

**NO. 2 OF 2019**

**THE PETROLEUM ACT**

SUBSIDIARY LEGISLATION

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**THE PETROLEUM (EXPLORATION AND  
PRODUCTION) REGULATIONS, 1984**

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**THE PETROLEUM (EXPLORATION AND PRODUCTION) REGULATIONS, 1984**

[Legal Notice 193 of 1984]

**1. Citation**

These Regulations may be cited as the Petroleum (Exploration and Production) Regulations, 1984.

**2. Petroleum agreements**

(1) A petroleum agreement shall be negotiated on the basis of the model production sharing contract substantially in the form set out in the Schedule.

(2) No person other than a company incorporated or registered in Kenya under the Companies Act may enter into a petroleum agreement with the Government.

**3. Negotiation of petroleum agreements**

(1) The Minister may, by notice, declare the opening of blocks for petroleum operations in respect of which he is prepared to receive applications for the negotiation of petroleum agreements and may, by that notice invite the applications and specify the conditions subject to which, including the period within which, the applications may be made.

(2) An application for negotiation of a petroleum agreement shall be in writing and shall specify-

- (a) the name, nationality and the nature of the business of the applicant;
- (b) the name and nationality of every director of the applicant;
- (c) the block to which the application applies;
- (d) the terms on which the applicant proposes to negotiate.

(3) The Minister may, for the purposes of and pursuant to section 8 of the Act, require evidence or other information concerning the financial and technical qualifications of any applicant and such evidence and information shall be treated as confidential.

**4. Registration of contractors**

(1) The Minister shall maintain a register of contractors in such form as may be proper to record the name, address and other necessary particulars of the contractor, or the assignment of a petroleum agreement.

(2) The Minister shall delete from the register any contractor in respect of whom a petroleum agreement has been terminated.

(3) Every entry in and deletion from the register shall be notified by the Minister by notice in the *Gazette*.

**5. Exploration permits**

(1) Applications for the grant of an exploration permit under section 5(2) of the Act to carry out geological and geophysical surveys may be made to the Minister in respect of any open block and shall be in writing specifying-

- (a) the name, nationality, nature of business and the principal place of business of the applicant;
- (b) the name and nationality of every director where the applicant is a company, corporation or other body corporate;
- (c) the delineation of the area proposed to be covered by the exploration permit;
- (d) the purpose of the proposed exploration to be undertaken and the description and estimated duration of the exploration.

(2) The Minister may call for such additional information as he may require under this regulation to enable him assess the suitability of a grant of an exploration permit.

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(3) Without prejudice to section 70 of the Interpretation and General Provisions Act, the Minister may attach such terms as he may consider necessary to the exploration permit including terms relating to the conduct of the exploration operations, inspection by the Minister, submission of data, samples and reports to the Minister and confidentiality thereof, payments to be made by the grantee, liability and indemnity.

(4) A non-exclusive exploration permit granted under section 5(2) of the Act to prospect and carry out geological and geophysical surveys shall not confer upon the grantee any right to drill any well for production of petroleum or any other well of a depth greater than a depth approved by the Minister.

(5) The Minister may grant more than one exploration permit for any particular area but a permit shall be in respect of the area for which it is granted only.

(6) An exploration permit shall not confer on the grantee any right of priority with respect to application for negotiation of or entering into a petroleum agreement with the Minister.

## 6. Access to land

(1) Neither a petroleum agreement nor an exploration permit granted under section 5(2) of the Act shall of itself authorize a contractor or its subcontractors or the grantee of a permit to enter upon or occupy or exercise any rights in-

- (a) any burial ground or land in the vicinity or precincts of any church, mosque or other sacred buildings or places of worship;
- (b) any area situated within fifty metres of any building in use, or any reservoir or dam;
- (c) any public road within the meaning of the Public Roads and Roads of Access Act, (Cap. 399) railway, or street within the meaning of the streets Adoption Act, (Cap. 406);
- (d) any area situated within a municipality or township within the meaning of the Local Government Act, (Cap. 265);
- (e) any land within one thousand metres of the boundaries of any aerodrome under the Civil Aviation Act, (Cap. 394);
- (f) any area of land declared to be a National Park or National Reserve under the Wildlife (Conservation and Management) Act (Cap. 376),

but nothing in this regulation shall be construed as preventing directional drilling into the subsurface of the areas of land and places specified in subparagraphs (a) to (f) from adjacent land by a contractor and its subcontractors or by the grantee of a permit.

(2) Entry into any area of land or place specified in paragraph (1) shall be subject to the consent of the competent authority.

(3) For the purposes of paragraph (2) "**competent authority**" means the person or body for the time being empowered under the relevant written law or custom to authorize access to the area of land or place.

## 7. Fees

The fees and other payments payable under or by virtue of a petroleum agreement or an exploration permit shall be as determined by the Minister from time to time.

## 8. Plurality

Nothing in these regulations shall be construed as preventing more than one application being made by the same person in respect of different blocks or more than one petroleum agreement or exploration on permit being entered into or granted to the same person.

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## SCHEDULE

## REPUBLIC OF KENYA

## MODEL PRODUCTION SHARING CONTRACT

This CONTRACT, made and entered into on the ....., 19...., by and between the Government of the Republic of Kenya (hereinafter referred to as the "**Government**") represented for the purpose of this contract by the Minister for the time being responsible for energy (hereinafter referred to as the "**Minister**") and ..... incorporated under the laws of ..... and having established a place of business at ....., Kenya (hereinafter referred to as the "**Contractor**").

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

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

## WITNESSETH:

WHEREAS the title to all Petroleum resources existing in their natural conditions in Kenya is vested in the Government; and

WHEREAS the Government wishes to promote and encourage the exploration and the development of Petroleum resources in an throughout the Contract Area; and

WHEREAS the Contractor desires to join and assist the Government in accelerating the exploration and development of the potential Petroleum resources within the Contract Area; and

WHEREAS the Contractor has the financial ability, technical competence and professional skills necessary to carry out the Petroleum Operations hereinafter described; and

WHEREAS in accordance with the Petroleum (Exploration and Production) Act, 1984 enacted by the Parliament of the Republic of Kenya, agreements, in the form of production sharing contracts, may be entered into between the Government and capital investors;

Now THEREFORE, in consideration of the undertaking and covenants herein contained, the Parties hereby agree as follows:

## PART I

## SCOPE AND INTERPRETATION

## 1. SCOPE

This Contract is a production sharing contract, in accordance with the provisions herein contained.

The Contractor shall-

(a) be responsible to the Government for the execution of the Petroleum Operations contemplated hereunder in accordance with the provisions of this Contract and is hereby appointed and constituted the exclusive legal entity to conduct Petroleum Operations in the Contract Area for the term hereof;

(b) provide all capital, machinery, equipment, technology and personnel necessary for the conduct of Petroleum Operations;

(c) bear the risk of Petroleum Costs required in carrying out Petroleum Operations and shall have an economic interest in the development of the Petroleum deposits in the Contract Area. Such costs shall be included in Petroleum Costs recoverable as provided in clause 27 hereof.

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During the term of this Contract, the total production achieved in the conduct of the Petroleum Operations shall be divided between the Parties hereto in accordance with the provisions of clause 27 hereof.

## 2. INTERPRETATION

In this Contract, words in the singular include the plural and vice versa, and except where the context otherwise requires:

**"Accounting Procedure"** means the accounting procedures and requirements set out in Appendix **"B"** attached hereto and made an integral part hereof;

**"the Act"** means the Petroleum (Exploration and Production) Act, 1984;

**"Affiliate"** means a person directly or indirectly controlling or controlled by or under direct or indirect common control with another person, and **"control"** means the ownership of at least fifty per cent (50%) of voting rights in that person;

**"Barrel"** means a quantity consisting of 158.987 litres at standard atmospheric pressure of 1.01325 bars and temperature of fifteen degrees centigrade (15°C);

**"Calendar Quarter"** or **"Quarter"** means a period of three (3) consecutive months commencing with the first day of January, April, July and October;

**"Calendar Year"** means a period of twelve (12) consecutive months commencing with the first day of January in any year and ending the last day of December in that year according to the Gregorian calendar;

**"Commercial Discovery"** means a discovery of Petroleum which has been duly evaluated in accordance with the provisions of clause 19, and which can be produced commercially according to good international petroleum industry practice, after the consideration of all pertinent technical and economic data;

**"Commercial Production"** means the quantity of Petroleum produced on a regular basis from a Commercial Discovery, saved and not used in Petroleum Operations;

**"Constitution"** means the Constitution of the Republic of Kenya;

**"Contract Area"** means the area covered by this Contract, and described in Appendix **"A"** and any part thereof not previously surrendered;

**"Contract Year"** means twelve (12) consecutive calendar months from the Effective Date or from the anniversary thereof;

**"Contractor"** means the Contractor, its successors or any assignee or assignees of any interest of the Contractor under this Contract, provided that the assignment of any such interest is accomplished pursuant to the provisions of clause 35 hereof;

**"Crude Oil"** means all hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric pressure asphalt ozokerites and the liquid hydrocarbons known as distillates or natural gas liquids obtained from Natural Gas by condensation or extraction;

**"Development Area"** means the area delimited in a development plan adopted under clause 20 hereof;

**"Effective Date"** means the date this Contract is executed by the Government and the Contractor;

**"Exploration Operations"** include geological and geophysical surveys and analyses, aerial mapping, investigations of subsurface geology, stratigraphic test drilling, drilling Exploratory Wells, and work necessary connected therewith;

**"Exploratory Well"** means a well drilled in search of Petroleum to test a geological feature which has not been determined to contain Petroleum in commercial quantities;



**"Fiscal Year"** means a period of twelve (12) consecutive months corresponding to the year of income as defined in the Income Tax Act of Kenya;

**"Income Tax Act"** means the Income Tax Act, Chapter 470 of the Laws of Kenya as from time to time amended;

**"Maximum Efficient Rate"** means the rate at which the maximum ultimate economic Petroleum recovery is obtained from a Commercial Field without excessive rate of decline in reservoir pressure, and consistent with good international petroleum industry practice;

**"Minister"** means the Minister for the time being responsible for energy or his designated representative;

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

**"Petroleum"** means Crude Oil and Natural Gas;

**"Petroleum Costs"** means expenditure made and obligations incurred and paid by the Contractor in carrying out Petroleum Operations hereunder, determined in accordance with the Accounting Procedure attached hereto in Appendix "B" and made a part hereof;

**"Petroleum Operations"** means all or any of the operations, authorized under this Contract, related to the exploration for, development, extraction, production, separation and treatment, storage, transportation and sale or disposal of, Petroleum up to the point of entry into a refinery, and includes Natural Gas processing operations but does not include petroleum refining operations;

**"Regulations"** means the Petroleum (Exploration and Production) Regulations, 1984 of Kenya;

**"Semester"** means a period of six (6) consecutive months, commencing with the first day of January or the first day of July of a Calendar Year.

## PART II

### TERM, EXPLORATION OBLIGATIONS AND TERMINATION

#### 2. TERM

(1) The Contractor is authorized to conduct Exploration Operations within the Contract Area during an initial exploration period of ..... Contract Years from the Effective Date.

(2) The Contractor shall begin Exploration Operations within three (3) months of the Effective Date.

(3) Upon written application by the Contractor made not later than one (1) month prior to the expiry of the initial exploration period, the Minister shall, if the Contractor has fulfilled its work and expenditure obligations under this Contract, grant a first additional exploration period of ..... Contract Years.

(4) Upon written application by the Contractor made not later than one (1) month prior to the expiry of the first additional exploration period hereof, the Minister shall, if the Contractor has fulfilled its work and expenditure obligations under this Contract, grant a second additional exploration period of ..... Contract Years.

(5) In order to enable the Contractor to complete the drilling and testing of an Exploratory Well actually being drilled or tested as the end of the second additional exploration period, the Minister shall, on written application by the Contractor made not later than three (3) months before the expiry of that exploration period, unless another period of notice is agreed, extend the period in which the work is to be expeditiously completed, which in any event shall not extend such period by more than four (4) months.

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(6) This Contract shall expire automatically at the end of the initial exploration period or of any additional exploration period, except as to any Development Area. If the Contractor reports, pursuant to sub-clause 19 (6) hereof, that a Commercial Discovery has been made before the expiry of the initial exploration period stipulated in sub-clause 2 (1) hereof or any additional exploration period thereof, this Contract shall not expire in respect to the relevant Development Area, but shall continue as to such Development Area for a term of ..... years from the date the development plan for that Development Area is adopted under sub-clause 20(3) hereof.

### 3. SURRENDER

(1) The Contractor shall surrender:

- (a) ..... per cent (..... %) of the original Contract Area at or before the end of the initial exploration period;
- (b) ..... per cent (.... %) of the original Contract Area at or before the end of the first additional exploration period;

(2) When calculating a surrender under sub-clause 3(1), Development Area shall be excluded from the original Contract Area.

(3) The Contractor may surrender a part of the Contract Area and such a voluntary surrender shall be credited against the next surrender obligation of the Contractor under sub-clause 3(1).

(4) The shape and size of an area surrendered shall be approved by the Minister, which approval shall not be unreasonably withheld.

(5) The Contractor shall give one (1) year's written notice to surrender in respect of a Commercial Discovery which is producing or has produced Petroleum and one (1) month written notice of surrender in respect of any other part of the Contract Area. In case of a surrender of the entire Contract Area the Contract shall terminate.

(6) No surrender shall reduce the minimum amount of exploration work and expenditure fixed in clause 4.

### 4. MINIMUM EXPLORATION AND EXPENDITURE OBLIGATIONS

(1) The Contractor shall carry out the following minimum work and expenditure obligations-

- (a) during the initial exploration period of ..... Contract Years-
  - (i) ..... km of seismic with a minimum expenditure of U.S. dollars .....
  - (ii) drilling of ..... Exploratory Wells to a minimum depth of ..... meters per well with a minimum expenditure of U.S. dollars ..... for each such well;
- (b) during the first additional exploration period of ..... Contract Years:
  - (i) drilling of ..... Exploratory Wells to a minimum depth of ..... meters per well with minimum expenditure of U.S. dollars ..... for each such well;
- (c) during the second additional exploration period of ..... Contract Year-
  - (i) drilling of ..... Exploratory Wells to a minimum depth of ..... meters per well with a minimum expenditure of U.S. dollars ..... for each such well.

(2) The fulfilment of any work obligation shall not relieve the Contractor of the corresponding expenditure obligation therein and vice-versa.

(3) If the drilling of an Exploratory Well is discontinued, prior to reaching the minimum depth herein specified, because that well has encountered the basement, an impenetrable substance or any condition which in accordance with good international petroleum industry practice would make it unsafe or impractical to continue drilling, the minimum depth obligation in respect of that well shall be deemed to be fulfilled.

A well drilled to evaluate a discovery under an evaluation work programme pursuant to sub-clauses 19 (2) and 19 (3) shall not have to satisfy the requirement to drill an Exploratory Well, except with the written consent of the Minister.

(4) The minimum exploration expenditure set forth in sub-clause 4(1) are expressed in ..... U.S. dollars of the year of the Effective Date. In any Contract Year of either the initial exploration period or of any additional exploration period, for the purpose of comparison of the actual costs incurred and paid by the Contractor with the minimum exploration expenditure, these actual costs incurred and paid by the Contractor for seismic operations and the drilling of Exploratory Wells during that Contract Year shall be converted into constant U.S. dollars by dividing these costs, by the number (hereinafter referred to as the "**Discount Rate**") which is the sum of one (1) and the decimal equivalent of the percentage increase in the United States Consumer Price Index, as reported for the first time in the monthly, publication "**International Financial Statistics**" of the International Monetary Fund, between the month of the Effective Date and the month when such costs were incurred.

(5) If during either the initial exploration period or the first additional exploration period, the Contractor exceeds the minimum work obligation or incurs expenditure in accordance with sub-clause 4(4) exceeding the minimum expenditure obligations for such exploration period, then such excess may be credited toward the respective obligation of the next succeeding additional exploration period or periods.

(6) On or before the commencement of the initial exploration period or of any additional exploration period the Contractor shall provide a security, in a form acceptable to the Minister, guaranteeing the Contractor's minimum work and expenditure obligations under sub-clause 4(1) hereof.

(7) If at the end of either the initial exploration period or of an additional exploration period or upon the date of termination of this Contract, whichever occurs first, the Contractor has not fulfilled its minimum work obligations under sub-clause 4(1) hereof, and/or its minimum expenditure obligations under sub-clauses 4(1) and 4(4) hereof, the Contractor shall pay to the Government the minimum monetary obligation in respect of the work not carried out multiplied by the Discount Rate, as defined in sub-clause 4(4) and calculated on the last month of that exploration period, and/or the shortfall, if any, between the amount expended, in accordance with sub-clause 4(4), and the minimum monetary obligation for that exploration period, multiplied by the Discount Rate, as defined hereabove.

#### 5. SURFACE FEES

(1) The Contractor shall pay, on or before the beginning of the relevant Contract Year to the Accounting Officer of the Ministry the following Surface Fees:

- U.S. dollars ..... per hectare per year for the initial exploration period;
- U.S. dollars ..... per hectare per year for the first additional exploration period; and
- U.S. dollars ..... per hectare per year for the second additional exploration period or any extension thereof.

(2) Said payments shall be calculated on the basis of the surface area of the Contract Area on the date such payments are due.

(3) A fee payable under sub-clause 5(1) is not refundable and late payment shall attract interest in accordance with sub-clause 34(2) hereof.

#### 6. TERMINATION

(1) The Minister may terminate this Contract by giving the contractor written notice, if the Contractor-

- (a) fails to make any payment to the Government or the Minister required under this Contract for a period exceeding one (1) month;
- (b) is in material breach of any other obligation under the Contract; or
- (c) becomes insolvent, makes a composition with creditors, goes into liquidation other than for reconstruction or amalgamation.

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(2) The period of notice in respect of sub-clause 6(1) (a) hereof shall be one (1) month, and in any other case three (3) months, but if the Contractor remedies the breach within the period of the notice, the Minister shall withdraw the notice. Where the Minister reasonably believes that the Contractor is using its best efforts to remedy the default, the Minister may extend the notice, accordingly.

(3) When this Contract is terminated or expires in whole or in part, the Contractor shall conclude the Petroleum Operations in the area as to which this contract has terminated or expired in an orderly manner minimizing harm to the Government and third parties.

(4) Where control over one of the entities constituting the Contractor is changed, the continuation of the Contract shall be subject to the consent of the Minister, which shall not be un-reasonably withheld, and for the purpose of this sub-clause 6(4) the term "**control**" shall have the same meaning as set forth in the definition of an Affiliate in sub-clause 1(2).

### PART III

## RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

### 7. RIGHTS OF THE CONTRACTOR

(1) The Contractor shall have the right to carry out the Petroleum Operations within the Contract Area, subject to the provisions of this Contract for the term hereof.

(2) The Contractor is granted the right to enter upon the Contract Area and conduct Petroleum Operations there, but permission may be granted to other persons to search for and mine minerals, other than Petroleum, so long as they do not unreasonably interfere with the Petroleum Operations, and easements and rights of way may be granted to other persons for the benefit of land adjacent to the Contract Area.

(3) The Minister shall obtain on behalf of the Contractor any permit necessary to enable the Contractor to use the water in the Contract Area for the purpose of the Petroleum Operations but the Contractor shall not unreasonably deprive the users of land, domestic settlement or cattle watering place of the water supply which they are accustomed.

(4) The Contractor may, for the purpose of the Petroleum Operations, use gravel, sand, clay and stone in the Contract Area but not in-

- (a) Trust land without a licence granted under section 37 of the Trust Land Act, Chapter 288 of the Laws of Kenya;
- (b) other private land without the consent of the owner; and
- (c) a beach, foreshore or reef without the consent of the Minister.

(2) The period of notice in respect of sub-clause 6(1) (a) hereof shall be one (1) month, and in any other case three (3) months, but if the Contractor remedies the breach within the period of the notice, the Minister shall, withdraw the notice. Where the Minister reasonably believes that the Contractor is using its best efforts to remedy the default, the Minister may extend the notice, accordingly.

(3) When this Contract is terminated or expires in whole or in part, the Contractor shall conclude the Petroleum Operations in the area as to which this Contract has terminated or expired in an orderly manner minimizing harm to the Government and third parties.

(4) Where control over one of the entities constituting the Contractor is changed, the continuation of the Contract shall be subject to the consent of the Minister, which shall not be unreasonably withheld, and for the purpose of this clause 6 (4) the term "**control**" shall have the same meaning as set forth in the definition of an Affiliate in sub-clause 1(2).

### 8. GENERAL STANDARDS OF CONDUCT

(1) The Contractor shall carry out the Petroleum Operation diligently and in accordance with good international petroleum industry practice.

(2) In particular, the Contractor shall-

- (a) ensure that all machinery, plant, equipment and installations used by the Contractor in connection with the Petroleum Operations are of proper and accepted construction and are kept in good repair;

- (b) use the resources of the Contract Area as productively as possible and ensure that Petroleum discovered and produced, or mud or any other fluids or substances do not escape to waste;
- (c) prevent damage to adjacent strata which bear Petroleum or water, and prevent water entering through wells into strata bearing Petroleum, except where water injection methods are used for secondary recovery operations;
- (d) properly confine Petroleum in receptacles constructed for that purpose, and not place Crude Oil in an earthen reservoir except temporarily in an emergency; and
- (e) dispose of waste oil, salt water and refuse in accordance with good international petroleum industry practice, avoiding pollution.

#### 9. JOINT LIABILITY AND INDEMNITY

(1) Where the Contractor consists of more than one person their liability shall be joint and several.

(2) The Contractor shall cause as little damage as possible to the surface of a Contract Area and to trees, crops, buildings and other property thereon, shall forthwith repair any damage caused, and shall pay reasonable compensation for any loss suffered.

(3) The Minister may, if he has reasonable cause to believe that the Petroleum Operations may endanger persons or property, cause pollution, harm marine life or interfere with navigation and fishing, order the Contractor to take reasonable remedial measures or order the Contractor to discontinue the relevant Petroleum Operations until such measures, or mutually agreed alternatives thereto, are implemented.

(4) The Contractor shall maintain appropriate and adequate third party liability insurance and workmen's compensation insurance and shall provide the Minister with evidence of those insurances before the Petroleum Operations begin.

(5) The Contractor shall indemnify, defend and save the Government harmless from all claims and damage which, but for the conduct of the Petroleum Operations by the Contractor or a sub-contractor, would not have arisen or occurred.

#### 10. WELLS AND SURVEYS

(1) Unless such notice is waived, the Contractor shall not drill a well or borehole or recommence drilling after a six (6) months' cessation without thirty (30) days' prior notification to the Minister which notice shall set forth the Contractor's reasons for undertaking such well and shall contain a copy of the drilling programme.

(2) The design of a well or borehole and the conduct of drilling shall be in accordance with good international petroleum industry practice.

(3) No borehole or well shall be drilled so that any part thereof is less than five hundred (500) meters from a boundary of the Contract Area, without the consent in writing of the Minister, which consent shall not be unreasonably withheld.

(4) The Contractor shall not, except where there is danger or a risk of significant economic loss-

- (a) abandon a well or remove any permanent form of casing therefrom, without giving forty-eight (48) hours prior notification to the Minister, and an abandoned well shall be securely plugged to prevent pollution, sub-sea damage, or water entering or escaping from the strata penetrated; or
- (b) commence drilling, re-enter or plug a well unless a representative of the Minister has been given a reasonable opportunity to be present.

(5) The Contractor shall state, in its application to abandon a well on land, whether that well is capable of providing a water supply.

(6) The Contractor shall, within two (2) months of termination or expiry of this Contract or the surrender of part of the Contract Area, deliver up all productive wells, in said surrendered area, in good repair and working order together with all casings and installations which

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cannot be moved without damaging the well, but the Minister may require the Contractor to plug the well at the Contractor's expense by notifying the Contractor within thirty (30) days after such termination or expiry is effected or at least three (3) months prior to surrender of a Development Area.

(7) Where the Contractor applies to permanently abandon an Exploratory Well in which Petroleum of potentially commercial significance has not been found, the Minister may request the Contractor to deepen or sidetrack that well and to test the formations penetrated as a result of such operation, or to drill another Exploratory Well within the same prospect area, subject to the following provisions:

- (a) Any such additional Petroleum Operations shall be at the sole cost, risk and expense of the Minister and shall be paid for in accordance with the Accounting Procedure. The Government shall advance to the Contractor the funds necessary to conduct the operations.
- (b) The Contractor shall not undertake such additional work if it will interfere with the conduct of the Contractor's Petroleum Operations or if it is not technically or operationally feasible.
- (c) In the event that the Petroleum Operations undertaken under this sub-clause 10(7) result in a discovery, which the Contractor elects to evaluate and/or develop as a Commercial Field, the Contractor shall reimburse the Government ..... per cent (..... %) of the costs and expenses incurred by the Government for the conduct of the operations and such sum shall be paid within thirty(30) days of the notification made by the Contractor. If the Contractor does not make such election, the Government shall have the right to continue the Petroleum Operations on this discovery at the sole cost, risk and expense of the Government.

(8) The Contractor shall give the Minister thirty (30) days; notice of any proposed geophysical survey, which notice shall contain complete details of the programme to be conducted. At the request of the Contractor, the Minister may waive the notice period.

#### **11. OFFSHORE OPERATIONS**

(1) The Contractor shall ensure that works and installation erected offshore in Kenya's territorial waters and exclusive economic zone shall be-

- (a) constructed, placed, marked, buoyed, equipped and maintained so that there are safe and convenient channels for shipping;
- (b) fitted with navigational aids approved by the Minister;
- (c) illuminated between sunset and sunrise in a manner approved by the Kenya Ports Authority; and
- (d) kept in good repair and working order.

(2) The Contractor shall pay compensation for any interference with fishing rights caused by the Petroleum Operations.

#### **12. FIXTURES AND INSTALLATIONS**

(1) With the written consent of the Minister, which consent shall not be unreasonably withheld, the Contractor shall have the right to construct roads, drill water wells and to place fixtures and installation necessary to conduct the Petroleum Operations, including but not limited to storage tanks, shipment installations, pipelines, cables of similar lines, located inside or outside the Contract Area. Such consent of the Minister may be conditional on the use by other producers of the excess capacity, if any, of those facilities. Where the Minister and the Contractor agree that a mutual economic benefit can be achieved by constructing and operating common facilities, the Contractor shall use its best efforts to reach agreement with other producers on, the construction and operation of such common facilities.

(2) Other producers may only use the facilities of the Contractor where there exists excess capacity and on payment of a reasonable compensation which includes a reasonable

return on investment to the Contractor and provided such use does not unreasonably interfere with the Contractor's Petroleum Operations.

