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Minerals and Energy, Department of
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GOVERNMENT NOTICE

DEPARTMENT OF MINERALS AND ENERGY

No. 1520

6 December 2002

DRAFT REGULATIONS UNDER THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (Act No. 28 of 2002).

The Minister of Minerals and Energy intends promulgating draft regulations in terms of section 107(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as set out in the Schedule hereto.

Interested parties are invited to submit written comments on the draft regulations on or before 6 February 2003. Comments must be submitted to:

**The Director-General,
Department of Minerals and Energy,
Private Bag X59,
PRETORIA
0001**

The draft regulations will also be available on the Department's website, www.dme.gov.za

REPUBLIC OF SOUTH AFRICA

**DRAFT MINERAL AND PETROLEUM RESOURCES DEVELOPMENT
REGULATIONS**

**IN TERMS OF THE
MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT,
2002, (ACT NO. 28 OF 2002)**

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CHAPTER 1**DEFINITIONS AND INTERPRETATION****SHORT TITLE AND COMMENCEMENT**

These Regulations shall be called the Mineral and Petroleum Resources Development Regulations, 2002, and shall commence on the date to be determined by the Minister by notice in the *Government Gazette*.

STATUTORY AUTHORISATION

Section 107(1) of the Act authorises these Regulations.

DEFINITIONS AND INTERPRETATION

These Regulations shall be read in conjunction with the Act. In the event of conflict between the provisions of the Act and the Regulations, the provisions of the Act shall apply.

1. In these Regulations, unless the context indicates otherwise –

- (a) "applicant" means any natural or juristic person who applies for a reconnaissance permission, prospecting right, mining right, mining permit, retention permit, exploration right, production right, reconnaissance permit or technical co-operation permit or renewal thereof in terms of the Act.
- (b) "environmental impact assessment" means a process applied to assess the environmental consequences of applications for a mining or production right in terms of the Act and include the compilation of a scoping and environmental impact assessment report concerning such applications.
- (c) "environmental management programme performance assessment" means a systematic, periodic, objective and documented evaluation of compliance with the environmental management programme approved in terms of the Act and the continued appropriateness and adequacy of the approved environmental management programme.
- (d) "environmental management programme monitoring" means the use of quantitative and qualitative data gathering techniques in order to ascertain whether the requirements of an approved environmental management programme are being complied with and to supply supporting information for the environmental management programme performance assessment.
- (e) "closure certificate" means a certificate issued in terms of section 43(1) of the Act.
- (f) "form" means a document or standard form attached to the Regulations and which forms part of the Annexure hereto.
- (g) "Social and Labour Plan forum" means a forum established in terms of the Regulations.
- (h) "hazard" means a source of or exposure to danger.
- (i) "installation" means installation as defined in the Mine Health and Safety Act, 1996, (Act No. 29 of 1996), as amended.
- (j) "integrated environmental management" means a philosophy that prescribes an approach for ensuring that environmental considerations are fully integrated into all stages of the reconnaissance, prospecting, exploration, mining and production process in order to achieve a desirable balance between conservation and development.
- (k) "interested and affected party" means a natural or juristic person or an association of persons with a direct interest in the proposed or existing operation or who will be directly affected by the proposed or existing operation.

- (l) "latent environmental impacts" means environmental impacts that may occur due to natural events or disasters.
- (m) "optimal prospecting" means prospecting conducted by the holder of a prospecting right in accordance with the prospecting work programme.
- (n) "optimal mining" means mining conducted by the holder of a mining right or mining permit in accordance with the mining work programme.
- (o) "optimal" means in the case of petroleum operations, that the work is being carried out in accordance with good internationally accepted oil-field practice subject to approval by the Petroleum Agency.
- (p) "post-closure management" means the ongoing management of residual environmental impacts for a specified period as determined after closure in terms of section 43 (1) of the Act has been obtained.
- (q) "produced water" means water produced with petroleum from the sub-surface in the course of production operations, and separated from the petroleum with the intention of discharging it into the environment.
- (r) "regional mining development and environmental committee" means the committee established in terms of section 64 of the Act and as contemplated in Regulations.
- (s) "regional office" means an office of the Department situated within each region as contemplated in section 8 of the Act. For the purposes of Chapter 3, this is the office of the Petroleum Agency.
- (t) "residual environmental impacts" means the environmental impacts remaining after mitigation.
- (u) "risk assessment" means a process of gathering data and making assumptions to estimate short and long term harmful effects on human health and the environment from exposure to hazards associated with the use of a particular product or technology; or establishing the probability of an event occurring, the factors that could bring about that event, likely exposure levels and the acceptability of the impact resulting from exposure.
- (v) "risk" means the probability that injury or harm to persons and environmental degradation will occur.
- (w) "risk management" means using the information from the risk assessment to make and implement decisions about risk based on the balance between cost and benefits, for a range of options that mitigate or eliminate risk.
- (x) "qualified person" means a person who –
 - (i) is qualified by virtue of his or her knowledge, training, skills and experience to organise the work and its performance; and
 - (ii) is familiar with the provisions of the Act and other related legislation which apply to the work to be performed; and
 - (iii) has been trained to recognise any potential or actual problem in the performance of the work.

CHAPTER 2**MINERAL, SOCIAL AND ENVIRONMENTAL REGULATION****PART 1: MINERAL REGULATION*****Manner of lodging applications and plan to be submitted***

2. (1) Any application for a reconnaissance permission, prospecting right, mining right, mining permit, retention permit or reconnaissance permit, lodged in terms of the Act, must be completed on the appropriate Form in Annexure 1 of the Regulations.
- (2) An application contemplated in sub-regulation (1) must be submitted to the regional office where the property or land is situated, by –
- (a) hand delivery;
 - (b) registered post;
 - (c) fax copy; or
 - (d) electronic format.
- (3) An application contemplated in sub-regulation (1) must be accompanied by a plan that must contain –
- (a) the co-ordinates of the area applied for;
 - (b) the north point;
 - (c) the scale to which the plan has been drawn;
 - (d) the name, number and location of the area or land covered by the application; and
 - (e) in relation to farm boundaries and surveyed points-
 - (i) the size and shape of the proposed area;
 - (ii) the boundaries of the land comprising the subject of the application concerned;
 - (iii) the layout of the proposed prospecting or mining operations;
 - (iv) surface structures and servitudes; and
 - (v) the topography of the area.

Consultation with interested and affected parties

3. (1) Any comments lodged by an interested and affected party or parties in terms of section 10(1)(b) of the Act, must be in writing and addressed to the relevant Regional Manager.
- (2) Any objections lodged by an interested and affected party or parties against the application for a right or permit in terms of the Act, must set out clearly and concisely the facts upon which it is based and must be addressed to the relevant Regional Manager in writing.

Transferability and encumbrance of permits and rights

4. (1) An application for the transferability and encumbrance of a prospecting right, mining right, technical co-operation permit, exploration right and production right must be in the form of Form P in Annexure 1.
- (2) The cessionary, transferee, lessee, sub-lessee, assignee or the person to whom the right has been alienated or disposed of, must apply and sign as co-signatory to the application for the consent of the Minister in which he or she must undertake to comply with the provisions of section 11(2) of the Act as set out in the undertaking in Form P, Annexure 1.

Application for assistance to historically disadvantaged persons

5. An application for assistance to historically disadvantaged person in terms of section 12 of the Act must be made to the Minister in the form of Form Q in Annexure 1.

Application for a reconnaissance permission

6. (1) An application for a reconnaissance permission in terms of section 13 of the Act must be completed on Form A in Annexure 1 and must contain the following-
- (a) full particulars of the applicant;

- (b) a description of the area, land or properties to which the application relates;
- (c) detailed documentary proof of the applicant's financial ability or access thereto, which may include-
 - (i) bank statement;
 - (ii) budget approved for proposed operation;
 - (iii) loan obtained for proposed operation; or
 - (iv) resolution by company or board for the proposed operation.
- (d) proof of technical ability to conduct the said reconnaissance operation;
 - (i) in-house expertise and the number of professionals used on the project; and/or
 - (ii) contractors, where a signed agreement must be provided to act on behalf of the applicant and take responsibility to comply to the requirements of the Act; and/or
 - (iii) external expertise or consultants, where a signed agreement must be provided to act on behalf of the applicant and take responsibility to comply to the requirements of the Act.
- (e) full particulars of a reconnaissance work programme and the duration thereof; and
- (f) full particulars of the estimated expenditure regarding the reconnaissance operations.

Application for a prospecting right

7. (1) An application for a prospecting right in terms of section 16 of the Act must be completed on Form B in Annexure 1 and must contain-
 - (a) full particulars of the applicant;
 - (b) a plan as described in Regulation 2(3) indicating the co-ordinates and boundaries of the area applied for;
 - (c) an indication of the mineral for which the right is required;
 - (d) the period for which the right is required;
 - (e) a detailed prospecting work programme as contemplated in Regulation 9 with estimated expenditure during prospecting operations per year;
 - (f) detailed documentary proof of the applicant's technical ability or access thereto to enable the applicant to carry out the prospecting operations and to mitigate and rehabilitate relevant environmental impacts;
 - (g) a description of how the applicant's technical ability or access thereto will be provided by making use of -
 - (i) in-house expertise and the number of professionals used on the project; and/or
 - (ii) contractors, where a signed agreement must be provided to act on behalf of the applicant and take responsibility to comply to the requirements of the Act; and/or
 - (iii) external expertise or consultants, where a signed agreement must be provided to act on behalf of the applicant and take responsibility to comply to the requirements of the Act.
 - (h) detailed documentary proof of the applicant's financial ability or access thereto, which may include-
 - (i) bank statement;
 - (ii) budget approved for proposed operation;
 - (iii) loan obtained for proposed operation; or
 - (iv) resolution by company or board for the proposed operation.
 - (i) a list of existing rights and permits held by the applicant to be compiled in a table format which indicate the region, the location with regard to the farm name and the existing right or permit number;
 - (j) any other information, data or documentation which the Minister may request in connection with the information under paragraphs (a) to (i).
- (2) After receiving the information required, the Regional Manager must submit the application forthwith to the Minister for consideration.

General terms and conditions of a prospecting right

8. (1) The terms and conditions of the prospecting right may be drafted in the form of Form GG, Annexure 1, or as the Minister may determine from time to time, and may contain particulars regarding-
 - (a) the parties to the agreement;
 - (b) the prospecting area applied for;

- (c) the mineral or associated minerals to be prospected for;
 - (d) the period for which prospecting right is required;
 - (e) prospecting fees payable;
 - (f) the prospecting work programme;
 - (g) indemnity;
 - (h) joint and several liability;
 - (i) waiver or lenience;
 - (j) arbitration;
 - (k) environmental protection;
 - (l) cost;
 - (m) severability; and
 - (n) *domicilium citandi et executandi* of the parties; and
 - (o) any additional terms and conditions that the Minister may determine to be applicable from time to time.
- (2) The holder of a prospecting right must –
- (a) exercise any right granted to him or her or it in terms of the provisions of this Act reasonably and in such manner that the rights and interests of the owner of any land to which the prospecting right relates are not adversely affected, except to the extent to which such owner is compensated;
 - (b) in the employment of employees, adopt and apply the principles outlined in the South African national affirmative action programmes, where possible;
 - (c) investigate, communicate and assess the potential environmental impacts of the proposed prospecting operation in accordance with the provisions of the Act;
 - (d) prevent, minimise, mitigate and manage the environmental impacts in accordance with the approved environmental management plan;
 - (e) monitor and assess the continued appropriateness, adequacy and environmental performance of the approved environmental management plan as determined;
 - (f) make appropriate and adequate financial provision for rehabilitation and remediation of environmental damage and revise such provision as required in terms of the Act;
 - (g) where the holder of a prospecting right is a corporate body, or association of persons give proper notice in writing to the Minister within thirty (30) days of any change relating to the following-
 - (i) the change of name;
 - (ii) the registered address and principal place of business;
 - (iii) the change as to the directors of the company, or member of a closed corporation;
 - (iv) the share capital of the company;
 - (v) the beneficial owner or owners of the shares issued by such company in contravention to the provisions of the Competition Act; and
 - (h) in the case of a natural person, provide written notice to the Minister of any change of the address of such person within thirty (30) days.

Prospecting work programme

9. (1) The prospecting work programme as contemplated in section 18(3)(b) of the Act, shall contain the following -
- (a) the mineral to be prospected for;
 - (b) a description of the geology substantiated by geological maps;
 - (c) a description of how the mineral reserve and mineral distribution of the prospecting area will be determined through -
 - (i) prospecting work to be performed;
 - (ii) geochemical survey to be carried out;
 - (iii) geophysical survey to be undertaken;
 - (d) a description of the prospecting method or methods to be implemented which may include the following-
 - (i) any excavations, trenching, pitting and drilling to be carried out;
 - (ii) any bulk sampling and testing to be carried out; and
 - (iii) any other prospecting methods to be applied.
 - (e) all planned prospecting activities must be conducted in phases and within specific timeframes;

- (f) technical data detailing the prospecting method or methods to be implemented and the time required for each phase of the proposed prospecting operation;
- (g) details with documentary proof of the following-
 - (i) the applicant's technical ability or access thereto to conduct the intended operation; and
 - (ii) the applicant's financial ability or access thereto to conduct the intended operation.
- (h) a cost estimate of the expenditure to be incurred for each phase of the prospecting operations where the expenditure must be broken down into -
 - (i) direct prospecting costs;
 - (ii) labour costs; and
 - (iii) costs pertaining to the rehabilitation and management of environmental impacts; and
 - (iv) any other direct cost.

Progress report in respect of prospecting

10. (1) Within six months from the granting of a prospecting right, and every six months thereafter for the duration of the term of the prospecting right, the holder of a prospecting right must submit progress reports as contemplated in section 21(1)(b) of the Act, to the Regional Manager detailing progress achieved in connection with the prospecting work programme.
- (2) The progress report must contain the following-
 - (a) prospecting work conducted during the reporting period;
 - (b) a surface plan of the prospecting area, the location, extent and depth of all boreholes, trenches or excavations completed;
 - (c) the lithology, mineral content and mineral distribution identified in such boreholes, trenches or excavations;
 - (d) any geological and or pre-feasibility study reports completed on the mineral or minerals obtained from the excavation, trench or borehole;
 - (f) actual expenditure incurred in terms of the prospecting area and the basis on which it was calculated;
 - (g) details with regard to the execution and compliance with the approved environmental management plan;
 - (h) a summary of performance regarding compliance to the Mine Health and Safety Act, 1996, (Act No. 29 of 1996);
 - (i) prospecting work to be conducted during the next reporting period; and
 - (i) any other information gathered by the holder of a prospecting right or requested by the Minister from time to time.
- (3) In respect of other prospecting methods employed excluding any form of excavation, the following information is required in the progress report-
 - (a) full details of any geophysical surveys conducted, including -
 - (i) flight plans or surface plans showing all flight lines or traverse lines; and
 - (ii) any data in writing or digital format gathered during surveys.
 - (b) full details of any geochemical surveys conducted, including-
 - (i) surface plans showing all sample points;
 - (ii) details of all analysis carried out on these samples; and
 - (iii) full analytical results of all samples.
 - (c) full results of any other investigations or tests performed, including-
 - (i) positions of any other samples and bulk samples collected, including where applicable-
 - (aa) petrographic descriptions of thin sections;
 - (bb) full information and analytical results of any age determinations;
 - (cc) full results of any physical properties determined;
 - (dd) full results of any chemical analysis performed;
 - (ee) full results of any sedimentological investigations; and
 - (ff) full results of any other tests or procedures performed.
- (4) True copies of any geological maps or plans produced during the prospecting operation must also be included in the progress report.

- (5) The holder of a prospecting right must supply the Minister with a list of borehole core information generated during any drilling programme and must obtain permission from the Minister to destroy the core.

Application for the renewal of a prospecting right

11. (1) An application for the renewal of a prospecting right in terms of section 18(1) of the Act must be in the form of Form C in Annexure 1, and must contain-
- (a) full particulars of the applicant;
 - (b) a plan as described in Regulation 2(3), indicating the co-ordinates and boundaries of the area applied for;
 - (c) the mineral for which the renewal of the prospecting right is required;
 - (d) the period for which a renewal of the prospecting right is needed subject to the maximum period as stated in section 18(4) of the Act;
 - (e) reasons as to why a renewal is required;
 - (f) a report reflecting the results and interpretation of completed prospecting activities and the costs thereof;
 - (g) details with regard to the execution and compliance with the approved environmental management plan also reflecting the extent of environmental rehabilitation conducted and completed thus far and the costs thereof;
 - (h) a summary of performance regarding compliance to the Mine Health and Safety Act, 1996 (Act No 29 of 1996); and
 - (i) a detailed prospecting work programme for the renewal period.
- (2) After receiving the information required, the Regional Manager must submit the application forthwith for the renewal of the prospecting right to the Minister for consideration.

Application for a mining right

12. (1) An application for a mining right in terms of section 22(1) of the Act must be completed on Form D in Annexure 1 and must contain-
- (a) full particulars of the applicant;
 - (b) the name of the proposed mine;
 - (c) a plan as described in Regulation 2(3), indicating the co-ordinates and boundaries of the area applied for;
 - (d) the mineral for which the right is required;
 - (e) the period for which the right is required;
 - (f) a mining work programme;
 - (g) a social and labour plan;
 - (h) detailed documentary proof of the applicant's technical ability or access thereto to enable the applicant to carry out the mining activities and to mitigate and rehabilitate relevant environmental impacts;
 - (i) a description of how the applicant's technical ability or access thereto will be provided by making use of -
 - (i) in-house expertise and the number of professionals used on the project; and/or
 - (ii) contractors, where a signed agreement must be provided to act on behalf of the applicant and take responsibility to comply to the requirements of the Act; and/or
 - (iii) external expertise or consultants, where a signed agreement must be provided to act on behalf of the applicant and take responsibility to comply to the requirements of the Act.
 - (j) detailed documentary proof of the applicant's financial ability or access thereto, which may include-
 - (i) bank statement;
 - (ii) budget approved for proposed operation;
 - (iii) loan obtained for proposed operation; or
 - (iv) resolution by company or board for the proposed operation.
 - (k) a list of existing rights and permits held by the applicant to be compiled in a table format which indicate the region, location with regard to farm name and the existing right or permit number; and
 - (l) any other information, data or documentation which the Minister may request in connection with the information required under paragraphs (a) to (k).

- (2) After receiving the information required, the Regional Manager must submit the application forthwith for the mining right to the Minister for consideration.

Mining work programme

13. (1) An application for a mining right in terms of section 22(1)(b) of the Act, must include a mining work programme, which shall become an obligation in terms of the right granted. Such mining work programme must contain-
- (a) full particulars of the applicant;
 - (b) a plan, co-ordinated according to generally accepted standards, showing the area under application;
 - (c) a feasibility study which must include the following-
 - (i) details of the identified mineral deposit concerned with regard to the type of mineral to be mined, its locality, extent, depth, geological structure, mineral content and mineral distribution;
 - (ii) details of the market for, and the market's requirements in respect of, the mineral concerned;
 - (iii) details and costing of the mining technique, mining technology, and production rates applicable to the intended mining operation;
 - (iv) details and costing of the technological process applicable to the extraction of the mineral for preparation of the mineral to suit market requirements;
 - (v) details and costing of the technical skills and expertise and associated labour implications, required to conduct the intended mining operation;
 - (vi) details with regard to the applicable timeframes and scheduling of the various implementation phases of the intended mining operation, and a technically justified estimate of the period required for the mining of the mineral deposit concerned;
 - (vii) details and costing of the regulatory requirements which will be applicable to the mining operation;
 - (viii) details regarding other relevant costing, capital expenditure requirements, and expected revenue applicable to the mining operation;
 - (ix) a detailed cash flow forecast and valuation, excluding financing, of the mining operation, which forecast must also clearly indicate how the applicable regulatory costs will be accommodated therein;
 - (x) details regarding the applicant's resources or intended mechanisms to finance the mining operation, and detail regarding the impact of such financing arrangements on the cash flow forecast; and
 - (xi) an assessment of the estimated costs to mitigate the potential environmental impact.

General terms and conditions of a mining right

14. (1) The terms and conditions of the mining right in terms of section 25(2)(c) of the Act may be drafted in the form of Form HH in Annexure 1 or as the Minister may determine from time to time, and must contain particulars regarding -
- (a) parties to the agreement;
 - (b) the mining area applied for;
 - (c) the mineral or associated minerals to be mined;
 - (d) the period for which the mining right is required;
 - (e) consideration (royalties or minimum royalties payable);
 - (f) restrictions and obligations applicable on the holder;
 - (g) indemnity;
 - (h) transferability;
 - (i) protection of boreholes, shafts, etc.;
 - (j) protection of property and persons;
 - (k) records and returns;
 - (l) joint and several liability;
 - (m) waiver of lenience;
 - (n) arbitration;
 - (o) environmental protection;
 - (p) cost;
 - (q) severability;
 - (r) *domicilium citandi et executandi* of the parties; and

- (s) any additional terms and conditions which the Minister may request to be applicable to an application.
- (2) The holder of a mining right must –
 - (a) exercise any right granted to him or her or it, reasonably and with due regard to such rights and interests of the holder of the right in the land or area to which the mining right relates;
 - (b) engage in joint-ventures or any other form of co-operation with the Black Economic Empowerment entities to develop technical skills and infrastructure;
 - (c) investigate, communicate and assess the potential environmental impacts of the proposed mining operation in accordance with the provisions of the Act;
 - (d) prevent, minimise, mitigate and manage the environmental impacts in accordance with the approved environmental management programme;
 - (e) monitor and assess the continued appropriateness, adequacy and environmental performance of the approved environmental management programme as determined;
 - (f) make appropriate and adequate financial provision for rehabilitation and remediation of environmental damage and revise such provision as required in terms of the Act;
 - (g) where the holder of a mining right is a corporate body or association of persons to give proper notice in writing to the Minister within 30 days of any change relating to the following-
 - (i) the change of name;
 - (ii) the registered address and principal place of business;
 - (iii) the change as to the directors of the company, or member of a closed corporation;
 - (iv) the share capital of the company; and
 - (v) the beneficial owner or owners of the shares issued by such company in contravention to the provisions of the Competition Act.
 - (h) as far as possible make use of local contractors, services, equipment purchased or hired; and
 - (i) in the case of a natural person, provide written notice to the Minister of any change of the address of such person within 30 days.

Application for the renewal of a mining right

- 15. (1) An application for the renewal of a mining right in terms of section 24(1) of the Act must be completed on Form E in Annexure 1 and must contain -
 - (a) full particulars of the applicant;
 - (b) a plan as contemplated in Regulation 2(3), indicating the co-ordinates and boundaries of the area applied for;
 - (c) the mineral for which the renewal of the mining right is required;
 - (d) the period for which a renewal is required;
 - (e) a detailed revised mining work programme for the renewal period;
 - (b) a revised social plan for the renewal period;
 - (g) details with regard to the execution and compliance with the approved environmental management programme also reflecting the extent of environmental rehabilitation conducted and completed thus far and the costs thereof;
 - (h) details with regard to financial provision for environmental rehabilitation, documentary proof of the applicant's financial ability or access thereto, the approved methodology and the amount to be provided for the renewal of the mining right;
 - (i) a summary of performance regarding compliance to the Mine Health and Safety Act, 1996, (Act No 29 of 1996);
 - (j) any other information or documentation the Minister may request under paragraphs (a) to (i).
- (2) After receiving the information required, the Regional Manager must submit the application forthwith for the renewal of the mining right to the Minister for consideration.

Information, data and statistical returns in respect of mining or processing of minerals

16. (1) The holder of a mining right must for the duration of such right and on the last day of every month, submit statistical returns to the Minister, regarding information and data in respect of mining or processing of minerals which include the following-
- (a) accurate returns of the work accomplished, production statistics for the reporting year and production forecast for the ensuing year, the persons employed, total mining costs and the results obtained;
 - (b) accurate returns for the preceding month of the production, purchases, sales and exports transacted by the holder of the mining right; and
- (2) The returns must reach the Minister not later than the 15th of the month in respect of which it is made and must be forwarded as set out in forms to be provided by the Department for that purpose.
- (3) The holder of a mining right shall furnish the Minister annually and in such forms as provided by the Department for this purpose by him or her with returns regarding matters pertaining to employees, salaries and wages.
- (4) Such holder shall also provide the Minister at his or her request with such other returns and data as may be reasonably required. Each such return and other data shall be furnished on or before a date as requested by the Minister and specified on the forms as provided or otherwise notified in writing.

Annual report in respect of mining

17. The prescribed annual report as provided for in section 25(2)(h) of the Act must contain -
- (1) full information in respect of the mine's business for that year, reflecting -
 - (a) production figures;
 - (b) all financial information in respect of costs, capital expenditure and revenue.
 - (2) annual progress regarding the execution of the social and labour plan; and
 - (3) annual progress in terms of the socio-economic empowerment as provided for in section 100 of the Act.

Application for a mining permit

18. (1) An application for a mining permit in terms of section 27(2) of the Act must be completed on Form F in Annexure 1 and must contain-
- (a) full particulars of the applicant;
 - (b) a plan as contemplated in Regulation 2(3), indicating the co-ordinates and boundaries of the area applied for, and not exceeding 1,5 ha per application;
 - (c) an indication of the mineral, associated minerals or group of minerals for which the permit is required;
 - (d) the period for which the permit is required, not exceeding two (2) years;
 - (e) documentary evidence to prove the applicant's technical ability and financial resources or access thereto that are readily available or how it will be provided for, to enable the applicant to carry out the mining activities and to mitigate and rehabilitate relevant environmental impacts;
 - (f) details of any mineral or group of minerals and the quantity thereof, which the applicant intends to remove and dispose of during mining operations; and
 - (g) any other information, data or documentation which the Minister may request under paragraphs (a) to (f).
- (2) After receiving the information required, the Regional Manager must submit the application forthwith for the mining permit to the Minister for consideration.

Application for the renewal of a mining permit

19. (1) An application for the renewal of a mining permit in terms of section 27(8) of the Act must be completed on Form F in Annexure 1 and must contain-
- (a) full particulars of the applicant;

- (b) a plan as contemplated in Regulation 2(3), indicating the co-ordinates and boundaries of the area applied for;
 - (c) an indication of the mineral for which the permit is required;
 - (d) the period for which the permit is required; not exceeding one (1) year;
 - (e) documentary evidence to prove the applicant's technical ability and financial resources or access thereto that are readily available or how it will be provided for, to enable the applicant to carry out the mining activities and to mitigate and rehabilitate relevant environmental impacts; and
 - (f) any other information, data or documentation that the Minister may request in connection with the information required under paragraphs (a) to (e).
- (2) After receiving the information required, the Regional Manager must submit the application forthwith for the renewal of the mining permit to the Minister for consideration.

Application for a retention permit

20. (1) An application for a retention permit in terms of section 31(1) of the Act must be completed on Form G in Annexure 1 and must contain -
- (a) full particulars of the applicant;
 - (b) the period for which the retention permit is required;
 - (c) particulars of the prospecting right in terms of which prospecting operations was conducted on the area concerned;
 - (d) a plan as contemplated in Regulation 2(3), indicating the co-ordinates and boundaries of the area applied for;
 - (e) a detailed geological description of the area of land to which the application relates;
 - (f) a description of the mineral or group of minerals for which the retention permit is required;
 - (g) documentary evidence to prove the existence of the mineral reserves occurring within the area under application;
 - (h) detail with regard to the execution of and compliance with the approved environmental management plan;
 - (i) particulars, substantiated by documentary proof, of the technical ability and financial resources of, or available to the applicant;
 - (j) the reasons why mining operations cannot be carried out on the area concerned;
 - (k) an indication of the circumstances in which and the earliest date on which, such mineral or group of minerals can in the opinion of the applicant, be mined or won on a profitable basis; and
 - (l) any other information, data or documentary evidence that the Minister may request.
- (2) After receiving the information required, the Regional Manager must submit the application forthwith for the retention permit to the Minister for consideration.

General terms and conditions of retention permit

21. (1) Every retention permit is, unless expressly waived, varied or suspended in writing by the Minister, subject to the conditions that the holder shall in relation to the retention area -
- (a) carry out progressive programmes of work for the purposes of testing prevailing market conditions and metallurgical testing;
 - (b) not carry out any programme involving substantial disturbance of the prospecting area without the written approval of the Minister and comply with such directions as the Minister consider appropriate for the protection of the environment or other aspect of or in relation to the land in carrying out that programme;
 - (c) not sell any mineral obtained from the retention area, except with the prior approval, in writing, of the Minister, nor remove from the retention area any mineral other than that which is required for testing purposes;
 - (d) not erect any permanent building or facility except with the approval in writing of the Minister; and
- (2) Any other conditions, not inconsistent with this Regulation or the specific provision of the Act imposing conditions to which the retention permit is subject, or as the Minister may determine and make an endorsement on the retention permit.

Application for the renewal of a retention permit

22. An application for renewal of a retention permit in terms of section 34(1) of the Act must be completed on Form H in Annexure 1, and must-
- (a) reflect updated information of market circumstances prevailing; and
 - (b) any other information or data which the Minister may request.

Purpose and objectives of the Regional Mining Development and Environmental Committees

23. (1) The purpose and objectives of the Regional Mining Development and Environmental Committees include the following-
- (a) to advise the Minister and Regional Manager with regard to the implementation and enforcement of the Act;
 - (b) to promote co-operative Governance; and
 - (c) to ensure adequate participation by interested and affected persons.

Establishment and functions of the Regional Mining Development and Environmental Committees

24. (1) A Regional Mining Development and Environmental Committee contemplated in section 64(1) of the Act, must be established for each region referred to in section 7 of the Act within 30 days after the promulgation of the Act.
- (2) The constitution and working procedure of the Committee must be established by the Minerals and Mining Development Board.
- (3) The Committee shall consists of such persons who by virtue of their knowledge and understanding of economic development and mining environmental management, can contribute to informed decision-making pertaining to sound environmental management and optimal utilization of mineral resources.
- (4) The Committee must consist of not more than 14 members appointed by the Minerals and Mining Development Board and approved by the Minister and shall include –
- (a) the Regional Manager designated by the Minerals and Mining Development Board, to be the Chairperson;
 - (b) a representative of the Mine Health and Safety Inspectorate of the Department; and
 - (c) representatives of relevant organs of State;
 - (d) organised labour, organised business, any relevant non-governmental organisation and any relevant community based organisation.
- (5) A further two persons may be co-opted in cases where their specific qualifications or knowledge will contribute to informed decision-making.
- (6) Any person co-opted by the Committee, shall be deemed to be a member of the Committee for that meeting and be entitled to vote on the relevant question before the Committee.
- (7) The Committee must meet to discuss, evaluate and make recommendations to the Minister only if objections against the application for a prospecting right, mining right or mining permit and/or the approval of a draft environmental management programme or plan, as the case may be, have been lodged by interested or affected persons.

Process of handling objections by the Committee

25. (1) Any objections received regarding any application in terms of this Act must be in writing and submitted to the Chairperson of the Committee.
- (2) The Committee must consider the objections received within 30 days whereafter the Chairperson must submit the findings and recommendations in writing to the Board.
- (3) The Board must advise the Minister within 14 days of the date on which the recommendations of the Committee have been received.

- (4) Where disagreement regarding the recommendations to be made by the Committee cannot be resolved within the Committee, the Chairperson of the Committee must refer the matter to the Minerals and Mining Development Board who will make recommendations to the Minister.

PART II: SOCIAL AND LABOUR PLAN

Submission of a Social and Labour Plan and its applicability

26. (1) Any application for a mining right in terms of this Act shall be accompanied by a social and labour plan. The Minister may refer the said social and labour plan back to the applicant with proposals and the revised social and labour plan must then be lodged.
- (2) The social and labour plan shall apply –
- to all applications for a mining right;
 - to all applications for the conversion of an old order right in terms of the Minerals Act, 1991, (Act No 50 of 1991) to a mining right in terms of the Act;
 - throughout the life of a mine referred to in sub-regulation (a) or (b);
 - in the event of possible large-scale retrenchments at a mine referred to in sub-regulation (a) and (b) and when such retrenchments may impact on the sector or regional or national interest.

Objects of Social and Labour Plan

27. (1) The objects of the social and labour plan are to–
- consider the development of the mining operation in the context of generally recognized standards of sustainable development by integrating social, economic and environmental factors in planning the mining operations throughout the life of the mine;
 - endeavour to avoid job losses and a decline in employment by promoting alternative solutions to threatening job security and potential measures to prevent a decline in employment;
 - endeavour to ameliorate the social and economic impact on individuals, regions and the economy in cases where job losses remain unavoidable after exploring alternative solutions and measures;
 - endeavour to avoid the unnecessary establishment of settlements which cannot be sustained after the closure of the mine;
 - put a social and labour plan strategy in place;
 - put a human resource development strategy in place;
 - include monitoring, contingency and reporting mechanisms; and
 - endeavour to reach its conclusion once all the obligations in terms of the social and labour plan have been met.

Contents of Social and Labour Plan

28. (1) The social and labour plan proposal must include the following, but is not limited thereto–
- a preamble, describing the background to the mine, in terms of its location, commodity to be mined, scale of operations and size of workforce;
 - a description of the local economic background of the area in which the mine will be or is situated, the areas from which labour will mainly be sourced, the key economic activities of the area, and the socio-economic impact of the mine's operations in the area;
 - a summary of the objectives of the social and labour plan and how it will be achieved;
 - the social and labour plan strategy of the mine;
 - the human resource development strategy of the mine;
 - the implementation process, which must include the establishment of a future forum, and the action plans, timeframes and other relevant information during the construction, operational, decommissioning, closure and post-closure phase of the mine with respect to the social and labour plan objectives;
 - monitoring, contingency mechanisms and reporting mechanisms;
 - any additional information which may be requested by the Minister; and
 - an undertaking by the applicant to adhere to the requirements and conditions set out in the social and labour plan.

Social and Labour Plan forum

29. (1) A social and labour plan forum comprising of the holder of a mining right, the employees and the relevant local authority, each of which shall be represented by a maximum of five (5) persons, will be established to ensure that the objectives of the social and labour plan is achieved.
- (2) The purpose of the forum is-
- (a) to implement the social and labour plan; and
 - (b) to monitor the compliance and the appropriateness of the social and labour plan.

PART III: ENVIRONMENTAL REGULATION**Environmental reports to be compiled for the application of a mining right**

30. (1) An applicant who has applied for a mining right in terms of section 22 of the Act must conduct an environmental impact assessment and submit a draft environmental management programme to the Regional Manager within 180 days of the date of notification by the Regional Manager.
- (2) An environmental impact assessment as contemplated in section 39(1) of the Act, includes the compilation of-
- (a) a scoping report; and
 - (b) an environmental impact assessment report.

Scoping Report

31. (1) A scoping report must identify the impacts and reasonable alternatives to be addressed in the environmental impact assessment report. The result of the scoping process must determine the nature and extent of investigations to be undertaken in the environmental impact assessment report.
- (2) A scoping report must –
- (a) describe the methodology, including the stakeholder engagement process, of the scoping process;
 - (b) describe the existing status of the environment prior to mining;
 - (c) identify and describe the anticipated environmental, social and cultural impacts, including the cumulative effects of the proposed operation;
 - (d) identify and describe reasonable alternatives to the project and alternative means of carrying out the project;
 - (e) propose the most appropriate approach and procedure to plan and develop the proposed mining project;
 - (f) describe the views and concerns of relevant authorities and interested and affected persons and the participation process followed; and
 - (g) describe the nature and extent of further investigations required in the environmental impact assessment report.
- (3) If the scoping report indicates that the proposed mining operation will result in unacceptable pollution, ecological degradation or damage to the environment, the Minister must refuse the application.
- (4) If the scoping report indicates that the proposed mining operation will not result in unacceptable pollution, ecological degradation or damage to the environment, the Regional Manager must request the applicant to submit -
- (a) an environmental impact assessment report based on the outcome of the scoping report; and
 - (b) a draft environmental management programme based on the environmental impact assessment report.

Environmental Impact Assessment Report

32. (1) An environmental impact assessment report must determine the nature, extent,

duration, probability and significance of the environmental, social and cultural impacts of the proposed mining operation, the reasonable alternatives and the potential mitigation measures for each impact during each of the life of the proposed mining operation.

- (2) An environmental impact assessment report must as a minimum ensure the following-
- (a) investigation of the environment likely to be significantly affected by the proposed mining operation and alternatives thereto;
 - (b) investigation of the potential impact, including cumulative impacts, of the proposed operation and its alternatives on the environment, socio-economic conditions and cultural heritage;
 - (c) an assessment of the nature, extent, duration, probability and significance of the potential environmental, social and cultural impacts of the proposed operation, including the cumulative impacts;
 - (d) a comparative assessment of the feasible alternatives and their potential environmental, social and cultural impacts;
 - (c) investigate and describe mitigatory measures for each significant impact of the proposed activity and the preferred alternative to keep adverse impacts to a minimum;
 - (d) description of the stakeholder engagement process followed during the course of the assessment and an indication of how issues raised have been addressed;
 - (e) reporting on knowledge gaps, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information; and
 - (f) description of the arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation; and
 - (g) inclusion of technical and supporting information as appendices.

Investigation of cumulative impacts

33. (1) In the environmental impact assessment report, the applicant must determine whether specific resources and ecological components are cumulatively affected by the proposed mining operation by considering-
- (a) whether the proposed operation is one of several projects or activities in the same geographic area;
 - (b) whether other projects or activities in the area have similar impacts on the specific resource and ecological components;
 - (c) whether these impacts have been historically significant for this resources and ecological components; and
 - (d) whether other investigations in the area have identified a cumulative impact concern.
- (2) To avoid extending data and analytical requirements beyond those relevant for decision-making, the selection of geographic boundaries and time period should be, whenever possible, be based on the natural boundaries of the resources of concern and the period of time that the proposed project's impacts will persist.

Contents of Environmental Management Programme

34. (1) An environmental management programme must describe the environmental objectives and specific goals for the proposed operation, the appropriate management options for the ongoing management and monitoring of the impacts of the activity, until closure.
- (2) A draft environmental management programme must provide –
- (a) a description of the environmental objectives and specific goals for-
 - (i) mine closure;
 - (ii) the management of identified environmental impacts emanating from the proposed operation;
 - (iii) the socio-economic conditions; and
 - (iv) the historical and cultural aspects (if applicable);
 - (b) an outline of the implementation programme which must include –

- (i) a description of the chosen appropriate technical and management options for each environmental impact, socio-economic condition and historical and cultural aspects of the preferred alternative under each phase of the mining operation;
 - (ii) a layout of action plans to achieve the objectives and specific goals also indicating a time schedule of actions undertaken within the action plans to implement mitigatory measures and options for prevention, management and remediation;
 - (iii) maintenance and emergency procedures or further remediation;
 - (iv) contingency measures;
 - (v) requirements for monitoring and environmental management programme performance assessment;
 - (vi) financial provision which must include-
 - (aa) the determination of the quantum;
 - (bb) details of the method of provision and revision thereof;
 - (vii) an environmental awareness plan in accordance with guidelines published by the Department from time to time;
 - (viii) supporting information and appendices; and
 - (ix) undertaking by the applicant to comply with the provisions of the Act
- (2) If the environmental impact assessment report and the draft environmental management programme indicate that the proposed mining operation will result in unacceptable pollution, ecological degradation or damage to the environment, the Minister must refuse the application.
- (3) If the environmental impact assessment report and draft environmental management programme indicate that the proposed mining operation will not result in unacceptable pollution, ecological degradation or damage to the environment, the Minister must approve the application.

Independent review

35. (1) The Minister may appoint a person to undertake an independent review, if a reasonable assessment indicates that the environmental impact assessment report and the draft environmental management programme or environmental management plan, as the case may be, cannot be executed satisfactorily by the applicant. Such appointment and execution shall be for the cost of the applicant.
- (2) The Minister must notify the applicant and provide reasons for the need for such independent review.
- (3) The person who will undertake such an independent review must provide proof that he or she has no vested interest or involvement in the proposed prospecting or mining operation.

Environmental report to be compiled for the application of a reconnaissance permission, prospecting right or mining permit

36. (1) An applicant who has applied for a reconnaissance permission, prospecting right or mining permit in terms of the Act must submit an environmental management plan to the Regional Manager within 180 days of the date of notification by the Regional Manager.

Environmental Management Plan

37. (1) An environmental management plan must address the potential impacts of the proposed operation, address feasible mitigatory and dedicated management and monitoring options for the proposed operation.
- (2) The environmental management plan, shall be in the format provided by the Department and must contain-
- (a) a description of the environment likely to be affected by the proposed prospecting or mining operation;
 - (b) an assessment of the potential impacts of the proposed prospecting or mining operation on the environment, socio-economic conditions and cultural heritage;

- (c) a summary of the significance of the potential impacts, the preferred alternative methods, proposed mitigation and management measures to minimise adverse impacts and optimize benefits, as well as the option of not implementing the activity;
- (d) financial provision which must include-
 - (i) the determination of the quantum;
 - (ii) details of the method(s) of provision;
- (e) requirements for monitoring and performance assessment;
- (f) closure and environmental objectives;
- (g) a record of the public participation undertaken; and
- (h) an undertaking by the applicant regarding the implementation of the environmental management plan.

Method(s) for financial provision

38. Financial provision for rehabilitation and remediation of environmental damage must be made by one or more of the following methods-
- (a) approved contributions to a dedicated trust fund as provided for in section 10(1)(cH) of the Income Tax Act, 1962, (Act No. 58 of 1962) and registered with the South African Revenue Services; and / or
 - (b) a written guarantee from a bank or approved financial institution guaranteeing the amount specifically for rehabilitation and the remediation of environmental damage and the availability of funds on demand of the Department of Minerals and Energy if the proposed prospecting or mining operation should fail or become incapacitated; and/or
 - (c) financial deposits to be placed within a central fund with Government or an institution to be approved by the Minister; and/or
 - (d) any other methodology of financial provision to be approved by the Minister from time to time.

Standard forms for financial provision

39. The standard form for the-
- (a) trust fund must be in the format set out in Form NN, Annexure 1;
 - (b) written guarantee must be in the format set out in Form OO, Annexure 1; and
 - (c) financial deposits must be in the format set out in Form PP, Annexure 1.

Quantum of financial provision

40. (1) The Minister shall request from the holder of a reconnaissance permission, prospecting right, mining right or mining permit, as the case may be, to submit financial statements from a financial institution as proof that the holder has the financial means to execute the requirements of the environmental management programme or plan.
- (2) The quantum of the financial provision to be approved by the Minister must be based on the requirements of the environmental management programme or plan and shall include a detailed itemization of all actual costs required for-
- (a) the rehabilitation of the surface of the area;
 - (b) the prevention and management of pollution from the atmosphere;
 - (c) the prevention and management of pollution of water and the soil;
 - (d) decommissioning and final closure of the operation; and
 - (e) post closure management of residual and latent impacts.
- (3) The holder of a reconnaissance permission, prospecting right, mining right or mining permit must annually update and review the quantum of the financial provision -
- (a) in consultation with a qualified person;
 - (b) as required in terms of the approved environmental management programme or environmental management plan; or
 - (c) as requested by the Minister.
- (4) Any inadequacies with regard to the financial provision must be rectified by the holder of a reconnaissance permission, prospecting right, mining right or mining permit as-
- (a) determined in an amendment of the environmental management programme or plan as the case may be;
 - (b) within the timeframe provided; or
 - (c) as determined by the Minister.

Monitoring and performance assessments of environmental management programme or plan

41. (1) As part of the general terms and conditions for a prospecting right, mining right or mining permit and in order to ensure compliance with the approved environmental management programme or plan and to assess the continued appropriateness and adequacy of the environmental management programme or plan, the holder of such right must-
- (a) conduct monitoring on a continuous basis;
 - (b) conduct performance assessments of the environmental management programme or plan as required; and
 - (c) compile and submit a performance assessment report to the Regional Manager to demonstrate adherence to sub-regulation (b).
- (2) The frequency of performance assessment reporting shall be-
- (a) in accordance with the period specified in the approved environmental management programme or plan, or, if not so specified;
 - (b) as agreed to in writing by the Minister; or
 - (c) biennially (every two years).
- (3) The performance assessment report, shall be in the format provided in guidelines that will from time to time be published by the Department and contain-
- (a) information regarding the period that applies to the performance assessment;
 - (b) the scope of the assessment;
 - (c) the procedure used for the assessment;
 - (d) the interpreted information gained from monitoring the approved environmental management programme or plan;
 - (e) the evaluation criteria used during the assessment;
 - (f) the results of the assessment; and
 - (g) recommendations on how and when deficiencies that are identified and/or aspects of non-compliance will be rectified.
- (4) The holder of a prospecting right, mining right or mining permit may appoint an independent qualified person(s) to conduct the performance assessment and compile the performance assessment report provided that no such appointment shall relieve the holder of the responsibilities in terms of these regulations.
- (5) After submission of the performance assessment report, the report shall be made available by the Regional Manager to any person on request.
- (6) If upon consideration by the Regional Manager, the performance assessment executed by the holder is not satisfactory or the report submitted by the holder is found to be unacceptable, the holder must-
- (a) repeat the whole or relevant parts of the performance assessment and revise and resubmit the report; and/or
 - (b) submit relevant supporting information; and/or
 - (c) appoint an independent qualified person(s) to conduct the whole or part of the performance assessment and to compile the report.
- (7) If a reasonable assessment indicates that the performance assessment cannot be executed satisfactorily by the holder or a qualified person(s) appointed by the holder, the Minister may appoint an independent performance assessment person(s). Such appointment and execution shall be for the cost of the holder.
- (8) When the holder of a prospecting right, mining right or mining permit intends closing such operation, a final performance assessment shall be conducted and a report submitted to the Regional Manager to ensure that -
- (a) the requirements of the relevant legislation have been complied with;
 - (b) the closure objectives as described in the environmental management programme or plan have been met; and
 - (c) all residual environmental impacts resulting from the holder's operations have been identified and the risks of latent impacts which may occur have been identified, quantified and arrangements for the management thereof have been assessed.

- (9) The final performance assessment and the submission of the required report shall either precede or accompany the application for a closure certificate in terms of the Act.

General requirements for mine closure

42. (1) The holder of a prospecting right, mining right, retention permit and mining permit must ensure that –
- (a) the closure of a prospecting or mining operation incorporates a process which must start at the commencement of the operation and continue throughout the life of the operation and within the framework of sustainable development;
 - (b) risks to elements of the environment must be quantified and managed proactively, which includes the gathering of relevant information throughout the life of a prospecting or mining operation;
 - (c) the safety and health of humans and animals are safeguarded from hazards resulting from prospecting or mining operations;
 - (d) environmental damage or residual impacts are minimised to such an extent that it is acceptable to all involved interested and affected persons;
 - (e) the land is rehabilitated to, as far as is practicable, its natural state, or to a predetermined and agreed standard or land use which conforms with the concept of sustainable development;
 - (f) the optimal exploitation and utilization of mineral resources are not adversely affected; and
 - (g) prospecting or mining operations are closed efficiently and cost effectively.

Application for a closure certificate

43. (1) An application for a closure certificate of a prospecting right, mining right, retention permit or mining permit in terms of section 43(4) of the Act must be completed on the Form EE as set out in Annexure 1.
- (2) An application for a closure certificate of a prospecting right, mining right, retention permit or mining permit must be accompanied with a closure plan.

Application to transfer environmental liabilities to a qualified person

44. (1) The holder of a prospecting right, mining right or mining permit may transfer liabilities and responsibilities as identified in the environmental management programme, or environmental management plan or any prescribed closure plan to a qualified person as contemplated in Regulation 45.
- (2) An application to transfer environmental liabilities to a qualified person in terms of section 43(2) of the Act, must be completed on Form U as set out in Annexure 1 and be lodged to the Minister for consideration.
- (3) When considering the transfer environmental liabilities and responsibilities in terms of section 43(2) of the Act, the Minister must consult with any State department which administers any law relating to matters affecting the environment.
- (4) No transfer of environmental liabilities and responsibilities to a qualified person may be made unless the Chief Inspector of Mines and the Department of Water Affairs and Forestry have confirmed in writing that the person to whom the liabilities and responsibilities is transferred to, have the necessary qualifications pertaining to health and safety and management of potential pollution of water resources.

Qualifications of person regarding transfer of environmental liabilities and responsibilities

45. (1) For the purposes of transferring environmental liabilities and responsibilities as may be identified in the environmental management programme or plan and any prescribed closure plan, the person to whom such transfer is made must –
- (a) have the expertise, resources and organisational abilities to integrate risk assessment, risk management and risk financing to ascertain the cost of environmental management;
 - (b) have the expertise, financial and other resources to meet its obligations to carry out actions necessary to fulfil the environmental obligations as set out in

- the environmental management programme, environmental management plan or any prescribed closure plan concerned;
- (c) have appropriate experience in environmental management and mine health and safety matters;
- (d) have direct access to insurance products and alternative risk financing services appropriate to financing of exposure to risks;
- (e) have the ability to manage trusts set up in terms of section 10(1)(cH) of the Income Tax Act, 1962 (Act No 58 of 1962); and
- (f) have expertise and experience or proven access thereto to interpret and manage the findings of an environmental risk assessment.

Environmental Risk Report

46. (1) An application for a closure certificate in terms of section 43(3) of the Act must be accompanied by an environmental risk report which must include-
- (a) the undertaking of a screening level environmental risk assessment where-
 - (i) all possible environmental risks are identified, including those which appear to be insignificant;
 - (ii) the process is based on the input from existing data;
 - (iii) the issues that are considered are qualitatively ranked as –
 - (aa) a potential significant risk; and/or
 - (bb) a uncertain risk; and/or
 - (cc) an insignificant risk.
 - (b) the undertaking of a second level risk assessment on issues classified as potential significant risks where-
 - (i) appropriate sampling, data collection and monitoring be carried out;
 - (ii) more realistic assumptions and actual measurements be made; and
 - (iii) a more quantitative risk assessment is undertaken, again classifying issues as posing a potential significant risk or insignificant risk.
 - (c) assessing whether issues classified as posing potential significant risks are acceptable without further mitigation;
 - (d) issues classified as uncertain risks be re-evaluated and re-classified as either posing potential significant risks or insignificant risks;
 - (e) documenting the status of insignificant risks and agree with interested and affected persons;
 - (f) identifying alternative risk prevention or management strategies for potential significant risks which have been identified, quantified and qualified in the second level risk assessment;
 - (g) agreeing on management measures to be implemented for the potential significant risks which must include-
 - (i) a description of the management measures to be applied;
 - (ii) a predicted long-term result of the applied management measures;
 - (iii) the residual and latent impact after successful implementation of the management measures;
 - (iv) time frames and schedule for the implementation of the management measures;
 - (v) responsibilities for implementation and long-term maintenance of the management measures;
 - (vi) financial provision for long-term maintenance; and
 - (vii) monitoring programmes to be implemented.

Closure objectives

47. (1) Closure objectives form part of the draft environmental management programme or environmental management plan, as the case may be, and must –
- (a) identify the key objectives for mine closure to guide the project design, development and management of environmental impacts;
 - (b) provide broad future land use objective(s) for the site; and
 - (c) provide proposed closure costs.

Contents of Closure plan

48. (1) A closure plan in terms of section 43(3)(d) of the Act, forms part of the environmental management programme or environmental management plan, as the case may be, and must include –
- (a) a description of the closure objectives and how these relate to the prospecting or mine operation and its environmental and social setting;

- (b) a summary of the regulatory requirements and conditions for closure negotiated and documented in the environmental management programme or plan;
- (d) a summary of the results of the environmental risk report and details of identified residual and latent impacts;
- (e) a summary of the results of progressive rehabilitation undertaken;
- (f) a description of the methods to decommission each prospecting or mining component and the mitigation or management strategy proposed to avoid, minimize and manage residual or latent impacts;
- (g) details of any long-term management and maintenance expected;
- (h) details of financial provision for monitoring, maintenance and post closure management, if required;
- (i) a plan or sketch at an appropriate scale describing the final land use proposal and arrangements for the site;
- (j) a record of interested and affected persons consulted; and
- (k) technical appendices, if any.

PART IV : POLLUTION CONTROL AND WASTE MANAGEMENT REGULATION

Principles of pollution control and waste management

49. (1) In accordance with the national norms and standards for pollution control and waste management, the holder of any right or permit in terms of the Act must -
- (a) avoid the generation and production of pollution, waste and mine residue at source; or
 - (b) where the production thereof cannot altogether be avoided, be minimized and re-used or recycled; and
 - (c) where possible and otherwise disposed of in a responsible and prescribed manner.

