Joint Operating Committee and, if appropriate, the current relevant Programme shall be deemed amended accordingly and the Operator shall promptly notify the Participants of the consequential amendments to the current relevant Budget.
- 15.5.5 If the Participants electing to participate under clause 15.5.2 or clause 15.5.3, together with the Participant proposing the Sole Risk Drilling, do not reach a Passmark, such Sole Risk Participants may, subject to the provisos to clause 15.1(b)(ii) or (iii) in the case of Sole Risk Drilling under those provisions, within twenty-eight (28) days following the expiration of the said notice, if given under clause 15.5.2, or within forty-eight hours following the expiration of such notice if given under clause 15.5.3, require the Operator (subject to clause 15.2.9) to undertake the Sole Risk Drilling. If such circumstance results from the Joint Operating Committee voting against or failing to vote in favour of an AFE under the current exploration and appraisal Programme, such Programme shall be deemed amended accordingly and the Operator shall promptly notify the Participants of the consequential amendments to the current exploration and appraisal Budget. In the case of a notice given under clause 15.5.2, the Sole Risk Drilling may not be commenced later than [one hundred and eighty (180) days]<sup>64</sup> following such notice. In the case of a notice given under clause 15.5.3, the Sole Risk Drilling may be commenced as soon as it is possible to do so without interference to the Joint Operations on that well.

## **15.6 Payments for Sole Risk Drilling**

- 15.6.1 (a) If Sole Risk Drilling carried out under clause 15.1(b) (i), (ii) or (iii) has resulted in a particular Discovery, any Participant which was a Non-Sole Risk Participant in all or part of such Sole Risk Drilling and which wishes to participate in Appraisal Drilling relating to that Discovery, or, if no Appraisal Drilling is to be conducted, then in any development, may elect to do so by

---

<sup>64</sup> See previous footnote.

notice in writing to the existing Sole Risk Participants served:

- (i) within twelve (12) Months from the date of completion of the Sole Risk Drilling, or
- (ii) prior to the date of the spudding of a well in respect of such Appraisal Drilling relating to that Discovery, or
- (iii) within thirty (30) days after Joint Operating Committee approval of a development Programme and Budget in respect of that Discovery,

whichever is the earliest.

- (b) If Sole Risk Drilling has been carried out under clause 15.1(b)(iv) in respect of a particular Discovery, any Participant which was a Non-Sole Risk Participant in all or part of such Sole Risk Drilling may elect to participate in further Appraisal Drilling or in a development Programme relating to that Discovery by notice in writing to the existing Sole Risk Participants served:

- (i) within twelve (12) Months from the date of completion of the Sole Risk Drilling, or
- (ii) prior to the date of the spudding of a well in respect of such further Appraisal Drilling relating to that Discovery, or
- (iii) within thirty (30) days after Joint Operating Committee approval of a development Programme and Budget in respect of that Discovery,

whichever is the earliest.

- (c) Any Participant which was a Non-Sole Risk Participant and was entitled to give notice under paragraph (a) or (b) above and fails to give such a notice within the periods specified therein shall not be entitled to participate in the development of that Discovery.

15.6.2 A Participant serving a notice as set out in clause 15.6.1(a) or (b) shall pay to the respective Sole Risk Participant (if more than one Participant, in proportion to their respective Percentage Interests in the Licence or in such other proportion as they may have agreed under clause 15.2.1):

- (a) an amount in respect of the costs of such Sole Risk Drilling ("**Drilling Costs**"); and
- (b) any costs relating to such Discovery incurred by the Sole Risk Parties since such Sole Risk Drilling and up to the date of the notice, ("**Interim Costs**");

equal to [[xxx (X) times]] its Percentage Interest share of such Drilling Costs and Interim Costs[[together with interest on such amount at a rate equal to [ ] percent ([ ]%) above SONIA Compounded in Arrears from the date on which the costs were incurred to the date the invoice is issued, with a five (5) Working Day lookback]].<sup>65</sup> Such amount shall be paid, in cash in the currency or proportionately in the currencies in which the contributions for the costs and expenses would have been made to the Joint Account under paragraph 3.2 of the Accounting Procedure. A Non-Sole Risk Participant making the requisite payment in full pursuant to this clause 15.6.2 to the Sole Risk Participant(s) shall

---

<sup>65</sup> Please see Guidance Notes for a discussion of this clause.

be deemed to have elected to participate in the relevant Sole Risk Project to the extent of its Percentage Interest and the Sole Risk Interests will be adjusted accordingly. Such Sole Risk Participant shall be liable for its Sole Risk Interest share of all costs and expenses, incurred on and after the date of the aforesaid notice under clause 15.6.1(a) or (b), relating to the Appraisal Drilling or development, as the case may be, and shall in addition be liable for the payment provided under clause 15.6.3. A Non-Sole Risk Participant that does not make the above payment by the due time shall lose its rights to participate in any further operations relating to the Discovery [[and in any New Area created in relation to it]].

- 15.6.3 Upon the Secretary authorising (whether by consenting or by approving or by serving a Development Plan) under Clause [17] of the Licence the commencement of the development of a Discovery in respect of which Sole Risk Drilling has been carried out, then any Non-Sole Risk Participant which has served notice under clause 15.6.1 and made the payments required under the provisions of clause 15.6.2 to one or more Sole Risk Participants in respect of that Discovery shall in addition be liable to pay to each of such Sole Risk Participants as are also participating in the development an amount in Pounds in respect of each Sole Risk Drilling operation in which it did not participate calculated in accordance with the following formula:-

$$A = B \times C/D \text{ [[x insert multiplier ]]}$$

where:-

- A** the amount to be paid to a Sole Risk Participant in respect of a Sole Risk Drilling operation;
- B** the amount paid to that Sole Risk Participant in respect of such Sole Risk Drilling operation pursuant to clause 15.6.2 (any payment made pursuant to clause 15.6.2 in a currency other than Pounds being translated to Pounds at the Conversion Rate on the date of payment by the Non-Sole Risk Participant);
- C** the value of the Index on the date on which the Secretary authorised commencement of the development;
- D** the value of the Index on the date of termination of such Sole Risk Drilling operation;

and where the “**Index**” means the Index Numbers of Producer Prices published by National Statistics in the Monthly Digest of Statistics in table 18.7 under the heading “output of manufactured products”, provided that:-

- (i) if the factor C/D is less than one (1), then the figure one (1) shall be substituted; and
  - (ii) if the Index shall cease to be published, then the nearest equivalent index shall be used in lieu of it with any adjustments to it as may be appropriate.
- 15.6.4 Any liability which arises under clause 15.6.3 shall be satisfied by the Non-Sole Risk Participant paying to the Sole Risk Participant (if more than one Non-Sole Risk Participant, in proportion to the liability of each such Participant) amounts equal to the amounts of the Percentage Interest share of the Sole Risk Participant of the Invoices or Advances paid or payable under the relevant approved development Programme and Budget until the liability of the Non-Sole Risk Participant pursuant to clause 15.6.3 has been extinguished and such



amounts shall be paid in Pounds to the Sole Risk Participant:-

- (a) within thirty-five (35) days of the date of the said authorisation in the case of Invoices or Advances paid prior to such date, and for the purpose of calculating the amount payable under this clause 15.6.4 (a) any Invoice or Advance paid in a currency other than Pounds shall be translated to Pounds at the Conversion Rate on the date of the said authorisation; and
- (b) not less than two (2) Working Days before the due dates for payment of the Invoices or Advances in the case of Invoices or Advances to be paid subsequent to the date of the said authorisation, and for the purpose of calculating the amounts payable under this clause 15.6.4(b) any Invoice or Advance to be paid in a currency other than Pounds shall be translated to Pounds at the Conversion Rate on the fourth (4th) Working Day before the due date for payment of it.

In the event that any liability of the Non-Sole Risk Participant is not fully extinguished by the payments made in accordance with the foregoing provisions of this clause 15.6.4 any balance shall become immediately payable by the Non-Sole Risk Participant to the Sole Risk Participant within 30 days of receipt of a written demand to that effect from the Sole Risk Participant to the Non-Sole Risk Participant notified after the final Invoice or Cash Call to be issued under the relevant development Programme and Budget has been issued.

## **15.7 Sole Risk Testing**

15.7.1 No Sole Risk Testing may be carried out unless:

- (a) in the case of testing under clause 15.1(c)(i) the intervals to be tested are not planned to be tested by another future well under any exploration and appraisal Programme and Budget already approved by the Joint Operating Committee at the time the Sole Risk Testing is proposed;
- (b) in the case of testing under clause 15.1(c)(ii) the Joint Operating Committee has voted against or failed to vote in favour of a proposal to instruct the Operator to carry out a testing programme in respect of the relevant intervals within the relevant well.
- (c) all drilling operations (which shall include Sole Risk Drilling) shall have been completed in respect of the relevant well (and in any testing programme where it is proposed to test one or more intervals in the relevant well as a Sole Risk Project and one or more intervals in the same well for the Joint Account, then the deepest such interval shall be tested first and thereafter each further proposed interval rising up the well, unless the Participants otherwise agree to an alternative testing programme in respect of the relevant intervals within the relevant well).
- (d) where Sole Risk Testing of one or more intervals in a well has been proposed concurrently with testing of other intervals in the same well for the Joint Account, flows of Petroleum, if any, from intervals tested under Sole Risk Testing can be and are measured separately from flows of Petroleum if any from intervals in the same well tested for the Joint Account.

15.7.2 If a Participant wishes to propose Sole Risk Testing under clause 15.1(c)(i), it shall give notice to the other Participants setting out all relevant information including the date on which it proposes that operations should be started, such date being not less than [60 days] nor more than [180 days] from the date of the

notice. Each of the Participants receiving such a notice shall respond to it, by notice to the other Participant, within twenty-eight (28) days of receipt, electing whether or not to participate. Any Participant failing to respond within the said twenty-eight (28) days shall be deemed to have elected not to participate.

- 15.7.3 If a Participant wishes to propose Sole Risk Testing under clause 15.1(c)(ii), such Participant shall, upon completion of the drilling of the well and after the Joint Operating Committee has voted against testing of all or any such intervals within the said well, give notice to the other Participants setting out such relevant information as is necessary in order to allow the other Participants to consider the proposal and elect whether or not to participate. Each of the Participants receiving such notice shall respond to it, by notice to the other Participants, within forty-eight (48) hours of receipt, electing whether or not to participate. Any Participant failing to respond within the said period shall be deemed to have elected not to participate.
- 15.7.4 If the Participants electing to participate under clauses 15.7.2 or 15.7.3, together with the Participant proposing the Sole Risk Testing, reach a Passmark, the proposed Sole Risk Testing shall be carried out in accordance with the said notice by the Operator as Joint Operations as if determined by the Joint Operating Committee and the then current Programme shall be deemed amended accordingly and the Operator shall promptly notify the Participants of the consequential amendments to the current relevant Budget.
- 15.7.5 If the Participants electing to participate under clauses 15.7.2 or 15.7.3, together with the Participant proposing the Sole Risk Testing, do not reach a Passmark, such Sole Risk Participants may, subject to clause 15.2.9, request the Operator to undertake the Sole Risk Testing. In the case of a notice given under clause 15.7.2 the Sole Risk Testing will be commenced on or as soon as possible after the date specified in the said notice and in any event not later than 180 days thereafter. In the case of a notice given under clause 15.7.3 the Sole Risk Testing will be commenced as soon as it is possible to do so without interference to the Joint Operations on that well.
- 15.7.6 If any Participant which was a Non-Sole Risk Participant wishes at any time to acquire the data and information obtained from any Sole Risk Testing then such Non-Sole Risk Participant shall pay to the respective the Sole Risk Participant (or if more than one Sole Risk Participant, in proportion to their respective Sole Risk Interests) an amount equal to [xxx (X) times] the amount it would have contributed to such Sole Risk Testing had it originally participated in the Sole Risk Testing [[together with interest on such amount at a rate equal to [ ] percent ([ ]%) above SONIA Compounded in Arrears from the date on which the costs were incurred to the date the invoice is issued, with a five (5) Working Day lookback]]<sup>66</sup>. Any Participant making such payment shall thereupon become a joint owner of such data and information.
- 15.7.7 [[If Sole Risk Testing directly results in the drilling of an [exploration or] appraisal well, either as a part of Joint Operations or by Sole Risk Drilling, any Participant which was a Non-Sole Risk Participant in such Sole Risk Testing and which participates in such drilling shall pay to the Sole Risk Participant (if more than one, in proportion to their Sole Risk Interests) an amount equal to [[xxx (X)

---

<sup>66</sup> This clause applies if a party wishes to buy into the testing data. There is an option here as to whether to apply a multiple to costs – if the multiple is sufficiently high, it may be felt that interest is not necessary, but if there is no or a small multiple then interest may be appropriate.

times]] the amount it would have contributed to such Sole Risk Testing had it participated in the Sole Risk Testing in the first place, [[together with interest on such amount at a rate equal to [ ] percent ([ ]%) above SONIA Compounded in Arrears from the date on which the costs were incurred to the date the invoice is issued, with a five (5) Working Day lookback]] less any amount which such Participant may have paid pursuant to clause 15.7.6.]] or [[If Sole Risk Testing directly results in the drilling of an exploration or appraisal well, either as part of Joint Operations or by Sole Risk Drilling, any Participant which was a Non-Sole Risk Participant in such Sole Risk Testing and which participates in such drilling shall not be required to pay for the Sole Risk Testing unless it wishes to acquire the data and information obtained from such Sole Risk Testing in accordance with 15.7.6.]]<sup>67</sup>

## **15.8 Sole Risk Development**

- 15.8.1 In the event that a proposal is made to the Joint Operating Committee that a development Programme and Budget should be prepared for a particular Discovery, pursuant to clause 11.1.1 and such proposal is rejected then, provided that any appraisal Programme approved by the Joint Operating Committee and relating to that Discovery has been completed (but excluding any appraisal work included in an exploration and appraisal Programme and Budget if an AFE for it has been submitted to the Participants under clause 11.2 and the Joint Operating Committee has voted against or failed to vote in favour of such AFE within twenty-eight (28) days after submission), any Participant may give notice to the other Participants that it intends to prepare a development Programme and Budget for that Discovery. Such Participant, together with such of the other Participants as within twenty-eight (28) days of such notice give counter-notice of their wish to participate in it, shall be entitled to proceed with the preparation of, and to submit such Programme and Budget for approval by, the Joint Operating Committee in accordance with clause 11.1.2.
- 15.8.2 If a development Programme and Budget prepared in accordance with clause 15.8.1, or a revised form of it, is approved by the Joint Operating Committee in accordance with clause 11.1.2, then the Participant or Participants which prepared the development Programme and Budget shall be entitled to charge all reasonable costs incurred in the preparation of it to the Joint Account together with interest at the rate of [ ] per cent above SONIA Compounded in Arrears from the date on which the costs were incurred to the date the invoice is issued, with a five (5) Working Day lookback.
- 15.8.3 In the event that, following the submission to the Joint Operating Committee for a proposed development Programme and Budget for a particular Discovery in accordance with clause 11.1.2, the Joint Operating Committee does not approve such development Programme and Budget within the period provided in that clause, then any Participant may serve notice on the other Participants of its intention to develop the Discovery at sole risk. Such notice shall be accompanied by details of its proposed development Programme and Budget. The other Participants may (subject to clause 15.6.2 where the Discovery resulted from Sole Risk Drilling) give counter-notice that they wish to participate in the development:-
- (a) within twenty-eight (28) days of such notice if the proposed development

---

<sup>67</sup> Please see the Guidance Notes for a discussion of the options under this clause.