(3) The Minister may consent to the laying of pipelines, cables and similar lines in the Contract Area by other persons, but those lines shall not unreasonably interfere with the Petroleum Operations of the Contractor.

(4) On termination or expiration of this Contract or surrender of part of the Contract Area, the Contractor shall remove the above ground plant, appliances and installations from the Contract Area or the part surrendered other than those that are situated in or related to a Development Area or, at the option of the Minister, the Contractor shall transfer them, at no cost, to the Government, in the condition that they are then in.

(5) When the rights of the Contractor in respect of a Development Area terminate, expire or are surrendered, the Contractor shall transfer to the Government, at no cost, the plant, appliances and installations that are situated in the Development Area or that are related thereto, unless such plant, appliances and installations are or may be utilized by the Contractor in Petroleum Operations under this Contract, but the Government may require the Contractor, to remove the surface installations at the cost of the Contractor.

### 13. LOCAL EMPLOYMENT AND TRAINING

(1) The Contractor, its contractors and sub-contractors shall, where possible, employ Kenya citizens in the Petroleum Operations, and until the expiry or termination of this Contract, shall train those citizens. The training programme shall be established in consultation with the Minister.

(2) In addition to the obligation under sub-clause 13(1) and commencing on the Effective Date, the Contractor shall for the purposes of section 11 of the Act contribute or hold to the order of the Ministry a minimum of ..... thousand U.S. dollars per year for the Ministry training fund established under section 11(1) of the Act. The Contractor's obligation hereunder shall be increased to a minimum of ..... thousand U.S. dollars per year commencing with the adoption of the first development plan under sub-clause 20(3).

### 14. DATA AND SAMPLES

(1) The Contractor shall keep logs and records of the drilling, deepening, plugging or abandonment of boreholes and wells, in accordance with good international petroleum industry practice and containing particulars of-

- (a) the strata and sub-soil through which the borehole or well was drilled;
- (b) the casing, tubing and down-hole equipment and alterations thereof, inserted in a borehole or well;
- (c) Petroleum, water, workable mineral or mine workings encountered; and
- (d) any other matter reasonably required by the Minister.

(2) The Contractor shall record, in an original or reproducible form of good quality, and on seismic tapes where relevant, all geological and geophysical information and data relating to the Contract Area obtained by the Contractor and shall deliver a copy of that information and data, the interpretations thereof and the logs and records of boreholes and wells, to the Minister, in a reproducible form, as soon as practicable after that information, those interpretations and those logs and records come into the possession of the Contractor.

(3) The Contractor may remove, for the purpose of laboratory examination or analysis, petrological specimens or samples of Petroleum or water encountered in a borehole or well and, as soon as practicable shall, without charge, give the Minister a representative part of each specimen and sample removed, but no specimen or sample shall be exported from Kenya without prior notification to the Minister.

(4) The Contractor shall keep records of and supply information concerning the Petroleum Operations, reasonably requested by the Minister, if the data or information necessary to comply with the request are readily available.

[Subsidiary]

**15. REPORTS**

(1) The Contractor shall supply to the Minister daily reports on drilling operations and production operations, and weekly reports on geophysical operations.

(2) The Contractor shall report in writing to the Minister the progress of the Petroleum Operations according to the following schedule-

- (a) within one (1) month of the last day of March, June, September and December covering the previous three (3) months;
- (b) within three (3) months of the last day of December covering the previous year;
- (c) within three (3) months of the date of expiry or termination of this Contract.

(3) A report under sub-clause 15 (2) shall contain, in respect of the period which it covers-

- (a) details of the Petroleum Operations earned out and the factual information obtained;
- (b) a description of the area in which the Contractor has operated;
- (c) an account of the expenditure on Petroleum Operations in accordance with the Accounting Procedure;
- (d) a map indicating all boreholes, wells and other Petroleum Operations;
- (e) on expiry or termination of this agreement details of the Petroleum Operations including all the matters described in paragraphs (a) to (d); and
- (f) all information required by clause 14 not hitherto supplied.

**PART IV**

**RIGHTS AND OBLIGATIONS OF THE GOVERNMENT**

**AND THE MINISTER**

**16. RIGHT'S OF THE GOVERNMENT**

(1) The Government may acquire a part of the Contract Area for a public purpose other than searching for or extracting Petroleum but not to the extent that will prevent the carrying out of Petroleum Operations within the Contract Area, and the Government shall not, without good cause, acquire a part of the Contract Area on which Petroleum Operations are in progress.

The Contractor shall not carry out Petroleum Operations on such an acquired part but may-

- (a) enter upon that part but not materially interfere with the public purpose; and
- (b) carry out directional drilling from an adjacent part.

(2) The Minister, or a person authorized by him in writing, may at all reasonable times inspect any Petroleum Operations, and any records of the Contractor relating thereto, and the Contractor shall provide, where available, facilities similar to those applicable to its own or to sub-contractors' staff for transport to the Petroleum Operations, subsistence and accommodation and pay all reasonable expenses directly connected with the inspection.

(3) The Minister may require the Contractor to perform an obligation under this Contract by giving reasonable written notice, and if the Contractor fails to comply with that notice, the Minister may execute any necessary works for which the Contractor shall pay forthwith. The Minister may give notice to execute works at any time but not later than three (3) months after the termination or expiry of this Contract or the surrender of a part of the Contract Area.

**17. OBLIGATIONS OF THE GOVERNMENT**

(1) The Government may, at the request of the Contractor, make available to the Contractor such land as the Contractor may reasonably require for the conduct of Petroleum Operations and-



- (a) where such land is Trust Land, the Government shall, subject to sub-clause 17(2), set apart such Trust Land in the Contract Area in accordance with the Trust Land Act (Cap 288) and Chapter IX of the Constitution;
- (b) where such land is private land, the Government may, subject to section 10 of the Act, acquire the land in accordance with the applicable laws;
- (c) the Contractor shall pay or reimburse the Government any reasonable compensation that may be required for the setting apart, use or acquisition of any land for the Petroleum Operations.

(2) Where the Contractor has occupied Trust Land for the purpose of the Petroleum Operations before that land has been set apart, the Contractor shall notify the Minister in writing of the need to set apart such land before the end of the two-year period referred to in section 115 of the Constitution.

(3) The Government shall grant or cause to be granted to the Contractor, its contractors and sub-contractors such way-leaves easements, temporary occupation or other permissions within an without the Contract Area as are necessary to conduct the Petroleum Operations and in particular for the purpose of laying, operating and maintaining pipelines and cables, and passage between the Contract Area and the point of delivery of Petroleum.

(4) The Government shall at all times give the Contractor the right of ingress to and egress from the Contract Area and to and from Immigration Act and Regulations of Kenya in particular, the facilities wherever located for the conduct of Petroleum Operations.

(5) Subject to the usual national security requirements and the Immigration Act and Regulations of Kenya in particular, the Government shall not unreasonably refuse to issue and/or renew entry permits for technicians and managers employed in the Petroleum Operations by the Contractor or its sub-contractors and their dependants.

## **PART V**

### **WORK PROGRAMME, DEVELOPMENT AND PRODUCTION**

#### **18. EXPLORATION WORK PROGRAMME**

(1) The Contractor shall submit and orally present to the Minister one (1) month after the Effective Date, a detailed statement of the exploration work programme and budget for the first Contract Year

(2) The Contractor shall submit and orally present to the Minister three (3) months before the end of each Contract Year, a detailed statement of the exploration work programme and budget for the next Contract Year.

(3) The Minister may submit to the Contractor, within thirty (30) days of the receipt of the annual exploration work programme and budget, suggest modifications and revisions thereof. The Contractor shall consider the inclusion of such suggested modifications and revisions in light of good international petroleum industry practice and shall provide the Minister with the exploration work programme and budget which the Contractor has adopted.

(4) After adoption of the annual exploration work programme and budget, the Contractor may make changes to that annual exploration work programme and budget if those changes do not materially affect the original objectives of that exploration work programme and budget, and shall state the reasons for those changes to the Minister.

#### **19. DISCOVERY AND EVALUATION WORK PROGRAMME**

(1) The Contractor shall in accordance with section 9(b) of the Act, notify the Minister of a discovery of Petroleum and shall report of the Minister all relevant information.

(2) If the Contractor considers that the discovery merits evaluation, it shall submit and orally present to the Minister a detailed statement of the evaluation work programme and budget which shall provide for the expeditious evaluation of the discovery and the provisions of sub-clauses 18(3) and 18 (4) shall apply to the evaluation work programme and budget.

[Subsidiary]

(3) After the evaluation work programme and budget have been adopted, the Contractor shall diligently evaluate the discovery without due interruption.

(4) In the event of a discovery in the last year of the second additional exploration period, the Minister shall, at the request of the Contractor, extend the term of the second additional exploration period in respect to the prospective area of the discovery and for the period of time reasonably required to expeditiously complete the adopted evaluation work programme and budget with respect to such discovery and to determine whether or not the discovery is commercial but in any event, such extension to the second additional exploration period shall not exceed ..... months.

(5) The Contractor shall, not more than three (3) months after the valuation is completed, report to the Minister the commercial prospects of the discovery, including all relevant technical and economic data.

(6) If the Contractor reports under sub-clause 19 (5) that the discovery is a Commercial Discovery, a development plan shall be submitted to the Minister within six (6) months of the completion of the evaluation work programme unless otherwise agreed, and upon written application of the Contractor, the term of this Contract shall be extended by the Minister, if necessary, in respect of the area of that Commercial Discovery, provisionally established in accordance with the principle of sub-clause 20 (2)(a), for the time required for the adoption of a development plan.

## **20. DEVELOPMENT PLAN AND DEVELOPMENT WORK PROGRAMME**

(1) The Contractor shall prepare, in consultation with the Minister, the development plan based on sound engineering and economic principles and in accordance with good international petroleum industry practice and considering the Maximum Efficient Rate of production appropriate to the Commercial Discovery.

(2) The development plan submitted by the Contractor to the Minister shall contain-

- (a) details of the proposed Development Area, relating to the Commercial Discovery which shall correspond as closely as possible to the extension of the discovered accumulation in the Contract Area, as determined by the analysis of all the relevant available information;
- (b) proposals relating to the spacing, drilling and completion of wells and the facilities and installations required for the production, storage and transportation of Petroleum;
- (c) a production forecast and an estimate of the investment and expenses involved; and
- (d) an estimate of the time required to complete each phase of the development plan.

(3) The Minister and the Contractor shall jointly, consider the development plan within sixty (60) days of submission thereof and the Minister may within that period, unless otherwise agreed, submit suggested modifications and revisions thereof. The Contractor shall consider the inclusion of such suggested modifications and revision in light of the good international petroleum industry practice, and the development plan shall be adopted sixty (60) days after receipt by the Contractor of those suggested modifications and revisions, unless another development plan is adopted by mutual agreement before that period has elapsed.

Where the Minister proposes no modifications and revisions, the development plan of the Contractor shall be adopted sixty (60) day after its submission unless it is adopted by mutual agreement before that period has elapsed.

(4) After a development plan has been adopted, the Contractor shall use its best efforts to proceed, promptly and without undue interruption, to implement the development plan in accordance with good international petroleum industry practice. Development work shall commence within six (6) months of the date of adoption of the development plan.

In connection therewith, the Contractor shall submit and orally present to the Minister, prior to the first day of October of each year following the adoption of a development

plan, a detailed statement of the annual development work programme and budget for the next Calendar Year and the provisions of sub-clauses 18(3) and 18(4) shall apply to the development plan and to the annual development work programme and budget.

(5) Where the development operations result in an extension to the area to which the Commercial Discovery relates within the Contract Area, the Minister shall adjust the relevant Development Area to include that extension as determined by the analysis of all the relevant available information.

## 21. UNITIZATION

(1) Where the recoverable reserves of a Commercial Discovery extend into an area adjacent to the Contract Area, the Minister may require the Contractor to produce Petroleum, therefore in co-operation with the contractor of the adjacent area. Where non-commercial deposits of Petroleum in the Contract Area if exploited with deposits in an area adjacent to the Contract Area, would be commercial, the Minister may make a similar requirement to the contractor of that adjacent area.

(2) If the Minister so requires, the Contractor shall in co-operation with the contractor of the adjacent area, submit within six (6) months, unless otherwise agreed, a proposal for the joint exploitation of the deposits, for the approval of the Minister.

(3) If the proposal is not submitted or approved, the Minister may prepare his own proposal, in accordance with good international petroleum industry practice, for the joint exploitation of the recoverable reserves, and the Minister's proposal unless another proposal is mutually agreed, shall be adopted by the Contractor, subject to sub-clause 21 (4), and subject to the adjacent contractor's acceptance of the same proposal. The reasonable costs of preparing the proposal shall be divided equally between the Contractor and the adjacent contractor.

(4) The provisions of the proposal for joint exploitation shall prevail over this Contract, where those provisions do not reduce the financial benefits to the Parties under this Contract.

## 22. MARGINAL AND NON-COMMERCIAL DISCOVERIES

(1) Where the Contractor determines that a discovery is marginal or non-commercial, the Contractor may propose a modification to his Contract, based on an alternative economic evaluation and after consideration the Minister may accept or reject the proposed modification.

(2) Unless otherwise agreed, if the Contractor fails to commence the evaluation of a discovery within ..... years following the notice of discovery, or if within ..... years following the completion of an evaluation work programme the Contractor considers the discovery does not merit development, the Minister may request the Contractor to surrender the area corresponding to such discovery and the Contractor shall forfeit any rights relating to any production therefrom. The area subject to such surrender shall not exceed the extension of the discovered accumulation as determined by the structural closure of the prospective horizon and all other relevant available information. Any such surrender by the Contractor shall be credited in accordance with sub-clause 3(3) hereof.

## 23. Natural Gas

(1) Where Natural Gas is discovered and the Contractor and the Minister agree that it may be economically processed and utilized other than in secondary recovery operations, that processing and utilization shall follow a development plan approved in accordance with clause 20.

(2) The Contractor shall return associated Natural Gas, not required for use in Petroleum Operations or sold, to the subsurface structure, but if such Natural Gas cannot be economically used or sold or returned to the subsurface structure, the Contractor shall, after expiry of a sixty (60) days' notice to the Minister giving reasons why such Natural Gas cannot be economically used or sold or returned to the subsurface structure, be entitled to flare such associated Natural Gas in accordance with good international petroleum industry practice. Notwithstanding anything in this clause to the contrary, associated Natural Gas may

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[Subsidiary]

be flared at any time if necessary for the conducting of well and production tests and during any emergency.

(3) Where the Contractor does not consider that it is economical to process and utilize associated Natural Gas and where that Natural Gas is not required for use in Petroleum, Operations, the Minister may at the field separator, process and utilize that Natural Gas without compensation but the Government shall pay for all costs and expenses related thereto which shall include, but shall not be limited to, any engineering studies, new fixtures, equipment and installations required for the gathering, transport, processing and utilization thereof and the operation and maintenance of same shall be at the sole risk, cost and expense of the Government.

(4) Where the Contractor considers that it is economical to produce Natural Gas, the Contractor agrees to sell all or part of its share of Natural Gas to the Government, provided that the Parties agree upon the price, volume and terms of sale.

#### **24. Production Levels and Annual Production Programme**

(1) The Contractor shall produce Petroleum at the Maximum Efficient Rate in accordance with good international petroleum industry practice.

(2) Prior to the first day of October of each year following the commencement of Commercial Production, the Contractor shall submit and orally present to the Minister, a detailed statement of the annual production programme and budget for the next Calendar Year, and the provisions of sub-clause 18 (3) and (4) shall apply to the annual production programme and budget.

(3) The Contractor shall endeavour to produce in each Calendar Year the forecast quantity estimated in the annual production programme.

(4) The Crude Oil shall be run to storage (constructed, maintained and operated by the Contractor) and Petroleum shall be metered or otherwise measured as required to meet the purpose of this Contract in accordance with clause 25.

#### **25. Measurement of Petroleum**

(1) The volume and quality of Petroleum produced and saved from the Contract Area shall be measured by methods and appliances customarily used in good international petroleum industry practice and approved by the Minister.

(2) The Minister may inspect the appliances used for measuring the volume and determining the quality of Petroleum and may appoint an inspector to supervise the measurement of volume and determination of quality.

(3) Where the method of measurement, or the appliances used therefor, have caused an overstatement or understatement of a share of the production, the error shall be presumed to have existed since the date of the last calibration of the measurement devices, unless the contrary is shown, and an appropriate adjustment shall be made for the period of error.

(4) The Minister and the Contractor shall determine the measurement point at which production shall be measured and the respective shares of Petroleum allocated.

#### **26. Valuation of Crude Oil and Natural Gas**

(1) The value of Crude Oil, for all purposes under this Contract, shall be denominated in United States dollars and shall be calculated each Calendar Quarter as follows—

- (a) if there have been sales of Crude Oil produced from the Contract Area to third parties at arm's length during that Calendar Quarter, the value shall be the weighted average per unit price actually paid in those sales, at the F.O.B. point of export or at the point that title and risk pass to the buyer, adjusted for grade, gravity and quality of such Crude Oil as well as for transportation costs and other appropriate adjustments; and "arm's length" for this purpose means transaction where the seller and the buyer are independent of one another and do not have, directly or indirectly, any common interest;
- (b) if there have been no sales of Crude Oil produced from the Contract Area to third parties at arm's length during that Calendar Quarter, the value shall

'be the "**Fair Market Value**" determined as the average per unit prevailing market price, actually paid during that Calendar Quarter in arm's length sales for export under term contracts of at least ninety (90) days between unrelated purchasers and sellers, for Crude Oil produced in Kenya and in the major Crude Oil producing countries, and adjusted for grade, gravity and quality of such Crude Oil as well as for transportation costs and any other appropriate adjustments.

If necessary, a value of Crude Oil shall be determined separately for each Crude Oil or Crude Oil mix and for each point of delivery.

The value of Crude Oil shall be mutually agreed at the end of each Calendar Quarter and applied to all transactions that took place during the Quarter.

If the Minister and the Contractor cannot reach agreement the value of Crude Oil within thirty (30) days of the end of any Calendar Quarter, such determination shall be made by an internationally recognized expert acquainted by the Contractor and the Minister, but if they fail to agree within thirty (30) days on the appointment of such expert, then by the International Chamber of Commerce. The expert shall report his determination within twenty (20) days of his appointment and his determination shall be final and binding upon the Government and the Contractor.

(2) Pending the determination of the value of Crude Oil for Calendar Quarter, the value of Crude Oil determined for the preceding Calendar Quarter will be provisionally applied to make calculation and payment during such Calendar Quarter until the applicable value for that Calendar Quarter is finally determined pursuant to sub-clause 26 (1). Any adjustment to provisional calculation and payment, if necessary, will be made within thirty (30) days after such applicable value is finally determined.

(3) Natural Gas shall be valued based on the actual proceeds received for sales, provided that, for sales of Natural Gas between the Contractor and any Affiliate, the value of such Natural Gas shall not be less than the then prevailing fair market value for such sales of Natural Gas taking into consideration, to the extent possible, such factors as the market, the quality and quantity of Natural Gas and other relevant factors reflected in Natural Gas pricing.

## PART VI

### COST RECOVERY, PRODUCTION SHARING, MARKETING AND PARTICIPATION

#### 27. Cost Recovery, Production Sharing and Income Tax

(1) Subject to the auditing provisions under clause 30, the Contractor shall recover the Petroleum Costs, in respect of all Petroleum Operations, incurred and paid by the Contractor pursuant to the provisions of this Contract and duly entered in the Contractor's books of account, by taking and separately disposing of an amount equal in value to a maximum of per cent (%) per Fiscal Year of all Crude Oil produced and saved from the Contract Area during that fiscal year and not used in Petroleum Operations. Such cost recovery Crude Oil is hereinafter referred to as "**Cost Oil**".

(2) Petroleum Costs may be recovered from Cost Oil in the following manner:

- (a) Petroleum Costs, with the exception of Capital Expenditures, incurred in respect of the Contract Area, shall be recoverable either in the Fiscal Year in which these Costs are incurred and paid or the Fiscal Year in which Commercial production occurs, whichever is the later; and
- (b) Capital Expenditure incurred in respect of each Development Area shall be recoverable at a rate of twenty per cent (20%) per annum based on amortization at that rate starting either in the Fiscal Year in which such Capital Expenditure are incurred and paid or the Fiscal Year in which Commercial Production from that Development Area commences, whichever is the later.

[Subsidiary]

For the purpose of this clause, “**Capital Expenditure**” shall mean the Qualifying Expenditure, other than “**intangible drilling costs,**” that is expenditure that has no salvage value, including expenditure on labour, fuel, repairs, maintenance, hauling, mobilization and demobilization and supplies and materials, other than supplies and materials for well casings or other well fixtures, which is for or incidental to drilling, cleaning, deepening, completing or abandoning wells and is incurred in respect of—

- (i) the determination of well locations, geological and geophysical studies, and topographical and geographical surveys preparatory to drilling;
- (ii) the drilling, shooting, testing and cleaning of wells; and
- (iii) the clearing, draining and levelling of land, road-building and laying of foundations.
- (c) To the extent that, in a Fiscal Year, the Petroleum Costs recoverable according to sub-clauses 27(2)(a) and 27(2)(6) exceed the value of all Cost Oil for such Fiscal Year, the excess shall be carried forward for recovery by the Contractor in the next succeeding Fiscal Year or Fiscal Years until fully recovered, but in no case after the termination of this Contract.
- (d) To the extent that, in a Fiscal Year, the Petroleum Costs recoverable according to sub-clauses 27 (2) (a) and 27 (2) (b) are less than the maximum value of the Cost Oil as specified in sub-clause 27 (1), the excess shall become part of, and be included in the Profit Oil as provided for in sub-clause 27 (3) hereafter.
- (e) For the purpose of valuation of Cost Oil, the provisions of clause 26 hereof shall apply.

3. The total Crude Oil produced and saved from the Contract Area and not used in Petroleum Operations less the Cost Oil as specified in sub-clauses 27 (1) and 27 (2), shall be referred to as the Profit Oil and shall be shared, taken and disposed of separately by the Government and the Contractor according to increments of Profit Oil as follows:

Increments of Profit Oil	Government share	Contractor's share
First 20,000 Barrels per day	%	%
Next 30,000 Barrels per day	%	%
Any 50,000 Barrels per day	%	%
Any volume over first 100,000 Barrels per day	%	%

For the purpose of this sub-clause, increments of Profit Oil shall be calculated by considering the total Crude Oil produced and saved from the Contract Area less the quantity of Cost Oil required to satisfy recoverable costs, expenses and expenditure according to subclauses 27(1) and 27(2).

(4) With respect to sub-clauses 27 (1), 27 (2) and 27 (3), Cost Oil and Profit Oil calculations shall be done quarterly on an accumulative basis. To the extent that actual quantities, costs and expenses are not known, provisional estimates of such data based on the adopted annual production work programme and budget under clause 24 shall be used. Within sixty (60) days of the end of each Fiscal Year, a final calculation of Cost Oil and Profit Oil based on actual Crude Oil production in respect of that Fiscal Year and recoverable Petroleum Costs shall be prepared and any necessary adjustments shall be made.

(5) The Contractor shall be subject to and shall comply with the requirements of the income tax laws in force in Kenya which impose taxes on or are measured by income or profits.

The portion of Crude Oil which the Government is entitled to take and receive under sub-clause 27(3) shall be inclusive of all taxes based on income or profits, including specifically tax payable under the Income Tax Act, and dividend tax imposed by Kenya on

any distribution of income or profits by the Contractor, but shall exclude the tax paid by the Contractor on behalf of petroleum service sub contractors.

The Government agrees to pay and discharge as and when due such taxes for account of the Contractor, and the Minister agrees to furnish the Contractor with proper receipts from the Government evidencing the payment of all such taxes on Contractor's behalf for each Fiscal Year. The Contractor shall prepare and file a Kenya income tax return for each Fiscal Year within four (4) months after the close of each Fiscal Year. The receipts furnished by the Minister evidencing payment of such taxes shall correspond to the amount of taxes payable on behalf of the Contractor by the Government. The receipts shall be issued by the duly constituted authority for the collection of Kenya income taxes and shall be furnished within three (3) months after the date the Contractor files its Kenya income tax return for such Fiscal Year.

All taxes paid by the Government in the name and on behalf of the Contractor shall be considered income to the Contractor for the Fiscal Year to which the tax payments relate.

(6) The Contractor, if so directed by the Minister, shall be obligated to lift and market part or all of the Government share of Profit Oil.

When the Minister elects not to take and receive in kind any part of the Government share of Profit Oil, the Minister shall notify the Contractor three (3) months before the commencement of each Semester of a Calendar Year, specifying the quantity of production and such notice shall be effective for the ensuing Semester. Any sale by the Contractor of the Government share of Profit Oil shall not be for a term of more than one (1) year without the Minister's consent.

The price paid by the Contractor for the Government share of Profit Oil shall be the price established according to clause 26. The Contractor shall pay the Government on a monthly basis, such payment to be made within thirty(30) days after the end of the month in which the production occurred.

(7) At a reasonable time prior to the scheduled date of commencement of Commercial Production, the Parties shall agree on procedures covering the scheduling, storage and lifting of Petroleum produced from the agreed upon point of export or delivery.

(8) In the event that the Contractor elects to produce a National Gas discovery, the Petroleum Costs incurred by the Contractor and directly attributable to the discovery and production of such Natural Gas shall be recovered from part thereof. The Parties agree that the Government and the Contractor shall share the Natural Gas produced and saved and not used in Petroleum Operations in accordance and on an equivalent basis with the percentage allocations provided for cost recovery and production sharing of Crude Oil under this clause. For this purpose, six thousand (6,000) cubic feet of Natural Gas at a temperature of 15 degrees centigrade and pressure of one atmosphere shall be deemed to be equivalent to one (1) Barrel of Crude Oil.

## 28. GOVERNMENT PARTICIPATION

(1) The Government may elect to participate in the Petroleum Operations in any Development Area and acquire an interest of up to ..... per cent (%) (hereinafter referred to as "**Participating Interest**") of the total interest in that Development Area. The Government may participate either directly or through an Appointee.

"**Appointee**" means a body corporate wholly owned or controlled by the Government, and appointed for the purposes of this Contract.

(2) The Government shall exercise the right to participate by giving notice to the Contractor within six (6) months from the date the development plan for a Development Area is adopted under sub-clause 20 (3). Such notice shall specify the Participating Interest that the Government has elected in that Development Area. If the Government exercises its option to participate, the Contractor (or each entity constituting the Contractor pro-rata) shall transfer to the Government that percentage interest specified by the Government.

The Government's participation shall be effective from the date the development plan hereof is adopted.