Air quality management and control

50. (1) The holder of a right or permit in terms of the Act, must comply with national air quality control or management norms and standards, where applicable.
- (2) The assessment of impacts relating to air quality control and management, where appropriate, must form part of the environmental impact assessment report and draft environmental management programme or the environmental management plan, as the case may be.

Fire prevention

51. (1) All coal debris and bituminous rock shall be deposited at a site as identified and approved in the environmental management programme or plan.
- (2) The holder of a mining right pertaining to the mining of coal shall be responsible for all damages resulting from the combustion of the coal residue stockpiles or deposits.

Noise control

52. (1) The holder of a right or permit in terms of the Act must comply with national norms and standards regarding noise control where applicable.
- (2) The assessment of impacts relating to noise pollution control and management, where appropriate, must form part of the environmental impact assessment report and draft environmental management programme or the environmental management plan as the case may be.
- (3) When the equivalent noise exposure, as defined in the South African Bureau of Standards Code of Practice for the Measurement and Assessment of Occupational Noise for Hearing Conservation Purposes, SABS 083 as amended, [in any at or in any mine or works where persons may travel or work, exceeds 85 dB (A)] exceeds the background plus seven (7) dB (A) decibels beyond the mine boundary or at the residential community or where non employees may travel, the holder shall take the necessary steps to reduce the noise to below this level.

- (4) Where compliance with sub-regulation (3) is not possible, the holder shall implement a hearing conservation programme, which complies with the recommendations given in the said SABS Code 083.
- (5) All mechanical equipment must be in a good working order and vehicles must adhere to the relevant noise requirements of the Road Traffic Act, 1997, (Act No. 93 of 1997).
- (6) All vehicles in operation must be in good working order and equipped with a silencer on their exhaust system.
- (7) Where appropriate, lubricants must be applied to ensure that surfaces which interact during mechanical movement do not generate undesirable noise levels.
- (8) Safety measures which generate noise such as reverse gear alarms on large vehicles must be appropriately calibrated or adjusted.
- (9) Appropriate non-metallic washers or isolation must be used with any joining apparatus to join screens such as corrugated iron to other structures and to each other. Such screens must be maintained in a fixed position.
- (10) Appropriate measures must be installed and or employed at the crushing operations or plant to act as screen and to reflect or reduce the noise level.
- (11) Noise levels must be recorded on a continuous basis at identified receptor sites which will include the residences of immediate neighbours and the borders of the mining area.

Blasting, vibration and shock

53. (1) In accordance with the provisions of the Mine Health and Safety Act, 1996, (Act No. 29 of 1996) blasting operations at prospecting or mining operations must be so designed and executed that the minimum shock, noise and vibration are generated.
- (2) An assessment of impacts relating to blasting, vibration and shock control and management, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan, as the case may be.

Water management and pollution control

54. (1) The Regulations promulgated in the *Government Notice* No. 704 of 4 June 1999, in terms of the National Water Act, 1998, (Act No. 36 of 1998) shall apply to the water management and pollution control at all proposed or existing prospecting or mining operations.
- (2) An assessment of impacts relating to water management and pollution control at proposed prospecting or mining operations, where appropriate, must form part of the environmental impact assessment report and draft environmental management programme or the environmental management plan, as the case may be.

Disposal of waste material

55. (1) The holder of any right or permit in terms of the Act, must comply with national norms and standards regarding the disposal of waste material, where applicable.
- (2) The assessment of impacts relating to the disposal of waste material, where appropriate, must form part of the environmental impact assessment report and draft environmental management programme or the environmental management plan.
- (3) Waste material from reduction works, beneficiation plants, coal preparation plants, screening and washing installations and generating stations at a mine shall be disposed of in accordance with the approved environmental management programme or environmental management plan and on an approved demarcated site.
- (4) No dumping or impounding of rubble, litter, garbage, rubbish or discards of any description, whether solid or liquid, shall take place elsewhere than at the site or sites

demarcated for the purpose in accordance with the approved environmental management programme or environmental management plan.

- (5) No sand dump or slimes dam shall be established on the bank of any stream, river, dam, pan or lake without written permission of the Minister and upon such conditions as he/she may prescribe or if and as approved in the environmental management programme or environmental management plan.
- (6) Coal debris shall not be allowed to accumulate on any ground where there exist, or where there are likely to occur, surface fissures or cavities as a result of underground operations.

Soil pollution and erosion control

- 56.
- (1) The holder of a right or permit in terms of the Act, must comply with national norms and standards regarding the management and control disposal of waste material, where applicable.
 - (2) The assessment of impacts relating to soil pollution and erosion control, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan.
 - (3) Except for the areas concerned in the approved areas for the depositioning of waste, all adverse chemical contamination of soils must be minimised to accepted levels.
 - (4) The spillage of hazardous chemicals onto soils or its escape or migration into surrounding soils from the approved depositioning area, must be prevented as far as possible.
 - (5) Oils, grease and hydraulic fluids must be disposed of in a waste disposal receptacle for collection or treatment or at a licensed facility or in accordance with a method approved in the environmental management programme or environmental management plan.
 - (6) Oils, grease and hydraulic fluid spills which occur must be cleaned up by removing all contaminated soil and disposing thereof in a waste disposal receptacle or at a licensed facility.
 - (7) The acidification, salination and mineralisation of soils through seepage of polluted water and no irrigation of land with any water must take place with the permission of the Minister of Water Affairs and Forestry or as approved in the environmental management programme or environmental management plan.
 - (8) The chemical and physical properties of top soil to be used for the purposes of rehabilitation must not be changed by introducing foreign material, gravel, rock, rubble or mine residue.

Sanitation of surface

- 57.
- (1) Toilet facilities shall be located in such a manner that no water or other pollution is caused.
 - (2) No person shall pollute the workings with faeces or urine or misuse the facilities provided or inappropriately foul the surrounding environment with faeces or urine. Acceptable hygienic and aesthetic practices must be adhered to.

Management of residue stockpiles and deposits

- 58.
- (1) The assessment of impacts relating to the management of residue stockpiles and deposits, where appropriate, must form part of the environmental impact assessment report and draft environmental management programme or the environmental management plan.
 - (2) *Residue characterisation*
 - (a) Mine residue must be characterised to identify any potentially significant health or safety hazard and environmental impact that may be associated

with the residue when stockpiled or deposited at the site(s) under consideration.

- (b) Residue stockpiles and/or deposits must be characterised in terms of its –
- (i) physical characteristics, which may include –
 - (aa) the size distribution of the principal constituents;
 - (bb) the permeability of the compacted material;
 - (cc) void ratios of the compacted material;
 - (dd) the consolidation or settling characteristics of the material under its own weight and that of any overburden;
 - (ee) the strength of compacted material;
 - (ff) the specific gravity of the solid constituents; and
 - (gg) the water content of the material at the time of deposition, after compaction, and at other phases in the life of the deposit.
 - (ii) chemical characteristics, which may include –
 - (aa) the toxicity;
 - (bb) the propensity to oxidize and /or decompose;
 - (cc) the propensity to undergo spontaneous combustion;
 - (dd) the pH and chemical composition of the water separated from the solids;
 - (ee) stability and reactivity and the rate thereof; and
 - (ff) neutralising potential.
 - (iii) mineral content, which include the specific gravity of the residue particles and its impact on particle segregation and consolidation;

(3) *Classification of residue stockpiles and deposits*

- (a) All residue stockpiles and deposits must be classified into one or a combination of the following categories –
- (i) the safety classification to differentiate between residue stockpiles and deposits of high, medium and low hazard on the basis of their potential to cause harm to life or property; and
 - (ii) the environmental classification to differentiate between residue stockpiles and deposits with –
 - (aa) a potentially significant impact on the environment due to its spatial extent, duration and intensity of potential impacts; or
 - (bb) no potentially significant impact on the environment.
- (b) All mine residue stockpiles and deposits must be classified by a suitably qualified person(s).
- (c) The classification of residue stockpiles and deposits shall determine the –
- (i) level of investigation and assessment required;
 - (ii) requirements for design, construction, operation, decommissioning, closure and post closure maintenance; and
 - (iii) qualifications and expertise required of persons undertaking the investigations, assessments, design, construction thereof.
- (d) The safety classification of residue stockpiles and deposits shall be based on the following criteria –

| Number of residents in zone of influence | Number of workers in zone of influence | Value of third party property in zone of influence | Depth to underground mine workings | Classification |
|--|--|--|------------------------------------|----------------|
| 0 | < 10 | 0 – R2 m | > 200m | Low hazard |
| 1 – 10 | 11 – 100 | R 2 m – R20 m | 50 m – 200 m | Medium hazard |
| > 10 | > 100 | > R20 m | < 50 m | High hazard |

- (e) A risk analysis must be carried out and documented on all high hazard residue stockpiles and deposits.
- (f) The environmental classification of residue stockpiles and deposits must be undertaken on the basis of –
- (i) the characteristics of the residue;
 - (ii) the location and dimensions of the deposit (height, surface area);

- (iii) the importance and vulnerability of the environmental components that are at risk; and
 - (iv) the spatial extent, duration and intensity of potential impacts.
 - (g) The assessment of impacts and analyses of risks shall form part of the environmental impact assessment and environmental management programme or plan, as the case may be.
- (4) *Site selection and investigation:*
- (a) The process of investigation and selection of a site must entail -
 - (i) the identification of a sufficient number of possible candidate sites to ensure adequate consideration of alternative sites;
 - (ii) qualitative evaluation and ranking of all alternative sites;
 - (iii) qualitative investigation of the top ranking sites to review the ranking done in (ii);
 - (iv) a feasibility study to be carried out on the highest ranking site(s), involving -
 - (aa) a preliminary safety classification;
 - (bb) an environmental classification;
 - (cc) geotechnical investigations; and
 - (dd) groundwater investigations.
 - (b) The geotechnical investigations may include-
 - (i) the characterization of the soil profile over the entire area to be covered by the residue facility and associated infrastructure to define the spatial extent and depth of the different soil horizons;
 - (ii) the characterization of the relevant engineering properties of foundations soils and the assessment of strength and drainage characteristics.
 - (c) The groundwater investigations may include-
 - (i) the potential rate of seepage from the residue facility;
 - (ii) the quality of such seepage;
 - (iii) the geohydrological properties of the strata within the zone that could potentially be affected by the quality of seepage;
 - (iv) the vulnerability and existing potential use of the groundwater resource within the zone that could potentially be affected by the residue facility.
 - (d) From these investigations, a preferred site must be identified.
 - (e) Further investigation on the preferred site, shall include -
 - (i) land use;
 - (ii) topography and surface drainage;
 - (iii) infrastructure and man-made features;
 - (iv) climate;
 - (v) flora and fauna;
 - (vi) soils;
 - (vii) ground water morphology, flow, quality and usage; and
 - (viii) surface water.
 - (f) The investigations, laboratory test work, interpretation of data and recommendations for the identification and selection of the most appropriate and suitable site for the disposal of all residue that have the potential to generate leachate that could have a significant impact on the environment and groundwater must be carried out by a suitably qualified person.
- (5) *Design of residue stockpile and deposit*
- (a) The design of the residue stockpile and deposit shall be undertaken by a suitably qualified person.
 - (b) An assessment of the typical soil profile on the site is required for residue stockpiles and deposits which -
 - (i) have a low hazard potential; and
 - (ii) have no significant impact on the environment.

- (c) The design of the residue stockpile and deposit must take into account all phases of the life cycle of the stockpile and deposit, from construction through to closure and must include –
 - (i) the characteristics of the mine residue;
 - (ii) the characteristics of the site and the receiving environment;
 - (iii) the general layout of the stockpile or deposit, whether it is a natural valley, ring dyke, impoundment or a combination thereof and its 3-dimensional geometry at appropriate intervals throughout the planned incremental growth of the stockpile or deposit;
 - (iv) the type of deposition method used; and
 - (v) the rate of rise of the stockpile or deposit.
- (d) Other design considerations, as appropriate to the particular type of stockpile and deposit must be incorporated –
 - (i) the control of storm water on and around the residue stockpile or deposit by making provision for the maximum precipitation to be expected over a period of 24 hours with a frequency of once in a 100 years, in accordance with the regulations made under section 8 of the National Water Act, 1998;
 - (ii) the provision, throughout the system, of a freeboard of at least 0.5 m above the expected maximum water level, in accordance with regulations made under the National Water Act, 1998, to prevent overtopping;
 - (iii) keeping the pool away from the walls; where there are valid technical reasons for deviating from this, adequate motivation must be provided and the design must be reviewed by a qualified person as required in terms of sections 9(6) or 9(7) of the Mine Health and Safety Act, 1996;
 - (iv) the control of decanting of excess water under normal and storm conditions;
 - (aa) the retention of polluted water in terms of polluted water in terms of GN R991(9), where measures may be required to prevent water from the residue deposit from leaving the residue management system unless it meets prescribed requirements;
 - (bb) the design of the penstock, outfall pipe, under-drainage system and return water dams;
 - (cc) the height of the phreatic surface, slope angles and method of construction of the outer walls and their effects on shear stability;
 - (dd) the erosion of slopes by wind and water, and its control by
 - (ee) vegetation, berms or catchment paddocks; and
 - (ee) the potential for pollution.
- (e) A design report and operating manual shall be drawn up for all residue stockpiles and deposits which –
 - (i) have a medium to high hazard; and
 - (ii) have a potentially significant impact on the environment.
- (f) Relevant information must be included in the draft environmental management programme or environmental management plan.

(6) *Construction and operation of residue deposits:*

- (a) The holder of any right or permit in terms of the Act, must ensure that-
 - (i) the residue deposits, including any surrounding catchment paddocks, is constructed and operated in accordance with the approved environmental management programme or environmental management plan;
 - (ii) the design of the residue deposit is followed implicitly throughout the construction thereof, and that any deviations from the design be approved by the Regional Manager and the environmental management programme and environmental management plan be amended accordingly;
 - (iii) as part of the monitoring system, measurements of all residues transported to the site and of all surplus water removed from the site are recorded;

- (iv) the provision for appropriate security measures be implemented to limit unauthorised access to the site and intrusion into the residue deposit;
 - (v) specific action be taken in respect of any sign of pollution;
 - (vi) adequate measures be implemented to control dust pollution and erosion of the slopes; and
 - (vii) details of rehabilitation of the residue deposit be provided in the draft environmental management programme or environmental management plan.
 - (b) A system of routine maintenance and repair in respect of the residue deposit must be implemented to ensure the ongoing control of pollution, the integrity of rehabilitation and health and safety matters at the site.
- (7) *Monitoring of residue stockpiles and deposits:*
- (a) A monitoring system for residue stockpiles and deposits with respect to potentially significant impacts as identified in the environmental assessment must be included in the environmental management programme or environmental management plan.
 - (b) In the design of a monitoring system for a residue stockpile or deposit, consideration must be given to –
 - (i) baseline and background conditions with regard to air, surface and groundwater quality;
 - (ii) the air, surface and groundwater quality objectives;
 - (iii) residue characteristics;
 - (iv) the degree and nature of residue containment;
 - (v) the receiving environment and specifically the climatic, local geological, hydrogeological and geochemical conditions;
 - (vi) potential migration pathways;
 - (vii) potential impacts of leachate;
 - (viii) the location of monitoring points and the prescribed monitoring protocols; and
 - (ix) the reporting frequency and procedures.
- (8) *Decommissioning, closure and after care:*
- (a) The decommissioning, closure and post closure management of residue deposits must be addressed in the closure plan, which must contain the following –
 - (i) the environmental classification, including assumptions on which the classification were based;
 - (ii) the closure objectives, final land use or capability;
 - (iii) conceptual description and details for closure and post closure management;
 - (iv) cost estimates and financial provision for closure and post-closure management; and
 - (v) residual impacts, monitoring and requirements to obtain mine closure in terms of the Act.

CHAPTER 3

PETROLEUM EXPLORATION AND PRODUCTION

Application for a reconnaissance permit

59. (1) An application for a reconnaissance permit in terms of section 74 of the Act must be completed on Form K in Annexure 1, and lodged at the office of the Petroleum Agency and must contain-
- (a) full particulars of the applicant;
 - (b) a plan as described in Regulation 2(3), indicating the co-ordinates and boundaries of the area applied for, referenced to the WGS84, Hartebeesthoek 94 datum;
 - (c) a clear statement of the technical motivation;

- (d) the period for which the permit is required which in terms of section 75(4)(b) of the Act may not exceed one year;
 - (e) a detailed work programme;
 - (f) detailed documentary proof that the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance operations optimally in accordance with the reconnaissance work programme;
 - (g) a list of existing rights and permits held by the applicant to be compiled in a table format which indicate the location and the number of the existing rights or permits;
 - (h) acknowledgement that the Petroleum Agency is entitled to require further information before determining whether or not to issue the reconnaissance permit applied for; and
 - (i) any other information, data or documentation that the Petroleum Agency may require in connection with information required under paragraphs (a) to (g).
- (2) After receiving the information required, the Petroleum Agency must submit the application forthwith to the Minister for consideration.

General terms and conditions for a reconnaissance permit

60. (1) The terms and conditions of the reconnaissance permit to be concluded between the applicant and the Minister in terms of section 75(1) of the Act, must be substantially in the form of Form JJ in Annexure 1, or as the Minister may determine from time to time, and must contain particulars regarding -
- (a) parties to the agreement;
 - (b) description of the permit area;
 - (c) duration of the reconnaissance permit;
 - (d) fees payable;
 - (e) reports and samples to be furnished
 - (f) work programme;
 - (g) indemnity and insurance;
 - (h) waiver of lenience;
 - (i) arbitration;
 - (j) environmental protection;
 - (k) costs;
 - (l) severability;
 - (m) *domicilium citandi et executandi* of the parties;
 - (n) notices and representatives; and
 - (o) any additional terms and conditions that the Minister may determine from time to time.

Reconnaissance work programme

61. The reconnaissance work programme shall contain the following-
- (a) the period required, subject in terms of section 75(4)(b) of the Act to a maximum of one year;
 - (b) an outline of the geological, geochemical, geophysical and other work to be performed;
 - (c) technical data detailing the reconnaissance method or methods to be implemented for the proposed reconnaissance programme;
 - (d) an estimate of the expenditure to be incurred, which must include costs pertaining to the rehabilitation and management of environmental impacts;
 - (e) the programme for the marketing and sale of any data and conditions relating thereto which shall be limited to a maximum period of 10 years.

Progress reports in respect of reconnaissance activities

62. The holder of a reconnaissance permit must submit timeous, accurate summary progress reports to the Petroleum Agency on a monthly basis.

Supply of data in respect of reconnaissance

63. The holder of a reconnaissance permit must supply to the Petroleum Agency, in a format and medium as agreed by the Petroleum Agency, digital and, where appropriate, paper copies of all data, reports and interpretations generated, as soon as possible after completion of operations or projects.

Application for a technical co-operation permit

64. An application for a technical co-operation permit in terms of section 76 of the Act must be completed on Form L as set out in Annexure 1 of the Regulations and must contain-
- (a) full particulars of the applicant;
 - (b) a plan indicating the co-ordinates and boundaries of the area applied for, referenced to the WGS84, Hartebeesthoek 94 datum;
 - (c) a clear statement of the technical motivation;
 - (d) the period for which the permit is required which in terms of section 77(4)(b) of the Act may not exceed one year;
 - (e) a detailed work programme;
 - (f) documentary evidence to prove that the applicant has access to financial resources and has the technical ability to conduct the proposed work programme;
 - (g) acknowledgement that the Petroleum Agency is entitled to require further information before determining whether or not to issue the permit applied for; and
 - (h) any other information, data or documentation that the Petroleum Agency may require in connection with information required under paragraphs (a) to (f).

General terms and conditions for a technical co-operation permit

65. The terms and conditions of the technical co-operation permit to be concluded between the applicant and the Petroleum Agency in terms of section 77(1) of the Act, may be as set out in Form KK, Annexure 1 of the Regulations or as the Minister may determine from time to time and must contain the following information-
- (a) parties to the agreement;
 - (b) description of the permit area;
 - (c) duration of the technical co-operation permit;
 - (d) fees payable;
 - (e) reports and samples to be furnished
 - (f) work programme;
 - (g) indemnity and insurance;
 - (h) waiver of lenience;
 - (i) arbitration;
 - (j) cost;
 - (k) option to acquire an exploration right;
 - (l) severability;
 - (m) *domicilia citandi et executandi*;
 - (n) a signature clause and clause for witnesses to sign; and
 - (o) any additional terms and conditions that the Minister may determine from time to time.

Technical co-operation work programme

66. The technical co-operation work programme shall contain the following-
- (a) the period required, subject in terms of section 77(4)(b) of the Act to a maximum of one year;
 - (b) an outline of the geological, geochemical, geophysical and other work to be performed;
 - (c) technical data detailing the research and analysis methods to be implemented for the proposed work programme; and
 - (d) an estimate of the expenditure to be incurred.

Progress reports in respect of technical co-operation activities

67. The holder of a technical co-operation permit must supply to the Petroleum Agency, in a format and medium agreed by the Petroleum Agency, digital and, where appropriate, paper copies of all data generated, as soon as possible after completion of operations or projects.

Application for an exploration right

68. An application for an exploration right in terms of section 79 of the Act must be completed on Form M as set out in Annexure 1 of the Regulations or as the Minister may determine from time to time and must contain-
- (a) full particulars of the applicant;
 - (b) a plan indicating the co-ordinates and boundaries of the area applied for, referenced to the WGS84, Hartebeesthoek 94 datum;
 - (c) a clear statement of the technical motivation;

- (d) the period for which the right is initially required in terms of section 80(5) of the Act, as well as any possible renewals;
- (e) a detailed exploration work programme;
- (f) documentary evidence to prove that:
 - (i) the applicant has access to financial resources and has the technical ability to conduct the proposed exploration operation optimally in accordance with the exploration work programme, such to be supported by a report from an independent assessor approved by the Petroleum Agency;
 - (ii) the applicant has the ability to comply with the provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
 - (iii) the granting of the right will further the objects referred in sections 2(d) and (f) of the Act;
- (g) acknowledgement that the Petroleum Agency and the Minister are entitled to require further information before determining whether or not the right applied for should be granted; and
- (h) any other information, data or documentation that the Petroleum Agency or the Minister may require in connection with information required under paragraphs (a) to (f).

General terms and conditions for an exploration right

69. (1) The terms and conditions of the exploration right to be concluded between the applicant and the Minister in terms of section 80(5) of the Act, must be as set out in Form LL, Annexure 1 of the Regulations or as the Minister may determine from time to time and must contain the following information-
- (a) parties to the agreement;
 - (b) area applied for;
 - (c) duration of the exploration right;
 - (d) fees payable;
 - (e) work programme;
 - (f) indemnity and insurance;
 - (g) waiver of lenience;
 - (h) arbitration;
 - (i) environmental protection;
 - (j) cost;
 - (k) option to acquire a production right;
 - (l) severability;
 - (m) *domicilia citandi et executandi*;
 - (n) a signature clause and clause for witnesses to sign;
 - (o) any additional terms and conditions that the Minister may determine from time to time.
- (2) In addition to any term and condition contained in the exploration right, the following general terms and conditions also apply to such right where the holder of an exploration right shall:
- (a) exercise any right granted in terms of the provisions of this Act reasonably and in such manner that the rights and interests of the owner of any land to which exploration right relates are not adversely affected, except to the extent to which such owner is compensated;
 - (b) in the employment of employees, adopt and apply the principles outlined in the South African national affirmative action programmes, where possible;
 - (c) where possible, engage in joint-ventures or any other form of co-operation with Black Economic Empowerment entities to develop technical skills and infrastructure;
 - (d) investigate, communicate and assess the potential environmental impacts of the proposed exploration operation in accordance with the provisions of the Act;
 - (e) prevent or manage to minimise or mitigate the environmental impacts in accordance with the approved environmental management programme;
 - (f) monitor and assess the continued appropriateness, adequacy and environmental performance of the approved environmental management programme as determined;
 - (g) make appropriate and adequate financial provision for rehabilitation and remediation of environmental damage and revise such provision as required in terms of the Act;
 - (h) where the holder of an exploration right is a corporate body, partnership or association of persons, give proper notice in writing to the Minister within thirty (30) days of any change relating to the following-
 - (i) name of right holder;

- (ii) registered address and principal place of business;
- (iii) directors of the company, or members of a close corporation;
- (iv) share capital of the company;
- (v) beneficial owner or owners of the shares issued by such company in contravention of the provisions of the Competition Act, 1998 (Act No. 89 of 1998); and
- (i) in the case of a natural person, provide written notice to the Minister of any change of the address of such person within thirty (30) days.

Exploration work programme

70. (1) The exploration work programme shall contain the following -
- (a) the period for which the right is required, as well as any possible renewals;
 - (b) an outline of the geological, geochemical, geophysical, exploration drilling and other work to be performed;
 - (c) technical data detailing the exploration method or methods to be implemented and the time required for each stage of the proposed exploration operation;
 - (d) an estimate of the expenditure to be incurred for each stage of the exploration operation where the expenditure must be broken down into:
 - (i) exploration costs; and
 - (ii) costs pertaining to the rehabilitation and management of environmental impacts.
- (2) In the case where an old order prospecting right must be converted into a new exploration right, the following information must, in addition to that required in item 4 of schedule II to the Act and to that required and as applied to the Regulations in terms of Chapter 3, also be included-
- (a) a brief summary of the geology of the exploration target(s) with a compilation of the data and conclusions generated under the old order prospecting right;
 - (b) a description of the contractual work commitment and exploration work which has been carried out and conclusions reached, which must include:
 - (i) past geological results as are outlined for the progress report;
 - (ii) details of past expenditure broken down into exploration costs, manpower costs and cost pertaining to the rehabilitation and management of environmental impacts;
 - (iii) data, previously compiled but not yet provided to the Petroleum Agency; and
 - (iv) a statement reflecting rehabilitation work completed and the rehabilitation work uncompleted.

Progress reports in respect of exploration

71. (1) The holder of an exploration right, must submit timeous accurate summary progress reports to the Petroleum Agency on a monthly, quarterly and annual basis.
- (2) Monthly progress reports must be submitted within 7 days of month end.
- (3) Quarterly progress reports must be submitted within 21 days of quarter end and must include-
- (i) the numbers of local and expatriate persons employed;
 - (ii) work done and money expended on operations;
 - (iii) the site and depth of every well drilled or being drilled and the formations penetrated and particulars regarding any occurrence of petroleum and / or any other mineral of potential value encountered; and
 - (iv) a statement reflecting rehabilitation work completed and the rehabilitation work uncompleted.
- (4) Annual progress reports must be submitted within 60 days of calendar year end and must include:
- (i) a full report of the exploration operations carried out during the year;
 - (ii) a detailed statement of exploration expenditure incurred during the year;
 - (iii) a description of operations planned for the following year;
 - (iv) a budget for exploration operations planned for the following year; and
 - (v) a statement reflecting rehabilitation work completed and rehabilitation work uncompleted.

- (5) Information in the progress reports will be kept confidential for the period contemplated in section 88(2) of the Act.
- (6) The Minister or the Petroleum Agency may reject any progress report or exploration work programme which does not comply with the requirements of the Act. Such reports or programmes must be re-submitted to the Minister within one (1) month.

Supply of data in respect of exploration

72. The holder of an exploration right must supply to the Petroleum Agency in a format and medium agreed by the Petroleum Agency, samples, digital and where appropriate, paper copies of all data generated, as soon as possible.

Application for the renewal of an exploration right

73. (1) An application for the renewal of an exploration right in terms of section 81 of the Act must be completed on Form M as set out in Annexure 1 of the Regulations and must contain:
- (a) full particulars of the applicant;
 - (b) a plan indicating the co-ordinates and boundaries of the renewal area applied for;
 - (c) the period for which the renewal is required, together with any possible further renewal periods;
 - (d) reasons why a renewal is required;
 - (e) a detailed report reflecting the exploration results, the interpretation thereof and the exploration expenditure incurred;
 - (f) a report reflecting the extent of compliance with the requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof;
 - (g) a detailed exploration work programme for the renewal period; and
 - (h) any other information or documentation that the Petroleum Agency or the Minister may require in connection with information required under paragraph (a) to (g).

Application for a production right

74. (1) An application for a production right in terms of section 83 of the Act must be completed on Form N as set out in Annexure 1 of the Regulations and must contain-
- (a) full particulars of the applicant;
 - (b) a plan indicating the co-ordinates and boundaries of the area applied for referenced to the WGS84, Hartebeesthoek 94 datum;
 - (c) a clear statement of the technical motivation;
 - (d) the period for which the right is required;
 - (e) a development and production work programme;
 - (f) a social and labour plan;
 - (g) documentary evidence to prove that:
 - (i) the applicant has access to financial resources and has the technical ability to conduct the proposed production operation optimally, such to be supported by a report from an independent assessor(s) approved by the Petroleum Agency;
 - (ii) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
 - (iii) the granting of such right will further the object referred to in section 2(f) of the Act;
 - (h) details of the petroleum types and the quantity thereof, which the applicant intends to remove and dispose of during production operations;
 - (i) acknowledgement that the Petroleum Agency or the Minister is entitled to require further information before deciding whether or not the right applied for should be granted; and
 - (j) any other information, data or documentation that the Petroleum Agency or the Minister may require in connection with information required under paragraphs (a) to (h).

General terms and conditions for a production right

75. (1) The terms and conditions of the production right to be concluded between the applicant and the Minister in terms of section 84(1) of the Act must be as set out in Form MM, Annexure 1 of the Regulations or as the Minister may determine from time to time and must contain the following information-
- (a) parties to the agreement;

- (b) production area applied for;
 - (c) the petroleum type to be produced;
 - (d) period for which the production right is required;
 - (e) considerations, royalties or minimum royalties payable;
 - (f) restrictions and obligations applicable on the holder;
 - (g) indemnity and insurance;
 - (h) protection of boreholes and associated facilities;
 - (i) protection of property and persons;
 - (j) records and returns;
 - (k) waiver of lenience;
 - (l) arbitration;
 - (m) environmental protection;
 - (n) cost;
 - (o) severability;
 - (p) *domicilia citandi et executandi*; and
 - (q) a signature clause and clause for witnesses to sign;
- (2) In addition to any term and condition contained in the production right, the following general terms and conditions also apply to such right. The holder of a production right shall-
- (a) exercise any right granted in terms of the provisions of this Act reasonably and in such manner that the rights and interests of the owner of any land to which the production right relates are not adversely affected, except to the extent to which such owner is compensated;
 - (b) in the employment of employees, adopt and apply the principles outlined in the South African national affirmative action programme;
 - (c) carry out training programmes in order to encourage and promote the development of local communities where the production operation is carried out;
 - (d) where possible, engage in joint-ventures or any other form of co-operation with Black Economic Empowerment entities to develop technical skills and infrastructure;
 - (e) investigate, communicate and assess the potential environmental impacts of the proposed production operation in accordance with the provisions of the Act;
 - (f) prevent, minimise, mitigate and manage the environmental impacts in accordance with the approved environmental management programme;
 - (g) monitor and assess the continued appropriateness, adequacy and environmental performance of the approved environmental management programme as determined;
 - (h) make appropriate and adequate financial provision for rehabilitation and remediation of environmental damage and revise such provision as required in terms of the Act;
 - (i) where the holder of a production right is a corporate body, partnership or association of persons, give proper notice in writing to the Minister within 30 days of any change relating to the following:
 - (i) name of right holder;
 - (ii) registered address and principal place of business;
 - (iii) the directors of the company, or member of a closed corporation;
 - (iv) share capital of the company; and
 - (v) beneficial owner or owners of the shares issued by such company in contravention of the provisions of the Competition Act, 1998 (Act No. 89 of 1998);
 - (j) as far as possible make use of local contractors, services, equipment purchased or hired; and
 - (k) in the case of a natural person, provide written notice to the Minister of any change of the address of such person within 30 days.
- (3) The State shall have the option, exercisable within 60 (SIXTY) days of the date of acceptance of an application for a Production Right, by written notice to the applicant, to elect to retain and transfer to a wholly owned Affiliate of the State up to a maximum of 1/10th (ONE TENTH) undivided interest in the Production Right.

Production work programme

76. (1) The production work programme shall contain the following information-
- (a) type of petroleum to be produced and the period required for production up to a maximum of thirty years (30) for the initial period;

- (b) a comprehensive feasibility study including details of the measured petroleum resource and a plan of the area under application;
 - (c) technical data detailing the production method to be used;
 - (d) details with respect to the envisaged production rate, processing, and marketing arrangements;
 - (e) a detailed forecast of capital requirements, sales revenues, operating costs and other costs presented in a cash flow format for the period required for production;
 - (f) an assessment of the reserves carried out by an independent expert(s) approved by the Petroleum Agency or the Minister; and
 - (g) an assessment of the development plan carried out by an independent expert(s) approved by the Petroleum Agency or Minister;
- (2) In the case where an old order mining right or OP26 right must be converted into a new production right, the following information must, in addition to that required in item 5 or item 7, as applicable, of Schedule II to the Act and to that required in terms of Regulations as applied to Chapter 3, be included-
- (a) a brief history of the production area and operations as well as an explanation of activities undertaken;
 - (b) a schedule of reserves and resources classified in terms of the classification rules of the Society of Petroleum Engineers as from the date of conversion;
 - (c) annualised figures for past expenditure broken down into development costs, production costs and costs pertaining to the rehabilitation and management of environmental impacts;
 - (d) copies of production reports reflecting relevant data;
 - (e) data previously compiled but not yet provided to the Petroleum Agency; and
 - (f) a statement reflecting rehabilitation work completed and the rehabilitation work uncompleted.

Application for the renewal of a production right

77. (1) An application for the renewal of a production right in terms of section 85(1) of the Act must be completed on Form N as set out in Annexure 1 of the Regulations and must contain-
- (a) full particulars of the applicant;
 - (b) a plan indicating the co-ordinates and boundaries of the renewal area applied for referenced to the WGS84, Hartebeesthoek 94 datum;
 - (c) the type of petroleum for which the renewal of the production right is required;
 - (d) the period for which the renewal is required;
 - (e) reasons why a renewal is required;
 - (f) a detailed report reflecting the production results, the interpretation thereof and the production expenditure incurred;
 - (g) a report reflecting the extent of compliance with the requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof;
 - (h) a detailed production work programme for the renewal period;
 - (i) a revised social plan for the renewal period; and
 - (j) any other information or documentation the Petroleum Agency or the Minister may require in connection with information required under paragraphs (a) to (i).

Information, data and statistical returns in respect of production of petroleum

78. (1) The holder of a production right must submit statistical returns to the Petroleum Agency monthly, regarding information and data in respect of production of petroleum which include the following-
- (a) description of all work, improvements and rehabilitation undertaken;
 - (b) accurate returns of all production; and
 - (c) accurate monthly returns of the sales and exports of petroleum transacted by the holder of the production right; and
 - (d) a rolling 12-month projection of petroleum production.
- (2) The returns must reach the Petroleum Agency not later than 21 days after month end and must be written in such form as may be required by the Petroleum Agency or the Minister.

- (3) The holder of a production right shall furnish the Petroleum Agency annually and in such form as may be required in terms of the production right be prescribed by him or her with returns regarding matters pertaining to employees, salaries and wages.
- (4) Such holder shall also provide the Minister or the Petroleum Agency at its request with such other returns and data as may be reasonably required. Each such return and other data shall be furnished on or before a date to be determined by the Petroleum Agency and specified on the prescribed forms or otherwise notified in writing.

PART II: SOCIAL AND LABOUR PLAN

79. Submission of a Social and Labour Plan and its applicability

- (1) Any application for a production right in terms of this Act shall be accompanied by a social and labour plan. The Minister may refer the said social and labour plan back to the applicant with proposals and the revised social and labour plan must then be lodged.
- (2) The social and labour plan shall apply –
 - (a) to all applications for a production right;
 - (b) to all applications for the conversion of an old order right in terms of the Minerals Act, 1991, (Act No. 50 of 1991) to a production right;
 - (c) throughout the life of such operation referred to in (a) or (b);
 - (d) in the event of possible large-scale retrenchments at operations referred to in (a) and (b) and when such retrenchments may impact on the sector or regional or national interest.

Objectives of Social and Labour Plan

80. (1) The objects of a social and labour plan are to-
 - (a) consider the development of the production operation in the context of generally recognized standards of sustainable development by integrating social, economic and environmental factors in planning the operations throughout the life of the operation;
 - (b) endeavour to avoid job losses and a decline in employment by promoting alternative solutions to threatening job security and potential measures to prevent a decline in employment;
 - (c) endeavour to ameliorate the social and economic impact on individuals, regions and the economy in cases where job losses remain unavoidable after exploring alternative solutions and measures;
 - (d) endeavour to avoid the unnecessary establishment of settlements which cannot be sustained after the closure of the operation;
 - (e) put a social and labour plan strategy in place;
 - (f) put a human resource development strategy in place;
 - (g) include monitoring, contingency and reporting mechanisms; and
 - (h) endeavour to reach its conclusion once all the obligations in terms of the social and labour plan have been met.

Contents of Social and Labour Plan

81. (1) The social and labour plan proposal must be submitted in the following format, but is not limited thereto-
 - (a) a preamble, describing the background to the production operation, in terms of its location, commodity to be mined, scale of operations and size of workforce;
 - (b) a description of the local economic background of the area in which the operation will be or is situated, the areas from which labour will mainly be sourced, the key economic activities of the area, and the socio-economic impact of the operation in the area;
 - (c) a summary of the objectives of the social and labour plan and how it will be achieved;
 - (d) the social and labour plan strategy of the production operation;
 - (e) the human resource development strategy of the production operation;
 - (f) the implementation process, which must include the establishment of a forum, and the action plans, timeframes and other relevant information during the construction, operational, decommissioning, closure and post-closure phase of the production operation with respect to the social and labour plan objectives;

- (g) monitoring, contingency mechanisms and reporting mechanisms;
- (h) any additional information which may be requested by the Minister; and
- (i) an undertaking by the applicant to adhere to the requirements and conditions set out in the social and labour plan.

Social and Labour Plan forum

82. (1) A social and labour plan future forum comprising the holder of a production right, the employees and the relevant local authority, each of which shall be represented by a maximum of five (5) persons, will be established to ensure that the objectives of the social and labour plan is achieved.
- (2) The purpose of the forum is-
- (a) to implement the social and labour plan; and
 - (b) to monitor the compliance and the appropriateness of the social and labour plan.

PART III: ENVIRONMENTAL REGULATION

Environmental reports to be compiled for the application of a production right

83. (1) An applicant who has applied for a production right in terms of section 83 of the Act must conduct an environmental impact assessment and submit a draft environmental management programme to the Petroleum Agency within 180 days of the date of notification by the Agency.
- (2) An environmental impact assessment as contemplated in section 39(1) of the Act, includes the compilation of-
- (d) a scoping report; and
 - (e) an environmental impact assessment report.

Scoping Report

84. (1) A scoping report must identify the impacts and reasonable alternatives to be addressed in the environmental impact assessment report. The result of the scoping process must determine the nature and extent of investigations to be undertaken in the environmental impact assessment report.
- (2) A scoping report must -
- (a) describe the methodology, including the stakeholder engagement process, of the scoping process;
 - (b) describe the existing status of the environment prior to mining;
 - (f) identify and describe the anticipated environmental, social and cultural impacts, including the cumulative effects of the proposed operation;
 - (d) identify and describe reasonable alternatives to the project and alternative means of carrying out the project;
 - (e) propose the most appropriate approach and procedure to plan and develop the proposed mining project;
 - (f) describe the views and concerns of relevant authorities and interested and affected persons and the participation process followed; and
 - (g) describe the nature and extent of further investigations required in the environmental impact assessment report.
- (4) If the scoping report indicates that the proposed mining operation will result in unacceptable pollution, ecological degradation or damage to the environment, the Minister must refuse the application.
- (4) If the scoping report indicates that the proposed mining operation will not result in unacceptable pollution, ecological degradation or damage to the environment, the Petroleum Agency must request the applicant to submit -
- (a) an environmental impact assessment report based on the outcome of the scoping report; and
 - (b) a draft environmental management programme based on the environmental impact assessment report.

Environmental Impact Assessment Report

85. (1) An environmental impact assessment report must determine the nature, extent, duration, probability and significance of the environmental, social and cultural impacts of the proposed mining operation, the reasonable alternatives and the potential mitigation measures for each impact during each of the life of the proposed operation.
- (2) An environmental impact assessment report must as a minimum ensure the following-
- (a) investigation of the environment likely to be significantly affected by the proposed production operation and alternatives thereto;
 - (b) investigation of the potential impact, including cumulative impacts, of the proposed operation and its alternatives on the environment, socio-economic conditions and cultural heritage;
 - (c) an assessment of the nature, extent, duration, probability and significance of the potential environmental, social and cultural impacts of the proposed operation, including the cumulative impacts;
 - (d) a comparative assessment of the feasible alternatives and their potential environmental, social and cultural impacts;
 - (e) investigate and describe mitigatory measures for each significant impact of the proposed activity and the preferred alternative to keep adverse impacts to a minimum;
 - (f) description of the stakeholder engagement process followed during the course of the assessment and an indication of how issues raised have been addressed;
 - (g) reporting on knowledge gaps, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information; and
 - (h) description of the arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation; and
 - (i) inclusion of technical and supporting information as appendices.

Investigation of cumulative impacts

86. (1) In the environmental impact assessment report, the applicant must determine whether specific resources and ecological components are cumulatively affected by the proposed mining operation by considering-
- (a) whether the proposed operation is one of several projects or activities in the same geographic area;
 - (b) whether other projects or activities in the area have similar impacts on the specific resource and ecological components;
 - (c) whether these impacts have been historically significant for this resources and ecological components; and
 - (d) whether other investigations in the area have identified a cumulative impact concern.
- (2) To avoid extending data and analytical requirements beyond those relevant for decision-making, the selection of geographic boundaries and time period should be, whenever possible, be based on the natural boundaries of the resources of concern and the period of time that the proposed project's impacts will persist.

Contents of Environmental Management Programme

87. (1) An environmental management programme must describe the environmental objectives and specific goals for the proposed operation, the appropriate management options for the ongoing management and monitoring of the impacts of the activity, until closure.
- (2) A draft environmental management programme must provide -
- (b) a description of the environmental objectives and specific goals for-
 - (i) closure of the production operation;
 - (ii) the management of identified environmental impacts emanating from the proposed operation;
 - (iii) the socio-economic conditions; and
 - (iv) the historical and cultural aspects (if applicable);

- (b) an outline of the implementation programme which must include –
 - (i) a description of the chosen appropriate technical and management options for each environmental impact, socio-economic condition and historical and cultural aspects of the preferred alternative under each phase of the mining operation;
 - (ii) a layout of action plans to achieve the objectives and specific goals also indicating a time schedule of actions undertaken within the action plans to implement mitigatory measures and options for prevention, management and remediation;
 - (iii) maintenance and emergency procedures or further remediation;
 - (iv) contingency measures;
 - (v) requirements for monitoring and environmental management programme performance assessment;
 - (vi) financial provision which must include-
 - (aa) the determination of the quantum;
 - (bb) details of the method of provision and revision thereof;
 - (vii) an environmental awareness plan in accordance with guidelines published by the Department from time to time;
 - (viii) supporting information and appendices; and
 - (ix) undertaking by the applicant to comply with the provisions of the Act
- (2) If the environmental impact assessment report and the draft environmental management programme indicate that the proposed production operation will result in unacceptable pollution, ecological degradation or damage to the environment, the Minister must refuse the application.
- (3) If the environmental impact assessment report and draft environmental management programme indicate that the proposed production operation will not result in unacceptable pollution, ecological degradation or damage to the environment, the Minister must approve the application.

Independent review

- 88. (1) The Minister may appoint a person to undertake an independent review, if a reasonable assessment indicates that the environmental impact assessment report and the draft environmental management programme or environmental management plan, as the case may be, cannot be executed satisfactorily by the applicant. Such appointment and execution shall be for the cost of the applicant.
- (2) The Minister must notify the applicant and provide reasons for the need for such independent review.
- (3) The person who will undertake such an independent review must provide proof that he or she has no vested interest or involvement in the proposed prospecting or mining operation.

Environmental report to be compiled for the application of a reconnaissance permit or exploration right

- 89. (1) An applicant who has applied for a reconnaissance permit or an exploration right in terms of the Act must submit an environmental management plan to the Petroleum Agency within 180 days of the date of notification by the Agency.

Environmental Management Plan

- 90. (1) An environmental management plan must address the potential impacts of the proposed operation, address feasible mitigatory and dedicated management and monitoring options for the proposed operation.
- (2) The environmental management plan, shall be in the format provided by the Petroleum Agency and must contain-
 - (a) a description of the environment likely to be affected by the proposed operation;
 - (b) an assessment of the potential impacts of the proposed operation on the environment, socio-economic conditions and cultural heritage;
 - (c) a summary of the significance of the potential impacts, the preferred alternative methods, proposed mitigation and management measures to

- minimise adverse impacts and optimize benefits, as well as the option of not implementing the activity;
- (d) financial provision which must include-
 - (i) the determination of the quantum;
 - (ii) details of the method(s) of provision;
- (e) requirements for monitoring and performance assessment;
- (f) closure and environmental objectives;
- (g) a record of the public participation undertaken; and
- (h) an undertaking by the applicant regarding the implementation of the environmental management plan.

Method(s) for financial provision

91. (1) Financial provision for rehabilitation and remediation of environmental damage must be made by one or more of the following methods-
 - (a) approved contributions to a dedicated trust fund as provided for in section 10(1)(cH) of the Income Tax Act, 1962, (Act No. 58 of 1962) and registered with the South African Revenue Services; and / or
 - (b) a written guarantee of a bank or approved financial institution guaranteeing the amount specifically for rehabilitation and the remediation of environmental damage and the availability of funds on demand of the Department of Minerals and Energy if the proposed prospecting or mining operation should fail or become incapacitated; and/or
 - (c) financial deposits to be placed within a central fund with Government or an institution to be approved by the Minister; and/or
 - (d) any other methodology of financial provision to be approved by the Minister from time to time.
- (2) The holder of a reconnaissance permit, exploration right or production right over any offshore area shall obtain and maintain for and in relation to Operations, insurances to indemnify the Agency, the State as set out in the permit and or right.

Standard forms for financial provision

92. The standard form for the-
 - (a) trust fund must be in the format set out in Form NN, Annexure 1;
 - (b) written guarantee must be in the format set out in Form OO, Annexure 1; and
 - (c) financial deposits must be in the format set out in Form PP, Annexure 1.

Quantum of financial provision

93. (1) The Minister shall request from the holder of a reconnaissance permit, an exploration or production right, as the case may be, to submit financial statements from a financial institution as proof that the holder has the financial means to execute the requirements of the environmental management programme or plan.
- (2) The quantum of the financial provision to be approved by the Minister must be based on the requirements of the environmental management programme or plan and shall include a detailed itemization of all actual costs required for-
 - (a) the rehabilitation of the surface of the area;
 - (b) the prevention and management of pollution from the atmosphere;
 - (c) the prevention and management of pollution of water and the soil;
 - (d) decommissioning and final closure of the operation;
 - (e) post closure management of residual and latent impacts; and
 - (f) the prevention of leakage of water or petroleum between subsurface formations and/or surface; and
 - (g) the removal of any facilities and wellheads, and any other equipment on the seabed or surface of the Area as appropriate which may constitute an obstruction or environmental hazard.
- (3) The holder of a reconnaissance permit, an exploration or production right must annually update and review the quantum of the financial provision -
 - (a) in consultation with a qualified person;
 - (b) as required in terms of the approved environmental management programme or environmental management plan; or
 - (c) as requested by the Minister.

- (4) Any inadequacies with regard to the financial provision must be rectified by the holder of a reconnaissance permit, an exploration or production right as-
 - (d) determined in an amendment of the environmental management programme or plan as the case may be;
 - (e) within the timeframe provided; or
 - (f) as determined by the Minister.

Monitoring and performance assessments of Environmental Management Programme or Plan

94. (1) As part of the general terms and conditions for a reconnaissance permit, an exploration or production right and in order to ensure compliance with the approved environmental management programme or plan and to assess the continued appropriateness and adequacy of the environmental management programme or plan, the holder of such permit or right must-
- (a) conduct monitoring on a continuous basis;
 - (b) conduct performance assessments of the environmental management programme or plan as required; and
 - (c) compile and submit a performance assessment report to the Petroleum Agency to demonstrate adherence to sub-regulation (b).
- (2) The frequency of performance assessment reporting shall be-
- (a) in accordance with the period specified in the approved environmental management programme or plan, or, if not so specified;
 - (b) as agreed to in writing by the Minister; or
 - (c) biennially (every two years).
- (3) The performance assessment report, shall be in the format provided in guidelines that will from time to time be published by the Department and contain-
- (a) information regarding the period that applies to the performance assessment;
 - (c) the scope of the assessment;
 - (c) the procedure used for the assessment;
 - (d) the interpreted information gained from monitoring of the approved environmental management programme or plan;
 - (e) the evaluation criteria used during the assessment;
 - (f) the results of the assessment; and
 - (g) recommendations on how and when deficiencies that are identified and/or aspects of non-compliance will be rectified.
- (4) The holder of a reconnaissance permit, an exploration or production right may appoint independent qualified person(s) to conduct the performance assessment and compile the performance assessment report provided that no such appointment shall relieve the holder of the responsibilities in terms of these regulations.
- (5) After submission of the performance assessment report, the report shall be made available by the Petroleum Agency to any person on request.
- (6) If upon consideration by the Petroleum Agency, the performance assessment executed by the holder is not satisfactory or the report submitted by the holder is found to be unacceptable, the holder must-
- (a) repeat the whole or relevant parts of the performance assessment and revise and resubmit the report; and/or
 - (b) submit relevant supporting information; and/or
 - (c) appoint an independent qualified person(s) to conduct the whole or part of the performance assessment and to compile the report.
- (7) If a reasonable assessment indicates that the performance assessment cannot be executed satisfactorily by the holder or person(s) appointed by the holder, the Minister may appoint an independent performance assessment person(s). Such appointment and execution shall be for the cost of the holder.
- (8) When the holder of a reconnaissance permit, an exploration or production right intends closing such operation, a final performance assessment shall be conducted and a report submitted to the Petroleum Agency to ensure that -
- (a) the requirements of the relevant legislation have been complied with;
 - (b) the closure objectives as described in the environmental management programme or plan have been met; and

- (c) all residual environmental impacts resulting from the holder's operations have been identified and the risks of latent impacts which may occur have been identified, quantified and arrangements for the management thereof have been assessed.
- (9) The final performance assessment and the submission of the required report shall either precede or accompany the application for a closure certificate in terms of the Act.

General requirements for closure of reconnaissance, exploration or production operations

95. (1) The holder of a reconnaissance permit, an exploration or production right must ensure that –
- (a) the closure of such operation incorporates a process which must start at the commencement of the operation and continue throughout the life of the operation and within the framework of sustainable development;
 - (b) risks to elements of the environment must be quantified and managed proactively, which includes the gathering of relevant information throughout the life of such operation;
 - (c) the safety and health of humans and animals are safeguarded from hazards resulting from such operations;
 - (d) environmental damage or residual impacts are minimised to such an extent that it is acceptable to all involved interested and affected persons;
 - (e) the land is rehabilitated to, as far as is practicable, its natural state, or to a predetermined and agreed standard or land use which conforms with the concept of sustainable development;
 - (f) the optimal exploitation and utilization of mineral resources are not adversely affected; and
 - (g) exploration and production operations are closed efficiently and cost effectively.

Application for a closure certificate

96. (1) An application for a closure certificate of a reconnaissance permit, exploration right and production right in terms of section 43(4) of the Act must be completed on the Form EE as set out in Annexure 1.
- (2) An application for a closure certificate of such permit or right must be accompanied with a closure plan.

Application to transfer environmental liabilities to a qualified person

97. (1) The holder of a reconnaissance permit, exploration right and production right may transfer liabilities and responsibilities as identified in the environmental management programme, or environmental management plan or any prescribed closure plan to a qualified person.
- (2) An application to transfer environmental liabilities and responsibilities to a qualified person in terms of section 43(2) of the Act, must be completed on Form U as set out in Annexure 1 of the Regulations and be lodged to the Minister for consideration.
- (3) When considering the transfer environmental liabilities and responsibilities in terms of section 43(2) of the Act, the Minister must consult with any State department which administers any law relating to matters affecting the environment.
- (4) No transfer of environmental liabilities to a qualified person may be made unless the Chief Inspector of Mines and the Department of Water Affairs and Forestry have confirmed in writing that the person to whom the liabilities and responsibilities is transferred to, have the necessary qualifications pertaining to health and safety and management of potential pollution of water resources.