Programme and Budget is the same as, or substantially similar to, that which was not approved by the Joint Operating Committee; or

- (b) within ninety (90) days of such notice if the proposed development Programme and Budget is substantially different from that which was not approved by the Joint Operating Committee.

15.8.4 If all the other Participants elect to participate under clause 15.8.3 the Participants shall proceed with the development in accordance with such development Programme and Budget and the provisions of clause 11.1.4 shall apply upon the Secretary authorising (whether by consenting or by approving or by serving a Development Plan) the commencement of the development. The Participants which prepared the development Programme and Budget shall be entitled to charge all reasonable costs incurred in its preparation to the Joint Account relating to that Discovery together with interest at the rate of [ ] per cent above SONIA Compounded in Arrears from the date on which the costs were incurred to the date the invoice is issued, with a five (5) Working Day lookback. Where less than all the Participants elect to participate under clause 15.8.3 the Participants which proposed the development Programme and Budget shall be entitled to charge all reasonable costs incurred in the preparation of it to the Participants electing to participate together with interest at the rate specified in the previous sentence.

15.8.5 In the event that, following approval by the Joint Operating Committee of a development Programme and Budget pursuant to clause 11.1.3 or following any notice served under clause 15.8.3, less than all the Participants, or in the case of clause 15.8.3 less than all the Non-Sole Risk Participants, elect to participate in the development of a Discovery within the periods respectively provided in those clauses, those Participants which elected to participate, or in the case of clause 15.8.3 the Sole Risk Participants and those Non-Sole Risk Participants which elected to participate, shall be entitled to proceed with the development of the Discovery at their sole risk in accordance with the relevant development Programme and Budget provided that if, upon the Secretary authorising (whether by consenting or by approving or by serving a Development Plan) the commencement of the development, such development Programme and Budget has been or is required to be materially amended<sup>68</sup> (which shall for the avoidance of doubt include any change in the date of commencement of the development or the rate at which Petroleum may be produced) then the Participants participating in the development shall as soon as practicable following such authorisation give notice to the other Participants of such amendments and within twenty-eight (28) days of such notice:-

- (a) any of the Participants participating in the development of the Discovery may by notice to all the other Participants, elect not to proceed with the development; and/or
- (b) any of the Participants not participating in the development of the Discovery may, by notice to all the other Participants elect to do so. On such election such Participant shall pay to the respective Sole Risk Participant (if more than one, in proportion to their respective Percentage Interests in the Sole Risk Project or such other proportion as they may have agreed) an amount equal to the reasonable costs incurred in the

---

<sup>68</sup> It is usual to enable parties to drop out of a development if the development plan changes – the parties may decide to limit that right to material changes or may consider that this will give rise to difficulties of interpretation.

preparation of the Development Plan together with interest at the rate of [ ] per cent above SONIA Compounded in Arrears from the date on which the costs were incurred to the date the invoice is issued, with a five (5) Working Day lookback.

Those Participants which, at the expiry of the said period of twenty-eight (28) days, are participating in the development shall be obliged to carry it out.

15.8.6 In the event that, following the Secretary authorising (whether by consenting or by approving or by serving a Development Plan) the commencement of a development in which all the Participants are participating, any of the Participant elects not to proceed with the development under clause 11.1.4, the other Participants shall be entitled to proceed with the development in accordance with the approved development Programme and Budget (as amended) and, if they do so proceed, shall be obligated to carry out the development.

15.8.7 In the event that less than all the Participants participate in the development of a Discovery in respect of which no Sole Risk Drilling has been carried out then, unless the Participants participating in such development unanimously agree otherwise, the Percentage Interest of each Participant in such development shall be in proportion to its Percentage Interest in the Licence.

15.8.8 In the event that less than all the Participants participate in the development of a Discovery in respect of which Sole Risk Drilling has been carried out then, unless the Participants participating in such development unanimously agree otherwise:-

(a) [[if the Participant which participated in the first such Sole Risk Drilling (for the purposes of this clause 15.8.8 "**Original Sole Risk Participant**") or if more than one such Participant, all such Participants, participate in the development, then the Percentage Interest of each Participant which was not an Original Sole Risk Participant in such development shall equal its Percentage Interest in the Licence, and the remaining Percentage Interest in the development shall be held by the Original Sole Risk Participant (if more than one, in proportion to their Sole Risk Interests); or

(b) if less than all the Original Sole Risk Participants participate in the development, then the calculation under (i) above shall first be performed as though all the Original Sole Risk Participants were participating. The Percentage Interests in such development of those Original Sole Risk Participants who do not participate shall then be allocated to all the participating Participants, in proportion to the Percentage Interests obtained in such preliminary calculation.]]

or (a) [[the Sole Risk Interests in such development shall then be allocated to all the participating Participants in the proportion that each Participant's Percentage Interest bears to the aggregate of the Percentage Interests of all the participating Participants.]]<sup>69</sup>

(b/c) any Participant which does not participate in the development of a

---

<sup>69</sup> Two options are given for the allocation of interests in the development – either the interests can be allocated pro rata to percentage interest shares (the second option in the text consisting of a single paragraph (a)) or some priority can be given to those parties who took the original risk over those who backed in, so that those who backed in will get their percentage interest share and those who were in from the start will have their percentage interest share but will also share the interest of any participant who chooses not to come in or not to continue in (the first option, consisting of two paragraphs (a) and (b)). If the straight percentage interest share route is adopted then clause 15.6.2 may need amendment.

Discovery shall have no further rights in such development.

15.8.9 [[Sole Risk Development will in respect of the areas comprised in the development be regarded as creating a New Area and the provisions of clause 9.10 shall apply to it. For the purposes of any application of Clause 5, 6 or 8 of the Licence, the Participants agree that, in the event of the creation of any New Area during the Initial Term or Second Term, the surface area above such New Area will, to the extent permitted under the Licence, be included in the part of the Licence Area to which the Licence is to continue to apply during Phase C, the Second Term or any Third Term subject to the surface areas above any area comprised in any development carried out under the Joint Operations and authorised by the Secretary prior to his authorisation of the Sole Risk Development having priority.]]<sup>70</sup>

15.8.10 [[The Participants recognise that it is possible that more than one development Programme and Budget may be proposed under clause 15.8.3 for the development of the Discovery at sole risk and that such proposals may conflict. In such event, the Participants shall meet to discuss such a deadlock and seek in good faith to resolve the matter. Notwithstanding any other provision of this Agreement, no Participant shall be entitled to proceed with the development of the Discovery as a Sole Risk Project until such deadlock has been resolved to the satisfaction of each of the Participants.]]<sup>71</sup>

**15.9 [Non-consent]** <sup>72</sup>

## **16. Costs and Accounting**

### **16.1 The Accounting Procedure**

The Accounting Procedure is hereby made part of this Agreement. In the event of any conflict between any provision in the main body of this Agreement and any provision in the Accounting Procedure, the provision in the main body shall prevail.

## **17. Default**

<sup>73</sup>

### **17.1 Notice of Default**

If any Participant (“**Defaulting Participant**”) fails to pay in full its share of any Invoice or Advance by the due date in accordance with paragraph 4.4 or paragraph 4.6 of the Accounting Procedure or is in Default (as defined in the Decommissioning Security Agreement) the Operator shall as soon as practicable give notice to all the Participants of such default and the date of its commencement (a “**Default Notice**”).

### **17.2 Failure to Pay**

If the Defaulting Participant fails to pay in full its share of any Invoice or Advance by the due date in accordance with paragraph 4.4 or paragraph 4.6 of the Accounting Procedure then (except where such Invoice or Advance relates to the costs of Decommissioning in

---

<sup>70</sup> Whether or not clause 9.10 allowing New Areas to be created by assignment is included in the agreement, New Areas are likely to be required where a party has not consented to a development - this clause should however be checked to ensure that any drafting changes in relation to New Areas are applied consistently here

<sup>71</sup> Conflicting development plans is a rare occurrence – it is not covered by clause 15.3 – the parties may wish to include this clause or may prefer to leave the agreement silent rather than giving each Participant an effective veto.

<sup>72</sup> If the parties wish, a non-consent clause may be inserted at this point – an example of such a clause is included in the Guidance Notes.

<sup>73</sup> See general discussion of this clause in the Guidance Notes.

which case the provisions of the Decommissioning Security Agreement shall apply):-

- (a) with the exception of the Defaulting Participant each Participant (“**Non-Defaulting Participant**”) shall contribute, in accordance with this clause 17.2, a share of the amount in default in the proportion that its Percentage Interest bears to the total of the Percentage Interests of the Non-Defaulting Participants and pending receipt of such additional contributions the Operator shall make arrangements to meet any commitments falling due by borrowing the necessary finance or by making the necessary finance available itself and all costs of any such finance shall be charged to the Non-Defaulting Participants; finance made available by the Operator shall [[bear interest at a rate equal to two (2) per cent above SONIA Compounded in Arrears from the due date to the date of payment, with a five (5) Working Day lookback]][[be subject to the financing fee provided in paragraph 4.3 of the Accounting Procedure]]<sup>74</sup>;
- (b) within three (3) Working Days following the date of service of the Default Notice, the Operator shall notify all the Participants of the liability of each of the Non-Defaulting Participants to contribute to the amount in default and shall make a further Cash Call or issue a further Invoice accordingly to take effect on the expiry of the six (6) Working Days specified in clause 17.2(c) or on such later date as the Joint Operating Committee may decide; and
- (c) if such default continues for more than six (6) Working Days after the date of service of the Default Notice each of the Non-Defaulting Participants shall on the Working Day next following such sixth or later agreed Working Day pay the amount notified under clause 17.2(b), and thereafter shall continue to pay, in addition to its share of subsequent Advances or Invoices, the same proportion of that part of all such subsequent Advances or Invoices attributable to the Defaulting Participant until such time as the Defaulting Participant has remedied its default in full or until [[forfeiture/transfer]]<sup>75</sup> of its interest pursuant to clause 17.6, and failure by any Participant to make such payments shall likewise and with the same results render that Participant in default.

### **17.3 Remedy of Default**

- 17.3.1 The Defaulting Participant shall have the right to remedy the default at any time prior to [[forfeiture/transfer]] of its interest pursuant to clause 17.6, by payment in full to the Operator or, if the Non-Defaulting Participants have paid any amounts under clause 17.2(c), the Non-Defaulting Participants, in proportion to the amounts so paid by them, of all amounts in respect of which the Defaulting Participant is in default, together with interest thereon calculated on a day to day basis at a rate equal to the rate stipulated from time to time under the Late Payment of Commercial Debts (Interest) Act 1998, from and including the due date for payment of such amounts until the actual date of payment.<sup>76</sup>
- 17.3.2 If the default is remedied in accordance with clause 17.3.1, the Defaulting Participant shall (from the day after the date on which the default is remedied) have restored to it the right to take in kind and dispose of its Percentage Interest

---

<sup>74</sup> There are options here as to the rate to be applied where the Operator makes up the default temporarily. The second option should cover the Operator's costs and therefore complies with the no benefit/no loss principle but this may be a case for an exception to that principle.

<sup>75</sup> Here and throughout this clause, the wording should be amended to reflect the option selected in clause 17.6.

<sup>76</sup> The interest rate suggested in this clause is deliberately very high as, if any exploration has been unsuccessful and therefore forfeiture may be seen as of little significance, this may be the only effective remedy of the Participants for a deliberate failure to pay.

share of Petroleum subject to any lifting procedures, but for the avoidance of doubt shall not be entitled to receive or be compensated for any Petroleum sold by the Operator on its behalf pursuant to clause 17.4 during any period in which it was in default.

#### **17.4 Disposal of Petroleum**

If any default continues for more than six (6) Working Days after the date of notification by the Operator under clause 17.1 then, for so long as the default so continues, the Defaulting Participant shall not be entitled to take in kind and dispose of its Percentage Interest share of Petroleum which shall instead be taken in kind and disposed of on behalf of the Defaulting Participant by the Operator and the actual proceeds of such sale (after the deduction of any costs incurred by the Operator in respect of such sale) shall be applied as follows:

- (a) first to discharge the liability of the Defaulting Participant to the Non-Defaulting Participants as specified in clause 17.3 (by application to first the interest and then the principal), in the proportions in which their respective Percentage Interests bear to the total of such liability; and
- (b) if any proceeds remain in the hands of the Operator after all liabilities arising under clause 17.3 have been settled, to discharge any outstanding liability of the Defaulting Participant to make provision for the costs of Decommissioning under the Decommissioning Security Agreement; and
- (c) if any proceeds remain in the hands of the Operator after all liabilities arising under clauses 17.4 (a) and 17.4 (b) have been settled, the Operator shall transfer such proceeds promptly to the Defaulting Participant.