[Subsidiary]

(3) If the Government exercises its right to participate in a Development Area, the Government and the Contractor shall execute the Participation Agreement, attached hereto as Appendix " C " and made a part thereof, within three (3) months after notice to the Contractor under sub-clause 28 (2).

- (4) The Government shall, in exercise of its right to participate in a Development Area—
- (a) have the right to a vote in proportion to its Participating Interest with respect to all decisions taken under the Participation Agreement;
  - (b) own and separately take and dispose of its share in the Petroleum produced and saved to which the Contractor is entitled under this Contract, corresponding to its Participating Interest in that Development Area. The Contractor shall not be obligated to market the Government's share of Petroleum corresponding to the Government's Participating Interest in that Development Area;
  - (c) assume its share of costs, expenses and obligations incurred in respect of that Development Area, from the Effective Date of its participation as defined in sub-clause 28 (2), pro-rata to its Participating Interest;
  - (d) own a Participating Interest share in all assets acquired, for Petroleum Operations in or related to the Development Area;
  - (e) reimburse the Contractor, without interest, pro-rata to the Government Participating Interest, its share of all costs, expenses and expenditure incurred in respect of the Development Area from the date the development plan for that Development Area has been adopted to the date the Government exercises its right to participate in that Development Area.

#### 29. Domestic Consumption

(1) The Contractor shall have the obligation to supply in priority Crude Oil for domestic consumption in Kenya and shall sell to the Government that portion of the Contractor's share of production which is necessary to satisfy the domestic supply requirement in accordance with the following provisions.

(2) In each Calendar Year, the Minister shall notify the Contractor not less than three (3) months prior to the beginning of that Calendar Year, of the domestic supply requirement. The maximum amount of Crude Oil that the Minister may require from the Contractor's share of production shall be calculated each Calendar Quarter, and shall be equal to the excess of total Crude Oil Domestic Consumption in Kenya multiplied by a fraction, the numerator of which is the average Crude Oil production from the Contract Area and the denominator of which is the total Crude Oil production from all producers in Kenya, over the amount of Crude Oil available to the Government from the Contract Area as in the form of Government share of production under clause 27 and in the form of Government participation share under clause 28.

For the purpose of this sub-clause, "**Domestic Consumption**" does not include Crude Oil refined in Kenya for export.

(3) When the Contractor is obligated to supply Crude Oil for domestic consumption in Kenya, the price paid by the Government shall be calculated in accordance with clause 26. Such sales to the Government shall be invoiced monthly and shall be paid within sixty (60) days of receipt of the invoice, unless other terms and conditions are mutually agreed.

(4) With the written consent of the Minister the Contractor may comply with this clause by importing Crude Oil and exporting the amount, but appropriate adjustments shall be made in price and volume to reflect transportation costs, differences in quality gravity and terms of sale.

(5) In this clause, "**Government**" includes an Appointee as defined in sub-clause 28 (1) and "**Contractor**" does not include the Government where the Government has participated under clause 28.



**PART VII****BOOKS, ACCOUNTS, AUDITS, IMPORTS, EXPORTS AND FOREIGN EXCHANGE****30. BOOKS, ACCOUNTS AND AUDITS**

(1) The Contractor shall keep books and accounts in accordance with the Accounting Procedure and shall submit to the Minister a statement of those accounts, not more than three (3) months after the end of each Calendar Year.

(2) At the request of the Minister, the Contractor shall appoint an independent auditor of international standing, approved by the Government to audit annually the books and accounts of the Contractor and report thereon; and the cost of such audit shall be at the charge of the Contractor.

(3) The Government may audit the books and accounts within two (2) Calendar Years of the period to which they relate, and shall complete that audit within one (1) Calendar Year.

(4) In the absence of an audit within two (2) Calendar Year or in the absence of notice to the Contractor of a discrepancy in the books and accounts within three (3) Calendar Years of the period to which the audit relates the Contractor's books and accounts shall be deemed correct.

**31. Preference to Kenyan Goods and Services**

(1) The Contractor, its contractors and sub-contractors shall give preference to Kenyan materials and supplies for use in Petroleum Operations as long as their prices, quality, quantities and timeliness of delivery are comparable with the prices, quality quantities and timeliness of delivery of non-Kenyan materials and supplies.

(2) The Contractor, its contractors and sub-contractors shall give preference to Kenyan contractors for services connected with Petroleum Operations as long as their prices, performance and timeliness are comparable with the prices, performance and timeliness of non-Kenyan service contractors.

(3) The Contractor, its contractors and sub-contractors shall provide supplies and services from bases in Kenya where practicable.

(4) The Contractor shall-

- (a) on or before the beginning of each Calendar Year to which it applies, submit to the Minister a tentative schedule of the contemplated service and supply contracts with an estimated value exceeding the equivalent of ..... US dollars per contract, to be let during the forthcoming Calendar Year, showing the anticipated tender date and approximate value and the goods and services to be provided;
- (b) for contracts with an estimated value exceeding the equivalent of ..... U.S. dollar per contract, undertake to select its contractors and sub-contractors from adequately qualified companies by means of competitive bidding or by another appropriate method in accordance with good international petroleum industry practice;
- (c) as soon as practicable after their execution, provide to the Minister a copy of each contract, requiring a payment in a currency other than Kenya Shillings and a brief description of the efforts made to find a Kenyan supplier or service contractor;
- (d) the minimum amount specified under this sub-clause 31 (4) may be changed from time to time by mutual agreement.

**32. EXPORTS AND IMPORTS**

(1) Except as to the Petroleum to be delivered to the Government pursuant to the terms of this Contract, the Contractor shall own and receive its share of Petroleum produced from the Contract Area and shall be entitled to export such Petroleum without restriction and free of taxes, charges, fees, duties or levies of any kind or to otherwise freely dispose of same.

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(2) The Contractor and its contractors and sub-contractor engaged in carrying out Petroleum Operations under this Contract shall be permitted to import into Kenya all materials, equipment and supplies including but not limited to machinery, vehicles, consumable items, movable property and any other articles, to be used solely in carrying out Petroleum Operations under this Contract.

Such materials, equipment and supplies shall be exempt from all Customs Duties. However, the Contractor and its contractors and sub contractors shall give preference to Kenyan goods and services in accordance with clause 31 hereof.

(3) In relation to materials, equipment and supplies imported or to be imported pursuant to sub-clause 32 (2), when a responsible representative of the Ministry has certified that they are to be use solely in carrying out Petroleum Operations under this Contractor the Contractor and its contractors and sub-contractors shall be entitled to make such imports without having to obtain-

- (a) any approval of import licence, provided, however, that an application has been duly made;
- (b) any Exchange Control approval, subject to the provisions of clause 33 hereof; or
- (c) any inspection outside of Kenya by General Superintendence or other inspecting body, acting for the time being, appointed by the Government .

(4) The actual costs of contracts for technical and other services entered into by the Contractor for Petroleum Operations and for materials purchased by the Contractor for use in Petroleum Operations shall be recoverable, provided that those services and materials are reasonably required for Petroleum Operations and provided further that the prices paid by the Contractor are no higher than those currently prevailing in normal arm's length transactions of the open market for comparable services and materials.

(5) Each expatriate employee of the Contractor, its contractors and sub-contractors shall be permitted to import and shall be exempt from all Customs Duties with respect to the reasonable importation of household goods and personal effects. Including one (1) automobile, provided however that such properties are imported within three (3) months of their arrival or such longer period as the Government may in writing determine.

(6) The Contractor and its contractor and sub-contractors and their expatriate employees may sell in Kenya all import items which are no longer needed for Petroleum Operations. However, if such imports were exempt from Customs Duties, the seller shall fulfil all formalities required in connection with the payment of duties, taxes, fees and charges imposed on such sales.

(7) Subject to sub-clauses 12 (4) and 12 (5), Contractor and its contractors and sub-contractors and their expatriate employees may export from Kenya, exempt of all export duties, taxes, fees and charges, all previously imported items which are no longer required for the conduct of Petroleum Operations under this Contract.

(8) "Customs Duties", as that term is used herein, shall include all duties, taxes on imports (except those charges paid to the Government for actual services rendered), which are payable as a result of the importation of the item or items under consideration.

### 33. EXCHANGE AND CURRENCY CONTROLS

(1) As long as the Contractor meets its obligations to the Government in terms of tax payments or any other payment contemplated by this Contract, and as long as the Contractor complies with sub-clause 33 (2) hereafter and is not in a material breach with this Contract, the Government shall by appropriate legal notice grant effective upon the Effective Date of this Contract the Contractor freedom to-

- (a) open and freely maintain external accounts inside Kenya and foreign bank accounts outside Kenya in accordance with Exchange Control Notice No. 3 issued under the Exchange Control Act, Chapter 113 of the Laws of Kenya;
- (b) receive, retain outside Kenya and freely dispose of foreign shall not be obligated to remit such proceeds to Kenya with the exception of those

proceeds as may be needed to meet in Kenya its expenses and payments to the Government;

- (c) pay directly outside Kenya for purchases of goods and service necessary to carry out Petroleum Operations hereunder;
- (d) pay its expatriate employees working in Kenya in foreign currencies outside of Kenya. Such expatriate employees shall be only required to bring into Kenya such foreign exchange as required to meet their personal living expenses and to meet payments of Kenyan taxes;
- (e) freely repatriate abroad all proceeds from Contractor's Petroleum Operations in Kenya, including but not limited to proceeds from the sale of assets and Petroleum; and
- (f) have rates of exchange for purchase or sale of currency in Kenya, not less favourable to the Contractor than those granted to any investor in Kenya.

(2) In order to keep the Government and the Central Bank of Kenya informed of its prospective and actual foreign exchange transactions, the Contractor shall inform the Government and the Bank in writing and in such form and detail as the Government or the Bank may request-

- (a) of the location of the Contractor's bank accounts in Kenya and a broad, which latter accounts shall be opened in bank approved by the Central Bank of Kenya;
- (b) annually, before the commencement of each Calendar Year of the Contractor's estimated receipts and disbursements of foreign exchange by principal headings during the Year (which statement may be amended from time to time if this appears necessary); and
- (c) quarterly, within thirty (30) days of the end of each Calendar Quarter, of the Contractor's actual receipts and disbursements of foreign exchange by principal headings during the preceding Quarter.

(3) Subject to the obligation to give preference to Kenyan goods and services as stipulated under clause 31, the Contractor shall have the right to enter all contracts and sub-contracts necessary to carry out Petroleum Operations, without prior approval by the Central Bank of Kenya or any other Government agency. The Government reserves the right to inspect the records or documentation related to such contracts and sub-contracts and, in accordance with clause 30 to appoint independent auditors to examine the accounts of the Contractor, and the Contractor shall provide a copy of such contracts within thirty (30) days after their execution, provided however that where the Government disputes anything in the contracts, the value in dispute shall not be included, until the dispute has been resolved, in-

- (a) the qualifying expenditure under the Income Tax Act;
- (b) the Certificate of Approved Enterprise; and
- (c) the qualifying payment under the Exchange Control Act.

(4) The Government shall grant to the Contractor a Certificate of Approved Enterprise in accordance with the Foreign Investments Protection Act, Chapter 518 of the Laws of Kenya. The amount recognized by the Certificate as having been invested shall be the actual amount for the time being invested by the Contractor as set forth in its books of account maintained and audited in accordance with this Contract, provided however that the Contractor shall not repatriate any proceeds of sale of an asset forming part of either-

- (a) qualifying expenditure under the Income Tax Act;
- (b) any asset subject to a Certificate of Approved Enterprise;

without written approval and the necessary amendments to the relevant certificate. Proceeds arising from any other source may be repatriated after a senior Officer of the Ministry, duly authorized in that behalf, has certified that such repatriation is in order.

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**Part VII**

**GENERAL**

**34. PAYMENTS**

(1) All sums due to the Government or the Contractor shall be paid in United States dollars or other currency agreed to by the Government and the Contractor.

(2) Any late payment shall attract interest at ..... per cent(..... %) per annum.

**35. ASSIGNMENT**

(1) After notice to the Minister the Contractor may assign part or all of its rights and obligations under this Contract to an Affiliate without the prior approval of the Minister, provided such assignment shall result in the assignor and the assignee being jointly and severally liable for all of the assignor's obligations hereunder.

(2) The Contractor may assign to a person other than an Affiliate part or all of its rights and obligations under this Contract with the consent of the Minister, which shall not be unreasonably withheld and which shall be granted or refused within thirty (30) days of receipt by the Minister of notice from the Contractor that it intends to make such an assignment, but the Minister may require such an assignee to provide a guarantee for the performance of the obligations of the Contractor.

(3) The Contractor shall report to the Minister any material changes in the corporate structure, ownership and financial position of the Contractor and its parent company.

**36. MANAGER, ATTORNEY AND JOINT OPERATION AGREEMENT**

(1) The Contractor shall notify the Minister, before the Petroleum Operations begin, of the name and address of the person resident in Kenya who will supervise the Petroleum Operations, and prior notice of any subsequent change shall be given to the Minister.

(2) The Contractor shall appoint an attorney resident in Kenya with power of representation in all matters relating to this Contract of which appointment the Minister shall be notified before the Petroleum Operations begin, and prior notice of any subsequent change shall be given to the Minister.

(3) Where the Contractor consists of more than one person, the Contractor shall deliver to the Minister a copy of the Joint Operating Agreement between those persons, as soon as it is available.

**37. CONFIDENTIALITY**

(1) All information which the Contractor may supply to the Government under this Contract shall be supplied at the expense of the Contractor and the Government shall keep that information confidential, and shall not disclose it other than to a person employed by or on behalf of the Government, except with the consent of the Contractor which consent shall not unreasonably be withheld.

(2) Notwithstanding sub-clause 37 (1), the Minister may use any information supplied, for the purpose of preparing and publishing reports and returns required by law, and for the purpose of preparing and publishing reports and surveys of a general nature.

(3) The Minister may publish any information which relates to a surrendered area at any time after the surrender, and in any other case, three (3) years after the information was received unless the Minister determines, after representations by the Contractor, that a longer period shall apply.

(4) The Government shall not disclose, without the written consent of the Contractor, to any person, other than a person employed by or on behalf of the Government, know-how and proprietary technology which the Contractor may supply to the Minister.

**38. FORCE MAJEURE**

(1) In this clause, *Force Majeure* means an occurrence beyond the reasonable control of the Minister or the Government of the Contractor which prevents any of them from performing their obligations under this Contract.

(2) Where the Minister, the Government or the Contractor prevented from complying with this Contract by *Force Majeure*, the person affected shall promptly give written notice to the other and the obligations of the affected person shall be suspended, provide that that person shall do all things reasonably within its power to remove such cause of *Force Majeure*. Upon cessation of the *Force Majeure* event, the person no longer affected shall promptly notify the other persons.

(3) Where the person not affected disputes the existence of *Force Majeure*, that dispute shall be referred to arbitration in accordance with clause 41.

(4) Where an obligation is suspended by *Force Majeure* for more than one (1) year, the Parties may agree to terminate this Contract by notice in writing without further obligations.

(5) Subject to sub-clause 38 (4), the term of the Contract shall be automatically extended for the period of the *Force Majeure*.

### 39. WAIVER

A waiver of an obligation of the Contractor shall be in writing, signed by the Minister, and no waiver shall be implied if the Minister does not exercise a remedy under this Contract.

### 40. GOVERNING LAW

(1) This Contract shall be governed by, interpreted and construed in accordance with the laws of Kenya.

(2) The Contractor agrees that it will obey and abide by all laws and regulations in force in Kenya.

(3) If after the Effective Date of this Contract the economic benefits of a Party are substantially affected by the promulgation of new laws and regulations, or of any amendments to the applicable laws and regulations of Kenya, the Parties shall agree to make the necessary adjustments to the relevant provisions of this Contract, observing the principle of the mutual economic benefits of the Parties.

### 41. ARBITRATION

(1) Except as otherwise provided in this Contract, any question or dispute arising out of or in relation to or in connection with this Contract shall, as far as possible, be settled amicably. Where no settlement is reached within thirty (30) days from the date of the dispute or such other period as may be agreed upon by the Parties, the dispute shall be referred to arbitration in accordance with the UNCITRAL arbitration rules adopted by the United Nations Commission on International Trade Law.

(2) The number of arbitrators shall be three (3) and shall be appointed as follows-

- (a) each Party shall appoint one (1) arbitrator and so notify the other Party of such appointment and those two (2) arbitrators shall appoint the third arbitrator.
- (b) if any of the arbitrators shall not have been appointed within thirty (30) days, either Party may request in writing the Secretary-General of the International Centre for Settlement of Investment Disputes to appoint the arbitrator or arbitrators not yet appointed and to designate an arbitrator to be the Chairman of the arbitral tribunal. The Secretary-General shall forthwith send a copy of that request to the other Party.

The Secretary-General shall comply with the request within thirty (30) days from the receipt thereof or such longer period as the Parties may agree.

The Secretary-General shall promptly notify the Parties of any appointment or designation made by him pursuant to the aforesaid request.

- (c) Arbitrators shall be chosen from countries other than those of which the Parties are nationals.
- (d) If an arbitrator fails or is unable to act, his successor will be appointed in the same manner as the arbitrator whom he succeeds.

(3) The arbitration shall take place in Nairobi, Kenya and shall be in English.

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(4) The decision of a majority of the arbitrators shall be final and binding on the Parties.

(5) Any judgment upon the award of the arbitrators may be entered in any court having jurisdiction in respect thereof.

**42. NOTICES**

(1) Any notice and other communication under this Contract shall be in writing and shall be delivered by hand, sent by registered post, by telegram or telex to the following address of the other.

To the Government:

To the Contractor:

(2) A notice shall be effective on receipt.

(3) Any notice given by telex or telegram shall be promptly confirmed by letter signed by the Party giving the notice.

(4) The Government and the Contractor may at any time and from time to time change its authorized representative or its address herein on giving the other ten (10) days notice in writing to such effect.

**43. HEADING AND AMENDMENTS**

(1) Headings are inserted in this Contract for convenience only and shall not affect the construction or interpretation hereof.

(2) This Contract shall not be amended, modified or supplemented except by an instrument in writing signed by the Parties.

Signed on the day and year first before written:

For the Government .....

The Minister .....

.....

.....

For the Contractor .....

Note: Appendices to each Petroleum Agreement will-

- (a) identify the block to which the Petroleum Agreement relates (Appendix "A");
- (b) provide for the Accounting Procedures to be followed by the Contractor (Appendix "B"); and
- (c) specify the terms and conditions of participation (Appendix "C").

**APPENDIX "A"**

**THE CONTRACT AREA**

*(The Area to which the Petroleum Agreement relates)*

**APPENDIX "B"**

**PART I-GENERAL PROVISIONS**

The purpose of this Accounting Procedure is to establish methods and rules of accounting for Petroleum Operations and the principles set forth herein shall apply to Petroleum Operations pursuant to the production sharing contract (hereinafter referred to as the "Contract"), to which this Appendix is attached.

**1.1 .INTERPRETATION**

**1.1 1.-DEFINITIONS**

"Joint Account" means the set of accounts maintained by the Operator to record all expenditure and other transactions under the provisions of the Contract. Such accounts will distinguish between exploration, evaluation, development and production costs. After

adoption of a development plan a separate Joint Account shall be maintained for each Development Area.

**"Joint Property"** means all property acquired and held in connection with Petroleum Operations under the Contract;

**"Material"** means personal property, including supplies and equipment, acquired and held for use in Petroleum Operations;

**"Controllable Material"** means material which the Operator subjects to record control and inventory. A list of types of such material shall be furnished to the Government and Non-Operator(s);

**"Operator"** means the party designated to conduct the Petroleum Operations;

**"Non-Operator(s)"** means the entities constituting the Contractor other than the Operator, and the Government when it participates Words not defined herein, but which are defined in the Contract shall have the meanings ascribed to them therein.

#### 1.1.2 PRECEDENCE OF DOCUMENT

In the event of conflict between the provisions of this Accounting Procedure and the provisions of the Contract, the provisions of the Contract shall prevail.

### 1.2. ACCOUNTING OBLIGATIONS OF THE CONTRACTOR

1. The Contractor shall maintain financial accounts necessary to record in reasonable detail the transactions relating to petroleum Operations which shall be prepared in accordance with general accepted standards of the international petroleum industry, as not particularly, but not exclusively set out in this Accounting Procedure.

1.2.2 The Contractor shall provide the Government with a description of its accounting classifications and the Contractor shall use such classifications when preparing its accounts.

1.2.3 The Contractor shall provide details of the financial accounts in the form of monthly statements which shall-

- (a) reflect all charges and credits related to Petroleum Operations;
- (b) be prepared on an accrual basis so that expenditure is recorded as incurred when title to goods passes or when work is executed; and
- (c) present the total accounts for the Contract Area and each Development Area and the share of each Non-Operator.

#### 1.3. -LANGUAGE AND UNITS OF ACCOUNTS

1.3.1 All books and accounts shall be maintained in the English language and in United States dollars. Where necessary for clarification, the Contractor may also maintain accounts and records in other language and currencies.

1.3.2 It is the intent of this Accounting Procedure that neither the Government nor the Contractor should experience an exchange gain or loss at the expense of, or to the benefit of, the other. However, should there be any gain or loss from exchange of currency, it will be credited or charged to the accounts under the Contract.

#### 1.4. -AUDITS AND INSPECTION RIGHTS OF THE GOVERNMENT

1.4.1 The Government, upon at least thirty (30) days' advance written notice to the Contractor, shall have the right at its sole expense to audit the Joint Account and related records for any Calendar Year or portion thereof within the twenty-four (24) month period following the end of such Year. Notice of any exception to the Contractor's accounts of any Calendar Year must be submitted to the Contractor within three (3) years from the end of such Year.

1.4.2 For purposes of auditing, the Government may examine and verify, at reasonable times, all charges and credits relating to the Petroleum Operations such as books of account, accounting entries, material records and inventories, vouchers, payrolls, invoices and any other documents, correspondence and records necessary to audit

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and verify the charges and credits. Furthermore, the auditors shall have the right in connection with such audit, to visit and inspect at reasonable times, all sites, plants, facilities, warehouses and offices of the Contractor directly or indirectly serving the Petroleum Operations including visiting personnel associated with those operations.

- 1.4.3 All adjustments resulting from an audit agreed shall be rectified promptly in the Contractor's accounts. Any unresolved dispute arising in connection with an audit shall be referred to arbitration in accordance with clause 41 of the Contract.
- 1.4.4 At the request of the Minister, the Contractor shall appoint an independent auditor of international standing approved by the Minister to audit annually the accounts and records of Petroleum Operations and report thereon, and the cost of such audit and report shall be chargeable to the Joint Account.

#### 1.5 REVISION OF ACCOUNTING PROCEDURE

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

### PART II - COSTS, EXPENSES, EXPENDITURE AND CREDITS OF THE CONTRACTOR

Subject to the provisions of the Contract, the Contractor shall bear and pay the following costs and expenses necessary to conduct Petroleum Operations. Such Petroleum Costs are recoverable by the Contractor in accordance with the provisions of the Contract.

#### 2.1 SURFACE RIGHTS

- 2.1.1 All direct costs necessary to acquire and to maintain surface rights to the Contract Area when such costs are paid by the Contractor according to the provisions of the contract.

#### 2.2.-LABOUR AND RELATED COSTS

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

#### 2.3.-MATERIAL

2.3.1 Value of material charged to the accounts under the Contract. The cost of material, equipment and supplies purchased or furnished by the Operator for use in Petroleum Operations shall be charged to the Joint Account on the basis set forth below. So far as it is reasonably practical and consistent with efficient and economical operations, only such material shall be purchased for or transferred to the Joint Property as may be required for immediate use and/or for approved work programmes and the accumulation of surplus stock shall be avoided.

- 2.3.1.1 Except as otherwise provided in Subpart 2.3.1.2. below material purchased, leased or rented shall be charged at the actual Net Cost incurred by the Operator. "**Net Cost**" shall include, but shall not be limited to, such items as vendor's invoice price, transportation duties, fees and applicable taxes less all discounts actually received.
- 2.3.1.2 Material purchased or transferred from the Contractor or its Affiliate(s) shall be charged at the prices specified here below.



- (a) New material (Condition "A") shall be valued at the current international Net Cost which shall not exceed the price prevailing in normal arm's length transactions on the open market.
- (b) Used material (Conditions "B", "C" and "D").
  - (i) Material which is in sound and serviceable condition and is suitable for reuse without reconditioning shall be classified as Condition "B" and priced at seventy-five per cent (75%) of the current price of new material defined in (a) above.
  - (ii) Material which cannot be classified as Condition "B" but which after reconditioning will be further serviceable for its original function shall be classified as Condition "C" and priced at fifty per cent (50%) of the current price of new material as defined in (a), above. The cost of reconditioning shall be charged to the reconditioned material provided that the value of Condition "C" material plus the cost of reconditioning do not exceed the value of Condition "B" material.
  - (iii) Material which cannot be classified as Condition "B" or Condition "C" shall be classified as Condition "D" and priced at a value commensurate with its use.

### 2.3.2-INVENTORIES

2.3.2.2 The Operator shall clearly state the principles upon which valuation of the inventory has been based.

2.3.2.3 Whenever there is a sale or change of interest in the Joint Property, a special inventory may be taken by the Operator, provided the seller and/or purchaser of such interest agrees to bear all of the expense thereof. In such cases, both the seller and the purchaser shall be entitled to be represented and shall be governed by the inventory so taken.

### 2.4-TRANSPORTATION AND EMPLOYEE RELOCATION COSTS

2.4.1 Transportation of material and other related costs such as origin services, expediting, crating, dock charges, forwarder's charges, surface and air freight, and customs clearance and other destination services.

2.4.2. Transportation of employees as required in the conduct of Petroleum Operations, including employees of the Operator's Affiliates whose salaries and wages are chargeable under Subparts 2.2.1. and 2.5.2.

2.4.3. Relocation costs to the Contract Area vicinity of employee permanently or temporarily assigned to Petroleum Operations. Relocation costs from the Contract Area vicinity, except when an employee is reassigned to another location classified as a foreign location by the Operator. Such costs include transportation of employees' families and their personal and household effects and all other relocation costs in accordance with the usual practice of the Operator and its Affiliate(s)

### 2.5-SERVICES

2.5.1 The actual costs of contract services, professional consultants, and other services performed by third parties other than service provided by the Contractor or its Affiliate(s), but the prices paid by the Contractor shall not be higher than those generally charged for comparable services.

2.5.2 . Costs of technical services, such as but not limited to, laboratory analysis, drafting, geophysical and geological interpretation, engineering, and related data processing,

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performed by the Contractor and its Affiliate(s) for the direct benefit of Petroleum Operations provided such costs shall not exceed those currently prevailing if performed by third parties in normal arm's length transaction for like services.