Qualifications of person regarding transfer of environmental liabilities and responsibilities

98. (1) For the purposes of transferring environmental liabilities and responsibilities as may be identified in the environmental management programme or plan and any prescribed closure plan, the person to whom such transfer is made must –

- (a) have the expertise, resources and organisational abilities to integrate risk assessment, risk management and risk financing to ascertain the cost of environmental management;
- (b) have the expertise, financial and other resources to meet its obligations to carry out actions necessary to fulfil the environmental obligations as set out in the environmental management programme, environmental management plan or any prescribed closure plan concerned;
- (c) have appropriate experience in environmental management specific to exploration and production operations, health and safety and management of water pollution;
- (d) have direct access to insurance products and alternative risk financing services appropriate to financing of exposure to risks;
- (e) have the ability to manage trusts set up in terms of section 10(1)(cH) of the Income Tax Act, 1962 (Act No 58 of 1962); and
- (f) have expertise and experience or access thereto to interpret and manage the findings of an environmental risk assessment.

Environmental Risk Report

99. (1) An application for a closure certificate in terms of section 43(3) of the Act must be accompanied by an environmental risk report which must include-
- (a) the undertaking of a screening level environmental risk assessment where-
 - (i) all possible environmental risks are identified, including those which appear to be insignificant;
 - (ii) the process is based on the input from existing data;
 - (iii) the issues that are considered are qualitatively ranked as -
 - (aa) a potential significant risk; and/or
 - (bb) a uncertain risk; and/or
 - (cc) an insignificant risk.
 - (b) the undertaking of a second level risk assessment on issues classified as potential significant risks where-
 - (i) appropriate sampling, data collection and monitoring be carried out;
 - (ii) more realistic assumptions and actual measurements be made; and
 - (iii) a more quantitative risk assessment is undertaken, again classifying issues as posing a potential significant risk or insignificant risk.
 - (c) assessing whether issues classified as posing potential significant risks are acceptable without further mitigation;
 - (d) issues classified as uncertain risks be re-evaluated and re-classified as either posing potential significant risks or insignificant risks;
 - (e) documenting the status of insignificant risks and agree with interested and affected persons;
 - (f) identifying alternative risk prevention or management strategies for potential significant risks which have been identified, quantified and qualified in the second level risk assessment;
 - (g) agreeing on management measures to be implemented for the potential significant risks which must include-
 - (i) a description of the management measures to be applied;
 - (ii) a predicted long-term result of the applied management measures;
 - (iii) the residual and latent impact after successful implementation of the management measures;
 - (iv) time frames and schedule for the implementation of the management measures;
 - (v) responsibilities for implementation and long-term maintenance of the management measures;
 - (vi) financial provision for long-term maintenance; and
 - (v) monitoring programmes to be implemented.

Closure objectives

100. (1) Closure objectives form part of the draft environmental management programme or environmental management plan, as the case may be, and must -
- (a) identify the key objectives for closure of the operation to guide the project design, development and management of environmental impacts;
 - (b) provide broad future land use objective(s) for the site; and
 - (c) provide proposed closure costs.

Contents of Closure plan

101. (1) A closure plan forms part of the environmental management programme or environmental management plan, as the case may be, and must include –
- (a) a description of the closure objectives and how these relate to the reconnaissance, exploration or production operation and its environmental and social setting;
 - (b) a summary of the regulatory requirements and conditions for closure negotiated and documented in the environmental management programme or plan;
 - (c) a summary of the results of the environmental risk assessment and details of identified residual and latent impacts;
 - (d) a summary of the results of progressive rehabilitation undertaken;
 - (e) a description of the methods to decommission each exploration or production component and the mitigation or management strategy proposed to avoid, minimize and manage residual or latent impacts;
 - (f) details of any long-term management and maintenance expected;
 - (g) details of financial provision for monitoring, maintenance and post closure management, if required;
 - (h) a plan or sketch at an appropriate scale describing the final land use proposal and arrangements for the site;
 - (i) record of interested and affected persons consulted; and
 - (j) technical appendices, if any.

PART IV : POLLUTION CONTROL AND WASTE MANAGEMENT REGULATION***Principles of pollution control and waste management***

102. (1) In accordance with the national norms and standards for pollution control and waste management, the holder of a reconnaissance permit, exploration right or production right must –
- (a) avoid the generation and production of pollution, waste and mine residue at source; or
 - (b) where the production thereof cannot altogether be avoided, be minimized and re-used or recycled; and
 - (c) where possible and otherwise disposed of in a responsible and prescribed manner.

Air quality control

103. (1) The holder of any right or permit in terms of the Act, must comply with national air quality control or management norms and standards where applicable.
- (2) The assessment of impacts relating to air quality control and management, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan, as the case may be.
- (3) The holder of an exploration right or production right shall not without the prior written approval of the Petroleum Agency flare any petroleum.

Fire prevention

104. (1) The holder of a reconnaissance permit, an exploration right or production right shall conduct its operations in accordance with good international oil-field practice so as to minimise the risks of fire, explosion and/or uncontrolled escape of petroleum.

Noise control

105. (1) The holder of a right or permit in terms of the Act must comply with national norms and standards regarding noise control where applicable.
- (2) The assessment of impacts relating to noise pollution control and management, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan as the case may be.

- (3) When the equivalent noise exposure, as defined in the South African Bureau of Standards Code of Practice for the Measurement and Assessment of Occupational Noise for Hearing Conservation Purposes, SABS 083 as amended, [in any at or in any operation or works where persons may travel or work, exceeds 85 dB (A)] exceeds the background plus seven (7) dB (A) decibels beyond the operation boundary or at the residential community or where non employees may travel, the holder shall take the necessary steps to reduce the noise to below this level.
- (4) Where compliance with sub-regulation (1) is not possible, the holder shall implement a hearing conservation programme, which complies with the recommendations given in the said SABS Code 083.
- (5) All mechanical equipment must be in a good working order and vehicles must adhere to the relevant noise requirements in terms of the Road Traffic Act, 1997, (Act No. 93 of 1997).
- (6) All vehicles in operation must be in good working order and equipped with a silencer on their exhaust system.
- (7) Where appropriate, lubricants must be applied to ensure that surfaces which interact during mechanical movement do not generate undesirable noise levels.
- (8) Safety measures which generate noise such as reverse gear alarms on large vehicles must be appropriately calibrated or adjusted.
- (9) Appropriate non-metallic washers or isolation must be used with any joining apparatus to join screens such as corrugated iron to other structures and to each other. Such screens must be maintained in a fixed position.
- (10) Appropriate measures must be installed and or employed at the crushing operations or plant to act as screen and to reflect or reduce the noise level.
- (11) Noise levels must be recorded on a regular basis at identified receptor sites which will include the residences of immediate neighbours and the borders of the mining area.

Blasting, vibration and shock

106. (1) In accordance with the provisions of the Mine Health and Safety Act, 1996, (Act No. 29 of 1996) blasting operations at reconnaissance, exploration and production operations must be so designed and executed that the minimum shock, noise and vibration are generated.
- (2) An assessment of impacts relating to blasting, vibration and shock control and management, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan, as the case may be.

Water management and pollution control

107. (1) The Regulations promulgated in the *Government Notice* No. 704 of 4 June 1999, in terms of the National Water Act, 1998, (Act No. 36 of 1998) shall apply to the water management and pollution control at all proposed or existing reconnaissance, exploration or production operations.
- (2) An assessment of impacts relating to water management and pollution control at proposed reconnaissance, exploration or production operations, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan, as the case may be.
- (3) The holder of an offshore reconnaissance permit, exploration or a production right must ensure that produced water from an offshore installation-
 - (a) is not diluted with sea-water or any other water prior to measurement of the hydrocarbon content.
 - (b) does not exceed 50 ppm by volume total hydrocarbons (i.e. both aliphatic and aromatic components) on a monthly average.

- (c) does not exceed 100 ppm by volume as a daily maximum.
- (4) The environmental management programme for the installation must include a process of continuous improvement in reducing the oil content of produced water.
- (5) For installations within 25 kilometres of shore or where the risk of pollution of sensitive environments is greater, the Minister may require that the permissible concentration of hydrocarbons in produced water be further reduced.
- (6) The holder of an exploration right or a production right must ensure that in the event of the above limits being exceeded, a report is promptly submitted to Petroleum Agency, Department of Environmental Affairs and Tourism, and South African Maritime Safety Association, providing details and stating what remedial action is being taken.

Disposal of waste material

108. (1) The holder of any right or permit in terms of the Act, must comply with national norms and standards regarding the disposal of waste material, where applicable.
- (2) The assessment of impacts relating to the disposal of waste material, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan.
- (2) Waste material from exploration and production operations shall be disposed of in accordance with the approved environmental management programme or environmental management plan and on an approved demarcated site.
- (3) No dumping or impounding of rubble, litter, garbage, rubbish or discards of any description, whether solid or liquid, shall take place elsewhere than at the site or sites demarcated for the purpose in accordance with the approved environmental management programme or environmental management plan.
- (4) No sand dump or slimes dam shall be established on the bank of any stream, river, dam, pan or lake without written permission of the Minister and upon such conditions as he/she may prescribe or if and as approved in the environmental management programme or environmental management plan.
- (5) No oil-based mud shall be used in exploration or production operations or disposed of without the prior written approval of the Petroleum Agency. Such approval shall only be granted after a full evaluation of the environmental assessment and handling methods are proposed.

Soil pollution and erosion control

109. (1) The holder of a right or permit in terms of the Act, must comply with national norms and standards regarding the management and control of soil pollution and erosion, where applicable.
- (2) The assessment of impacts relating to soil pollution and erosion control, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan.
- (3) Except for the areas concerned in the approved areas for the deposition of waste, all adverse chemical contamination of soils must be minimised to levels, as approved in the environmental management programme or the environmental management plan.
- (4) The spillage of hazardous chemicals onto soils or its escape or migration into surrounding soils from the approved deposition area, must be prevented.
- (5) Oils, grease and hydraulic fluids must be disposed of in a waste disposal receptacle for collection or treatment or at a licensed facility or in accordance with a method approved in the environmental management programme or environmental management plan.

- (6) Oils, grease and hydraulic fluid spills which occur must be cleaned up by removing all contaminated soil and disposing thereof in a waste disposal receptacle or at a licensed facility.
- (7) The acidification, salination and mineralisation of soils through seepage of polluted water or irrigation of land must not take place without the permission of the Minister of Water Affairs and Forestry or as approved in the environmental management programme or environmental management plan.
- (8) The chemical and physical properties of top soil to be used for the purposes of rehabilitation, must not be changed by introducing foreign material, gravel, rock, rubble or mine residue.

Sanitation of surface

110. (1) Toilet facilities shall be located in such a manner that no water or other pollution is caused.
- (2) No person shall pollute the workings with faeces or urine or misuse the facilities provided or inappropriately foul the surrounding environment with faeces or urine. Acceptable hygienic and aesthetic practices must be adhered to.

Management of residue stockpiles and deposits

111. (1) The assessment of impacts relating to the management of residue stockpiles and deposits, where appropriate, must form part of the environmental impact assessment report and environmental management programme or the environmental management plan.
- (2) *Residue characterisation*
- (a) Exploration or production residue must be characterised to identify any potentially significant health, safety and environmental impact that may be associated with the residue when stockpiled or deposited at the site(s) under consideration.
 - (b) Residue stockpiles and/or deposits must be characterised in terms of its –
 - (i) physical characteristics, which may include –
 - (aa) the size distribution of the principal constituents;
 - (bb) the permeability of the compacted material;
 - (cc) void ratios of the compacted material;
 - (dd) the consolidation or settling characteristics of the material under its own weight and that of any overburden;
 - (ee) the strength of compacted material;
 - (ff) the specific gravity of the solid constituents; and
 - (gg) the water content of the material at the time of deposition, after compaction, and at other phases in the life of the deposit.
 - (ii) chemical characteristics, which may include –
 - (aa) the toxicity;
 - (bb) the propensity to oxidize and /or decompose;
 - (cc) the propensity to undergo spontaneous combustion;
 - (dd) the pH and chemical composition of the water separated from the solids;
 - (ee) stability and reactivity and the rate thereof; and
 - (ff) neutralising potential.
 - (iii) mineral content, which include the specific gravity of the residue particles and its impact on particle segregation and consolidation;
- (3) *Classification of residue stockpiles and deposits*
- (a) All residue stockpiles and deposits must be classified into one or a combination of the following categories –
 - (i) the safety classification to differentiate between residue stockpiles and deposits of high, medium and low hazard on the basis of their potential to cause harm to life or property; and
 - (ii) the environmental classification to differentiate between residue stockpiles and deposits with –
 - (aa) a potentially significant impact on the environment due to its spatial extent, duration and intensity of potential impacts; or
 - (bb) no potentially significant impact on the environment.

- (b) All exploration and production residue stockpiles and deposits must be classified by a suitably qualified person(s).
- (c) The classification of residue stockpiles and deposits shall determine the –
 - (i) level of investigation and assessment required;
 - (ii) requirements for design, construction, operation, decommissioning, closure and post closure maintenance; and
 - (iii) qualifications and expertise required of persons undertaking the investigations, assessments, design, construction thereof.
- (d) The safety classification of residue stockpiles and deposits shall be based on the following criteria –

| Number of residents in zone of influence | Number of workers in zone of influence | Value of third party property in zone of influence | Depth to underground mine workings | Classification |
|--|--|--|------------------------------------|----------------|
| 0 | < 10 | 0 – R2 m | > 200m | Low hazard |
| 1 – 10 | 11 – 100 | R 2 m – R20 m | 50 m – 200 m | Medium hazard |
| > 10 | > 100 | > R20 m | < 50 m | High hazard |

- (e) A risk analysis must be carried out and documented on all high hazard residue stockpiles and deposits.
- (f) The environmental classification of residue stockpiles and deposits must be undertaken on the basis of –
 - (i) the characteristics of the residue;
 - (ii) the location and dimensions of the deposit (height, surface area);
 - (iii) the importance and vulnerability of the environmental components that are at risk; and
 - (iv) the spatial extent, duration and intensity of potential impacts.
- (g) An assessment of the environmental impacts shall be done on all environmental components which are significantly affected.
- (h) The assessment of impacts and analyses of risks shall form part of the environmental impact assessment and environmental management programme or plan.

(4) *Site selection and investigation:*

- (a) The process of investigation and selection of a site must entail –
 - (i) the identification of a sufficient number of possible candidate sites to ensure adequate consideration of alternative sites;
 - (ii) qualitative evaluation and ranking of all alternative sites;
 - (iii) qualitative investigation of the top ranking sites to review the ranking done in (ii);
 - (iv) a feasibility study to be carried out on the highest ranking site(s), involving –
 - (aa) a preliminary safety classification;
 - (bb) an environmental classification;
 - (cc) geotechnical investigations; and
 - (dd) groundwater investigations.
- (b) The geotechnical investigations may include-
 - (i) the characterization of the soil profile over the entire area to be covered by the residue facility and associated infrastructure to define the spatial extent and depth of the different soil horizons;
 - (ii) the characterization of the relevant engineering properties of foundations soils and the assessment of strength and drainage characteristics.
- (c) The groundwater investigations may include-
 - (i) the potential rate of seepage from the residue facility;
 - (ii) the quality of such seepage;
 - (iii) the geohydrological properties of the strata within the zone that could potentially be affected by the quality of seepage;
 - (iv) the vulnerability and existing potential use of the groundwater resource within the zone that could potentially be affected by the residue facility.
- (d) From these investigations, a preferred site must be identified.
- (e) Further investigation on the preferred site, shall include –
 - (i) land use;
 - (ii) topography and surface drainage;
 - (iii) infrastructure and man-made features;

- (iv) climate;
 - (v) flora and fauna;
 - (vi) soils;
 - (vii) ground water morphology, flow, quality and usage; and
 - (viii) surface water.
- (f) The investigations, laboratory test work, interpretation of data and recommendations for the identification and selection of the most appropriate and suitable site for the disposal of all residue that have the potential to generate leachate that could have a significant impact on the environment and groundwater must be carried out by a suitably qualified person.
- (5) *Design of residue stockpile and deposit*
- (a) The design of the residue stockpile and deposit shall be undertaken by a suitably qualified person.
 - (b) An assessment of the typical soil profile on the site is required for residue stockpiles and deposits which -
 - (i) have a low hazard potential; and
 - (ii) have no significant impact on the environment.
 - (c) The design of the residue stockpile and deposit must take into account all phases of the life cycle of the stockpile and deposit, from construction through to closure and must include -
 - (i) the characteristics of the mine residue;
 - (ii) the characteristics of the site and the receiving environment;
 - (iii) the general layout of the stockpile or deposit, whether it is a natural valley, ring dyke, impoundment or a combination thereof and its 3-dimensional geometry at appropriate intervals throughout the planned incremental growth of the stockpile or deposit;
 - (iv) the type of deposition method used; and
 - (v) the rate of rise of the stockpile or deposit.
 - (d) Other design considerations, as appropriate to the particular type of stockpile and deposit must be incorporated -
 - (i) the control of storm water on and around the residue stockpile or deposit by making provision for the maximum precipitation to be expected over a period of 24 hours with a frequency of once in a 100 years, in accordance with the regulations made under section 8 of the National Water Act, 1998;
 - (ii) the provision, throughout the system, of a freeboard of at least 0.5 m above the expected maximum water level, in accordance with regulations made under the National Water Act, 1998, to prevent overtopping;
 - (iii) keeping the pool away from the walls; where there are valid technical reasons for deviating from this, adequate motivation must be provided and the design must be reviewed by a qualified person as required in terms of sections 9(6) or 9(7) of the Mine Health and Safety Act, 1996;
 - (iv) the control of decanting of excess water under normal and storm conditions;
 - (aa) the retention of polluted water in terms of polluted water in terms of GN R991(9), where measures may be required to prevent water from the residue deposit from leaving the residue management system unless it meets prescribed requirements;
 - (bb) the design of the penstock, outfall pipe, under-drainage system and return water dams;
 - (cc) the height of the phreatic surface, slope angles and method of construction of the outer walls and their effects on shear stability;
 - (dd) the erosion of slopes by wind and water, and its control by vegetation, berms or catchment paddocks; and
 - (ee) the potential for pollution.
 - (e) A design report and operating manual shall be drawn up for all residue stockpiles and deposits which -
 - (i) have a medium to high hazard; and
 - (ii) have a potentially significant impact on the environment.
 - (f) Relevant information must be included in the draft environmental management programme or environmental management plan.

(6) *Construction and operation of residue deposits:*

- (a) The holder of any right or permit in terms of the Act, must ensure that-
 - (i) the residue deposits, including any surrounding catchment paddocks, is constructed and operated in accordance with the approved environmental management programme or environmental management plan;
 - (ii) the design of the residue deposit is followed implicitly throughout the construction thereof, and that any deviations from the design be approved by the Regional Manager and the environmental management programme and environmental management plan be amended accordingly;
 - (iii) as part of the monitoring system, measurements of all residues transported to the site and of all surplus water removed from the site are recorded;
 - (iv) the provision for appropriate security measures be implemented to limit unauthorised access to the site and intrusion into the residue deposit;
 - (v) specific action be taken in respect of any sign of pollution;
 - (vi) adequate measures be implemented to control dust pollution and erosion of the slopes; and
 - (vii) details of rehabilitation of the residue deposit be provided in the draft environmental management programme or environmental management plan.
- (b) A system of routine maintenance and repair in respect of the residue deposit must be implemented to ensure the ongoing control of pollution, the integrity of rehabilitation and health and safety matters at the site.

(7) *Monitoring of residue stockpiles and deposits:*

- (a) A monitoring system for residue stockpiles and deposits with respect to potentially significant impacts as identified in the environmental assessment must be included in the environmental management programme or environmental management plan.
- (b) In the design of a monitoring system for a residue stockpile or deposit, consideration must be given to -
 - (i) baseline and background conditions with regard to air, surface and groundwater quality;
 - (ii) the air, surface and groundwater quality objectives;
 - (iii) residue characteristics;
 - (iv) the degree and nature of residue containment;
 - (v) the receiving environment and specifically the climatic, local geological, hydrogeological and geochemical conditions;
 - (vi) potential migration pathways;
 - (vii) potential impacts of leachate;
 - (viii) the location of monitoring points and the prescribed monitoring protocols; and
 - (ix) the reporting frequency and procedures.

(8) *Decommissioning, closure and after care:*

- (a) The decommissioning, closure and post closure management of residue deposits must be addressed in the closure plan, which must contain the following -
 - (i) the environmental classification, including assumptions on which the classification were based;
 - (ii) the closure objectives, final land use or capability;
 - (iii) conceptual description and details for closure and post closure management;
 - (iv) cost estimates and financial provision for closure and post-closure management; and
 - (v) residual impacts, monitoring and requirements to obtain closure in terms of the Act.

CHAPTER 4**APPEALS*****Appeal against administrative action by Regional Manager, the Petroleum Agency or an officer***

112. (1) Any person, hereinafter referred to as the appellant, who appeals under section 96(1)(a) of the Act against an administrative action of a Regional Manager, the Petroleum Agency or an officer, hereinafter referred to as the Respondent, must within 30 days after he or she has become aware of such administrative action, lodge a written notice of appeal with the Director-General.
- (2) The notice of appeal shall state clearly-
- the actions appealed against; and
 - the grounds on which the appellant rely.
- (3) When lodging the notice of appeal, the appellant shall at the same time deposit with the Director-General the fee prescribed.
- (4) The Director-General may in his or her discretion and on such terms and conditions as he or she may decide, condone the late noting of an appeal.
- (5) After receipt of the notice of appeal, the Director-General must dispatch copies thereof to -
- the respondent; and
 - any other person, hereinafter referred to as the affected party, whose rights may, in the opinion of the Director-General, be affected by the outcome of the appeal
- and request the persons contemplated in paragraphs (a) and (b) to respond as provided for in sub-regulations (6) and (7).
- (6) The respondent must, within 21 days from receipt of the notice of appeal, submit to the Director-General written reasons for the administrative action appealed against.
- (7) The affected party must within 21 days from receipt of the notice of appeal, submit to the Director-General a replying submission indicating -
- the extent and nature of his or her rights;
 - how the outcome of the appeal may affect his or her rights; and
 - any other information pertaining to the grounds as set out in the notice of the appeal.
- (8) The Director-General must dispatch the documents referred to in sub-regulations (6) and (7) to the appellant by registered post and request him or her to reply in writing within 21 days from receipt thereof.
- (9) The Director-General must, within 30 days from the date contemplated in sub-regulation (8), either -
- confirm;
 - set aside;
 - amend the administrative action of the respondent; or
 - substitute any other administrative action for the administrative action of the respondent.

Appeal against administrative action by Director-General or Petroleum Agency

113. (1) Any person, hereinafter referred to as the appellant, who appeals under section 96(1)(a) of the Act against an administrative action of a Director-General or the designated agency, hereinafter referred to as the Respondent, must within 30 days after he or she has become aware of such administrative action, lodge a written notice of appeal with the Minister.
- (2) The notice of appeal shall state clearly-
- the actions appealed against; and
 - the grounds on which the appellant rely.

- (3) When lodging the notice of appeal, the appellant shall at the same time deposit with the Director-General the sum of R200.
- (4) The Minister may in his or her discretion and on such terms and conditions as he or she may decide, condone the late noting of an appeal.
- (5) After receipt of the notice of appeal, the Minister must dispatch copies thereof to –
 - (a) the respondent; and
 - (b) any other person, hereinafter referred to as the affected party, whose rights may, in the opinion of the Minister, may be affected by the outcome of the appeal
 and request the persons contemplated in paragraphs (a) and (b) to respond as provided for in sub-regulations (6) and (7).
- (6) The respondent must, within 21 days from receipt of the notice of appeal, submit to the Minister written reasons for the administrative action appealed against.
- (7) The affected party must within 21 days from receipt of the notice of appeal, submit to the Minister a replying submission indicating –
 - (a) the extent and nature of his or her rights;
 - (b) how the outcome of the appeal may affect his or her rights; and
 - (c) any other information pertaining to the grounds as set out in the notice of the appeal.
- (8) The Minister must dispatch the documents referred to in sub-regulations (6) and (7) to the appellant by registered post and request him or her to reply in writing within 21 days from receipt thereof.
- (9) The Minister must, within 30 days from the date contemplated in sub-regulation (8), either –
 - (a) confirm;
 - (b) set aside;
 - (c) amend the administrative action of the respondent; or
 - (d) substitute any other administrative action for the administrative action of the respondent.

CHAPTER 5

GENERAL AND MISCELLANEOUS REGULATIONS

Refusal of prospecting right, mining right, mining permit, retention permit, reconnaissance permit, technical co-operation permit, exploration right, production right

114. Refusal of a prospecting right, mining right, mining permit or retention permit, reconnaissance permit, technical co-operation permit, exploration right, production right, must be completed on Form R, Annexure 1.

Permission to remove bulk samples of minerals during prospecting or exploration

115. Permission to dispose of or remove bulk samples of minerals or petroleum during prospecting or exploration must be completed on Form S, Annexure 1.

Notice for the suspension or cancellation of a prospecting right, mining right, mining permit or retention permit, reconnaissance permit, technical co-operation permit, exploration right or production right

116. Notice for the suspension or cancellation of a prospecting right, mining right, mining permit or retention permit, reconnaissance permit, technical co-operation permit, exploration right, production right, must be completed on Form V, Annexure 1.

Withdrawal of the suspension notice

117. Notice of the withdrawal of the suspension notice must be completed as per Form W, Annexure 1.

Notice to prohibit or restrict the granting of a prospecting right, mining right, reconnaissance permit, exploration right or production right

118. Notice to prohibit or restrict the granting of a prospecting right or mining right as contemplated in section 49 of the Act, must be completed on Form X, Annexure 1.

Notice of profitability and curtailment of mining or production operations affecting employment

119. Notice of profitability and curtailment of mining operations affecting employment must be completed as per Form Y, Annexure 1.

Notification to Regional Manager / Petroleum Agency if holder is prevented from commencing with operations

120. The holder of a prospecting right, mining right or mining permit, reconnaissance permit, technical co-operation permit, exploration right, production right, must notify the Regional Manager or Petroleum Agency if he or she is prevented from commencing with operations as per Form Z, Annexure 1.

Notice to land owner or lawful occupier of land if holder is prevented from commencing with operations

121. Notice given by the Regional Manager or Petroleum Agency to the land owner or lawful occupier of land, if holder is prevented from commencing with operations, must be completed as per Form AA, Annexure 1.

Notice of expropriation of property

122. Notice of the expropriation of property for the purpose of prospecting, mining, reconnaissance, exploration or production, must be completed on Form BB, Annexure 1.

Certificate to authorise person to enter prospecting area, mining area, retention, reconnaissance, exploration or production area

123. The certificate as per Form DD, Annexure 1, to authorise person to enter prospecting area, mining area, retention, reconnaissance, exploration or production area.

Notice by authorised person if holder contravenes provisions of Act

124. Notice given to the holder of a prospecting right, mining right, mining permit, reconnaissance permit, exploration right or production right, by an authorised person as contemplated in section 93(1) of the Act, must be completed on Form CC, Annexure 1.

Balance Sheet: Liquidator's report

125. The holder of a permit or right shall also file with the Director-General immediately on publication a copy of each annual report, including the balance sheet and profit and loss account, issued by the directors of such concern, and also a copy of the liquidator's report on liquidation.

CHAPTER 6

TRANSITIONAL ARRANGEMENTS

Lodgement for the conversion of an old order prospecting right in terms of the Minerals Act, 1991, (Act No. 50 of 1991) to one in terms of the Mineral and Petroleum Resources Development Act, 2002, (Act No. 28 of 2002)

126. An application for the conversion of an old order prospecting right in terms of section 6(1) of Schedule II of the Act, must be completed on Form I as set out in Annexure 1.

Lodgement for the conversion of an old order mining right in terms of the Minerals Act, 1991, (Act No. 50 of 1991) to one in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)

127. The application for the conversion of an old order mining right in terms of section 7(1) of Schedule II of the Act must be in the form of Form J in Annexure 1.

ANNEXURE 1**APPLICATION FORMS FOR PERMISSIONS, RIGHTS AND PERMITS TO BE COMPLETED IN
TERMS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002****FORM A:****APPLICATION FOR A RECONNAISSANCE PERMISSION IN TERMS OF SECTION 13 OF THE
MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)****MINISTER**

I, _____ the undersigned hereby apply for a reconnaissance
permission in terms of section 13 of the Act over the following property or properties:

1. _____
2. _____
3. _____
4. _____

THE APPLICATION MUST BE ACCOMPANIED BY:

- (a) Access to financial resources.
- (b) Technical ability to conduct the said reconnaissance operation.
- (c) Reconnaissance work programme in accordance to which the reconnaissance operator will be undertaken.
- (d) Estimated expenditure regarding the reconnaissance operation's compatibility to the proposed reconnaissance operation.

APPLICANT

SIGNED AT _____ ON THE _____ OF 20____

FORM B:**APPLICATION FOR A PROSPECTING RIGHT IN TERMS OF SECTION 16 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**The Minister
.....

1. Full name of applicant

2. Identity number (in the case of a person other than a natural person the registration number, where applicable, must be furnished):
.....

3. Postal Address

Telephone Number:

4. (a) Registered name of land (farm and subdivision) on which you propose to prospect:
.....
.....

(b) Magisterial District

5. Mineral; associated minerals or group of minerals for which you propose to prospect:
.....

6. Period for which the right is required:

THE APPLICATION MUST BE ACCOMPANIED BY:**A. Details of the Area Applied for :**

- i. Provide a plan, drawn up in such a form and to such a scale as may be required by the Regional Manager, and signed and dated by the applicant showing :
 - the area applied for. The co-ordinates of the corner points are to be tabulated on the map in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
- ii. The plan should show in addition:
 - the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by proposed operations.
- iii. Provide details of any other matter relevant to the application.

B. A Detailed Prospecting Work Programme**C. Substantiate Financial and Technical Competence**

Provide details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how they will be provided for, to enable the applicant to carry out the prospecting activities and to mitigate and rehabilitate relevant environmental impacts satisfactorily.

D. Existing rights and past compliance with provisions of the Act

Provide details of existing rights and permits held by the applicant in the region where the application(s) is lodged.

Report the extent of compliance with the requirements of the approved Environmental Management Plan for any prospecting or mining right that the applicant holds or has held in South Africa and has not contravened any provisions of the Act.

G. Acknowledge that the Regional Manager is entitled to request further information before considering the prospecting right.**H. Prescribed Fee**

An amount of R....., being the prescribed non-refundable application fee, must accompany this application.

.....
SIGNATURE OF APPLICANT.....
DATE:

FORM C:**APPLICATION FOR THE RENEWAL OF A PROSPECTING RIGHT IN TERMS OF SECTION 18(1) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**

The Minister

-
1. Full name of applicant
 2. Identify number (in the case of a person other than a natural person the registration number, where applicable, must be furnished):
 3. Postal Address Telephone Number:
 - 4.(a) Registered name of land (farm and subdivision) on which you propose to continue to prospect:
 - (b) Magisterial District
 5. Mineral for which you propose to prospect:
 6. Period for which renewal is required
 7. Reasons why renewal is required

THE APPLICATION MUST BE ACCOMPANIED BY:

- A. A detailed report regarding the results and interpretation of completed prospecting activities and prospecting expenditures incurred.
- B. A report reflecting the extent of the environmental rehabilitation conducted and completed in terms of the approved environmental management plan as well as rehabilitation to be completed and the estimated costs thereof.
- C. A detailed prospecting work programme for the renewal period.
- D. An amount of R....., being the prescribed non-refundable application fee, must accompany this application.

SIGNATURE OF APPLICANT

DATE:

FORM D:**APPLICATION FOR A MINING RIGHT IN TERMS OF SECTION 22(1) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**

The Minister

1. Full name of applicant
2. Identity number (in the case of a person other than a natural person the registration number, where applicable, must be furnished):
3. Postal Address Telephone Number:
4. (a) Registered name of land (farm and subdivision) on which you propose to mine
- (b) Magisterial District
5. Mineral; associated minerals or group of minerals for which you propose to mine:
6. Period for which the right is required:

THE APPLICATION MUST BE ACCOMPANIED BY:**A. Details of the Area Applied for :**

- ii. Provide a plan, drawn up in such a form and to such a scale as may be required by the Regional Manager, and signed and dated by the applicant showing :
- the area applied for. The co-ordinates of the corner points are to be tabulated on the map in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
- iii. The plan should show in addition:
- the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by proposed operations.
- iii. Provide details of any other matter relevant to the application.

B. A Detailed Mining Work Programme**C. Substantiate Financial and Technical Competence**

Provide details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how they will be provided for, to enable the applicant to carry out the mining activities and to mitigate and rehabilitate relevant environmental impacts satisfactorily.

D. Existing rights and past compliance with provisions of the Act

Provide details of existing rights held by the applicant in the region where the applications is lodged. Report the extent of compliance with the requirements of the approved Environmental Management Programme or Plan for any prospecting or mining right that the applicant holds or has held in South Africa and has not contravened any provision of the Act.

G. Acknowledge that the Regional Manager is entitled to request further information before considering the prospecting right.**H. Social and Labour Plan**

A social and labour plan containing details of the socio-economic impact of the proposed mining project, as well as the measures to remedy any negative socio-economic impacts during the life of the mine and after closure;

I. Prescribed Fee

An amount of R....., being the prescribed non-refundable application fee, must accompany this application

.....
SIGNATURE OF APPLICANT

.....
DATE:

FORM E:**APPLICATION FOR THE RENEWAL OF A MINING RIGHT IN TERMS OF SECTION 24(1) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**The Minister
.....

1. Full name of applicant
.....
2. Identify number (in the case of a person other than a natural person the registration number, where applicable, must be furnished):
.....
3. Postal Address
.....
..... Telephone Number:
4. (a) Registered name of land (farm and subdivision) on which you propose to continue to mine:
.....
.....
.....
(b) Magisterial District
.....
5. Mineral for which you propose to mine:
.....
6. Period for which renewal is required
.....
7. Reasons why renewal is required
.....

THE APPLICATION MUST BE ACCOMPANIED BY:

- A. A report reflecting the extent of the environmental rehabilitation conducted and completed in terms of the approved environmental management programme as well as rehabilitation to be completed and the estimated costs thereof.
- B. A detailed revised mining work programme for the renewal period.
- C. An amount of R....., being the prescribed non-refundable application fee, must accompany this application.

.....
SIGNATURE OF APPLICANT.....
DATE:

FORM F:**APPLICATION FOR A MINING PERMIT IN TERMS OF SECTION 27(2) AND THE RENEWAL THEREOF IN TERMS OF SECTION 27(8) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**The Minister
.....1. Full name of applicant
.....2. Identity number (in the case of a person other than a natural person the registration number, where applicable, must be furnished):
.....

3. Postal Address

..... Telephone Number:

4. (a) Registered name of land (farm and subdivision) on which you propose to mine not exceeding 1,5 hectares:

(b) Magisterial District:

5. Mineral; associated minerals or group of minerals which you propose to mine:
.....6. Period for which the right is required: (not more than two years), or
Period for which the renewal of the right is required: (not more than one year)**THE APPLICATION MUST BE ACCOMPANIED BY:****A. Details of the Area Applied for :**

- iii. Provide a plan, drawn up in such a form and to such a scale as may be required by the Regional Manager, and signed and dated by the applicant showing :
 - the area applied for. The co-ordinates of the corner points are to be tabulated on the map in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
- iv. The plan should show in addition:
 - the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square metres or kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by proposed operations.
- iii. Provide details of any other matter relevant to the application.

B. Substantiate Financial and Technical Competence

Provide details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how they will be provided for, to enable the applicant to carry out the mining activities and to mitigate and rehabilitate relevant environmental impacts satisfactorily.

C. Existing rights and past compliance with provisions of the Act

Provide details of existing rights held by the applicant in the region where the application(s) is lodged. Report the extent of compliance with the requirements of the approved Environmental Management Programme or Plan for any prospecting or mining right that the applicant holds or has held in South Africa and has not contravened any provision of the Act.

D. Acknowledge that the Regional Manager is entitled to request further information before considering the mining permit.**E. Prescribed Fee**

An amount of R....., being the prescribed non-refundable application fee, must accompany this application.

.....
SIGNATURE OF APPLICANT.....
DATE:

FORM G:**APPLICATION FOR A RETENTION PERMIT IN TERMS OF SECTION 31(1) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT NO. 28 OF 2002)**

The Minister

1. Full name of applicant

2. Identity number (in case of a person other than a natural person the registration number)

3. Postal address

..... Telephone Number

4. (a) Registered name of land (farm and subdivision) which you wish to retain:

.....

.....

(b) Magisterial District

5. Allotted number of prospecting right:

6. Period for which the retention period is required

7. The application must be accompanied by:

(a) Full particulars of the reasons why the retention permit is required.

(b) Full particulars of prospecting operations conducted on the relevant area and a feasibility report.

(c) Proof that a mineral reserve exist which has mining potential.

(d) Proof that the mining of the relevant mineral would be uneconomical due to prevailing market conditions.

(e) Proof that the applicant has complied with the relevant provisions of the Act.

(f) If the area applied for is less than the original area for which the prospecting right was granted, provide the co-ordinates for the area to be retained.

8. An amount of R....., being the application fee must accompany this application.

.....
SIGNATURE OF APPLICANT.....
DATE

FORM H:**APPLICATION FOR RENEWAL OF A RETENTION PERMIT IN TERMS OF SECTION 34(1) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT NO. 28 OF 2002)**

The Minister

-
1. Full name of applicant
 2. Identity number (in case of a person other than a natural person the registration number)
 3. Postal address Telephone Number
 4. (a) Registered name of land (farm and subdivision) which you wish to retain the retention permit:
.....
.....
.....
 5. Allotted number of the retention permit:
 6. Period for which the retention period is required

7. The application must be accompanied by:

- (a) An updated report regarding the circumstances which prevail and reasons why the relevant mineral cannot be economically mined.
- (b) The reasons for the renewal being sought.
- (c) Proof that the applicant has complied with the relevant provisions of the Act.

8. An amount of R....., being the application fee must accompany this application.

.....
SIGNATURE OF APPLICANT.....
DATE

FORM I:**LODGEMENT FORM FOR THE CONVERSION OF AN OLD ORDER PROSPECTING RIGHT IN TERMS OF THE MINERALS ACT, (ACT NO 50 OF 1991), TO ONE IN TERMS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**

The Minister

1. Full name of applicant
2. Identity number (in the case of a person other than a natural person the registration number, where applicable, must be furnished):
3. Postal Address Telephone Number:
4. (a) Registered name of land (farm and subdivision) on which you wish to continue to prospect:
- (b) Magisterial District
5. Mineral; associated minerals or group of minerals being held under the old order prospecting right and for which you wish to continue to prospect:
6. Number of old order prospecting right which is to be converted
7. Period for which the right is required:

THE APPLICATION MUST BE ACCOMPANIED BY:**A. Details of the Area Applied for :**

1. Provide a plan, drawn up in such a form and to such a scale as may be required by the Regional Manager, and signed and dated by the applicant showing :
 - the area applied for. The co-ordinates of the corner points are to be tabulated on the plan in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
2. The plan should show in addition:
 - the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by proposed operations.
3. Provide details of any other matter relevant to the application.
4. An affidavit verifying that the holder is conducting or has conducted prospecting on the land to which the conversion relates immediately before this Act came into effect and setting out the periods during which such prospecting had been conducted;
5. Information whether or not the prospecting right being held in terms of the old order prospecting right is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office and the registered number of such mortgage bond or other right;
6. A statement setting out the terms and conditions which apply to the present old order prospecting right;
7. A certified copy of the title deed in respect of the land to which the present prospecting right relates;
8. The original old order prospecting right or a certified copy thereof.

B. A Detailed Prospecting Work Programme**C. Substantiate Financial and Technical Competence**

Provide details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how they will be provided for, to enable the applicant to carry out the prospecting activities and to mitigate and rehabilitate relevant environmental impacts satisfactorily.

D. Existing rights and past compliance with provisions of the Act

Provide details of existing rights held by the applicant in the region where the application(s) is lodged.

Report the extent of compliance with the requirements of the approved Environmental Management Programme for any prospecting or mining right that the applicant holds or has held in South Africa and has not contravened any provision of the Act.

G. Acknowledge that the Regional Manager is entitled to request further information before considering the conversion of the prospecting right.**H. Prescribed Fee**

An amount of R....., being the prescribed non-refundable application fee, must accompany this application.

.....
SIGNATURE OF APPLICANT

.....
DATE:

FORM J:**LODGEMENT FORM FOR THE CONVERSION OF A OLD ORDER MINING RIGHT IN TERMS OF THE MINERALS ACT, (ACT NO 50 OF 1991), TO ONE IN TERMS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**

The Minister

1. Full name of applicant
2. Identity number (in the case of a person other than a natural person the registration number, where applicable, must be furnished):
3. Postal Address Telephone Number:
4. (a) Registered name of land (farm and subdivision) on which you wish to continue mining:
- (b) Magisterial District
5. Mineral; associated minerals or group of minerals being held under the old order mining right or any other mining right from previous legislation and for which you wish to continue to mine:
6. Period for which the right is required:

THE APPLICATION MUST BE ACCOMPANIED BY:**A. Details of the Area Applied for :**

3. Provide a plan, drawn up in such a form and to such a scale as may be required by the Regional Manager, and signed and dated by the applicant showing :
 - the area applied for. The co-ordinates of the corner points are to be tabulated on the plan in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
4. The plan should show in addition:
 - the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by proposed operations.
3. Provide details of any other matter relevant to the application.
4. An affidavit verifying that the holder is conducting or has conducted mining on the land to which the conversion relates immediately before this Act came into operation and setting out the periods during which such mining had been conducted;
5. Information whether or not the mining right being held in terms of the old order mining right is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office and the registered number of such mortgage bond or other right;
6. A statement setting out the terms and conditions which apply to the present mining right;
7. A certified copy of the title deed in respect of the land to which the present mining right relates;
8. The original old order mining right or a certified copy thereof.

B. A Detailed Mining Work Programme**C. Substantiate Financial and Technical Competence**

Provide details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how they will be provided for, to enable the applicant to carry out the mining activities and to mitigate and rehabilitate relevant environmental impacts satisfactorily.

D. Existing rights and past compliance with provisions of the Act

Provide details of existing rights held by the applicant in the region where the application(s) is lodged.

Report the extent of compliance with the requirements of the approved Environmental Management Programme for any prospecting or mining right that the applicant holds or has held in South Africa and has not contravened any provision of the Act.

G. Acknowledge that the Regional Manager is entitled to request further information before considering the conversion of the prospecting right.

H. Prescribed Fee

An amount of R....., being the prescribed non-refundable application fee, must accompany this application.

.....
SIGNATURE OF APPLICANT

.....
DATE:

FORM K:**APPLICATION FOR A RECONNAISSANCE PERMIT IN TERMS OF SECTION 74 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)****Note that :**

- a Reconnaissance Permit for petroleum is valid for a period not exceeding one year.
- it does not represent an exclusive right and is not transferable or renewable.
- an environmental management programme must be approved before seismic operations may commence.

Applications must be delivered to :

The Chief Executive,
Petroleum Agency SA,
PO Box 1174,
Parow, 7499,

Tel : 021 938 3500

Fax : 021 938 3520

Email : plu@petroleumagencyssa.com

Street address:

Petroleum House,
151 Frans Conradie ave.,
Parow, 7500.

A. Details of Applicant**1) Full Name of Applicant**

.....

2) Registration Number of Company / Identify Number of Individual :

.....

3) Postal Address

.....

Telephone No.....Fax No.....

4) Black Empowerment Shareholding / Partners (%) :

.....

B. Area Applied for & Summary of Planned Operations**1) Hydrocarbon Targeted in Reconnaissance Programme (oil & / or gas or CBM) :**

.....

2) Period Applied for

.....

3) Magisterial District, Farm Name / sub-division or Offshore Licence Block in which Reconnaissance Area lies

.....

4) Summary of Planned Reconnaissance Operations :

.....

.....
Signature of Applicant

.....
Date

THE APPLICATION MUST BE ACCOMPANIED BY :**C. Details of the Area Applied for :**

- iv. Provide a plan, drawn up in such a form and to such a scale as may be required by the Petroleum Agency, and signed and dated by the applicant showing :
 - the area applied for. The corner points should be labelled clockwise A,, B, C etc. The co-ordinates of the corner points are to be tabulated on the plan in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
- v. The plan should show in addition :
 - the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by proposed operations.
 - for offshore applications, the Petroleum Agency numerical licence block(s) affected should be shown.
- iii. Provide details of any other matter relevant to the application.

D. Details of Planned Reconnaissance Operations :

- i. Specify the minimum proposed operations and expenditure for the block applied for ;
- ii. Provide a map showing the areas within which 2D and 3D seismic surveys are planned ;
- iii. Detail the proposed time framework for the proposed reconnaissance operations ;
- vi. Provide a statement of the anticipated effect which the proposed reconnaissance operations may have on the environment and other users of the area.
- vii. Provide a budget for the proposed work programme.
- v. Note that provision must be made to provide copy of all resulting data, reports, information and samples to the Petroleum Agency SA.

E. Substantiate Financial and Technical Competence

Provide details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how they will be provided for, to enable the applicant to carry out the reconnaissance activities and to mitigate and rehabilitate relevant environmental impacts satisfactorily.

F. Past Compliance with Provisions of the Act

Provide a report by an independent third party of the extent of compliance with the requirements of the approved Environmental Management Programme for any petroleum right that the applicant holds or has held in South Africa.

G. Acknowledge that the Petroleum Agency is entitled to request further information before deciding whether or not to award the reconnaissance permit.**H. Prescribed Fee**

An amount of R....., being the prescribed non-refundable application fee, must be paid into the account of the Petroleum Agency. Proof of payment must be attached to the application.

FORM L:**APPLICATION FOR A TECHNICAL CO-OPERATION PERMIT IN TERMS OF SECTION 76 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**

Note that a Technical Co-operation Permit :

- is valid for a period not exceeding one year.
- is not an exclusive right and is not transferable or renewable.
- does not permit any exploration operations.

Applications must be delivered to :

The Chief Executive,
Petroleum Agency SA,
PO Box 1174,
Parow, 7499.

Tel : 021 938 3500

Fax : 021 938 3520

Email : plu@petroleumagencyrsa.com

Street address :

Petroleum House,
151 Frans Conradie ave.,
Parow, 7500.

A. Details of Applicant

- 1) Full Name of Applicant:
- 2) Registered Number of Company / Identify Number of Individual :
- 3) Postal Address
- Telephone No. Fax No.
- 4) Black Empowerment Shareholding / Partners (%) :

B. Area Applied for & Summary of Planned Operations

- 1) Hydrocarbon Targeted in Technical Co-operation Study (oil / gas / CBM) :
- 2) Period Applied for :
- 3) Magisterial District, Farm Name / sub-division or Offshore Licence Block on which Study will Focus :
- 4) Summary Work Scope of Technical Co-operation Study :

Signature of Applicant

Date

THE APPLICATION MUST BE ACCOMPANIED BY :

C. Details of the Area Applied for :

- v. Provide a plan, drawn up in such a form and to such a scale as may be required by the Petroleum Agency, and signed and dated by the applicant showing :
 - the area applied for. The corner points should be labelled clockwise A,, B, C etc. The co-ordinates of the corner points are to be tabulated on the plan in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
- viii. The plan should show in addition :
 - the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by exploration operations.
 - for offshore applications, the Petroleum Agency numerical licence blocks affected should be shown.
- iii. Provide details of any other matter relevant to the application.

D. Details of Planned Technical Co-operation Study :

- i. Specify the minimum proposed work scope and expenditure for the area or areas applied for ;
- ii. Detail the proposed time framework for the proposed Technical Co-operation Study ;
- iii. Provide a budget for the proposed Technical Co-operation Study.

E. Substantiate Financial and Technical Competence :

Provide information to substantiate that the applicant has the technical and financial competence to carry out the planned Technical Co-operation study in a responsible manner .

F. Past Compliance with Provisions of the Act, Regulations, Agreements

Provide a report by an independent third party of the extent of compliance with the requirements of the approved Environmental Management Programme for the preceding Exploration Right period(s).

G. Acknowledge that the Petroleum Agency is entitled to request further information before deciding whether or not to award the reconnaissance permit.**H. Prescribed Fee**

An amount of R....., being the prescribed non-refundable application fee, must be paid into the account of the Petroleum Agency. Proof of payment must be attached to the application.

FORM M:**APPLICATION FOR AN EXPLORATION RIGHT IN TERMS OF SECTION 79 AND THE RENEWAL THEREOF IN TERMS OF SECTION 81 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**

Note that an Exploration Right :

- is valid for a period not exceeding three years.
- is an exclusive right which may be renewed and transferred and encumbered.

NB: - an environmental management programme must be approved before exploration operations may commence.

Applications must be delivered to :

The Chief Executive,
Petroleum Agency SA,
PO Box 1174,
Parow, 7499.

Tel : 021 938 3500

Fax : 021 938 3520

Email : plu@petroleumagencyrsa.com

Street address:

Petroleum House,
151 Frans Conradie avenue.
Parow, 7500.

A. Details of Applicant

- 1) Full Name of Applicant
- 2) Registration Number of Company / Identify Number of Individual :
- 3) Postal Address :
- Telephone No. Fax No.
- 4) Black Empowerment Shareholding / Partners (%) :

B. Areas Applied for & Summary of Planned Operations

- 1) Hydrocarbon Targeted in Exploration Programme (oil / gas / CBM) :
- 2) Period Applied for :
- 3) Province / Magisterial District / Farm Name or Offshore Licence Block included in Exploration Area :
- 4) Summary of Planned Exploration Operations :

.....
Signature of Applicant

.....
Date

THE APPLICATION SHOULD BE ACCOMPANIED BY :

C. Details of the Area Applied for :

- vi. Provide a plan, drawn up in such a form and to such a scale as may be required by the Petroleum Agency, and signed and dated by the applicant showing :
 - the area applied for. The corner points should be labelled clockwise A,, B, C etc. The co-ordinates of the corner points are to be tabulated on the plan in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
- ix. The plan should show in addition :
 - the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by proposed operations.
 - for offshore applications, the Petroleum Agency numerical licence blocks affected should be shown.
- iii. Provide details of any other matter relevant to the application.

D. Details of Planned Exploration Operations :

- i. Specify the minimum proposed operations and expenditure for the block or blocks applied for ;
- ii. For seismic surveys, provide a map showing the areas within which 2D and 3D surveys are planned ;
 - x. Detail the proposed time frame for the proposed exploration operations ;
 - xi. Provide a budget for the proposed work programme.
 - v. Provide a statement of the anticipated effect which the proposed Exploration Operations may have on the environment and other users of the area.

E. Substantiate Financial and Technical Competence :

Provide details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how they will be provided for, to enable the applicant to carry out the exploration activities and to mitigate and rehabilitate relevant environmental impacts satisfactorily.

F. Past Compliance with Provisions of the Act

Provide a report by an independent third party of the extent of compliance with the requirements of the approved Environmental Management Programme for the preceding Exploration Right period.

G. Acknowledge that the Petroleum Agency is entitled to request further information before deciding whether or not to award the reconnaissance permit.

H. Prescribed Fee

An amount of R....., being the prescribed non-refundable application fee, must be paid into the account of the Petroleum Agency. Proof of payment must be attached to the application.

FORM N:**APPLICATION FOR A PRODUCTION RIGHT IN TERMS OF SECTION 83 AND THE RENEWAL THEREOF IN TERMS OF SECTION 85 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002)**

Note that a Production Right :

- is valid for a period not exceeding three years.
- is renewable.
- is an exclusive right which may be renewed and transferred and encumbered.

NB : an environmental management programme must be approved before production operations may commence.

Applications must be delivered to :

The Chief Executive,
Petroleum Agency SA,
PO Box 1174,
Parow, 7499,

Tel : 021 938 3500

Fax : 021 938 3520

Email : plu@petroleumagencyssa.com

Street address:

Petroleum House,
151 Frans Conradie ave.,
Parow, 7500.