#### **17.5 Rights under this Agreement suspended**

17.5.1 After service of a Default Notice and during the continuation of any default the Defaulting Participant shall not be entitled to be represented at meetings of the Joint Operating Committee or any sub-committee of it nor to vote thereat and clause 9.8.2 shall apply in relation to any matters requiring the consent or approval of Participants under this Agreement, subject to the following provisions:

- (a) in respect of any decision to conduct operations of the type described in clause 15.1, whether proposed as a Sole Risk Operation or proposed to the Joint Operating Committee as Joint Operations, the Non-Defaulting Participants shall be entitled to proceed with such operation as a Sole Risk operation with the Non-Defaulting Participants being deemed to be the Sole Risk Participants and the Defaulting Participant being the Non-Sole Risk Participant;
- (b) for any decision requiring the consent or approval of all Participants (including for the avoidance of doubt the approval of any transfer pursuant to clause 23), the consent or approval of the Defaulting Participant shall not be required and the consent or approval of all Non-Defaulting Participants shall be sufficient to decide the matter;
- (c) the Defaulting Participant shall be bound by decisions of the Joint Operating Committee or, where this Agreement requires unanimity, by decisions of all of the Non-Defaulting Participants, made during the continuation of the default.

17.5.2 After service of a Default Notice and during the continuation of any default the



Defaulting Party shall have no further access to any data and information relating to the Joint Operations other than such information or data as may be necessary to enable the Defaulting Party to remedy its default.

- 17.5.3 After service of a Default Notice and during the continuation of any default the Defaulting Party shall not be entitled to withdraw pursuant to clause 24 and shall be entitled to transfer all or any part of its interest pursuant to clause 23 only if its default is remedied prior to such transfer.

## **17.6 [[Forfeiture/Transfer]]<sup>77</sup> of interest**

- 17.6.1 Subject to the remaining provisions of this clause 17.6, in the event that the default continues for more than [sixty (60)] days (or [thirty (30)] days if such default occurs in respect of an Invoice or Cash Call issued by the Operator in respect of an exploration well) from the date of service of a Default Notice in respect of a single default (or for a cumulative period of [sixty (60)] days in respect of a number of defaults within any twelve successive calendar months) then each of the Non-Defaulting Participants shall have the right to have [[forfeited/ transferred]] to it and to acquire, by notice to the other Participants, the interest of the Defaulting Participant in the Licence (in so far as it relates to the Licence Area) and in and under this Agreement or, if any other Non-Defaulting Participant exercises such right within thirty (30) days after the first notice of exercise, its proportionate share of the interest of the Defaulting Participant in the Licence (in so far as it relates to the Licence Area) and in and under this Agreement, such share being the proportion which its Percentage Interest bears to the total Percentage Interests of the Non-Defaulting Participants exercising such right (or as the Non-Defaulting Participants exercising such right may otherwise agree).
- 17.6.2 Until any Non-Defaulting Participant exercises such right as is mentioned in clause 17.6.1 then, without prejudice to any rights of the Non-Defaulting Participants, and unless [[the Joint Operating Committee decides]] [[all the Non-Defaulting Participants agree]]<sup>78</sup> to abandon the Joint Operations, the Joint Operations shall continue and the Operator shall continue to apply the provisions of clause 17.4.
- 17.6.3 Any [[forfeiture/transfer]] of the interest of the Defaulting Participant in the Licence (in so far as it relates to the Licence Area) and in and under this Agreement pursuant to clause 17.6.1 shall be:
- (a) subject to any necessary consent of the Secretary;
  - (b) without prejudice to any other rights of each Participant other than the Defaulting Participant;
  - (c) acquired as beneficial owner or owners free of any charges and encumbrances (other than rent and royalty under the Licence);

---

<sup>77</sup> See general discussion in the Guidance Notes on the option provided here of using the traditional forfeiture remedy or opting for the sale at a market value.

<sup>78</sup> The decision as to whether to abandon if no-one wishes to acquire the defaulter's interest or to simply continue with the sales of petroleum on its account may be taken either by the Joint Operating Committee or by unanimity.

- (d) [[subject to the payment of consideration agreed or determined as set out in clause 17.7 [[if such transfer occurs after the date of approval of any Development Plan]];]]<sup>79</sup> and
- (e) effective as of the date of the [[forfeiture/transfer]].

17.6.4 [Upon [[forfeiture /transfer]] and acquisition of the interest of a Defaulting Participant under clause 17.6.1, a Defaulting Participant shall promptly join in such actions as may be necessary or desirable to obtain any necessary consent of the Secretary and shall execute and deliver any and all documents necessary to effect any such [[forfeiture /transfer]] and acquisition, and all costs and expenses pertaining to any such [[forfeiture /transfer]] and acquisition (including for the avoidance of doubt any stamp duty or stamp duty land tax incurred on the documents executed to effect such [[forfeiture /transfer]] and acquisition) shall be the responsibility of the Defaulting Participant.]

## 17.7 [[Calculation of Consideration<sup>80</sup>

A Non-Defaulting Participant acquiring all or part of the interest of the Defaulting Participant [[after the date of approval of any Development Plan]]<sup>81</sup> shall pay to the Defaulting Participant on the date of transfer a proportionate part of the value of the Defaulting Participant's interest in the Licence (in so far as it relates to the Licence Area) and in and under this Agreement as agreed between each acquiring Participant and the Defaulting Participant. In default of such agreement within thirty (30) days of the first notice given under clause 17.6.1, then either party (the "**Referring Party**") may serve notice on the other requiring the matter to be determined by an Expert in accordance with the following provisions:

- 17.7.1 the identity of the Expert shall be agreed between the parties to the dispute or in default of such agreement within ten (10) Business Days of service of the notice under clause 17.7, on application to the President for the time being of the [Institute of Chartered Accountants in England and Wales] to appoint an individual to act as the Expert in the reference requesting that the appointment be made within ten (10) Business Days of receipt of the application;
- 17.7.2 the Expert shall be qualified or experienced in the valuation of oil industry assets. No person shall be appointed as an Expert under this clause 17.7 in any dispute in respect of which that person has any financial or personal interest in the result of the Expert determination except by the prior written consent of all of the parties to the dispute;
- 17.7.3 the Expert shall be required as a condition of appointment to keep all matters relating to the appointment, the dispute and his determination confidential;
- 17.7.4 the Expert shall reach his decision on such basis as is fair and reasonable, taking into account good oil and gas industry practice and all of the circumstances that the Expert believes are relevant to enable him to make his decision;

---

<sup>79</sup> This clause should be used if the parties opt for the forced sale route – there is an option to provide that transfer is for no value during the exploration phase but for value after a development plan is approved, on the basis that exploration acreage is particularly hard to value.

<sup>80</sup> Please see the discussion on this clause in the Guidance Notes.

<sup>81</sup> This wording should be consistent with 17.6.3(d)

17.7.5 [[the Expert shall notify the parties to the dispute of his preliminary decision within thirty (30) Business Days of the date of acceptance of his appointment (or such longer period as such parties may agree in writing). The parties shall be given ten (10) Business Days to make representations on the preliminary decision and the Expert shall, having taken account of such representations, reach his final decision within (20) Business Days of notification of his preliminary decision]]

OR

- (a) [[Within 30 days of the appointment of the Expert, each of the parties to the dispute shall provide a submission to the Expert. The submission shall consist of a single number, being its valuation of the proportionate share of the Defaulting Party's interest and supporting evidence for such valuation.
- (b) Neither party shall be entitled to:
  - (i) make a submission other than as set out above, including submitting a range of numbers, options or any other proposal which is intended to make the proposed number conditional on any matter;
  - (ii) request any guidance from the expert;
  - (iii) request any extension of time;and any submission which fails to comply with the above provisions shall be invalid, and the Expert shall be required to make a determination in favour of the other party.
- (c) Within 20 days of receiving the two submissions, the Expert shall notify the parties of his determination. The Expert's determination shall specify which of the two numbers submitted in his opinion most closely represents the value of the interest. The Expert shall not be required to give any reasons for his determination. The Expert shall not be entitled to:
  - (i) make any determination other than to choose one of the two numbers submitted;
  - (ii) make any determination containing any conditionality;
  - (iii) request any further documentation or information from either party or
  - (iv) request any extension of time.
- (d) Any determination of the Expert which fails to comply with the above shall be invalid and the terms of reference for the Expert will provide that the Expert will not receive remuneration if the determination is invalid;]]

17.7.6 the [[final]] decision of the Expert shall be binding on the parties to the dispute except in the case of fraud or manifest error. The Expert shall act as expert and not as arbitrator;

17.7.7 the Expert's fees and expenses shall be deducted from the sale price but the parties to the dispute shall bear their own legal and other costs in relation to any Expert determination;

17.7.8 [[if the consideration as determined by the Expert is not acceptable to the Non-Defaulting Participant, it shall be entitled to withdraw its notice served under clause 17.6, but shall not be permitted to serve another such notice within [six (6)] calendar months of its original notice;]]

- 17.7.9 if one or more Non-Defaulting Participants have served notice under clause 17.6, and one or more of those parties has agreed a consideration or accepted an Expert determination under this clause 17.7, then the transfer to the Non-Defaulting Participant(s) which have so agreed or accepted shall proceed in respect of their proportionate shares of the interest of the Defaulting Participant in the Licence (in so far as it relates to the Licence Area) and in and under this Agreement, such shares being the proportion which their Percentage Interests bear to the total Percentage Interests of the Non-Defaulting Participants originally exercising such right (or as the Non-Defaulting Participants which have so agreed or accepted may otherwise agree) and the remainder of the interest of the Defaulting Participant in the Licence and in and under this Agreement shall be retained by it;
- 17.7.10 any amount due to any Non-Defaulting Participant pursuant to clause 17.3 and not previously repaid under clause 17.4, and any amounts necessary to discharge any outstanding liability of the Defaulting Participant to make provision for the costs of Decommissioning under the Decommissioning Security Agreement shall be deducted from the consideration due to the Defaulting Participant and paid to such Non-Defaulting Participant or to the relevant trustee in accordance with the Decommissioning Security Agreement as the case may be[;
- 17.7.11 [[a discount of [[xx%]] shall be applied to the valuation of the Defaulting Participant's interest in the Licence and under this Agreement as agreed between the parties to the dispute or determined by the Expert.]]

## **17.8 [[Power of Attorney<sup>82</sup>**

The Defaulting Participant appoints the Operator to be its attorney for the purposes of:

- (a) taking and disposing on its behalf of its Percentage Interest share of any Petroleum and applying the proceeds as set out in clause 17.4;
- (b) taking such actions as may be necessary or desirable to obtain any necessary consent of the Secretary to a [[forfeiture/transfer]] pursuant to clause 17.6.2; and
- (c) executing and delivering on its behalf and in its name any and all documents necessary to effect any such [[forfeiture/transfer]]and acquisition;

and all costs and expenses pertaining to any such [[forfeiture/transfer]]and acquisition(including for the avoidance of doubt any stamp duty or stamp duty land tax incurred on the documents executed to effect such [[forfeiture/transfer]]and acquisition) shall be the responsibility of the Defaulting Participant.]]

## **17.9 Default by the Operator**

If the Participant acting as Operator fails to pay in full its share of any Invoice or Advance by the due date in accordance with paragraph 4.4 or paragraph 4.6 of the Accounting Procedure or is in Default (as defined in the Decommissioning Security Agreement) then the Non-Operator having the largest Percentage Interest (and in the event of two or more such Non-Operators with identical Percentage Interests that Non-Operator having held such Percentage Interest for the longest time) shall be entitled to and shall exercise all of the powers of the Operator under this clause 17 in respect of such default, including

---

<sup>82</sup> A power of attorney is included as an option in order to give clear authority to the operator to enter into sale transactions in respect of production under clause 17.4 as agent for the defaulting party swiftly, without reliance on an insolvency practitioner. The operator may also need to execute transfer documents, including deeds, on behalf of the defaulting party if forfeiture or transfer ensues. If the power of attorney option is used, the Agreement will need to be executed as a deed.

without limitation the power of attorney in clause 17.8.

## **18. Disposal of Petroleum**

Subject to clauses 15 and 17, in respect of the development of any Discovery:-

- (a) each of the Participants shall have the right to take in kind and separately dispose of its Percentage Interest share in the total quantities of Petroleum available under this Agreement, provided always that the Operator shall have the right to use in any Joint Operations as much of such Petroleum as may be needed by it for that purpose and the quantities to be so used shall be excluded from the estimates to be provided by the Operator; and
- (b) each of the Participants shall have the obligation to take in kind and separately dispose of its Percentage Interest share in all Petroleum produced;
- (c) the Participants which have or may have Percentage Interests in respect of such development shall prior to the commencement of production agree allocation, attribution and lifting procedures to reflect the principles set out at paragraphs (a) and (b) of this clause 18.

## **19. Data and Confidentiality**

### **19.1 Confidential Data and Information**

All data and information acquired or received by any Participant (including by the Participant acting in the capacity of Operator) under this Agreement shall be held confidential by such Participant during the continuance of this Agreement and for a period of five (5) years thereafter<sup>83</sup> and shall not be divulged in any way to any third party, without the prior written approval of all the other Participants provided that:-

- (a) any Participant (including the Participant acting in the capacity of Operator) may, without such approval, disclose such data and information:-
  - (i) to the extent required by the Acts, the Licence, any other applicable Legislation or by any government, statutory or regulatory body or to comply with the rules of a recognised stock exchange or the Stock Exchange Commission of the United States of America;
  - (ii) to the extent that it is already lawfully known to the Participant at the date of disclosure under no obligation of confidentiality;
  - (iii) to the extent that it is in the public domain or enters into the public domain except by breach of this Agreement; or
  - (iv) to the extent that it becomes available to the Participant through a third party which expressly represents that it is under no obligation of confidentiality in respect of it;
- (b) any Participant (including the Participant acting in the capacity of Operator) may, subject to clause 19.1(c), disclose such data and information to:
  - (i) its employees, directors, officers [and contractor personnel];
  - (ii) any Affiliate of such Participant and its employees, directors, officers [and contractor personnel] provided that the Participant shall be responsible for the

---

<sup>83</sup> Please see discussion in the Guidance Notes on the implication of this provision.