2.5.3 . Costs of use of equipment and facilities for the direct benefit of the Petroleum Operations, furnished by Contractor or its Affiliate(s) at rates commensurate with the cost of ownership, or rental, and the cost of operation thereof, but such rates shall not exceed those currently prevailing in the general vicinity of the Contract Area in normal arm's length transactions on the open market for like services and equipment.

**2.6.-DAMAGES AND LOSSES TO JOINT PROPERTY**

**2.**

6.1 . All costs or expenses necessary for the repair or replacement of Joint Property resulting from damages or -losses incurred by fire flood, storm, theft, accident, or any other cause, except insofar as those costs and expenses are caused by the wilful misconduct of the Operator. The operator shall furnish the Government and Non-Operator(s) written notice of damages or losses for each damage or loss in excess of fifty thousand U.S. dollars (U.S. \$50,000) as soon as after the loss as practicable.

**2.7-INSURANCE**

2.7.1 Premia for insurance required under the Contract, provided that a party not participating in such insurance shall not share in the costs unless such insurance is compulsory under the laws of Kenya and provided further, that if such insurance is wholly or partly placed with an Affiliate of the Contractor such premia shall be recoverable only to the extent generally charged by competitive insurance companies other than an Affiliate of the Contractor.

2.7.2 Actual expenditure incurred in the settlement of all losses claims, damages, judgments, and other expenses for the benefit of the Petroleum Operations.

**2.8.-LEGAL EXPENSE**

2.8.1 All costs or expenses of litigation or legal services otherwise necessary or expedient for the protection of the Joint Property or other interest in the Contract Area, including but not limited to legal counsel's salaries and fees, court costs, cost of investigation or procuring evidence and amounts paid in settlement or satisfaction of any such litigation or claims. These services may be performed by the Operator's legal staff or an outside firm as necessary.

**2.9.-DUTIES AND TAXES**

2.9.1 All duties, taxes (except taxes based on income), fees, and governmental assessments of every ,kind and nature which have been paid by the Operator with respect to the Contract.

**2.10-OFFICES, CAMPS AND MISCELLANEOUS FACILITIES**

2.10.1 Cost of establishing, maintaining and operating any offices, suboffices, camps, warehouses, housing and other facilities directly serving Petroleum Operations. The costs shall be allocated to the operations served on an equitable basis.

**2.11 -GENERAL AND ADMINISTRATIVE EXPENSES**

2.11.1 This charge shall be made monthly for services of all personnel and offices of the Operator and its Affiliate(s) outside Kenya and those not otherwise provided herein. It shall include services and related office costs of personnel performing management, administrative, legal,

accounting, treasury, tax, employee relations, computer services, purchasing, engineering, geological, geophysical, and all other functions for the direct benefit of Petroleum Operations. The charge shall be made as follows:

This charge will be at the provisional rate of ..... per cent (.....%) of total costs per month during any period in which exploration operations are being conducted. For the period commencing on the date that the Contractor reports a commercial discovery to the Government as required in clause 19 (5) of the Contract until the Contract is terminated the provisional rates shall be ..... per cent (.....%) of total costs per month.

The provisional charges for such costs are based upon Operator's cost experience and estimates of costs to be incurred in conduct of the Petroleum Operations, and are subject to quarterly adjustment as Operator's costs indicate are necessary and equitable. Within ninety (90) days following the end of each Quarter, the Operator shall determine the actual costs incurred in performing such services, and shall charge or credit the Joint Account for the difference between the actual cost incurred for the Quarter and the provisional rate charged during the Quarter.

On request of the Government or a Non-Operator, the Operator shall make available at its home offices all supporting documents used for the determination of the charges. Such documents shall include but shall not be limited to time allocation reports prepared by employees providing services described in Subpart 2.11.1., cash vouchers supporting cash expenses included in the overhead pool, intercompany billings supporting charges for services provided by Operator's Affiliates (e.g. building rentals, telecommunications paid by the Operator's parent company), summary or impersonalized computer run supporting salaries, wages and employee benefits and other such documents as may be mutually agreed.

## 2.12-OTHER EXPENDITURE

- 2.12.1 Other reasonable expenditure not covered or dealt with in the foregoing provisions which are incurred by the Operator or its Affiliate(s) for the necessary, proper, economical and efficient conduct of Petroleum Operations.
- 2.12.2 Interest incurred on loans raised by the Contractor for capital expenditure in Petroleum Operations under the Contract at rates not exceeding prevailing commercial rates may be recoverable as Petroleum Costs.

## 2.13-CREDITS UNDER THE CONTRACT

The net proceeds of the following transactions will be credited to the accounts under the Contract-

- (a) the net proceeds of any insurance or claim in connection with the Petroleum Operations or any assets charged to the accounts under the Contract;
- (b) revenue received from outsiders for the use of property of assets charged to the accounts under the Contract;
- (c) any adjustment received by the Contractor from the suppliers manufacturers or their agents in connection with defective equipment or material the cost of which was previously charged by the Contractor under the Contract;
- (d) rentals, refunds or other credits received by the Contractor which apply to any charge which has been made to the accounts under the Contract;
- (e) proceeds from all sales of surplus material or assets charged to the account under the Contract; and

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- (f) the prices originally charged to the accounts under the Contract for inventory materials subsequently exported from Kenya.

#### 2.14-NO DUPLICATION OF CHARGES AND CREDITS

Notwithstanding any provision to the contrary in this Accounting Procedure, it is the intention that there shall be no duplication of charges or credits in the accounts under the Contract.

#### PART III - FINANCIAL REPORTS TO THE MINISTER

3.1 The reporting obligations provided for in this Part shall, unless the contrary is stated, apply to the Operator.

3.2 The Operator shall submit annually to the Minister the following.

3.2.1 the annual work programme and budget three (3) months before the beginning of the year to which they apply and the budget shall be analyzed by item within the exploration programme, evaluation programme, development programme and production programme and show for each major budget item, with reasonable detail, the following-

- (a) latest forecast cumulative costs anticipated at the start of the budget year;
- (b) cumulative expenditure anticipated at the end of each Quarter of the budget year; and
- (c) expenditure anticipated in future years to complete the budget item.

3.2.2 a schedule of the service and supply contracts, to be let during the forthcoming year which require payment in foreign currency exceeding the equivalent of ..... U.S. dollars (U.S. \$.....) per contract, showing the anticipated tender date and approximate value and the goods or services to be provided;

3.2.3 the audit report required by Sub-part 1.4.4. of this Accounting Procedure, stating whether in the opinion of the auditors of the Contract-

- (a) the last annual expenditure report records the expenditure of the Contractor truly and fairly in accordance with the provisions of the Contract;
- (b) the reports on Petroleum revenue submitted truly and fairly determine the arm's length value of disposals of Petroleum during the Year.

3.3 The Operator shall submit quarterly within thirty (30) days of each Quarter to the Minister:

3.3.1 a report of expenditure and receipts under the Contract analyzed by budget item showing-

- (a) actual expenditure and receipts for the Quarter in question;
- (b) actual cumulative cost to date;
- (c) latest forecast cumulative cost at the year end;
- (d) variations between budget costs and actual costs, and explanations therefor; and
- (e) with effect from adoption of the development plan, the total payroll costs segregated between Kenyan and non-Kenyan personnel and the total expenditure segregated between Kenyan and non-Kenyan goods and services.

3.3.2 a cost recovery statement containing the following information-

- (a) recoverable Petroleum Costs carried forward from the previous Quarter, if any;
- (b) recoverable Petroleum Costs incurred and paid during the Quarter;
- (c) total recoverable Petroleum Costs for the Quarter ((a) plus to above);
- (d) quantity and value of Cost Oil taken and separately disposed of by the Contractor for the Quarter;
- (e) amount of Petroleum recovered for the Quarter;
- (f) amount of recoverable Petroleum Costs to be carried forward into the next Quarter, if any; and
- (g) value of Government's share of Production taken by the Contractor pursuant to clause 27 of the Contract.

3.4 A copy of each contract for goods or services, requiring foreign currency payment, shall be provided to the Minister as soon as practicable after its execution, together with a contract summary containing-

- (a) a description of the goods or services to be provided;
- (b) the approximate consideration for the contract;
- (c) the names of proposed bidders, contractors or suppliers; and
- (d) a brief description of the efforts made to find a Kenya supplier or contractor including the names of businesses considered and the reasons for rejecting them.

3.5 After the commencement of production the Operator shall within fifteen (15) days after the end of each month, submit a production report to the Minister showing for each Development Area the quantity of Petroleum-

- (a) held in stocks at the beginning of the month;
- (b) produced during the month;
- (c) lifted, and by whom;
- (d) lost and consumed in Petroleum Operations; and
- (e) held in stocks at the end of the month.

3.6 A lifting party shall submit, within fifteen (15) days after the end of each month, a report to the Minister stating-

- (a) the quantities and sales value of arm's length Petroleum sales made in that month;
- (b) the quantities, sales value and arm's length value of disposals of Petroleum other than by sale at arm's length during the month; and
- (c) the total Petroleum revenue for that month.

#### **APPENDIX "C"**

##### **PARTICIPATION AGREEMENT**

3.6 A lifting party shall submit, within fifteen (15) days after the end of each month, a report to the Minister stating-

- (a) the quantities and sales value of arm's length Petroleum sales made in that month;
- (b) the quantities, sales value and arm's length value of disposals of Petroleum other than by sale at arm's length during the month; and
- (c) the total Petroleum revenue for that month.

#### **APPENDIX "C"**

##### **PARTICIPATION AGREEMENT**

This Participation Agreement, made and entered into on this ..... day of ....., 19....., by and between the Government of the Republic of Kenya (hereinafter referred to as the "Government") represented for the purpose of this agreement by the Minister for the time being responsible for energy (hereinafter referred to as the "**Minister**") and ..... incorporated under the laws of..... and having established a place of business at ..... Kenya (hereinafter referred to as the "**Contractor**").

WHEREAS the Government and the Contractor have entered into a production sharing contract (referred to as the "Contract"), to which this Appendix is attached;

WHEREAS the Government may decide to exercise its option under clause 28 of the Contract; and

WHEREAS the Parties wish to set forth the terms and condition under which the Government has agreed to participate in the Petroleum Operations in each case such option is exercised;

[Subsidiary]

NOW, THEREFORE, the Parties agree as follows:

**1-INTERPRETATION**

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

"AFE" means an authorization for expenditure;

"Government" includes an Appointee as defined in subclause 2 (1) of the Contract;

"Joint Account" means the accounts maintained by the Operator to record all transactions related to operations in the Participatio Area under this Participation Agreement;

"Joint Property" means all property acquired and held for use connection with operations under this Participation Agreement;

"Non-Operator" means a Party other than the Operator;

"Operating Committee" means the committee established b Article 4 hereof;

"Operator" means the Party designated to conduct the Petroleum Operations, pursuant to Article 3 hereof and its successors;

"Participating Interest" means the respective undivided interest of each of the Parties as it may exist at any given time in the Participation Area and under this Participation Agreement;

"Participation Area" means a Development Area in which the Government elects to participate under the Contract;

"Participation Dates" means the effective date of participation by the Government as defined in subclause 28 (2) of the Contract;

"Participation Work Programme" means a programme of the Petroleum Operations under this Participation Agreement;

"Parties" means, collectively, the Government and the entities constituting the Contractor, their respective successors or assignees.

"Party" means anyone of the Parties;

"Year" means Calendar Year.

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

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

**2. PARTICIPATING INTERESTS**

1. When and if the Government elects, pursuant to clause 28 of the Contract, to participate in Petroleum Operations in a Participation Area, each entity constituting the Contractor shall assign proportionately to the Government a part of its interest in the Development Area so that the rights, interest and obligations of the Contractor and the Government in such area shall be owned and borne as of the Participation Date in undivided interests as follows:

Government: ..... per cent (..... %) or such lesser 28 of the Contract;

amount as may be elected in accordance with clause

Contractor: ..... percent(..... %) or such greater amount as may remain after the Government's election.

2. In the event a Party shall transfer in whole or in part its Participating Interest pursuant to clause 35 of the Contract and Article 9 of this Participation Agreement, the Participating Interest of the Parties therein shall be revised accordingly.

### 3. OPERATOR AND DUTIES OF OPERATOR

1. The Operator shall be the Party acting as Operator on the Participation Date and the Operator shall have the rights and obligations of a Non-Operator in respect of its Participating Interest.

2. The Operator shall serve as Operator until it resigns or is removed pursuant to the provisions of this Article, or until it ceases to hold a Participating Interest hereunder. In the event that an Operator assigns the whole of its Participating Interest hereunder to one of its Affiliates, such Affiliate shall become Operator hereunder in the former's place.

3. Upon the affirmative vote of all the Non-Operators, the Operator shall be removed as Operator in case of any one of the following-

- (a) bankruptcy of the Operator or its parent company;
- (b) assignment for the benefit of the Operator's creditors;
- (c) appointment of a receiver or manager with respect to the whole or any part of the property or assets of the Operator;
- (d) entitlement of any person other than an Affiliate of the Operator to appoint a majority of the members of the board of directors of the Operator by reason of any act, default or neglect of the Operator;
- (e) failure without justification by the Operator to pay a sum due to or in the name of the Joint Account for more than sixty (60) days;
- (f) the Operator's material breach of this Participation Agreement which remains unremedied for more than thirty (30) day after the Operator is notified by Non-Operators of such breach; or
- (g) reduction in the Operator's Participating Interest to per cent (.....%) or less.

4. An Operator may at any time resign as Operator by giving to the other Parties notice in writing of such resignation. Such resignation shall be effective one hundred-eighty (180) days after the date of notice thereof or on the date on which a successor Operator appointed by the Parties (other than the Operator) shall be read and able to assume the obligations of Operator in accordance with all the provisions of this Participation Agreement, whichever shall first occur.

5. Should an Operator so resign or be removed, a successor Operator shall immediately be appointed by the Operating Committee A Party having been removed as Operator may not vote to succeed itself as Operator. Such appointment shall be made by a vote of a least two (2) of the remaining Parties holding not less than the per centage figure of the remaining Participating Interests set out in Article 4(6). For the purpose of this Article 3 (5), Operator includes any of its Affiliates holding a Participating Interest in this Participation Agreement.

6. Removal or resignation of an Operator shall not in any way affect its rights or obligations as a Non-Operator Party to this Agreement. On the effective date of removal or resignation, the Operator shall deliver to the successor Operator any and all funds, equipment materials, appurtenances, books, records, data, interpretations, information and rights acquired by and in the custody of the Operator for the Joint Account of the Parties (including available Petroleum not delivered to the Parties), shall, with the successor Operator, prepare an inventory of Joint Property, adjusting the Joint Account accordingly, and shall co-operate as far as possible, in effecting a smooth transfer of operating responsibilities.

7. An Operator that is removed under Article 3(3) (g) hereof may charge to the Joint Account all reasonable and necessary expenditure incurred in demobilizing and repatriating personnel and equipment.

[Subsidiary]

8. The Operator shall have control of the Petroleum Operations in the Participation Area and shall have exclusive custody of all materials, equipment and other property acquired therefor, and shall perform the duties under this Participation Agreement diligently and in accordance with good international petroleum industry practice, and sound and accepted engineering, management and accounting principles.

The Operator shall not be liable to any Non-Operator for any acts or omissions, claims, damages, losses or expenses, in connection with or arising out of this Participation Agreement or the Contract or Petroleum Operations save those caused by gross negligence or wilful misconduct of the Operator.

9. The Operator shall-

- (a) consult with Non-Operators and advise them of all matters arising from the Petroleum Operations;
- (b) comply with the decisions of the Operating Committee;
- (c) keep the Participating Interests and all property acquired or used free from liens, except for those authorized by Article 6 hereof; and
- (d) pay the costs of the Petroleum Operations under this Participation Agreement promptly and make proper charges to Non-Operators.

10. The Operator shall submit a copy of an AFE to the Non-Operators for each budget item of capital expenditure in the approved Participation Work Programme and budget that costs more than

..... U.S. dollars (U.S. \$ .....).

Where it is necessary to complete an expenditure in a budget item in the approved Participation Work Programme, the Operator may exceed the budget for the budget item by the lesser of ten per cent (10%) thereof or ..... U.S. dollars (U.S. \$.....) and shall report promptly such excess expenditure to the Non-Operators.

The Operator may spend not more than ..... U.S. dollars (U.S. \$.....) on Petroleum Operations in the Participation Area not included in an approved Participation Work Programme, provided that such expenditure shall not be for items previously rejected by the Operating Committee. The Operator shall report promptly that expenditure to the Non-Operators and, if it is approved in accordance with Article 4(6), the Operator may make further expenditure thereon or on other items not exceeding ..... U.S. dollars (U.S. \$.....) in that Year.

7. An Operator that is removed under Article 3(3)(g) hereof may charge to the Joint Account all reasonable and necessary expenditure incurred in demobilizing and repatriating personnel and equipment.

8. The Operator shall have control of the Petroleum Operations in the Participation Area and shall have exclusive custody of all materials, equipment and other property acquired therefor, and shall perform the duties under this Participation Agreement diligently and in accordance with good international petroleum industry practice, and sound and accepted engineering, management and accounting principles.

The Operator shall not be liable to any Non-Operator for any acts or omissions, claims, damages, losses or expenses, in connection with or arising out of this Participation Agreement or the Contract or Petroleum Operations save those caused by gross negligence or wilful misconduct of the Operator.

9. The Operator shall-

- (a) consult with Non-Operators and advise them of all matters arising from the Petroleum Operations;
- (b) comply with the decisions of the Operating Committee;
- (c) keep the Participating Interests and all property acquired or used free from liens, except for those authorized by Article 6 hereof; and



- (d) pay the costs of the Petroleum Operations under this Participation Agreement promptly and make proper charges to Non-Operators.

10. The Operator shall submit a copy of an AFE to the Non-Operators for each budget item of capital expenditure in the approved Participation Work Programme and budget that costs more than ..... U.S. dollars (U.S. \$ .....).

Where it is necessary to complete an expenditure in a budget item in the approved Participation Work Programme, the Operator may exceed the budget for the budget item by the lesser of ten per cent (10%) thereof or ..... U.S. dollars (U.S. \$.....) and shall report promptly such excess expenditure to the Non-Operators.

The Operator may spend not more than ..... U.S. dollars (U.S. \$.....) on Petroleum Operations in the Participation Area not included in an approved Participation Work Programme, provided that such expenditure shall not be for items previously ejected by the Operating Committee. The Operator shall report promptly that expenditure to the Non-Operators and, if it is approved in accordance with Article 4(6), the Operator may make further expenditure thereon or on other items not exceeding ..... U.S. dollars (U.S. \$.....) in that Year.

The limits in this Article 3(10) may be changed from time to time by the Operating Committee.

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

11. A Non-Operator may inspect the Participation Area, the Petroleum Operations, and the books, records and other information of the Operator pertaining thereto.

The Operator shall supply to a Non-Operator by telephone telefax, telegraph or telex, daily reports on drilling, and such other reports in writing normally provided by an Operator to a Non-Operator in the international petroleum industry, including but no limited to reports on well tests and core analysis, and copies of drilling logs, well surveys and velocity surveys. The Operator shall furnish any other information reasonably requested by Non-Operator, in such information is readily available.

12. The Operator shall obtain and maintain all insurance required by law and such other insurance as the Operating Committee may from time to time determine, provided that, in respect of such other insurance, any Party may elect not to participate provided such Part gives notice to that effect to the Operator. The cost of insurance in which all the Parties are participating shall be for the Joint Account and the cost of insurance in which less than all the Parties are participating shall be charges to such Parties individually. The Operator shall, in respect of any insurance-

- (a) promptly inform the Parties participating therein when it is taken out and supply them with copies of the relevant policie when the same are issued;
- (b) arrange for the Parties participating therein, according to thei respective Participating Interests, to be named as co-insured on the relevant policies with waivers of subrogation in favour of the Parties; and
- (c) duly file all claims and take all necessary and proper steps to collect any proceeds and, if all the Parties are participating therein, credit them to the Joint Account or, if less than all the Parties are participating therein, credit them to the participating Parties.

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

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[Subsidiary]

If the Operator is unable to obtain such other insurance required by the Operating Committee, it shall so advise the Parties and there after, it shall be discharged of its obligation to obtain such insurance.

The Operator shall take all reasonable steps to ensure that all contractors (including sub-contractors) performing work in respect of the Petroleum Operations and the Joint Property obtain and maintain all insurance required by the law and obtain from their insurers waiver of subrogation in favour of the Parties.

13. The Operator may prosecute, defend and settle claims and litigations arising out of the Petroleum Operations and may compromise or settle such claims or litigations which involve an amount not exceeding the equivalent of one hundred thousand U.S. dollars (U.S. \$100,000) without the approval of the Operating Committee. Any claim or litigation involving an amount in excess of the equivalent of one hundred thousand U.S. dollars (U.S. \$100,000) shall be reported promptly to the Non-Operators and a Non-Operator shall have the right to be represented by its own counsel at its expense in the compromise, settlement or defence of such claims or litigation.

14. The Operator shall fulfil the reporting obligations of the Contractor unless otherwise stipulated in this Participation Agreement and the Contract.

#### **4.-OPERATING COMMITTEE AND WORK PROGRAMMES**

1. The Parties shall establish an Operating Committee to supervise and control the Petroleum Operations. The Operating Committee shall consist of one representative appointed by each of the Parties provided always that more than one of the Parties may appoint the same representative who shall represent them separately.

Each Party shall, as soon as possible after the date of this Participation Agreement, give notice to all the other Parties of the name of its representative and of an alternate on the Operating Committee.

Such representative may be replaced, from to time, by like notice. Representatives may bring to meetings of the Operating Committee such advisers as they consider necessary. The representative of a Party or, in the absence of the representative, his alternate, shall be deemed authorized to represent and bind such Party with respect to any matter which is within the powers of the Operating Committee. The representative of the Party which is the Operator shall be the chairman of the Operating Committee and shall report the proceedings.

2. Except as otherwise provided in this Participation Agreement, the powers and duties of the Operating Committee shall include-

- (a) the consideration and determination of all matters relating to general policies, procedures and methods of operation hereunder;
- (b) the approval of any public announcement or statement regarding this Participation Agreement or the Petroleum Operations;
- (c) the consideration, revision and approval or disapproval, of all proposed Participation Work Programmes, budgets and AFE's prepared and submitted to it pursuant to the provisions of this Participation Agreement;
- (d) the determination of the timing and location of all well drilled under this Participation Agreement and any change in the use or status of a well;
- (e) the determination of whether the Operator will represent the Parties regarding any matters or dealings with the Minister any other governmental authorities or third parties in so far as the same relate to the Petroleum Operations, provided that there is reserved to each party the unfettered right to deal with the Minister or any other governmental authorities in respect of matters relating to its own Participating Interest; and
- (f) the consideration and, if so required, the determination of any other matter relating to the Petroleum Operations which may be referred to it by the Parties

or any of them or which is otherwise designated under this Participation Agreement for reference to it.

3. The Operator shall, when requested by a representative of any Party, call a meeting of the Operating Committee. The Operator may do so at any time to keep the Parties informed on the Petroleum Operations.

4. A request to call a meeting of the Operating Committee shall state the purpose of that meeting and, except in an emergency, the Operator shall give the Parties at least fifteen (15) days' written notice with an agenda of the meeting, but where a meeting is called in an emergency, the Operator shall give as much notice thereof as possible by telephone, telex or telegraph and except with the consent of all the Parties, the business of a meeting shall be only that for which it was called.

5. The Operator may, instead of calling a meeting, submit matter to the Parties by written notice, upon which each Party may vote within the period prescribed in the notice which shall not be less than three (3) days or more than fifteen (15) days from the date notice is received. Failure of a Party to vote within the above time limits shall be deemed a negative vote.

6. Each Party shall have a voting interest equal to its Participating Interest. Unless otherwise provided in this Participation Agreement all decisions of the Operating Committee shall be made by the affirmative vote of at least two (2) Parties holding not less than ..... per cent (.....%) of the Participating Interests.

7. The Operator shall, at least four (4) months before the end of each Year, submit to the Parties for approval a Participation Work Programme and budget, which shall contain details of the Petroleum Operations to be carried out in the next Year and allocation of funds therefor including administrative overheads and third party expenditure in accordance with the Accounting Procedure attached to this Participation Agreement as Exhibit "A".

8. Unless unanimously agreed at least sixty (60) days prior to the beginning of the Year, the Operator shall call a meeting of the Operating Committee to discuss and approve a Participation Work Programme and budget for the ensuing Year and such work programme and budget shall be approved not later than thirty (30) days prior to the commencement of such year and the decision of the Operating Committee shall bind the Parties. Upon approval of such work programme and budget the Operator is hereby authorized and obliged to proceed with it in accordance with such approval.

9. Such approved Participation Work Programme and budget may be reviewed and revised from time to time by the Operating Committee. Any Party may in writing request a review of an approved Participation Work Programme or budget, or of a project within a programme, if that project costs more than .....

U.S. dollars (U.S. \$.....), and the request shall state the objections of the Party, which shall be considered by the Operating Committee, who may amend the Participation Work Programme or budget.

#### **5.-COSTS AND EXPENSES**

1. Except as otherwise specifically provided in the Contract and this Participation Agreement, all costs and expenses incurred by the Operator in the conduct of operations hereunder shall be borne by the Parties in proportion to their respective Participating Interests set forth in Article 2.

2. All costs and expenses incurred by the Operator in the conduct of Petroleum Operations hereunder shall be determined and settled in accordance with good internationally accepted accounting practice consistent with the provisions of the Contract and its Accounting Procedure as complemented by the provisions of Exhibit "A" to this Participation Agreement, and the Operator shall keep its records of costs and expenses in accordance therewith.

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[Subsidiary]

## 6. PAYMENTS TO OPERATOR

1. A Non-Operator shall pay its share of an expenditure relating to the Petroleum Operations, within fifteen (15) days of receipt of the account of the Operator.

2. The Operator may, upon twenty (20) days' written notice, request a Non-Operator to advance a share of the estimated expenditure for the following month, stipulating the due date of payment, provided however that such due date of payment shall not be before the first banking day of that month and the Operator shall include with such notice an estimate of the cash calls for the next three (3) months. Operator's estimate of expenditure shall not exceed the approved Year's budget. The Operator may, at any time upon fifteen (15) days' written notice, request additional advances to cover unforeseen expenditure.

3. Cash requirements shall be specified by the Operator in the currencies required for the Petroleum Operations and the Non-Operators shall advance their shares in the currencies so specified.