A. Details of Applicant

- 1) Full Name of Applicant :
- 2) Registration Number of Company / Identify Number of Individual :
- 3) Postal Address :
- Telephone No..... Fax No.....
- 4) Black Empowerment Shareholding / Partners (%) :

B. Areas Applied for & Summary of Planned Operations

- 1) Hydrocarbon targeted in Production Operation (oil / gas or CBM) :
- 2) Province / Magisterial District / Farm Name / Offshore Licence Block in which Operation will take place :

- 3) Summary of Planned Production Operations :

Signature of Applicant

Date

THE APPLICATION MUST BE ACCOMPANIED BY :**C. Details of the Area Applied for :**

- i. Provide a plan, drawn up in such a form and to such a scale as may be required by the Petroleum Agency, and signed and dated by the applicant showing :
 - the area applied for. The corner points should be labelled clockwise A,, B, C etc. The co-ordinates of the corner points are to be tabulated on the plan in latitude / longitude referenced to the WGS84 Hartebeest94 datum. The north point should be shown.
- ii. The plan should show in addition :
 - the name, number and situation on the farm or farms on which the area applied for is situated,
 - surface structures and servitudes,
 - the topography of the immediate vicinity,
 - the size of the area applied for in square kilometres.
 - major towns, roads, rail lines, conservation areas, restricted areas, and all features, communities and facilities that could be affected by proposed operations.
 - for offshore applications, the Petroleum Agency numerical licence blocks affected should be shown.
- iii. Provide details of any other matter relevant to the application.

D. Details of Planned Production Operations :

- i. Provide a comprehensive geological report with details of the petroleum resources and reserves as determined by the geological study and feasibility study in respect of the area applied for;
- ii. Provide an independent assessment of the reserves to be exploited under the production right;
- iii. Provide a comprehensive technical and feasibility report with details of the production method, capacity of production and scale of operations, processing and treatment of petroleum, infrastructure requirements as well as marketing arrangements for the sale of the petroleum products;
- iv. Provide a detailed forecast of capital requirements, sale revenues, operating costs, environmental management and remedial costs, environmental management programme financial guarantees, mine safety and health costs and other costs, presented in a cash flow format in respect of the period required for production operations;
- v. Provide an independent evaluation of the proposed development programme.
- vi. Note that provision must be made to provide copy of all resulting data, reports, information and samples to the Petroleum Agency SA.

E. Substantiate Financial and Technical Competence :

Provide details with documentary evidence to prove the applicant's technical ability and financial resources that are readily available or how they will be provided for, to enable the applicant to carry out the production activities effectively and to mitigate and rehabilitate relevant environmental impacts satisfactorily.

F. Social and Labour Plan :

Provide full details of the proposed social and labour plan.

G. Past Compliance with Provisions of the Act

Provide a report by an independent third party of the extent of compliance with the requirements of the approved Environmental Management Programme for the preceding Exploration Right period(s).

H. Acknowledge that the Petroleum Agency is entitled to request further information before deciding whether or not to award the reconnaissance permit.

I. Prescribed Fee

An amount of R....., being the prescribed non-refundable application fee, must be paid into the account of the Petroleum Agency. Proof of payment must be attached to the application.

MISCELLANEOUS PROCEDURES**FORM O:**

**NOTICE OF CONSULTATION IN TERMS OF SECTION 10 OF THE MINERAL AND
PETROLEUM RESOURCES DEVELOPMENT ACT, (ACT NO 28 OF 2002):
A PROSPECTING RIGHT / MINING RIGHT / MINING PERMIT /
RECONNAISSANCE / TECHNICAL CO-OPERATION PERMIT / EXPLORATION
RIGHT / PRODUCTION RIGHT**

Be pleased to take notice that

.....
has applied for a Permit / Right
in terms of

section of the Mineral and Petroleum Resources Development Act over the following properties /
blocks :

1.
2.
3.
4.

(Annex a schedule of properties applied for if necessary.)

Take further notice that if you wish to object to the granting of the above-mentioned permit or right, you must
forward your objections in writing to the relevant Regional Manager within a period of 14 (fourteen) days
after the expiry of this notice.

Dated at on the day of
.....200

This notice will expire on : day of200... at
15h00.

.....
Designated officer

FORM P:**TRANSFER OR ENCUMBRANCE OF
PERMITS AND RIGHTS:**

(in terms of Section 11 of the Mineral and Petroleum Resources Development Act, 2002)

I,

of(company name)

the undersigned applicant and holder of a :

prospecting right, mining right, technical co-operation permit / exploration right / production right

No:....., hereby apply for the :

1. Cession
2. Transfer
3. Letting
4. Sub-letting
5. Assignment
6. Alienation

of the above-mentioned right.

The receiver of the right as co-signatory hereof undertakes to comply with the provisions of section 11(2)(a),
(b), (c), (d) and section 11(4) of the Act.

Dated aton theday of200

.....
Signature of Applicant.....
Signature of the Receiver of the Right**Details of Receiver of Right**

Name of representative (Print) :

Name of company :

Address :

Telephone No. : Fax No. :

Email :

FORM Q:**APPLICATION FORM FOR ASSISTANCE TO HISTORICALLY DISADVANTAGED PERSONS IN TERMS OF SECTION 12 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002, (ACT NO. 28 OF 2002)**

(The legible persons entitled to apply for assistance in terms of section 13 are those previously been disadvantaged by unfair discrimination. Assistance if offered will be subject to the Minister's terms and conditions).

(A) Full particulars of the applicant:

Name and Surname (registration number in case of a juristic person):.....

Citizenship/primary listing of a company (if applicable) :.....

Identification number:

Directors/Members name(s) and surname(s) :

1.....

2.....

3.....

4.....

5.....

6.....

7.....

8.....

Postal Address (where the main business is carried in a case of a juristic person)

Telephone numbers :

E- mail address (if any)

Fax numbers:

(B) Insolvent status of the applicant

Five years prior to this application being lodged for assistance in terms of section 13, did the applicant(s) estate been placed under sequestration or liquidation by an order of court.

YES/NO

If yes, the following documents must be attached to this application :

1. Copy of the court order (i.e. Provisional/Final)
2. Rehabilitation court order (in the case of sequestration) ; or

Any other information that should be disclosed to enable the Minister to determine the solvency of the applicant.

Five years prior to this application being lodged on behalf of a juristic person, did any director/member in his/her capacity as a director/member been involved in a company or close corporation which was placed under judicial management or liquidation by an order of court.

YES/NO

If yes, the following documents must be lodged together with the application :

1. A copy of the court order whether provisional or final (placing the entity under judicial management or liquidation)
2. A certified schedule 2 form CM27 copy (companies act, 1973 as amended); or
3. A certified schedule 4 CK1 copy (close corporations act, 1984 as amended)

Any other information that will enable the Minister to determine the individual director's/member's specific roles.

(C) Criminal Offences

Two years prior to the lodging of this application, did the applicant(s) or director(s)/ member(s) of a juristic person been convicted for a criminal offence with out an option of a fine.

YES/NO.....

If yes, briefly state the surrounding circumstances which lead to the commission of the criminal offence.

.....

(If the space provided is insufficient, sworn statements may be used and attached to this application).

(D) Pre – knowledge and technical skills in the Mining and Minerals Industry

This part of the application must be addressed in a separate document under the following headings (discussion per heading is limited to the maximum of half a page):

- Involvement in the mining industry either as employer/employee
- The importance of the Environmental Management Program (EMP)
- The reasons, why an entrepreneurs/company social plan is important to the Development of the local economy were mining activities are carried out.

(E) Business case

Under this heading proved, a summarized vision of your business plan and attach your business plan to this application (The nature of the business plan will depend on the type i.e. small, medium or large mining operation the applicant is or intends to carry out).

(F) Financial Disclosure

If the applicant is already operating mining business, the following documentation as certified by the board of directors/members/trustees must be lodged together with the application:

- A recent balance sheet reflecting the profit and loose of the entity.
- The auditor's or accountant's report which must verify the correctness and status of the balance sheet and the audit and accounting books of the entity respectively.
- Pledges/bonds/loan agreements entered into with other financial sources.

Any other information that should be disclosed in order to enable the Minister to determine the financial need or status of the applicant.

If the applicant intends to enter the mining business, the following documentation as certified by a commission of oath must be lodged together with the application (if any):

- Loan agreement entered into with other financial sources.
- Short or long term investment in a form of shares, unit trust etc.

- Personal financial contributions.

Any other information that should be disclosed in order to enable the Minister to determine the financial need or status of the applicant.

FORM R:**REFUSAL BY THE MINISTER TO GRANT PERMITS/RIGHTS :**

**PROSPECTING RIGHT / MINING RIGHT / MINING PERMIT
RECONNAISSANCE / TECHNICAL CO-OPERATION PERMIT / EXPLORATION RIGHT /
PRODUCTION RIGHT**

(in terms of Sections 13, 17, 23, 33, 75, 79,84 of the Mineral and Petroleum Resources Development Act, 2002)

Application Number :

Name of Applicant :

Application for (permit / right type) :

Mineral type :

Over farms / offshore petroleum licence block :

.....

.....

.....

(append list of farm names if necessary)

I, the undersigned,
(Minister of Minerals and Energy)

hereby refuse the permit / right on the following grounds :

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

Dated at on the day of200

.....
Minister of Minerals and Energy

FORM S:

**PERMISSION TO REMOVE AND DISPOSE OF MINERALS AND PETROLEUM PERMIT IN
TERMS OF SECTION 20 OF THE MINERAL AND PETROLEUM RESOURCES
DEVELOPMENT ACT, 2002, (ACT NO. 28 OF 2002)**

The Minister of Minerals and Energy hereby grant permission for the removal and disposal of the under-mentioned mineral(s) as follows :

- (5) Full particulars of the prospecting right holder:
- (6) Name and surname (in case of a juristic person, registration number)
- (7) Identification number of the holder
- (8) The physical address where the holder carries out business
.....
- (9) Class (e.g. A, B, C, D or E)
- (10) Mineral/Ore
.....
.....
.....
- (11) Quantities intended to be removed (per mineral, if prospecting for more than one mineral)
.....
.....
.....
- (12) Terms and conditions:
.....
.....
.....
.....

.....
(MINISTER OF MINERALS AND ENERGY)

FORM T:**TERMS AND CONDITIONS : MINERAL BENEFITIATION IN TERMS OF SECTION 26 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002, (ACT NO. 28 OF 2002)**

I.....Minister of Minerals and Energy in concurrence with the Minister of Finance and upon recommendation made by the Mining and Mineral Development Board hereby exempt..... (known as holder of mining rights) from royalty payment as follow:

Terms and conditions

The applicant for a mining right, shall ;

- (a) after compliance with section 20(1) and the application is accepted in terms of sub-section 20(3), further granted in terms sub-sections 21(1)(a) – (h), exercise the rights stipulated under sub-sections 5(a) – (d);
- (b) be entitled to the exclusive right as stipulated under sub-section 23(1), on condition the applicant for the renewal of a mining right comply with the provisions of sub-sections 22(1) - (3);
- (c) be exempted from payment of royalties as per recommendation made by the Minerals and Mining Development Board, whereby such recommendation is based either on the provisions of sub-section 24(a) or 24(b) or both;
- (d) after been granted a mining right, register such right in terms of section 23(a).

Signed at on the day of

.....
(MINISTER OF MINERALS AND ENERGY)

FORM U:**APPLICATION IN TERMS OF SECTION 43(2) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002, (ACT NO 28 OF 2002), TO TRANSFER ENVIRONMENTAL LIABILITIES AND RESPONSIBILITIES TO QUALIFIED PERSON**

Minister

I,

Holder of:

1. Reconnaissance Permission No.....;
2. Prospecting Right No.;
3. Mining Right No.....;
4. Mining Permit No.....;
5. Reconnaissance Permit No.....;
6. Exploration Right No.....;
7. Production Right No.....;

(whichever is applicable)

hereby apply for the transfer of the environmental liabilities and responsibilities pertaining to the above-mentioned permission, right or permit of the environmental management plan or environmental management programme as the case may be or any prescribed closure plan, to a person with such qualifications which may be prescribed.

.....
SIGNATURE OF HOLDER OF PERMISSION, PERMIT OR RIGHT

DATED ATON THEDAY OF20

FORM V:**NOTICE FOR SUSPENSION / CANCELLATION :**

**OF A PROSPECTING RIGHT / MINING RIGHT / MINING PERMIT / MINING RETENTION
PERMIT
RECONNAISSANCE / TECHNICAL CO-OPERATION PERMIT / EXPLORATION RIGHT /
PRODUCTION RIGHT**

(in terms of Section 47 of the Mineral and Petroleum Resources Development Act, 2002, (Act No. 28 of 2002))

Permit / Right Number :

Name of Applicant :

Permit / Right Type :

Mineral Type :

Over Farms / Offshore Petroleum Licence Block

.....

.....

.....

.....

(attach list of farm names if necessary)

I, the undersigned,

.....
(Minister of Minerals and Energy)

hereby suspend / cancel the permit / right on the following grounds :

- (a). The holder is conducting prospecting, mining, exploration or production operations in contravention to the Act;
2. The holder has breached the terms and conditions upon which the permit or right has been granted;
3. The holder is not prospecting, mining, exploring or producing the mineral or petroleum resource optimally;
4. The holder is has contravened the approved environmental management programme; or
5. The holder has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under the Act.

The Minister further invites the holder, in terms of sub-section 47(2)(c), to show cause why the affected right should not be suspended / cancelled.

Dated at on the day of 200

.....
Minister of Minerals and Energy

FORM W:**WITHDRAWAL OF SUSPENSION NOTICE IN TERMS OF SECTION 47(5) OF THE ACT:
OF A PROSPECTING RIGHT / MINING RIGHT / MINING PERMIT / MINING RETENTION
PERMIT
RECONNAISSANCE / TECHNICAL CO-OPERATION PERMIT / EXPLORATION RIGHT /
PRODUCTION RIGHT**

(in terms of Section 47(5) of the Mineral and Petroleum Resources Development Act, 2002, (Act No. 28 of 2002))

The Minister hereby gives notice of the withdrawal of the suspension of
imposed in terms of sub-section 47(5) of the Mineral and Petroleum Development Act, 2002, to :

(a) Name and surname of permit / right holder (in case of juristic person, registration number):.....

(b) Physical address where the main business is carried out :.....

(c) The district where the property / land / offshore petroleum licence block is situated

The Minister therefore finds the holder to have satisfactorily discharged the requirements of the Ministerial Directive or the holder has furnished compelling reasons for the withdrawal of the suspension (delete which is not applicable).

.....
Minister of Minerals and Energy

.....
Date

FORM X:
**NOTICE FOR PROHIBITION OR RESTRICTION OF GRANTING A RIGHT OR PERMIT IN
TERMS OF SECTION 49 OF THE MINERAL AND PETROLEUM RESOURCES
DEVELOPMENT ACT, 2002, (ACT NO. 28 OF 2002)**

The Minister of Minerals and Energy hereby gives notice of the prohibition or restriction to the granting of a prospecting right, mining right or mining permit or an exploration permit or production permit in, on or under the follow properties:

- (a) situated at.....
- (b) situated at.....
- (c) situated at.....
- (d) situated at.....
- (e) situated at.....
- (f) situated at.....

On the following terms and conditions :

- (a)
- (b)
- (a)
- (c)
- (d)
- (e)
- (f)

As from to subject to further notice.

Signed at on the day of

.....
(Minister of Minerals and Energy)

**Prohibition or Restriction to the granting of a prospecting right, mining right or mining permit
(Section 49 Notice)**

The Minister of Minerals and Energy hereby give notice of the prohibition or restriction to the granting of a prospecting right, mining right or mining permit in, on or under the follow properties:

- (a) situated at.....
- (b) situated at.....
- (c) situated at.....
- (d) situated at.....

- (e) situated at.....
- (f) situated at.....

On the following terms and conditions :

- (a)
- (b)
- (a)
- (c).....
- (d)
- (e)
- (f)

As from to subject to further notice.

Signed at on the day of

.....
(MINISTER OF MINERALS AND ENERGY)

FORM Y :**NOTICE IN TERMS OF SECTION 49 OF THE ACT: PROFITABILITY AND CURTAILMENT OF MINING OR PRODUCTION OPERATIONS AFFECTING EMPLOYMENT**

The holder of a mining or production right (No) hereby gives notice in terms of section 52(1) of the Minerals and Petroleum Development Act, of the following negative economic conditions and the social economic impact thereof.

- (a) Indications of the profitability levels (as required in terms of section 52(1)(a))

 (b) The percentage of the labour force to be retrenched in a period of 12 months:..... (as required in terms of sub-section 52(1)(b)).

(The holder is further required to attach documents that will illustrate the negative market conditions, measures taken to minimize the impact, audited balance sheets (one reflecting the profit and loss 12 months before the negative market conditions, the other reflecting the current profit and loss of the company) and any other documents that should be disclosed or may be required to enable the Board to investigate).

Signed at.....on.....of.....200

?.....?
Capacity Minister of Minerals and Energy

Profitability and curtailment of mining operations affecting employment (Section 52 Notice)

The holder of a mining right (No) hereby give notice in terms of section 52(1) of the Minerals and Petroleum Development Act....., of the following negative economic conditions and the social economic impact thereof.

- (c) Indications of the profitability levels (as required in terms of section 52(a))
 (d) The percentage of the labour force to be retrenched in a period of 12 months (as required in terms of sub-section 52(b)).

(The holder is further required to attach documents that will illustrate the negative market conditions, measures taken to minimize the impact, audited balance sheets (one reflecting the profit and loss 12 months before the negative market conditions, the other reflecting the current profit and loss of the company) and any other documents that should be disclosed or may be required to enable the Board to investigate).

Signed at.....on.....of.....

?.....?
(Capacity)

FORM Z:**NOTICE BY HOLDER IN TERMS OF SECTION 54(1) OF THE ACT WHERE THE
HOLDER OF ANY RIGHT OR PERMIT IN TERMS OF THE ACT CANNOT
COMMENCE WITH OPERATION**

To : The Designated Officer

.....
.....
.....

I, the undersigned,, the holder

of permit or right:-No :

for.(mineral/petroleum);

hereby give notice in terms of section 54(1) of the Act that I am prevented from commencing or from conducting
prospecting, mining, reconnaissance, exploration or production on the relevant land by the owner/occupier on the
following grounds:

- (a) refusal of entry to the relevant land;
- (b) unreasonable demands in return for access to the land;
- (c) owner/occupier cannot be found to apply for access.
(Delete which is not applicable)

DATED AT ON THE DAY OF 2001.

SIGNATURE OF HOLDER

FORM AA:**NOTICE TO LAND OWNER IN TERMS OF SECTION 54(2) OF THE ACT WHERE THE HOLDER OF ANY RIGHT OR PERMIT IN TERMS OF THE ACT CANNOT COMMENCE WITH OPERATION**

The Landowner/Occupier

.....

.....

Kindly note that I have received a Notice dated 20.. in terms of section 54(1) of the Act from the holder of prospecting right/mining permit / reconnaissance permit / exploration right / production right No. that he/she cannot commence or conduct prospecting, or mining, reconnaissance, exploration or production operations on due to:

1.
2.
3.
4.

You are hereby called upon to make representations on or before 200 regarding this notice.

You are hereby further notified of the rights being held in terms of sections 5, 17, 23 and 27(5) of the Act of the above-mentioned holder as per annexure.

Take further notice that you are contravening the following sections of the Act.

You are hereby informed that the following steps in terms of the Act may be taken against you.

1.
2.
3.
4.
5.

DATED AT ON THE DAY OF 200

.....

Designated Officer

REGIONAL MANAGER

.....

HOLDER OF RIGHT / PERMIT

NO...../.....

FORM BB:

EXPROPRIATION NOTICE IN TERMS OF SECTION 55 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002, (ACT NO 28 OF 2002)

The Minister of Minerals and Energy, hereby gives notice of the expropriation of the under-mentioned property(ies) in terms of section 55(1) of the Minerals and Petroleum Development Act.....

- (a) situated at..... title deed no.....
- (b) situated at..... title deed no.....
- (c) situated at..... title deed no.....
- (d) situated at..... title deed no.....
- (e) situated at..... title deed no.....
- (f) situated at..... title deed no.....

Further, the Minister acknowledged the application of section 6, 7 and 9(1) of the Expropriation Act, 1975 (Act No. 63 of 1975), when exercising the powers to expropriate property vested to the Minister by section 52(1).

Signed at.....on.....of.....200

.....
Minister of Minerals and Energy

FORM CC:**NOTICE IN TERMS OF SECTION 88(1) OF THE ACT REGARDING
CONTRAVENTION OF PROVISIONS OF ACT**

KINDLY TAKE NOTICE that you as holder of prospecting/mining right, mining/retention permit, reconnaissance permit, exploration right or production right or environmental management programme have contravened or are contravening the following provision/provisions of the Act:

1.
2.
3.
4.

You are hereby ordered to take immediate steps to rectify the contravention(s) on or before the day of 200.

OR

You are hereby ordered to suspend your prospecting/mining /reconnaissance / exploration / production operations as from the day of 200 under the following instructions:

1.
2.
3.
4.


DATED AT ON THE DAY OF 2001.

.....
Designated Officer

ORIGINAL HEREOF RECEIVED ON THE DAY OF 200.

.....
**HOLDER OF THE RIGHT/PERMIT, MANAGER,
OFFICIAL, EMPLOYEE OR AGENT**
HOLDER OF RIGHT / PERMIT NO /.....

FORM DD:**FORM IN TERMS OF SECTION 94 OF MINERAL AND PETROLEUM
RESOURCES DEVELOPMENT ACT, 2002 (ACT NO 15 OF 2002)**

| | |
|--|---|
| <p>DEPARTMENT OF MINERALS AND ENERGY</p> <p>AUTHORIZATION IN TERMS OF SECTION 94 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT</p> <div data-bbox="258 857 409 1055"></div> <div data-bbox="495 694 684 1115"><p>Photograph</p></div> | <p>Under section 94 of the Mineral and Petroleum Resources Development Act, 2002, I hereby, by virtue of the powers delegated to me, authorize</p> <p>.....</p> <p>ID No.</p> <p>of the Department of Minerals and Energy to enter without any warrant, at any time, without prior notice, upon any land or place, including any offshore installation, vehicle, vessel or aircraft, which may be necessary for the proper exercising of the powers or the performance of the duties or functions in the said Act.</p> <div data-bbox="1075 981 1359 1126"><p>OFFICE STAMP</p></div> <p>.....</p> <p>MINISTER</p> |
|--|---|

FORM EE:**APPLICATION FOR A CLOSURE CERTIFICATE :**

(in terms of Section 43(3) of the Mineral and Petroleum Resources Development Act, 2002)

NB : The application is to be made within 180 days of lapse / abandonment / cancellation / cessation / relinquishment or rehabilitation as contemplated in section 40 (3) of the Act.

To: The Regional Manager

1. Permit / Right Number :

2. Name of Applicant :

3. Permit / Right Type :

4. Mineral Type :
.....

5. Over Farms / Offshore Petroleum Licence Block (as per attached map) :.....

.....

.....

6. Reason for Application : (abandonment / cancellation / cessation / relinquishment / rehabilitation completed)

7. Details of relevant area / operation

.....

.....

.....

8. Application for the Transfer of Environmental liabilities and Responsibilities : If relevant, a separate submission must be appended to the application.

9. The following documents should accompany the application :

(a) A copy of the Closure Plan must be appended to the application

(b) A copy of the Final Environmental Management Programme Performance Assessment. This may precede or accompany the application for closure.

.....
Signature of Applicant

.....
Date

FORM FF :**CLOSURE CERTIFICATE :**

(in terms of Section 43 of the Mineral and Petroleum Resources Development Act, 2002)

NB : The application is to be made within 180 days of lapse / abandonment / cancellation / cessation / relinquishment or rehabilitation as contemplated in section 43 (3) of the Act.

Permit / Right Number :

Name of Applicant :

Permit / Right Type : Reconnaissance Permit / Exploration Right / Production Right.....

Mineral Type :

Over Farms / Offshore Petroleum Licence Block (as per attached map):.....

.....

.....

.....

I, the undersigned,

(Minister of Minerals and Energy) :

(a) hereby grant closure to the above permit / right holder, as envisioned in section 43 of the Act :

(b) agree to the transfer of the following environmental liabilities and responsibilities, if applicable, as follows :

1).....

2).....

3).....

4).....

to the following entity :

Person / Company Name :

Company Registration Number / Individual's ID Number :

Address

.....

.....

.....
Minister of Minerals and Energy

.....
Date

STANDARD FORMAT OF PERMISSIONS, RIGHTS AND PERMITS IN TERMS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT NO 28 OF 2002)

FORM GG: PROSPECTING RIGHT

LET IT HEREBY BE KNOWN:

THAT on this the _____ day of _____ in the year _____ (_____) before me, _____, Notary Public, duly sworn and admitted, residing and practising at _____ in the _____ Province, Republic of South Africa, and in the presence of the subscribing competent witnesses personally came and appeared:

(1) _____, **Regional Manager**, _____ Region of the Department of Minerals and Energy, and as such in his or her capacity as the duly authorised representative of:

THE MINISTER OF MINERALS AND ENERGY

(hereinafter together with **his or her** successors in title and assigns referred to as "**the Grantor**"), he or she, the said Appearer, being duly authorised thereto under and by virtue of a Power of Attorney granted to him or her by _____ in his or her capacity as the Director-General of the Department of Minerals and Energy of the Grantor at _____ on the _____ day of _____, acting under and by virtue of the powers delegated to him or her by the Minister of Minerals and Energy on _____ **in terms of section _____ of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 15 of 2002).**

AND

(2) _____, a _____ of, and as such in his or her capacity as the duly authorised representative of:

(No. _____)

(hereinafter together with its successors in title and assigns referred to as "**the Grantee**"), he or she, the said Appearer, being duly authorised thereto under and by virtue of a Resolution of Directors of the **Grantee** passed at _____ on the _____ day of _____; which Power of Attorney and a certified copy of which Resolution have this day been exhibited to me, the Notary, remain filed of record in my Protocol with the Minute hereof.

AND THE APPEARERS DECLARED THAT:

WHEREAS **The State is the custodian of the National Mineral and Petroleum Resources.**

AND WHEREAS **The Grantee has applied for a** Prospecting **Right** in respect of _____ in, on and under the **land**,

AND WHEREAS the Grantor has agreed to grant to the **Grantee** the sole and exclusive right to prospect for _____ in, on and under the **land** in accordance with the terms and conditions recorded hereunder,

NOW THEREFORE THE **GRANTOR** GRANTS A PROSPECTING RIGHT SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Definitions

In this **prospecting right** the clause headings are inserted for reference purposes only and shall not govern or affect the meaning or interpretation thereof. The following words and expressions shall have the meaning assigned to them:

- 1.1. "the Act" shall mean the **Mineral and Petroleum Resources Development Act, 2002 (Act No. 15 of 2002)** or any subsequent law which amends or substitutes the Act;
- 1.2. "the EMP" shall mean the environmental management **plan** referred to in section of the Act;
- 1.3. "the Grantor" shall mean the Government of the Republic of South Africa in its Department of Minerals and Energy and shall include its successors and/or assigns, and wherever appropriate (in particular where the provisions of this **prospecting right** require the prior consent of the Grantor) the references **herein** to the Grantor shall be read as meaning the Minister or any person duly authorised by the Minister to act in the Minister's place and stead;
- 1.4. "the **Grantee**", shall mean the **holder of a prospecting right** and shall include the administrators or assigns or successors in title of the **Grantee** or any syndicate or company or juristic or natural person which in any manner takes over or otherwise acquires the rights of the **Grantee** under this **right**;
- 1.5. "the Minister", shall mean the responsible Minister of State referred to in the Act, or any official of the Department of Minerals and Energy to whom the Minister's authority may be delegated from time to time;
- 1.6. "mineral", shall mean (the mineral(s) concerned to be specified at the time of negotiations with the **Grantee**);
- 1.7. "the Prospecting Area", shall mean the **land** referred to in clause 1 **hereof**, excluding those portions relinquished or abandoned from time to time;
- 1.8. "the Prospecting **Work Programme**", shall mean the **Grantee's** written recordal of the manner in which **he / she / it** intends to carry out the prospecting operations in the Prospecting Area, and shall include all amendments and supplementary submissions relating to the prospecting programme which may be made by the **Grantee** and approved in writing by the Grantor from time to time, all of which amendments and supplementary submissions shall form part of this **prospecting right** as Annexure ____ attached hereto;
- 1.9. "the **Manager**", shall mean the **Regional Manager** for the ____ Region of the Department of Minerals and Energy, appointed in terms of the Act;
- 1.10. "State", shall mean the Republic of South Africa;
- 1.11. "effective date", shall mean the date **in terms of section 17(5) of the Act**.

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1. Description of Prospecting Area

The prospecting area shall comprise the following:

Certain: _____
 Situate: _____
 Measuring: _____

which prospecting area is more fully described in the attached sketch plan/diagram, marked Annexure _____

2. Prospecting Rights

- 2.1. The Grantor grants to the Grantee, the sole and exclusive right to prospect for _____ in, on and under the Prospecting Area;
- 2.2. this Prospecting Right shall constitute the Minister's written approval and entitles the Grantee to all the rights, and obligations in terms of the Act to enable the Grantee to prospect and search for _____ in, on and under the Prospecting Area.

3. Commencement, Duration and Renewal

- 3.1. This Prospecting Right will commence on the effective date and, unless cancelled or suspended earlier under section 47 of the Act will continue in force for a period of _____ from the effective date.
- 3.2. The Grantee shall within 90 days reckoned from the effective date commence with Prospecting Operations in the Prospecting Area and shall thereafter conduct such operations continuously and actively in a manner and on a scale which are in accordance with the Prospecting Work Programme, and the approved EMP to the satisfaction of the Grantor.
- 3.3. Subject to section 18 this Prospecting Right may be renewed once at the request of the Grantee for a further period of not longer than _____ years: and the renewal of this prospecting right is subject to the Grantee complying duly with section 18 of the Act -
- 3.3.1. the Grantee has complied with the provisions of sub-clause 9.1 below.
- 3.3.2. the Grantee has complied with the Prospecting Work Programme referred to in sub-clause 9.2 or any amendment or extension thereof, and submits an extension thereon in respect of each renewal period together with its request for the renewal;

- 3.3.3. the Grantee has complied with the approved EMP and has ensured the continued relevancy of the EMP on an updated version thereof, as well as the financial guarantee for rehabilitation; and
- 3.3.4. the Grantee submits to the Grantor a written application on the prescribed form for the renewal at least 90 days prior to the expiry date of any period.

4. Prospecting Fees

- 4.1. In consideration for the prospecting rights granted to the Grantee under this Prospecting Right, the Grantee shall pay to the Grantor at the Office of the Manager, or to such other person and/or at such place as the Grantor may from time to time by written notice to the Grantee, elect, as from the effective date:
- 4.1.1. an annual prospecting fee of R____ (____ RAND) per hectare of the Prospecting Area payable yearly in advance, which shall increase annually on _____ (ANNIVERSARY DATE) of each year by R____ (____ RAND) per hectare
- 4.1.2. The Grantee shall, in addition, pay to the Grantor a share of ____ of the value of any minerals found, removed and disposed off in the course of prospecting operations on the Prospecting Area; payment of the said share of ____ shall be made within 30 (thirty) days after the end of every quarter and shall be accompanied by a certificate or other document acceptable to the Manager, reflecting particulars of the value of minerals found, removed and disposed of on the Prospecting Area during the quarter in question; such quarterly payments shall be based:
- on the selling price of the minerals (if applicable);
 - in the case of minerals not sold, on the estimated value thereon; and
 - after the subsequent sale (if applicable) of any minerals in respect of which payment has already been made on the estimated value thereof, on the difference between the estimated value and selling price
- 4.1.3. In the event of the prospecting period being extended in accordance with the provisions of clause 3.3 above, R____ per hectare of the Prospecting Area for the ____ year of the prospecting period.
- 4.2. The prospecting fees referred to in sub-clause 4.1 shall be paid as follows:
- 4.2.1. prospecting fees payable in respect of the first year of the prospecting period shall be paid to the Manager within fourteen (14) days following the date of registration of the prospecting right in the name of the Grantee; and
- 4.2.2. prospecting fees payable in respect of each subsequent year of the prospecting period shall be paid within thirty (30) days following the date of commencement of each succeeding year of the prospecting period.
- 4.3. If the prospecting fees referred to in sub-clause 4.1 are not paid punctually on the due dates for payment, the Grantee shall be in *mora debitoris* and shall pay interest thereon at the rate prescribed in terms of section 80 of the Public Finance Management Act, 1999 (Act 1 of 1999) reckoned from the due date for payment up to and including the date on which payment takes place.

5. Abandonment or Relinquishment of the Prospecting Area

- 5.1. Subject to the approval by the Grantor, the Grantee shall annually on the anniversary date of this Prospecting Right, by giving the Grantor not less than three (3) months prior notice in writing to that effect, abandon or relinquish a portion or portions of the Prospecting Area if necessary.
- 5.2. In abandoning or relinquishing the Prospecting Area or any portion thereof, the Grantee will from the date of such abandonment, be absolved from the obligations and liabilities as set out in the prospecting work programme in respect of the abandoned area, but not be absolved from those obligations or liabilities which may have accrued up to the date of such abandonment under the terms and conditions of this Prospecting Right, the prospecting work programme, the EMP and the Act.
- 5.3. With effect from the date the Grantee has so abandoned or relinquished a portion or portions of the Prospecting Area, the Grantor shall be entitled to grant any prospecting rights or mining rights or any right or permit referred to in the Act in, on, or under the portion or portions, so abandoned or relinquished, to any persons or persons.

- 5.4. Upon abandonment or relinquishment of the Prospecting Area or any portion thereof, the Grantee will furnish the Grantor with all prospecting results and/or information, as well as its general evaluation of, the geological, geophysical and borehole data in respect of such abandoned area insofar as it applies to _____ or any other mineral or minerals referred to in clause 8 such results and/or information may be made available to third parties.

6. Examination of the Prospecting Area

The Minister and any person or persons designated by him/her shall have the right to carry out or cause to be carried out any examination or inspection which may be deemed necessary on the Prospecting Area.

7. Reports to be Furnished

- 7.1. Within thirty (30) days after the end of each quarter, the Grantee shall furnish to the Manager, a report giving an account of the progress of its operations in the Prospecting Area of which proper records are kept at its registered address or place of business. Such returns must contain:
- 7.1.1. a statement and sketch plan of the areas in which prospecting operations has been carried out;
 - 7.1.2. the number of boreholes drilled as well as borehole core data and core-log data; prospecting method applied, including but not limited to trenching, pits.
 - 7.1.3. a statement of the depth drilled and formations intersected and geological information gained from cores and/or cuttings in respect of each hole;
 - 7.1.4. a statement of any occurrences of _____ and other minerals of potential value encountered in the course of the said operations;
 - 7.1.5. a statement of financial expenditure, excluding salaries and wages, incurred on prospecting operations;
 - 7.1.6. the co-ordinates of each hole location and the collar elevation of each hole in the LO system; and
 - 7.1.7. a statement reflecting rehabilitation work completed and of the rehabilitation work uncompleted and still to be done.
- 7.2. Within three (3) months after the end of each year in which this Prospecting Right is in force the Grantee shall furnish the Grantor with a full report together with plans, of the prospecting operations carried out by it in the Prospecting Area during that year or the period prior to such expiration or termination as the case may be, together with a detailed statement of prospecting expenditures incurred during such year.
- 7.3. The Grantee shall furnish the Manager with such other information, maps and plans, as to the progress of its operations in the Prospecting Area as the Grantor may from time to time require and which the Grantee can reasonably make available.
- 7.4. Within three (3) months after the termination and/or cancellation and/or abandonment of this Prospecting Right, the Grantee shall furnish the Grantor with all results of and its general evaluation of the geological, geophysical and borehole data relating to the Prospecting Area as it applies to _____ or any other mineral or minerals under sub-clause 8.2.
- 7.5. All information furnished by the Grantee to the Grantor in accordance with this clause and clause 8 below, may be made available for use by third parties on expiry of the Prospecting Period in terms of the prospecting right, termination of the Prospecting Right or voluntary abandonment thereof by the Grantee provided that the Grantor shall during the Prospecting Period hold as confidential all information supplied to it under this clause as well as in terms of section 30 of the Act.

8. Keeping of Records

- 8.1. The Grantee must keep, in a form as may be from time to time reasonably approved by the Grantor, current and accurate records of the drilling, deepening, plugging or abandonment of all boreholes and of any alterations in the casing thereof. Such records must contain particulars of the following matters:
- 8.1.1. the site of and number assigned to every borehole;
 - 8.1.2. the subsoil and strata through which the borehole was drilled;
 - 8.1.3. the casing inserted in any borehole and any alterations to such casing;
 - 8.1.4. any _____ and/or other minerals of potential value encountered in any borehole;
 - 8.1.5. detailed results of all assay tests; and
 - 8.1.6. such other records as the Grantor may from time to time direct and which the Grantee can reasonably keep.
- 8.2. The Grantee must keep within the Republic of South Africa current and accurate geological, geophysical and drilling plans and maps relating to the Prospecting Area as may be necessary to preserve all information which the Grantee has about the geology of the Prospecting Area.
- 8.3. The Grantee shall deliver to the Grantor at the completion of each phase of the Prospecting Work Programme two copies of the said records, plans and maps referred to in sub-clauses 11.1 and 11.2.

9. Prospecting Work Programme

The Grantee must, to the satisfaction of the Grantor:

- 9.1. over the period of this Prospecting Right, initiate and thereafter actively pursue operations designed to progressively prospect substantially over the Prospecting Area; and
- 9.2. carry out and meet the commitments set out in the Prospecting Work Programme annexed hereto marked Annexure _____; and
- 9.3. it is recorded that the time sequences as set out in the Prospecting Work Programme will commence on the effective date.
- 9.4. Any revisions or amendments to the Prospecting Work Programme and budget must be submitted with the reasons therefor to the Minister for his/her written approval.

10. Indemnity

- 10.1. The Grantee, its successors and/or assigns, during the tenure of this Prospecting Right will take all such necessary and reasonable steps and do all such acts, matters and things and carry out their Prospecting Operations in such a manner as will adequately safeguard and protect the environment, Prospecting Area and any person or persons using or entitled to use the surface of the Prospecting Area from any damage caused by or through or in consequence of the exercise by the Grantee of its aforesaid right to prospect under this Prospecting Right, of any activity or activities associated with the Grantee's operations in the Prospecting Area, and will in so far as there is a legal liability, compensate such person or persons for any damage or losses, including but not limited to damage to the surface, to any crops or improvements, which such person or persons may suffer as a result of, arising from or in connection with the exercise of his/her rights under this Prospecting Right or of any act or omission in connection therewith.

The Grantor is not or will not be deemed to be a partner in any Prospecting Operations carried out in terms of this Prospecting Right. The Grantor will give notice to the Grantee and its aforesaid successors and/or assigns of any claim or occurrence in respect of which it proposes to invoke the provisions of this indemnity and will give the Grantee and its aforesaid successors and/or assigns the fullest opportunity to investigate, repudiate or otherwise deal with any matter that may arise from such claim. Provided always that nothing herein contained will be deemed to render the Grantee or its aforesaid successors and/or assigns liable for, or to indemnify the Grantor and/or its servants and employees against, any compensation or damages for or with respect to injuries or damage to persons or Prospecting Area directly resulting from any delict of the Grantor and/or its servants and employees during the currency of this Prospecting Right, or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

- 10.2. The Grantor will hold harmless and indemnify the Grantee and its aforesaid successors and/or assigns from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of matters referred to in the proviso of sub-clause 13.1 of this clause.

11. Health and Safety

The Grantee and its successors and/or assigns will and do hereby undertake and bind themselves during the currency of this Prospecting Right to observe and comply with all relevant provisions of the Mine Health and Safety Act, 29 1996 and regulations in terms thereof, or any subsequent law which amends or substitutes the Mine Health and Safety Act, 1996.

12. Cession, Transfer, Alienation

12.1. The Grantee shall not, without the Grantor's prior written consent be entitled to either wholly or in part transfer or encumber this prospecting right in terms of section 11 of the Act.

12.2. Unless the Grantee has obtained the prior written consent of the Grantor on such terms and conditions as the Grantor may determine (but subject always to the provisions of clause 12.3), the Grantee shall not:

12.2.1. lease the rights granted to the Grantee in terms of this Prospecting Right;

12.2.2. allow any other person to prospect for ----- in the Prospecting Area for such other person's own benefit and account;

12.2.3. allow any other person to carry out prospecting operations for ---- in the Prospecting Area and to retain the whole or any part of the income or profits from the prospecting operations.

12.3. The Grantee may from time to time appoint one or more independent contractors to carry out any work in relation to prospecting operations, but the Grantee shall always remain liable for the compliance and observation of the provisions of the Act, the EMP and of the terms and conditions of this Prospecting Right.

13. Joint and Several Liability

The parties forming the Grantee are jointly and severally liable to the Grantor for all obligations of the Grantee, in respect of this Prospecting Right and all its Annexures.

14. Waiver or Lenience

No waiver of any of the Grantor's rights and no lenience granted or permitted by the Minister or the Manager from time to time in a form which does not constitute a formal amendment of this Prospecting Right shall prejudice the Minister's or the Manager's rights under this right or the Act.

15. Arbitration

If any difference or dispute arise between the parties to this Prospecting Right to the intention and meaning of any of the terms and conditions thereof, or any matter arising from this Prospecting Right, such difference or dispute may, after the parties have exhausted all possible attempts to resolve the dispute or difference, be referred by mutual agreement between the parties for determination by an arbitrator in terms of the Arbitration Act 42, 1965, or any subsequent law which amends or substitutes the Arbitration Act.

16. Environmental Protection

16.1. The Grantee hereby undertakes and binds itself to conduct all Prospecting Operations in accordance with the requirements of the Act and any other legislation in a manner that would facilitate the protection and conservation of the natural resources of the Republic of South Africa and of the environment in general;

16.2. Subject to the provisions of the Act, the Grantee shall on the expiration or termination of this Prospecting Right or on relinquishment of part of the Prospecting Area or on the voluntary abandonment of the Prospecting Area:

16.2.1. remove all equipment and installations from such relinquished or abandoned Prospecting Area; and

- 16.2.2. perform all necessary site rehabilitation and shall take all other actions necessary to minimise hazards to human or other life or to the Prospecting Area(s) of others or the environment in general for time to come.

17. Costs

All costs flowing from this Prospecting **Right** direct or incidental, and cost of notarial execution and registration, deregistration (in cases of abandonment or relinquishment) including transfer duty, Value Added Tax at the prevailing rate and stamp duty, shall be paid by the **Grantee**.

18. Severability

Notwithstanding anything to the contrary, any provision of this **Right** which contravenes the Act or which is otherwise *ultra vires*, void, voidable, or unenforceable, shall be severable from the rest of this **Right**, such rest thus being and remaining of full force, effect and enforceability.

19. Domicilia citandi et executandi

- 19.1. The parties hereto choose the undermentioned addresses as their domicilia citandi et executandi for the purposes of serving any notice in terms of this **right** and any notice shall be validly given if in writing and posted under pre-paid registered cover addressed to the Grantor or delivered to the Grantor at:

BUSINESS ADDRESS:

POSTAL ADDRESS:

and to the **Grantee** at:

BUSINESS ADDRESS:

POSTAL ADDRESS:

- 19.2. In the event of a change of address on the part of either party to this agreement, that party shall immediately notify the other in writing of such change, failing which the abovementioned address shall remain in force.

Thus done and signed at _____ on the _____ day of 200__ in the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

for and on behalf of the Grantor

Thus done and signed at _____ on the _____ day of 200__ on the presence of the undersigned witnesses:

AS WITNESS:

1.

2.

for and on behalf of the **Grantee**

**FORM HH :
MINING RIGHT**

LET IT HEREBY **BE** MADE KNOWN:

THAT on this the _____ day of _____ in the year _____, before me, Notary by lawful authority duly sworn and admitted, residing and practising at _____, in the _____ Province of South Africa, and in the presence of the subscribing competent witnesses, personally came and appeared _____ in his or her capacity as the Regional Manager of the _____ Region of the Department of Minerals and Energy of the Republic of South Africa, he or she being duly authorised thereto by _____

THE MINISTER OF MINERALS AND ENERGY

(hereafter together with his or her successors in title and assigns called "the Grantor")

under a Power of Attorney granted to him or her by _____ in his or her capacity as Director-General of the Department of Minerals and Energy him or her being duly authorised thereto by virtue of powers delegated to him or her by the Minister of Minerals and Energy of the Republic of South Africa (hereafter together with his or her successors in office and assigns) on _____ in terms of section _____ of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 15 of 2002)

and also personally came and appeared _____ in his or her capacity as a _____

Registration No

(hereafter together with is successors in title and assigns called)

he or she being duly authorised thereto by a _____ of the Grantee, which Power of Attorney and a certified extract from the minutes of the meeting of the Directors of the Grantee evidencing the above-mentioned resolution have this day been examined by me the Notary and now remain filed in my Protocol,

AND THE APPEARERS DECLARED THAT

WHEREAS The State is the custodian of the National Mineral and Petroleum Resources.

AND WHEREAS the Grantee has conducted prospecting operations for _____ on the property and wishes to acquire a mining right in respect of the rights to _____ in, on and under the land,

AND WHEREAS the Grantor has agreed to grant to the Grantee the sole and exclusive right to mine for _____ on the land in accordance with the terms and conditions recorded in this mining right.

NOW THEREFORE **THE GRANTOR GRANTS A MINING RIGHT SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

1. **Definitions**

In this **mining right** the following words and expressions shall have the meanings assigned to them:

- 1.1. "the Act" shall mean the **Mineral and Petroleum Resources Development Act, 2002 (Act 15 of 2002)** or any **subsequent law which amends or substitutes the Act**.
- 1.2. "mineral" shall mean
- 1.3. "Business Plan" shall mean the **Grantee's** written recordal of the manner in which **he/she or it** intends to facilitate, implement and control the Mining **Work** Programme on a profitable basis, including, without limitation, the financing and financial management of operations, estimated mining expenditures, financial provision for rehabilitation under the Act, the making of provision for the payment of any taxes and the discharge of any other fiscal responsibilities and, in this regard, all amendments to and supplementary submissions on the Business Plan which may be made by the **Grantee** from time to time shall be deemed to be included in this expression.
- 1.4. "the EMP" shall mean the environmental management programme referred to in the Act.
- 1.5. "the **Grantor**" shall mean the Government of the Republic of South Africa in its Department of Minerals and Energy and shall include the successors in title and assigns of the **Grantor**, and wherever appropriate (in particular where the provisions of this **mining right** require the prior consent of the **Grantor**) the references in this **mining right** to the **Grantor** shall be as meaning the Minister or any person duly authorised by the Minister to act in the Minister's place and stead.
- 1.6. "the **Grantee**" shall mean _____ (Registration No _____ and shall include the assigns or successors in title of the **Grantee** or any syndicate or juristic or natural person which in any manner takes over or otherwise acquires the rights of the **Grantee** under this **Mining Right**.
- 1.7. "mine" when used shall bear the meaning assigned thereto in the Act.
- 1.8. "the **Mining Right** Area" shall mean the portion or portions of the **land** referred to in clause 1
- 1.9. "Mining **Work** Programme" shall mean the **Grantee's** written recordal of the manner in which the **Grantee** intends to mine, recover and win minerals in, on and under the **Mining Right** area, including without limitation, the mining methods to be employed, the machinery to be used, demarcations of where mining operations are to be conducted, demarcations of buildings, storerooms and conveyors, the manner of processing ore for the purposes of recovering _____ and the manner in which the **Grantee** will comply with all regulations and legislation relevant to such mining activities and, in this regard, all amendments to and supplementary submissions on the Mining **Work** Programme which may be made by the **Grantee** from time to time shall be deemed to be included **herein**.

- 1.10. *PPI* shall mean the figure representing the weighted average for all items of the Producer Price Index for mining and quarrying as reflected in the official Producer Price Index published for the relevant month by the Government's Central Statistical Service or, in the event of any such Producer Price Index being discontinued at any time, the weighted average of such other similar statistical index published from time to time by the Government (or other recognised body processing statistical information).
- 1.11. "*initial period*" shall mean the period referred to in clause 3.1.
- 1.12. "*mining right period*" shall mean the period of time referred to in clause 3 together with all periods for which this *mining right* may be renewed or extended under the provisions of clause 4.
- 1.13. "*financial year*" shall mean a complete financial year of the *Grantee* which, as the time of conclusion of this *mining right*, commences on ____/____/____ and ends on ____/____/____.
- 1.14. "*Manager*" shall mean the *Regional Manager* for the ____ Region of the Department of Minerals and Energy.
- 1.15. "*Effective date*", shall mean the date *in terms of section 23(5) of the Act*.

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1. Description of the Mining Right Area

The land shall comprise the following:

Certain: _____

Situate: _____

Measuring: _____

which Mining Right Area is more fully described in the attached Diagram/sketch plan marked Annexure ____.

2. Grant of Mining Right

The Grantor hereby grants to the Grantee and the Grantee accepts the sole and exclusive right to mine, and recover _____ in, on and under the Mining Right Area for the Grantee's own benefit and account, and to deal with, remove and sell or otherwise dispose of _____, subject to the terms and conditions of this mining right, the EMP and other provisions of the Act.

2.1. Grants to the Grantee the consent referred to in section _____ of the Act to mine for _____ in, on, or under the Mining Right Area on the Grantee's own account and to dispose thereof.

3. Duration

3.1. This mining right shall commence on the effective date and shall thereafter endure for a period of _____ years, subject to the provisions of clauses 4, 12 and 15.

4. Renewal of Mining Right

4.1. Any application for renewal shall be submitted in writing to the Grantor not later than 90 (ninety) days prior to the date of expiry of the initial period.

4.2. The Grantee shall simultaneously with the application for renewal, submit a Business Plan and a Mining Work Programme indicating that mining and rehabilitation work will be conducted in accordance with the EMP or an amended version thereof during such renewal period.

4.3. Any renewal shall be subject to the approval of the Grantor in the Grantor's discretion, which approval may be made subject to such terms and conditions including environmental management requirements as the Grantor may in the Grantor's discretion deem necessary, it being recorded however that the latter discretion shall not be exercised in an unreasonable manner.

5. Consideration

5.1. In consideration for the rights granted to the Grantee under this mining right, the Grantee shall pay to the Grantor throughout the duration of this mining right the royalty referred to in clause 5.2, subject always to the minimum royalty provided for in clause 5.3.

- 5.2. An annual royalty equal to whichever of the following is the lesser shall be paid by the Grantee to the Grantor:
- 5.3. Notwithstanding the provisions of clause 5.2, a minimum annual royalty calculated in accordance with the following provisions shall be paid by the Grantee to the Grantor:
- 5.4. The balance (if any) of any royalty payable in terms of clause ____ remaining after application of the set-off referred to in clause ____ shall be paid annually in arrears within ____ days following the date of finalisation of the audited annual financial statements of the Grantee for the relevant year.
- 5.5. If the Grantee changes the Grantee's financial year during the currency of this mining right period, appropriate adjustments to the calculations provided for in clause 5 shall be made in order to ensure that neither party is prejudiced in consequence of such change.
- 5.6. If the royalties referred to in clauses 5.2 and 5.3 are not punctually paid on the dates on which they become payable, the Grantee shall be in *mora debitoris* and interest on all arrears amounts calculated at the uniform rate prescribed in terms of section 80 of the Public Finance Management Act, 1999 (Act 1 of 1999) and reckoned from the due date for payment up to and including the date on which payment takes place by the Grantee to the Grantor.
- 5.7. All payments in terms of this clause 5 shall be made by the Grantee to the Grantor at the offices of the Manager, provided that:
- 5.7.1. The Grantor shall be entitled during the mining right period by means of written notice to the Grantee to nominate any other person or institution in South Africa to whom the royalty payments shall be made; and

6. Restrictions and Obligations imposed on the Grantee

- 6.1. Subject to the provisions of the Act, the Grantee and the Grantee's nominees, agents, contractors and employees shall have the right to enter upon and have access to any portion of the Mining Right Area together with all such persons, plant, machinery and equipment as may be required for the purposes of prospecting or mining on the Mining Right Area and to carry out all such prospecting and mining operations on the Mining Right Area as the Grantee may in the Grantee's discretion determine, which rights of the Grantee shall (notwithstanding anything to the contrary in this mining right) be subject to the following special conditions:
- 6.1.1. No mining operations shall be carried out on any land which is under cultivation or which is used as a garden, orchard, vineyard, nursery, plantation, forest, kraal or cemetery or within one hundred metres from any spring, well, borehole, stream, reservoir, dam, watercourse or waterworks, or within one hundred metres of any house, homestead or building unless security in such amount as the Grantor may have determined has been deposited with the Regional Manager for payment of any loss or damage arising directly or indirectly from such mining operations and for the renewal, reconstruction or re-erection of anything damaged or destroyed as a result of such mining operations.