- acts of such Affiliate and its employees, directors, officers [and contractor personnel] in respect of such data and information as if they were its own; or
- (iii) any bona fide intended assignee of such Participant, or bona fide intended purchaser of shares in such Participant or in a holding company of such Participant; or
  - (iv) any outside professional consultants; or
  - (v) any bank or financial institution from whom such Participant is seeking or obtaining finance; or
  - (vi) any insurer or insurance broker from which such Participant is seeking insurance.
- (c) Before disclosing any such data or information to any person under the provisions of clause 19.1(b), the Participant shall procure that the proposed recipient of such Information is (i) made aware of the terms of this Agreement, and (ii) except where disclosure is made under the provisions of clause 19.1(b) (i) or (ii), is bound to the Participant to maintain confidentiality of such data or information by professional confidentiality or on terms no less onerous than those set out in this clause.
- (d) The Operator may disclose such data and information to:
- (i) its employees, directors, officers [and contractor personnel];
  - (ii) such persons as may be necessary in connection with the conduct of the Joint Operations;
  - (iii) any party requesting a release pursuant to the provisions of the Guidelines for Release of Proprietary Seismic Data agreed between the Secretary of State and Oil and Gas UK, provided that such party executes a seismic release agreement substantially in the form of the industry standard seismic release agreement published from time to time by Oil and Gas UK.
- (e) In the event of any Participant ceasing to hold a Percentage Interest, such Participant shall nevertheless remain bound by this clause 19.1.

## **19.2 Trading Rights**

The Operator may, with the prior written approval of all the Participants and on such terms and conditions as they may determine, exchange any such data and information for other similar data and information and the Operator shall promptly provide all the Participants with a conformed copy of the agreement relating to such exchange and all such other data and information. In any event, the Operator shall enter into such trade or exchange agreements for and on behalf of itself and the other Participants and shall obtain an undertaking in substantially the same terms as clause 19.1 from any third party to such trade. Notwithstanding the foregoing provisions of this clause 19, if any Participant is also the owner or part owner of such other data and information it shall not be entitled to prevent an exchange which has been approved by all the other Participants.

## **19.3 Licensed Data<sup>84</sup>**

Where the Joint Operating Committee authorises the Operator to obtain a licence of data (including inter alia seismic data), the following principles shall apply unless otherwise

---

<sup>84</sup> Please see discussion in Guidance Notes on seismic trading.

unanimously agreed by the Participants:

- 19.3.1 subject to clause 19.3.2 below, in the case of newly licensed data, the cost of the original aggregate licence fee shall be apportioned between the Participants in proportion to their Percentage Interests (excluding any Participant that is already licensed to use the data in question in relation to Joint Operations);
- 19.3.2 any assignee of a Percentage Interest will be jointly and severally liable with the assignor for the full amount of any fee payable by the licensee as a result of such assignment and/or as a result of the access to or use of the licensed data by such assignee; and
- 19.3.3 where any Participant is subject to a direct or indirect change of control, such Participant shall be liable for the full amount of any fee payable by the licensee as a result of such change of control.

## **20. Public Announcements**

- 20.1 Subject to clause 20.2, the Operator shall be responsible for the preparation and release of all public announcements and statements regarding this Agreement or the Joint Operations provided always that no such public announcement or statement shall be issued or made unless all the Participants have been furnished with a copy in advance and the approval of the Joint Operating Committee has been obtained, except that the Operator shall not be prohibited from making such public announcements as it may think appropriate in the case of serious incidents of personal injury or pollution where obtaining the consent of the Joint Operating Committee is not practicable but shall promptly furnish all the Participants with a copy thereof.
- 20.2 If any Participant shall itself wish to issue or make any public announcement or statement regarding this Agreement or the Joint Operations it shall not do so unless it furnishes all the Participants with a copy of such announcement or statement in advance and obtains the approval of the Joint Operating Committee provided that, notwithstanding any failure to obtain such approval, no Participant or any Affiliate of such Participant shall be prohibited from issuing or making any such public announcement or statement if it is necessary to do so in order to comply with any applicable law or the regulations of a recognised stock exchange [[or the Securities and Exchange Commission of the United States]]. The Participants issuing or making any such announcement or statement shall, contemporaneously with the issuing or making thereof, provide a copy to each other Participant.

## **21. Outgoings and Grants**

### **21.1 Outgoings**

The Participants shall be liable for the payment of their respective Percentage Interest shares of all sums which may be properly payable under the Acts and the Licence provided that to the extent permitted by the Acts and the Licence, the Operator shall pay all such sums excepting royalties from the Joint Account. Each Participant shall be responsible for the settlement of its own royalties in accordance with the provisions of the Licence.

### **21.2 Grants**

Grants received by any of the Participants from any governmental agency or body in the United Kingdom or of the European Union in respect of their respective expenditures made pursuant to this Agreement will be retained by the Participant receiving them. The

Operator shall supply to any Participant applying for a grant, at the sole cost of the Participant requiring it, all requisite data and information which such Participant may reasonably require for the purpose.

### **21.3 Emissions allowances and credits<sup>85</sup>**

Prior to the start of production under any development the Participants shall consider how to deal with any allowances or credits in respect of the emission of any substance into the environment which are issued to the Operator in respect of the Field or any Joint Property and shall develop procedures for the allocation and/or disposal of any such allowances or credits not required for Joint Operations and, without prejudice to the right and obligation of the Operator to purchase such allowances or credits as may be necessary to comply with its obligations under clause 6.2.2, for the purchase or other provision of additional allowances or credits where insufficient allowances and credits are issued to the Operator for the purposes of Joint Operations.

## **22. Covenant, Undertaking and Relationship**

### **22.1 Covenant and Undertaking**

Without prejudice to the overriding responsibility of the Operator under clause 6.2.2, each Participant hereby covenants and undertakes with each other Participant that it will comply with all the applicable provisions and requirements of the Acts and the Licence and will do all such acts and things within its control as may be necessary to keep and maintain the Licence in force and effect.

### **22.2 Relationship**

22.2.1 The liability of the Participants hereunder shall be several and not joint or collective and each Participant shall be responsible only for its individual obligations hereunder. It is expressly agreed that it is not the purpose or intention of this Agreement to create, nor shall it be construed as creating, any mining partnership, commercial partnership or other partnership.

22.2.2 Subject to clauses 6.2.4, 8.3.3 and 19.3, each Participant agrees to indemnify and keep each other Participant, each other Participant's Affiliates and any of the directors, officers and employees or Agency Personnel of the indemnified Participant or its Affiliates (together the "**Participant Group**") indemnified, to the extent of the indemnifying Participant's Percentage Interest share, from and against any claim by or liability to (including any costs and expenses necessarily incurred in respect of any such claim or liability) any person not being a Participant hereto, (including, for the avoidance of doubt, any such claim or liability arising from or in connection with Environmental Loss) arising from or in connection with the Joint Operations including (without prejudice to the generality of the foregoing) any such claim or liability resulting from the negligence of any member of the Participant Group but excluding any such claim or liability which is caused by the Wilful Misconduct of any Participant, but provided always that any such claim or liability arising from or in connection with Environmental Loss shall remain subject to the foregoing indemnity even where caused by the Wilful Misconduct of a Participant.

In the case of any such claim or liability, other than any such claim or liability arising from or in connection with Environmental Loss, which is caused by the

---

<sup>85</sup> Please see the discussion in the Guidance Notes with regard to Emissions Trading.



Wilful Misconduct of a Participant, such Participant shall indemnify and defend the other Participants and hold them harmless against such claim or liability, (including any award of damages and any legal or other costs and expenses incurred in respect of such claims or liability) but in no event or circumstance whatsoever (including Wilful Misconduct) shall such Participant be liable for any Consequential Loss of another Participant.

22.2.3 In respect of any representative of a Participant exercising its rights of access under clause 7.3 in any offshore site where Joint Operations are being conducted:

- (a) the Participant shall be responsible for and shall defend, indemnify, and hold harmless the other Participants, the Operator, its Affiliates and their respective directors, officers and employees (including Agency Personnel) from and against any loss, damage, claim or liability (including any award of damages and any legal or other costs and expenses incurred in respect of such claim or liability) in respect of loss of or damage to the property of and personal injury (including death or disease) to such representative, irrespective of negligence and/or breach of duty (whether statutory or otherwise) on the part of any indemnified person except only for any loss, damage, claim or liability resulting from the Wilful Misconduct of the indemnified person; and
- (b) any loss, damage, claim or liability (including any award of damages and any legal or other costs and expenses incurred in respect of such claim or liability) in respect of loss of or damage to Joint Property or property of the other Participants, the Operator, its Affiliates and their respective directors, officers and employees (including Agency Personnel) or personal injury (including death or disease) to such persons arising out of or connected to the visit of such representative shall be treated as arising from or in connection with Joint Operations for the purposes of clause 22.2.2.

## 22.3 **[[Taxation<sup>86</sup>**

- (a) If, for United States federal income tax purposes, this Agreement and operations hereunder are regarded as a partnership (and if the Participants have not agreed to form a tax partnership), each U.S. Party (as defined in sub-clause (c) below) elects to be excluded from the application of all the provisions of Subchapter "K", Chapter 1, Subtitle "A", of the United States Internal Revenue Code of 1986, as amended ("the Code"), as permitted and authorised by Section 761(a) of the Code and the regulations promulgated thereunder. Each U.S. Party is authorised and directed to execute and file such evidence of this election as may be required by the Internal Revenue Service, including all returns, statements and data required by United States Treasury Regulations Sections 1.761-2 and 1.6031-1(d)(2), and shall provide a copy of it to each U.S. Party. Should there be any requirement that any U.S. Party give further evidence of this election, each U.S. Party shall execute such documents and furnish such other evidence as may be required by the Internal Revenue Service or as may be necessary to evidence this election.
- (b) Subject to sub-clause (e), no Participant shall give any notice or take any other action which it is advised by a US Party is inconsistent with the election made above in clause 22.3(a). If any income tax laws of any state or other political subdivision of the United States or any future income tax laws of the United States

---

<sup>86</sup> This clause will only be required where one of the licensees is a US party.

or any such political subdivision of the United States contain provisions similar to those in Subchapter "K", Chapter 1, Subtitle "A", of the Code, under which an election similar to that provided by Section 761(a) of the Code is permitted, each U.S. Party shall make such election as may be permitted or required by such laws. In making the foregoing election, each U.S. Party states that the income derived by it from operations under this Agreement can be adequately determined without the computation of partnership taxable income.

- (c) For purposes of this clause 22.3, "**U.S. Party**" shall mean any Participant which is subject to the income tax laws of the United States in respect of operations under this Agreement.
- (d) No activity shall be conducted under this Agreement that would cause any Participant that is not a U.S. Party to be deemed to be engaged in a trade or business within the United States under applicable tax laws and regulations.
- (e) A Participant which is not a U.S. Party shall not be required to do any act or execute any instrument which might subject it to the taxation jurisdiction of the United States.]]

## **22.4 Anti-Bribery<sup>87</sup>**

22.4.1 For the purposes of this Clause 22.4, "Operator" shall be deemed to include the Operator and any Participant acting as Operator from time to time for the purpose of this Agreement.

22.4.2 Each Participant:

- (i) warrants that neither it nor any member of its Group has Bribed at any time in connection with this Agreement, the Licence or Joint Operations;
- (ii) agrees that it shall not, and shall procure that no member of its Group shall, Bribe in connection with this Agreement, the Licence or Joint Operations; and
- (iii) agrees that if it becomes aware of any suspected failure by it or any member of its Group to comply with this Clause 22.4.2 that it will conduct an appropriate investigation in relation to the same and shall give due consideration to whether such investigation should be conducted by or with the assistance of an independent reputable firm of professionals with relevant experience.

22.4.3 The Operator and any Participant providing services in connection with Joint Operations, or whose Affiliates provide such services:

- (i) shall, and shall ensure that such Affiliates shall, devise and maintain adequate internal controls in connection with the obligations set out in Clause 22.4.2
- (ii) shall, and shall ensure that such Affiliates shall, establish, prepare, maintain and retain books and records in connection with Joint Operations in accordance with generally accepted accounting practices applicable to each of them, properly record and report their respective transactions in a manner that accurately and fairly reflects in reasonable detail such transactions, and maintain such books and

---

<sup>87</sup> See discussion in the Guidance Notes on this clause, which was amended in 2013 in "Amendments to Clause 22 of the OGUK Industry Model Form Joint Operating Agreement to address the Bribery Act 2010".

records for a period of five (5) years after the date of termination of this Agreement;

- (iii) confirms that it and such Affiliates have adequate Policies and Procedures in place in respect of compliance with Applicable Anti-Bribery Law, and agrees that it and they will comply with such Policies and Procedures in respect of Joint Operations; and
- (iv) agrees that it and such Affiliates have taken and will take reasonable steps, where appropriate, to impose on contractors engaged by it or its Affiliates to carry out services in connection with Joint Operations (and, where appropriate, has required or will require them to impose on any subcontractors) a duty to comply with Applicable Anti-Bribery Law and, where appropriate, with Policies and Procedures in respect of compliance with Applicable Anti-Bribery Law.

22.4.4 Where it is legally able to do so, and subject to the consent of the Competent Authority where applicable, each Participant shall notify the other Participants in writing as soon as practicable upon:

- (i) becoming aware of any material failure by such Participant or any member of its Group to comply with any provisions of Clause 22.4.2 (i) and (ii) relating to this Agreement, the Licence or Joint Operations; or
- (ii) becoming aware of any investigation or proceeding initiated by a Competent Authority relating to an alleged breach of Applicable Anti-Bribery Laws by such Participant or any member of its Group relating to this Agreement, the Licence or Joint Operations and, except for any information subject to legal privilege, such Participant shall use reasonable efforts to keep the other Participants informed as to the progress of such investigation or proceeding.