4. If any Non-Operator's advances for a given month exceed its share of cash disbursements for the same month, the next succeeding cash advance, after such determination, shall be reduced accordingly.

However, Non-Operator(s) may request that excess advances be re-funded. The Operator shall make such refund within fifteen (15) days after date of such notice.

5. Where a Party is in default of payment, the Operator and the non-defaulting Parties shall have, as security for amounts due here under from a defaulting Non-Operator, a lien on the Participating Interest share, the interest in material and equipment acquired for the Petroleum Operations and upon the proceeds from the sale of Petroleum, of that Non-Operator, and a Non-Operator shall have for amounts due hereunder, a similar lien on the same interests and property of the Operator.

6. A lien may be exercised by a non-defaulting Party by collecting the amount due from a purchaser of Petroleum and the statement of the Operator of the amount due shall be proof thereof.

7. A late payment shall attract interest at LIBOR plus ..... per cent(..... %) or ..... per cent(..... %), whichever is the greater, compounded monthly and calculated from the due date of payment. A payment not received within seventy-two (72) hours of the due date shall accrue interest from the due date and the non-paying Party shall be deemed to be in default from the due date of the payment.

8. A Party which remains in default for five (5) days shall have no right to vote at any Operating Committee meeting held during the period of the default but shall be bound by all decisions of the Operating Committee made during such period, and the defaulting Party's Participating Interest shall be deemed to be vested pro-rata in the non-defaulting Parties for voting purposes during the continuation of the default.

9. Where a Party fails to pay an amount required to be paid hereunder, and remains in default for ninety (90) days, the Participating Interest share of the defaulting Party may be declared forfeit by the non-defaulting Parties, unless the amount due is an advance and the defaulting Party provides an irrevocable letter of credit or other security, acceptable to the Operator, for the amount due.

10. When the Participating Interest share of a defaulting Party is declared forfeit, the Operator shall give notice thereof to all the Parties, and that share shall vest rateably, unless otherwise agreed in the non-defaulting Parties without payment of compensation and the defaulting Party shall at its sole expense take all steps necessary to vest that share accordingly, and the defaulting Party hereby appoints the Operator to act as its attorney to execute any and all documents required to effect such transfer. Notwithstanding the transfer of a defaulting Party's Participating Interest share in accordance with the foregoing, the defaulting Party shall remain liable for its proportionate share of the commitments incurred before its rights lapsed.

11. Where a Party is in default of payment, the remaining Parties shall advance the Operator on demand a share of that payment, in proportion to the Participating Interests of those Parties. Any payments received from a defaulting Party shall be credited to the accounts of the non-defaulting Parties who advanced funds on behalf of the defaulting Party.

#### **7.-MATERIAL AND EQUIPMENT**

1. All material and equipment required by the Operator for Petroleum Operations hereunder shall be owned by the Parties in undivided shares in the proportion of their respective Participating interests.

2. Except as may be otherwise approved by the Operating Committee, the Operator shall purchase for the Joint Account of the Parties only such material and equipment as are reasonably required in the conduct of operations provided for in approved Participation Work Programmes or revisions thereof, the Operator shall not stockpile material or equipment for future use without the approval of the Operating Committee.

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

4. Subject to the provisions of clause 12 of the Contract, upon termination of this Participation Agreement the Operator shall salvage or the Joint Account all jointly-owned material and equipment which are reasonably salvageable, to be disposed of as provided in Article 7(3) hereof.

#### **8.-RELATIONSHIP OF THE PARTIES AND TAX PROVISIONS**

1. The Parties declare that it is not their intention by entering into this Participation Agreement to create or be considered as a partnership or any other similar entity.

2. Each Party shall be responsible for and shall pay its own taxes to the Kenyan authorities on its operations hereunder.

3. It is recognized that a Party hereunder may be subject to the laws of its place of incorporation in addition to the laws of Kenya.

For United States Federal income tax purposes, each of the Parties hereto which is subject to United States Income Tax laws ("**U.S. Party**") hereby elects to be excluded from the application of all of the provisions of Sub-chapter "K", Chapter 1, Sub-title "A", of the United States Internal Revenue Code of 1954, as permitted and authorized by Section 761 of that Code and the regulations promulgated thereunder. Should there be any requirement that each U.S. Party evidence this election, each U.S. Party agrees to execute such documents and furnish such other evidence as may be required by the United States Federal Internal Revenue Service. Upon the request of an U.S. Party, the Operator shall provide data necessary for filing United States tax returns.

#### **9.-SURRENDERS AND TRANSFERS**

1. Any Party desiring that all of the Participation Area be surrendered voluntarily shall notify the other Parties in writing accordingly, specifying its reasons therefor, and thereafter:

- (a) Each Party shall within thirty (30) days after receipt of the notice inform the other Parties in like manner whether concurs in or opposes the proposed surrender;

[Subsidiary]

- (b) If all the Parties concur in the proposed surrender, the Participation Area shall be surrendered as soon as possible under the Contract;
- (c) If one or more of the Parties shall oppose the proposed surrender, the Party or Parties desiring to surrender shall, upon request by the opposing Parties, transfer and convey without warranty of title-free and clear of all liens, charges an encumbrances and without right to compensation, all of it or their interest(s) in the Participation Area and material left thereon to said opposing Party or Parties, each in the proportion that its or their Participating Interest(s) hereunder bears to the sum of the Participating Interests of all the Opposing Parties, or as otherwise agreed by the opposing Parties. The transferring Party or Parties shall bear-
  - (i) its or their Participating Interest share(s) of costs, expenses and liabilities incurred hereunder which are attributable to the Participation Area for the period prior to the effective date of such transfer of interest;
  - (ii) its or their Participating Interest share(s) of all costs an expenses incurred by the Operator after such date under any contracts entered into by the Operator in execution of a Participation Work Programme theretofore approve by the Operating Committee; and
  - (iii) its or their Participating Interest share(s) of any accrue obligations under the Contract which are not include in (i) or (ii) above, but shall thereafter have no further rights or other obligations in connection therewith.
- (d) A transfer under paragraph(c) above shall be effective a among the Parties thirty (30) days after the opposing Parties receipt of the transferring Party's firts mentioned notice proposing surrender. Thereafter until such transfer has receive whatever approvals may be necessary under the provision of the Contract or applicable law, the transferring Palty or Parties shali hold at most legal, but not equitable, title to the interest(s) transferred for tlhe benefit of the opposing Party or Parties. The transferring Party or Parties receiving the interest(s) transferred shall execute and deliver such documents and do such older acts as may be necessary to give legal effect to such transfer, to obtain ali approvals thereof as may be required from the Minister, and otherwise to effectuate the purposes of this paragraph.
- (e) Notwithstanding the foregoing, if the Operating Committee determines that ..... per cent (.....%) or more of the estimated, discovered and recoverable reserves under the Pariticipation Area have been produced, no Party shali be allowed to surrender or required transfer of interest in this Participation Agreement and the Contract without the unanimous consent of all Parties.

2. No transfer of any interest under this Participation Agreement and the Contract shall be made by any Party otherwise than in respect of an undivided interest in all or part of its Participating Interest in this Participation Agreement and the Contract, and in accordance with the following provisions of this Article 9.

3. If any Party shall receive a *bona fide* offer for the purchase of all or a portion of an offeree Party's Participating Interest in this Participation Agreement and the Participation Area which the offeree Party is willing to accept, the offeree Party shall give notice thereof in writing to the other Parties:

- (a) Such notice shali set forth the identity of the offeror, the terms and conditions (including monetary and other considerations) offered in good faith, and all other relevant particulars.
- (b) For a period of thirty (30) days next following the receipt of such notice, the other Parties shall have an option to purchase the entire interest proposed to be sold on the same terms offered by the offeror, as set forth in the respective offer.

- (c) If more than one of the Parties should exercise its right to purchase said interest, each shall have the right to acquire such interest in the proportion that the Participating Interest hereunder of such Party bears to the sum of the Participating Interests of all the Parties exercising such right except as they may otherwise agree.
- (d) If within such a period of thirty (30) days, none of the other Parties shall exercise its rights to purchase said interest, the sale to said offeror may be made under the terms and conditions set forth in the notice given; provided that the sale shall be consummated within six (6) months from the date of such notice and that the sale and any transfer shall be in accordance with the Contract and applicable law.
- (e) For the purposes of this paragraph, an offer to purchase shall also include an acceptance of an entity's offer to sell.

4. The limitations of Article 9 (3) shall not apply to a transfer of a Participating Interest by a Party to an Affiliate of such Party or by the Government to an Appointee, or from an Appointee to another Appointee, nor shall they apply to a transfer of a Participating Interest effected as a result of merger, consolidation, re-organization or sale of capital stock of the parent company of a Party.

5. Every transfer of a Participating Interest in the Participation Area shall be made expressly subject to this Participation Agreement and shall include a corresponding interest in jointly acquired equipment and facilities. No transfer of an interest hereunder shall be effective unless made by an instrument in writing duly executed by the Parties thereto in accordance with applicable law, and until the same has received all consents required under this Participation Agreement and the Contract. A transfer shall provide that the transferor remains liable for obligations incurred before the date of transfer and such obligations shall in addition become the obligations of the transferee. Where, after the transfer, the transferee or transferor owns a Participating Interest of less than five per cent (5 %), they shall be jointly represented.

6. A transferee other than an Affiliate or an Appointee shall be of sufficient financial standing to meet its Participating Interest share of its obligations under the Contract and this Participation Agreement. In the event of a transfer of a Participating Interest to an Affiliate of a Party the transferor Party shall remain responsible for the full performance by the Affiliate of the obligations undertaken by said Party under this Participation Agreement and the Contract, and if such Affiliate ceases to be an Affiliate, the Participating Interest shall be transferred back to the Party.

7. In this Article, transfer means a transfer, assignment, sale or other disposal of the interest of a Party.

## 10. DISPOSAL OF PRODUCTION

1. Each Party shall separately own, take in kind and dispose of its Participating Interest share of that portion of the Petroleum produced and saved from the Participation Area to which the Contractor is entitled under clause 27 of the Contract.

2. Within six (6) months following the signing of this Participation Agreement, the Parties shall, in accordance with the provisions of the Contract and in light of the gathering and transportation facilities available under the adopted development plan, in good faith establish a set of rules governing the scheduling, lifting and other necessary provisions for the Crude Oil offtakes of the Parties, consistent with good international petroleum industry practice, which shall provide, among other things, such detailed terms and procedures as required for-

- (a) short-term production forecasts;
- (b) nominations and calculation of entitlements;
- (c) scheduling of deliveries;
- (d) lifting tolerances;
- (e) underclift, overlift and make-up provisions;

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- (f) passage of title and risk;
- (g) penalties assessable to the Parties which cause shut-in or reductions of production; and
- (h) other related matters.

Whatever is mutually agreed by the Parties shall be deemed to form part of this Participation Agreement.

The above terms and procedures shall apply separately to each grade of Crude Oil that is segregated and separately stored for offtake.

3. The Government may request from time to time that the Contractor purchase all or part of the Government's Participating interest share of Crude Oil. The Contractor shall use its best efforts to comply with this request but in the event that the Contractor is not able to take such Crude Oil, then the Contractor will assist the Government in good faith to market such Crude Oil at the best price, terms and conditions available in the international market for the sale of such Crude Oil.

4. In the event of production of associated Natural Gas or of any discovery of Natural Gas, the Parties shall agree upon appropriate procedures for disposal of any Natural Gas available under this Participation Agreement and the Contract.

#### 11. SOLE RISK OPERATIONS

1. Any Party may undertake Petroleum Operations at sole risk (hereinafter referred to as "**Sole Risk Project**") in a Participation Area, subject to the provisions of this Article.

2. The following types of Sole Risk Project may be proposed-

- (a) the drilling of a well or the deepening, side-tracking, completing, plugging back, testing or reworking of an existing well drilled for the Joint Account of the Parties, in order to test a formation in which no jointly-owned well has been completed as a well producing or capable of producing Petroleum;
- (b) the installation of production and transportation facilities.

3. The conduct of a project in a Development Area may not be the subject of a sole risk notice under this Article until after it has been proposed in complete form to the Operating Committee for consideration pursuant to Article 4 hereof and has not been approved within the period therein provided.

- (b) nominations and calculation of entitlements;
- (c) scheduling of deliveries;
- (d) lifting tolerances;
- (e) underlift, overlift and make-up provisions;
- (f) passage of title and risk;
- (g) penalties assessable to the Parties which cause shut-in or reductions of production; and
- (h) other related matters.

Whatever is mutually agreed by the Parties shall be deemed to form part of this Participation Agreement.

The above terms and procedures shall apply separately to each grade of Crude Oil that is segregated and separately stored for offtake.

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- (a) the drilling of a well or the deepening, side-tracking, completing, plugging back, testing or reworking of an existing well drilled for the Joint Account of the Parties, in order to test a formation in which no jointly-owned well has been completed as a well producing or capable of producing Petroleum;
- (b) the installation of production and transportation facilities.

3. The conduct of a project in a Development Area may not be the subject of a sole risk notice under this Article until after it has been proposed in complete form to the Operating Committee for consideration pursuant to Article 4 hereof and has not been approved within the period therein provided.

In the event that such project fails to obtain the requisite approval of the Operating Committee, then any Party may serve notice on the other Parties of its intention to carry out that project at sole risk.

The other Parties may give counter-notice that they wish to participate in the project within sixty (60) days after receipt thereof but, where a drilling rig is on the location and has not been released, the period is reduced to seventy-two (72) hours after receipt thereof. The periods set forth in this Article 11 (3) shall be extended for any period of time mutually agreed by the Parties as necessary or desirable for acquiring or developing additional information on the Sole Risk Project.

4. If all the other Parties elect to participate in the project identified in the proposing Party's notice within the period thereof provided, such project is considered as being approved by the Operating Committee and the provisions of Article 4 (8) of this Participation Agreement shall apply.

5. In the event that less than all the Parties elect to participate in the project, the Parties which elected to participate (hereinafter referred to as "**Sole Risk Parties**") shall be entitled to have the Sole Risk Project carried out.

The interest of each Sole Risk Party in a Sole Risk Project shall be in proportion to its Participating [interest in this Participation Agreement, or in such other proportion as the Sole Risk Parties may agree.

Any Sole Risk Project shall be carried out at the sole risk, cost and expense of the Sole Risk Parties in the proportion of their respective interests.

6. A Sole Risk Project will be carried out by the Operator on behalf of the Sole Risk Parties under the provisions of this participation Agreement. No Sole Risk Project may be commenced after one hundred and eighty (180) days following the expiration of the notice period prescribed in Article 11 (3), but the Operator shall commence work as promptly as reasonably possible if the notice period of seventy-two (72) hours, set forth in Article 11 (3), applies. The Operator shall complete the Sole Risk Project with due diligence provided that it does not jeopardize, hinder or unreasonably interfere with Petroleum Operations carried out under the Contract and adopted by the Operating Committee pursuant to Article 4 of this Participation Agreement.

The Sole Risk Parties may use for the Sole Risk Project any production, handling, processing and/or transporting facilities which are Joint Property, subject to a determination by the Operating Committee as to usage fees, availability of capacity and production compatibility.

[Subsidiary]

7. In connection with any Sole Risk Project-

- (a) the Sole Risk Project will be carried out under the overall supervision and control of the Sole Risk Parties in lieu of the Operating Committee;
- (b) the computation of costs and expenses of the Sole Risk Project incurred by the Sole Risk Parties shall be made in accordance with the principles set out in Exhibit "A" attached hereto;
- (c) the Operator carrying out the Sole Risk Project shall maintain separate books, records and accounts (including bank accounts) for the Sole Risk Project which shall be subject to the same right of examination and audit by the Sole Risk Parties;
- (d) the costs and expenses of the Sole Risk Project shall not be reflected in the statements and billings rendered by the Operator for Petroleum Operations under the Participation Agreement; and
- (e) if the Operator is carrying out a Sole Risk Project on behalf of the Sole Risk Parties, the Operator shall be entitled to request the Sole Risk Parties in connection with the Sole Risk Project to advance their share of the estimated expenditure and shall not use Joint Account funds or be required to use its own funds for the purpose of paying the costs and expenses of the Sole Risk Project; furthermore the Operator shall not be obliged to commence or, having commenced, to continue the Sole Risk Project unless and until relevant advances have been received from the Sole Risk Parties.

8. The Sole Risk Parties shall indemnify and hold harmless the other Parties against all actions, claims, demands and proceedings whatsoever brought by any third party arising out or in connection with the Sole Risk Project and shall further indemnify the other parties against all damages, costs, losses and expenses whatsoever directly or indirectly caused to or incurred by them as a result of anything done or omitted to be done in the course of carrying out such Sole Risk Project.

9. Subject to the provisions under Article 11 (10) below, the Sole Risk Project, including data and information, is wholly owned by the Sole Risk Parties in accordance with the provisions of the Contract, but the Sole Risk Parties shall keep the other Parties informed about the project.

In the event that such project results in an increase of production of Petroleum from the Participation Area, the portion of such increase which is available to the Contractor under the Contract shall be owned solely by the Sole Risk Parties. Each of them shall have the right and obligation to take in kind, and separately dispose of its proportional share of supplementary Petroleum production.

10. Any Party or Parties which are not participating in the Sole Risk Project may, by giving thirty (30) days' notice to the Sole Risk Parties, become participants in such project, at any time after the Sole Risk Parties have recovered from the supplementary Petroleum production the following sums of money to which they are entitled on the project:

In the case of a project under Article 11 (2)(a) hereof, ..... per cent (..... %) of the Sole Risk cost of such project plus one hundred per cent (100%) of the cost of operating such well incurred by the Sole Risk Parties;

In the case of a project under Article 11 (2)(b) hereof, ..... per cent (.....%) of the Sole Risk cost of such project, plus one hundred per cent (100%) of the cost of operating such facilities.

The value of the supplementary production to which a Sole Risk Party is entitled shall be the market value in sales at arm's length determined in accordance with clause 26 of the Contract.

From and after the election of any Party or Parties to become participants in such project, all relevant wells, facilities, equipment and other property appurtenant thereto shall

be owned jointly by the participating Parties and each of the participating Parties shall be entitled to receive its proportional share of the supplementary Petroleum production.

## 12. CONFIDENTIALITY

1. All information related to the Petroleum Operations shall be confidential and shall not be disclosed to a person other than Party except to-

- (a) an Affiliate;
- (b) the Government and other public authorities to the extent necessary for the purpose of any applicable law;
- (c) a stock exchange to which a Party is obliged to make disclosure;
- (d) contractors, consultants, legal counsels or arbitrators of a Party where disclosure is essential;
- (e) a *bona fide* prospective purchaser of an interest of a Part in the Contract, but that purchaser shall undertake to treat that information as confidential;
- (f) a lender, where disclosure is essential; or
- (g) a person to whom disclosure has been agreed by the Parties

2. A Party making a disclosure to a person described in paragraph (1)(e) or (f) shall give ten (10) days' written notice thereto to the other Parties.

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

4. The obligations of the Parties under this Article 12 are continuing obligations and any Party ceasing to be a Party to this Agreement shall remain bound by this Article until this Agreement is no longer in force between any remaining Parties and the Contract has expired.

## 13. LIABILITY

1. The Parties shall be severally liable in accordance with their respective Participating Interests to third parties.

2. Where the Government has nominated an Appointee, as defined in clause 28 (1) of the Contract, and the Appointee defaults the Government shall be liable.

3. If because of the operation of the joint and several liability provisions contained in the Contract, anyone of the Parties hereto shall be required to pay in full to the Government or any other party, any sum which, if the liability were several, would be required separately from each of the Parties or from one other Party only, then the Party(ies) shall notify forthwith and request immediate payment of the Party's(ies) proportionate share according to its Participating interest. If within ten (10) days from receipt of said notice, the other Party(jes) shall fail to make payment as provided above such Party(ies) shall be in default and the provisions of Article 6 above shall apply, this being without prejudice to any other legal remedies available to the non-defaulting Party(ies) against the defaulting Party(ies).

## 14. GOVERNING LAW

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

## 15. ARBITRATION

A dispute under this Participation Agreement shall be referred to arbitration in accordance with clause 41 of the Contract;

[Subsidiary]

**16. FORCE MAJEURE**

1. In this Article 16, *force majeure* means an occurrence beyond the reasonable control of any of the Parties which prevents any of them from performing their obligation, under this Participation Agreement.

2. Where a Party is prevented from performing an obligation under this Participation Agreement by *force majeure*, that Party shall give written notice, to the other Parties, and the obligation of the affected Party shall be suspended for the period of the *force majeure*.

3. The affected Party shall promptly notify the other Parties when the period of *force majeure* terminates.

4. No Party may claim *force majeure* as a reason for the failure to timely pay any monies pursuant to this Participation Agreement.

5. Where any Party disputes the existence of *force majeure*, that dispute may be referred to arbitration as provided in clause 44 of the Contract.

**17. NOTICES**

1. All notices and other communications provided for in this Participation Agreement shall be made in writing and shall be delivered by hand or sent by registered airmail, as appropriate, return receipt requested, or by telegram or telex (with confirmation by mail) to the Parties at the following addresses:

To the Minister:

To:

Permanent Secretary, Ministry of Energy and Regional Development,

P.O. Box 30582, Nairobi.

Kenya.

Telex: 23094 MINERGY.

2. Notices given by registered airmail shall be deemed received on the date shown on the return receipt. Notices given by telegram or telex shall be presumed received on the working day at the place of receipt next following the time of transmission.

3. Any Party may at any time and from time to time change its authorized representative or its address herein on giving the other Parties ten (10) days notice in writing to such effect.

**18. TERM**

1. This Participation Agreement shall come into force on the Participation Date and shall remain in force until-

- (a) it is terminated by the written consent of all the Parties;
- (b) all the Participating Interests are vested in one Party; or
- (c) the expiration or termination of the Contract.

2. Before this Participation Agreement is terminated, there shall be a final accounting and settlement of the Joint Account.

**19. FINANCIAL PROVISIONS**

1. Headings are inserted in this Participation Agreement to convenience only and shall not affect the construction for interpretation hereof.

2. This Participation Agreement shall not be amended, modified or supplemented except by an instrument in writing signed by the Parties.

3. Subject to the provisions hereof, this Participation Agreement shall inure to the benefit of and be binding upon the successors and assignees of the Parties hereto and each of them respectively.

IN WITNESS WHEREOF, the Parties hereto have signed this Participation Agreement on the day and year first above written.

**XHIBIT "A"**

**ACCOUNTING PROCEDURE**

**Attached to and made a part of the Participation Agreement.**

**SECTION I**

**GENERAL PROVISIONS**

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

It is the intent of the Parties that no Party shall lose or profit by reason of its duties and responsibilities as either Operator or as Non-Operator and that no duplicate charges to the Joint Account for the same work shall be made.

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

**1.1. INTERPRETATION**

**1.1.1 . In this Exhibit-**

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

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

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

**CROSSHEADING 1.2. STATEMENTS, BILLINGS AND ADJUSTMENTS**

1.2.1 The Operator shall maintain financial accounts necessary to record in reasonable detail the transactions relating to Petroleum Operations under the Agreement which shall be prepared in accordance with generally accepted standards of the international petroleum industry. The Operator shall upon request by a Party furnish a description of its accounting classifications.

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

1.2.3 The Operator shall bill the Non-Operator(s) on or before the last day of each month for their proportionate share of expenditur for the preceding month. Such billings shall be accompanied by state ments of all charges and credits to the Joint Account, summarize in reasonable detail by appropriate accounting classifications indicative of the nature thereof, except that items of Controllable Material an unusual charges and credits shall be detailed.

1.2.4 . The Operator shall, upon request by Non-Operator's furnish a description of such accounting classifications.

1.2.5 . Amounts included in the billings shall be expressed in the currency in which the Operator's records are maintained. In the conversion of currencies when accounting for advances or payments in different currencies as provided for in Sub-section

[Subsidiary]

1.3., or any other currency transactions affecting operations under the Agreement, it is the intent that none of the Parties shall experience an exchange gain or loss at the expense of, or to the benefit of, the other Parties. It is agreed that any loss or gain to the Joint Account resulting from the exchange of currency required for operations under the Agreement or from the translations required, shall be charged or credited to the Joint Account. The Operator shall furnish the Parties with a description of the procedure applied by the Operator to accomplish said translation or exchange of currencies and provide currency exchange data sufficient to enable Non-Operator(s) to translate the billings the currency of the Non-Operator(s) accounts.

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**THE PETROLEUM (EXPLORATION AND PRODUCTION)  
(TRAINING FUND) REGULATIONS, 2006**

ARRANGEMENT OF SECTIONS

1. Citation
  2. Interpretation
  3. Establishment of the Fund
  4. Object and purpose of the Fund
  5. Source of the Fund
  6. Account of the Fund
  7. Payments out of the Fund
  8. Surplus funds
  9. Administration of the Fund
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**THE PETROLEUM (EXPLORATION AND PRODUCTION)  
(TRAINING FUND) REGULATIONS, 2006**

[Legal Notice 132 of 2006]

**1. Citation**

These Regulations may be cited as the Petroleum (Exploration and Production) (Training Fund) Regulations, 2006, and shall be deemed to have come into force on 1st July, 2006.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

"**financial year**" means the period of twelve months ending on the 30<sup>th</sup> June in each year;

"**Fund**" means the Training Fund established under regulation 3;

"**Minister**" means the Minister for the time being responsible for energy;

"**officer administering the Fund**" means the Permanent Secretary of the Ministry for the time being responsible for matters relating to energy; and

"**training programme**" means the training programme established, in consultation with the Minister, for training Kenyans in petroleum operations.

**3. Establishment of the Fund**

There is hereby established a Fund to be known as the Training Fund, in accordance with section 11 of the Act.

**4. Object and purpose of the Fund**

The object and purpose for which the Fund is established is to finance the training of Kenyans in petroleum operations.

**5. Source of the Fund**

(1) The Fund shall comprise of moneys paid by contractors as training contribution.

(2) The contractors shall, for purposes of section 11(2) of the Act, pay into the Fund such moneys as may be stipulated in a petroleum agreement as training contribution.

**6. Account of the Fund**

The officer administering the fund shall open an account into which all moneys due to the Fund shall be paid.

**7. Payments out of the Fund**

(1) There shall be paid out of the Fund such moneys as the officer administering the Fund may approve for purposes of the training programmes.

(2) The expenditure incurred on the Fund shall be on the basis of, and limited to, annual training programmes and cost estimates which shall be prepared by the officer administering the Fund, and approved by the Minister, at the beginning of the financial year to which they relate.

**8. Surplus funds**

All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for purposes for which the Fund is established.