- 6.1.2. The Grantee shall not trespass or enter into any homestead, house or its curtilage nor interfere with or prejudice the interests of the occupiers and/or owners of the surface of the Mining Right Area except to the extent to which such interference or prejudice is reasonably necessary for the purposes of enabling the Grantee properly to exercise the Grantee's rights under this mining right.
- 6.2. Subject to section 44 of the Act, no permanent buildings, except for buildings which are by law required to be of a permanent nature and except for buildings which the Grantee will remove from the Mining Right Area upon expiry of this mining right, may be erected on the Mining Right Area by the Grantee without the prior written consent of the registered owner of the surface of the Mining Right Area.
- 6.3. No new roads, railways, pipelines, power line or other similar infrastructure traversing the surface of the Mining Right Area shall be constructed on the Mining Right Area by the Grantee without the authorisation or permission from the authorities concerned.
- 6.4. The Grantee shall conduct an environmental impact assessment and carry out all operations on the Mining Right Area in accordance with the approved EMP and with the minimum amount of disturbance and damage to the environment.
- 6.5. Mining operations shall be conducted according to the Business Plan and in a manner which shall limit so far as may reasonably be possible any detrimental effect which such mining operations may have on existing developments and improvements on the Mining Right Area and surrounding areas and communities.
- 6.6. The Grantee must to the satisfaction of the Grantor, over the mining right period, initiate and actively conduct mining operations and carry out and meet the commitments set out in the approved Business Plan.
- 6.7. The Grantee undertakes to commence with mining operations within _____ years from the effective date. Failure to do so, this lease shall *ipso facto* lapse.

7. No Mortgage, Cession, Transfer, Alienation

- 7.1. The Grantee shall not, without the Grantor's prior written consent be entitled to either wholly or in part transfer or encumber this mining right in terms of section 11 of the Act.
- 7.2. Unless the Grantee has obtained the prior written consent of the Grantor on such terms and conditions as the Grantor may determine (but subject always to the provisions of clause 7.3), the Grantee shall not:
- 7.2.1. lease the rights granted to the Grantee in terms of this Mining Right;
- 7.2.2. allow any other person to mine for ----- in the Mining Area for such other person's own benefit and account;
- 7.2.3. allow any other person to carry out mining operations for ---- in the Mining Area and to retain the whole or any part of the income or profits from the mining operations.

7.3. The Grantee may from time to time appoint one or more independent contractors to carry out any work in relation to mining operations, but the Grantee shall always remain liable for the compliance and observation of the provisions of the Act, the EMP and of the terms and conditions of this Mining Right.

8. Protection of Boreholes, Shafts, etc.

No boreholes sunk by the Grantee during the currency of this mining right shall be sealed or closed up by the Grantee without the prior approval of the Grantor, but the Grantee shall fence and render safe all boreholes, shafts, openings and excavations in accordance with the provisions of the Act, the Mine Health and Safety Act, 1996 and any other applicable laws and regulations.

9. Protection of Property and Persons

The Grantee shall during the currency of this mining right take all such steps, do all such acts and things and conduct all prospecting and mining operations in such manner as may be required to ensure that the property and person of anyone who is entitled from time to time to make lawful use of the surface of the Mining Right Area are fully protected against any damage caused by or as a result of the exercise of the rights granted under this mining right to the Grantee and, in this regard, the Grantee hereby indemnifies such persons against all such damage.

10. Inspection of Mining Right Area

The Grantor and any person duly authorised thereto in writing by the Grantor shall be entitled to inspect the Mining Right Area, the Grantee's mining operations and the execution of the approved EMP on the Mining Right Area at any time, and any instruction conveyed in writing by the Grantor to the Grantee requiring the proper performance by the Grantee of the Grantee's obligations under this mining right shall be put into effect by the Grantee in terms of the Act.

11. Cessation and termination of Mining Right

11.1 The Grantor shall be entitled to terminate this mining right in terms of section 47 of the Act.

11.2 The Grantee shall be entitled to terminate this mining right at any time on prior written notice to the Grantor, which notice shall take effect as from the date of receipt thereof by the Grantor.

Unless the contrary is agreed to in writing between the Grantor and the Grantee the following provisions shall apply on termination of this mining right:

11.2.1. The Grantee or any other person entitled thereto shall subject to the provisions of the Act, within of termination of this mining right remove all installations, machinery, plant and equipment from the Mining Right Area, but shall not remove or damage any machinery or assets used for the maintenance of underground works or installations or for the prevention of damage to the mine or underground works (which machinery and assets shall for all purposes be deemed to have been abandoned by the Grantee).

- 11.2.2. No compensation shall be payable to the Grantee in respect of such removal or in respect of such abandonment.
- 11.2.3. If any of the installations, machinery, plant or equipment which are not necessary for the maintenance of the mine and underground works are not removed within such period of _____, the Grantor may (unless and extension of time for such removal is allowed) cause the same to be sold by public tender or public auction.
- 11.2.4. One month's notice of such sale shall be published in the Government Gazette and in a newspaper circulating in the Magisterial District of ____ and shall be given to the registered mortgagees, if any, of the Mining Right Area.
- 11.2.5. After the recovery of the costs of such sale and of any moneys which remain due to the Grantor under this Mining Right, the balance of the proceeds of such sale shall be paid to the Grantee.
- 11.2.6. As an alternative to such sale the Grantor shall have the right, upon written notice to the Grantee, to purchase all or any of the buildings, machines, installations, equipment or other property of the mine on the Mining Right Area at such price and on such conditions as may be agreed upon between the parties or, failing mutual agreement on any such conditions, the dispute shall be referred for determination to arbitration in accordance with the provisions of clause 18.

12. Records and Returns

- 12.1. The Grantee shall maintain all such books, plans and records in regard to mining on the Mining Right Area as may be required by the Act and the regulations promulgated thereunder, and shall furnish to the Minister such reports and documents as may be relevant to the rights of the Grantor under this agreement.
- 12.2. The Grantee shall furnish to the appropriate authorities all such returns as may from time to time be required under the Act and the regulations promulgated thereunder.
- 12.3. The Grantee shall on a quarterly basis, calculated from the commencement of this mining right, furnish the Grantor or the Grantor's nominee with a return reflecting the particulars of any primary geological exploration undertaken by the Grantee on the Mining Right Area.
- 12.4. The Grantee shall furthermore at the end of each year following commencement of this mining right, inform the Grantor in writing of any new developments and of the future prospecting and mining activities planned in connection with the exploitation/mining of ____ on the Mining Right Area.

13. Payment of Compensation

The Grantor shall not at any time be liable or responsible for the payment of compensation of whatsoever nature to the Grantee, the Grantee's successors-in-title or assigns, except for compensation for which the Grantor is liable in consequence of the breach by the Grantor of any of the provisions of this mining right or on account of any wrongful act or omission by or attributable to the Grantor.

14. Contravention

Should the Grantee breach or fail to observe any material term or condition of this mining right, and should the Grantee fail to remedy such breach or default within 60 (Sixty) days following the Grantor's written notice to do so, the Grantor shall be entitled to cancel this mining right forthwith in terms of section 47 of the Act, without prejudice to any other rights or remedies of the Grantor.

15. Health and Safety

The Grantee and its successors in title or assigns will and do hereby undertake and bind themselves to during the currency of this Mining Right to observe and comply with all relevant provisions of the Mine, Health and Safety Act 29, 1996.

16. Arbitration

16.1. Should any difference or dispute arise between the parties to this mining right as to the intention and meaning of any of the terms and conditions of this mining right, or as to any matter arising from this mining right, then the parties shall endeavour in good faith to make every effort to resolve the dispute on its merits by negotiations and shall, for that purpose, attend at least one meeting with each other. Such negotiations shall take place within 21 (twenty-one) days of the dispute arising unless the parties otherwise agree in writing and shall endure for no longer than 7 (seven) days from the date of commencement thereof.

16.2. If the negotiation referred to in 18.1 does not take place or does not result in a resolution of the dispute or difference within 7 (seven) days of the commencement thereof (or such extended period as the parties may agree in writing), any party claiming that a dispute has arisen shall give written notice to the other party of that fact and shall specify in that notice the nature of the dispute.

16.3. If the parties are unable to resolve the difference or dispute in question despite compliance with 18.1, 18.2 and 18.3, then the dispute shall be referred for arbitration in terms of the Arbitration Act, 42, 1965, or any subsequent law which amends or substitutes the Arbitration Act.

17. Joint and Several Liability

Notwithstanding anything to the contrary, any provision of this mining right which contravenes the Act or which is otherwise *ultra vires*, void, voidable, or unenforceable, shall be severable from the rest of this mining right, such rest thus being and remaining of full force, effect and enforceability.

18. Domicilia citandi et executandi

18.1. The parties choose the undermentioned business addresses as their respective *domicilia citandi et executandi* and for all purposes arising from this mining right, in particular for the purposes of the serving of any notice in terms of this mining right, and any notice properly addressed to the undermentioned postal addresses of the parties shall be deemed to have been received by the addressee within 5 (five) if given in writing and posted by prepaid registered post addressed to the addressee at the relevant postal address:

18.1.1. In the case of the Grantor:

Business Address:

Postal Address:

Tel:

Fax:

18.1.2. In the case of the Grantee:

Business Address:

Postal Address:

Tel:

Fax:

- 18.2. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party at any place other than the chosen *domicilium citandi et executandi* shall constitute adequate notice or communication to the party notwithstanding that it was not sent to or delivered at such party's chosen *domicilium citandi et executandi*.
- 18.3. Either party shall be entitled from time to time to change the *domicilium citandi et executandi* or postal address furnished above after giving at least 14 (Fourteen) days prior written notice of such change to the other party, failing which the above mentioned addresses shall remain in force.
- 18.4. Any written notice or communication contemplated in this clause which is forwarded by one party to the other by registered post will be reputably presumed to have been received by the addressee on the fourteenth day following the date of posting from an address within the Republic of South Africa to the addressee at the postal address of the addressee for the time being as determined in accordance with the provisions of this clause.

19. Cost

The Grantee shall pay all costs and charges incurred by the Grantee in connection with the negotiation, preparation, execution and registration of this mining right.

Thus done and signed at ____ on the ____ day of ____ 200__ in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____

2. _____

for and on behalf of the Grantor

Thus done and signed at ____ on the ____ day of ____ of 200__ in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____

2. _____

for and on behalf of the Grantee

QUOD ATTESTOR

NOTARY

FORM II:**MINING PERMIT****PREAMBLE**

WHEREAS, The State is the custodian of the right to in respect of the land District of Province in terms of section 2 of the Mineral and Petroleum Resources Development Act, 2002, (hereinafter referred to as "the Act"; and

WHEREAS, ID/Registration number (hereinafter referred to as "the Grantee"), applied to mine which may occur on the land in question, it is hereby agreed, in terms of the provisions of section 27 of the Act, by me, Minister of Minerals and Energy (hereinafter referred to as "the Minister"), to grant to the Grantee, and the Grantee hereby accepts the right to mine for at his own cost, and to dispose thereof, on the land approximately (not more than ,5) hectares in extent (hereinafter referred to as "the land"), as shown on sketch plan No, which sketch plan is filed in the office of the Regional Manager, subject to the provisions of the Act and the conditions set out hereinafter:

BEACONS

1. Recognizable, sturdy and clearly-visible beacons must be placed and maintained so that the mining area as described by the permit and sketch plan is clearly identified.

GRANTING OF RIGHTS

2. The Grantee shall as soon as is possible, but within a period of not less than three months after the signing hereof by the Minister, apply for a mining permit as described in the Act and the permit hereby granted shall be valid for a period of years after the issuing thereof provided that should the Grantee not apply for a mining permit within the prescribed period of three months, this agreement shall ipso facto lapse.
3. This mining permit may be renewed upon written application by the Grantee for a further period of one (1) year, provided:
 - (a) The Grantee has conducted the mining operations in accordance with the mining plan.
 - (b) The Grantee has complied with the provisions of the approved and has ensured the continued relevancy of the Environmental Management Plan or an updated version thereof, as well as financial guarantee for rehabilitation.

UNDERTAKING BY GRANTEE

4. The Grantee undertakes to commence with mining operations/activities within three (3) months from the date of issue of the mining permit. Failure to do so, this agreement shall ipso facto lapse.

5. Mining operations shall be carried out in a manner and on a scale satisfactory to the Minister.

ABANDONMENT

6. The Grantee may, at any time, by notice in writing to the Minister, abandon the permit hereby granted or any portion of the land comprising the subject of such a permit, and thereupon it shall be deemed to have lapsed as from the date of such notice to the extent indicated therein.

CANCELLATION OR SUSPENSION OF MINING PERMIT BY THE MINISTER

7. Cessation and termination of Mining Permit

7.1 The Minister shall be entitled to terminate this mining right in terms of section 47 of the Act.

- 7.2 The Grantee shall be entitled to terminate this mining right at any time on prior written notice to the Grantor, which notice shall take effect as from the date of receipt thereof by the Grantor.

Unless the contrary is agreed to in writing between the Grantor and the Grantee the following provisions shall apply on termination of this mining right:

- 7.2.1. The Grantee or any other person entitled thereto shall subject to the provisions of the Act, within of termination of this mining right remove all installations, machinery, plant and equipment from the Mining Right Area, but shall not remove or damage any machinery or assets used for the maintenance of underground works or installations or for the prevention of damage to the mine or underground works (which machinery and assets shall for all purposes be deemed to have been abandoned by the Grantee).
- 7.2.2. No compensation shall be payable to the Grantee in respect of such removal or in respect of such abandonment.
- 7.2.3. If any of the installations, machinery, plant or equipment which are not necessary for the maintenance of the mine and underground works are not removed within such period of, the Grantor may (unless and extension of time for such removal is allowed) cause the same to be sold by public tender or public auction.
- 7.2.4. One month's notice of such sale shall be published in the Government Gazette and in a newspaper circulating in the Magisterial District of ____ and shall be given to the registered mortgagees, if any, of the Mining Right Area.
- 7.2.5. After the recovery of the costs of such sale and of any moneys which remain due to the Grantor under this Mining Right, the balance of the proceeds of such sale shall be paid to the Grantee.
- 7.2.6. As an alternative to such sale the Grantor shall have the right, upon written notice to the Grantee, to purchase all or any of the buildings, machines, installations, equipment or other property of the mine on the Mining Right Area at such price and on such conditions as may be agreed upon between the parties or, failing mutual agreement on any such conditions, the dispute shall be referred for determination to arbitration in accordance with the provisions of clause 18.

NOTE

Clauses 8 and 9 are specifically applicable to diamonds only should any other mineral/s be involved, the clauses must be deleted or amended accordingly

CONSIDERATION PAYABLE

8. The Grantee shall pay to the State, in addition to such amounts as are payable at any time under any law providing for taxation on the profits of diamond mining, at the office of the Department in the region where the operation is taking place as from the date of issuing of a mining permit by the Minister to the Grantee -
- (a) a royalty of 5% of the proceeds of the diamonds found in the course of mining operations on the land. Payment of the said royalty shall be made within 30 (thirty) days after the end of every quarter and shall be accompanied by a certificate or other document acceptable to the Minister, reflecting particulars of the proceeds and sales of diamonds. Such quarterly payments shall be based -
- (i) on the selling price of the diamonds;
- (ii) in the case of diamonds not yet sold, on the estimated value thereof; and
- (iii) after the subsequent sale of any diamonds in respect of which payment has been made in terms of subparagraph (ii) above, on the difference between the estimated value and the selling price; and
- (b) a minimum royalty of R..... for year one and R..... for year two. Such minimum royalties may be offset against actual royalties payable for each year in which the royalties are payable.

If the said payments are not made on the due date, the Grantee shall be in mora and interest thereon shall be charged at the "prescribed rate" as defined in section 80 of the Public Finance Management Act, 1999 (Act 1 of 1999), reckoned from the due date to the date on which such payment is made.

9. The Minister may at any time direct that the value of any diamonds found on the land during mining operations be determined by someone appointed by the Minister, and the Grantee shall not dispose of such diamonds at a price below the value so determined, without the consent of the Minister.

KEEPING OF RECORDS

10. The Grantee shall keep all such books, accounts, plans and records as may reasonably be deemed by the Minister to be necessary for conveying a full account and record of his operations on the land and such books, accounts, plans and records shall at all reasonable times be open to the inspection of the Minister or any officer authorised thereto by him/her. The Grantee shall furthermore promptly submit, at the intervals stated in Schedule A to this agreement, the documents required in the said schedule.

INSPECTIONS

11. The Minister or any other officer appointed by him/her shall have the right to carry out, or cause to be carried out, any investigation which may be deemed necessary on the land pertaining to the mining permit.

GRANTEE NOT EXEMPTED FROM OBLIGATIONS

12. In the event of this mining permit ceasing to exist for any reason, the Grantee shall not be exempted from any of his unfulfilled obligations in terms hereof or the Act.

STATE NOT LIABLE

13. Subject to the provisions of the Act, the State is not liable for the payment of any compensation whatsoever for any installation or structure erected on or over the site or for any improvement made by the Grantee on the site after conclusion of his mining operations and evacuation of the land.

CESSION, TRANSFER, ALIENATION

14. The rights granted in terms of this mining permit may not be dealt with as described in section 27(7)(b) of the Act, but may be encumbered or mortgaged only for the purpose of funding or financing of the mining operations with the consent of the Minister.

GRANTING OF RIGHTS IN RESPECT OF OTHER MINERALS

15. Subject to the provisions of the Act, the Minister reserves the right to grant a mining permit to any other person to mine or to prospect for any other mineral which may occur on the land and which is not included herein. Provided that such other mining permit shall not be granted without the prior consultation between the Minister and the Grantee.

PROTECTION OF PROPERTY AND PERSONS

16. The Grantee shall take all such necessary steps and do all such acts, matters and things and carry out his mining operations in such manner as will fully and adequately safeguard and protect the rights, property and person of any person or persons occupying, using or present on the land or adjacent land, from any damage caused by or through or in consequence of the exercise by the Grantee of his mining operations pertaining to the mining permit.

INDEMNITY

17. The Grantee hereby undertakes to hold harmless and indemnifies the State and/or the servants of the State, of and from any injury, loss (including loss of life) or damage, costs, charges and expenses which may be suffered or sustained by any person or persons whomsoever as a result of the mining operations carried out by the Grantee and shall also on demand refund to the State and/or the servants of the State all costs, charges and expenses which the State and/or the servants of the State may be put to or sustain in connection with or arising out of any claims made against the State and/or the servants of the State by any such person or persons, it being specially agreed that the State shall in no way be deemed to be a partner in the mining operations. The State shall give notice to the Grantee of any occurrence in respect of which he intends to benefit by this indemnity and shall afford the Grantee full facilities for investigating, contesting or otherwise dealing at his discretion with any matter arising in respect thereof.

WAIVER OR LENIENCE

18. No waiver or lenience that the Minister may grant or allow towards the Grantee in connection with the latter's obligations shall prejudice the rights of the Minister in terms hereof or the Act. Such waiver or lenience shall furthermore, not be regarded as an abandonment by the Minister of any of his/her rights.

DOMICILIUM

19. Any notice, instructions, claim of account which is required or may be given to the Grantee in terms hereof shall be valid if given in writing and forwarded by prepaid registered post to the Grantee at :

.....
.....
.....

or in any such place in the Republic of South Africa as the Grantee may in writing give the Minister notice of hereafter. The Grantee hereby chooses domicilium citandi et executandi at the lastmentioned address.

THUS DONE AND SIGNED at on this day of 20...., in the presence of the undersigned competent witnesses.

MINISTER:

AS WITNESS:

1.

2.

I, _____, hereby accept the above conditions set out herein.

Signed at on this the day of 20...., in the presence of the undersigned competent witnesses.

GRANTEE

AS WITNESSES:

1.

2.

SCHEDULE A**DOCUMENTS TO BE LODGED AT THE DEPARTMENT**

The Grantee shall furnish to the Minister quarterly returns reflecting particulars of:

- (i) The number and dimensions of all pits, trenches, shafts, tunnels or other excavations made, together with a description of the geological formations encountered.
- (ii) Details of boreholes drilled, i.e., depth and strata traversed.
- (iii) The quantity of waste and gravel or ore excavated and the quantity of gravel or ore treated.
- (iv) The number of diamonds found, together with their mass (in carats) and the value.
- (v) The number of workers employed.
- (vi) Expenditure incurred in respect of -
 - (a) salaries and wages;
 - (b) stores; and
 - (c) equipment, machinery and vehicles purchased and details of any other expenditure.

N.B. "NIL" RETURNS WITH THE REASONS THEREFOR MUST BE FORWARDED WHERE APPLICABLE.)

FORM JJ:**RECONNAISSANCE PERMIT****Index****Preamble**

1. Definitions
2. Description of the Permit Area
3. Duration
4. Rights and Obligations of the Grantee
5. Fees
6. Technical Advisory Committee
7. Minister's Right to Cancel or Suspend the Reconnaissance Permit
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10. Reports and Samples to be Furnished
11. Reconnaissance Work Programme and Budget
12. Black Economic Empowerment
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22. Cession, Transfer, Alienation
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29. Costs and VAT
30. Severability

31. **Notices, *domicilia citandi et executandi* and Representatives**

ANNEXURES

- A Map and description of the Permit Area
- B Reconnaissance Work Programme
- C Account to which payments to the Grantor are to be made

SPECIMEN AGREEMENT FOR A RECONNAISSANCE PERMIT

entered into between

THE REPUBLIC OF SOUTH AFRICA

(hereinafter referred to as "the Grantor") and herein represented by the Chief Executive of South African Agency for Promotion of Petroleum Exploration and Exploitation (Proprietary) Limited, he being duly authorised by a Resolution of Directors of Agency passed at Cape Town on [] 2000 [], Agency acting herein on behalf of the Minister of Minerals and Energy of the Republic of South Africa (hereinafter referred to as "the Minister"), by virtue of the provisions of section 70(1) read with section 66(1)(d) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. xx of 2002)

and

Registration No. []

(hereinafter referred to as "the Grantee") a company incorporated and registered in _____ under the laws of _____ and having its registered address at _____ and herein represented by _____, he being duly authorised by virtue of a resolution of directors of Grantee passed at _____ to _____

(the Agency and Grantee are jointly referred to as "Parties" and individually as "Party")

WHEREAS

- In terms of section 66(1)(a) of the Mineral and Petroleum Resources Development Act, 2002, Act No. ____ of 2002 ("the Act") it is the function of the Agency to promote exploration for petroleum in the Republic of South Africa;
- In terms of section 66(1)(d) of the Act the Minister is authorised to issue reconnaissance permits for the purpose of promoting exploration for petroleum within the onshore and offshore territory of the Republic of South Africa, the latter in such maritime zones over which the State has jurisdiction, including but not limited to the territorial waters, the continental shelf, and the exclusive economic zone, all as envisaged in the Sea-Shore Act, 1935 (Act No. 21 of 1935), and in the Maritime Zones Act, 1994 (Act No. 15 of 1994);
- The Grantor and the Grantee have jointly identified certain offshore areas where reconnaissance work can be expected substantially to increase the understanding of the underlying geology and which reconnaissance work can reasonably be expected to attract the interest of the industry;

- The Grantor has agreed to issue to the Grantee a Reconnaissance Permit by way of and being this Reconnaissance Permit Agreement to enable it to carry out certain reconnaissance work on an area ("the Permit Area") more fully described in clause 2 below in accordance with the terms and conditions recorded hereunder.
- The Grantor has appointed South African Agency for Promotion of Petroleum Exploration and Exploitation (Proprietary) Limited as its designated representative for the purposes of this agreement

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Definitions

The definitions in the Act shall apply also to this Agreement and additionally the following words and expressions shall have the meaning assigned to them:

List of definitions to be fleshed out as text approaches finalisation

- 1.1. "the Act" shall mean the Mineral and Petroleum Resources Development Act, 2002 (Act No. ... of 2002) or any subsequent law which amends or substitutes the Act;
- 1.2. "Affiliate" of a Party shall mean a company which owns, or is owned by, or which is owned by an entity which owns that Party; "owns" and "owned" mean in this definition the ownership directly or indirectly of more than 50 % of the voting shares or members' interests;
- 1.3. "the Agency" shall bear the meaning attributed thereto in the description of the Parties above;
- 1.4. "Effective Date", shall mean the date on which this reconnaissance permit agreement is signed by the last Party to sign it;
- 1.5. "the Grantee", shall bear the meaning attributed thereto in the definition of the Parties above;
- 1.6. "the Grantor" shall mean the State;
- 1.12. "the Minister", shall bear the meaning attributed thereto in the description of the Parties above;
- 1.8. "the Permit Area" means the area referred to in clause 2 of this Agreement, excluding parts relinquished or abandoned from time to time;
- 1.10. "the Reconnaissance Work Programme", shall mean the Grantee's written recordal envisaged in regulation 6 made in terms of the Act of the manner in which it intends to carry out the Reconnaissance Operations in the Permit Area, and shall include all amendments and supplementary submissions relating to the Reconnaissance Work Programme which may be made by the Grantee and approved in writing by the Agency from time to time;
- 1.11. State, shall mean the Republic of South Africa;

Reference to the singular of a defined term includes a reference to it in the plural and vice versa and reference to any gender includes a reference to all other genders.

2. Description of the Permit Area

The Permit Area comprises approximately _____ km² in the West / South / East* Coast Region offshore, being the area of sea including the seabed, identified as such by co-ordinates on the map attached as Annexure A hereto.

3. Duration

- 3.1 Unless this permit is suspended, cancelled or abandoned it shall, subject to acceptance thereof by Grantee, where provided at the foot of this permit, be valid from the Effective Date for a period of [] months thereafter.*

* In terms of section 70(4)(b) of the Act, this period may not exceed one year.

- 3.2 In terms of sections 70(4)(d) and (e) of the Act, this permit is not transferable and not renewable.
- 3.3 Subject to satisfactory completion of the Reconnaissance Work Programme, the Grantee shall for a period of 9 years from the expiry of this Permit (Marketing Period) have the exclusive right to license the use of the Data to third parties through contracts that will preserve the confidentiality of the data and on terms and conditions that are customary in the industry, and retain all consequent revenues.
- 3.4 During the Marketing Period as defined in 3.3, the Agency shall have the right to use all such data and reports for internal evaluation of the petroleum potential of the Permit Area, and to disclose portions of the said data and reports to bona fide potential licensees of the data and/or potential applicants for a Technical Co-operation Permit or Exploration Right or Production Right in relation to the portion of the Permit Area to which the disclosed data relates. On expiry of the Marketing Period the Agency shall be free to display, disclose, sell, trade or otherwise dispose of the Data and reports without restriction.

4. Rights and Obligations of the Grantee

- 4.1 The Agency hereby in terms of section 70(1) read with section 66(1)(d) of the Act issues to the Grantee and the Grantee hereby accepts the Reconnaissance Permit constituted by this Agreement, conferring the non-exclusive right to carry out the Reconnaissance Operations in the Permit Area as set out in the Reconnaissance Work Programme attached hereto as, marked Annexure B,
- 4.2 The Grantee acknowledges that all technical data, reports, maps, samples and information generally (defined in clause 13.6 as "the Data") that arise from the carrying out of the reconnaissance work are the property of the Agency.
- 4.3 The Grantee shall have the right to:
- 4.3.1 have access to and enter upon the Permit Area with such persons, aircraft, animals, vehicles, boats, ships, vessels, machinery, equipment, instruments or material as may be necessary for the purpose of carrying out reconnaissance operations upon the Permit Area as may be necessary for or incidental to the aforesaid purposes;

The Grantee's Operations shall be limited to those reasonably necessary and pertinent to the methods and techniques set out in the Reconnaissance Work Programme (Annexure B) and any combination or combinations of such work and all such auxiliary or related work or activities as may be useful in connection with such Operations; for the absence of doubt, such Operations shall not include any form of drilling.

However, the Grantee shall not, without the Minister's prior written consent, carry out Reconnaissance Operations over :

- (a) areas used or reserved under any law for any Government or public purpose;
- (b) areas within 5 (five) nautical miles seaward of the low water mark (as defined in section 1 of the Sea-Shore Act, 1935 (Act No. 21 of 1935)), nor in the areas shown as reserved areas on the attached sketch plan, Annexure A.

- 4.3 Without detracting from the Grantee's further obligations in terms of this Reconnaissance Permit Agreement or in terms of the Act the Grantee shall :
- 4.3.1 actively conduct Reconnaissance Operations in respect of Petroleum on the Permit Area in accordance with the Reconnaissance Work Programme;
- 4.3.2 comply with the terms and conditions of this Reconnaissance Permit Agreement and the relevant provisions of the Act;
- 4.3.3 pay the prescribed reconnaissance fee to the Agency;
- 4.3.4 submit, timeous, complete and correct summary progress reports to the Agency on a monthly basis;
- 4.3.5 supply to the Agency digital and, where appropriate, paper copies of all data generated, as soon as possible after completion of each phase of Operations or projects.

5. Fees

- 5.1 All fees, considerations and the like which are payable by Grantee to the Agency and/or the Grantor in terms of this Reconnaissance Permit shall be paid by deposit into the account of the Agency at the bank and account indicated in Annexure C, or such other bank and account as the Agency may from time to time give notice of. The onus for timely payment rests solely with the Grantee; the Agency will not normally issue invoices.
- 5.2. If any fees, considerations and the like payable by the Grantee to the Agency in terms of this Reconnaissance Permit are not paid punctually on or before the due dates for payment, the Grantee shall be in *mora debitoris* and shall pay interest thereon at the rate prescribed in terms of section 80 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) reckoned from the due date for payment to the date of actual payment.
- 5.3. ***Regardless of any relinquishment of parts of the Permit Area or early termination of this Reconnaissance Permit for whatever reason, no portion of the fees referred to in clause 5.1 shall be refundable.***

6. Technical Advisory Committee

- 6.1. The Agency and the Grantee shall as soon as possible after the Effective Date establish a committee to be known as the Technical Advisory Committee which shall consist of:
- (a) a chairman and one other person appointed by the Agency; and
 - (b) two other persons appointed by the Grantee.
- 6.2. The Agency and the Grantee may appoint by notice an alternative member to act in the place of either or both of their representatives on the Technical Advisory Committee during his or her absence or incapacity to act as a member of the Committee. When an alternate member acts in the place of any member he or she shall have the powers and perform the duties of such member.
- 6.3. Without prejudice to the rights and obligations of the Grantee in relation to the management of Operations the functions of the Technical Advisory Committee shall be:
- (a) to review all Operations carried out by the Grantee and to provide the Grantee advice and recommendations with respect thereto;
 - (b) to review and approve any proposed reconnaissance work programme to be submitted by the Grantee to the Agency in terms of clause 14;
 - (c) to review the accounting of expenditure and the maintenance of operating records and reports kept in connection with Operations; and
 - (d) to offer advice to the Grantee in order to promote the efficient carrying out of Operations.
- 6.4. Meetings of the Technical Advisory Committee shall be held at least semi-annually. The location of such meetings shall be in Cape Town, South Africa unless otherwise unanimously agreed by the members of the committee.
- 6.5. Three members of the Technical Advisory Committee shall form a quorum for a meeting of the Committee, provided that at least one representative of Grantee and one representative of the Agency is present.
- 6.6. Any member of the Technical Advisory Committee shall have the right to call any expert to any meeting of the Committee to advise the Committee on any matter of a technical nature requiring expert advice.
- 6.7. The Chairman of the Committee shall cause minutes of each meeting to be kept and circulated to the members.

7. Minister's Right to Cancel or Suspend the Reconnaissance Permit

- 7.1 It is recorded that the Minister is empowered to cancel or suspend this Reconnaissance Permit in the circumstances envisaged in and in accordance with the provisions of section 85 read with section 44 of the Act.
- 7.2. In the event of this Reconnaissance Permit being cancelled in accordance with the provisions of clause 7.1, the Grantee will not be absolved from its obligations or liabilities which have accrued up to the date of such cancellation.

- 7.3. The cancellation of this Reconnaissance Permit in terms of clause 7.1 will be without prejudice to the Grantor's or the Agency's other rights under this Reconnaissance Permit or in statutory or common law of the Republic of South Africa, including its right to recover any damages it may have suffered or may suffer, its right to claim specific performance or its right to claim ancillary relief.

8. No guaranteed right to other minerals

- 8.1. Should any mineral or minerals be discovered in the course of Reconnaissance Operations, the Grantee shall be bound to report such discovery to the Minister. The Grantee may thereafter, subject to any prior rights, apply for and, if granted the required prospecting rights by the State, prospect for such mineral or minerals.

9. Examination of the Permit Area and Operations

- 9.1. In terms of sections 86 to 89 of the Act, all read with section 65 of the Act, the Minister may authorise inspections and exercise of related powers more fully therein set forth.
- 9.2. Upon request by the Agency during offshore operations of Grantee, Grantee shall provide free transport between the Grantee's onshore base and the offshore facilities as well as accommodation on the offshore facilities for two representatives of the Agency.

10. Reports and Samples to be Furnished

- 10.1. Grantee shall timeously provide information and reports consistent with the Reporting Guidelines of the Agency unless agreed otherwise in writing. This reporting shall include, *inter alia*:
- 10.2. The Grantee shall keep the Agency currently advised of all major developments taking place during the course of Operations and shall furnish the Agency with Data (as defined in clause 10.6) and other available information, reports, assessments and interpretations relating to Operations as the Agency may reasonably require.
- 10.3. The Grantee shall during the currency of this Permit provide the Agency with a summary report of all Operations during each month within 15 days of the end of that month.
- 10.4. Within 30 (thirty) days of the end of each quarter the Grantee shall submit to the Agency a report reflecting, for the relevant quarter:
- (i) the numbers/names of companies which have visited the Grantee's data room;
 - (ii) the work done and money expended on Operations; and
 - (iii) a statement reflecting rehabilitation work completed and of the rehabilitation work uncompleted.
- 10.5. The Grantee shall furnish the Agency with such other information, maps and plans, as to the progress of its operations in the Permit Area as the Agency may from time to time require and which the Grantee can reasonably make available.
- 10.6. Copies of all maps, magnetic tapes and all other geological and geophysical information and interpretation obtained by the Grantee in the course of carrying out Operations (hereinafter referred to as "Data") shall be given to the Agency as soon as they are acquired or prepared.
- 10.7. The Grantee may export such Data for processing or laboratory examination or analysis by the Grantee or by third parties or storage outside of the Republic of South Africa, provided that copies of equivalent quality have first been delivered to the Agency and provided that the Agency's prior written approval has been obtained.
- 10.8. Within three (3) months after the termination and/or cancellation and/or abandonment of this Reconnaissance Permit, the Grantee shall furnish the Agency with all results of Operations in the Permit Area.
- 10.9. Nothing in this clause contained shall be construed as requiring the Grantee to disclose any of its proprietary technology or that of its Affiliates.
- 10.10. The above provisions are additional to and without detracting from the provisions of Regulations 7 and 8 made in terms of the Act.

11. Reconnaissance Work Programme and Budget

11.1. The Grantee must, to the satisfaction of the Grantor over the period of this Reconnaissance Permit, initiate and thereafter actively pursue operations designed to carry out and meet the commitments set out in the Reconnaissance Work Programme annexed hereto marked Annexure B.

11.2. It is recorded that the time sequences as set out in the Reconnaissance Work Programme will commence on the Effective Date.

12. Black Economic Empowerment

The Grantee acknowledges that in order to give effect to Section 2(d) of the Act, the Grantor is desirous of expanding opportunities for historically disadvantaged persons (as defined in the Act) to enter the upstream petroleum industry and to benefit from the exploitation of petroleum resources in the Republic of South Africa and as such Grantee undertakes to use its best endeavours to seek historically disadvantaged South African partners to participate in this reconnaissance permit.

13. Good international practice, pollution, navigation, fishing and conservation

In addition to the provisions of the Act, the Grantee shall comply with the following special obligations.

13.1 The Grantee shall maintain all installations erected for the safety of Operations in good repair and condition and shall execute all Operations in a proper and workmanlike manner in accordance with methods customarily used in good international practice and, without prejudice to the generality of the foregoing, the Grantee shall take all steps practicable in order to prevent pollution of the terrestrial or marine environment.

13.2 The Grantee shall take immediate action with respect to notices given by the Agency of any event described in clause 13.1. In determining the occurrence of such event, the Agency shall adopt the standards and thresholds of the Department of Minerals and Energy of the Grantor.

13.3 The Grantee shall immediately report the release of any petroleum into the environment to the Agency. This procedure shall be reflected in the oil spill contingency plan required in terms of the Prevention and Combating of Pollution of the Sea Act (Act no. 6 of 1981).

13.4 The Grantee shall leave the seafloor free of significant obstruction and shall notify the relevant government agencies that the Permit Area is free of obstruction or, if it is not, the location, nature and extent of any obstruction resulting from its Operations.

13.5 The Grantee shall give timely notice of Operations to relevant government agencies and to commercial fishing associations and shall take all reasonable steps to minimise interference with navigation and fishing.

14. Local labour, equipment, materials and contractors

14.1. In furtherance of section 2(f) of the Act, in carrying out Operations the Grantee shall, to the extent reasonably possible, employ South African citizens having appropriate qualifications.

14.2. ***Not later than three months from the Effective Date, the Grantee shall meet with the Agency to discuss and agree on a programme for the recruitment, training and employment of South African citizens during Operations.***

14.3 The Grantee may employ a person who has necessary qualifications and experience and is not a South African citizen if the required skills are not available in the South African labour market. The subsequent availability of qualified candidates will be reviewed annually.

14.4 The Grantee:

14.4.1 ***and its contractors shall use and purchase equipment, machinery, materials, instruments, supplies and accessories (all referred to as "Goods") manufactured, produced or available in the Republic of South Africa for use in Operations under this Reconnaissance Permit, provided that such Goods are reasonably comparable with like goods manufactured, produced or available outside the Republic of South Africa as to landed cost, quantity and quality and can be made available at the time when and the place where required;***

14.4.2 ***shall to the extent reasonable, utilise contractors in the Republic of South Africa where services of comparable standards with those obtained elsewhere are available from such contractors at***

competitive prices and on competitive terms and can be made available at the time when and the place where required.

15. Tax

Except to the extent exempted, Grantee shall, throughout the term of this Reconnaissance Permit, be liable for income tax payments to Grantor on the annual taxable income derived by it from Operations and transactions in connection therewith in accordance with the Income Tax Act.

It is however recorded that the Minister has procured that the Minister of Finance has issued a directive in terms of section 36(7F) of the Income Tax Act, that the provisions of that section (which relates to "ring-fencing") shall not apply to Grantee's Operations by virtue of this Reconnaissance Permit.

16. Accounts and Audits

The Grantee shall maintain such accounting records as will properly support all expenditure and receipts of reconnaissance operations under this reconnaissance permits.

Such records or copies thereof shall be provided at Petroleum Agency's request for the purpose of confirming the minimum expenditure obligations under the reconnaissance work programme. Agency shall have the right to appoint an auditor for the purpose of confirming that these obligations have been met. Such confirmation, if any, shall be completed within two years after the end of the calendar year in which the expenditures or receipts occurred.

17. Customs duties

The Minister records having procured the following from his/her colleague the Minister of Finance, namely :

17.1 *The Grantee may during the continuance of this Reconnaissance Permit and subject to the provisions of international trade agreements which may be in force, import into the Republic of South Africa or clear from any customs and excise warehouse under rebate of full customs duty (as defined in the Customs and Excise Act, 1964) or export from the Republic of South Africa such Goods (excluding refined Petroleum products for use in road vehicles and distillate and residual fuel oil for any purpose and goods imported by the Grantee for the personal use of its personnel who are South African residents) as are required for use in Operations and which are not obtainable or available from stocks of Goods manufactured in the Republic of South Africa in terms of clause 20.4.1; provided however that the Grantee shall not sell, transfer, dispose of or use or retain for use except in Operations under this Reconnaissance Permit any Goods obtained free of customs duty without the permission of the Commissioner for Customs and Excise; such duty as may be assessed by the Commissioner for Customs and Excise shall be payable to him/her in respect of any such Goods sold, transferred, disposed of or used or retained for any use other than in Operations except if such Goods are sold, transferred or disposed of to any person in the Republic of South Africa entitled to a like rebate of customs duty or if such Goods are exported from the Republic of South Africa by the Grantee.*

17.2 *The Grantee shall have the right, subject to the applicable laws and regulations, to employ such contractors as in its opinion may be necessary for Operations; such contractors shall be exempted from the payment of customs duties in the same manner as the Grantee is exempted under this Reconnaissance Permit as long as their work is pursuant to their contract with the Grantee.*

17.3 *The Grantee's non-South African personnel may import household and personal effects into South Africa free of customs duty and may export such effects freely, but disposal in the Republic of South Africa of any such household and personal effects shall be subject to approval by the Commissioner for Customs and Excise and shall be subject to customs duties.*

18. Exchange Control

18.1 The Minister records having procured the following from his/her colleague the Minister of Finance.

18.1.1 The Grantee shall have the free availability of the currency generated from the export of Petroleum which the Grantee can place directly to a bank account within the Republic of South Africa or abroad.

18.1.2 The Grantee shall have the free disposition and right to freely exchange South African Rand whether received from the sales of Petroleum in the national market for foreign currency or

received from other activities or events related to this Exploration Right. The Grantee has the right to deposit such currency directly into bank accounts in the Republic of South Africa or abroad.

- 18.1.3 The Grantee shall have the right to maintain, control and operate bank accounts in any currency, inside the Republic of South Africa and abroad; to have the control and free use of these accounts and to maintain and freely dispose of the funds of these accounts without any restrictions. The Grantee shall not be obliged to convert any foreign currencies into South African Rand.
- 18.1.4 Without prejudice to what is mentioned above, the Grantee shall have the right to dispose, distribute, send or retain abroad, without any restrictions, the Grantee's annual net profits.
- 18.1.5 The Grantee may use South African banks to exchange the currencies referred to in clause 18.1.2.
- 18.2 The exchange rate of the South African Rand will be determined by the free market.
- 18.3 If other exchange rules are established while this Reconnaissance Permit is in place, the Grantee may elect to have such other exchange rules apply to Operations. To the extent that such other exchange rules do not affect rules set out herein, the rules set out herein shall continue to apply to Operations.
- 18.4 The Grantee may, after electing to have such other exchange rules apply to Operations, elect to return to the rules set out herein.
- 18.5 The Grantee may acquire abroad materials, equipment and services and pay for them in foreign currency. The Grantee may obtain financing abroad through loans and advances to pay for costs of activities connected with this Reconnaissance Permit.
- 18.6 The Grantee shall provide periodic reports as reasonably requested by the Reserve Bank.
- 18.7 In the event that the ratio of borrowings from South African financial institutions to foreign investment exceeds the ratio prescribed in Exchange Control Regulations promulgated by Government Gazette Notice R1111 of December 1961 as amended, the Grantee shall notify the Reserve Bank and advise the Reserve Bank as to any steps the Grantee intends to take to reduce this ratio, or request approval, which shall not be unreasonably withheld, to exceed this ratio.

19. Indemnity and insurance

- 19.1. The Grantee, its successors and/or assigns, during the tenure of this Reconnaissance Permit, will take all such necessary and reasonable steps and do all such acts, matters and things and carry out their Reconnaissance Operations in such a manner as will adequately safeguard and protect the environment, the Permit Area and any person or persons using or entitled to use the surface of the Permit Area from any damage caused by or through or in consequence of the exercise by the Grantee of its aforesaid right to explore under this Reconnaissance Permit, of any activity or activities associated with the Grantee's operations in the Permit Area, and will in so far as there is a legal liability, compensate such person or persons for any damage or losses, including but not limited to damage to the surface, to any crops or improvements, which such person or persons may suffer as a result of, arising from or in connection with the exercise of the Grantee's rights under this Reconnaissance Permit or of any act or omission in connection therewith..
- 19.2. The Grantee and its aforesaid successors and/or assigns will and do hereby undertake and bind themselves to hold harmless and indemnify the Grantor and the Agency and/or their servants and employees against any claim or claims which may be instituted by any person as a result of any injury, loss (including loss of life), damage, cost, charges, and expenses which may be suffered or sustained by any person or persons whomsoever, as a result of, or which may in any way whatsoever be associated with the exercise by the Grantee's successors and/or assigns of the right to conduct reconnaissance under this Reconnaissance Permit, and must also on request refund to the Grantor and/or Agency and/or their servants and employees all costs, charges and expenses which the Grantor and/or its servants and employees may be put to or sustain in connection with or arising out of any such claim made by such person or persons.
- 19.3. It is explicitly agreed that the Grantor and/or the Agency will not be deemed to be a partner in any Operations carried out in terms of this Reconnaissance Permit. The Grantor and/or the Agency will give notice to the Grantee and its aforesaid successors and/or assigns of any claim or occurrence in respect of which it proposes to invoke the provisions of this indemnity and will give the Grantee and its aforesaid successors and/or assigns the fullest opportunity to investigate, repudiate or otherwise deal with any matter that may arise from such claim. Provided always that nothing herein contained will be deemed to render the Grantee or its aforesaid successors and/or assigns liable for, or to indemnify the Grantor and/or the Agency and/or their servants and employees against, any compensation or damages for or with respect to injuries or damage to persons or the Permit Area directly resulting from any delict of the Grantor and/or its servants and employees during the currency of this Reconnaissance Permit, or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

((There is no such proviso))

19.4 The Grantee shall during the term of this Reconnaissance Permit obtain and maintain for and in relation to Operations, insurance to indemnify the Agency, the Grantor and the Grantee against:

- (a) loss or damage to any or all assets being used in connection with Operations;
- (b) loss or damage for which the Grantee may be liable caused by pollution in the course of or as a result of Operations;
- (c) loss or destruction of property or damage to property as well as bodily injury, sickness or death suffered by any third party for which the Grantee may be liable;
- (d) the cost of removing wrecks and cleaning-up operations pursuant to an accident in the course of or as a result of Operations;
- (e) The Grantee's liability to its employees, consultants and agents engaged in Operations;
- (f) any other risk of whatever nature as is customary to insure against in the international petroleum industry in accordance with good international oil-field practices.

19.5 The amount insured against, the type of insurance referred to in clause 19.5 above and the terms of such insurance shall be determined in accordance with good international oil-field practices.

20. Health and Safety

20.1 The Grantee and its successors and/or assigns will and do hereby undertake and bind themselves during the currency of this Reconnaissance Permit to observe and comply with all relevant provisions of the Mine Health and Safety Act, 1996 (Act no. 29 of 1996) and regulations in terms thereof, or any subsequent law which amends or substitutes the Mine Health and Safety Act, 1996.

20.2 Without detracting from sections 42 and 43 of the Act, in the event of any emergency or accident arising from Operations affecting the environment, the Grantee shall forthwith notify the Agency accordingly and take such action as may be prudent and necessary in accordance with good international oil-field practice in such circumstances.

21. Data and information to be kept confidential and limitations on public announcements

In addition to the provisions of section 83 of the Act,:

21.1. The Data (as defined in clause 10.3) and all programmes, tests, analyses, results, books, statements, records, returns, plans and information which the Grantee is or may from time to time be required to furnish under the provisions of this Reconnaissance Permit, shall be supplied at the expense of Grantee. Each Party shall keep confidential the Data and such information and shall not disclose it to any person without the consent of the other Party except:

- (a) where disclosure is required by any law;
- (b) to an Affiliate, provided such Affiliate maintains confidentiality as provided in this clause 21;
- (c) to the extent such Data and information is required to be furnished pursuant to any legal proceedings or because of any order of any court binding upon a Party;
- (d) to prospective or actual contractors, consultants and attorneys employed by any Party where disclosure of such Data or information is essential to such contractor's, consultant's or attorney's work;
- (e) to a bona fide prospective transferee of Party's interest (including an entity with whom a Party or its Affiliate are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares);
- (f) to a bank or other financial institution to the extent appropriate to a Party arranging for funding;
- (g) to the extent such Data and information must be disclosed pursuant to any rules or requirements of any government or stock exchange having jurisdiction over such Party or its Affiliates;
- (h) to its respective employees for the purposes of Operations, subject to the Party taking customary precautions to ensure such Data and information is kept confidential; and

- (i) where any Data or information, through no fault of a Party, has become published in the public domain;

Disclosure as pursuant to clauses 22.1 (d), (e) and (f) shall not be made unless prior to such disclosure the disclosing Party has obtained a written undertaking from the intended recipient to keep the Data and information strictly confidential.

- 21.3 Except as may be required by applicable securities law or stock exchange requirements, no public announcement shall be made by any Party unless the other has been furnished with a copy and has given prior approval, which prompt approval shall not be unreasonably withheld. When a public announcement or statement becomes required by law or necessary or desirable because of impending danger to or loss of life, damage to property or pollution resulting from Operations, either Party is authorised to issue and make such announcement or statement without prior notice or the prior approval of the other where such prior notice and/or approval is not practical in the circumstances. In such a case, the Party making the announcement or statement shall promptly furnish the other Party with a copy of such announcement.

22. Cession, Transfer, Alienation

- 22.1. In terms of s70(4)(d) of the Act, this Reconnaissance Permit is not transferable, and furthermore the Grantee shall not be entitled to sub-let, alienate, sell, cede, assign, transfer, delegate or mortgage, its rights and obligations under this Reconnaissance Permit, either wholly or in part.

- 22.2. The Grantee shall not:

- (a) lease the rights granted to the Grantee in terms of this Reconnaissance Permit; or
- (b) allow any other person to conduct reconnaissance for petroleum in the Permit Area for such other person's own benefit and account; or
- (c) allow any other person to carry out reconnaissance operations for petroleum in the Permit Area.

- 22.3. The Grantee may from time to time appoint one or more independent contractors to carry out any work in relation to carry out reconnaissance operations, but the Grantee shall always remain liable for the compliance and observation of the provisions of the Act, the Environmental Management Programme and of the terms and conditions of this Reconnaissance Permit.

23. Law and interpretation

Subject to section 4 of the Act, and section 27 (Arbitration) of this Reconnaissance Permit, this Reconnaissance Permit, the interpretation thereof and any dispute arising thereunder or associated therewith shall be governed by and determined in accordance with the laws of the Republic of South Africa.

In the event of any inconsistency between this Reconnaissance Permit and the Act, the Act shall prevail.

In this agreement the clause headings are inserted for reference purposes only and shall not govern or affect the meaning or interpretation thereof.

24. Vis Major

- 24.1. Failure on the part of the Grantee to fulfil any of the terms and conditions provided for in this Reconnaissance Permit and to conform to the terms and provisions of the Act and the terms and provisions of such other laws and regulations as may be applicable shall not be deemed to be a breach of this Reconnaissance Permit on the part of the Grantee, in so far as such failure results from any act, cause, thing or event outside the control of the Grantee including, without limitation to the generality of the foregoing, acts of God, war, insurrection, civil commotion, blockade, strikes, flood, storm, lightning, fire or earthquake. Financial inability, ordinary hardship and inconvenience, however caused or arising, shall not be a vis major circumstance.
- 24.2. If the Grantee by reason of the provisions of clause 24.1 above is prevented from fulfilling its obligations or of enjoying its rights under this Reconnaissance Permit, it shall immediately notify Petroleum Agency in writing to that effect and shall take all reasonable steps to remove the cause thereof and to investigate the consequences. The Grantee shall promptly notify Petroleum Agency as soon as conditions of vis major no longer prevent the Grantee from carrying out its obligations and following such notice shall resume Operations as soon as reasonably practicable.

25. Amendments

The provisions of this Reconnaissance Permit replace all prior negotiations, representations and other communication between the parties hereto and may be amended only in writing between the parties.

26. Waiver or Lenience

No waiver of any of the Agency's or the Grantor's rights and no lenience granted or permitted by the Minister or the Agency from time to time in a form which does not constitute a formal amendment of this Reconnaissance Permit shall prejudice the Minister's or the Agency's rights under this right or the Act and shall not constitute grounds for Grantee to expect that the Minister or the Agency as the case may be will continue to waive its/their rights or grant or permit lenience in the future.

27. Arbitration

27.1. All disputes relating to or arising out of this Reconnaissance Permit shall be finally settled under the rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such rules. Subject to clause 27.2, the venue of the arbitration shall be London, England and the proceedings and records of the proceedings shall be in the English language.