[22.4.5 Notwithstanding any other rights of audit contained in this Agreement, and except where exercise of the rights contained in this Clause would interfere with the conduct of any investigation by a Competent Authority, a Participant or a group of Participants acting jointly shall be entitled to conduct, or to appoint an independent representative from a reputable firm of professionals with relevant experience to conduct, a review of the Operator and its Affiliates providing services in connection with Joint Operations in order to determine whether the Operator and such Affiliates are in compliance with their own Policies and Procedures while conducting Joint Operations. The Operator shall, and shall procure that such Affiliates shall, permit such review provided that they shall be given at least [thirty (30)] days' notice of such review and that no Participant shall be entitled to commence a subsequent review less than twelve (12) months after issuance of a report in respect of the preceding review. Where any Participant proposes such a review it shall invite the other Participants to participate in a joint review. Such right of review includes the right of access at all reasonable times during normal business hours to all relevant accounts and records maintained by the Operator and such Affiliates. [[Costs incurred by the Operator in connection with carrying out any review under this Clause 22.4.5 shall be charged to the Joint Account]. [Costs incurred by the Participant(s) in connection with carrying out any such review shall be borne by the Participant(s).] The Participant(s) or firm of professionals conducting the review shall prepare a final report of the review containing findings and observations and issue the same to the Operator (and to each Participant participating in the review) as soon as practicable following conclusion of the review, and the Operator shall (or shall procure that the Affiliate concerned shall) take due cognisance of such findings and observations.

If such review identifies any issue which requires investigation, the Operator shall (or shall procure that the Affiliate concerned shall) conduct an appropriate investigation in accordance with Clause 22.4.2(iii).]<sup>88</sup>

## **22.5 Ethical Behaviour**

Each Participant covenants and undertakes with each other Participant that neither it nor its Affiliates, nor any of their respective directors, officers, employees or agents will make, offer, or authorise with respect to the matters which are the subject of this Agreement, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (i.e., any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate (a) English law or (b) the laws relating to corruption applicable to such covenanting Participant.

## **23. Assignment and Encumbrance<sup>89</sup>**

### **23.1 Restriction**

No transfer of any interest under the Licence (in so far as it relates to the Licence Area) or this Agreement shall be made by any Participant:

23.1.1 otherwise than in respect of an undivided interest in all or part of its interest in the Licence (in so far as it relates to the Licence Area) and in and under this Agreement (so that any such transfer shall include all or a corresponding part of any interest of such Participant in a Sole Risk Project) in accordance with the following provisions of this clause or the provisions of clause 24; or

23.1.2 [[if such transfer would result in a continuing Participant and its Affiliates holding in aggregate a Percentage Interest of less than [ ] percent ( %).]].<sup>90</sup>

### **23.2 Conditions**

No transfer shall be effective or binding upon the Participants unless the remaining, non-transferring Participants shall each have consented to such transfer in writing (which consent may only be withheld on grounds that the financial responsibility and technical capability of the proposed transferee to discharge the obligations under this Agreement as they relate to the interest to be transferred has not been adequately demonstrated).

### **23.3 Effective Date<sup>91</sup>**

No transfer shall be effective or binding upon the Participants until the date upon which each of the following has occurred:-

---

<sup>88</sup> See the discussion in the Guidance Notes on this optional clause 22.4.5.

<sup>89</sup> See the discussion in the Guidance Notes on this clause.

<sup>90</sup> This optional clause is designed to avoid the administrative and operational inconvenience which may result from having interests divided into very small shares and the resulting increase in the number of partners to be consulted.

<sup>91</sup> The 20th round JOA appeared to envisage three separate documents – a consent in writing, an executed or photostatic copy of an instrument evidencing assignment, and a written instrument in which the assignee assumed obligations. In current practice, consent to assignment is sought by submission of a novation in the form of an execution deed under the industry Master Deed with a request that this be executed (or, more often, that consent be granted for the Administrator to execute). The requirement for an executed or photostatic copy has therefore been removed, as each Participant will be entitled under the Master Deed to a copy of the execution deed in any event. If the Master Deed is not to be used then the parties may wish to reconsider the drafting of this clause in its entirety.

- (a) any necessary consent and approval of the Secretary to such transfer shall have been obtained and evidence of it furnished to all the Participants by the transferring Participant; and
- (b) all Participants (including the transferring Participant) execute a written instrument (in form and content satisfactory to the Participants and duly executed by the transferee) in which the transferee accepts and assumes in place of the transferring Participant:
  - (i) all of the obligations under this Agreement in so far as the interest transferred is concerned whether incurred before, on or after the effective date of the transfer;
  - (ii) all of the obligations under the Decommissioning Security Agreement in so far as the interest transferred is concerned and the transferee makes such provision (if any) in respect of the costs of Decommissioning as is required under the Decommissioning Security Agreement;
  - (iii) [[where a New Area has been created, all of the obligations under such trust and indemnity arrangements in respect of the New Area and the Remaining Area as have been entered into pursuant to clause 9.10.3.]]<sup>92</sup>

#### **23.4 Consent**

A Participant (including the Participant acting in the capacity of Operator) shall promptly join in such reasonable actions as may be necessary or desirable to obtain any consent and approval of the Secretary in connection with, and shall execute and deliver any and all documents reasonably necessary to effect, any such transfer.

#### **23.5 Costs**

All costs and expenses pertaining to any such assignment shall be the responsibility of the transferring Participant. For the avoidance of doubt any stamp duty or stamp duty land tax incurred on the documents executed to effect such transfer shall either be paid by the transferring Participant, or the transferring Participant shall be responsible for procuring the payment of it by the transferee.

#### **23.6 Encumbrance<sup>93</sup>**

Nothing contained in this clause 23 shall prevent a Participant from mortgaging, pledging or otherwise encumbering all or part of its interest in the Licence and in and under this Agreement for the purpose of security relating to finance provided that:-

- (a) such Participant shall remain liable for all obligations relating to such interest; and
- (b) the mortgage, pledge or encumbrance shall be subject to any necessary approval of the Secretary and be expressly subordinated to the rights of the other Participants under this Agreement, including without limitation those set out in clause 17;
- (c) such Participant shall ensure that any such mortgage, pledge or encumbrance shall be and shall be expressed to be without prejudice to the provisions of this Agreement.

---

<sup>92</sup> This provision may be deleted if clause 9.10 has not been used.

<sup>93</sup> Please see the discussion in the Guidance Note on this clause.

## **24. Withdrawal**

### **24.1 Restriction**

No Participant may withdraw from the Licence (in so far as it relates to the Licence Area) or this Agreement otherwise than in accordance with the following provisions of this clause.

### **24.2 Right**

24.2.1 Any Participant may, subject to clauses 9.9, 24.2.3 and 24.3 and always provided that all Work Obligations set out in Schedule [3] to the Licence to be discharged prior to the effective date of withdrawal have been completed, at any time up to and including the date of the meeting to be held pursuant to clause 9.9.1(d) or 9.9.2 to decide whether to continue the Licence into the next Phase or the Second Term or Third Term (as the case may be), give notice to the other Participants that it wishes to withdraw from the Licence (in so far as it relates to the Licence Area) and this Agreement. Within thirty (30) days of receipt of such notice (but in any event no later than the date of such meeting), any of the other Participants may similarly give notice that it wishes to withdraw from the Licence (in so far as it relates to the Licence Area) and this Agreement. If all the other Participants give such notice no assignment shall take place, the Participants shall be deemed to have decided to abandon the Joint Operations and the Licence (in so far as it relates to the Licence Area) shall be surrendered on the earliest possible date. If less than all the other Participants give such notice the withdrawing Participants shall withdraw from the Licence (in so far as it relates to the Licence Area) and this Agreement on the earliest possible date and shall assign their respective interests in the Licence and in and under this Agreement to the non-withdrawing Participants in accordance with clause 24.3 without any compensation whatsoever.

24.2.2 In the event that the Licence is continued for a Third Term any Participant may, subject to clauses 24.2.3 and 24.3, and always provided that all Work Obligations in respect of such Third Term have been completed at any time thereafter give notice to the other Participants that it wishes to withdraw from the Licence (in so far as it relates to the Licence Area) and this Agreement. Within thirty (30) days of receipt of such notice, any of the other Participants may similarly give notice that it wishes to withdraw from the Licence (in so far as it relates to the Licence Area) and this Agreement. If all the other Participants give such notice no assignment shall take place, the Participants shall be deemed to have decided to abandon the Joint Operations and the Licence shall be surrendered on the earliest possible date. If less than all the other Participants give such notice the withdrawing Participants shall withdraw from the Licence (in so far as it relates to the Licence Area) and this Agreement on the earliest possible date and shall assign their respective interests in the Licence (in so far as it relates to the Licence Area) and in and under this Agreement to the non-withdrawing Participants in accordance with clause 24.3 without any compensation whatsoever.

24.2.3 No Participant participating in or subject to a Development Plan may withdraw pursuant to this clause 24.2 from the Licence and this Agreement [[prior to the completion of the Relevant Works (as defined in Clause [17] of the Licence)

comprised in such Development Plan]].<sup>94</sup>

### **24.3 Conditions**

With respect to clause 24.2:-

- (a) a withdrawing Participant shall assign all of its said interest to the non-withdrawing Participants, which interest shall (unless otherwise agreed by such non-withdrawing Participants) be allocated to them in the proportion in which their respective Percentage Interests prior to the effective date of withdrawal (as defined in sub-clause (b)) bear to the total of such Percentage Interests;
- (b) a withdrawing Participant shall promptly join in such actions as may be necessary or desirable to obtain any consent of the Secretary in connection with, and shall execute and deliver any and all documents necessary to effect, any such assignment and a withdrawal shall not be effective and binding upon the Participants until the date upon which all such actions shall have been done and documents executed and delivered (“the effective date of withdrawal”) and all costs and expenses pertaining to any such assignment (including for the avoidance of doubt any stamp duty incurred on the documents executed to effect such assignment) shall be the responsibility of the withdrawing Participant;
- (c) a withdrawing Participant shall promptly join in all actions required by the other Participants for the maintenance of the Licence provided that its participation in such actions shall not cause it to incur after the date on which notice of withdrawal is given any financial obligations except as provided in this clause 24;
- (d) a withdrawing Participant shall pay all liens and penalties which may be prescribed by the Secretary and all costs and expenses incurred by the other Participants in connection with such withdrawal;
- (e) a withdrawing Participant shall not be allowed to withdraw from the Licence and this Agreement if its said interest is subject to any liens, charges or encumbrances other than rent and royalty under the Licence, unless the other Participants are willing to accept the assignment subject to such additional liens, charges or encumbrances;
- (f) unless the Participant or Participants acquiring its said interest agree to accept the withdrawing Participant’s liabilities and obligations, a withdrawing Participant shall, subject to clause 11.1.4 [and clause 15.9]<sup>95</sup>, remain liable and obligated for its Percentage Interest share of all expenditure accruing to the Joint Account under any Programme and Budget approved by the Joint Operating Committee and, where applicable, authorised by AFE prior to the date on which notice of withdrawal is given even if the operations concerned are to be implemented thereafter provided always that this sub-paragraph (f) shall not render a withdrawing Participant liable for any amounts which such Participant would not have been obliged to pay had it not withdrawn<sup>96</sup>;

---

<sup>94</sup> There are different views as to when it is appropriate to allow a party to withdraw from a JOA. Some people take the view that withdrawal should only be allowed in the exploration phase, others that withdrawal after development has begun should be permitted provided that the work specified in the Development Plan has been completed. If the latter view is taken, the words in square brackets should be retained.

<sup>95</sup> This reference is required only if a non-consent provision has been included at 15.9.

<sup>96</sup> Some parties take the view that a Participant which has voted against a particular Programme and Budget and then withdrawn within a specified number of days should not have to pay towards that Programme and Budget. Others consider that the essence of a Joint Venture is the requirement to go along with the will of the majority and that, save in the specific cases cross-referred to in this

- (g) After service of a notice of intention to withdraw and until the effective date of withdrawal the withdrawing Participant shall not be entitled to be represented at meetings of the Joint Operating Committee or any sub-committee of it nor to vote thereat and clause 9.8.2 shall apply in relation to any matters requiring the consent or approval of Participants under this Agreement subject to the following provisions:
- (i) for any decision requiring the consent or approval of all Participants (including for the avoidance of doubt the approval of any transfer pursuant to clause 23), the consent or approval of the withdrawing Participant shall not be required and the consent or approval of all the other Participants shall be sufficient to decide the matter;
  - (ii) the withdrawing Party shall have no further access to any data and information relating to the Joint Operations;
  - (iii) the withdrawing Participant shall be bound by decisions of the Joint Operating Committee or, where this Agreement requires unanimity, by decisions of all of the non-withdrawing Participants.

## **25. Force Majeure**

**25.1** Each obligation of a Participant (including the Participant acting in the capacity of Operator) hereunder, other than the obligation to make payments of money, shall be suspended while such Participant is prevented or hindered from complying therewith by any cause beyond the reasonable control of such Participant provided that a lack of funds shall be deemed not to be a cause beyond reasonable control. In such event, such Participant shall give notice of suspension as soon as reasonably possible to the other Participants stating the date and extent of such suspension and the cause of it. Any of the Participants whose obligations have been suspended as aforesaid shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify all the other Participants.

In this clause 25 “**Force Majeure**” means any cause beyond the reasonable control of such Participant, and which such Participant by the exercise of reasonable diligence is unable to prevent, avoid or remove, provided that a lack of funds shall not constitute Force Majeure.

## **26. Disposal of Joint Property and Decommissioning**

**26.1** If the Operator shall consider that any item of the Joint Property is no longer needed or suitable for the Joint Operations, the Operator shall, subject to the provisions of the Licence and the Accounting Procedure, dispose of such Joint Property.

**26.2** If the Joint Operating Committee shall decide to cease the Joint Operations, in whole or in part:

26.2.1 the Operator shall endeavour to recover and dispose of as much of the Joint Property as the Joint Operating Committee directs can economically and reasonably be recovered or as may be required to be recovered under the Petroleum Act 1998, the Licence or any other applicable law, and the net cost or net proceeds shall be charged or credited to the Joint Account;

---

clause, a Participant should continue to pay its share in respect of all Joint Operations approved prior to the effective date of withdrawal.

---



26.2.2 in respect of any development, the Operator shall proceed to decommission in accordance with the Decommissioning Programme and Budget.

### **26.3 Decommissioning Security Agreement**

Prior to submission of a Development Plan in respect of a Discovery to the Secretary in accordance with the applicable clause of the Licence, each of the Participants shall enter into a decommissioning security agreement in the form set out in Schedule C.<sup>97</sup>

### **26.4 Ongoing Liability**

Following completion of Decommissioning, the Participants shall remain liable for any residual liability which arises at law if Joint Property is not wholly removed[[, unless and until the Participants enter into a separate agreement as contemplated in clause 2.2]].<sup>98</sup>

## **27. Intellectual Property**

**27.1** Any Intellectual Property developed specifically for Joint Operations the development of which is charged to the Participants in proportions to their Percentage Interests and which neither contains nor is derived from existing Intellectual Property of any of the Participants is termed “**Joint Operations Intellectual Property**” and, subject to the provisions of clause 19, shall be part of Joint Property. Intellectual Property Rights in Joint Operations Intellectual Property (“**Joint Operations Intellectual Property Rights**”) shall vest in the Operator on behalf of and for the benefit of the Participants.