**9. Administration of the Fund**

(1) The officer administering the Fund shall—

(a) supervise and control the administration of the Fund;

[Subsidiary]

- (b) cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;
- (c) prepare, sign and transmit to the Controller and Auditor-General, in respect of each financial year and within four months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund, and such details as the Minister for the time being responsible for Finance may from time to time direct, in accordance with the provisions of the Public Audit Act;
- (d) furnish such additional information as he may deem to be proper and sufficient for the purpose of examination and audit by the Controller and Auditor-General in accordance with the provisions of the Public Audit Act.

(2) Every statement of account shall include details of the balance between the assets and liabilities of the Fund and indicate the financial status Of the Fund as at the end of the financial year concerned.

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**UNTITLED**

[Legal Notice 99 of 2019]

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**THE PETROLEUM (LIQUEFIED PETROLEUM GAS) REGULATIONS**

## ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation
2. Interpretation
3. Regulations not to apply to Kenya Defence Forces
4. Requirement for licence for liquefied petroleum gas business
5. Application for a licence
6. Form and duration of licence
7. Renewal of licence
8. Importation of bulk liquefied petroleum gas
9. Storage of bulk liquefied petroleum gas
10. Storage of bulk liquefied petroleum gas for own use
11. Obligations of the operator of a bulk liquefied petroleum gas storage facility
12. Acquisition of new cylinders and valves
13. Filing of liquefied petroleum gas
14. Prohibition against unauthorized refilling
15. Damage to cylinders
16. Transport of bulk liquefied petroleum gas
17. Transport of cylinders
18. Wholesale of liquefied petroleum gas in cylinders
19. Retail of liquefied petroleum gas in cylinders
20. Export of liquefied petroleum gas in cylinders
21. Obligations of the brand owner
22. Reticulation of liquefied petroleum gas
23. Reporting of accidents
24. Investigation of accidents
25. Mutual Cylinder Exchange System
26. Cylinder deposit
27. Brand caretaker
28. Penalties and fines
29. Appeals
30. General penalty
31. Transitional provisions
32. *Spent*

## SCHEDULES

REQUIREMENTS FOR APPLICATION OF A NEW LICENCE

APPLICATION FOR RENEWAL OF A LICENCE

FORM OF LPG LICENCE

APPLICABLE LICENCE FEES

OFFENCES, PENALTIES AND FINES

MINIMUM SAFETY INFORMATION ON LPG CYLINDER REFILL

TRANSITIONAL CLAUSES



**THE PETROLEUM (LIQUEFIED PETROLEUM GAS) REGULATIONS**

[Legal Notice 100 of 2019]

**1. Citation**

These Regulations may be cited as the Petroleum (Liquefied Petroleum Gas) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires-

"Act" means the Petroleum Act (Cap. 308);

"Authority" means the Energy and Petroleum Regulatory Authority established under section 9 of the Energy Act (Cap. 314);

"licensing agent" means a person appointed by the Authority under section 21 of the Energy Act (Cap. 314);

"Boiling Liquid Expanding Vapor Explosion" means an explosion caused by the rupture of a vessel containing a pressurized liquid that has reached temperatures above its boiling point;

"brand caretaker" means a licensee appointed by the Authority to operate the cylinders of a distressed brand owner;

"brand owner" means a person who is the registered owner of a cylinder;

"bulk liquefied petroleum gas" means liquefied petroleum gas of a quantity exceeding eighty kilograms;

"bulk storage" means storage capacity exceeding eighty kilograms;

"consumer" has the meaning assigned to it in the Act;

"consumer charter" means a document which gives details of service delivery terms, payment, response times and overall quality of service standards;

"cylinder" means a receptacle for liquefied petroleum gas conforming to the Kenya Standard;

"cylinder deposit" means the amount of money collected by the brand owner or his appointed wholesaler or retailer at the point of sale as security for the cylinder;

"distressed brand owner" means a brand owner who has failed to meet the requirements for the renewal of a licence or who has failed to renew his licence, in either case for more than three months from the expiry of the previous licence;

"filling or refilling" means the packaging of liquefied petroleum gas into cylinders;

"feasibility study" means a document containing the analysis and evaluation of the proposed project to determine that the project meets technical requirements, can be completed within the estimated cost and time, and that it will be profitable;

"fire safety auditor" means a person registered as a fire safety professional under the Occupational Safety and Health Act (Cap. 236A);

"import route" means the prescribed import route under the East African Community Customs Management Act, 2004;

"importer" means a person licensed to import bulk liquefied petroleum gas under the Act;

"Kenya Standard" means the specification or code of practice provided under the Standards Act (Cap. 496);

"licensee" means a person who is a holder of a licence issued under these Regulations;

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[Subsidiary]

"liquefied petroleum gas" has the meaning assigned to it in the Act;

"liquefied petroleum gas business" includes the import, export, filling, storage, wholesale, retail or transport of liquefied petroleum gas in bulk or in cylinders;

"liquefied petroleum gas consumer site" means a facility used by a consumer to store bulk liquefied petroleum gas for own use;

"load port" means the immediate previous country of origin where the LPG was loaded for transit to Kenya;

"LPG" means liquid petroleum gas;

"Mutual Cylinder Exchange System" means a contractual arrangement among brand owners who have consented on the exchange of different brands of standard capacity cylinders at points of sale;

"premises" includes any land, building or structure;

"professional engineer" means a person registered to practice as an engineer by the Engineers Board of Kenya under the Engineers Act (Cap. 530);

"requalification" means the procedure by which a cylinder is subjected to inspection and revalidation in accordance with the Kenya Standard;

"retail" has the meaning assigned to it in the Act;

"retailer" means a person engaged in retail business;

"reticulated piped gas system" means the system for supply of liquefied petroleum gas through a network of pipes from a centralized storage point;

"scrappage" means the destruction of a defective cylinder;

"seal" means a cap placed on the valve of the cylinder for the purposes of preventing ingress of water or dust into the valve;

"standard capacity cylinder" means a cylinder with a capacity of 0.5, 1, 3, 6 or 13 kilograms fitted with a unified valve;

"unified valve" means a valve type whose specifications conform to the Kenya Standard;

"wholesale" means the business of selling liquefied petroleum gas in bulk or in cylinders to retailers or bulk consumers; and

"wholesaler" means a person engaged in selling of bulk liquefied petroleum gas to retailers or bulk consumers.

### **3. Regulations not to apply to Kenya Defence Forces**

These Regulations shall not apply to the Kenya Defence Forces.

### **4. Requirement for licence for liquefied petroleum gas business**

(1) A person shall not undertake liquefied petroleum gas business except in accordance with the terms and conditions of a valid licence issued by the Authority or its licensing agents.

(2) A person who contravenes these Regulations commits an offence and shall, where no fine or penalty thereof is expressly set out in the Act, be liable on conviction to the applicable fines set out in the Fifth Schedule.

### **5. Application for a licence**

(1) A person who wishes to undertake liquefied petroleum gas business shall make an application for a licence to the Authority or its licensing agents in the prescribed manner.

(2) The application in sub regulation (1) shall be submitted electronically together with the documents specified in the First Schedule, such additional documentation as the Authority may require and the fees set out in the Fourth Schedule.



(3) The Authority may request for additional information before making a determination for an application for a licence.

## 6. Form and duration of licence

A licence for a liquefied petroleum gas business shall be in the form set out in the Third Schedule and shall be valid for —

- (a) in the case of a jetty, pipeline, bulk storage facility and liquefied petroleum gas reticulation system, for three years from the date of issue;
- (b) in the case of retail of liquefied petroleum gas in cylinders, for two years from the date of issue;
- (c) in the case of business to transport liquefied petroleum gas in bulk or in cylinders, for two years from the date of issue;
- (d) in the case of business to import liquefied petroleum gas in bulk, for two years from the date of issue; and
- (e) in the case of business to export or wholesale liquefied petroleum gas in bulk or in cylinders, for two years from the date of issue.

## 7. Renewal of licence

(1) An application for the renewal of a licence shall be made at least thirty days prior to the expiry of the licence.

(2) The application in sub regulation (1) shall be submitted together with the documents set out in the Second Schedule and the fees set out in the Fourth Schedule.

(3) Where an application for the renewal of a licence is made after the period specified in sub regulation (1), an additional fee equal to twenty percent of the licence fee shall be payable in addition to the fees specified in sub regulation (2).

## 8. Importation of bulk liquefied petroleum gas

(1) An importer shall import liquefied petroleum gas through the import routes prescribed by the East African Community Customs Management Act.

(2) A person licensed under this regulation, shall within twenty four hours prior to the arrival of the bulk liquefied petroleum gas at a point of entry, declare to the Authority the —

- (a) load port of the bulk liquefied petroleum gas;
- (b) total quantity of the bulk liquefied petroleum gas in kilograms; and
- (c) final destination point of the bulk liquefied petroleum gas.

(3) All imported bulk liquefied petroleum gas shall be tested at the prescribed point of entry as specified by the Kenya Bureau of Standards or any such body responsible for standards in Kenya;

(4) Where the specifications of such bulk liquefied petroleum gas fail to meet the Kenya Standard, the importer shall return the bulk liquefied petroleum gas to the load port.

(5) Where the importer fails to return the bulk liquefied petroleum gas specified in sub regulation (4) to the load port, the Authority shall facilitate the destruction of the bulk liquefied petroleum gas at the cost of the importer.

(6) An importer shall submit to the Authority the following information with respect to the preceding month, on or before the 10th day of each calendar month —

- (a) total quantity in metric tons of bulk liquefied petroleum gas imported;
- (b) the source of the imported liquefied petroleum gas;
- (c) total quantity in metric tons of bulk liquefied petroleum gas sold in the local market by sector and County;
- (d) total quantity in metric tons of bulk liquefied petroleum gas sold in the export market;
- (e) list of bulk liquefied petroleum gas sales to liquefied petroleum gas consumers indicating the quantity in kilograms, dates and places of delivery; and

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- (f) in case the sales include liquefied petroleum gas in cylinders, the total bulk liquefied petroleum gas filled in cylinders.

(7) An importer shall not supply bulk liquefied petroleum gas to any person unless such a person is in possession of a valid bulk liquefied petroleum gas licence issued under the Act or such a person is a liquefied petroleum gas consumer.

(8) An importer shall terminate the supply of liquefied petroleum gas to a liquefied petroleum gas consumer where it is established that a liquefied petroleum gas consumer is undertaking refilling or further trade in liquefied petroleum gas without the requisite licence required under the Act.

(9) A person who contravenes this regulation commits an offence and shall be liable on conviction to the fine set out in the Fifth Schedule.

### **9. Storage of bulk liquefied petroleum gas**

(1) A person shall not construct or install a bulk liquefied petroleum gas storage facility or a gas reticulation system without a construction permit from the Authority.

(2) An application for a construction permit for a bulk liquefied petroleum gas storage facility or a gas reticulation system shall specify the following —

- (a) exact location of the storage site and easements for any pipelines and incidental infrastructure including land registration number;
- (b) capacity of the storage facility or gas reticulation system;
- (c) scope of the project; and
- (d) grade of product to be stored.

(3) The application in sub regulation (2) shall be submitted together with the —

- (a) registration documents of the applicant;
- (b) identification documents of the applicant including those of its directors and partners;
- (c) feasibility study of the project which shall contain a financial model indicating the project financing costs, operations and maintenance costs and projected sales;
- (d) copy of title deed in the name of the applicant or a duly registered lease whose term shall not be less than five years;
- (e) an environmental impact assessment licence from the National Environment Management Authority;
- (f) development permission from the relevant County Government;
- (g) evidence of compliance with the Physical Planning Act (No. 6 of 1996)(now repealed);
- (h) detailed layout plan that complies with the Kenya Standard and approved by the relevant County Government;
- (i) detailed design drawings of the liquefied petroleum gas storage facility certified by a professional engineer in the mechanical field;
- (j) detailed design drawings for the liquefied petroleum gas storage facility's tank saddles, drainage and gas traps certified by a professional engineer in the civil or structural field; and
- (k) detailed designs for the firefighting system certified by a professional engineer in the mechanical field and a fire safety auditor which shall contain detailed calculations to prove the adequacy of the designs to prevent Boiling Liquid Expanding Vapor Explosion.

(4) An application for a licence to store bulk liquefied petroleum gas shall meet the criteria set out in the First Schedule.

(5) Where bulk liquefied petroleum gas is stored in more than one premises, a separate licence shall be required for each premises.

**10. Storage of bulk liquefied petroleum gas for own use**

A person intending to install a bulk liquefied petroleum gas storage facility for own use, shall —

- (a) declare the specific purpose for which the bulk liquefied petroleum gas is to be used;
- (b) obtain a construction permit from the Authority; and
- (c) comply with regulations 9(3) and 9(4).

**11. Obligations of the operator of a bulk liquefied petroleum gas storage facility**

(1) The operator of a bulk liquefied petroleum gas storage facility shall not load or discharge liquefied petroleum gas to or from an unlicensed bulk liquefied petroleum gas transport vehicle.

(2) The operator of a bulk liquefied petroleum gas storage facility shall not allow a bulk liquefied petroleum gas transport vehicle to be driven into his facility by a driver who is not in possession of a valid driver certificate issued by the Authority or its licensing agents.

(3) A person who contravenes this regulation shall be liable to the fine set out in the Fifth Schedule.

**12. Acquisition of new cylinders and valves**

(1) A person shall not acquire or manufacture a standard capacity cylinder and valve for use in Kenya if the cylinder and the valve do not conform to the Kenya Standard provided that where a liquefied petroleum gas consumer acquires a cylinder from a licensee the obligation to ensure conformity of the cylinder and the valve shall lie with the licensee.

(2) A person who acquires a new cylinder shall declare it to the Authority not later than one calendar month from the date of acquisition.

(3) The declaration made in sub regulation (2) shall include the—

- (a) capacity and number of imported or locally manufactured cylinders;
- (b) landed cost of cylinders inclusive of all taxes for imported cylinders or ex-factory cost inclusive of all taxes for locally manufactured cylinders;
- (c) manufacturer's name and the country of origin of the cylinders; and
- (d) serial number for each cylinder.

(4) A person who contravenes this regulation shall be liable to the fine set out in the Fifth Schedule.

**13. Filing of liquefied petroleum gas**

(1) A person shall not fill liquefied petroleum gas into cylinders unless he is the brand owner or has prior written consent from the brand owner.

(2) An application for a licence to fill liquefied petroleum gas into cylinders shall meet the requirements set out in the First Schedule.

(3) A copy of the consent in sub regulation 13(1) shall be submitted to the Authority by the brand owner.

(4) A person licensed to fill liquefied petroleum gas shall not fill cylinders that do not conform to the Kenya Standard.

(5) A person licensed to fill liquefied petroleum gas shall ensure that when every cylinder is filled, the —

- (a) accurate gross and tare weights of the filled cylinder are indicated on the body of the cylinder;
- (b) cylinder is fitted with an appropriate seal;
- (c) accurate records by unique serial numbers, capacities and net weights are maintained; and

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- (d) relevant and clear safety messages are visibly appended on the body of the cylinder as set out in the Sixth Schedule.

#### **14. Prohibition against unauthorized refilling**

The following acts constitute the unauthorized refilling of cylinders and any person who commits these acts shall be liable to the fine set out in the Fifth Schedule —

- (a) refilling of a cylinder by a person or entity other than the brand owner or refilling of a cylinder without the prior written consent from the brand owner provided that such consent shall have been submitted to the Authority;
- (b) refilling of a cylinder that —
  - (i) does not bear the embossed markings of the brand or trade name; or
  - (ii) is defaced, tampered or bears illegible markings;
- (c) refilling of a cylinder that is due for repair, requalification or scrappage;
- (d) refilling of a cylinder directly from a bulk liquefied petroleum gas road transport vehicle;
- (e) decanting of liquefied petroleum gas from one cylinder to another cylinder save for safety reasons;
- (f) refilling of a cylinder from a facility or such other source that is not licensed by the Authority or its licensing agents;
- (g) refilling of a cylinder with a product or substance other than liquefied petroleum gas;
- (h) refilling of a cylinder with liquefied petroleum gas that does not conform to the Kenya Standard;
- (i) possession of a seal bearing a similar marking to another brand owner without written consent from the brand owner and such consent submitted to the Authority;
- (j) supply of a filled cylinder into the market without a seal; and
- (k) wholesale or retail of filled cylinders belonging to another brand owner without written consent from the brand owner and such consent submitted to the Authority.

#### **15. Damage to cylinders**

Any of the following acts where performed without the written consent from the brand owner shall constitute willful damage of a cylinder and any person who commits these acts shall be liable to the fines set out in the Fifth Schedule —

- (a) altering the brand name, symbol or any marking on the cylinder;
- (b) defacing or altering the shape of the cylinder;
- (c) removing or replacing a valve or a safety relief valve;
- (d) scrappage of an empty cylinder; or
- (e) repair or maintenance of a cylinder.

#### **16. Transport of bulk liquefied petroleum gas**

(1) A person licensed to transport bulk liquefied petroleum gas shall not permit any of his motor vehicles to load or discharge liquefied petroleum gas from or into a bulk liquefied petroleum gas storage facility that is not licensed under these Regulations except where the discharge is to a liquefied petroleum gas consumer.

(2) A person who contravenes this regulation commits an offence and shall be liable to the fines set out in the Fifth Schedule.

**17. Transport of cylinders**

(1) A person shall not transport more than three filled cylinders by road, except in accordance with the terms and conditions of a valid licence issued by the Authority or its licensing agents.

(2) An application for a licence to transport cylinders by road shall meet the requirements set out in the First Schedule.

(3) A person licensed to transport cylinders by road shall not permit any of his motor vehicles to load or off-load from or to a cylinder filling facility, wholesaler or retailer that is not licensed.

(4) A motor vehicle for use in the transport of cylinders shall be equipped with two serviced dry powder fire extinguishers of at least nine kilograms each.

(5) The arrangement of cylinders during transportation shall comply with the Kenya Standard.

**18. Wholesale of liquefied petroleum gas in cylinders**

(1) A person shall not undertake wholesale of liquefied petroleum gas in cylinders belonging to another brand owner without the prior written consent from the brand owner and such consent submitted to the Authority.

(2) A person licensed to undertake wholesale of liquefied petroleum gas in cylinders shall not stock or offer for sale cylinders that do not conform to the Kenya Standard.

(3) A person licensed to undertake wholesale of liquefied petroleum gas in cylinders shall maintain records of each cylinder that is purchased or sold.

(4) The records in sub regulation (3) shall be maintained for at least one calendar year and shall contain the following information —

- (a) serial number of each cylinder;
- (b) cylinder brand;
- (c) date of purchase of each cylinder;
- (d) name of the business entity from which each cylinder was purchased;
- (e) date of resale of each cylinder;
- (f) name of retailer to which the cylinders were sold; and
- (g) net weight in kilograms of each cylinder sold.

(5) The Authority may require all licensees in liquefied petroleum gas cylinder business to subscribe to a common information technology platform for the ease of tracking sales of filled cylinders and submission of information required under the Act and these Regulations.

(6) A person who contravenes this regulation commits an offence and shall be liable to the fine set forth in the Fifth Schedule.

**19. Retail of liquefied petroleum gas in cylinders**

(1) A person shall not undertake the business of retail of liquefied petroleum gas in cylinders except in accordance with the terms and conditions of a valid licence issued by the County Government or its licensing agents.

(2) Where the County Government does not have capacity to issue the licence in sub regulation (1), the Authority or its licensing agents shall issue the licence.

(3) An application for a licence for retail of liquefied petroleum gas in cylinders shall meet the requirements set out in the First Schedule and shall be made upon the payment of the fees specified in the Fourth Schedule.

(4) A person shall not undertake the business of retail of liquefied petroleum gas cylinders of another brand owner without prior written consent from the brand owner and such consent submitted to the respective County Government and the Authority.

(5) A person licensed to undertake the business of retail of liquefied petroleum gas in cylinders shall not stock or offer for sale cylinders that do not conform to the Kenya Standard.

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(6) No person whether licensed or otherwise shall buy for resale liquefied petroleum gas in cylinders from a wholesaler who is not in possession of a licence issued by the Authority.

(7) A person licensed to undertake the business of retail of liquefied petroleum gas in cylinders, shall issue liquefied petroleum gas consumers with a receipt that shall include the following information —

- (a) name, address and telephone number of the retailer;
- (b) name and telephone number of the liquefied petroleum gas consumer;
- (c) date of the sale;
- (d) cylinder brand;
- (e) serial number or quick response code of the cylinder;
- (f) serial number or quick response code of the seal;
- (g) net weight in kilograms of the cylinder; and
- (h) unit and total price of the transaction.

(8) A person who contravenes this regulation commits an offence and is liable to the fine set out in the Fifth Schedule.

## **20. Export of liquefied petroleum gas in cylinders**

A person who wishes to export liquefied petroleum gas in cylinders shall obtain prior written consent from the brand owner and such consent shall be submitted to the Authority for approval.

## **21. Obligations of the brand owner**

(1) Every brand owner shall—

- (a) ensure that its cylinders are in a good state of repair and are re-qualified in accordance with the Kenya Standard;
- (b) maintain a list of its authorized filling agents, wholesalers, retailers and cylinder requalification agents;
- (c) maintain the records of serial numbers or quick response codes and date of requalification of each cylinder;
- (d) maintain the serial numbers and date of sale of each cylinder;
- (e) Track cylinders by use of Radio Frequency Identification or quick response code or any other appropriate technology;
- (f) provide the relevant training and any relevant information to its approved filling agents, wholesalers and retailers on the safe storage and handling of cylinders;
- (g) ensure that cylinders are affixed with a notice informing consumers on the safe use, storage and handling of liquefied petroleum gas as prescribed in Sixth Schedule; and
- (h) obtain an appropriate insurance cover against injuries to liquefied petroleum gas consumers or third parties caused by faulty cylinders.

(2) A brand owner who contravenes sub regulation (1) commits an offence and shall be liable to the fine set out in the Fifth Schedule.

## **22. Reticulation of liquefied petroleum gas**

(1) A person shall not undertake the business of reticulation of liquefied petroleum gas without a valid licence issued by the County Government or its licensing agents.

(2) Where the County Government does not have capacity to issue the licence in sub regulation (1), the Authority or its licensing agents shall issue the licence.

(3) An application for a licence for the reticulation of liquefied petroleum gas shall meet the requirements set out in the First Schedule and shall be made upon the payment of the fees specified in the Fourth Schedule.

(4) A liquefied petroleum gas reticulation system shall conform to the provisions of the relevant Kenya Standard and be operated in accordance with Guidelines published by the Authority.

(5) The operator of a liquefied petroleum gas reticulation system shall obtain, maintain and safeguard wayleaves or rights of way where the pipeline and incidental installation for liquefied petroleum gas distribution are located.

(6) A design for a liquefied petroleum gas reticulation system shall incorporate environment, health and safety standards and shall be certified by a professional engineer in the mechanical field.

(7) Each housing unit or consumer outlet shall have separate and functional metering system approved by the body responsible for Weights and Measures.

(8) The unit of sale of liquefied petroleum gas to liquefied petroleum gas consumers in a liquefied petroleum gas reticulation system shall be in kilograms.

(9) A person licensed to operate a liquefied petroleum gas reticulation system shall maintain an accidents and complaints register.

(10) The accidents register in subregulation (9) together with the respective investigation reports shall be submitted to the Authority during application for renewal of the licence.

(11) Where a liquefied petroleum gas reticulation system serves more than one hundred housing units, the operator shall be required to maintain a liquefied petroleum gas consumer charter approved by the Authority.

(12) The operator of a liquefied petroleum gas reticulation system shall maintain a service contract for each liquefied petroleum gas consumer.

(13) The service contract in sub regulation (12) shall include the following —

- (a) name, address and telephone number of the operator and the liquefied petroleum gas consumer;
- (b) rights and obligations of the parties;
- (c) emergency response plan;
- (d) billing period and the mode of payment;
- (e) total cost per kilogram and the components thereof; and
- (f) dispute and complaints handling procedures.

(14) The operator of a liquefied petroleum gas reticulation system shall maintain records of all the bulk liquefied petroleum gas purchased and delivered which shall contain the—

- (a) respective times and dates;
- (b) registration number of the delivery vehicles;
- (c) name and licence number of the liquefied petroleum gas supplier; and
- (d) quantity of the liquefied petroleum gas.

### **23. Reporting of accidents**

(1) A person licensed to undertake liquefied petroleum gas business shall within forty eight hours notify the Authority in writing of any accident causing—

- (a) loss of life or personal injury;
- (b) damage to property or the environment; or
- (c) an explosion, spill or fire.

(2) The information to be submitted to the Authority shall include the following —

- (a) name of the owner and operator of the premises involved;
- (b) date and time of the incident and accident;
- (c) location and geographical spread of the incident or accident;
- (d) number of injuries and/or fatalities if any;
- (e) scale of environmental damage if any;

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- (f) own and third party property damage if any;
- (g) in the case of a jetty, storage facility or pipeline give the number of days the infrastructure will continue to be out of service; and
- (h) description of the events leading to and the most probable cause of the incident and accident.

(3) A person licensed to undertake liquefied petroleum gas business who fails to comply with this regulation commits an offence and shall be liable to the fine set out in the Fifth Schedule.

#### **24. Investigation of accidents**

(1) A person licensed to undertake liquefied petroleum gas business shall investigate any accident occurring with respect to a licensed activity and shall within fourteen days or any such extended period as approved by the Authority from the date of the accident submit a report containing the—

- (a) cause of the accident;
- (b) effects of the accident; and
- (c) proposed remedial measures and timelines thereof.

(2) The Authority shall review the report under sub regulation (1) within thirty days, and:

- (a) accept the report; or
- (b) request for adjustments; or
- (c) reject the report giving reasons and other directives.

(3) Notwithstanding sub regulations (1) and (2), the Authority may commission its own investigation.

(4) Where required, the person affected by the incident or accident shall be required to facilitate the Authority or its appointed agent or committee to undertake the investigation.

(5) No person shall obstruct, hinder or withhold such information as may be requested by the Authority's appointed agent or committee provided that such information was requested in the prescribed manner.

#### **25. Mutual Cylinder Exchange System**

(1) A brand owner who wishes to operate under a Mutual Cylinder Exchange System shall —

- (a) enter into a Mutual Cylinder Exchange Agreement with other interested parties; and
- (b) apply in writing to the Authority for approval and attach —
  - (i) a copy of the Mutual Cylinder Exchange Agreement; and
  - (ii) an approval for the Mutual Cylinder Exchange System from the Competition Authority of Kenya.

(2) Members of a Mutual Cylinder Exchange System may apply to the Authority to be recognized as a self-regulated organization.

(3) The Authority shall satisfy itself that the agreement in sub regulation (1)(a) is not discriminatory and does not distort market competition.