27.2. The venue of the arbitration shall be Cape Town, South Africa if the amount in dispute is less than US\$500 000,00 (FIVE HUNDRED THOUSAND UNITED STATES DOLLARS). However, if the relief sought is declaratory or specific relief, then the venue shall be as provided in clause 27.1.

27.3. Notwithstanding any such difference or dispute or reference to arbitration, the Parties shall, to the extent possible, proceed with the carrying out of their obligations under this Reconnaissance Permit, subject to the provisions of thereof.

27.4. The Parties irrevocably agree that the decision in those arbitration proceedings :

- (a) *shall be binding on them; and*
- (b) *shall be carried into effect; and*
- (c) *can be made an order of any Court of competent jurisdiction.*

28. Environmental Protection

28.1. The Grantee hereby undertakes and binds itself to conduct all Reconnaissance Operations in accordance with the requirements of the Act and any other legislation, and the Environmental Management Programme submitted by the Grantee in terms of section 36(1) read with section 65 of the Act and which has been approved by the Minister, in a manner that would facilitate the protection and conservation of the natural resources of the Republic of South Africa and of the environment in general.

28.2. Subject to the provisions of the Act, the Grantee shall on the expiration or termination of this Reconnaissance Permit:

- (a) remove all equipment and installations from the Permit Area; and
- (b) perform all necessary site rehabilitation and shall take all other actions necessary to minimise hazards to human or other life or the environment in general for time to come.

29. Costs and VAT

29.1. All expenses, fees, costs stamp and transfer duties flowing from this Reconnaissance Permit direct or incidental, and Value Added Tax at the prevailing rate and stamp duty, shall be paid by the Grantee.

29.2. All remittances and payments to the Agency in terms of this Reconnaissance Permit are exclusive of Value Added Tax (VAT).

30. Severability

Any provision of this Reconnaissance Permit which is in any way unenforceable or which may render it unenforceable or which may contravene the applicable laws or regulations of any jurisdiction to which this Reconnaissance Permit is subject shall be deemed, to the extent of such unenforceability or contravention, severable from this Reconnaissance Permit and of no force or effect and shall not affect any other provision of this Reconnaissance Permit and its enforceability or legality in all other respects.

31. Notices, *domicilia citandi et executandi* and Representatives

All notices, requests and reports provided for herein shall be in writing and shall be delivered either by hand to an authorised representative of the receiving Party, or sent by courier or telefax to the following addresses in the Republic of South Africa, provided that if given by telefax a copy thereof shall be sent immediately by prepaid registered airmail:

Grantor :

Minister of Minerals and Energy

Physical address :

Mineralia Centre
Cnr Visagie & Andries Streets
PRETORIA

Postal address :

Private Bag X59
PRETORIA
0001

Tel number : (27) 12 317 9000

Fax number : (27) 12 322 3416

PETROLEUM AGENCY :

Attention : Chief Executive

Physical address :

Petroleum House
151 Frans Conradie Drive
PAROW
Western Cape

Postal address :

P O Box 1174
PAROW
7499

Tel number : (27) 21 938 3500

Fax number : (27) 21 938 3520

GRANTEE :

.....LIMITED

Attention : Mr _____ or _____

Physical address :

Postal address :

Tel number : _____

Fax number : _____

Either Party may change its address to such other address as it may notify the other Party of on at least 30 (thirty) days prior notice.

All notices, requests and reports sent by telefax shall be deemed to have been received within 12 (twelve) hours of transmission. Those delivered by hand or sent by courier shall be deemed to have been received at the time of actual delivery.

Each Party also chooses the physical address specified above as its *domicilium citandi et executandi* for all purposes arising under this Reconnaissance Permit, including service of process.

The Grantee shall within 7 (SEVEN) calendar days of the Effective Date of this Reconnaissance Permit give notice to the Agency in which it appoints one representative with whom Petroleum Agency may

deal concerning this Reconnaissance Permit. Such representative shall continue to represent the Grantee unless the Grantee notifies the Agency of a change of representative.

Thus done and signed at _____ on the _____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

for and on behalf of the Agency

Thus done and signed at _____ on the _____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

for and on behalf of the Grantee

ANNEXURE A

MAP AND DESCRIPTION OF THE PERMIT AREA

ANNEXURE B

RECONNAISSANCE WORK PROGRAMME

ANNEXURE C

ACCOUNT TO WHICH PAYMENTS TO THE GRANTOR ARE TO BE MADE

The amounts payable to the Agency will be deposited by the Grantee into the account of the Agency at:

Bank: ABSA
Branch:
Branch code:
Account no.:

In the case of payments originating in the USA the following further information will be of assistance:

PAYMENT TO BE MADE TO:

Full name of Bank
Address

Harris Bank International
Corporation
3 Times Square
New York
New York, 10036

| | |
|--|---|
| SWIFT Address | HATRUS33 |
| Account Number | 49-0-2945-7 |
| For Credit of | ABSA Bank Limited International Banking Services: Corporate Pretoria South Africa |
| For Further Credit Under Reference | CEF (PTY) LTD SEF 8245Y55 |
| The remitting Bank must confirm payments by MT100 to: | ABSA Bank Limited IBS Corporate Pretoria South Africa |
| SWIFT Code For Attention | ABSAZAJJACPT <i>Amanda Reyneke</i> |

Kindly confirm payments per Fax to CEF (PTY) LTD
Attention *Dolf Jonker/Kobus Geertsema* Fax No.
(27)11 784 5494

In all cases, the Grantee is required to deliver proof of payment to the Agency within 3 working days of effecting the payment.

FORM KK :**TECHNICAL CO-OPERATION PERMIT****Index****Preamble**

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ANNEXURES

- A Map and description of the Permit Area
- B Technical Work Programme
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D Existing Data

SPECIMEN AGREEMENT FOR A TECHNICAL CO-OPERATION PERMIT

entered into between

THE REPUBLIC OF SOUTH AFRICA

(hereinafter referred to as "the Grantor") and herein represented by its Minister of Minerals and Energy (hereinafter referred to as "the Minister"), she/he being duly authorised by virtue of the provisions of section 70(1) read with section 66(1)(d) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. xx of 2002)

and

Registration No. [_____]

(hereinafter referred to as "the Grantee") a company incorporated and registered in _____ under the laws of _____ and having its registered address at _____ and herein represented by _____, he being duly authorised by virtue of a resolution of directors of Grantee passed at _____ to _____

in respect of Block _____
REPUBLIC OF SOUTH AFRICA

(the Grantee and the Grantee are jointly referred to as "Parties" and individually as "Party")**WHEREAS**

- In terms of section 66(1)(a) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. ____ of 2002) ("the Act") it is the function of the Agency to promote exploration for petroleum in the Republic of South Africa;
- In terms of section 66(1)(d) of the Act the Minister is authorised to issue Technical Co-operation permits on behalf of the Minister for the purpose of promoting exploration for petroleum within the onshore and offshore territory of the Republic of South Africa, the latter in such maritime zones over which the State has jurisdiction, including but not limited to the territorial waters, the continental shelf, and the exclusive economic zone, all as envisaged in the Sea-Shore Act, 1935 (Act No. 21 of 1935), and in the Maritime Zones Act, 1994 (Act No. 15 of 1994) to which end it will undertake all necessary marketing, promotion, advertising and publicity;
- The Grantee has identified an area which it believes may hold significant potential for discovery of petroleum (the Permit Area, more fully described in clause 2 below) and desires to have the opportunity to study, analyse and interpret the Existing Data (as more fully described in clause 2) relating to the Permit Area;
- The Grantor has agreed to issue to the Grantee a Technical Co-operation Permit by way of and being this Technical Co-operation Permit Agreement to enable the Grantee to carry out certain studies, analyses and interpretations ("the Technical Work") on the Existing Data which can be expected substantially to increase the understanding of the underlying geology and petroleum potential of the Permit Area in accordance with the terms and conditions recorded hereunder.
- In recognition of this contribution to the increased understanding of the geology and petroleum potential of the Permit Area that will result from diligent execution of the Technical Work by the Grantee, the Grantor undertakes

to negotiate with no other entity for the granting of any form of Right relating to petroleum over any portion of the Permit Area for the duration of this Permit and for so long thereafter as the Grantor in its sole discretion considers that negotiation between the Parties over the terms of an Exploration Right relating to some portion or all of the Permit Area are progressing satisfactorily.

- The Grantor has appointed South African Agency for Promotion of Petroleum Exploration and Exploitation (Proprietary) Limited as its designated representative for the purposes of this agreement

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Definitions

The definitions in the Act shall apply also to this Agreement and additionally the following words and expressions shall have the meaning assigned to them:

- 1.1. "the Act" shall mean the Mineral and Petroleum Resources Development Act, 2002 (Act No. ... of 2002) or any subsequent law which amends or substitutes the Act;
- 1.2. "Affiliate" of a Party shall mean a company which owns, or is owned by, or which is owned by an entity which owns that Party; "owns" and "owned" mean in this definition the ownership directly or indirectly of more than 50 % of the voting shares or members' interests;
- 1.3. "the Agency" shall mean South African Agency for Promotion of Petroleum Exploration and Exploitation (Proprietary) Limited, known as Petroleum Agency SA;
- 1.4. "Effective Date", shall mean the date on which this Technical Co-operation permit agreement is signed by the last Party to sign it or such later date being the date upon which the data, as listed in Annexure C (other than the seismic field data referred to in clause 4.1.4), are received by Grantee;
- 1.5. "the Grantee", shall bear the meaning attributed thereto in the definition of the Parties above;
- 1.6. "the Grantor" shall mean the State;
- 1.7. "the Minister", shall bear the meaning attributed thereto in the description of the Parties above;
- 1.8. "the Permit Area" means the area referred to in clause 2 of this Agreement, excluding parts relinquished or abandoned from time to time;
- 1.9. "the Technical Work Programme", shall mean the Grantee's written recordal of the manner in which it intends to carry out the Technical Work in relation to Existing Data, and shall include all amendments and supplementary submissions relating to the Technical Work Programme which may be made by the Grantee and approved in writing by the Grantor from time to time;
- 1.10 "State", shall mean the Republic of South Africa;

Reference to the singular of a defined term includes a reference to it in the plural and vice versa and reference to any gender includes a reference to all other genders.

2. Description of the Permit Area

The Permit Area comprises approximately _____ km² in the West / South / East* Coast Region offshore, being the area of land or sea including the seabed, identified as such by co-ordinates on the map attached as Annexure A hereto.

3. Duration

- 3.1 Unless this permit is suspended, cancelled or abandoned it shall, subject to acceptance thereof by Grantee, where provided at the foot of this permit, be valid from the Effective Date for a period of [] months thereafter.*

* In terms of section 72(4)(b) of the Act, this period may not exceed one year.

3.2 In terms of sections 72(4)(c) and (d) of the Act, this permit is not transferable and not renewable.

4. Rights and Obligations of the Grantee

4.1 The Grantor hereby in terms of section 72(1) read with section 66(1)(d) of the Act issues to the Grantee and the Grantee hereby accepts the Technical Co-operation Permit constituted by this Agreement, conferring the exclusive right to negotiate the terms of an Exploration Right to be granted over some or all of the Permit Area, subject to satisfactory completion of the Technical Work Programme attached hereto as Annexure B. For the avoidance of doubt it is recorded that this exclusive right to negotiate the terms of such an Exploration Right does not imply that the Parties must reach agreement on the said terms and if the Parties fail to reach agreement on the aforesaid terms then no Exploration Right will be awarded to the Grantee regardless of satisfactory conclusion of the Technical Work Programme.

4.2 The Grantee acknowledges that all technical data, reports, maps, samples and information generally (defined in clause 10.4 as "the Data") that arise from the carrying out of the Technical Work are the property of the Grantor and that on termination of this permit agreement through expiry, lapse, abandonment or howsoever else, the Grantor shall be free to sell, give, disclose or otherwise dispose of the Data without restriction.

4.3 The Grantee shall have no special right of access to the Permit Area arising from this permit agreement.

4.4 Without detracting from the Grantee's further obligations in terms of this Technical Co-operation Permit Agreement or in terms of the Act the Grantee shall:

4.4.1 actively carry out the Technical Work Programme in respect of petroleum on the Permit Area;

4.4.2 comply with the terms and conditions of this Technical Co-operation Permit Agreement and the relevant provisions of the Act;

4.4.3 pay the prescribed technical co-operation fee to the Grantor;

4.4.4 submit, timeous, complete and correct summary progress reports to the Grantor on a monthly basis; and

4.4.5 supply to the Grantor digital and, where appropriate, paper copies of the Data as soon as possible after completion of each phase of the Technical Work.

5. Fees

5.1 All fees, considerations and the like which are payable by Grantee to the Grantor and/or the Grantor in terms of this Technical Co-operation Permit Agreement shall be paid by deposit into the account of the Agency at the bank and account indicated in Annexure C, or such other bank and account as the Grantor may from time to time give notice of. The onus for timely payment rests solely with the Grantee; the Grantor will not normally issue invoices.

5.2. If any fees, considerations and the like payable by the Grantee to the Grantor in terms of this Technical Co-operation Permit are not paid punctually on or before the due dates for payment, the Grantee shall be in *mora debitoris* and shall pay interest thereon at the rate prescribed in terms of section 80 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) reckoned from the due date for payment to the date of actual payment.

5.3. ***Regardless of any relinquishment of parts of the Permit Area or early termination of this Technical Co-operation Permit Agreement for whatever reason, no portion of the fees referred to in clause 5.1 shall be refundable.***

6. Technical Advisory Committee

6.1. The Grantor and the Grantee shall as soon as possible after the Effective Date establish a committee to be known as the Technical Advisory Committee which shall consist of:

(a) a chairman and one other person appointed by the Grantor; and

(b) two other persons appointed by the Grantee.

- 6.2. The Grantor and the Grantee may appoint by notice an alternative member to act in the place of either or both of their representatives on the Technical Advisory Committee during his or her absence or incapacity to act as a member of the Committee. When an alternate member acts in the place of any member he or she shall have the powers and perform the duties of such member.
- 6.3. Without prejudice to the rights and obligations of the Grantee in relation to the management of the Technical Work the functions of the Technical Advisory Committee shall be:
- (a) to review all Technical Work carried out by the Grantee and to provide the Grantee advice and recommendations with respect thereto;
 - (b) to review any proposed Technical Work Programme to be submitted by the Grantee to the Grantor in terms of clause 11;
 - (c) to review the maintenance of operating records and reports kept in connection with the Technical Work; and
 - (d) to offer advice to the Grantee in order to promote the efficient carrying out of the Technical Work.
- 6.4. Meetings of the Technical Advisory Committee shall be held at least semi-annually. The location of such meetings shall be in Cape Town, South Africa unless otherwise unanimously agreed by the members of the committee.
- 6.5. Three members of the Technical Advisory Committee shall form a quorum for a meeting of the Committee, provided that at least one representative of Grantee and one representative of the Grantor is present.
- 6.6. Any member of the Technical Advisory Committee shall have the right to call any expert to any meeting of the Committee to advise the Committee on any matter of a technical nature requiring expert advice.
- 6.7. The Chairman of the Committee shall cause minutes of each meeting to be kept and circulated to the members.

7. Minister's Right to Cancel or Suspend the Technical Co-operation Permit

- 7.1. It is recorded that the Minister is empowered to cancel or suspend this Technical Co-operation Permit in the circumstances envisaged in and in accordance with the provisions of section 85 read with section 44 of the Act.
- 7.2. In the event of this Technical Co-operation Permit being cancelled in accordance with the provisions of clause 7.1, the Grantee will not be absolved from its obligations or liabilities which have accrued up to the date of such cancellation.
- 7.3. The cancellation of this Technical Co-operation Permit in terms of clause 7.1 will be without prejudice to the Grantor's or the Grantor's other rights under this Technical Co-operation Permit or in statutory or common law of the Republic of South Africa, including its right to recover any damages it may have suffered or may suffer, its right to claim specific performance or its right to claim ancillary relief.

8. No guaranteed right to other minerals

- 8.1. Should any mineral or minerals be discovered in the course of the Technical Work, the Grantee shall be bound to report such discovery to the Minister. The Grantee may thereafter, subject to any prior rights, apply for and, if granted the required prospecting rights by the State, prospect for such mineral or minerals.

9. Examination of the Permit Area and Operations

In terms of sections 86 to 89 of the Act, all read with section 65 of the Act, the Minister may authorise inspections and exercise of related powers more fully therein set forth.

10. Reports and Samples to be Furnished

- 10.1. For the duration of the Study the Grantee shall submit to the Grantor:
- 10.1.1 written progress and status reports on progress with the seismic reprocessing starting from 3 (three) months after receipt by the Grantee of the data listed in Annexure D, and monthly thereafter general progress and status reports; and

- 10.1.2 within 30 (thirty) days from the expiry of this permit agreement, provide the Grantor with two copies of the final report (which shall be a comprehensive assessment of the studies and interpretations), together with copies of the results of any reprocessing of seismic data, together with film images and digital records. Such final report shall be presented and delivered by the Grantee to the Grantor at its offices in Parow, South Africa.
- 10.3. The Grantee shall furnish the Grantor with such other information, maps and plans, as to the progress of the Technical Work in relation to the Permit Area as the Grantor may from time to time require and which the Grantee can reasonably make available.
- 10.4. Copies of all maps, magnetic tapes and all other geological and geophysical information and interpretation obtained by the Grantee in the course of carrying out the Technical Work (hereinafter referred to as "Data") shall be given to the Grantor as soon as they are acquired or prepared.
- 10.5. The Grantee may export such Data for processing or laboratory examination or analysis by the Grantee or by third parties or storage outside of the Republic of South Africa, provided that copies of equivalent quality have first been delivered to the Grantor and provided that the Grantor's prior written approval has been obtained.
- 10.6. Within three (3) months after the termination and/or cancellation and/or abandonment of this Technical Co-operation Permit, the Grantee shall furnish the Grantor with all results of the Technical Work in relation to the Permit Area.
- 10.7. Nothing in this clause contained shall be construed as requiring the Grantee to disclose any of its proprietary technology or that of its Affiliates.
- 10.8. The above provisions are additional to and without detracting from the provisions of Regulations 7 and 8 made in terms of the Act.
- 10.9. The Grantor shall have the right to use all data and reports for internal evaluation of the petroleum potential of the Permit Area, and to disclose portions of the said data and reports to bona fide potential licensees of the data and/or potential applicants for a Technical Co-operation Permit or Exploration Right or Production Right in relation to the portion of the Permit Area to which the disclosed data relates.

11. Technical Work Programme and Budget

- 11.1. The Grantee must, to the satisfaction of the Grantor over the period of this Technical Co-operation Permit, initiate and thereafter diligently pursue activities intended to meet the commitments set out in the Technical Work Programme annexed hereto and marked Annexure B.
- 11.2. It is recorded that the time sequences as set out in the Technical Work Programme will commence on the Effective Date.

12. Black Economic Empowerment

The Grantee acknowledges that in order to give effect to Section 2(d) of the Act, the Grantor is desirous of expanding opportunities for historically disadvantaged persons (as defined in the Act) to enter the upstream petroleum industry and to benefit from the exploitation of petroleum resources in the Republic of South Africa and as such Grantee undertakes to use its best endeavours to seek historically disadvantaged South African partners to participate in this Technical Co-operation permit and any Exploration Right that may flow therefrom.

13. Good international practice

In addition to the provisions of the Act, the Grantee undertakes to execute all Technical Work in a proper and workmanlike manner in accordance with methods customarily used in good international practice.

14. Local labour, equipment, materials and contractors

- 14.1. In furtherance of section 2(f) of the Act, in carrying out the Technical Work the Grantee shall, to the extent reasonably possible, employ South African citizens having appropriate qualifications.
- 14.2. The Grantee:
- 14.2.1 *and its contractors shall use and purchase equipment, machinery, materials, instruments, supplies and accessories (all referred to as "Goods") manufactured, produced or available in the Republic of South Africa for use under this Technical Co-operation Permit, provided that such Goods are reasonably*

comparable with like goods manufactured, produced or available outside the Republic of South Africa as to landed cost, quantity and quality and can be made available at the time when and the place where required;

- 14.2.2** *shall to the extent reasonable, utilise contractors in the Republic of South Africa where services of comparable standards with those obtained elsewhere are available from such contractors at competitive prices and on competitive terms and can be made available at the time when and the place where required.*

15 Existing Data

The Grantor will procure that the Agency will, for a consideration of US \$ _____ (_____ United States Dollars) exclusive of the costs of digital media (magnetic tapes, etc.) and shipping cost, make available for use solely by the Grantee the existing data as indicated in (a) to (f) below. The consideration shall be paid to the Grantor within 30 (thirty) days from the Effective Date. Costs for digital media and shipping will be charged at cost plus 10 % and shall be paid within 30 (thirty) days of receipt of invoice by the Grantee. The Grantee agrees that while the Grantor has made all reasonable efforts to ensure the quality of the existing data, the Grantor shall not be liable for the integrity, accuracy or quality of the existing data. The Grantor accepts no liability for the results of any decisions or actions of the Grantee arising from the Grantee's use of the existing data. Such data shall include, but as available not be limited to the following:

- (a) one copy of all available borehole measurements and analyses including sample logs, wireline logs, gas chromatograms, micropalaeontological, petrographical, and geochemical data and / or reports (including core descriptions) as well as one digital tape copy, where available (in industry-standard format), of all wireline logs from all wells drilled in the Exploration Area;
- (b) one copy of each technical report of the wells drilled in the Exploration Area, regional reports for the West / South / East Coast and general reports for RSA offshore operations, as appropriate to the Exploration Area;
- (c) one copy of each seismic line which intersects the Exploration Area, at the vertical scale of 2.5 inches per second (two-way time) or as imaged, as well as one copy of [] km of lines to be selected by the Grantee at a scale of 5 inches per second (two-way time). The Grantor will also provide location data for all seismic lines in SEG-P-1, UKOOA or ASCII format, in digital form;
- (d) field data for up to [] km of seismic lines in the Exploration Area as available and as selected by the Grantee. This data set shall be defined by the Grantee after its preliminary evaluation of the copies of seismic lines described in (c) above. The Grantee will provide the Grantor with copies of the reprocessed data as both digital records in industry standard format and a single paper copy. Where such field tapes are available only in a format other than digital records on 9-track half-inch tape (or more modern format) the Grantor will make available such original field data tapes so that the Grantee can transcribe the data into a current industry-standard format. The Grantee shall provide the Grantor with a copy of the data so transcribed onto media of an industry-standard format which is current at the time, and which the Grantor is equipped to read and, at the Grantor's request, return the original tapes to the Grantor at the Grantee's sole cost, risk and expense.
- (e) stacked and migrated data for up to [] km of seismic lines, as available, as selected by the Grantee;
- (e) access to available sets of conventional cores, sidewall cores, drilling cuttings from the wells in the Exploration Area for sampling; and

Wherever possible documents will be provided as digital images in a format appropriate to the document.

Additional field data tapes and stacked and migrated data tapes, over and above that detailed in clauses (d) and (e) above will be made available upon request by Grantee provided that Grantee shall reimburse the Grantor for the reasonable and customary costs incurred in preparing such tapes.

The Grantor will co-operate with the Grantee at the Grantee's request by assisting in resolving technical problems relating to the data (but not interpretation) upon terms and conditions then to be agreed.

All the aforesaid data, studies and reports (hereinafter referred to as the "Existing Data") provided to the Grantee are owned by the Grantor and are of considerable commercial value to it. Such Existing Data shall remain the property of the Grantor and shall, on termination of this Exploration Right, be returned at Grantee's cost to the Grantor. The Grantee will hold the Existing Data confidential between itself and the Grantor in the manner described in clause 16.1 in relation to the Data with the exception of items 16.1(e) and 16.1(f), in which instances the Grantee must first acquire The Grantor's prior written approval, and 16.1(b)

16. Data and information to be kept confidential and limitations on public announcements

In addition to the provisions of section 83 of the Act:

16.1. The Data (as defined in clause 10.4) and all programmes, tests, analyses, results, books, statements, records, returns, plans and information which the Grantee is or may from time to time be required to furnish under the provisions of this Technical Co-operation Permit, shall be supplied at the expense of Grantee. Each Party shall keep confidential the Data and such information and shall not disclose it to any person without the consent of the other Party except:

- (a) where disclosure is required by any law;
- (b) to an Affiliate, provided such Affiliate maintains confidentiality as provided in this clause 16;
- (c) to the extent such Data and information is required to be furnished pursuant to any legal proceedings or because of any order of any court binding upon a Party;
- (d) to prospective or actual contractors, consultants and attorneys employed by any Party where disclosure of such Data or information is essential to such contractor's, consultant's or attorney's work;
- (e) to a bona fide prospective transferee of Party's interest (including an entity with whom a Party or its Affiliate are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares);
- (f) to the extent such Data and information must be disclosed pursuant to any rules or requirements of any government or stock exchange having jurisdiction over such Party or its Affiliates;
- (g) to its respective employees for the purposes of Operations, subject to the Party taking customary precautions to ensure such Data and information is kept confidential;
- (h) where any Data or information, through no fault of a Party, has become published in the public domain; and

Disclosure as pursuant to clauses 16.1 (d) and (e) shall not be made unless prior to such disclosure the disclosing Party has obtained a written undertaking from the intended recipient to keep the Data and information strictly confidential.

16.2 Except as may be required by applicable securities law or stock exchange requirements, no public announcement shall be made by any Party unless the other has been furnished with a copy and has given prior approval, which prompt approval shall not be unreasonably withheld. When a public announcement or statement becomes required by law or necessary or desirable because of impending danger to or loss of life, damage to property or pollution resulting from Operations, either Party is authorised to issue and make such announcement or statement without prior notice or the prior approval of the other where such prior notice and/or approval is not practical in the circumstances. In such a case, the Party making the announcement or statement shall promptly furnish the other Party with a copy of such announcement.

17. Cession, Transfer, Alienation

17.1. In terms of section 72(3)(c) of the Act, this Technical Co-operation Permit is not transferable, and furthermore the Grantee shall not be entitled to let, sub-let, alienate, sell, cede, assign, transfer, delegate or mortgage, its rights and obligations under this Technical Co-operation Permit, either wholly or in part without the prior written approval of the Minister.

17.2 The Minister hereby approves that the Grantee may cede, transfer, let, sub-let, assign or otherwise dispose of or mortgage, either wholly or in part, its rights and obligations under this Exploration Right, to an Affiliate but only if the Grantee's guarantor has bound itself to guarantee the obligations of the transferee. The Grantee shall advise the Grantor by notice within 10 days of effecting such transaction.

17.3. The Grantee may from time to time appoint one or more independent contractors to carry out any portion of the Technical Work, but the Grantee shall always remain liable for the compliance and observation of the provisions of the Act and of the terms and conditions of this Technical Co-operation Permit.

18. Law and interpretation

18.1 Subject to section 4 of the Act, and section 22 (Arbitration) of this Technical Co-operation Permit, this Technical Co-operation Permit, the interpretation thereof and any dispute arising thereunder or associated therewith shall be governed by and determined in accordance with the laws of the Republic of South Africa.

- 18.2 In the event of any inconsistency between this Technical Co-operation Permit and the Act, the Act shall prevail.
- 18.3 In this agreement the clause headings are inserted for reference purposes only and shall not govern or affect the meaning or interpretation thereof.

19. Vis Major

- 19.1 Failure on the part of the Grantee to fulfil any of the terms and conditions provided for in this Technical Co-operation Permit and to conform to the terms and provisions of the Act and the terms and provisions of such other laws and regulations as may be applicable shall not be deemed to be a breach of this Technical Co-operation Permit on the part of the Grantee, in so far as such failure results from any act, cause, thing or event outside the control of the Grantee including, without limitation to the generality of the foregoing, acts of God, war, insurrection, civil commotion, blockade, strikes, flood, storm, lightning, fire or earthquake. Financial inability, ordinary hardship and inconvenience, however caused or arising, shall not be a vis major circumstance.
- 19.2 If the Grantee by reason of the provisions of clause 19.1 above is prevented from fulfilling its obligations or of enjoying its rights under this Technical Co-operation Permit, it shall immediately notify the Grantor in writing to that effect and shall take all reasonable steps to remove the cause thereof and to investigate the consequences. The Grantee shall promptly notify the Grantor as soon as conditions of vis major no longer prevent the Grantee from carrying out its obligations and following such notice shall resume the Technical Work as soon as reasonably practicable.

20. Amendments

The provisions of this Technical Co-operation Permit replace all prior negotiations, representations and other communication between the parties hereto and may be amended only in writing between the parties.

21. Waiver of Lenience

No waiver of any of the Agency's or the Grantor's rights and no lenience granted or permitted by the Minister or the Agency from time to time in a form which does not constitute a formal amendment of this Technical Co-operation Permit shall prejudice the Minister's or the Agency's rights under this right or the Act and shall not constitute grounds for Grantee to expect that the Minister or the Agency as the case may be will continue to waive its/their rights or grant or permit lenience in the future.

22. Arbitration

- 22.1 All disputes relating to or arising out of this Technical Co-operation Permit shall be finally settled under the rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such rules. Subject to clause 22.2, the venue of the arbitration shall be London, England and the proceedings and records of the proceedings shall be in the English language.
- 22.2 The venue of the arbitration shall be Cape Town, South Africa if the amount in dispute is less than US\$500 000,00 (FIVE HUNDRED THOUSAND UNITED STATES DOLLARS). However, if the relief sought is declaratory or specific relief, then the venue shall be as provided in clause 27.1.
- 22.3 Notwithstanding any such difference or dispute or reference to arbitration, the Parties shall, to the extent possible, proceed with the carrying out of their obligations under this Technical Co-operation Permit, subject to the provisions of thereof.
- 22.4 The Parties irrevocably agree that the decision in those arbitration proceedings :
- (a) *shall be binding on them; and*
 - (b) *shall be carried into effect; and*
 - (c) *can be made an order of any Court of competent jurisdiction.*

23. Costs and VAT

- 23.1. All expenses, fees, costs stamp and transfer duties flowing from this Technical Co-operation Permit direct or incidental, and Value Added Tax at the prevailing rate and stamp duty, shall be paid by the Grantee.
- 23.2. All remittances and payments to the Grantor in terms of this Technical Co-operation Permit are exclusive of Value Added Tax (VAT).

24. Severability

Any provision of this Technical Co-operation Permit which is in any way unenforceable or which may render it unenforceable or which may contravene the applicable laws or regulations of any jurisdiction to which this Technical Co-operation Permit is subject shall be deemed, to the extent of such unenforceability or contravention, severable from this Technical Co-operation Permit and of no force or effect and shall not affect any other provision of this Technical Co-operation Permit and its enforceability or legality in all other respects.

25. Notices, *domicilia citandi et executandi* and Representatives

All notices, requests and reports provided for herein shall be in writing and shall be delivered either by hand to an authorised representative of the receiving Party, or sent by courier or telefax to the following addresses in the Republic of South Africa, provided that if given by telefax a copy thereof shall be sent immediately by prepaid registered airmail:

Grantor :

Minister of Minerals and Energy

Physical address :

Mineralia Centre
Cnr Visagie & Andries Streets
PRETORIA
Gauteng Province

Postal address :

Private Bag X59
PRETORIA
0001

Tel. number : (27) 12 317 9000

Fax number : (27) 12 322 3416

PETROLEUM AGENCY SA:

Attention : Chief Executive

Physical address :

Petroleum House
151 Frans Conradie Drive
PAROW
Western Cape Province

Postal address :

P O Box 1174
PAROW
7499

Tel. number : (27) 21 938 3500

Fax number : (27) 21 938 3520

GRANTEE :

.....LIMITED

Attention : Mr _____ or _____

Physical address :

Postal address :

Tel. number : _____

Fax number : _____

Either Party may change its address to such other address as it may notify the other Party of on at least 30 (thirty) days prior notice.

All notices, requests and reports sent by telefax shall be deemed to have been received within 12 (twelve) hours of transmission. Those delivered by hand or sent by courier shall be deemed to have been received at the time of actual delivery.

Each Party also chooses the physical address specified above as its *domicilium citandi et executandi* for all purposes arising under this Technical Co-operation Permit, including service of process.

The Grantee shall within 7 (SEVEN) calendar days of the Effective Date of this Technical Co-operation Permit give notice to the Grantor in which it appoints one representative with whom the Grantor may deal concerning this Technical Co-operation Permit. Such representative shall continue to represent the Grantee unless the Grantee notifies the Grantor of a change of representative.

Thus done and signed at _____ on the ____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

for and on behalf of the Grantor

Thus done and signed at _____ on the ____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

for and on behalf of the Grantee

ANNEXURE A MAP AND DESCRIPTION OF THE PERMIT AREA

ANNEXURE B TECHNICAL WORK PROGRAMME

In order to achieve the objectives as set out in the Technical Co-operation Permit Agreement to which this Technical Work Programme forms Annexure B the Grantee shall, within the term of this Agreement:

- 1.1 carry out a study and evaluation as detailed in clause 3 of the petroleum potential of the Permit Area through integrated interpretation of all the geological and geophysical data provided by the Agency relating to the Permit Area. This process will result in the completion of a report which identifies areas within the Permit Area that exhibit, in the opinion of the Grantee, the highest petroleum potential (hereinafter referred to as the "Study"). The Study shall include:
 - 1.1.1 a comprehensive geological evaluation of samples and other data provided by the Agency pursuant to clause 15 of the main agreement. Such studies will include a petrographic study, a tectonic study, and source-rock and thermal modelling studies of the Permit Area.;

- 1.1.2 a comprehensive geophysical study including the reprocessing of at least [] km of seismic data, and special processing as the Grantee deems necessary;
 - 1.1.3 interpretation of the seismic data and map selected horizons;
 - 1.1.4 preparation of a geological model of the Permit Area, incorporating results of geological and geophysical studies referred to in clauses 1.1 and 1.2; and
 - 1.1.5 preparation a technical report on the results of the Study, making recommendations for future exploration work.
- 2 All Studies, including but not limited to the geophysical, geological and engineering work, seismic reprocessing, interpretation, and evaluation will be executed by the Grantee at its sole cost, risk and expense and without any cost to the Grantor.
 - 3 The Grantee shall conduct such Studies utilising its own resources and such third party contractors as it deems necessary.

ANNEXURE C

ACCOUNT TO WHICH PAYMENTS TO AGENCY ARE TO BE MADE

The amounts payable to the Agency will be deposited by the Grantee into the account of the Agency at:

Bank: ABSA
 Branch:
 Branch code:
 Account no.

In the case of payments originating in the USA the following further information will be of assistance:

PAYMENT TO BE MADE TO:

| | |
|---|---|
| Full name of Bank | Harris Bank International Corporation |
| Address | 3 Times Square New York New York, 10036 |
| SWIFT Address | HATRUS33 |
| Account Number | 49-0-2945-7 |
| For Credit of | ABSA Bank Limited International Banking Services: Corporate Pretoria South Africa |
| For Further Credit Under Reference | CEF (PTY) LTD SEF 8245Y55 |
| The remitting Bank must confirm payments by MT100 to: | ABSA Bank Limited IBS Corporate Pretoria South Africa |
| SWIFT Code | ABSAZAJJACPT |
| For Attention | xxxxxxxxxxxx |

Kindly confirm payments per Fax to CEF (PTY) LTD post names to be substituted
Attention xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Fax No. (27)11 784 5494

In all cases, the Grantee is required to deliver proof of payment to the Grantor within 3 working days of effecting the payment.

ANNEXURE D

In terms of clause 10 of the Technical Co-operation Permit Agreement to which this Annexure D is attached, the Grantor will make available the following Data:

**FORM LL:
EXPLORATION RIGHT**

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SPECIMEN AGREEMENT FOR AN EXPLORATION RIGHT

PROTOCOL NO. _____ / _____

LET IT HEREBY BE KNOWN:

THAT on this the ____ day of _____ in the year Two thousand and ____ (2____) before me, _____, Notary Public, duly sworn and admitted, residing and practising at _____ in the _____ Province, Republic of South Africa, and in the presence of the subscribing competent witnesses personally came and appeared:

- (1) _____, Chief Executive of South African Agency for Promotion of Petroleum Exploration and Exploitation (Proprietary)(Limited), and as such in his or her capacity as the duly authorised representative of:

THE REPUBLIC OF SOUTH AFRICA

(hereinafter together with its successors in title and assigns referred to as "the Grantor"), he or she, the said Appearer, being duly authorised thereto under and by virtue of the powers delegated to him or her by the Minister of Minerals and Energy on in terms of section 97(1) read with sections 65(2)(a) and 65(2)(b)(vi) of the Mineral and Petroleum Resources Development Act; 2002 (Act No. ... of 2002), the said Minister acting in terms of section 3(2)(a) read with section 75(1) of the said Act.

AND

- (2) _____, a _____ of, and as such in his or her capacity as the duly authorised representative of:

(No. ____ / ____ / ____)

(hereinafter together with its successors in title and assigns referred to as "the Grantee"), he or she, the said Appearer, being duly authorised thereto under and by virtue of a Resolution of Directors of the Grantee passed at _____ on the ____ day of _____,

certified copies of which delegation and of which Resolution have this day been exhibited to me, the Notary, and remain filed of record in my Protocol with the Minute hereof.

AND THE APPEARERS DECLARED THAT:

WHEREAS In terms of section 3(2)(a) read with sections 65(2)(a) and 75 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. of 2002), the Grantor may grant exploration rights (as defined in the said Act) in respect of petroleum (as so defined) within the area of jurisdiction of the Grantor,

AND WHEREAS the Grantee wishes to obtain an Exploration Right in respect of Petroleum in, on and under the property referred to in clause 2,

AND WHEREAS the Grantor has agreed to grant such Exploration Right to the Grantee in accordance with the terms and conditions recorded hereunder,

NOW THEREFORE THE PARTIES AGREE HERETO:

1. Definitions

In this agreement the clause headings are inserted for reference purposes only and shall not govern or affect the meaning or interpretation thereof. The definitions in the Act and regulations shall apply also to this agreement and additionally the following words and expressions shall have the meaning assigned to them:

- 1.1. "the Act" shall mean the Mineral and Petroleum Resources Development Act, 2002 (Act No. ... of 2002) or any subsequent law which amends or substitutes the Act;

- 1.2. "Affiliate" of a Party means a company which owns, or is owned by, or which is owned by an entity which owns that Party; "owns" and "owned" mean in this definition the ownership directly or indirectly of more than 50 % of the voting shares or members' interests;
- 1.3. "Effective Date", shall mean the date on which this exploration right agreement is executed notarially by the last Party so to execute;
- 1.4. "the Exploration Area", shall mean the property referred to in clause 2 of this agreement, excluding those portions relinquished or abandoned from time to time;
- 1.5. "Exploration Operations", shall mean any operation, activity or matter that relates to the exploration for Petroleum in the Exploration Area by the Grantee and/or its contractors;

Exploration Work Programme" shall mean the Grantee's written recordal of ...

- 1.6. "the Grantee", shall have the meaning attributed thereto in the description of the Parties above and shall as appropriate mean all Grantee Parties;
- 1.7. "Grantee Party" means each cessionary, transferee, lessee, sub-lessee or assignee of rights, duties and obligations under this Exploration Right pursuant to the provisions of clause 28 hereof;
- 1.8. "the Grantor" shall have the meaning attributed thereto in the description of the Parties above;
- 1.9. "the Income Tax Act" shall mean the Income Tax Act, 1962 (Act No. 58 of 1962) as amended or substituted;
- 1.10. "installation" shall have the meaning assigned to it in the Mine Health and Safety Act, 1996 (Act no. 29 of 1996) as amended;

"Natural Oil" shall have the meaning assigned to it in the Income Tax Act, and is the same as petroleum as defined in the Act;

- 1.11. "Petroleum Agency" means the South African Agency for Promotion of Petroleum Exploration and Exploitation (Proprietary) Limited (No. 1999/015715/07);
- 1.12. "Quarter" means a three-month period of a year beginning on 1st January, 1st April, 1st July or 1st October of any year;
- 1.13. "State" shall mean the Grantor;

Reference to the singular of a defined term includes a reference to it in the plural and vice versa and reference to any gender includes a reference to all other genders.

2. Grantor's Agent : Petroleum Agency

- 2.1. ***Without detracting from section 66 of the Act the Grantor records that it has appointed the Petroleum Agency as the Grantor's agent in regard to all matters relating to this Exploration Right, excluding matters concerning health and safety save in regard to the approval of exploration rights and production rights.***
- 2.2. ***Without detracting from the generality of clause 2.1:***
 - 2.2.1. the Grantee shall be obliged to pass all data, including but not limited to information contemplated in section 14 of the Act and this Exploration Right and samples and borehole cores, and interpretations of all the foregoing, to the Petroleum Agency, and all of which data, information, samples, borehole cores, and interpretations, shall be passed in the format and in the medium as may be required by the Petroleum Agency in writing from time to time.
 - 2.2.2. The Grantor hereby appoints the Petroleum Agency or its representatives as the Grantor's representative or representatives on the Technical Advisory Committee provided for in clause 8 hereof.

3. Description of Exploration Area

The Exploration Area shall comprise the following:

Block
Region
Measuring: _____ km²*

which Block is more fully described in the attached sketch plan/diagram, marked Annexure A_____

4. Exploration Right

The Grantor hereby in terms of section 75 of the Act grants to the Grantee, which hereby accepts, this exploration right conferring the sole and exclusive right to explore for petroleum in, on and under the Exploration Area on the terms and conditions set forth herein and subject to the provisions of the Act.

5. Ancillary Rights and Obligations

5.1. Without limiting the generality of clause 4 or detracting from Grantee's rights in terms of sections 5 and 77 of the Act, the Grantee shall have the right to:

- 5.1.1. enter the Exploration Area together with the Grantee's employees, and bring on to the Exploration Area any plant, machinery and equipment and build, construct and lay down any surface or underground infrastructure which may be required for the purposes of exploration;
- 5.1.2. explore for the Grantee's own account on or under the Exploration Area for petroleum;
- 5.1.3. remove and dispose of any petroleum found during the course of exploration;
- 5.1.4. subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, the Exploration Area or from any excavation previously made and used for exploration or production purposes, or sink a well or borehole required for use relating to exploration on the Exploration Area;
- 5.1.5. in terms of section 77(1)(a) of the Act, apply for and be granted a production right in respect of petroleum on the Exploration Area.

5.2. Without detracting from the Grantee's further obligations in terms of this Exploration Right or in terms of the Act, the Grantee shall :

- 5.2.1. not, without the Minister's prior written consent, carry out Exploration Operations over :
 - 5.2.1.1. areas used or reserved under any law for any Government or public purpose;
 - 5.2.1.2. areas within five nautical miles seaward of the low water mark (as defined in section 1 of the Sea-Shore Act, 1935 (Act No. 21 of 1935)), nor in the areas shown as reserved areas on the attached sketch plan, Annexure A;
- 5.2.2. continuously and actively conduct exploration operations in accordance with the approved Exploration Work Programme;
- 5.2.3. comply with the terms and conditions of this exploration right and the relevant provisions of the Act;
- 5.2.4. comply with the requirements of the approved Environmental Management Programme;
- 5.2.5. pay the prescribed fees to the Grantor.

5.3. No provision contained in this Exploration Right shall constitute a stipulation for the benefit of any person or entity who is not a Party to this Exploration Right capable of acceptance by such person, except the Petroleum Agency.

6. Commencement, Duration and Renewal

- 6.1. This Exploration Right will commence on the Effective Date and, unless terminated earlier under any provisions hereof, will continue in force for an Initial Period of _____ [not more than 3 years] from the Effective Date.
- 6.2. The Grantee shall within 30 (thirty) days reckoned from the Effective Date, commence with Exploration Operations in the Exploration Area and shall thereafter conduct such operations continuously and actively in accordance with the Exploration Work Programme and the approved Environmental Management Programme.
- 6.3. This Exploration Right shall be renewed by the Minister on application in terms of section 76(1) of the Act by the Grantee for a maximum of 3 (three) further Periods not exceeding 2 years each if the Grantee has complied with the:
- 6.3.1. terms and conditions of this Exploration Right and is not in contravention of any relevant provision of the Act;
 - 6.3.2. Exploration Work Programme; and
 - 6.3.3. requirements of the approved Environmental Management Programme.
- 6.4. At the end of each Period the Grantee shall relinquish the relevant portion of the original extent of the Exploration Area as indicated in Annexure B and in the manner described in clause 10.
- 6.5. For the purposes of calculating the relinquishment required at the end of any period, any portion of the Exploration Area which is the subject of an accepted application for a production right or situated within a production area shall be considered as having been relinquished from the date of the application;
- 6.6. Any relinquishment in terms of this clause 6 or clause 10 shall be without prejudice to any obligation incurred by the Grantee in respect of the Exploration Area prior to the date of relinquishment and such relinquishment shall not affect the obligations of the Grantee under clause 15 (Exploration Work Programme and Budget) of this Exploration Right.

7. Fees and Royalties

- 7.1 The Grantee shall pay to the Grantor the prescribed exploration fees and the prescribed royalties in respect of petroleum removed and disposed of during the course of the Grantee's Exploration Operations, as envisaged in section 77 of the Act
- 7.1.1. an annual exploration fee of R_____ (_____ RAND) per km² of the Exploration Area payable yearly in advance, which shall increase annually on the anniversary of the Effective Date by the increase in the Consumer Price Index (All Items, Metropolitan and Other Urban Areas) as published from time to time by Statistics South Africa
 - 7.1.2. a royalty of _____% of the value of any petroleum or minerals found, removed and disposed of in the course of exploration operations on the Exploration Area; payment of the said share shall be made within 30 (thirty) days after the end of every Quarter and shall be accompanied by a certificate or other document acceptable to the Grantor, reflecting particulars of the value of petroleum and/or minerals found, removed and disposed of on the Exploration Area during the Quarter in question; such quarterly payments shall,
 - (a) in the case of petroleum,
 - (i) be made on a fair market value of the Petroleum produced, calculated at the boundary of the mine. "Fair market value" shall, except as provided in (ii) below, be the actual realised price used to determine gross income for income tax reporting purposes under the Income Tax Act. The currency of payment will be either SA Rand or US Dollars.
 - (ii) In the event that all sales during a Quarter are to an Affiliate of Grantee then fair market value for the purposes of calculating royalty will be determined utilising a basket of similar products on offer world-wide. Otherwise, the fair market value for purposes of calculating royalty on sales to an Affiliate will be the average weighted by volume of the actual realised price of sales to third parties during such Quarter.

(b) In the case of other minerals it will be:

- based on the selling price of the minerals (if applicable);
- in the case of minerals not sold, on the estimated value thereon; and
- after the subsequent sale (if applicable) of any minerals in respect of which payment has already been made on the estimated value thereof, on the difference between the estimated value and selling price.

7.2. In terms of the *money bill* the Grantee shall additionally pay to the Grantor a data maintenance fee equal to 1% of the fair market value, at the boundary of the mine, of petroleum produced from the Exploration Area, saved and sold.

7.2.1 "Fair market value" shall be as defined in 7.1.2. and shall, except as provided in clause 7.3.2 below, be the actual realised price used to determine gross income for income tax reporting purposes under the Income Tax Act. The currency of payment will be either SA Rand or US Dollars.

7.2.2 In the event that all sales during a Quarter are to an Affiliate of Grantee then fair market value will be determined utilising a basket of similar products on offer world-wide. Otherwise, the fair market value in respect of sales to an Affiliate will be the average weighted by volume of the actual realised price of sales to third parties during such Quarter.

7.3. The exploration fees and data maintenance fees referred to in clause 7.1 and 7.2 shall be paid as follows:

7.3.1. exploration fees shall be paid within 30 (thirty) days following the Effective Date and each subsequent anniversary thereof for the duration of this Exploration Right; and

7.3.2. data maintenance fees payable in respect of each Quarter shall be paid within thirty (30) days following the end of each such Quarter for the duration of this Exploration Right.

7.4. If any fees or royalties referred to in clauses 7.1 or 7.2 are not paid punctually on or before the due dates for payment, the Grantee shall be in *mora debitoris* and shall pay interest thereon at the rate prescribed in terms of section 80 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) reckoned from the due date for payment to the date of actual payment.

7.5. **Regardless of any relinquishment of parts of the exploration area or early termination of this Exploration Right for whatever reason, no portion of the fees referred to in clauses 7.1 and 7.2 shall be refundable.**

7.6 All fees and royalties which are payable by Grantee to the Grantor in terms of the Exploration Right shall be paid by deposit into the account of the Grantor at the bank and account indicated in Annexure C, or such other bank and account as the Grantor may from time to time give notice of. The onus for timely payment rests solely with the Grantee; the Grantor will not normally issue invoices. It should also be noted that the Upstream Training Trust is independent of the Grantor and payments to it should be made separately to the bank and account indicated in Annexure D, or such other bank and account as the Upstream Training Trust may from time-to-time give notice of.

8. Technical Advisory Committee

8.1. the Grantor and Grantee shall as soon as possible after the Effective Date establish a committee to be known as the Technical Advisory Committee which shall consist of:

- (a) a chairman and one other person appointed by the Grantor; and
- (b) two other persons appointed by Grantee.

The membership of the Technical Advisory Committee may be enlarged to include one representative of each of Grantee Parties. The Grantor may in this instance enlarge its representation to equal that of all the Grantee Parties.

8.2. The Grantor and any Grantee Party may appoint by notice an alternative member to act in the place of its representative on the Technical Advisory Committee during his or her absence or incapacity to act as a member of the Committee. When an alternate member acts in the place of any member he or she shall have the powers and perform the duties of such member.

- 8.3. Without prejudice to the rights and obligations of Grantee in relation to the management of Operations the functions of the Technical Advisory Committee shall be:
- (a) to review all Operations carried out by Grantee and to provide Grantee advice and recommendations with respect thereto;
 - (b) to review and approve any proposed exploration work programme and budgets to be submitted by Grantee to the Grantor in terms of clause 14 and to monitor the implementation of any appraisal programmes submitted by Grantee to the Grantor in terms of clause 16;
 - (c) to review any appraisal programmes submitted by Grantee to the Grantor in terms of clause 16 and any development plan which Grantee proposes to submit in connection with an application for a Production Right in terms of clause 39;
 - (d) to review the accounting of expenditure and the maintenance of operating records and reports kept in connection with Operations; and
 - (e) to offer advice to Grantee in order to promote the efficient carrying out of Operations.
- 8.4. All meetings of the Technical Advisory Committee shall be held at least semi-annually. The location of such meetings shall be in Cape Town, South Africa unless otherwise unanimously agreed by its members, and the Grantee shall provide the the Grantor with copies of all documentation and presentation materials 7 (seven) days prior to the meeting.
- 8.5. Three members of the Technical Advisory Committee shall form a quorum for a meeting of the Committee, provided that at least one representative of Grantee and one representative of the Grantor is present.
- 8.6. Any member of the Technical Advisory Committee shall have the right to call any expert to any meeting of the Committee to advise the Committee on any matter of a technical nature requiring expert advice.
- 8.7. The Chairman of the Committee shall cause minutes of each meeting to be kept and circulated to the members.

9. Minister's Right to Cancel or Suspend the Exploration Right

- 9.1 It is recorded that the Minister is empowered to cancel or suspend this Exploration Right in the circumstances envisaged in and in accordance with the provisions of section 85 read with section 44 of the Act.
- 9.2. In the event of this Exploration Right being cancelled in accordance with the provisions of clause 9.1, the Grantee will not be absolved from its obligations or liabilities which have accrued up to the date of such cancellation.
- 9.3. The cancellation of this Exploration Right in terms of clause 9.1 above will be without prejudice to the Grantor's other rights under this Exploration Right or in statutory or common law of the Republic of South Africa, including its right to recover any damages it may have suffered or may suffer, its right to claim specific performance or its right to claim ancillary relief.