**27.2** Any Participant and any of its Affiliates shall have an irrevocable, perpetual, royalty-free, fully paid-up worldwide right to use such Joint Operations Intellectual Property, and an irrevocable, perpetual, royalty-free, fully paid-up worldwide licence to use such Joint Operations Intellectual Property Rights, for its/their own operations and in any other bona fide operations in which such Participant and/or its Affiliates has/have an interest, always provided that, in the case of such bona fide operations, any other person participating in such operations gives a prior written undertaking to each of the Participants:

- (a) to keep such Joint Operations Intellectual Property confidential in terms no less stringent than those which bind the Participant in question hereunder;
- (b) not to use Joint Operations Intellectual Property Rights for any purpose except in connection with such operations; [[and
- (c) to enter into such commercial arrangements with respect to such use as the Joint Operating Committee may reasonably require. ]]

**27.3** In the event that the Intellectual Property of any of the Participants (other than Joint Operations Intellectual Property) is offered for use in connection with Joint Operations then the Participant proposing to supply such Intellectual Property shall be entitled to require that, prior to its Intellectual Property being made available as aforesaid, the right to use its Intellectual Property, together with a licence under any relevant Intellectual Property Rights, shall be granted to the other Participants on such reasonable terms and conditions as may be agreed having due regard to the respective interests of each of the

---

<sup>97</sup> Please take careful note of the comments in the Guidance Notes regarding the timing of execution of the DSA. Please also note that the Oil and Gas UK template DSA contains many options and choices which will require negotiation and therefore it cannot be signed in its template form. The parties therefore have to decide whether to negotiate the DSA at the time of entering into the JOA, or to delay this negotiation until after a commercial discovery is made, but with the risk that negotiation at that point will delay submission of the Development Plan.

<sup>98</sup> Note that the words in square brackets should be included only if the optional language has been included in Clause 2.2 regarding a separate agreement.

Participants. A Participant's Intellectual Property used under any licence granted under this clause shall not constitute Joint Intellectual Property and clause 27.2 shall not apply to it.

**27.4** Notwithstanding the provisions of clause 5 or any other provisions of this Agreement, neither the Operator nor any other Participant shall be obliged to disclose any of its own or its Affiliates' Intellectual Property to any of the other Participants or to grant a licence of its or its Affiliates' Intellectual Property Rights for use in connection with Joint Operations.

## **28. The Contracts (Rights of Third Parties) Act 1999**

**28.1** Except as provided in this clause 28, no provision of this Agreement is intended by the Participants to be construed as creating any right(s) enforceable by a third party and all third party rights implied by law are, to the extent permissible by law, excluded from this Agreement.

**28.2** Subject to the remaining provisions of this clause, clauses 6.2.4, 22.2.2, and 22.2.3(a) are intended to be enforceable by the persons specifically referred to in those clauses, by virtue of the Contracts (Rights of Third Parties) Act 1999.

**28.3** Notwithstanding clause 28.2, this Agreement may be rescinded, amended or varied by the Parties without notice to or the consent of any person who is not a Party even if, as a result, that person's right to enforce a term of this Agreement may be varied or extinguished.

**28.4** The rights of any person under clause 28.2 shall be subject to such person's written agreement to submit irrevocably to the [[exclusive]]<sup>99</sup> jurisdiction of the English Courts in respect of all matters relating to such rights.

## **29. Applicable Law**

**29.1** This Agreement shall be governed by and shall be construed according to the laws of England and in respect of any dispute regarding the validity, enforceability or interpretation of this Agreement each of the Participants (including the Participant acting in the capacity of Operator) hereby irrevocably submits to the [[exclusive]]<sup>100</sup> jurisdiction of the English courts.

## **30. Notices**

Any notice required to be given pursuant to this Agreement shall be in writing and may be given by delivering it by hand at, or by sending it by prepaid first class post or facsimile to, the relevant address (marked for the attention of the relevant person)<sup>101</sup> set out below or such other address or person as any Participant may notify to the other Participants

---

<sup>99</sup> The reference here to exclusive or non-exclusive should be consistent with Clause 29. Note in particular that third parties may not be caught by a choice of arbitration as a means of dispute resolution since they have not signed the agreement which is a requirement under the international rules governing enforcement of arbitration agreements. It is particularly important therefore in these cases to require the third party to submit to the arbitration as a condition of enforcing the indemnity.

<sup>100</sup> Please see discussion in Guidance Notes on this option.

<sup>101</sup> The standard does not make any suggestion as to who should be specified as the recipient of formal notices under the agreement but problems can arise if a name (as opposed to a job title) is included as, by the time the notice is sent, the individual has moved to another position, region or even company. Notices then languish unnoticed. Common practice is therefore to specify a job title.

from time to time. Any notice required to be given to the Operator may be given by delivering it by hand at, or by sending it by prepaid first class post or facsimile to, the relevant address for the Participant acting in the capacity of Operator from time to time. Any such notice given as aforesaid shall be deemed to have been given or received at the time of delivery (if delivered by hand), the first Working Day next following the day of sending (if sent by facsimile) and the second Working Day next following the day of sending (if sent by post). Without prejudice to the foregoing provisions of this clause, if a Participant to which a notice is given does not acknowledge it by the end of the third Working Day next following the day of delivery or sending, the Participant giving the notice shall communicate with the Participant which has not so acknowledged and, if necessary, re-deliver or re-send the notice.

[ ]: [ ]

*Attn:* [ ]

*Facsimile:* [ ]

[ ]: [ ]

*Attn:* [ ]

[ ]

*Facsimile:* [ ]

## **31. Miscellaneous**

### **31.1 Costs and Expenses**

Each Participant shall bear its own costs and expenses in relation to the negotiation and execution of this Agreement.

### **31.2 Entire Agreement**

This Agreement represents the entire agreement of the Participants in relation to its subject matter and supersedes any prior understandings, agreements or undertakings in relation to it.

### **31.3 Amendment**

This Agreement shall not be amended except by written instrument executed by all the Parties.

### **31.4 Waiver**

No waiver by any Participant of any provisions of this Agreement shall be binding unless made expressly in writing. No waiver by any Participant of any rights under this Agreement or arising out of any breach of this Agreement shall be considered as a waiver of any subsequent rights arising under the same or any other provision.

### **31.5 Severance**

If any provision (or part of it) of, or pursuant to, this Agreement is or becomes unlawful, void or unenforceable, the legality, validity or enforceability of any other part of that provision or any other provision shall not be affected but shall continue in full force and effect.

### **31.6 Precedence**



**Schedule A**

Joint Operating Agreement

UKCS Licence No. P[     ]

Block [     ]

Accounting Procedure

*Please note that there are two versions of the Accounting Procedure available. The form annexed here is a short form. A longer and more traditional form is also available on the Oil and Gas UK website. Both forms have been agreed by a sub-committee of Oil Industry Finance Association*

## **1. Purpose and Intent**

- 1.1** The purpose of this Accounting Procedure is to define the responsibilities and procedure for accounting for the financial transactions relating to this Agreement.
- 1.2** It is intended that the Accounting Procedure is fair and equitable as regards the charges, income, losses and gains attributed to the Joint Account, and to their apportionment amongst the Participants, and as regards the rights of the Participants on the disposal of assets and surplus materials. It is further intended that the Operator shall neither gain nor suffer any loss as a result of acting as Operator. The Participants agree that if any Participant considers that the methods described herein are materially inequitable, the Participants shall meet and in good faith endeavour to agree on changes in methods deemed appropriate to correct any inequity. For the avoidance of doubt, any changes made to the Accounting Procedure shall be subject to unanimous approval of the Participants or, where expressly so provided, by decision of the Joint Operating Committee.
- 1.3** The Operator shall charge and credit the Joint Account for all costs and receipts properly and necessarily incurred to conduct Joint Operations in accordance with the principles set out in this Accounting Procedure and, if the Joint Operating Committee so determines, with the Standard Oil Accounting Procedures issued by Oil and Gas UK from time to time (“SOAPs”) in effect on the date on which the transaction is charged or credited to the Joint Account provided that in the event of any conflict between the SOAPs and this Accounting Procedure, [this Accounting Procedure]<sup>102</sup> shall prevail and in the event of a conflict between the provisions of the Accounting Procedure and the provisions of the Agreement, the Agreement shall prevail.
- 1.4** Subject to the necessary Budget and AFE being approved in accordance with clauses 10 to 14 (as applicable), expenditures properly and necessarily incurred to conduct Joint Operations from and after the effective date of this Agreement as set out in clause 2.1 shall be charged to and paid by the Participants in proportion to their respective Percentage Interests. The Operator may, in accordance with the Accounting Procedure, Invoice the Participants Monthly in respect of all expenditures to be borne by the Participants incurred pursuant to this Agreement provided, however, that other frequencies and procedures for invoicing may be approved by unanimous decision of the Participants from time to time.

## **2. Responsibilities**

- 2.1** Each Participant is responsible for maintaining its own records to comply with its statutory and own internal requirements, except those that it is the statutory obligation of the Operator to prepare and submit on behalf of the Participants.
- 2.2** The Operator shall open and maintain a Joint Account for this Agreement. The Operator shall record in a full and proper manner in the Joint Account the financial transactions made in accordance with this Agreement.
- 2.3** Subject always to the provisions of paragraph 1.2, the Operator shall advise the Participants of changes to its internal accounting procedures that will materially affect the basis and level of charge or income to the Joint Account at least [ xx] days in advance of

---

<sup>102</sup> The parties should consider whether they wish the Standard Oil Accounting Procedures published by Oil and Gas UK to take precedence over their Accounting Procedure or whether they will review any changes in recommended procedure on a case by case basis and amend their own procedures expressly where they consider it appropriate. The draft assumes that in the event of conflict, the Accounting Procedure will govern.

the change.

**2.4** The Operator will provide the other Participants with such accounting information as may be necessary to:

2.4.1 fulfil any statutory obligation to which the other Participants are subjected,

2.4.2 permit any other Participant to claim any allowance or grant to which it may be entitled and for which an application is required by such Participant;

to the extent that such accounting data and information could reasonably be expected to be available from accounting records maintained by the Operator. Save as aforesaid, each of the Participants is responsible for maintaining its own accounting records to comply with all legal and governmental requirements, except those (if any) which it is the statutory obligation of the Operator to prepare and submit on behalf of itself and the Participants.

**2.5** The Operator shall in addition to the data required under this Accounting Procedure supply to any Participant such further accounting data which such Participant may reasonably request to the extent that such accounting data and information could reasonably be expected to be available from accounting records maintained by the Operator and provided that the cost of provision of such further data shall be to the account of the requesting Participant.

### **3. Accounting Basis**

**3.1** The Joint Account shall be maintained in Pounds. Expenditures and Receipts funded in currencies other than Pounds shall be [[converted into Pounds [at the Conversion Rate] in accordance with the Operator's standard accounting practice]] [[charged to the Joint Account in such currencies]]<sup>103</sup>. Where expenditure is incurred in any currency other than Pounds but settled in Pounds, the sum charged to the Joint Account shall be the actual cost in Pounds of the other currency purchased. Any exchange gain or loss shall be for the Joint Account.

**3.2** Subject to the necessary Budget and AFE being approved in accordance with clauses 10 to 14 (as applicable), the Operator shall charge and credit the Joint Account on the basis of its accounting policies in effect on the date on which the transaction is charged or credited to the account for all the costs and income properly and necessarily incurred and received in accordance with this Agreement, including:

3.2.1 licence rentals charged at cost;

3.2.2 contract services charged at cost; approval is required from the Participants for contracts with the values stated in clause 6.5;

3.2.3 the cost or credit for material and property purchased or transferred from other ventures, used, returned (including any reconditioning costs) to other ventures;

3.2.4 the cost of services, equipment, and/ or facilities owned, partly owned, leased or hired by the Operator or its Affiliates and used on behalf of the Joint Account, which shall be charged at rates commensurate with the cost of ownership. The rates shall not exceed rates currently prevailing for like services, equipment and/or facilities if provided by non-affiliated third parties;

---

<sup>103</sup> The parties have the option to have all Joint Account transactions recorded in sterling only (and therefore payments by the operator in other currencies will need to be converted at an agreed rate) or to have joint accounting in multiple currencies.

- 3.2.5 the cost of specific advice or services obtained from any of the Operator's Affiliates, calculated in accordance with that Affiliate's usual accounting procedure; approval is required for each charge in accordance with clause 6.5;
- 3.2.6 the appropriate costs of its organisation, calculated in accordance with its cost allocation system, which comprises salaries, benefits and appropriate overheads of personnel supporting the Joint Operations. Overheads include local office and outside support costs from shared service centres for HR, IT, treasury, security, procurement and any other general expertise not specifically charged elsewhere [[including technical support fee or parent company overhead to be charged in accordance with the Operator's standard accounting procedures]]<sup>104</sup>.
- 3.2.7 relocation expenditure allocated on an equitable basis;
- 3.2.8 agreed expenses incurred by personnel;
- 3.2.9 insurance premiums charged at cost for the benefit of the Joint Operations;
- 3.2.10 expenditure necessary to repair or replace damage or losses to property, charged at cost; and
- 3.2.11 any other costs and expenditures incurred by the Operator necessary for the proper conduct of the Joint Operations and not covered in this paragraph, which shall be subject to audit as set out in paragraph 7 below.