(4) The Authority shall within sixty days from the date of receipt of an application in sub regulation (1)(b), approve or reject the application.

(5) Where the Authority rejects the application, the Authority shall communicate to the applicant in writing, of the decision and the reasons for the decision.

(6) Where the Authority approves the agreement, the Authority shall communicate to the applicant in writing.

(7) Parties to a Mutual Cylinder Exchange Agreement shall apply in writing to the Authority for approval —



- (i) whenever a new party becomes signatory to the Mutual Cylinder Exchange Agreement;
- (ii) at the lapse of two years from the date of the immediate last approval of the Mutual Cylinder Exchange System.

(8) The application in sub regulation (7) shall be accompanied by the documents specified in sub regulation (1)(b).

## 26. Cylinder deposit

(1) A cylinder shall remain the property of the brand owner and a consumer shall pay a cylinder deposit where the liquefied petroleum gas consumer does not provide an empty cylinder in exchange during the purchase of liquefied petroleum gas in cylinders.

(2) A liquefied petroleum gas consumer who returns a cylinder to a brand owner shall be entitled to a full refund of the cylinder deposit.

## 27. Brand caretaker

(1) The Authority may appoint a brand caretaker in respect of a distressed brand owner to facilitate collection of cylinders from the market and refill the cylinders for such period as the Authority may determine.

(2) The Authority shall by notice in the Gazette notify the public on the appointment of the brand caretaker.

## 28. Penalties and fines

(1) Any penalties, fines, fees, expenses or other monies recoverable under these Regulations, the recovery of which is not otherwise specifically provided for, shall be a civil debt recoverable summarily.

(2) The penalties and fines set out in the Fifth Schedule shall be determined by the Authority.

## 29. Appeals

Any person who is dissatisfied with a decision of the Authority under these Regulations may appeal to the Energy and Petroleum Tribunal.

## 30. General penalty

Where any default in or contravention of any of the provisions of these Regulations is made for which no fine or penalty is expressly stated, the person so defaulting or contravening, shall on conviction, be liable to a fine not less than one hundred thousand shillings.

## 31. Transitional provisions

The transitional provisions set out in the Seventh Schedule shall apply.

## 32. Spent

### FIRST SCHEDULE

[r. 5(2), 9(4), 13(2), 19(3) & 22(3)]

#### REQUIREMENTS FOR APPLICATION OF A NEW LICENCE

##### I. Requirements for Licence for Import, Export and Wholesale of Bulk LPG

1. Completed online application;
2. Scan of original certificate of incorporation or business registration certificate;
3. Scan of original CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue;
4. Scan of original identification documents (National IDs or Passports) for all the company's directors or partners;

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5. Scan of original valid Single Business Permit from the County Government.
6. Scan of original PIN Certificate.
7. Scan of original valid tax compliance certificate;
8. Scan of original valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya.
9. Proof of access to a licensed storage facility through submitting scan of either:
  - (a) ownership of a licensed bulk LPG storage facility or a long term lease (minimum 5 years); or
  - (b) Valid hospitality agreement with a licensed bulk LPG Storage facility.
10. Proof of presence in the market by submitting scan of either:
  - (a) throughput of at least 2,000 metric tons per annum; or
  - (b) Ownership of a cylinder brand.

#### **II. Requirements for Licence for Wholesale and Export of Bulk LPG**

1. Completed online application;
2. Scan of original copy of certificate of incorporation or business registration certificate;
3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue;
4. Scan of original copies of identification documents (National IDs or Passports) for all the company's directors;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of PIN Certificate;
7. Scan of original copy of a valid tax compliance certificate;
8. Scan of original copy of a valid Work Permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya.
9. Proof of access to supply of LPG by submitting scan of either:
  - (a) a valid bulk LPG Import licence; or
  - (b) Supply agreement with a holder of a valid bulk LPG Import licence.

#### **II. Requirements for Licence for Storage and Wholesale of LPG in Cylinders**

1. Completed online application;
2. Scan of original copy of certificate of incorporation or business registration certificate;
3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue;
4. Scan of original copies of identification documents (National IDs or Passports) for all the company's directors;
5. Scan of original copy of Single Business Permit from the County Government;
6. Scan of original copy of PIN Certificate;
7. Scan of original copy of a valid tax compliance certificate;
8. Scan of original copy of a valid Work Permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
9. Scan of original copy of a valid Certificate of Registration of Work Place;

10. Scan of original copy of a valid Weighing Scale *Calibration Certificate* from the Department of Weights and Measures;

11. Proof of authority to trade in a cylinder brand by submitting scan of either:

- (a) Trade Mark registration certificate; or
- (b) a valid copy of a written consent from the brand owner.

12. Proof of safe premises by submitting scan of either:

- (a) Proof of ownership or lease of a yard or warehouse; and
- (b) A valid *Fire certificate* for the above premises.

13. Scan of the applicant's *Customer Complaint Handling Procedures*.

#### **IV. Requirements for Licence for Storage and Retail of LPG in Cylinders**

1. Completed online application;

2. Scan of original copy of certificate of incorporation or business registration certificate;

3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue.

4. Scan of original copies of identification documents (National IDs or Passports) for all the company's directors;

5. Scan of original copy of Single Business Permit from the County Government;

6. Scan of original copy of PIN Certificate;

7. Scan of original copy of a valid tax compliance certificate;

8. Scan of original copy of a valid Work Permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;

9. Scan of original copy of a valid Certificate of Registration of Work Place;

10. Scan of original copy of a valid Weighing scale *Calibration Certificate* from the Department of Weights and Measures;

11. Proof of safe premises by submitting scan of either:

- (a) Proof of a retail facility conforming to the Kenya Standard; and
- (b) A valid *fire certificate* for the above premises.

12. Scan copy of the applicant's *Customer Complaint Handling Procedures*.

#### **V. Requirements to become a Brand Owner**

1. Completed online application;

2. Scan of original copy of certificate of incorporation or business registration certificate;

3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue;

4. Scan of original copies of identification documents (National IDs or Passports) for all the company's directors;

5. Scan of original copy of Single Business Permit from the County Government;

6. Scan of original copy of PIN Certificate;

7. Scan of original copy of a valid tax compliance certificate;

8. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;

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9. Scan of original copy of Trade Mark registration certificate;
10. Scan of original copy of a certificate of *Conformity of the Cylinders* to the Kenya Standard;
11. Proof of ownership of Standard Capacity Cylinders by submitting scan of either:
  - (a) Proof of ownership of a minimum of five thousand cylinders of individual capacities of 0.5, 1, 3, 6 or 13 Kg fitted with Unified Valves; or
  - (b) A combination of any of the capacities in 11(a) totaling to a minimum five thousand and fitted with unified valves.
12. Inventory for each cylinder listed by:
  - (a) Serial number;
  - (b) Capacity; and
  - (c) Landed or ex-factory cost inclusive of all taxes.
13. Scan copy of a valid insurance policy against injuries to LPG Consumers and third parties related to faulty Cylinders; and
14. Scan copy of the applicant's *Customer Complaint Handling Procedures*.

#### **VI. Requirements for Licence for Transport of Bulk LPG**

1. Completed online application;
2. Scan of original copy of certificate of incorporation or business registration certificate;
3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue;
4. Scan of original copies of identification documents (National IDs or Passports) for all the company's directors;
5. Scan of original copy of Single Business Permit from County Government;
6. Scan of original copy of PIN Certificate;
7. Scan of original copy of a valid tax compliance certificate;
8. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
9. Scan of original copy of a valid certificate of calibration for the Bulk LPG tank mounted on each Bulk LPG transport vehicle;
10. Scan copy of a comprehensive emergency preparedness and response plan;
11. *Scan of original copy of Certificate of Conformity* to the Kenya Standard for each Bulk LPG transport vehicle;
12. Scan of original copy of a valid Fire certificate from the County Government for each Bulk LPG transport vehicle;
13. Scan of original copy of a valid *Report on Examination* for the LPG tank mounted on each Bulk LPG transport vehicle.
14. Scan of original copy of a valid *Motor Vehicle Inspection* certificate for each Bulk LPG transport vehicle;
15. Proof of fitting each vehicle with a working GPS enabled tracking system;
16. Scan of original copy of logbook for each Bulk LPG transport vehicle. The logbook shall be in the name of the applicant and in absence of such, the applicant shall provide a valid lease agreement with the Bulk LPG transport vehicle owner; and

17. List of drivers to be engaged plus the Driver Certificate number for each driver as issued by the Authority.

#### **VII. Requirements for licence for Transport of LPG in Cylinders**

1. Completed online application;
2. Scan of original copy of certificate of incorporation or business registration certificate;
3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue;
4. Scan of original copies of identification documents (National IDs or Passports) for all the company's directors;
5. Scan of original copy of Single Business Permit from the County Government;
6. Scan of original copy of PIN Certificate;
7. Scan of original copy of a valid tax compliance certificate;
8. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
9. Scan of comprehensive emergency preparedness and response plan;
10. Scan of original copy of Certificate of Conformity with the Kenya Standard for each vehicle;
11. Scan of original copy of a Fire certificate from the County Government for each vehicle;
12. Scan of original copy of logbook for the cylinder transport vehicle. The logbook shall be in the name of the applicant and in absence of such, the applicant shall provide a valid lease agreement with the Cylinder transport vehicle owner;
13. Scan of original copy of a valid *Motor Vehicle Inspection* certificate for the transport vehicle;
14. List of drivers to be engaged plus the Driver Certificate number for each driver as issued by the Authority.

#### **VIII. Requirements for Licence for Storage of Bulk LPG**

1. Completed online application;
2. Scan of original copy of certificate of incorporation or business registration certificate;
3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue;
4. Scan of original copies of identification documents (National IDs or Passports) for all the company's directors;
5. Scan of original copy of Single Business Permit from the County Government;
6. Scan of original copy of PIN Certificate;
7. Scan of original copy of valid tax compliance certificate;
8. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
9. Proof of control of a Bulk LPG storage facility by submitting scan copy of either:
  - (a) Ownership documents; OR
  - (b) Long term lease (minimum 5 years)
10. Scan of original copy of an Environmental Impact Assessment Licence;

[Subsidiary]

11. Scan of original copy of Certificate of Compliance with the Physical Planning Act;
12. Scan of original copy of Certificate of Conformity with the Kenya Standard;
13. Scan of original copy of a valid Fire Certificate from the County Government;
14. Scan of original copy of a valid Report of Examination for the Bulk LPG storage tank;
15. Scan of original copy of a valid Calibration Certificate for each Bulk LPG storage tank;
16. Proof of access to a calibrated weighbridge by submitting scan copy of either:

(a) Ownership of a calibrated weighbridge; OR

(b) Long term agreement for use of a calibrated weighbridge (minimum 5 years)

17. Scan of original copy of a valid copy of Certificate of Registration of Work Place;
18. Proof of training of a minimum of four employees in safe handling of LPG in a NITA approved institution; and
19. Scan copy of a signed Emergency Response Plan for the Facility.

#### **IX. Requirements for Licence for Storage and Filling of LPG in Cylinders**

1. Completed online application;
2. Scan of original copy of certificate of incorporation or business registration certificate;
3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 calendar months from the date of issue;
4. Scan of original copies of identification documents (National IDs or Passports) for all the company's directors;
5. Scan of original copy of Single Business Permit from the County Government;
6. Scan of original copy of PIN Certificate;
7. Scan of original copy of a valid tax compliance certificate;
8. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
9. Proof of control of a LPG storage facility by submitting scan of either:
  - (a) Ownership documents of a Bulk LPG storage facility: OR
  - (b) Long term lease (minimum 5 years).
10. Scan of original copy of a valid Environmental Impact Assessment Licence;
11. Scan of original copy of a valid Certificate of Compliance with the Physical Planning Act;
12. Scan of original copy of a valid Certificate of Conformity to the Kenya Standard;
13. Scan of original copy of a valid Fire Certificate from the County Government;
14. Scan of original copy of a valid Report on Examination for each Bulk LPG storage tank;
15. Scan of original copy of a valid Calibration Certificate for each Bulk LPG storage tank;
16. Scan of original copy of a valid Certificate of Registration of Work Place;
17. Proof of training of a minimum of four employees in the safe handling of LPG in a NITA approved institution;
18. Proof of economic viability of the plant by submitting scan of either:
  - (a) Proof of ownership of at least 5,000 Cylinders of either or combination of 0.5, 1, 3, 6 or 13kg capacities fitted with unified valves; OR

- (b) Written contract to fill LPG in cylinders on behalf of a licensed brand owner with an assurance of allocated filling capacity of at least 5,000 LPG cylinders per annum.

19. Scan of original copy of Weighing scale *Calibration Certificate* from the Department of Weights and Measures;
20. Proof of access to a calibrated weighbridge by submitting scan of either:
  - (a) Ownership of a calibrated weighbridge; OR
  - (b) Long term agreement on a calibrated weighbridge use (minimum 5 years)
21. Scan of signed copy of Emergency Response Plan for the Facility.
22. Scan of *Customer Complaint Handling Procedures* in compliance with LN 49/2012 and
23. Proof of installation of intrinsically safe non-obscured Closed Circuit Television (CCTV) cameras at the filling area with access given to the Authority via a web-based portal.

#### **X. Licensing Requirements to operate a reticulated LPG System**

1. Completed online application;
2. Scan of original copy of certificate of incorporation or business registration certificate;
3. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
4. Scan of original copies of identification documents (National IDs or Passports) for all the Company's directors;
5. Scan of original copy of Single Business Permit from the County Government;
6. Scan of original copy of PIN Certificate;
7. Scan of original copy of a valid tax compliance certificate;
8. Scan of original copy of a valid Work permit Class "G" for foreign directors for directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
9. Proof of access to legal supply of Bulk LPG by submitting scan of either:
  - (a) A copy of a valid licence for Import, Export and Wholesale of Bulk LPG; or
  - (b) A copy of a supply agreement with a holder of a valid licence for Import, Export and Wholesale of Bulk LPG.
10. Scan of original copy of an Environmental Impact Assessment Licence;
11. Scan of original copy of a Certificate of Conformity to the Kenya Standard;
12. Scan of original copy of a Certificate of compliance with the building code.
13. Scan of original copy of a Fire Certificate from the County Government;
14. Scan of original copy of a valid Report on Examination for each Bulk LPG;
15. Scan of original copy of a valid Calibration Certificate for each Bulk LPG storage tank.
16. Scan of original copy of a valid Calibration Certificate for the metering equipment to be connected to LPG Consumers.
17. Scan of signed Emergency Response Plan for the Facility.
18. Scan of copy of an LPG Consumer customer charter where applicable;
19. Scan of copy of an LPG Customer Service Contract where applicable; and
20. Scan of copy of the applicant's Customer Complaint Handling Procedures.

[Subsidiary]

SECOND SCHEDULE

[r. 7(2)]

APPLICATION FOR RENEWAL OF A LICENCE

**I. Requirements for renewal of licence for Import, Export and Wholesale of Bulk LPG**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors.
4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from County Government;
6. Scan of original copy of a valid tax compliance certificate;
7. Proof of access to a licensed storage facility by submitting scan of either:
  - (a) Ownership documents of a licensed Bulk LPG storage facility or long term lease (minimum 5 years); or
  - (b) A valid hospitality agreement with a licensed Bulk LPG Storage facility.
8. Proof of presence in the market by submitting a scan of either:
  - (a) Throughput of at least 2,000 metric tons per annum; or
  - (b) Ownership of a licensed LPG Cylinder brand; and
9. Proof of compliance with Legal Notice No. 6 of 2014 on timely and accurate submission of required petroleum statistics.

**II. Requirements for renewal of licence for Wholesale and Export of Bulk LPG**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors;
4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of a valid tax compliance certificate;
7. Proof of access to supply of Bulk LPG by submitting scan of either of the following:
  - (a) A valid Bulk LPG Import licence; or
  - (b) A valid supply agreement with a holder of a valid Bulk LPG Import licence.

**III. Requirements for renewal of licence for Storage and Wholesale of LPG in Cylinders**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors.



4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of a valid tax compliance certificate;
7. Scan of original copy of a valid weighing scale *calibration certificate* from the Department of Weights and Measures;
8. Scan of original copy of a valid work place registration certificate;
9. Proof of authority to trade in the Cylinder brand by providing scan of either:
  - (a) Copy of original Trade Mark registration certificate; and
  - (b) A valid copy of a written consent from the brand owner.
10. Proof of safe premises by submitting scan of either:
  - (a) Proof of ownership or lease of a yard or warehouse
  - (b) A valid Fire certificate for the above premises
11. Proof of compliance with Corrective Action Plans given during audits; and
12. Scan of report and list of reported and resolved customer complaints.

#### **IV. Requirements for renewal of licence for Storage and Retail of LPG in Cylinders**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors;
4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of a valid tax compliance certificate;
7. Scan of original copy of a valid weighing scale *Calibration Certificate* from the Department of Weights and Measures;
8. Scan of a valid original copy of work place registration certificate;
9. Requirement for safe premises by submitting scan of either:
  - (a) Proof of ownership of an approved LPG cage for retail
  - (b) A valid *fire certificate* for the above premises' and
10. Proof of compliance with Corrective Action Plans given during audits.

#### **V. Requirements for renewal of licence for Transport of Bulk LPG**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors;
4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of a valid tax compliance certificate;

[Subsidiary]

7. Scan of copy of a valid certificate of calibration for the LPG tank mounted on each Bulk LPG road transport vehicle;
8. Scan of a comprehensive emergency preparedness and response plan
9. Scan of original copy of a *Certificate of conformity* to the Kenya Standard for each Bulk LPG road transport vehicle;
10. Scan of original copy of a fire certificate from the County Government;
11. Scan of original copy of a valid *Report on Examination* for the LPG tank mounted on each Bulk LPG road transport vehicle;
12. Scan of original copy of a valid *Motor Vehicle Inspection* certificate for each Bulk LPG road transport vehicle;
13. Proof of fitting all the vehicles with a working GPS enabled tracking system;
14. Scan of original copy of logbook for each Bulk LPG road transport vehicle. The logbook shall be in the name of the applicant and in absence of such; the applicant shall provide valid lease agreements with the truck owner.
15. List of drivers to be engaged plus the Driver Certificate number for each driver as issued by the Authority;
16. Proof of compliance with Corrective Action Plans given during audits.

**VI. Requirements for renewal of licence for transport of LPG in cylinders**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors;
4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of valid tax compliance certificate;
7. Scan of a comprehensive emergency preparedness and response plan in compliance to Legal Notice No. 8 of 2014.
8. Scan of original copy of *certificate of Conformity* to the Kenya Standard for the transport vehicle;
9. Scan of original copy of a fire certificate from the *County Government*;
10. Scan of original copy of logbook for each vehicle. The logbook shall be in the name of the applicant and in absence of such, the applicant shall provide valid lease agreements with the truck owner;
11. Scan of original copy of a valid *Motor Vehicle Inspection* certificate for the transport vehicle;
12. List of drivers to be engaged plus the Driver Certificate number for each driver as issued by the Authority; and
13. Proof of compliance with Corrective Action Plans given during audits.

**VII. Requirements for renewal of licence for storage of bulk LPG**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;

3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors.
4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of a valid tax compliance certificate;
7. Proof of control of a LPG storage facility by submitting scan of either:
  - (a) Ownership documents of a LPG storage facility; OR
  - (b) Long term lease (minimum 5 years)
8. Scan of proof of *Submission of Annual Environmental Audit* to NEMA;
9. *Scan of original copy of a valid Fire Certificate* from the County Government;
10. Scan of original copy of a valid *Report on Examination* for bulk LPG storage tanks;
11. Scan of original copy of a valid *Calibration Certificate* for each Bulk LPG storage tank;
12. Proof of access to a calibrated weighbridge by submitting scan of either:
  - (a) Ownership of a calibrated weighbridge; OR
  - (b) Long term agreement on use of a calibrated weighbridge use (minimum 5 years)
13. Scan of original copy of a valid *Certificate of Registration of Work Place* in compliance with the Occupational Health and Safety Act (Cap. 236A);
14. Scan of proof of training of a minimum of 4 employees in the handling of LPG in a NITA approved institution;
15. Proof of compliance with Corrective Action Plans given during audits; and
16. Proof of compliance with Legal Notice No. 6 of 2014 on timely and accurate submission of required petroleum statistics (via online platform to the Authority).

**VIII. Requirements for renewal of licence for storage of bulk LPG and filling of cylinders**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors;
4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of a valid tax compliance certificate;
7. Proof of control of a LPG storage facility by submitting scan of either:
  - (a) Ownership documents of a LPG storage facility; OR
  - (b) Long term lease (minimum 5 years).
8. Scan of proof of *Submission of Annual Environmental Audit* to NEMA;
9. *Scan of original copy of a Fire Certificate* from the County Government;
10. Scan of copy of a valid *Report on Examination* for the Bulk LPG storage tanks;
11. Scan of original copy of a valid *Calibration Certificate* for each Bulk LPG storage tank;

[Subsidiary]

12. Scan of original copy of a valid copy of *Certificate of Registration of Work Place*;
13. Scan of proof of training of a minimum of 4 employees involved in the handling of LPG in a NITA approved institution;
14. Proof of economic viability of the plant by submitting scan of either:
  - (a) Proof of ownership of at least 10,000 Cylinders of own brand in the 2nd year of operation; 15,000 in the 3rd year of operation and 20,000 in the 4th year of operation; or
  - (b) Written contract to fill LPG in Cylinders on behalf of a licensed brand owner with an assurance of allocated filling capacity of at least 5,000 LPG Cylinders per annum.
15. Scan of original copy of weighing scale *Calibration Certificate* from the Department of Weights and Measures;
16. Proof of installation of intrinsically safe non-obscured Closed Circuit Television (CCTV) cameras at the filling area with access given to the Authority via a web-based portal.
17. Proof of compliance with Corrective Action Plans given during audits.
18. Proof of compliance with Legal Notice No. 6 of 2014 on timely and accurate submission of required petroleum statistics; and
19. Scan of report and list of reported and resolved customer complaints.

**IX. Requirements for renewal of licence to operate a reticulated LPG system**

1. Completed online application;
2. Scan of original copy of CR 12 from registrar of companies or CR 13 from the Business Registration Service that is not older than 12 months from the date of issue;
3. Scan of original copies of identification documents (National IDs or Passports) for the company's directors.
4. Scan of original copy of a valid Work permit Class "G" for foreign directors working in Kenya or notarized declaration of non-residence for foreign directors not residing in Kenya;
5. Scan of original copy of a valid Single Business Permit from the County Government;
6. Scan of original copy of a valid tax compliance certificate;
7. Proof of access to legal supply of LPG by submitting scan of either:
  - (a) A copy of a valid Import, Export and Wholesale of bulk LPG licence; or
  - (b) Supply agreement with a holder of a valid Import, Export and Wholesale of bulk LPG licence.
8. Scan of proof of *Submission of Annual Environmental Audit* to NEMA.
9. Scan of original copy of a valid *Fire Certificate* from the County Government;
10. Scan of original copy of a valid *Report on Examination* for Bulk LPG storage tanks;
11. Scan of original copy of a valid *Calibration Certificate* for each Bulk LPG storage tank;
12. Scan of original copy of a valid *Calibration Certificate* of the metering equipment to be connected to LPG Consumers;
13. Proof of compliance with Corrective Action Plans given during audits.
14. Proof of compliance with Legal Notice No. 6 of 2014 on timely and accurate submission of required petroleum statistics (via online platform to the Authority); and
15. Scan of report and list of reported and resolved customer complaints.

THIRD SCHEDULE

[r. 6]

FORM OF LPG LICENCE

Serial No .....

THE PETROLEUM ACT, 2019

LIQUEFIED PETROLEUM ACT, 2019

LIQUEFIED PETROLEUM GAS BUSINESS LICENCE

Licence No. EPRA/LPG/ \_\_\_\_\_

Licence is hereby granted to \_\_\_\_\_ of P.O.Box \_\_\_\_\_ to carry on the following petroleum businesses:

TYPE OF LPG BUSINESS
----------------------

On premises situated at:

Plot No. \_\_\_\_\_

Building: \_\_\_\_\_

Road: \_\_\_\_\_

Town/County: \_\_\_\_\_

Licence issue date \_\_\_\_\_

(SEAL) Signature: \_\_\_\_\_

Issued under the authority of the Director General

Energy and Petroleum Regulatory Authority

FOURTH SCHEDULE

[r. 5(2), 7(2), 19(3) & 22(3).]

APPLICABLE LICENCE FEES

TYPE OF LICENCE	NEW APPLICATION	RENEWAL APPLICATION
Import of Bulk LPG	Kshs. 20,000	Kshs. 10,000
Export of Bulk LPG	Kshs. 8,000	Kshs. 5,000
Wholesale of Bulk LPG	Kshs. 8,000	Kshs. 5,000
Transport of Bulk LPG	Kshs. 10,000	Kshs. 5,000
Storage of Bulk LPG or Operation of LPG reticulation system	Kshs. 20,000	Kshs. 10,000
Filling of LPG into cylinders	Kshs. 20,000	Kshs. 10,000
Export of LPG in cylinders	Kshs. 10,000	Kshs. 5,000
Wholesale of LPG in cylinders	Kshs. 8,000	Kshs. 5,000

[Subsidiary]

Retail of LPG in cylinders      Khs. 5,000      Kshs. 2,000

## FIFTH SCHEDULE

[r. 4(2), 8(9), 11(3), 12(4), 14, 15, 16(2), 18(6), 19(8), 21(2), 23(3) &amp; 28(2)]

## OFFENCES, PENALTIES AND FINES

<b>Offence</b>	<b>Penalty/Fine in Kenya Shillings</b>
Importation, exportation or transportation of LPG without a valid licence issued by the Authority	Not less than KShs. 10,000,000
Resale of bulk LPG to another person for purposes of export or retail or final use without a valid licence issued by the Authority	Not less than KShs. 1,000,000
Use of a vehicle for purposes of transport of bulk LPG that does not possess a valid permit issued by the Authority	Not less than KShs. 1,000,000
Driving a vehicle or engaging a driver for the purpose of transport of bulk LPG without a valid driver certificate issued by the Authority	Not less than KShs. 250,000
Non-display of original or certified copy of licence or permit issued by the Authority at the premises of operation	Not exceeding KShs. 1,000,000
Operation of a non-licensed LPG facility	Not less than KShs. 10,000,000
Import of LPG through undesignated routes	A fine not less than Kshs. 200,000
Non-declaration of the load port for imported Bulk LPG and the quantity imported	25% of the customs value of the Bulk LPG
Falsified declaration of quantities of imported bulk LPG	25% of the customs value of the Bulk LPG
Non-declaration of the final destination of imported Bulk LPG	25% of the customs value of the Bulk LPG
Non-submission of Bulk LPG import data on a monthly basis	KShs. 100,000 for each month not submitted
Non-submission of cylinders import data on a monthly basis	KShs. 100,000 for each month not submitted
Supply of Bulk LPG to facilities not licensed under these Regulations other than LPG consumer facilities.	Kshs. 500,000 for each delivery to a non-licensed facility
Refilling, trading or rebranding of cylinders without the brand owner's consent	Not less Kshs. 10,000,000
Unauthorized possession of LPG Seals without the brand owner's authority	KShs. 20,000 for each seal found within the premises
Stocking or offering for sale Cylinders that don't meet Kenya Standards	KShs. 20,000 for each nonconforming cylinder

Failure by Cylinder Wholesalers to maintain mandatory records prescribed in these Regulations	Kshs. 50,000
Failure by LPG licensee to comply with the obligations set forth in these Regulations.	Not less than Kshs. 200,000 for each offence
Obstruction of inspection officers from the Authority or its licensing agents.	Kshs. 100,000 for each day the obstruction occurs
Failure to report an LPG related accident within the prescribed 48 hour period	Not less than Kshs. 200,000 for every accident not reported within 48 hours

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SIXTH SCHEDULE

[r. 13(5)(d) & 21(1)(g).]