10. Abandonment or Relinquishment of the Exploration Area

- 10.1. The Grantee may, subject to sub-clauses 10.2., 10.3., 10.4. and 10.5., abandon this right in its entirety or relinquish any portion or portions of the Exploration Area at any time.
- 10.2. All areas relinquished in terms of clause 6 or this clause 10 shall cease to be part of the Exploration Area as from the end of the relevant period or on the date identified so notified in conformance with sub-clause 5.5 of this Exploration Right, whichever is the sooner and provided that:
- 10.2.1 Any part of the Exploration Area relinquished under sub-clause clause 5.5 shall be deemed to have been relinquished for the purposes of the determination of the relinquishment next required to be made by the Grantee;
 - 10.2.2 The Grantee shall relinquish such parts of the Exploration Area in such a way that the area relinquished is a single area:

- (i) bounded by lines running either due North and South or due East and West and coinciding with integral multiples of 01 minutes of longitude or latitude; and
- (ii) approximately rectangular with the length not more than three times the width of the narrowest portion of the area to be relinquished;

- 10.3 Subject to the submission of a clear technical motivation by the Grantee, the Grantor may in its sole discretion relax the requirement in 10.2.2 above that the relinquished area be a single area.
- 10.4 Grantee may, subject to the terms of clause 10.2.2, by notice in writing addressed and delivered to the Grantor, relinquish any part of the Exploration Area from a date not less than six months from the date on which such notice was delivered to the Grantor.
- 10.5 In abandoning or relinquishing the Exploration Area or any portion thereof, the Grantee will not be absolved from those obligations or liabilities, either in the form of exploration work or otherwise, which may have accrued under the terms and conditions of this Exploration Right, the Exploration Work programme, the Environmental Management Programme and the Act up to the date of such abandonment or relinquishment.
- 10.6 With effect from the date the Grantee has so abandoned or relinquished a portion or portions of the Exploration Area, the Grantor shall be entitled to grant any exploration rights or production rights or any of the rights and permits referred to in the Act in, on, or under the portion or portions, so abandoned or relinquished, to any persons or persons.
- 10.7 Upon abandonment or relinquishment of the Exploration Area or any portion thereof, the Grantee will furnish the Grantor with all exploration results and/or information and interpretations, as well as its evaluation of the geological, geophysical and borehole data in respect of such abandoned or relinquished area or areas insofar as it applies to petroleum or any other mineral or minerals referred to in clause 11. Such results and/or information may be made available to third parties.
- 10.8 Upon abandonment or relinquishment of the Exploration Area or any part thereof the Grantee shall apply for an Exoneration Certificate in terms of section 40 of the Act.

11. No guaranteed right to other minerals

- 11.1 The Grantee shall not have the exclusive right to acquire a prospecting right, mining right, mining permit or retention permit in respect of any mineral or minerals (excluding petroleum) in, on and under the Exploration Area.
- 11.2 Should any mineral or minerals be discovered in the course of Exploration Operations, the Grantee shall nevertheless be bound to report such discovery to the Minister. The Grantee may thereafter, subject to any prior rights, apply for and, if granted the required prospecting rights by the State, prospect for such mineral or minerals.

12. Examination of the Exploration Area

- 12.1 The Minister may authorise inspections and exercise of related powers as set out in the Act
- 12.2 Upon request by the Grantor during offshore operations of Grantee, Grantee shall provide free transport between the Grantee's onshore base and the offshore facilities as well as accommodation on the offshore facilities for authorised officers.

13. Records and samples

- 13.1 The Grantee must keep, in a form as may be from time to time reasonably approved by the Grantor, current and accurate records of all Exploration Operations. Such records must include, inter alia, details of drilling, completion, plugging or abandonment of all boreholes, drill-stem tests, well logs, all other geological and geophysical information and interpretation, maps, digital records obtained by the Grantee in the course of carrying out Operations (hereinafter referred to as "Data") and any equipment lost overboard or down hole, relating to the Exploration Area as may be necessary to preserve all information which the Grantee has about the geology of the Exploration Area, and such other records as the Grantor may from time to time direct and which the Grantee can reasonably keep.

- 13.2. The Grantee shall at its own expense save and correctly label a representative portion of each sample of cores and cuttings from the earth or sea bed and strata encountered in drilling wells, such samples to be taken at regular intervals in accordance with good international oilfield practice, and samples of any Petroleum or other Minerals of potential value recovered in any of the Grantee's wells in the Exploration Area, to be forwarded promptly to the Grantor at the Grantee's expense. All samples acquired by the Grantee for its own purpose shall be made available for inspection at any reasonable time by the Grantor.

Before the Grantee discards any core and/or cuttings and samples, the Grantor shall, by prior notice, be afforded an opportunity of obtaining the same and these will be delivered to it at Grantee's expense.

- 13.3. The Grantee may export such Data for processing or laboratory examination or analysis by the Grantee or by third parties or storage outside of the Republic of South Africa, provided that representative samples equivalent in quality or, where such material is capable of being reproduced, copies of equivalent quality have first been delivered to the Grantor and provided that the Grantor's prior written approval has been obtained.
- 13.4. The Grantee shall deliver to the Grantor, at the Grantee's expense, copies of all data as defined in 12.1 above as soon as they are acquired or prepared in accordance with the the Grantor's reporting guidelines.

14. Reports

- 14.1. The Grantee shall keep the Grantor currently advised of all major developments taking place during the course of Operations and shall furnish the Grantor with Data (as defined elsewhere) and other available information, reports, assessments and interpretations relating to Operations as the Grantor may reasonably require in accordance with the Grantor's reporting guidelines.
- 14.2. The Grantee shall provide the Grantor with a summary report of all Operations on a monthly basis.
- 14.3. Within 30 (thirty) days of the end of each Quarter the Grantee shall submit to the Grantor a report reflecting, for the relevant Quarter, details of all Operations, including but not limited to:
- (i) the numbers of local and expatriate persons employed;
 - (ii) the work done and money expended on Operations; and
 - (iii) the site and depth of every well drilled or being drilled and the formations penetrated and particulars regarding any occurrence of petroleum and/or any other mineral of potential value encountered.
 - (iv) a statement of compliance with the approved Environmental Management Programme.
- 14.4. Nothing in clause 13 or this clause 14 shall be construed as requiring the Grantee to disclose any of its proprietary technology or that of its Affiliates.
- 14.5. The Grantee shall furnish the Grantor with such other reports as to the progress of its operations in the Exploration Area as the Grantor may from time to time require and which the Grantee can reasonably make available.
- 14.6. Within three (3) months after the termination and/or cancellation and/or abandonment of this Exploration Right, the Grantee shall furnish the Grantor with all results of and its interpretations and general evaluation of the geological, geophysical and borehole data relating to the Exploration Area as it applies to petroleum or any other mineral or minerals under sub-clause 11.2.
- 14.7. The Grantee shall provide copies of all hydrographic information and data obtained by the Grantee or its contractors and sub-contractors, during marine operations undertaken under this Exploration Right to the Grantor and the Chief Hydrographer of the South African Navy.
- 14.8. All information furnished by the Grantee to the Grantor in accordance with this clause and clause 13 above, may be made available by the Grantor for use by third parties on expiry of the Exploration Period, termination of the Exploration Right or relinquishment or abandonment by the Grantee.

- 14.9 The provisions of this clause 14 are additional to and without detracting from the provisions of Regulation 14 made in terms of the Act.

15. Exploration Work Programme and Budget

- 15.1. The Grantee must, to the satisfaction of the Grantor:
- 15.1.1. over the period of this Exploration Right, initiate and thereafter actively pursue operations designed to progressively explore substantially over the Exploration Area;
 - 15.1.2. carry out and meet the commitments set out in the Exploration Work Programme annexed hereto marked Annexure E;
 - 15.1.3. not less than three months prior to each anniversary of the Effective Date prepare and submit to the Grantor an amended and revised exploration work programme and budget setting forth the exploration operations which the Grantee proposes to carry out during the twelve months following the aforesaid anniversary and the cost thereof.
- 15.2. Any amended and revised exploration work programme and budget submitted to the Grantor shall be consistent with the relevant Minimum Work Obligation set out in Annexure E and with the requirements set out in clause 37 relating to environmental protection.
- 15.3. Any revisions or amendments to the aforesaid Exploration Work Programme and budget must be submitted to Petroelum Agency for approval.
- 15.4. In the event that the work carried out by the Grantee, as reviewed from time to time, is less than that specified in the Exploration Work Programme and insufficient reason has been given by the Grantee to the Grantor for the failure to carry out the full Exploration Work Programme, then the Grantor may in terms of section 76(3) of the Act refuse an application for a renewal of this Exploration Right in terms of clause 6.3 hereof.
- 15.5. If at the end of any sub-period, the Grantee has not completed the Minimum Work Obligation for that sub-period, then the Grantee shall (where the amount spent is less than the estimated expenditure for such Minimum Work Obligation) pay the Grantor the difference (if any) between the said estimated expenditure in respect of the Minimum Work Obligation for the relevant sub-period and the actual amount which the Grantee expended on the Minimum Work Obligation.
- 15.6. If the Grantee performs more exploration work than the Minimum Work Obligation for the Initial Period, the First Renewal Period or the Second Renewal Period, then the Grantee can carry forward the excess work together with any associated excess expenditure and apply it against the Minimum Work Obligation for the next sub-period if an application for renewal of this Exploration Right for such next sub-period is granted but not beyond that next sub-period. Appraisal work or expenditure in respect of appraisal work shall not be taken into account in establishing whether there has been excess expenditure or exploration work as aforesaid.
- 15.7. It is recorded that the time sequences as set out in the Exploration Work Programme will commence on the Effective Date.
- 15.8. As set out in section 84 of the Act, each Grantee Party shall secure and deliver to the Grantor within 14 (fourteen) days of Effective Date a financial guarantee, appropriate to its proportionate interest in this Exploration Right in the format indicated in Annexure F.

16. Discoveries and testing

- 16.1. When a discovery of Petroleum is made in the Exploration Area, the Grantee shall -
- (a) promptly inform the Grantor by notice of the fact that such discovery has been made;
 - (b) forthwith cause tests to be made in connection with such discovery in order to determine whether it is, in the Grantee's opinion, commercial. Before testing each occurrence of Petroleum, the Grantee shall give notice of testing to the Grantor and shall provide, free of charge, to the representatives of the Grantor access and transportation to the drilling rig and reasonable facilities there in order to witness such tests; and
 - (c) within 60 days after having completed such tests, furnish the Grantor with a report containing an evaluated result of such tests.

- 16.2. The testing and measuring of Petroleum for the purpose of establishing the existence of a commercial discovery of Petroleum shall be carried out in accordance with good international oil-field practice.
- 16.3. If the Grantee considers, after providing the report referred to in clause 16.1.(c), that the discovery of Petroleum could be commercial, then the Grantee shall forthwith take reasonable steps to appraise the discovery and submit the appraisal programme which it intends to undertake to the Grantor for its agreement. The Grantor shall review such appraisal programme and within 30 days of receipt thereof either agree to it or give Grantee any comments which Grantor may have with respect to it. If the Grantor fails to respond with comments within such time, it shall be deemed to have agreed to the appraisal programme.
- 16.4. The Grantee shall, within one year from the date on which the Grantor is advised of the appraisal programme or such longer period as may be appropriate under the circumstances address and deliver to the Grantor a full report containing particulars of the results of the appraisal programme, including particulars and preliminary estimates relating to:
- (i) the location and depth of petroleum bearing structures;
 - (ii) the composition of petroleum;
 - (iii) the estimated recoverable reserves of petroleum; and
 - (iv) the estimated daily production potential of petroleum; and
 - (v) a preliminary estimate of the expenditure of development and production operations, including the expenditure on transportation of petroleum, based on an outline design for the development of the discovery of petroleum.
- 16.5. the Grantor may, at any time after delivery of the report and estimates referred to in clauses 16.4 request the Grantee to supply such further particulars relating to such reports as the Grantor deems necessary and the Grantee shall comply in writing with such request within 30 days from the date of delivery of such request.

17. Black Economic Empowerment

The Grantee acknowledges that in order to give effect to section 2(d) of the Act, Grantor is desirous of expanding opportunities for historically disadvantaged persons (as defined in the Act) to enter the upstream petroleum industry and to benefit from the exploitation of Petroleum resources in South Africa and as such Grantee undertakes to use its best endeavours to seek historically disadvantaged South African partners to participate in this Exploration Right for at least a 10 % undivided interest. Such participation shall be governed by the principles contained in Appendix D and an associated Operating Agreement.

18. Good international oil-field practice

In addition to the provisions of the Act, the Grantee shall comply with the following special obligations.

- 18.1. The Grantee shall maintain all installations in good repair and condition and shall execute all Operations in a proper and workmanlike manner in accordance with methods of exploration used in good international oil-field practice and, without prejudice to the generality of the foregoing, the Grantee shall take all steps practicable in order to prevent:
- (a) the escape or waste of petroleum discovered in the Exploration Area;
 - (b) damage to petroleum-bearing strata;
 - (c) the entrance of uncontrolled water through wells to petroleum-bearing strata;
 - (d) the escape of petroleum into any waters or aquifer in or in the vicinity of the Exploration Area; and
 - (e) pollution of the terrestrial or marine environment.
- 18.2. The Grantee shall immediately inform the the Grantor and other relevant government bodies of the occurrence of any event described in clauses 18.1(a) through 18.1(e) above and shall take immediate remedial action.

- 18.3. The Grantee shall take immediate action with respect to notices given by the Grantor of any event described in clauses 18.1(a) through 18.1(e) above.
- 18.4. The Grantee shall give all notices and take all actions described in the relevant oil-spill contingency plan required in terms of the Prevention and Combating of Pollution of the Sea Act (Act no. 6 of 1981).
- 18.5. The Grantee shall protect all wells drilled under this Exploration Right. Upon completion or abandonment of a well the Grantee shall remove from the drill site all guide bases and other substantial equipment so as to leave the environment free of significant obstruction, except where the relevant well is intended to be used as a production well. The Grantee shall notify the relevant government agencies that the location is free of obstruction or, if it is not, the location, nature and extent of any obstruction.
- 18.6. No gas produced from the Exploration Area, except in the case of short term flaring necessary for testing or other operational reasons, may be flared unless the Grantor's prior written approval, which approval shall not be unreasonably withheld, has been obtained.
- 18.7. The Grantee shall give timeous notice to relevant government agencies and to interested and affected parties as to all Exploration Operations and shall take all reasonable steps to minimise interference with rights of other users.

19. Existing Data

Grantor will procure that Petroleum Agency will, for a consideration of US\$ _____ (_____ United States Dollars) exclusive of the costs of digital media (magnetic tapes, etc.) and shipping cost, make available for use solely by the Grantee the existing data as indicated in (a) to (f) below. The consideration shall be paid to Petroleum Agency within 30 (thirty) days from the Effective Date. Costs for digital media and shipping will be charged at cost plus 10 % and shall be paid within 30 (thirty) days of receipt of invoice by the Grantee. The Grantee agrees that while Grantor and Petroleum Agency have made all reasonable efforts to ensure the quality of the existing data, neither Grantor nor Petroleum Agency shall be liable for the integrity, accuracy or quality of the existing data. Neither Grantor nor Petroleum Agency accepts liability for the results of any decisions or actions of the Grantee arising from the Grantee's use of the existing data. Such data shall include, but as available not be limited to the following:

- (a) one copy of all available borehole measurements and analyses including sample logs, wireline logs, gas chromatograms, micropalaeontological, petrographical, and geochemical data and / or reports (including core descriptions) as well as one digital tape copy, where available (in industry-standard format), of all wireline logs from all wells drilled in the Exploration Area;
- (b) one copy of each technical report of the wells drilled in the Exploration Area, regional reports for the West / South / East Coast and general reports for RSA offshore operations, as appropriate to the Exploration Area;
- (c) one copy of each seismic line which intersects the Exploration Area, at the vertical scale of 2.5 inches per second (two-way time) or as imaged, as well as one copy of 500 km of lines to be selected by the Grantee at a scale of 5 inches per second (two-way time). Petroleum Agency will also provide location data for all seismic lines in SEG-P-1, UKOOA or ASCII format, in digital form;
- (d) field data for up to _____ km of seismic lines in the Exploration Area as available and as selected by the Grantee. This data set shall be defined by the Grantee after its preliminary evaluation of the copies of seismic lines described in (c) above. The Grantee will provide Petroleum Agency with copies of the reprocessed data as both digital records in industry standard format and a single paper copy. Where such field tapes are available only in a format other than digital records on 9-track half-inch tape (or more modern format) Petroleum Agency will make available such original field data tapes so that the Grantee can transcribe the data into a current industry-standard format. The Grantee shall provide Petroleum Agency with a copy of the data so transcribed onto media of an industry-standard format which is current at the time, and which Petroleum Agency is equipped to read and, at Petroleum Agency's request, return the original tapes to Petroleum Agency at the Grantee's sole cost, risk and expense.
- (e) stacked and migrated data for up to _____ km of seismic lines, as available, as selected by the Grantee;
- (e) access to available sets of conventional cores, sidewall cores, drilling cuttings from the wells in the Exploration Area for sampling; and

Wherever possible documents will be provided as digital images in a format appropriate to the document.

Additional field data tapes and stacked and migrated data tapes, over and above that detailed in clauses (d) and (e) above will be made available upon request by Grantee provided that Grantee shall reimburse Petroleum Agency for the reasonable and customary costs incurred in preparing such tapes.

Petroleum Agency will co-operate with the Grantee at the Grantee's request by assisting in resolving technical problems relating to the data (but not interpretation) upon terms and conditions then to be agreed.

All the aforesaid data, studies and reports (hereinafter referred to as the "Existing Data") provided to the Grantee are owned by Petroleum Agency and are of considerable commercial value to it. Such Existing Data shall remain the property of Petroleum Agency and shall, on termination of this Exploration Right, be returned at Grantee's cost to Petroleum Agency. The Grantee will hold the Existing Data confidential between itself and Petroleum Agency in the manner described in clause 27.1 in relation to the Data with the exception of items 27.1(f) and 27.1(k), in which instances the Grantee must first acquire Petroleum Agency prior written approval, and 27.1.(b)

20. Upstream Training Trust

The Grantee shall pay the amounts set out in Annexure D to the independent Upstream Training Trust, to be used in the training, education, and obtaining of practical experience for South African personnel in a manner to be mutually agreed by the Trustees.

21. Local labour, equipment, materials and contractors

21.1. In furtherance of section 2(f) of the Act, in carrying out Operations the Grantee shall, to the extent reasonably possible, employ South African citizens having appropriate qualifications.

21.2. ***Not later than three months from the Effective Date, the Grantee shall meet with the Grantor to discuss and agree on a programme for the recruitment, training and employment of South African citizens during the exploration phase of Operations.***

21.3. The Grantee may employ a person who has necessary qualifications and experience and is not a South African citizen if the required skills are not available in the South African labour market. The subsequent availability of qualified candidates will be reviewed annually.

21.4. The Grantee:

21.4.1. ***and its contractors shall use and purchase equipment, machinery, materials, instruments, supplies and accessories (all referred to as "Goods") manufactured, produced or available in the Republic of South Africa for use in Operations under this Exploration Right, provided that such Goods are reasonably comparable with like goods manufactured, produced or available outside the Republic of South Africa as to landed cost, quantity and quality and can be made available at the time when and the place where required;***

21.4.2. ***shall to the extent reasonable, taking cognisance of government policies, utilise contractors in the Republic of South Africa where services of comparable standards with those obtained elsewhere are available from such contractors at competitive prices and on competitive terms and can be made available at the time when and the place where required.***

22. Tax

22.1. The Grantee shall maintain a permanent establishment in the Republic of South Africa and arrange its affairs in such a manner that all the profits from production of petroleum under this Exploration Right will be attributable to that establishment.

22.2. Except to the extent exempted, the Grantee shall throughout the term of this Exploration Right be liable for income tax payments to the State on the annual taxable income derived by it from the production of Natural Oil in accordance with the Income Tax Act as amended from time to time. In no event, however, shall such tax exceed, in respect of taxable income derived during any year of assessment from the production of Natural Oil in the Exploration Area, the sum of an amount of the "normal tax" as defined in Chapter II, Part 1, Section 5 of the Income Tax Act (hereinafter called the "basic tax"), calculated on the full amount of such taxable income at a maximum tax rate of 35 %. The Grantee is hereby expressly exempted and shall not be liable, for the payment of any "additional normal tax" under Chapter II, Part 1, Section 5(2A) of the Income Tax Act.

22.3. South African income taxes shall be calculated in United States Dollars. For South African tax reporting purposes only, all account balances necessary to compute the US Dollar tax liability shall be converted to Rand at the rate determined under clause 25 (Exchange Control). Such conversion shall occur at the end of each taxation year. Taxes may be paid in either Rand or US Dollars at the Grantee's election. Payments made in

- US Dollars for any taxation year shall be converted to Rand in the same manner described in this sub-clause 22.3.
- 22.4. The Grantee shall maintain a permanent establishment in the Republic of South Africa and arrange its affairs in such a manner that all the profits from production of petroleum under this Exploration Right will be attributable to that establishment.
- 22.5. Any payments to the State in terms of this clause 22 shall constitute the Grantee's only commitment to the State, or any political sub-division thereof, for taxes or levies, of any kind or nature, on the income or profits derived by the Grantee from the production of petroleum under this Exploration Right. Specifically, but without limiting the provisions contained in the preceding sentence, the Grantee shall not, other than as set out in clause 7, be liable to the State for:
- 22.5.1. any other taxes or levies of a similar nature, calculated in relation to taxable income, profits or turnover arising out of Operations in the production and disposal of petroleum under this Exploration Right;
 - 22.5.2. any share of profit by the State or any other form of consideration in respect of the activities performed by it pursuant to this Exploration Right;
 - 22.5.3. non-resident shareholders' tax or any other dividend withholding tax, in respect of dividends declared or paid in favour of shareholders who are not resident in the Republic of South Africa out of profits derived from the production of petroleum under this Exploration Right, or any tax on the remittance outside the Republic of South Africa of profits derived from the aforesaid production of petroleum;
 - 22.5.4. distributed or undistributed profits tax, including the Secondary Tax on Companies imposed under Part VII, Section 64B, et. seq. of the Income Tax Act, in respect of profits derived from the production of petroleum.
- 22.6. In calculating the taxable income referred to in this clause 22, the deductions from income shall be as granted in the Income Tax Act as at the date on which the 1977 amendments thereto were promulgated, and shall in any event include:
- 22.6.1. the costs expended by the Grantee itself on Exploration Operations within the Exploration Area in any tax year or part thereof, and
 - 22.6.2. under current working costs, also the costs of transportation of petroleum from the Exploration Area to the marine terminal or such refinery in the Republic as the Grantee may elect, as the case may be, and as capital ranking for redemption:
 - (a) the costs of laying pipeline from the points referred to above in this sub-clause 22.6.2. or to any onshore processing facility of the Grantee;
 - (b) the costs incurred by the Grantee itself in connection with the viability of the relevant undertaking and the design, procurement, management (including also project management), transport and construction of the constituent parts (from and after raw material stage and including also the piles and other foundations) of any marine or onshore receiving installations erected or to be erected on the Exploration Area or onshore with a view to exploitation of petroleum discovered or found in the Exploration Area, including also the costs of training of personnel for any purpose in connection with such installations, at any time prior to the successful commissioning of such installations but excluding any assets belonging to another taxpayer, and
 - (c) a capital allowance equal to 12 % (twelve per cent) compound interest per annum on the total amount of unredeemed capital expenditure, ranking for redemption, calculated from the end of the month during which each such cost was incurred, until it be redeemed and calculated, as far as this can be done, according to the provisions of sections 26(3) and (4) of the Mining Rights Act, 1967, an example of which is attached hereto as Annexure G.
- 22.7. Expenditure shall not be disallowed as a deduction for income tax purposes because it has been incurred by the Grantee outside the Republic of South Africa.
- 22.8. Production activities taking place in or in connection with an area or areas covered by one Production Right and its associated pipeline and onshore receiving installations up to the boundary of the local refinery, if any, shall be deemed to have taken place in respect of a single mine provided that assets belonging to another taxpayer will be disregarded.

22.9. In determining the taxable income or profits in respect of the Exploration Area, the phrase "mining for Natural Oil" shall be interpreted as including all exploration, development and production activities and such taxable income or profits shall be taxed as set out in this clause 22.

22.10. Should the Grantee's offshore facilities be linked to an onshore plant also belonging to the Grantee, the offshore facilities and pipelines as well as the onshore receiving facilities and pipelines (as well as all related structures and foundations) up to the boundary of the onshore plant will be regarded as a mine and the income therefrom taxed as herein set out, while the rest of the onshore facilities will be regarded as a factory and the income therefrom taxed in accordance with the income tax laws of the Republic of South Africa as amended from time to time, the gross income of the Grantee from the combined mine and factory respectively being in such proportion as the Grantee and the Commissioner for Inland Revenue agree or, failing such agreement, as determined by any of the firms or entities referred to in Annexure H (Schedule of Experts) hereof at the request of the Commissioner, unless the Grantee and the said Commissioner agree in writing on another firm or entity.

23. Accounts and Audits

The Grantee shall maintain in South Africa such accounting records as will properly support all expenditure and receipts of Operations under this Exploration Right.

Such records or copies thereof shall be provided at the Grantor's request for the purpose of confirming the minimum expenditure obligations under the Exploration Work Programme. The Grantor shall have the right to appoint an auditor for the purpose of confirming that these obligations have been met. Such confirmation, if any, shall be completed within two years after the end of the calendar year in which the expenditures or receipts occurred.

24. Customs duties

The Minister records having procured the following from the Minister of Finance, namely :

24.1. *The Grantee may during the continuance of this Exploration Right and subject to the provisions of international trade agreements which may be in force, import into the Republic of South Africa or clear from any customs and excise warehouse under rebate of full customs duty (as defined in the Customs and Excise Act, 1964) or export from the Republic of South Africa such Goods (excluding refined Petroleum products for use in road vehicles and distillate and residual fuel oil for any purpose and goods imported by the Grantee for the personal use of its personnel who are South African residents) as are required for use in Operations and which are not obtainable or available from stocks of Goods manufactured in the Republic of South Africa in terms of clause 21.4.1; provided however that the Grantee shall not sell, transfer, dispose of or use or retain for use except in Operations under this Exploration Right any Goods obtained free of customs duty without the permission of the Commissioner for Customs and Excise; such duty as may be assessed by the Commissioner for Customs and Excise shall be payable to him/her in respect of any such Goods sold, transferred, disposed of or used or retained for any use other than in Operations except if such Goods are sold, transferred or disposed of to any person in the Republic of South Africa entitled to a like rebate of customs duty or if such Goods are exported from the Republic of South Africa by the Grantee.*

24.2. *The Grantee shall have the right, subject to the applicable laws and regulations, to employ such contractors as in its opinion may be necessary for Operations; such contractors shall be exempted from the payment of customs duties in the same manner as the Grantee is exempted under this Exploration Right as long as their work is pursuant to their contract with the Grantee.*

24.3. *The Grantee's non-South African personnel may import household and personal effects into South Africa free of customs duty and may export such effects freely, but disposal in the Republic of South Africa of any such household and personal effects shall be subject to approval by the Commissioner for Customs and Excise and shall be subject to customs duties.*

25. Exchange Control

25.1. The Minister records having procured the following from the Minister of Finance.

25.1.1. The Grantee shall have the free availability of the currency generated from the export of petroleum produced under this Exploration Right which the Grantee can place directly to a bank account within the Republic of South Africa or abroad.

- 25.1.2. The Grantee shall have the free disposition and right to freely exchange South African Rand whether received from the sales of petroleum in the national market for foreign currency or received from other activities or events related to this Exploration Right. The Grantee has the right to deposit such currency directly into bank accounts in the Republic of South Africa or abroad.
- 25.1.3. The Grantee shall have the right to maintain, control and operate bank accounts in any currency, inside the Republic of South Africa and abroad; to have the control and free use of these accounts and to maintain and freely dispose of the funds of these accounts without any restrictions. The Grantee shall not be obliged to convert any foreign currencies into South African Rand.
- 25.1.4. Without prejudice to what is mentioned above, the Grantee shall have the right to dispose, distribute, send or retain abroad, without any restrictions, the Grantee's annual net profits.
- 25.1.5. The Grantee may use South African banks to exchange the currencies referred to in clause 25.1.2.
- 25.2. The exchange rate of the South African Rand will be determined by the free market.
- 25.3. The Grantee may acquire abroad materials, equipment and services and pay for them in foreign currency. The Grantee may obtain financing abroad through loans and advances to pay for costs of activities connected with this Exploration Right.
- 25.4. The Grantee shall provide periodic reports as reasonably requested by the Reserve Bank.
- 25.5. In the event that the ratio of borrowings from South African financial institutions to foreign investment exceeds the ratio prescribed in Exchange Control Regulations promulgated by Government Gazette Notice R1111 of December 1961 as amended, the Grantee shall notify the Reserve Bank and advise the Reserve Bank as to any steps the Grantee intends to take to reduce this ratio, or request approval, which shall not be unreasonably withheld, to exceed this ratio.

26. Indemnity and insurance

- 26.1. The Grantee, its successors and/or assigns, will, during the tenure of this Exploration Right, take all such necessary and reasonable steps and do all such acts, matters and things and carry out their Exploration Operations in such a manner as will adequately safeguard and protect the environment, the Exploration Area and any person or persons using or entitled to use the surface of the Exploration Area from any damage caused by or through or in consequence of the exercise by the Grantee of its aforesaid right to explore under this Exploration Right, of any activity or activities associated with the Grantee's operations in the Exploration Area, and will in so far as there is a legal liability, compensate such person or persons for any damage or losses, including but not limited to damage to the surface, to any crops or improvements, which such person or persons may suffer as a result of, arising from or in connection with the exercise of his/her rights under this Exploration Right or of any act or omission in connection therewith.
- 26.2. The Grantee and its aforesaid successors and/or assigns will and do hereby undertake and bind themselves to hold harmless and indemnify the Grantor and/or its servants and employees against any claim or claims which may be instituted by any person as a result of any injury, loss (including loss of life), damage, cost, charges, and expenses which may be suffered or sustained by any person or persons whomsoever, as a result of, or which may in any way whatsoever be associated with the exercise by the Grantee, its successors and/or assigns of the right to explore under this Exploration Right, and must also on request refund to the Grantor and/or its servants and employees all costs, charges and expenses which the Grantor and/or its servants and employees may be put to or sustain in connection with or arising out of any such claim made by such person or persons.
- 26.3. It is explicitly agreed that the Grantor will not be deemed to be a partner in any Exploration Operations carried out in terms of this Exploration Right. The Grantor will give notice to the Grantee and its aforesaid successors and/or assigns of any claim or occurrence in respect of which it proposes to invoke the provisions of this indemnity and will give the Grantee and its aforesaid successors and/or assigns the fullest opportunity to investigate, repudiate or otherwise deal with any matter that may arise from such claim. Provided always that nothing herein contained will be deemed to render the Grantee or its aforesaid successors and/or assigns liable for, or to indemnify the Grantor and/or its servants and employees against, any compensation or damages for or with respect to injuries or damage to persons or the Exploration Area directly resulting from any delict of the Grantor and/or its servants and employees during the currency of this Exploration Right, or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

- 26.4. The Grantor will hold harmless and indemnify the Grantee and its aforesaid successors and/or assigns from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of matters referred to in the proviso of sub-clause 25.1 of this clause.
- 26.5. The Grantee shall during the term of this Exploration Right obtain and maintain for and in relation to Operations, insurance to indemnify the Grantor, the Petroleum Agency and the Grantee against:
- (a) loss or damage to any or all assets being used in connection with Operations;
 - (b) loss or damage for which the Grantee may be liable caused by pollution in the course of or as a result of Operations;
 - (c) loss or destruction of property or damage to property as well as bodily injury, sickness or death suffered by any third party for which the Grantee may be liable;
 - (d) the cost of removing wrecks and cleaning-up operations pursuant to an accident in the course of or as a result of Operations;
 - (e) the Grantee's liability to its employees, consultants and agents engaged in Operations;
 - (f) any other risk of whatever nature as is customary to insure against in the international petroleum industry in accordance with good international oilfield practices.
- 26.6. The amount insured against, the type of insurance referred to in clause 26.5 above and the terms of such insurance shall be determined in accordance with good international oilfield practices.
- 26.7. The Grantee acknowledges that the Grantor cannot guarantee that the Grantee will at all times be in a position to exercise the rights granted in terms of this Exploration Right and that in certain instances a conflict may arise with the holders of other mineral and / or fishing rights which overlap with the Exploration Area. The Grantee hereby indemnifies and holds the Grantor harmless from and against all claims, liabilities and costs incurred by the Grantee should the rights of the Grantee in terms of this Exploration Right not be exercisable by a reason of such a conflict with other rights holders within the Exploration Area.

27. Health and Safety

- 27.1. The Grantee and its successors and/or assigns will and do hereby undertake and bind themselves during the currency of this Exploration Right to observe and comply with all relevant provisions of the Mine Health and Safety Act (Act no. 29 of 1996) as amended and regulations in terms thereof, or any subsequent law which amends or substitutes the Mine Health and Safety Act, 1996.
- 27.2. Without detracting from sections 42 and 43 of the Act, in the event of:
- 27.2.1. an emergency or accident arising from Operations affecting the environment, Grantee shall forthwith notify the Grantor accordingly; or
 - 27.2.2. any fire or oil spill in the Exploration Area or from any facilities connecting the Exploration Area with the land, Grantee shall promptly implement the relevant contingency plan; or
 - 27.2.3. any other emergency or accident arising from Operations affecting the environment, Grantee shall take such action as may be prudent and necessary in accordance with good international oil-field practice in such circumstances.

28. Data and information to be kept confidential and limitations on public announcements

In addition to the provisions of section 83 of the Act and Regulation 14 made in terms of the Act:

- 28.1. The Data (as defined in clause 13.1) and all programmes, tests, analyses, results, books, statements, records, returns, plans and information which the Grantee is or may from time to time be required to furnish under the provisions of this Exploration Right, shall be supplied at the expense of Grantee. Each Party shall each keep confidential the Data and such information and shall not disclose it to any person without the consent of the other Party except:
- (a) where disclosure is required by any law;
 - (b) when this Exploration Right has expired or has been terminated;
 - (c) to an Affiliate, provided such Affiliate maintains confidentiality as provided in this clause 28;

- (d) to the extent such Data and information is required to be furnished pursuant to any legal proceedings or because of any order of any court binding upon a Party;
- (e) to prospective or actual contractors, consultants and attorneys employed by any Party where disclosure of such Data or information is essential to such contractor's, consultant's or attorney's work;
- (f) to a bona fide prospective transferee of Party's interest (including an entity with whom a Party or its Affiliate are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares);
- (g) to a bank or other financial institution to the extent appropriate to a Party arranging for funding;
- (h) to the extent such Data and information must be disclosed pursuant to any rules or requirements of any government or stock exchange having jurisdiction over such Party or its Affiliates;
- (i) to its respective employees for the purposes of Operations, subject to each Party taking customary precautions to ensure such Data and information is kept confidential;
- (j) where any Data or information, through no fault of a Party, has become published in the public domain; and
- (k) where any relinquishment or abandonment has taken place (but only as to Data and information with regard to the relinquished or abandoned areas).

Disclosure as pursuant to clauses 28.1.(f) and 28.1.(g) shall not be made unless prior to such disclosure the disclosing Party has obtained a written undertaking from the recipient Party to keep the Data and information strictly confidential.

28.2. Each Party shall own the Data as defined in 13.1 above in its possession, whether original or a copy, and after termination of this Exploration Right or relinquishment of any portion of the Exploration Area each Party may sell, trade, license and otherwise disclose or dispose of such Data relating to the areas no longer included in the Exploration Area.

28.3. Except as may be required by applicable securities law or stock exchange requirements, no public announcement shall be made by any Party unless the other has been furnished with a copy and has given prior approval, which prompt approval shall not be unreasonably withheld. When a public announcement or statement becomes required by law or necessary or desirable because of impending danger to or loss of life, damage to property or pollution resulting from Operations, either Party is authorised to issue and make such announcement or statement without prior notice or the prior approval of the other where such prior notice and approval is not practical in the circumstances. In such a case, the Party making the announcement or statement shall promptly furnish the other Party with a copy of such announcement.

29. Cession, Transfer, Alienation

- 29.1. This Exploration Right may not be ceded, transferred, let, sub-let, assigned or otherwise disposed of without the written consent of the Minister in terms of section 11 of the Act.
- 29.2. The Minister hereby approves that the Grantee may cede, transfer, let, sub-let, assign or otherwise dispose of or mortgage, either wholly or in part, its rights and obligations under this Exploration Right, to an Affiliate but only if the Grantee's guarantor has bound itself to guarantee the obligations of the transferee. The Grantee shall advise the Grantor by notice within 10 days of effecting such transaction.

30. Law

Subject to section 4 of the Act, and sections 36 (Arbitration) and 21 (Tax) of this Exploration Right this Exploration Right, the interpretation thereof and any dispute arising thereunder or associated therewith shall be governed by and determined in accordance with the laws of the Republic of South Africa.

31. Grantee's Rights and Obligations Ensured

- 31.1. The Minister approves and adopts the terms and conditions of this Exploration Right on behalf of the Grantor, and undertakes on behalf of the State to do and perform all acts and things which are or may be required to be done or performed to give full effect to this Exploration Right in accordance with its

provisions, and guarantees that the contractual rights and obligations of the Grantee under this Exploration Right will not be altered without prior written consent of the Grantor and the Grantee.

31.2. The Minister, on behalf of the Grantor, agrees and commits to the Grantee for the duration of this Exploration Right, to maintain the stability of the provisions of this Exploration Right as such provisions exist as of the Effective Date of this Exploration Right.

31.3. Any renewal of this Exploration Right granted by the Minister in terms of section 76 shall be on the same terms and conditions as existed immediately prior to the renewal.

32. Vis Major

32.1. Any act, cause, thing or event outside the control of the Grantee including, but not limited to, acts of God, war, insurrection, civil commotion, blockade, strikes, flood, storm, lightning, fire or earthquake which prevents the Grantee from fulfilling its obligations under this Exploration Right, the Act or the regulations, or such other laws and regulations as may be applicable, may be declared a vis major event and such failure on the part of the Grantee shall not constitute breach. Financial inability, ordinary hardship and inconvenience, however caused or arising, shall not be a vis major circumstance.

32.2. If the Grantee by reason of the provisions of clause 32.1 above is prevented from fulfilling its obligations or of enjoying its rights under this Exploration Right, it shall immediately notify the Grantor in writing to that effect and shall take all reasonable steps to remove the cause thereof and to investigate the consequences. The Grantee shall promptly notify the Grantor as soon as conditions of vis major no longer prevent the Grantee from carrying out its obligations and following such notice shall resume Operations as soon as reasonably practicable.

33. Amendments

The provisions of this Exploration Right replace all prior negotiations, representations and other communication between the parties hereto and may be amended only in writing between the parties.

34. Unitisation

34.1. A situation may arise where rights held by holders under two or more production rights and/or mining leases and/or exploration rights and or prospecting leases or sub-leases extend over different areas which geologically form part of the same petroleum-bearing area. In such circumstance the Grantor may by notice in writing require the holders of such rights to prepare a scheme for the production of that petroleum-bearing area as a unit to be submitted to the Grantor within the period specified in the said notice which shall be not less than 90 (ninety) days.

34.2. A scheme so prepared shall maximise the exploitation and/or prospecting of the unitised area for the benefit of all holders of interests in the respective mining and/or prospecting sub-leases.

34.3. If no scheme is submitted within the period specified in the notice or such further period as the Grantor may approve, or if the scheme submitted is not acceptable to the Grantor, the Grantor may appoint a committee consisting of industry specialists to advise the Grantor.

34.4. Any committee so appointed shall after having considered any representation made by the Grantee submit a scheme to the Minister as soon as is practical.

34.5. The Minister may, if he/she is satisfied that any scheme submitted in terms of sub-clause 34.2. or 34.4. is practical and fair and equitable to all parties concerned, confirm such scheme, and it shall thereupon become binding upon all parties.

34.6. If the Grantee fails to carry out any provision of the scheme which is binding upon him, the Minister may by notice in writing require the Grantee to do so within the period specified in the notice and if the Grantee fails to comply with the notice the Minister may terminate the exploration right or production right as the case may be.

35. Waiver or Lenience

No waiver of any of the Grantor's rights and no lenience granted or permitted by the Grantor from time to time in a form which does not constitute a formal amendment of this Exploration Right shall prejudice the Grantor's

rights under this right or the Act and shall not constitute grounds for Grantee to expect that the Grantor will continue to waive its/their rights or grant or permit lenience in the future.

36. Arbitration

- 36.1. All disputes relating to or arising out of this Exploration Right shall be finally settled under the rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such rules. Subject to clause 36.2, the venue of the arbitration shall be London, England and the proceedings and records of the proceedings shall be in the English language.
- 36.2. The venue of the arbitration shall be Cape Town, South Africa if the amount in dispute is less than US\$500 000,00 (FIVE HUNDRED THOUSAND UNITED STATES DOLLARS). However, if the relief sought is declaratory or specific relief, then the venue shall be as provided in clause 36.1.
- 36.3. Notwithstanding any such difference or dispute or reference to arbitration, the Parties shall, to the extent possible, proceed with the carrying out of their obligations under this Exploration Right, subject to the provisions of this Exploration Right.
- 36.4. The Parties irrevocably agree that the decision in those arbitration proceedings :
- 36.4.1. shall be binding on them;**
- 36.4.2. shall be carried into effect; and**
- 36.4.3. can be made an order of any Court of competent jurisdiction.**

37. Environmental Protection

- 37.1. The Grantee hereby undertakes and binds itself to conduct all Exploration Operations in accordance with the requirements of the Act and any other legislation, and the Environmental Management Programme submitted by Grantee in support of its application for this right and approved by Grantor, in a manner that would facilitate the protection and conservation of the natural resources of the Republic of South Africa and of the environment in general;
- 37.2. Subject to the provisions of the Act, the Grantee shall on the expiration or termination of this Exploration Right or on relinquishment of part of the Exploration Area or on the voluntary abandonment of the Exploration Area:
- 37.2.1. remove all equipment and installations from such relinquished or abandoned Exploration Area; and
- 37.2.2. perform all necessary site rehabilitation and shall take all other actions necessary to minimise hazards to human or other life or to the Exploration Area(s) of others or the environment in general for time to come.
- 37.3. The Grantee may from time to time appoint one or more independent contractors to carry out any work in relation to exploration operations, but the Grantee shall always remain liable for the compliance and observation of the provisions of the Act, the Environmental Management Programme and of the terms and conditions of this Exploration Right.
- 37.4. The Grantee shall within 14 (fourteen) days of the Effective Date provide to the Grantor the financial provision for remediation of environmental damage as set out in regulations 32 and 33 and the approved Environmental Management Programme

38. Costs and VAT

- 38.1. All expenses, fees, costs stamp and transfer duties flowing from this Exploration Right direct or incidental, and the costs of notarial execution and registration, deregistration (in cases of abandonment or relinquishment) including transfer duty, Value Added Tax at the prevailing rate and stamp duty, shall be paid by the Grantee.
- 38.2. The Grantee shall pay Value Added Tax (VAT) at the prevailing rate on all remittances and payments to the Grantor or Petroleum Agency in terms of this Exploration Right as applicable.

39. Exclusive right to Acquire a Production Right

- 39.1. In terms of section 77(1)(a) of the Act but subject to compliance with the further provisions of the Act, the Grantee has the exclusive right to apply for and be granted a production right in respect of petroleum on the Exploration Area.
- 39.2. The Grantor hereby grants to the Grantee the exclusive right to acquire a production right over such part or parts of the Exploration Area as the Grantee may at any time during the currency of this Exploration Right select on the terms and conditions set out in 39.3 below.
- 39.3. Any such production right acquired shall be in accordance with the terms and conditions of the Production Right attached hereto as Annexure I.
- 39.4. ***The application for and granting of and duration of any such Production Right, applications for renewal of such Production Right, and the rights and obligations of the holder of such Production Right, are governed by, inter alia, sections 78, 79, 80 and 81 of the Act and the relevant regulations.***
- 39.5. For the avoidance of doubt, the Grantee shall be entitled to exercise this exclusive right not just once but as many times as can be justified during the currency of the Exploration Right by the results of exploration operations.
- 39.6. In respect of each application for a Production Right the Grantee shall submit a development programme which the Grantee intends to undertake. Such development programme shall:
- (i) subject to clause 34, relate exclusively to the Production Area applied for;
 - (ii) ensure the maximum efficient recovery of the petroleum;
 - (iii) be compiled in accordance with sound engineering, economic, safety and environmental principles recognised in good international oil-field practice;
 - (iv) address the following matters:
 - required production equipment, processing facilities (if any) and storage facilities;
 - feasible alternatives for transportation of petroleum, including pipelines;
 - onshore and offshore installations required;
 - production profiles;
 - cost estimates;
 - safety and environmental measures;
 - employment and training programme;
 - flaring provisions;
 - overall project economics; and
 - (v) include an environmental impact assessment and management programme.
- 39.7. In the event of the Grantee electing to exercise its exclusive right, as set out in 39.1 above the extent (size) of the selected area referred to in sub-clause 39.1 above, shall be subject to approval by the Grantor.

40 Grantor's Option

- 40.1. The Grantor shall have the option, exercisable within 60 (SIXTY) days of the date of acceptance of an application for a Production Right, by written notice to the Grantee, to elect to retain or transfer to a wholly owned Affiliate of the Grantor up to a maximum of 1/10th (ONE TENTH) undivided interest in the Production Right.
- 40.2. Should the Grantor so elect, any application by the Grantee for a Production Right in respect of such Mining Block shall be deemed to have been made in respect of an undivided share which excludes such retained undivided interest, and the Production Right shall be in respect of such residual undivided share.
- 40.3. The Grantor shall not be liable for any prior exploration costs in respect of the undivided interest so retained by it but shall be liable for its undivided interest share of all costs incurred under the Production Right henceforth, as provided in the Operating Agreement, Annexure J hereto.
- 40.4. ***Should the Grantor retain an undivided ownership interest in the Production Right, the Grantor and the Grantee shall enter into the Operating Agreement (Annexure J hereto)***

contemporaneously with the grant of the Production Right. The Accounting Procedure (Exhibit A of Annexure J hereto) shall then apply between the parties to the Operating Agreement.

- 40.5. *In the event that, at the time of granting of a Production Right, there is more than one Grantee Party and that an Operating Agreement (and associated Accounting Procedure) is already in effect between the Grantee Parties then the Grantee may invite the Grantor to agree to become a party to that agreement rather than the Operating Agreement described in clause 40.3. and the Grantor shall use its best endeavours to comply provided that the terms and conditions offered are not less favourable to the Grantor than those in the Operating Agreement described in clause 40.3.*
- 40.6. If the Grantor elects not to retain an undivided interest in the Production Right, the Production Right shall relate to the whole of the undivided interest in the Production Right.

41 Gas

If the Grantee discovers Petroleum, the economic development of which can only be accomplished if Gas produced as the primary or secondary product is sold commercially, then the Grantee shall at its option, exercisable upon notice to the Grantor and the Grantor, have a period of five years (Gas Market Development Period) from the date of granting of the relevant Production Right in which to study the discovery, locate markets and determine the commerciality of the discovery. The Grantor shall grant said Production Right subject to above, the implementation of which is contingent upon the Grantee determining during such five year period that the discovery can be commercially developed and produced. Prior to the expiry of the said five years the Grantee shall confirm by notice to the Grantor that the discovery can be developed and produced commercially and proceed with implementation of the Development Programme, failing which the aforesaid Production Right shall be deemed terminated. The Gas Market Development Period may, at the discretion of the Grantor, be extended to a maximum of 10 (ten) years.

42. Entire Agreement Act Prevails

Subject to the Act, this Exploration Right and the Appendices attached hereto (those Appendices being and forming an integral part of this Exploration Right) contain the entire agreement between the Parties and supersedes all their prior understandings, agreements and negotiations of whatsoever nature.

In the event of any inconsistency between this Exploration Right and the Act, the Act shall prevail.

43. Severability

Any provision of this Exploration Right which is in any way unenforceable or which may render it unenforceable or which may contravene the applicable laws or regulations of any jurisdiction to which this Exploration Right is subject shall be deemed, to the extent of such unenforceability or contravention, severable from this Exploration Right and of no force or effect and shall not affect any other provision of this Exploration Right and its enforceability or legality in all other respects.

44. Notices, *domicilia citandi et executandi* and Representatives

All notices, requests and reports provided for herein shall be in writing and shall be delivered either by hand to an authorised representative of the receiving Party, or sent by courier or telefax to the following addresses in the Republic of South Africa, provided that if given by telefax a copy thereof shall be sent immediately by prepaid registered airmail:

Grantor :

Minister of Minerals and Energy

Physical address :

Mineralia Centre
Cnr Visagie & Andries Streets
PRETORIA

Postal address :

Private Bag X59
PRETORIA
0001

Tel number : (27) 12 317 9000

Fax number : (27) 12 322 3416

PETROLEUM AGENCY:

Attention : Chief Executive

Physical address :

Petroleum House
151 Frans Conradie Drive
PAROW
Western Cape

Postal address :

P O Box 1174
PAROW
7499

Tel number : (27) 21 938 3500

Fax number : (27) 21 938 3520

GRANTEE :

.....LIMITED

Attention : Mr _____ or _____

Physical address :

Postal address :

Tel number : _____

Fax number : _____

Either Party may change its address to such other address in the Republic of South Africa as it may notify the other Party of on at least 30 (thirty) days prior notice.

All notices, requests and reports sent by telefax shall be deemed to have been received within 12 (twelve) hours of transmission. Those delivered by hand or sent by courier shall be deemed to have been received at the time of actual delivery.

Each Party also chooses the physical address specified above as its domicilium citandi et executandi for all purposes arising under this Exploration Right, including service of process.

Grantee shall within 7 (SEVEN) calendar days of the Effective Date of this Exploration Right give notice to the Grantor in which it appoints one representative with whom the Grantor may deal concerning this Exploration Right. Such representative shall continue to represent Grantee unless Grantee notifies the Grantor of a change of representative.

45. Registration

In terms of section 77(2)(a) of the Act, the Grantee must lodge this Exploration Right for registration at the Mining Titles Office within the period specified in the said section.

Thus done and signed at _____ on the _____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

.....
for and on behalf of the GrantorQUOD ATTESTOR

NOTARY PUBLIC

Thus done and signed at _____ on the _____ day of _____ 20____ on the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

.....
for and on behalf of the GranteeQUOD ATTESTORNOTARY PUBLIC

ANNEXURE A

PLAN AND DESCRIPTION OF THE EXPLORATION AREA

To be inseted

ANNEXURE B

PERIODIC RELINQUISHMENTS

Areas to be relinquished

- (a) At the end of the Initial Period Grantee shall relinquish not less than ____% of the original extent of the Exploration Area
- (b) At the end of the First Renewal Period Grantee shall increase the proportion of the original extent of the Exploration Area relinquished to not less than ____%
- (c) At the end of the Second Renewal Period Grantee shall increase the proportion of the original extent of the Exploration Area relinquished to not less than ____%

ANNEXURE C

ACCOUNT TO WHICH PAYMENTS TO THE GRANTOR ARE TO BE MADE

The amounts payable to the Grantor will be deposited by the Grantee into the account of the Petroleum Agency at:

Bank: ABSA
Branch
Branch code
Account no.

For payments originating in the USA the following
further information may be necessary

PAYMENT TO BE MADE TO:

Full name of Bank
Address

Harris Bank International
Corporation
3 Times Square
New York

| | |
|--|---|
| | New York, 10036 |
| SWIFT Address | HATRUS33 |
| Account Number | 49-0-2945-7 |
| For Credit of | ABSA Bank Limited International Banking Services: Corporate Pretoria South Africa |
| For Further Credit Under Reference | CEF (PTY) LTD SEF 8245Y55 |
| The remitting Bank must confirm payments by MT100 to: | ABSA Bank Limited IBS Corporate Pretoria South Africa |
| SWIFT Code | ABSAZAJJACPT |
| For Attention | Amanda Reyneke |

Kindly confirm payments per Fax to CEF (PTY) LTD
Attention Dolf Jonker/Kobus Geertsema Fax No.
(27)11 784 5494

In all cases, the Grantee is required to deliver proof of payment to the Grantor within 3 working days of effecting the payment.

ANNEXURE D

CONTRIBUTIONS TO THE UPSTREAM TRAINING TRUST

In terms of clause 20 of the Exploration Right to which this schedule is annexed, the Grantee shall pay to the Upstream Training Trust the following amounts:

- (a) within 30 days of the Effective Date - US \$ _____ (_____ United States Dollars);
- (b) within 30 days of the first anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (c) within 30 days of the second anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (c) within 30 days of the third anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (d) within 30 days of the fourth anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (e) within 30 days of the fifth anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (f) within 30 days of the sixth anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);

- (c) within 30 days of the third anniversary of the Effective Date - US\$ _____
(_____ United States Dollars);
- (g) within 30 days of the seventh anniversary of the Effective Date - US\$ _____
(_____ United States Dollars);
- (h) within 30 days of the eighth anniversary of the Effective Date - US\$ _____
(_____ United States Dollars);

The amounts payable will be deposited by the Grantee into the account of the Upstream Training Trust at:

Bank: ABSA
 Branch:
 Branch code:
 Account no.:

In all cases, the Grantee is required to deliver proof of payment to the Trust within three working days of effecting the payment.