#### **4. Funding and Finance Fee**

- 4.1 The Operator shall initially fund the costs of and receive the income from the activities pertaining to the Agreement on behalf of the Parties.
- 4.2 Within ten (10) days of the end of each Month, the Operator shall issue to the Participants an Invoice in Pounds, in respect of Expenditure during the relevant Month. Where the Operator has incurred Expenditure in any currency other than Pounds, the amount of such Expenditure shall be [[converted into Pounds]] [[charged in such currencies]]<sup>105</sup> in accordance with the provisions of paragraph 3.1.
- 4.3 With each invoice, a financing fee (or credit) will be charged (or credited) by the Operator to each Participant on the basis of the following formula:

$$F=(C \times PI) \times (I \times P/A)$$

Where:

- F** represents the financing fee or credit to be settled between the relevant Participant and the Operator;
- C** represents the total cost funded by the Operator for the relevant Month, using the cash basis;
- PI** represents the Percentage Interest of the relevant Participant under the Agreement;
- I** represents interest at SONIA Compounded in Arrears from [the start to the end of the relevant processing Month, with a five (5) Working day lookback] [from the mid point date plus one (1) of the preceding processing Month to the mid point date of

---

<sup>104</sup> The issue of parent company overhead (PCO) or technical support fee (TSF) is a particularly contentious one. Some operators charge for this general overhead on the basis of a percentage of all other sums charged to the Joint Account (with some exceptions) and others do not – hence the option in this paragraph. If PCO/TSF is to be charged, it may be necessary to specify in further detail the basis of charging – a more detailed provision appears in the long form accounting procedure at paragraph 22.

<sup>105</sup> See note on paragraph 3.1 above – this clause should be consistent.



the relevant processing Month (inclusive)] [[together with such increase or decrease to such rate as shall represent the amount of any increase or decrease in the cost of borrowing to the Operator consequent upon a variation to the credit rating of the Operator's ultimate holding company by Standard & Poor's Corporation Rating Agency]]<sup>106</sup>;

- P** represents the number of days from the mid-point of the relevant processing Month of the Operator to the due date of settlement of the relevant Invoice; and
- A** represents the number of days in the year.

- 4.4** Each Participant shall settle the Invoice on or before the due date specified on the Invoice, which shall not be less than ten (10) days from the date of issue of the Invoice. If any Participant fails to pay in full its share of any Invoice by the due date, the provisions of clause 17 (Default) shall apply.
- 4.5** Payment of any Invoices shall not prejudice the right of any Participant to protest or question the correctness of any amount included in any Invoice or billing schedule. Any queried or disputed amount in relation to any Invoice shall be promptly brought to the attention of the Operator, who shall address the query or dispute promptly. In the event that a query or dispute arises with an Invoice the undisputed part of such Invoice shall be settled. The part subject to query or dispute may be withheld until the query or dispute is resolved. If a full payment is made prior to settlement of the query or dispute, such payment shall not constitute a settlement of the query or dispute or otherwise waive or affect the rights of any Participant or the Operator. If a Participant fails to settle the undisputed part of the Invoice by the due date, the provisions of clause 17 shall apply in respect of the unpaid amount. If the query or dispute is resolved in favour of the Operator, a financing fee covering the period between the date on which the queried or disputed expenditure was incurred and the date on which such expenditure is settled by the disputing Participant, may be applied by the Operator.
- 4.6** During periods of major expenditure, for example during a development, the implementation of any alternative funding mechanism to the foregoing, such as a cash call procedure, shall be the decision of the Joint Operating Committee. No finance fee shall apply to payments funded by Cash Call.

## **5. Billing Statements**

- 5.1** The Operator shall include a billing statement with each month's Invoice.
- 5.2** The billing statement shall show the net total of all Expenditures (less all Receipts to be separately disclosed where appropriate) relating to the Joint Operations and the amount thereof paid by or repaid to each Participant and shall be accompanied by supporting schedules which shall divide Expenditures and Receipts into main classifications and sub-classifications, which shall be consistent with those used in annual Programmes and Budgets, and shall be by AFE where applicable. The supporting schedules shall show monthly, year-to-date and inception-to-date net totals of all expenditures (less all receivables, to be separately disclosed where appropriate), and shall provide sufficient information to allow reconciliation to Invoices.

---

<sup>106</sup> Where the project is funded by invoices rather than cash calls, the financing fee includes interest at SONIA Compounded in Arrears, representing the likely cost to the Operator of funding the costs of the project. However, if the Operator's (or its parent's) credit rating changes then this may increase or decrease the cost to the Operator of borrowing money. In order to protect against this, on the principle of no gain, no loss, the optional words in square brackets may be included.

- 5.3** All billing statements and supporting schedules shall give totals in Pounds [[except where Expenditures and Receipts funded in currencies other than Pounds are charged to the Joint Account in such currencies]]<sup>107</sup>.
- 5.4** [[Billing statements shall be prepared on the accruals basis but shall provide appropriate details of amounts on a cash basis, which shall be used for invoicing purposes.]][[The cash basis rather than the accrual basis shall be used in the Invoices and billing schedules. Nevertheless for the Non-Operators' internal accounting purposes the Operator shall show its estimate of accrued expenditure for each AFE and main budget heading.]]
- 5.5** All Invoices and billing statements rendered by the Operator during any Year shall be presumed to be true and correct after twenty-four (24) months following the end of the calendar year unless within the twenty-four (24) months:
- (a) a Participant makes a claim to the Operator in writing for an adjustment; or
  - (b) the Operator advises the Participants in writing of an adjustment.

Adjustments relating to claims from third parties or governmental authority may be made at any time.

## **6. Materials**

- 6.1** The Operator shall keep records of equipment and Material purchased and ensure their safe custody. Material and/ or equipment shall only be purchased, or transferred from other ventures' stock, for Joint Operations as may be reasonably required for operational use. The accumulation of surplus Material and equipment for the Joint Account shall be minimised.
- 6.2** At reasonable intervals a complete inventory shall be taken by the Operator of all controllable Material forming part of Joint Property, in accordance with the Operator's standard materials procedures in force from time to time. At reasonable intervals a reconciliation shall be made between an inventory list and the records of stocks held on the Joint Account and a list of surpluses and shortages shall be determined by the Operator. Inventory adjustments shall be made by the Operator to the Joint Account for surpluses and shortages, with relevant explanations where available. A special inventory shall be taken upon any change of the Operator, the cost of which shall be charged to the Joint Account.
- 6.3** Movements from common warehouse: movements of Material are charged at cost plus financing charge. The said financing charge shall be applied at SONIA Compounded in Arrears from the start to the end of the Month in which material is issued, or such other financing charge as may be agreed by the Participants from time to time to cover the cost of financing the holding of such stocks.
- 6.4** All conditions and warranties (whether express or implied, statutory or otherwise) as to the fitness for purpose or merchantability of Material are excluded, but the Operator shall use its reasonable endeavours to enforce any guarantee given by the supplier or manufacturer and to enforce any remedies available at law or in equity in respect of defective materials and credit the Joint Account therefore. In the event that materials are defective, any credit due under any such guarantee shall not be passed to the Joint Account until adjustment has been received by the Operator from the supplier, the

---

<sup>107</sup> See note on paragraph 3.1 above – this clause should be consistent.

manufacturer or their agents.

- 6.5** The Operator shall [[notify/obtain the approval of]] the Joint Operating Committee if Major Surplus Items are to be disposed. Major Surplus Items are defined for the purpose of this Agreement as items having an original cost to the Joint Account of five hundred thousand pounds Sterling (£500,000) or more in aggregate or one hundred thousand pounds Sterling (£100,000) or more individually. Unless agreed otherwise by the Joint Operating Committee, the Operator shall dispose of Major Surplus Items in accordance with its normal procedures.
- 6.6** The Operator shall have a prior right to purchase any surplus Material, other than Major Surplus Items, at the price recorded in its accounting system, but is under no obligation to do so. If the Operator does not wish to exercise its right to purchase, the Operator shall dispose of the surplus Material, other than Major Surplus Items, without recourse to the other Participants and in accordance with its normal procedures.

## **7. Audit**

- 7.1** Subject to paragraph 7.2 below, all Non-Operators shall have the right to audit the accounts and records of the Joint Account for each Year including the billing schedules relating to it and to obtain all necessary information for such purposes, within twenty-four (24) Months following the end of such Year. The Non-Operators shall give at least [sixty (60) days] notice to the Operator of their intention to conduct an audit. The right of audit includes the right of access at all reasonable times during normal business hours to all accounts and records, pertaining to the Joint Account, maintained by the Operator and its Affiliates.
- 7.2** Audits of accounts and records pertaining to the Joint Account which:
- 7.2.1 include information generally accepted as proprietary and confidential; or
  - 7.2.2 are maintained by Affiliates of the Operator, other than any Affiliate of the Operator which is conducting a substantial part of Joint Operations on behalf of the Operator; or
  - 7.2.3 relate to charges made under paragraphs 3.2.6 to 3.2.8; or
  - 7.2.4 [[relate to multi-field or multi-operator contracts pursuant to clause 6.5.3 and contain information which the Operator considers to be commercially sensitive (for example and without limitation, itemised rates, prices, price structures and incentives)]]<sup>108</sup>;

shall, unless the Joint Operating Committee agrees otherwise, be audited in accordance with paragraph 7.3 or 7.4 as applicable.

- 7.3** For the accounts and records referred to in paragraphs 7.2.1 to 7.2.3 above, the Operator's statutory auditors (provided they accept such appointment) shall conduct such audit in accordance with terms of reference established by the Operator from time to time, [[provided that the Operator shall use reasonable endeavours to take account of any reasonable comments of the Non-Operators on such terms of reference]] [[subject to the agreement of the Joint Audit Committee (where it exists) or the Non-Operators (where no Joint Audit Committee exists) such agreement not to be unreasonably withheld]]. The terms of reference shall include as a minimum those referred to in paragraph 7.6 below. If the Operator's statutory auditors will not accept such

---

<sup>108</sup> Please see discussion in Guidance Notes on this clause and related options.

appointment, an external auditor of international standing, to be appointed by the Joint Operating Committee, shall conduct such audits. [[Provided that such accounts and records relating to paragraphs 3.2.6 to 3.2.8 as are not proprietary and confidential shall be audited by a combined team of the Operator's statutory auditors and representatives of the Non-Operators.]]

- 7.4** [[For the accounts and records referred to in paragraph 7.2.4 above the audit shall be conducted:
- 7.4.1 according to the process adopted by the multi-venture audit committee established by the Operator in respect of all of its operations ("**Joint Audit Committee**"); or
  - 7.4.2 in the event that no such process is adopted by the Joint Audit Committee or to the extent that the process adopted does not apply to any accounts and records referred to in paragraph 7.2.4 above, such audits shall be conducted jointly by the Operator's contract compliance accountants and the representatives of the Non-Operators working together.]]
- 7.5** [[The Non-Operators shall jointly appoint [one (1)] representative and an alternate who shall participate in any such audits of accounts and records referred to in [[the proviso to paragraph 7.3]] [[and in]] [[paragraph 7.2.4 above]] and shall, as soon as possible after such appointment, give notice to the Operator of the name of such representative and alternate. The Non-Operators shall use reasonable endeavours to retain notified representatives and/or alternates for a period of twelve (12) Months after the date of such notification.]
- 7.6** Subject to the prior approval of the Joint Operating Committee, the Operator will arrange for a regular audit of the accounts and records referred to in paragraph 7.2 above. The auditors will be asked to [[certify]] [[confirm that in all material respects]]<sup>109</sup>:
- 7.6.1 the salary and related benefits described in paragraph 3.2.6 are consistent with the payroll records;
  - 7.6.2 [[administrative overhead costs have been correctly charged to the Joint Account and in accordance with the Operator's standard accounting policies and practices;]]
  - 7.6.3 any charge for general expertise not specifically charged elsewhere, [[including any technical support fee or parent company overhead charged under paragraph 3.2.6]] is calculated on a consistent basis and has not resulted in a [[material]] over-recovery of costs.
- 7.7** In respect of contracts entered into by the Operator on behalf of the Participants, the Operator shall use reasonable endeavours to obtain audit rights for all other Participants in all contracts. Where the Operator obtains audit rights the Non-Operators may carry out audits of such contracts jointly with the Operator.
- 7.8** The Non-Operators shall make every reasonable effort to conduct audits jointly in a manner which will result in a minimum of inconvenience to the Operator. The Operator shall make every reasonable effort to co-operate with the Non-Operators and, where

---

<sup>109</sup> Some accountants dislike being required to "certify" matters and therefore an alternative form of words is provided as an option – the operator should check with its auditors. The terms of reference are a matter for negotiation but clearly the first option in 7.6.3 is required only if TSF/PCO is provided for.

appropriate, the auditors conducting an audit under paragraph 7.2 and will provide reasonable facilities and assistance.

- 7.9** At the conclusion of each audit, the Non-Operators shall endeavour to settle outstanding matters with the Operator and a written report will be circulated to all the Participants within three (3) Months of the conclusion of each audit. The report shall include all claims arising from such audit together with comments pertinent to the operation of the accounts and records. The Operator shall reply to the report in writing as soon as possible and in any event not later than three (3) Months following receipt of the report. Should the Non-Operators consider that any matter in the report or reply requires further investigation, the Non-Operators shall have the right to conduct further investigation in relation to such matter notwithstanding that the period of twenty-four (24) Months referred to in paragraph 7.1 may have expired. Such further investigation shall be commenced within thirty (30) days and be concluded within sixty (60) days of the receipt of such a report or reply, unless mutually agreed by all the Participants, such agreement not to be unreasonably withheld. If any outstanding matter is not settled within nine months of the conclusion of the audit then it shall be referred to the Joint Operating Committee in accordance with clause 7.11 below.
- 7.10** Notwithstanding that the said period of twenty-four (24) Months may have expired, if evidence exists that the Operator has been guilty of Wilful Misconduct, the Non-Operators shall have the right to conduct further audits in respect of any earlier periods.
- 7.11** All adjustments resulting from an audit agreed between the Operator and the Non-Operators conducting the audit shall be rectified promptly in the Joint Account by the Operator and reported to the Non-Operators. If any dispute shall arise in connection with an audit, it shall be referred to the Joint Operating Committee for resolution [[by unanimous agreement]]<sup>110</sup>. In the event that [[unanimous]] agreement is not reached, then such matter shall be referred to an expert appointed by the President of the Institute of Chartered Accountants in England and Wales. The decision of such expert shall be binding on all Participants.
- 7.12** Costs incurred by the Operator in connection with carrying out any audit under this paragraph 7 shall be charged to the Joint Account. Costs incurred by the Non-Operators in connection with carrying out any audit under this paragraph 7 shall not be charged to the Joint Account.