MINIMUM SAFETY INFORMATION ON LPG CYLINDER REFILL

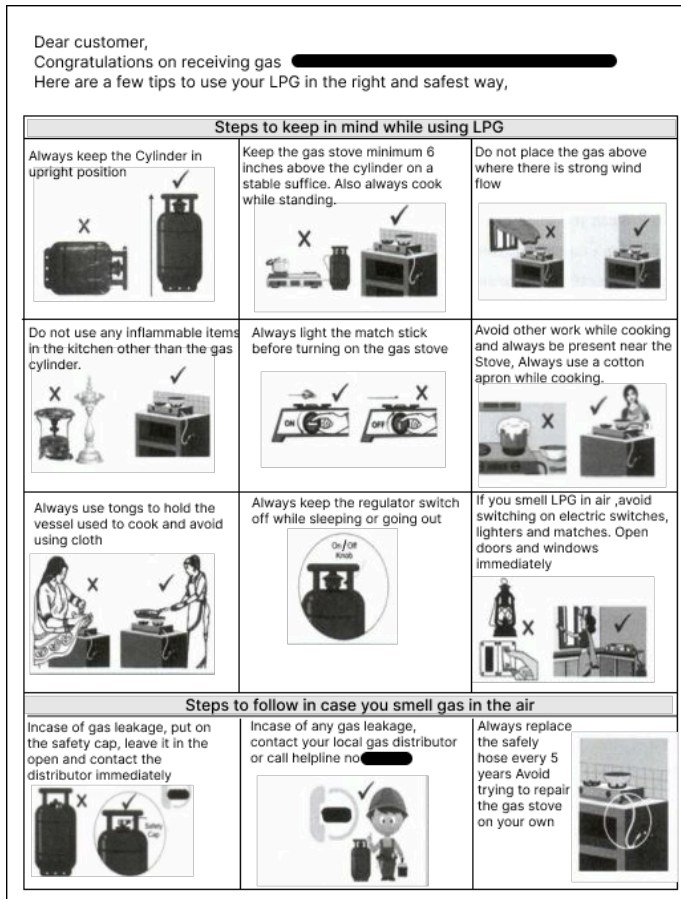
1. Company details:
  - a. Brand name.
  - b. Customer service number.
  - c. Emergency contacts.
  - d. KEBS standardization mark.
2. What to check when buying LPG during cylinder refill:
  - a. Check condition of valve.
  - b. Weight of cylinder against tare weight.
  - c. Check that the seal is intact and genuine.
  - d. Request cylinder use demonstration if not sure.
3. How to handle and store:
  - a. Keep the cylinder in upright position when transporting and storing.
  - b. Observe separation distance between cylinder and stove/cooker/oven (a minimum separation distance of 30 cm is recommended).
  - c. Keep the cylinder in an airy place.
  - d. Do not rollover, throw or bang the cylinder.
  - e. Do not store cylinders in exits or aisles.
  - f. Avoid exposing cylinders to rain and direct sun.
4. How to use LPG cylinder
  - a. Ensure the hose, regulator or burner is well fitted.
  - b. When using a rubber hose, ensure there are no visible cracks. Replace hose after three years.
  - c. Strike match before turning on LPG burner or regulator.
  - d. Never leave the burner un-attended during use.
  - e. Ensure to turn off LPG burner or regulator after use.
  - f. Ensure that you get LPG from genuine gas suppliers and source.

[Subsidiary]

5. What to do in case of LPG leakage:

- a. When you smell LPG odor, do not panic.
- b. Don't turn on any electrical appliances or light switch.
- c. Turn off LPG regulator.
- d. LPG is heavier than air; hence open the lowest openings such as doors, in addition to windows.
- e. Remove the cylinder out of the room.
- f. Inform the wholesaler or the brand owner.

Sample poster



SEVENTH SCHEDULE

[r. 31]

TRANSITIONAL CLAUSES

1. For the purposes of this Schedule —

"creditor" means a brand owner to whom the debt is owed;

"Repealed Regulations" means the Energy (Liquefied Petroleum Gas) Regulations, 2009 (L.N. 121/2009);



"members" means the members of the Liquefied Petroleum Gas Cylinder Exchange Pool; and

"Pool" means the Liquefied Petroleum Gas Cylinder Exchange Pool established under regulation 14 of the Repealed Regulations.

2. The Pool shall be dissolved once these Regulations come into force.
3. Notwithstanding paragraph 2 of this Schedule, the Liquefied Petroleum Gas Cylinder Exchange Pool Committee constituted under the Repealed Regulations shall remain in office for a maximum period of six months from the date of coming into force of these Regulations and any costs borne by the Pool during this period shall be borne by all the members.
4. (1) The Pool shall within four calendar months reconcile all cylinder exchange records and issue final invoices and the debt status for each brand owner.  
(2) Each brand owner shall verify the accuracy of all the invoices issued by the Pool.
5. A brand owner shall declare to the Pool, the number of competitors' cylinders in his possession within one month of the coming into force of these Regulations and the Pool shall notify the owner of the cylinders within two months of the coming into force of these Regulations.
6. A brand owner shall be required to collect his empty cylinder from the premises of a competitor premises within two months of such notice.
7. Where a brand owner fails to collect his cylinder after six months of the coming into force of these Regulations, the owner of the facility where the cylinder is stored shall —
  - (a) be at liberty to rebrand the cylinder to his own brand or dispose off the cylinder to recover any attendant costs; and
  - (b) inform the Authority in writing before undertaking such rebranding or disposal.
8. (1) Any debt incurred pursuant to the Pool that was vested against a person immediately before the commencement of these Regulations, shall be enforceable against the debtor where no physical cylinder is available for exchange.  
(2) A brand owner may enter into commercial negotiations with his debtor to offset debts.
9. All brand owners shall within twelve months of the coming into force of these Regulations take stock of the total number of cylinders in their possession and in circulation and declare such number to the Authority.
- 10.(1) An application for the renewal of licence by a brand owner, shall be granted where the brand owner has paid all the debts accrued pursuant to the obligations under the LPG Cylinder Exchange Pool Agreement and as verified in the final invoice issued under paragraph 4(1) of this Schedule.  
(2) A brand owner shall submit a letter of confirmation of clearance of the debt from the creditor.
- 11.(1) Every brand owner shall within two months of the coming into force of these Regulations declare to the Authority, points where consumers may return empty cylinders.  
(2) The Authority shall publish the points in subparagraph (1) on its website.



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**THE PETROLEUM (PRICING) REGULATIONS**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation
2. Interpretation
3. Application

PART II – TARIFFS ON IMPORTATION AND  
TRANSPORTATION OF PETROLEUM PRODUCTS

4. Landed costs
5. Pipeline tariff

PART III – WHOLESALE AND RETAIL COST ELEMENTS AND MARGINS

6. Wholesale price
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SCHEDULES

WHOLESALE DEPOT LOCATIONS

LANDED COST AND PRIMARY TRANSPORTATION COST

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**THE PETROLEUM (PRICING) REGULATIONS**

[Legal Notice 192 of 2022]

**1. Citation**

These Regulations may be cited as the Petroleum (Pricing) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires-

"Act" means the Petroleum Act (Cap. 308);

"Authority" means the Energy and Petroleum Regulatory Authority established under section 9 of the Energy Act (Cap. 314);

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for petroleum;

"consumer" means any person who is supplied or entitled to be supplied with petroleum as an end user;

"consumption" means the quantity of petroleum products consumed at any given period;

"maximum retail price" means the capped retail prices of petroleum products as set by the Authority for a particular period;

"maximum wholesale price" means the capped depot gate prices of petroleum products as set by the Authority for a particular period;

"OTS" or "open tendering system" has the same meaning assigned to it in the Act;

"petroleum products" means Premium Motor Spirit (Super Petrol), Illuminating Kerosene and Automotive Gasoil (Diesel) that meet the requirements of the Kenya Standards;

"transport" means the transportation of petroleum products from the primary import or secondary storage depots by pipeline, road, rail or in navigable waters;

"pump price" means the capped price of petroleum products to be paid by a consumer at a retail dispensing site;

"primary storage" means a petroleum bulk storage depot into which petroleum products are first received at Mombasa upon importation;

"primary transport" means the transportation of petroleum from primary storage depots to secondary storage depots;

"secondary storage" means a bulk storage depot that receives petroleum products from a primary storage depot;

"retail dispensing site" means licensed premises where petroleum products are sold to consumers; and

"wholesale depot" means a facility for petroleum bulk receipt, storage, and truck loading for onward distribution and supply.

**3. Application**

(1) The Authority shall determine and publish the maximum wholesale and retail prices of petroleum products on the 14th day of every calendar month.

(2) The published prices in subregulation (1) shall be effective on the 15th day of the calendar month and shall remain in force until the 14th day of the following calendar month.

(3) Notwithstanding subregulations (1) and (2), the Authority may compute and publish wholesale and retail prices of petroleum products to take into account changes in law impacting on costs of petroleum products.

[Subsidiary]

(4) Except as otherwise provided, these Regulations shall apply to —

- (a) Super Petrol;
- (b) Illuminating Kerosene; and
- (c) Diesel.

(5) The petroleum products listed in subregulation (4) shall be imported through the OTS and designated for consumption in Kenya.

(6) A person licensed to undertake the business of wholesale or retail of petroleum products shall not offer for sale petroleum products at a price above the published maximum wholesale and retail price respectively.

(7) A person who contravenes subregulation (6) commits an offence and is liable on conviction to the fine prescribed in section 124 of the Act.

#### PART II – TARIFFS ON IMPORTATION AND TRANSPORTATION OF PETROLEUM PRODUCTS

#### 4. Landed costs

(1) The landed cost of imported petroleum products shall be calculated and determined using the pricing formula and cost components provided in Part I of the Second Schedule.

(2) The Authority may vary the cost structure in the Second Schedule upon consultation with stakeholders.

(3) Any changes in the pricing structure shall be published in the *Gazette*.

#### 5. Pipeline tariff

(1) The Authority shall approve the applicable tariffs for primary transport by pipeline.

(2) The allowable pipeline loss to be factored in the pump price shall be the actual loss approved by the Authority.

(3) The loss in subregulation (2) shall be capped at 0.25% of the total throughput volume in a period defined by the Authority.

#### PART III – WHOLESALE AND RETAIL COST ELEMENTS AND MARGINS

#### 6. Wholesale price

(1) The landed cost of petroleum products shall be determined as follows:

$$C_l = \frac{\sum (V_{ip} \cdot C_{ip})}{\sum V_{ip}}$$

$C_l$  is the weighted average cost in Kenya shillings per litre of petroleum products imported through the OTS through a gazetted primary storage depot;

$V_{ip}$  is the volume in litres of a cargo of petroleum product imported through the OTS and discharged at the port of Mombasa from the 10th day of the previous month to the 9th day of the pricing month;

$C_{ip}$  is the unit cost of a cargo of petroleum product imported through the OTS and discharged at the port of Mombasa from the 10th day of the previous month to the 9th day of the pricing month in Kenya Shillings per litre;

(2) The maximum wholesale price of petroleum products in Kenya Shillings per litre shall be determined as the sum of the following -

$$P_w = C_l + J_{hc} + C_p + L_{ps} + P_t + L_{pt} + C_{ss} + L_{ss} + C_f + M_w + Y + T + VAT$$

Where —

$P_w$  = the maximum wholesale price

$C_l$  = the landed cost of imported petroleum products

$J_{hc}$  = the jetty handling costs

$C_p$  = the primary storage costs  
 $L_{ps}$  = the allowable losses on primary storage  
 $P_t$  = the primary transportation costs  
 $L_{pt}$  = the allowable losses on primary transport  
 $C_{ss}$  = the secondary storage costs  
 $L_{ss}$  = the allowable losses on secondary storage  
 $C_f$  = the inventory financing costs  
 $M_w$  = the wholesale margin  
 $Y$  = is any other prudently incurred cost approved by the Authority  
 $T$  = the applicable taxes (Excluding VAT),  
 VAT= Value Added Tax

- (a) The landed cost of imported petroleum products CI, shall be calculated and determined using the pricing formula set out in Part I of the Second Schedule;
- (b)  $C_p$  is the primary storage tariff at Kipevu Oil Storage Facility or any other gazetted primary storage depot;
- (c)  $L_{ps}$  is the allowable loss factor in Primary Storage Depots;
- (d)  $C_f$  is the inventory financing cost for operational stocks of petroleum products;
- (e)  $P_t$  is the transportation cost from Mombasa to the nearest wholesale depot, which is made up of  $x$  percent of pipeline tariff ( $K_{pt}$ ) and  $(100-x)$  percent of road bridging cost ( $K_{rd}$ ) as set out in Part II of the Second Schedule;
- (f)  $C_{ss}$  is the secondary storage depot throughput fees;
- (g)  $L_{ss}$  is the allowed losses in secondary storage depots;
- (h)  $M_w$  is the allowed wholesale margin.

## 7. Retail pump price

The maximum retail price of petroleum products shall be the sum of the following –

$$P_r = P_w + T_s + M_{ri} + M_{ro} + Z + VAT$$

Where —

- (a)  $P_r$  is the maximum retail price of petroleum products;
- (b)  $T_s$  is the cost of transporting petroleum products from a secondary storage depot to a retail dispensing site;
- (c)  $M_{ri}$  is the retail margin corresponding to the investments associated with a benchmark retail dispensing site;
- (d)  $Z$  is any other prudently incurred cost approved by the Authority;
- (e)  $M_{ro}$  is the retail margin corresponding to the operating costs associated with a benchmark retail dispensing site.

## 8. Publication of cost elements and pricing areas

The Authority shall publish the  $J_{hc}$ ,  $C_p$ ,  $P_t$ ,  $C_f$ ,  $L_{ss}$ ,  $L_{ps}$ ,  $T_s$ ,  $C_{ss}$ ,  $x$ - factor,  $K_{pt}$ ,  $K_{rd}$ ,  $M_{ri}$ ,  $M_{ro}$ ,  $M_w$ , and the list of pricing towns from time to time.

### PART IV – GENERAL PROVISIONS

## 9. Secondary storage locations

The locations of wholesale depots used as secondary storage for purposes of determining the maximum wholesale and retail prices of petroleum products are as set out in the First Schedule.

[Subsidiary]

**10. Display of petroleum prices**

(1) A person licensed to undertake retail of petroleum products shall at all times display the applicable retail prices.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine of twenty thousand shillings.

**11. Non-disclosure of price before release**

(1) A person shall not disclose prices of petroleum products set under these Regulations prior to the date that such prices are to be declared by the Authority.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to the fine prescribed in section 124 of the Act.

**12. Price determination under emergency situations**

The Authority shall determine the maximum wholesale and retail price of petroleum products released from the strategic stocks.

**13. Offences and penalties**

Where a person defaults or contravenes any of the provisions of these Regulations for which no fine or penalty is expressly stated in the Act, the person shall on conviction be liable to the fine set out under section 124 of the Act.

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**FIRST SCHEDULE**

[r. 9]

**WHOLESALE DEPOT LOCATIONS**

The locations of wholesale depots used as secondary storage for purposes of determining the maximum wholesale and retail prices of petroleum products are:

<i>Item</i>	<i>Wholesale Depot Location</i>
1.	Mombasa
2.	Nairobi
3.	Nakuru
4.	Eldoret
5.	Kisumu

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**SECOND SCHEDULE**

[r. 4(1), 4(2), 6(a), 6(e)]

**LANDED COST AND PRIMARY TRANSPORTATION COST****Part I - LANDED COST OF PETROLEUM**

The landed cost of Petroleum Imports ( $C_i$ ) shall be calculated using the formula below and as guided by the OTS.

$$C_i = \left\{ \frac{(FOB + FP + LC) \times FX}{1,000 \times CF} + \{IWR + KPA + SC + OL + A + I + COC + AR + D\} \right\}$$

Where -

**FOB**

Free on Board price of imported petroleum products as per the OTS Agreement in United States Dollar per metric ton



<i>FP</i>	Freight and Premium in United States Dollar per metric ton
<i>LC</i>	Letter of credit charges in United States Dollar per metric ton
<i>IWR</i>	Insurance and War Risk charges in Kenya Shillings per litre
<i>CF</i>	Conversion Factor to convert Metric Ton to Cubic Metre.
<i>FX</i>	Foreign Currency Exchange rate for converting the cost of imported petroleum products from United States Dollars or any other foreign currency to Kenyan Shillings and which shall be the mean selling rate of leading commercial banks or any other rate as may be determined by the Authority.
<i>COC</i>	Certificate of Conformity charges in Kenya Shillings per litre
<i>KPA</i>	Kenya Ports Authority handling fees in Kenya Shillings per litre
<i>SC</i>	Stevedoring Charges in Kenya Shillings per litre
<i>OL</i>	Ocean Losses in Kenya Shillings per litre
<i>A</i>	Administration Fees in Kenya Shillings per litre
<i>I</i>	Inspection charges in Kenya Shillings per litre
<i>AR</i>	Analysis and Recertification charges in Kenya Shillings per litre
<i>D</i>	Demurrage costs in Kenya Shillings per litre

**Part II - TRANSPORT RATES TO THE NEAREST WHOLESALE DEPOT (P<sub>t</sub>)**

The P<sub>t</sub> will be factored as follows:—

Where K<sub>pt</sub> is the Pipeline tariff, and K<sub>rd</sub> is the Road Bridging rate



**THE PETROLEUM (IMPORTATION) REGULATIONS, 2023**

## ARRANGEMENT OF REGULATIONS

## PART 1 – PRELIMINARY

*Regulation*

1. Citation
2. Interpretation
3. Application

## PART II – THE OPEN TENDERING SYSTEM

4. Licence to import petroleum
5. Open tendering system agreement
6. Transport and storage agreement
7. Capacity allocation
8. Ownership of petroleum products

## PART III – THE SUPPLY COORDINATION COMMITTEE

9. Supply Coordination Committee
10. Functions of the Committee

## SCHEDULES

FIRST SCHEDULE (r. 2, 3, 4, 10)	PETROLEUM PRODUCTS TO BE IMPORTED THROUGH THE OPEN TENDERING SYSTEM
—	
SECOND SCHEDULE (r. 5 (1)) —	OPEN TENDERING SYSTEM AGREEMENT TERMS AND CONDITIONS



## THE PETROLEUM (IMPORTATION) REGULATIONS, 2023

[Legal Notice 3 of 2023]

### PART 1 – PRELIMINARY

#### 1. Citation

These Regulations may be cited as the Petroleum (Importation) Regulations, 2023.

#### 2. Interpretation

In these Regulations, unless the context otherwise requires —

**"Act"** means the Petroleum Act (Cap. 308);

**"Authority"** means the Energy and Petroleum Regulatory Authority established under section 9 of the Energy Act (Cap. 314);

**"batch"** means a quantity of refined petroleum product of similar grade pumped through the pipeline as a continuous consignment;

**"batching"** means the process of scheduling batches in the pipeline;

**"Energy Act"** means the Energy Act (Cap. 314);

**"import cost build-up"** means the breakdown of cost of imported petroleum product up to the point of delivery into Kenya;

**"nominated common user primary import petroleum storage facility"** means a shore petroleum storage facility owned and maintained by a person which may be used by third parties and which has been chosen at a particular point in time to receive a shipment of imported petroleum;

**"offtake"** means change in title and risk of refined petroleum products from one party to another after fulfilment of set commercial obligations;

**"oil marketing company"** means a company duly licensed to import the petroleum products in the First Schedule and is eligible to participate in the open tendering system;

**"open tendering system"** has the meaning assigned to it under the Act;

**"open tendering system agreement"** means the approved set of rules and procedures that govern the operation of the open tendering system;

**"pipeline operator"** means the entity in charge of management and operations of a network of petroleum pipelines and whose pipeline infrastructure is connected to a primary import petroleum storage facility;

**"primary import petroleum storage facility"** means a petroleum bulk storage depot into which petroleum products are first received at Mombasa upon importation;

**"strategic stocks"** has the meaning assigned to it under the Act;

**"tender call"** means a notice from the open tendering system coordinator for interested bidders to participate in a petroleum import tender; and

**"transport and storage agreement"** means a contract between Kenya Pipeline Company and pipeline users executed for the purpose of storage and transmission of petroleum products through the pipeline system.

#### 3. Application

(1) These Regulations shall apply to the importation of the refined petroleum products listed in the First Schedule.

(2) The Cabinet Secretary may, upon the recommendation of the Authority, amend the list of petroleum products specified in the First Schedule.

[Subsidiary]

(3) These Regulations shall not apply to the procurement of petroleum products for strategic stocks.

PART II – THE OPEN TENDERING SYSTEM

**4. Licence to import petroleum**

(1) A person shall not import the petroleum products in the First Schedule except under the terms and conditions of a valid licence issued by the Authority.

(2) The importation of petroleum products under these Regulations shall be through the open tendering system.

(3) The importation of petroleum products under these Regulations through a Government to Government arrangement shall be deemed to have occurred through the open tendering system.

(4) An oil marketing company that is eligible to participate in the open tendering system shall offtake the petroleum products in subregulation (3) under the terms and conditions of the open tendering system.

(5) The importation of petroleum through the open tendering system or a Government to Government arrangement shall be centrally coordinated by the ministry responsible for petroleum.

(6) The products listed in the First Schedule shall except where exempted by the Cabinet Secretary in writing, be imported through the Kipevu Oil Terminal and the Shimanzi Oil Terminal in Mombasa.

(7) The Cabinet Secretary may upon recommendation by the Authority, amend the import routes and points in sub-regulation (6).

**5. Open tendering system agreement**

(1) An oil marketing company shall sign and comply with the terms and conditions of the open tendering system agreement as set out in the Second Schedule.

(2) The parties to an open tendering agreement may amend the terms and conditions of the open tendering agreement provided the Authority approves the amendments.

**6. Transport and storage agreement**

Every oil marketing company shall sign and comply with the terms and conditions of a transport and storage agreement.

**7. Capacity allocation**

(1) The participation of an oil marketing company in the open tendering system shall be dependent on the allocated storage capacity in a nominated common user primary import petroleum storage facility.

(2) The capacity referred to in sub-regulation (1) shall be allocated in a manner approved by the Authority.

**8. Ownership of petroleum products**

Transfer of title and risk of petroleum products imported under these Regulations shall be as provided in the open tendering system agreement.

PART III – THE SUPPLY COORDINATION COMMITTEE

**9. Supply Coordination Committee**

(1) The parties to the open tendering system agreement shall, at their own cost, establish a supply coordination committee.

(2) The supply coordination committee shall liaise with the ministry responsible for petroleum, the pipeline operator, operators of common user petroleum facilities and other relevant government agencies for the efficient implementation of the open tendering system agreement.

(3) The parties to the open tendering system agreement shall develop operational procedures to guide the day to day operations of the supply coordination committee.

#### 10. Functions of the Committee

- (1) The functions of the supply coordination committee shall be to —
- (a) consolidate the volume requirements for petroleum products to be imported through the open tendering system;
  - (b) communicate import tender calls and final results to the participants in the open tendering system;
  - (c) witness the opening of bids at the opening sessions attended by participants in the open tendering system and in the presence of a representative of the Principal Secretary in charge of petroleum;
  - (d) consolidate and verify the accuracy of petroleum products import cost build-ups for the purposes of pricing;
  - (e) submit after verification of accuracy, the petroleum products import cost build-ups to the Authority for the purpose of pricing; and
  - (f) assist the pipeline operator in batching petroleum products being transported through the pipeline system.
- (2) The supply coordination committee shall compile and submit the following information to the Authority and the ministry responsible for petroleum—
- (a) the stock levels of petroleum in licensed bulk storage facilities at intervals prescribed by the Authority; and
  - (b) cost build-ups for the imported petroleum products listed in the First Schedule.

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#### FIRST SCHEDULE (r. 2, 3, 4, 10)

##### PETROLEUM PRODUCTS TO BE IMPORTED THROUGH THE OPEN TENDERING SYSTEM

<b>Item</b>	<b>Petroleum Product</b>
1.	Premium Motor Spirit (PMS) or Super Petrol
2.	Jet A-1 or Dual Purpose Kerosene (DPK)
3.	Automotive Gasoil (AGO) or Diesel

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#### SECOND SCHEDULE (r. 5 (1))

##### OPEN TENDERING SYSTEM AGREEMENT TERMS AND CONDITIONS

The open tendering system agreement shall contain the following terms and conditions and any other terms and conditions that the parties may deem fit and approved by the Authority:

1. **The Effective Date and Duration of the Agreement**
2. Conditions that qualify oil marketing companies to enter into the open tendering system agreement and participate either as importers/sellers or buyers.
3. The open tendering system process—
  - (a) Invitation to tender

[Subsidiary]

- (b) Tender closing and opening time
  - (c) Validity of offers
  - (d) Disqualification of offers
  - 4. Delivery Point — The designated delivery shore terminal
  - 5. Quality — Description of the specification of the products to be imported
  - 6. Shipment — Parcel split (one or two parcels per cargo award and the conditions thereof)
  - 7. Pricing Basis - The Free on Board cost, Freight and Premium, Local Currency Component
  - 8. Payment terms and penalties for late payment
  - 9. Lay-time and Demurrage
  - 10. Title and Risk of petroleum products
  - 11. Termination and Withdrawal procedures
  - 12. Dispute Resolution
  - 13. Governing Law
  - 14. Penalties — Withdrawal, Late Delivery, Delivery Default
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