## **8. Definitions**

For the purposes of this Schedule:

- (a) Words and expressions defined in the Agreement have the meanings ascribed to them in clause 1.
- (b) Reference in this Agreement to any clause shall be a reference to a clause in the Agreement.
- (c) Unless the context otherwise requires, reference to any paragraph is to a paragraph of this Schedule.

---

<sup>110</sup> There is an option here as to whether audit exceptions are to be resolved unanimously. Non-Operators may feel that this is an important protection for them while Operators will wish to ensure that audit exceptions are not allowed to hang over them unreasonably.

**Schedule B**  
Trust Deed







"Part Area Owner" means a Party which has a beneficial interest in one or more Part Areas, as further defined in Schedule 2;

"Secretary" means in relation to the Licence, the "Minister" as defined therein, or, in relation to the exercise of functions under the Acts, the person designated to exercise such functions, as the case may be;

"Senior Supervisory Personnel" means any person employed by a Party as a director or other corporate officer or who occupies a senior managerial position in such Party with direct responsibility for the conduct of operations in relation to the Upper Layers or the Lower Layers;

"Upper Layers" means [            ];

"Wilful Misconduct" means, in relation to a Party, an intentional or conscious or reckless disregard by its Senior Supervisory Personnel of good and prudent oil and gas field practice or of any of the terms of this Agreement in utter disregard of avoidable and harmful consequences but shall not include any act, omission or error of judgment or mistake made in the exercise in good faith of any function, authority or discretion vested in or exercisable by such Senior Supervisory Personnel and which in the exercise of such good faith is justifiable by special circumstances including but not limited to safeguarding of life, property or the environment and other emergencies.

- 1.2** For the purposes of this Trust Deed the "Percentage Share" of a Part Area Owner in a particular Part Area shall be that percentage which the percentage interest share (howsoever expressed in the relevant Operating Agreement from time to time) held by such Part Area Owner in that Part Area is of the aggregate of all of the percentage interest shares of all the Part Area Owners of the same Part Area. The percentage shares as at the date of this Agreement are as set out in Schedule 2.
- 1.3** In this Trust Deed (including the recitals hereto):
- 1.3.1 where the context requires, words denoting the singular shall also include the plural and vice versa;
  - 1.3.2 all references to Clauses and the Schedule are, unless otherwise expressly stated, references to clauses of and schedules to this Trust Deed; and
  - 1.3.3 the Schedule forms part of this Trust Deed and shall have the same force and effect as if expressly set out in the body of this Trust Deed.

## **2. Declaration of Trust**

- 2.1** The benefit of all estate, rights and interests of the Parties in and under the Licence in relation to the Licensed Area shall be applied in accordance with the terms of this Trust Deed.
- 2.2** Each Part Area Owner confirms and undertakes that notwithstanding the terms of the Licence, it holds a beneficial interest in the estate, rights and interests in and under the Licence in respect of the Part Area(s) of which it is a Part Area Owner.
- 2.3** [Each Part Area Owner declares that it holds its entire estate, rights and interests in and under the Licence in respect of each Part Area of which it is not a Part Area Owner in trust for and to the benefit of the Part Area Owners which have a beneficial interest in

such Part Area.]<sup>111</sup>

- 2.4** Each of the Parties will do all such acts and things within its control as may be necessary to keep and maintain the Licence in full force and effect and will refrain from doing anything within its control which would justify revocation of the Licence.
- 2.5** Nothing contained in this Trust Deed shall prejudice or affect the rights and obligations of the Part Area Owners of the same Part Area inter se pursuant to the relevant Operating Agreement applying from time to time to that Part Area.

### **3. Covenants and Undertakings**

**3.1** Each Part Area Owner (in this Clause 3, the "Covenantor") covenants (separately in respect of each Part Area of which it is a Part Area Owner) that upon the request and at the cost of each of the Part Area Owners of another Part Area (in this Clause 3, the "Requesting Parties"), the Covenantor will:

- 3.1.1 comply with any and all reasonable directions given by the Requesting Parties; and
- 3.1.2 promptly execute all such deeds and documents and do all such acts and things as the Requesting Parties may reasonably request in relation to the Part Area of which the Requesting Parties are the Part Area Owners PROVIDED THAT such compliance, execution or action would not constitute a breach of the Licence and PROVIDED FURTHER THAT any necessary approval has been obtained of the Secretary.

**3.2** Each of the Parties undertakes (except in accordance with Clause 3.1) that:

- 3.2.1 it will not assign, charge or otherwise dispose of or encumber any interest in a Part Area of which it is not a Part Area Owner or purport to do so; and
- 3.2.2 it will not otherwise deal with any such interest or exercise any right or power granted by the Licence in relation to any Part Area of which it is not a Part Area Owner or any right derived from a right so granted except to comply with any direction of the Secretary as required by law.

### **4. Indemnity**

**4.1** Each Part Area Owner (in this Clause 4, the "Covenantor") undertakes that it will indemnify and keep indemnified each and any Part Area Owner of another Part Area (in this Clause 4, the "Indemnified Party") against each and any claim, demand, action, proceeding, loss, damage and/or expense (including without limitation legal expenses) made against or suffered or incurred by the Indemnified Party (and any costs, including legal costs, reasonably incurred by it in respect thereof) as a result of any failure by the Covenantor to comply with the covenants and undertakings given by it in this Trust Deed and/or arising under the Licence as a result of any operations carried on in the Part Area of which the Covenantor is a Part Area Owner whether arising on, before or after the date of this Trust Deed PROVIDED THAT if more than one Covenantor is liable to indemnify the same Indemnified Party against the same claim, demand, action, proceeding, loss, damage, cost (including legal cost) and/or expense then:

---

<sup>111</sup> Insert only if the Part Area Owners are not the same in all of the Part Areas

- 4.1.1 if all such Covenantors are Part Area Owners of the same Part Area, the liability of each shall be limited to that proportion of the aggregate liability to the Indemnified Party which its Part Area Owner's Percentage Share bears to the aggregate of the Part Area Owners' Percentage Shares of all the Covenantors who are so liable; but
- 4.1.2 if such Covenantors are Part Area Owners of different Part Areas, the aggregate liability to the Indemnified Party shall be apportioned between such Part Areas pro rata to the area covered by each. Thereafter, the share of liability attributed to each individual Part Area Owner shall be discharged in accordance with Clause 4.1.1; and

PROVIDED FURTHER THAT an Indemnified Party shall not be entitled to an indemnity pursuant to this Clause 4 if and to the extent that any claim, demand, action, proceeding, loss, damage, cost and/or expense made against or suffered or incurred by it arises as a result of its own negligence, omission, breach of duty (statutory or otherwise) or breach of the provisions of the Licence or this Trust Deed.

## **5. Periodic Payments**

The periodic payments payable to the Secretary pursuant to the terms of the Licence shall be apportioned between the Part Areas pro rata to the area from time to time covered by each and then apportioned between the respective Part Area Owners in accordance with the relevant Operating Agreement applying from time to time to such Part Area in the proportion that each Part Area Owner's Percentage Share bears to the aggregate of all Part Area Owners' Percentage Shares for such Part Area. *Where one Part Area overlies another Part Area the payments due in relation to the aggregate of such Part Areas shall first be prorated equally between the Part Areas and then apportioned between the owners of the respective Part Areas as aforesaid.* The Parties shall bear and discharge the obligations of the licensees of the Licence with regard to royalties in proportion to their entitlements to the petroleum in respect of which such royalties become payable or deliverable and the Parties shall indemnify one another accordingly.

## **6. Stratigraphically Divided Areas**

- 6.1 *The Lower Layer Parties shall with the consent of each of the Other Parties (not to be unreasonably withheld) and with all other necessary consents and approvals, including those of the Secretary, and subject to Clause 6.2, have access to the Lower Layers from the surface of the area comprised in the Licence or otherwise through the Upper Layers PROVIDED THAT such access shall not interfere with any operations or planned or proposed operations of the Part Area Owners of the Upper Layers.*
- 6.2 *Without prejudice to Clause 4 prior to the Lower Layers Parties gaining access to the Lower Layers pursuant to Clause 6.1, whether from the surface of the area comprised in the Licence or otherwise through the Upper Layers, they shall: (i) provide security to the satisfaction of the Other Parties, whose approval of such security shall not be unreasonably withheld, provided that a Lower Layer Party meeting or exceeding a current rating of "AA" by Standard & Poor's or "Aa2" by Moody's or is a 100% subsidiary of an entity holding such rating shall not be required to provide such security; and (ii) notwithstanding any conflicting provisions in the Operating Agreement applicable to the Lower Layers and to the extent only of its Percentage Interest as set out in the Operating Agreement, indemnify each of the Other Parties against any Claim suffered by the Other Parties as a result of or in connection with such access or any associated operations*

*including any loss of or damage to any reservoir or hydrocarbon accumulation provided however that, where the Lower Layer Parties have submitted a well programme to the Other Parties and the Other Parties have approved such well programme, following the granting of such approval and where such well is drilled in accordance with such well programme by the Lower Layer Parties, the Lower Layer Parties and their contractors shall have no liability to the Other Parties for any claim, demand, action, proceeding, loss, damage or expense suffered or incurred by the Other Parties as a result of or in connection with such access or any associated operations including loss or damage to any reservoir or hydrocarbon accumulation irrespective of the negligence or breach of duty (statutory or otherwise), save to the extent that such claim, demand, action, proceeding, loss, damage or expense is attributable to the Wilful Misconduct of the Lower Layer Parties, (iii) The Contract (Rights of Third Parties) Act 1999 shall only apply in respect of the benefit created in favour of the contractors referred to in this Clause 6.2. Clause 6.2 may be amended, varied or terminated by the Parties without notice to or the consent of such contractors even if such contractors' rights under this Clause 6.2 would be amended, varied and/or terminated.]*

## **7. Assignment**

**7.1** No transfer of any interest in a Part Area shall be effective or binding upon the Parties unless

the remaining, non-transferring Parties shall each have consented to such transfer in writing (which consent may only be withheld on grounds that the financial responsibility and technical capability of the proposed transferee to discharge the obligations of the transferring Party as they relate to the interest to be transferred has not been adequately demonstrated).

**7.2** No such transfer shall be effective or binding upon the Parties until the date upon which each of the following has occurred:-

7.2.1 any necessary consent and approval of the Secretary to such transfer shall have been obtained and evidence of it furnished to all the Parties by the transferring Party; and

7.2.2 all Parties (including the transferring Party) execute a written instrument (in form and content satisfactory to the Parties and duly executed by the transferee) in which the transferee accepts and assumes in place of the transferring Party:

(a) all of the obligations under this Trust Deed in so far as the interest transferred is concerned whether incurred before, on or after the effective date of the transfer; and

(b) all of the obligations under any agreement between the relevant Part Area Owners in which the Part Area Owners make provision for the costs of decommissioning in so far as the interest transferred is concerned and the transferee makes such provision (if any) in respect of the costs of decommissioning as is required under the provisions of such agreement;

and which includes a new Schedule to replace the then current Schedule showing the relevant percentage interest shares of the Parties in each Part Area subsequent to the transfer.

**7.3** A Party shall promptly join in such reasonable actions as may be necessary or desirable to obtain any consent and approval of the Secretary in connection with, and shall execute and deliver any and all documents reasonably necessary to effect, any such transfer.

- 7.4** All costs and expenses pertaining to any such assignment shall be the responsibility of the transferring Party. For the avoidance of doubt any stamp duty or stamp duty land tax incurred on the documents executed to effect such transfer shall either be paid by the transferring Party, or the transferring Party shall be responsible for procuring the payment of it by the transferee.
- 7.5** Nothing contained in this Clause 7 shall prevent a Party from mortgaging, pledging or otherwise encumbering all or part of its interest in a Part Area and in and under this Trust Deed for the purpose of security relating to finance provided that:-
- (a) such Party shall remain liable for all obligations relating to such interest;
  - (b) the mortgage, pledge or encumbrance shall be subject to any necessary approval of the Secretary and be expressly subordinated to the rights of the other Parties under this Trust Deed; and
  - (c) such Party shall ensure that any such mortgage, pledge or encumbrance shall be and shall be expressed to be without prejudice to the provisions of this Trust Deed.

**8. Miscellaneous**

- 8.1** Without prejudice to any rights, obligations or liabilities then accrued, the provisions of this Trust Deed as they affect a particular Party shall terminate and cease to have effect with respect to that Party on such date as such Party ceases to hold any interest in the Licensed Area.
- 8.2** This Trust Deed may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Trust Deed but all the counterparts shall together constitute but one and the same instrument.
- 8.3** *Save as set out in Clause 6.2*, a third party shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Trust Deed, but this does not affect any right or remedy which exists apart from such Act and which may be available to such third party.
- 8.4** This Trust Deed shall be governed by and construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the English Courts.

**IN WITNESS WHEREOF** this Trust Deed has been duly executed by the Parties the day and year first above written.

Executed as a deed by	)	
[ <b>LIMITED</b> ]	)	_____
on being signed by:	)	Director
_____	)	
and _____	)	_____
		Director/Secretary



## Schedule 1

### Part 1 Area A (Block \_\_/\_\_)

<u>Latitude</u>	<u>Longitude</u>
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W

### Part 2 Area A (Block \_\_/\_\_)

<u>Latitude</u>	<u>Longitude</u>
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W

### Part 3 Area A (Block \_\_/\_\_)

<u>Latitude</u>	<u>Longitude</u>
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W

### Part 4 Area A (Block \_\_/\_\_)

<u>Latitude</u>	<u>Longitude</u>
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W
__ Degr __ ' __. __ "N	__ Degr __ ' __. __ "W

## **Schedule 2**

**Part 1  
Area A Percentage Interest Shares**

Area A Owner	Percentage Interest Share
*	%
	%

**Part 2  
Area B Percentage Interest Shares**

Area A Owner	Percentage Interest Share
*	%
	%

**Part 3  
Area C Percentage Interest Shares**

Area A Owner	Percentage Interest Share
*	%
	%

**Part 4  
Area D Percentage Interest Shares**

Area A Owner	Percentage Interest Share
*	%
	%



**Schedule C**  
Decommissioning Security Agreement

See the Industry Template DSA available from the Oil and Gas UK website

**Schedule D**  
Associated Agreements