ANNEXURE E

EXPLORATION WORK PROGRAMME

The Grantee shall carry out the work specified hereunder. Such work, which shall exclude any appraisal work, for any period, shall be called the "Minimum Work Obligation".

- (a) During the Initial Period, the Grantee shall:
- (i) complete the re-processing of at least _____ km of existing 2D seismic data, and
 - (ii) complete the re-processing of at least _____ km² of existing 3D seismic data, and
 - (iii) complete the acquisition and processing of _____ km of 2D seismic data, and
 - (iv) complete the acquisition and processing of _____ square kilometres of 3D seismic data, and
 - (v) drill one exploratory well to a minimum depth of _____ m (_____) which shall be the Minimum Work Obligation for the First Renewal Period.

which shall be the Minimum Work Obligation for the Initial Period.

The expenditure in respect of the Minimum Work Obligation described above is estimated to be US\$ _____ (_____ United States Dollars).

- (b) During the First Renewal Period, the Grantee shall :
- (i) complete the acquisition and processing of
 - (ii) drill one exploratory well to a minimum depth of _____ m (_____) which shall be the Minimum Work Obligation for the First Renewal Period.

The expenditure in respect of the Minimum Work Obligation for the First Renewal Period is estimated to be US\$ _____ (_____ United States Dollars).

- (c) During the Second Renewal Period, the Grantee shall:
- (i) drill _____ exploratory wells to a minimum depth of _____ m (_____ metres) each,
- which shall be the Minimum Work Obligation for the Second Renewal Period.

The expenditure in respect of the Minimum Work Obligation for the Second Renewal Period is estimated to be US \$ _____ (_____ United States Dollars).

(d) During the Third Renewal Period, the Grantee shall:

- (i) drill _____ exploratory wells to a minimum depth of _____ m
(_____ metres) each,

which shall be the Minimum Work Obligation for the Third Renewal Period.

The expenditure in respect of the Minimum Work Obligation for the Third Renewal Period is estimated to be US \$ _____ (_____ United States Dollars).

ANNEXURE F
FINANCIAL GUARANTEE

A financial guarantee acceptable to the Grantor in the form of one of the alternatives incorporated as examples under Appendix B to the regulations, to be attached

ANNEXURE G

CAPITAL ALLOWANCE SCHEDULE

| FIRST YEAR OF PRE-PRODUCTION ACTIVITIES | | | |
|---|--------------------|--|--------------------|
| Actual capital expenditure qualifying for redemption | | Unredeemed balance of Capital Expenditure (C/E) for the purpose of calculating the Capital Allowance (C/A) | |
| Incurred during the year | R 2 000 000 | Incurred | R 2 000 000 |
| C/A for the year | <u>R 120 000</u> | C/A for the year | <u>R 120 000</u> |
| Carried forward | <u>R 2 120 000</u> | (at 12 %, pro rata for a portion of a year*, say) | <u>R 2 120 000</u> |
| SECOND YEAR OF PRE-PRODUCTION ACTIVITIES | | | |
| Balance brought forward | R 2 120 000 | Balance brought forward | R 2 120 000 |
| Incurred during the year ** | R 2 000 000 | Incurred during the year ** | <u>R 1 940 000</u> |
| C/A for the year | <u>R 370 800</u> | | R 4 060 000 |
| Carried forward | <u>R 4 490 800</u> | C/A for the year (at, say 12 %) | <u>R 370 800</u> |
| | | | <u>R 4 430 800</u> |
| * C/E is calculated at 12 % (or other applicable percentage) from the end of the month during which it was incurred until the end of the tax year; in this example, however, it is supposed that all the qualifying C/E was incurred just before the end of the 6th month of the tax year | | | |
| ** Interest and other finance charges on loans do not qualify for the C/A | | | |

FIRST YEAR OF PRODUCTION

1. Calculation of taxable income

| | |
|-------------------|--------------------|
| Gross income | R 3 000 000 |
| Working costs | R 3 740 000 |
| Working loss | R 740 000 |
| Redemption of C/E | <u>R 6 626 896</u> |
| Assessed loss | <u>R 7 366 896</u> |

2. C/E qualifying for redemption

| | |
|------------------------------|--------------------|
| Unredeemed balance b/f | R 4 490 800 |
| Incurred during the year | R 1 500 000 |
| C/A for the year | <u>R 636 096</u> |
| Total allowed for redemption | <u>R 6 626 896</u> |

Thus no balance carried forward

3. Calculation of C/A in determining the balance of C/E for the purposes of the C/A

| <u>Unredeemed balance</u> | | <u>C/A at 12 % *</u> |
|--|---------------------------------|----------------------|
| Balance brought forward | R 4 430 800 | R 531 696 |
| C/E incurred | R 1 500 000 | R 90 000 |
| Possible C/E included in working costs but on which C/A is allowed | R 240 000 | <u>R 14 400</u> |
| C/A for the year | <u>R 636 096</u> R 6 806 896 | → <u>R 636 096</u> |

Deduct

C/E allowed for redemption:
amount deducted in the
calculation of profits is
R6 626 895 but the deduction
is restricted under section 26(3)
to the amount of the "profit",
i.e.

R NIL

Unredeemed balance
carried forward R 6 806 896

* Or other applicable percentage

SECOND YEAR OF PRODUCTION**1. Calculation of taxable income/loss**

| | |
|----------------|--------------------|
| Gross income | R 7 000 000 |
| Working cost | <u>R 3 500 000</u> |
| Working profit | R 3 500 000 |

Deduct

| | | |
|-------------------------------|--------------------|--------------------|
| Redemption of C/E | R 1 900 828 | |
| Assessed loss b/f | <u>R 7 366 896</u> | <u>R 9 267 724</u> |
| Assessed loss carried forward | | <u>R 5 767 724</u> |

2. C/E qualifying for redemption

| | | |
|---------------------------|-------|--------------------|
| Balance b/f | N I L | |
| C/E incurred for the year | | R 1 000 000 |
| C/A for the year | | <u>R 900 828</u> |
| | | <u>R 1 900 828</u> |

3. Calculation of C/A in determining the balance of C/E for the purposes of the C/A**Unredeemed balance****C/A at 12 %**

| | | |
|--|------------------|------------------|
| Balance brought forward | R 6 806 896 | R 816 828 |
| C/E incurred | R 1 000 000 | R 60 000 |
| Possible C/E included in working costs but which qualifies for C/A | R 400 000 | R 24 000 |
| C/A for the year | <u>R 900 828</u> | <u>R 900 828</u> |
| | R 9 107 724 | |

Deduct

| | |
|--|----------------------|
| C/E allowed for redemption as calculated below | * <u>R 3 400 000</u> |
| Unredeemed balance carried forward | <u>R 5 707 724</u> |

*** C/E allowed for redemption**

Deemed deduction [sec 26(4)] is R9 107 724 but the deduction is restricted under sec 26(3) to the amount of the "profit" i.e. Working profit R 3 500 000

Plus

C/E included in working costs but which can for the purposes of the C/A be regarded as C/E

R 400 000
R 3 900 000

Deduct

So much of the loss brought forward which is not ascribable to the C/E (see below) #

R 500 000
R 3 400 000

The portion of the loss brought forward not resulting from the deduction of C/E

| | |
|-----------------------------------|-------------------------------------|
| Assessed loss brought forward | R 7 366 896 |
| Actual C/E (redemption allowance) | R 6 626 896 |
| C/E in working costs | <u>R 240 000</u> <u>R 6 866 896</u> |
| | <u>R 500 000</u> |

ANNEXURE H

SCHEDULE OF EXPERTS (ACCOUNTING)

To be agreed between the parties at the time.

ANNEXURE I

PRODUCTION RIGHT AGREEMENT

A production right agreement based on the specimen document published as Appendix C part 4 to the regulations under the Act, to be negotiated between the parties and attached.

ANNEXURE J

OPERATING AGREEMENT

An operating agreement based on the Association of International Petroleum Negotiators Model form Operating Agreement to be negotiated between the parties and attached

**FORM MM:
OPERATION RIGHT**

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SPECIMEN AGREEMENT FOR A PRODUCTION RIGHT

PROTOCOL NO. _____ / _____

LET IT HEREBY BE KNOWN:

THAT on this the ____ day of _____ in the year Two thousand and ____ (2____) before me, _____, Notary Public, duly sworn and admitted, residing and practising at _____ in the _____ Province, Republic of South Africa, and in the presence of the subscribing competent witnesses personally came and appeared:

- (1) _____, Chief Executive of South African Agency for Promotion of Petroleum Exploration and Exploitation (Proprietary)(Limited), and as such in his or her capacity as the duly authorised representative of:

THE REPUBLIC OF SOUTH AFRICA

(hereinafter together with its successors in title and assigns referred to as "the Grantor"), he or she, the said Appearer, being duly authorised thereto under and by virtue of the powers delegated to him or her by the Minister of Minerals and Energy on in terms of section 97(1) read with sections 65(2)(a) and 65(2)(b)(vi) of the Mineral and Petroleum Resources Development Act; 2002 (Act No. ... of 2002), the said Minister acting in terms of section 3(2)(a) read with section 75(1) of the said Act.

AND

- (2) _____, a _____ of, and as such in his or her capacity as the duly authorised representative of:

(No. ____/____/____)

(hereinafter together with its successors in title and assigns referred to as "the Grantee"), he or she, the said Appearer, being duly authorised thereto under and by virtue of a Resolution of Directors of the Grantee passed at _____ on the ____ day of _____,

certified copies of which delegation and of which Resolution have this day been exhibited to me, the Notary, and remain filed of record in my Protocol with the Minute hereof.

AND THE APPEARERS DECLARED THAT:

WHEREAS In terms of section 3(2)(a) read with sections 65(2)(a) and 75 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. of 2002), the Grantor may grant production rights (as defined in the said Act) in respect of petroleum (as so defined) within the area of jurisdiction of the Grantor,

AND WHEREAS the Grantee wishes to obtain a Production Right in respect of Petroleum in, on and under the property referred to in clause 3,

AND WHEREAS the Grantor has agreed to grant such Production Right to the Grantee in accordance with the terms and conditions recorded hereunder,

NOW THEREFORE THE PARTIES AGREE HERETO:

1. Definitions

The definitions in the Act and regulations shall apply also to this agreement and additionally the following words and expressions shall have the meaning assigned to them:

- 1.1. "the Act" shall mean the Mineral and Petroleum Resources Development Act, 2002 (Act No. ... of 2002) or any subsequent law which amends or substitutes the Act;
- 1.2. "Affiliate" of a Party means a company which owns, or is owned by, or which is owned by an entity which owns that Party; "owns" and "owned" mean in this definition the ownership directly or indirectly of more than 50 % of the voting shares or members' interests;
- 1.3. "Effective Date", shall mean the date on which this Production right agreement is executed notarially by the last Party so to execute;
- 1.4. "the Production Area", shall mean the property referred to in clause 2 of this agreement, excluding those portions relinquished or abandoned from time to time;
- 1.5. "Production Operations", shall mean any operation, activity or matter that relates to the Production for Petroleum in the Production Area by the Grantee, its successor and/or assign and/or its contractors;
- 1.6. "the Production Work Programme", shall mean the Grantee's written recordal of the manner in which it intends to carry out the Production operations in the Production Area, and shall include all amendments and supplementary submissions relating to the Production programme which may be made by the Grantee and approved in writing by the Grantor from time to time, all of which amendments and supplementary submissions shall form part of this Production Right as Annexure D attached hereto, and shall include and incorporate the Development Plan, approved by the Grantor, submitted in support of the Grantee's application for this Production Right;
- 1.7. "the Grantee", shall have the meaning attributed thereto in the description of the Parties above and shall as appropriate mean all Grantee Parties;
- 1.8. "Grantee Party" means each cessionary, transferee, lessee, sub-lessee or assignee of rights, duties and obligations under this Production Right pursuant to the provisions of clause 28 hereof;
- 1.9. "the Grantor" shall have the meaning attributed thereto in the description of the Parties above; Exploration and Exploitation (Proprietary) Limited (No. 1999/015715/07);
- 1.10. "the Income Tax" shall mean the Income Tax Act, 1962 (Act No. 58 of 1962) as amended or substituted;
- 1.11. "installation" shall have the meaning assigned to it in the Mine Health and Safety Act, 1996 (Act no. 29 of 1996) as amended;
- 1.12. "Petroleum Agency" means the South African Agency for Promotion of Petroleum Exploration and Exploitation (Proprietary) Limited (No. 1999/015715/07);
- 1.13. "Quarter" shall mean a three-month period of a year beginning on 1st January, 1st April, 1st July or 1st October of any year;
- 1.14. "State" shall mean the Grantor;

Reference to the singular of a defined term includes a reference to it in the plural and vice versa and reference to any gender includes a reference to all other genders.

2 Grantor's Agent : The Petroleum Agency

- 2.1. ***Without detracting from section 66 of the Act the Grantor records that it has appointed the Petroleum Agency as the Grantor's agent in regard to all matters relating to this Production Right, excluding matters concerning health and safety save in regard to the approval of exploration rights***

and production rights.**2.2. Without detracting from the generality of clause 2.1:**

- 2.2.1. the Grantee shall be obliged to pass all data, including but not limited to information contemplated in section 14 of the Act and this Production Right and samples and borehole cores, and interpretations of all the foregoing, to the Petroleum Agency, and all of which data, information, samples, borehole cores, and interpretations, shall be passed in the format and in the medium as may be required by the Petroleum Agency in writing from time to time.
- 2.2.2. The Grantor hereby appoints the Petroleum Agency or its representatives as the Grantor's representative or representatives on the Technical Advisory Committee provided for in clause 8 hereof.

3. Description of Production Area

The Production Area shall comprise the following:

Block
Region
Measuring: _____ km²*

which Block is more fully described in the attached plan and description, marked Annexure A. _____

4. Production Right

The Grantor hereby in terms of sections 79 and 81 of the Act grants to the Grantee, which hereby accepts, this Production right conferring the sole and exclusive right to explore for, remove and dispose of petroleum found in, on and under the Production Area on the terms and conditions set forth herein and subject to the provisions of the Act.

5. Ancillary Rights and Obligations

- 5.1. Without limiting the generality of clause 4 or detracting from Grantee's rights in terms of sections 5 and 81 of the Act, the Grantee shall have the right to:

- 5.1.1. enter the Production Area together with the Grantee's employees, and bring on to the Production Area any plant, machinery and equipment and build, construct and lay down any surface or underground infrastructure which may be required for the purposes of Production; provided that:

- 5.1.1.1. onshore land (i.e. land above the high-water mark, as defined in section 1 of the Sea-Shore Act, 1935 (Act No. 21 of 1935)) may be used for the said purposes if (1) the permission of the owner thereof, where such owner is not the State or, in terms of the Sea-Shore Act, 1935, the Minister, has first been obtained and if (2) the owner thereof will be compensated by the Grantee for actual damage caused to such land; and

- 5.1.1.2. cables or pipelines may be laid over or under the said Sea-shore or the Sea or the Continental Shelf and structures may be erected on the Production Area with relevant permission of the Petroleum Agency in terms of the Act.

- 5.1.2. explore for the Grantee's own account on or under the Production Area for petroleum;

- 5.1.3. subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, the Production Area or from any excavation previously made and used for exploration or production purposes, or sink a well or borehole required for use relating to Production on the Production Area;

- 5.1.4. in terms of section 80 of the Act, apply for and be granted a renewal of this Production Right.

- 5.2. Without detracting from the Grantee's obligations in terms of this Production Right or in terms of the Act the Grantee shall:

- 5.2.1. continuously and actively conduct Operations in accordance with the Production Work Programme;
 - 5.2.2. comply with the terms and conditions of this Production Right and the relevant provisions of the Act;
 - 5.2.3. comply with the requirements of the approved environmental management programme; and
 - 5.2.4. pay the prescribed fees to the Grantor.
- 5.3. No provision contained in this Production Right shall constitute a stipulation for the benefit of any person or entity who is not a Party to this Production Right capable of acceptance by such person, except the Petroleum Agency.

6. Commencement, Duration and Renewal

- 6.1. This Production Right will commence on the Effective Date and, unless terminated earlier under any provisions hereof, will continue in force for a period of ____ [not more than 30 years] from the Effective Date
- 6.2. The Grantee shall within 30 (thirty) days reckoned from the Effective Date, commence with Production Operations in the Production Area and shall thereafter conduct such operations continuously and actively in accordance with the Production Work Programme and the approved Environmental Management Programme.
- 6.3. This Production Right shall be renewed by the Minister on application in terms of section 80 of the Act by the Grantee if the Grantee has complied with the:
- 6.3.1. terms and conditions of this Production Right and is not in contravention of any relevant provision of the Act;
 - 6.3.2. Production Work Programme; and
 - 6.3.3. requirements of the approved Environmental Management Programme.

7. Fees and Royalties

- 7.1. The Grantee shall pay to the Grantor the prescribed production fees and the prescribed royalties in respect of petroleum removed and disposed of during the course of the Grantee's Production Operations, as envisaged in section 81(2)(e)
- 7.1.1. an annual production fee of R____ (____ RAND) per km² of the Production Area payable yearly in advance, which shall increase annually on the anniversary of the Effective Date by the increase in the Consumer Price Index (All Items, Metropolitan and Other Urban Areas) as published from time to time by Statistics South Africa
 - 7.1.2. a royalty of ____ of the value of any petroleum or minerals found, removed and disposed of in the course of Production operations from the Production Area; payment of the said share shall be made within 30 (thirty) days after the end of every Quarter and shall be accompanied by a certificate or other document acceptable to the Grantor, reflecting particulars of the value of petroleum and/or minerals found, removed and disposed of on the Production Area during the Quarter in question; such quarterly payments shall,
 - (a) in the case of petroleum,
 - (i) be made on a fair market value of the Petroleum produced, calculated at the boundary of the mine. "Fair market value" shall, except as provided in (ii) below, be the actual realised price used to determine gross income for income tax reporting purposes under the Income Tax Act. The currency of payment will be either SA Rand or US Dollars.

- (ii) In the event that all sales during a Quarter are to an Affiliate of Grantee then fair market value for the purposes of calculating royalty will be determined utilising a basket of similar products on offer world-wide. Otherwise, the fair market value for purposes of calculating royalty on sales to an Affiliate will be the average weighted by volume of the actual realised price of sales to third parties during such Quarter.

- (b) In the case of other minerals it will be:

- based on the selling price of the minerals (if applicable);
- in the case of minerals not sold, on the estimated value thereon; and
- after the subsequent sale (if applicable) of any minerals in respect of which payment has already been made on the estimated value thereof, on the difference between the estimated value and selling price.

7.2. In terms of section 66(i) of the Act the Grantee shall additionally pay to the Grantor a data maintenance fee equal to 1% of the fair market value, at the boundary of the mine, of petroleum produced, removed from the Production Area, and disposed of.

7.2.1. "Fair market value" shall be as defined in 7.1.2. and shall, except as provided in clause 7.2.2 below, be the actual realised price used to determine gross income for income tax reporting purposes under the Income Tax Act. The currency of payment will be either SA Rand or US Dollars.

7.2.2. In the event that all sales during a Quarter are to an Affiliate of Grantee then fair market value will be determined utilising a basket of similar products on offer world-wide. Otherwise, the fair market value in respect of sales to an Affiliate will be the average weighted by volume of the actual realised price of sales to third parties during such Quarter.

7.3. The production fees and data maintenance fees referred to in clause 7.1 and 7.2 shall be paid within 30 (thirty) days after the end of each Quarter following the Effective Date.

7.4. If any fees or royalties referred to in clauses 7.1 or 7.2 are not paid punctually on or before the due dates for payment, the Grantee shall be in *mora debitoris* and shall pay interest thereon at the rate prescribed in terms of section 80 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) reckoned from the due date for payment to the date of actual payment.

7.5. ***Regardless of any relinquishment of parts of the Production Area or early termination of this Production Right for whatever reason, no portion of the fees referred to in clauses 7.1 and 7.2 shall be refundable.***

7.6. All fees and royalties which are payable by Grantee to the Grantor in terms of the Production Right shall be paid by deposit into the account of the Grantor at the bank and account indicated in Annexure B, or such other bank and account as the Grantor may from time to time give notice of. The onus for timely payment rests solely with the Grantee; the Grantor will not normally issue invoices. It should also be noted that the Upstream Training Trust is independent of the Grantor and payments to it should be made separately to the bank and account indicated in Annexure C, or such other bank and account as the Upstream Training Trust may from time-to-time give notice of.

8. Technical Advisory Committee

8.1. The Grantor and Grantee shall as soon as possible after the Effective Date establish a committee to be known as the Technical Advisory Committee which shall consist of:

- (a) a chairman and one other person appointed by the Grantor; and
- (b) two other persons appointed by Grantee.

The membership of the Technical Advisory Committee may be enlarged to include one representative of each of Grantee Parties. The Grantor may in this instance enlarge its representation to equal that of all the Grantee Parties.

- 8.2. The Grantor and any Grantee Party may appoint by notice an alternative member to act in the place of its representative on the Technical Advisory Committee during his or her absence or incapacity to act as a member of the Committee. When an alternate member acts in the place of any member he or she shall have the powers and perform the duties of such member.
- 8.3. Without prejudice to the rights and obligations of the Grantee in relation to the management of Operations the functions of the Technical Advisory Committee shall be:
- (a) to review all Operations carried out by the Grantee and to provide the Grantee advice and recommendations with respect thereto;
 - (b) to review and approve any proposed Production Work Programme and budgets, and any propose amendments thereof, which are to be submitted by the Grantee to the Grantor in terms of clause 15 and to monitor the implementation of any appraisal programmes submitted by Grantee to the Grantor in terms of clause 16;
 - (c) to review any appraisal programmes to be submitted by Grantee to the Grantor in terms of clause 16 and any development plan which Grantee proposes in relation to any further discoveries of petroleum in the Production Area;
 - (d) to review the accounting of expenditure and the maintenance of operating records and reports kept in connection with Operations; and
 - (e) to offer advice to the Grantee in order to promote the efficient carrying out of Operations.
- 8.4. All meetings of the Technical Advisory Committee shall be held at least semi-annually. The location of such meetings shall be in Cape Town, South Africa unless otherwise unanimously agreed by its members, and the Grantee shall provide the the Grantor with copies of all documentation and presentation materials 7 (seven) days prior to the meeting.
- 8.5. Three members of the Technical Advisory Committee shall form a quorum for a meeting of the Committee, provided that at least one representative of the Grantee and one representative of the Grantor is present.
- 8.6. Any member of the Technical Advisory Committee shall have the right to call any expert to any meeting of the Committee to advise the Committee on any matter of a technical nature requiring expert advice.
- 8.7. The Chairman of the Committee shall cause minutes of each meeting to be kept and circulated to the members.

9. Minister's Right to Cancel or Suspend the Production Right

- 9.1. It is recorded that the Minister is empowered to cancel or suspend this Production Right in the circumstances envisaged in and in accordance with the provisions of section 85 read with section 44 of the Act.
- 9.2. In the event of this Production Right being cancelled in accordance with the provisions of clause 8.1, the Grantee will not be absolved from its obligations or liabilities which have accrued up to the date of such cancellation.
- 9.3. The cancellation of this Production Right in terms of clause 8.1 above will be without prejudice to the Grantor's other rights under this Production Right or in statutory or common law of the Republic of South Africa, including its right to recover any damages it may have suffered or may suffer, its right to claim specific performance or its right to claim ancillary relief.

10. Abandonment or Relinquishment of the Production Area

- 10.1. The Grantee may, subject to sub-clauses 10.2. and 10.3., abandon this right in its entirety or relinquish any portion or portions of the Production Area at any time.
- 10.2. In abandoning or relinquishing the Production Area or any portion thereof, the Grantee will not be absolved from those obligations or liabilities, either in the form of Production work or otherwise, which may have accrued under the terms and conditions of this Production Right, the Production Work programme, the Environmental Management Programme and the Act up to the date of such abandonment or relinquishment.

- 10.3. The Grantee may, by notice in writing addressed and delivered to the Grantor, abandon or relinquish any part of the Production Area from a date not less than six months from the date on which such notice was delivered to the Grantor.

All such abandoned or relinquished areas shall cease to be part of the Production Area on the date identified so notified provided that the area(s) relinquished are:

- (i) bounded by lines running either due North and South or due East and West and coinciding with integral multiples of 01 minutes of longitude or latitude; and
 - (ii) approximately rectangular with the length not more than three times the width of the narrowest portion of the area to be relinquished.
- 10.4. With effect from the date the Grantee has so abandoned or relinquished a portion or portions of the Production Area, the Grantor shall be entitled to grant any exploration rights or production rights or any of the rights and permits referred to in the Act in, on, or under the portion or portions, so abandoned or relinquished, to any persons or persons.
- 10.5. Upon abandonment or relinquishment of the Production Area or any portion thereof, the Grantee will furnish the Grantor with all exploration and production results and/or information and interpretations, as well as its evaluation of the geological, geophysical and borehole data in respect of such abandoned or relinquished area or areas insofar as it applies to petroleum or any other mineral or minerals referred to in clause 10. Such results and/or information may be made available to third parties.
- 10.6. Upon abandonment or relinquishment of the Production Area or any part thereof the Grantee shall apply for an Exoneration Certificate in terms of section 40 of the Act.

11. No guaranteed right to other minerals

- 11.1. The Grantee shall not have the exclusive right to acquire a prospecting right, mining right, mining permit or retention permit in respect of any mineral or minerals in, on and under the Production Area.
- 11.2. Should any mineral or minerals be discovered in the course of Production Operations, the Grantee shall nevertheless be bound to report such discovery to the Grantor. The Grantee may thereafter, subject to any prior rights, apply for and, if granted the required prospecting rights by the State, prospect for such mineral or minerals.

12. Examination of the Production Area

- 12.1. The Minister may authorise inspections and exercise of related powers as set out in the Act
- 12.2. Upon request by the Grantor during offshore operations of Grantee, Grantee shall provide free transport between the Grantee's onshore base and the offshore facilities as well as accommodation on the offshore facilities for authorised officers.

13. Records and samples

- 13.1. The Grantee must keep, in a form as may be from time to time reasonably approved by the Grantor, current and accurate records of all Production Operations. Such records must include, *inter alia*, details of drilling, completion, plugging or abandonment of all boreholes, drill-stem tests, well logs, all other geological and geophysical information and interpretation, maps, digital records obtained by the Grantee in the course of carrying out Operations (hereinafter referred to as "Data") and any equipment lost overboard or down hole, relating to the Production Area as may be necessary to preserve all information which the Grantee has about the geology of the Production Area, and such other records as the Grantor may from time to time direct and which the Grantee can reasonably keep.
- 13.2. The Grantee shall at its own expense save and correctly label a representative portion of each sample of cores and cuttings from the earth or sea bed and strata encountered in drilling wells, such samples to be taken at regular intervals in accordance with good international oilfield practice, and samples of any petroleum or other minerals of potential value recovered in any of the Grantee's wells in the Production Area, to be forwarded promptly to the Grantor at the Grantee's expense. All samples acquired by the Grantee for its own purpose shall be made available for inspection at any reasonable time by the Grantor.

Before the Grantee discards any core and/or cuttings and samples, the Grantor shall, by prior notice, be afforded an opportunity of obtaining the same and these will be delivered to it at Grantee's expense.

- 13.3. The Grantee may export such Data for processing or laboratory examination or analysis by the Grantee or by third parties or storage outside of the Republic of South Africa, provided that representative samples equivalent in quality or, where such material is capable of being reproduced, copies of equivalent quality have first been delivered to the Grantor and provided that the Grantor's prior written approval has been obtained.
- 13.4. The Grantee shall deliver to the Grantor, at the Grantee's expense, copies of all data as defined in 13.1 above as soon as they are acquired or prepared in accordance with the Grantor's reporting guidelines.

14. Reports

- 14.1. The Grantee shall keep the Grantor currently advised of all major developments taking place during the course of Operations and shall furnish the Grantor with Data (as defined elsewhere) and other available information, reports, assessments and interpretations relating to Operations as the Grantor may reasonably require in accordance with the Grantor's "Reporting Guidelines".
- 14.2. The Grantee shall provide the Grantor with a summary report of all Operations on a monthly basis.
- 14.3. Within 30 (thirty) days of the end of each Quarter the Grantee shall submit to the Grantor a report reflecting, for the relevant Quarter, details of all Operations, including but not limited to:
- (i) the numbers of local and expatriate persons employed;
 - (ii) the work done and money expended on Operations;
 - (iii) the site and depth of every well drilled or being drilled and the formations penetrated and particulars regarding any occurrence of petroleum and/or any other mineral of potential value encountered; and
 - (iv) a statement of compliance with the approved Environmental Management Programme.
- 14.4. Nothing in clause 13 or 14 shall be construed as requiring the Grantee to disclose any of its proprietary technology or that of its Affiliates.
- 14.5. The Grantee shall furnish the Grantor with such other reports as to the progress of its operations in the Production Area as the Grantor may from time to time require and which the Grantee can reasonably make available.
- 14.6. Within three (3) months after the termination and/or cancellation and/or abandonment of this Production Right, the Grantee shall furnish the Grantor with all results of and its interpretations and general evaluation of the geological, geophysical and borehole data relating to the Production Area as it applies to petroleum or any other mineral or minerals under sub-clause 10.2.
- 14.7. The Grantee shall provide copies of all hydrographic information and data obtained by the Grantee or its contractors and sub-contractors, during marine operations undertaken under this Production Right to the Grantor and the Chief Hydrographer of the South African Navy.
- 14.8. All information furnished by the Grantee to the Grantor in accordance with this clause 14 and clause 13 above, may be made available by the Grantor for use by third parties on expiry or termination of the Production Right or relinquishment or abandonment by the Grantee.
- 14.9. The provisions of this clause 14 are additional to and without detracting from the provisions of Regulation 14 made in terms of the Act.

15. Production Work Programme and Budget

- 15.1. The Grantee must, to the satisfaction of the Grantor:
- 15.1.1. over the period of this Production Right, initiate and thereafter actively pursue operations designed to produce petroleum optimally;

- 15.1.2. carry out and meet the commitments set out in the Production Work Programme annexed hereto marked Annexure D;
- 15.1.3. not less than three months prior to each anniversary of the Effective Date prepare and submit to the Grantor an amended and revised Production Work Programme and budget setting forth the Production Operations which the Grantee proposes to carry out during the twelve months following the aforesaid anniversary and the cost thereof.
- 15.2. Any amended and revised Production Work Programme and budget submitted to the Grantor shall be consistent with the requirements set out in clause 37 relating to environmental protection.
- 15.3. Any revisions or amendments to the aforesaid Production Work Programme and budget must be submitted to Petroelum Agency for approval.
- 15.4. In the event that the work carried out by the Grantee, as reviewed from time to time, is less than that specified in the Production Work Programme and insufficient reason has been given by the Grantee to the Grantor for the failure to carry out the full Production Work Programme, then the Grantor may in terms of section 80(3) of the Act refuse an application for a renewal of this Production Right in terms of clause 6.3 hereof.
- 15.5. It is recorded that the time sequences as set out in the Production Work Programme will commence on the Effective Date.
- 15.6. As set out in section 84 of the Act, each Grantee Party shall secure and deliver to the Grantor within 14 (fourteen) days of Effective Date a financial guarantee, appropriate to its proportionate interest in this Production Right in the format indicated in Annexure E.

16. PRODUCTION OF PETROLEUM

- 16.1. If petroleum produced by the Grantee is of quality which can be utilised by local refineries and provided the price for such petroleum is not greater than the price for petroleum available to local refiners from other sources with due consideration to the quality, product yield and other factors which relate to price, then the Grantee shall be entitled to dispose of its entire production to local refiners forming part of the "private sector" as defined from time to time by the Minister provided, however, that if the demand for petroleum by the said refiners in the private sector in the Republic of South Africa shall at the time or any time thereafter be supplied entirely from indigenous sources, then the Grantee shall be entitled to dispose of a portion of its production to the said refiners based upon the ratio which the Grantee's share of the average monthly production of petroleum from the Production Area shall bear to the total average monthly production of petroleum from all such indigenous sources. Such allocation shall be re-determined periodically but not more frequently than once every three months.
- 16.2. The Grantee shall be entitled to export petroleum and/or processed products produced from the Production Area which are not sold under sub-clause 16.1 hereof in the Republic of South Africa.
- 16.3. No export duty or similar export charges shall be levied on petroleum and/or processed products exported by the Grantee in terms of clause 16.2.
- 16.4. Nothing in this clause 16 shall be deemed to require the Grantee to refine any portion of its production of petroleum before selling the same in or outside the Republic of South Africa and the Grantee shall be entitled, subject to obtaining prior State approval, to erect a refinery for the processing of petroleum produced by it, if such refinery can be justified.

16.5 No provision in this clause 16 shall prejudice the right of the Grantee to use freely and exempt from taxes specified in clause 2 below, petroleum produced under the terms of this Production Right, in Operations, including its injection in or return to any producing formation.

17. Discoveries and testing

17.1. When a further discovery of Petroleum is made in the Production Area, the Grantee shall -

- (a) promptly inform the Grantor by notice of the fact that such discovery has been made;
- (b) forthwith cause tests to be made in connection with such discovery in order to determine whether it is, in the Grantee's opinion, commercial. Before testing each occurrence of Petroleum, the Grantee shall give notice of testing to the Grantor and shall provide, free of charge, to the representatives of the Grantor access and transportation to the drilling rig and reasonable facilities there in order to witness such tests; and
- (c) within 60 days after having completed such tests, furnish the Grantor with a report containing an evaluated result of such tests.

17.2. The testing and measuring of Petroleum for the purpose of establishing the existence of a commercial discovery of Petroleum shall be carried out in accordance with good international oil-field practice.

17.3. If the Grantee considers, after providing the report referred to in clause 17.1.(c), that the discovery of petroleum could be commercial, then the Grantee shall forthwith take reasonable steps to appraise the discovery and submit the appraisal programme which it intends to undertake to the Grantor for its agreement. The Grantor shall review such appraisal programme and within 30 days of receipt thereof either agree to it or give Grantee any comments which Grantor may have with respect to it. If the Grantor fails to respond with comments within such time, it shall be deemed to have agreed to the appraisal programme.

17.4. The Grantee shall, within one year from the date on which the Grantor is advised of the appraisal programme or such longer period as may be appropriate under the circumstances address and deliver to the Grantor a full report containing particulars of the results of the appraisal programme, including particulars and preliminary estimates relating to:

- (i) the location and depth of petroleum bearing structures;
- (ii) the composition of petroleum;
- (iii) the estimated recoverable reserves of petroleum;
- (iv) the estimated daily production potential of petroleum; and
- (v) a preliminary estimate of the expenditure of development and production operations, including the expenditure on transportation of petroleum, based on an outline design for the development of the discovery of petroleum.

17.5. the Grantor may, at any time after delivery of the report and estimates referred to in clause 17.4 request the Grantee to supply such further particulars relating to such reports as the Grantor deems necessary and the Grantee shall comply in writing with such request within 30 days from the date of delivery of such request.

18. Black Economic Empowerment

The Grantee acknowledges that in order to give effect to section 2(d) of the Act, Grantor is desirous of expanding opportunities for historically disadvantaged persons (as defined in the Act) to enter the upstream petroleum industry and to benefit from the exploitation of petroleum resources in South Africa and as such Grantee undertakes to use its best endeavours to seek historically disadvantaged South African partners to participate in this Production Right for at least a 10 % undivided interest. Such participation shall be governed by the principles contained in Annexure F and an associated Operating Agreement.

19. Good international oil-field practice

In addition to the provisions of the Act, the Grantee shall comply with the following special obligations.

- 19.1. The Grantee shall maintain all installations in good repair and condition and shall execute all Operations in a proper and workmanlike manner in accordance with methods of Production used in good international oil-field practice and, without prejudice to the generality of the foregoing, the Grantee shall take all steps practicable in order to prevent:
- (a) the escape or waste of petroleum discovered in the Production Area;
 - (b) damage to petroleum-bearing strata;
 - (c) the entrance of uncontrolled water through wells to petroleum-bearing strata;
 - (d) the escape of petroleum into any waters or aquifer in or in the vicinity of the Production Area; and
 - (e) pollution of the terrestrial or marine environment.
- 19.2. The Grantee shall immediately inform the Grantor and other relevant government bodies of the occurrence of any event described in clauses 19.1(a) through 19.1(e) above and shall take immediate remedial action.
- 19.3. The Grantee shall take immediate action with respect to notices given by the Grantor of any event described in clauses 18.1(a) through 18.1(e) above.
- 19.4. The Grantee shall give all notices and take all actions described in the relevant oil-spill contingency plan oil-spill contingency plan required in terms of the Prevention and Combating of Pollution of the Sea Act (Act no. 6 of 1981).
- 19.5. The Grantee shall protect all wells drilled under this Production Right. Upon completion or abandonment of a well the Grantee shall remove from the drill site all guide bases and other substantial equipment so as to leave the environment free of significant obstruction, except where the relevant well is intended to be used as a production well. The Grantee shall notify the relevant government agencies that the location is free of obstruction or, if it is not, the location, nature and extent of any obstruction.
- 19.6. No gas produced from the Production Area, except in the case of short term flaring necessary for testing or other operational reasons, may be flared unless the Grantor's prior written approval, which approval shall not be unreasonably withheld, has been obtained.
- 19.7. The Grantee shall give timeous notice to relevant government agencies and to interested and affected parties as to all Production Operations and shall take all reasonable steps to minimise interference with the rights of other users.

20. Existing Data

20.1 In the event that the Grantee has not already acquired the use of the Existing Data as defined below, and at the Grantee's request, the Grantor will procure that Petroleum Agency will, for a consideration of US \$ _____ (_____ United States Dollars) exclusive of the costs of digital media (magnetic tapes, etc.) and shipping cost, make available for use solely by the Grantee the existing data as indicated in (a) to (f) below. The consideration shall be paid to the Grantor within 30 (thirty) days from the Effective Date. Costs for digital media and shipping will be charged at cost plus 10 % and shall be paid within 30 (thirty) days of receipt of invoice by the Grantee. The Grantee agrees that while the Grantor has made all reasonable efforts to ensure the quality of the existing data, the Grantor shall not be liable for the integrity, accuracy or quality of the Existing Data. The Grantor accepts no liability for the results of any decisions or actions of the Grantee arising from the Grantee's use of the existing data. Such Existing Data shall include, but as available not be limited to the following:

- (a) one copy of all available borehole measurements and analyses including sample logs, wireline logs, gas chromatograms, micropalaeontological, petrographical, and geochemical data and / or reports (including core descriptions) as well as one digital tape copy, where available (in industry-standard format), of all wireline logs from all wells drilled in the Production Area;
- (b) one copy of each technical report of the wells drilled in the Production Area, regional reports for the West / South / East Coast and general reports for RSA offshore operations, as appropriate to the Production Area;
- (c) one copy of each seismic line which intersects the Production Area, at the vertical scale of 2.5 inches per second (two-way time) or as imaged, as well as one copy of 500 km of lines to be selected by the Grantee

at a scale of 5 inches per second (two-way time). The Grantor will also provide location data for all seismic lines in SEG-P-1, UKOOA or ASCII format, in digital form;

- (d) field data for up to _____ km of seismic lines in the Production Area as available and as selected by the Grantee. This data set shall be defined by the Grantee after its preliminary evaluation of the copies of seismic lines described in (c) above. The Grantee will provide the Grantor with copies of the reprocessed data as both digital records in industry standard format and a single paper copy. Where such field tapes are available only in a format other than digital records on 9-track half-inch tape (or more modern format) the Grantor will make available such original field data tapes so that the Grantee can transcribe the data into a current industry-standard format. The Grantee shall provide the Grantor with a copy of the data so transcribed onto media of an industry-standard format which is current at the time, and which the Grantor is equipped to read and, at the Grantor's request, return the original tapes to the Grantor at the Grantee's sole cost, risk and expense.
- (e) stacked and migrated data for up to _____ km of seismic lines, as available, as selected by the Grantee;
- (e) access to available sets of conventional cores, sidewall cores, drilling cuttings from the wells in the Production Area for sampling; and

Wherever possible documents will be provided as digital images in a format appropriate to the document.

Additional field data tapes and stacked and migrated data tapes, over and above that detailed in clauses (d) and (e) above will be made available upon request by the Grantee provided that Grantee shall reimburse the Grantor for the reasonable and customary costs incurred in preparing such tapes.

The Grantor will co-operate with the Grantee at the Grantee's request by assisting in resolving technical problems relating to the data (but not interpretation) upon terms and conditions then to be agreed.

All the aforesaid data, studies and reports (hereinafter referred to as the "Existing Data") provided to the Grantee are owned by the Grantor and are of considerable commercial value to it. Such Existing Data shall remain the property of the Grantor and shall, on termination of this Production Right, be returned at the Grantee's cost to the Grantor. The Grantee will hold the Existing Data confidential between itself and the Grantor in the manner described in clause 29.1 in relation to the Data with the exception of items 29.1(f) and 29.1(k), in which instances the Grantee must first acquire the Grantor's prior written approval, and 29.1(b).

- 20.2. In the event that the Grantee already has possession of Existing Data in terms of an Exploration Right or Prospecting Sub-lease from which this Production Right arises, then the Grantee shall be entitled to retain that portion of the Existing data already in its possession for the duration of this Production Right and shall treat the same as though it were acquired in terms of clause 20.1.

21. Upstream Training Trust

The Grantee shall pay the amounts set out in Annexure C to the independent Upstream Training Trust, to be used in the training, education, and obtaining of practical experience for South African personnel in a manner to be mutually agreed by the Trustees.

22. Local labour, equipment, materials and contractors

- 22.1. In furtherance of section 2(f) of the Act, in carrying out Operations the Grantee shall, to the extent reasonably possible, employ South African citizens having appropriate qualifications.
- 22.2. ***Not later than three months from the Effective Date, the Grantee shall meet with the Grantor to discuss and agree on a programme for the recruitment, training and employment of South African citizens during the Production Operations.***
- 22.3. The Grantee may employ a person who has necessary qualifications and experience and is not a South African citizen if the required skills are not available in the South African labour market. The subsequent availability of qualified candidates will be reviewed annually.
- 22.4. The Grantee:
 - 22.4.1. ***and its contractors shall use and purchase equipment, machinery, materials, instruments, supplies and accessories (all referred to as "Goods") manufactured, produced or available in the Republic of South Africa for use in Operations under this Production Right, provided that such Goods are reasonably comparable with like goods manufactured, produced or available outside the Republic of South Africa as to***

landed cost, quantity and quality and can be made available at the time when and the place where required;

22.4.2. shall to the extent reasonable, taking cognisance of government policies, utilise contractors in the Republic of South Africa where services of comparable standards with those obtained elsewhere are available from such contractors at competitive prices and on competitive terms and can be made available at the time when and the place where required.

23. Tax

- 23.1. The Grantee shall maintain a permanent establishment in the Republic of South Africa and arrange its affairs in such a manner that all the profits from production of petroleum under this Production Right will be attributable to that establishment.
- 23.2. Except to the extent exempted, the Grantee shall throughout the term of this Production Right be liable for income tax payments to the State on the annual taxable income derived by it from the production of Natural Oil in accordance with the Income Tax Act as amended from time to time. In no event, however, shall such tax exceed, in respect of taxable income derived during any year of assessment from the production of Natural Oil in the Production Area, the sum of an amount of the "normal tax" as defined in Chapter II, Part 1, Section 5 of the Income Tax Act (hereinafter called the "basic tax"), calculated on the full amount of such taxable income at a maximum tax rate of 35 %. The Grantee is hereby expressly exempted and shall not be liable for the payment of any "additional normal tax" under Chapter II, Part 1, Section 5(2A) of the Income Tax Act.
- 23.3. South African income taxes shall be calculated in United States Dollars. For South African tax reporting purposes only, all account balances necessary to compute the US Dollar tax liability shall be converted to Rand at the rate determined under clause 26 (Exchange Control). Such conversion shall occur at the end of each taxation year. Taxes may be paid in either SA Rand or US Dollars at the Grantee's election. Payments made in US Dollars for any taxation year shall be converted to Rand in the same manner described in this sub-clause 23.3
- 23.4. The Grantee shall maintain a permanent establishment in the Republic of South Africa and arrange its affairs in such a manner that all the profits from production of petroleum under this Production Right will be attributable to that establishment.
- 23.5. Any payments to the State in terms of this clause 23 shall constitute the Grantee's only commitment to the State, or any political sub-division thereof, for taxes or levies, of any kind or nature, on the income or profits derived by the Grantee from the production of petroleum under this Production Right. Specifically, but without limiting the provisions contained in the preceding sentence, the Grantee shall not, other than as set out in clause 7, be liable to the State for:
- 23.5.1. any other taxes or levies of a similar nature, calculated in relation to taxable income, profits or turnover arising out of Operations in the production and disposal of petroleum under this Production Right;
- 23.5.2. any share of profit by the State or any other form of consideration in respect of the activities performed by it pursuant to this Production Right;
- 23.5.3. non-resident shareholders' tax or any other dividend withholding tax, in respect of dividends declared or paid in favour of shareholders who are not resident in the Republic of South Africa out of profits derived from the production of petroleum under this Production Right, or any tax on the remittance outside the Republic of South Africa of profits derived from the aforesaid production of petroleum;
- 23.5.4. distributed or undistributed profits tax, including the Secondary Tax on Companies imposed under Part VII, Section 64B, et. seq. of the Income Tax Act, in respect of profits derived from the production of petroleum.
- 23.6. In calculating the taxable income referred to in this clause 23, the deductions from income shall be as granted in the Income Tax Act as at the date on which the 1977 amendments thereto were promulgated, and shall in any event include:
- 23.6.1. the costs expended by the Grantee itself on Production Operations within the Production Area in any tax year or part thereof, and
- 23.6.2. under current working costs, also the costs of transportation of petroleum from the Production Area to the marine terminal or such refinery in the Republic as the Grantee may elect, as the case may be, and as capital ranking for redemption:

- (a) the costs of laying pipeline from the points referred to above in this sub-clause 23.6.2. or to any onshore processing facility of the Grantee;
 - (b) the costs incurred by the Grantee itself in connection with the viability of the relevant undertaking and the design, procurement, management (including also project management), transport and construction of the constituent parts (from and after raw material stage and including also the piles and other foundations) of any marine or onshore receiving installations erected or to be erected on the Production Area or onshore with a view to exploitation of petroleum discovered or found in the Production Area, including also the costs of training of personnel for any purpose in connection with such installations, at any time prior to the successful commissioning of such installations but excluding any assets belonging to another taxpayer, and
 - (c) a capital allowance equal to 12 % (twelve per cent) compound interest per annum on the total amount of unredeemed capital expenditure, ranking for redemption, calculated from the end of the month during which each such cost was incurred, until it be redeemed and calculated, as far as this can be done, according to the provisions of sections 26(3) and (4) of the Mining Rights Act, 1967, an example of which is attached hereto as Annexure G.
- 23.7. Expenditure shall not be disallowed as a deduction for income tax purposes because it has been incurred by the Grantee outside the Republic of South Africa.
- 23.8. Production activities taking place in or in connection with an area or areas covered by one Production Right and its associated pipeline and onshore receiving installations up to the boundary of the local refinery, if any, shall be deemed to have taken place in respect of a single mine provided that assets belonging to another taxpayer will be disregarded.
- 23.9. In determining the taxable income or profits in respect of the Production Area, the phrase "mining for Natural Oil" shall be interpreted as including all exploration, development and production activities and such taxable income or profits shall be taxed as set out in this clause 23.
- 23.10. Should the Grantee's offshore facilities be linked to an onshore plant also belonging to the Grantee, the offshore facilities and pipelines as well as the onshore receiving facilities and pipelines (as well as all related structures and foundations) up to the boundary of the onshore plant will be regarded as a mine and the income therefrom taxed as herein set out, while the rest of the onshore facilities will be regarded as a factory and the income therefrom taxed in accordance with the income tax laws of the Republic of South Africa as amended from time to time, the gross income of the Grantee from the combined mine and factory respectively being in such proportion as the Grantee and the Commissioner for Inland Revenue agree or, failing such agreement, as determined by any of the firms or entities referred to in Annexure H (Schedule of Experts) hereof at the request of the Commissioner, unless the Grantee and the said Commissioner agree in writing on another firm or entity.

24. Accounts and Audits

Grantee shall maintain in South Africa such accounting records as will properly support all expenditure and receipts of Operations under this Production Right.

Such records or copies thereof shall be provided at the Grantor's request for the purpose of confirming any minimum expenditure obligations under the Production Work Programme. The Grantor shall have the right to appoint an auditor for the purpose of confirming that these obligations have been met. Such confirmation, if any, shall be completed within two years after the end of the calendar year in which the expenditures or receipts occurred.

25. Customs duties

The Minister records having procured the following from the Minister of Finance, namely :

- 25.1. *The Grantee may during the continuance of this Production Right and subject to the provisions of international trade agreements which may be in force, import into the Republic of South Africa or clear from any customs and excise warehouse under rebate of full customs duty (as defined in the Customs and Excise Act, 1964) or export from the Republic of South Africa such Goods (excluding refined Petroleum products for use in road vehicles and distillate and residual fuel oil for any purpose and goods imported by the Grantee for the personal use of its personnel who are South African residents) as are required for use in Operations and which are not obtainable or available from stocks of Goods manufactured in the Republic of South Africa in terms of clause 22.4.1; provided however that the Grantee shall not sell, transfer, dispose of or use or retain for use except in Operations under this Production Right any Goods obtained*

free of customs duty without the permission of the Commissioner for Customs and Excise; such duty as may be assessed by the Commissioner for Customs and Excise shall be payable to him/her in respect of any such Goods sold, transferred, disposed of or used or retained for any use other than in Operations except if such Goods are sold, transferred or disposed of to any person in the Republic of South Africa entitled to a like rebate of customs duty or if such Goods are exported from the Republic of South Africa by the Grantee.

- 25.2. *The Grantee shall have the right, subject to the applicable laws and regulations, to employ such contractors as in its opinion may be necessary for Operations; such contractors shall be exempted from the payment of customs duties in the same manner as the Grantee is exempted under this Production Right as long as their work is pursuant to their contract with the Grantee.*
- 25.3. *The Grantee's non-South African personnel may import household and personal effects into South Africa free of customs duty and may export such effects freely, but disposal in the Republic of South Africa of any such household and personal effects shall be subject to approval by the Commissioner for Customs and Excise and shall be subject to customs duties.*

26. Exchange Control

- 26.1. The Minister records having procured the following from the Minister of Finance:
- 26.1.1. The Grantee shall have the free availability of the currency generated from the export of petroleum produced under this Production Right which the Grantee can place directly to a bank account within the Republic of South Africa or abroad.
- 26.1.2. The Grantee shall have the free disposition and right to freely exchange South African Rand whether received from the sales of Petroleum in the national market for foreign currency or received from other activities or events related to this Production Right. The Grantee has the right to deposit such currency directly into bank accounts in the Republic of South Africa or abroad.
- 26.1.3. The Grantee shall have the right to maintain, control and operate bank accounts in any currency, inside the Republic of South Africa and abroad; to have the control and free use of these accounts and to maintain and freely dispose of the funds of these accounts without any restrictions. The Grantee shall not be obliged to convert any foreign currencies into South African Rand.
- 26.1.4. Without prejudice to what is mentioned above, the Grantee shall have the right to dispose, distribute, send or retain abroad, without any restrictions, the Grantee's annual net profits.
- 26.1.5. The Grantee may use South African banks to exchange the currencies referred to in clause 26.1.2.
- 26.2. The exchange rate of the South African Rand will be determined by the free market.
- 26.3. The Grantee may acquire abroad materials, equipment and services and pay for them in foreign currency. The Grantee may obtain financing abroad through loans and advances to pay for costs of activities connected with this Production Right.
- 26.4. The Grantee shall provide periodic reports as reasonably requested by the Reserve Bank.
- 26.5. In the event that the ratio of borrowings from South African financial institutions to foreign investment exceeds the ratio prescribed in Exchange Control Regulations promulgated by Government Gazette Notice R1111 of December 1961 as amended, the Grantee shall notify the Reserve Bank and advise the Reserve Bank as to any steps the Grantee intends to take to reduce this ratio, or request approval, which shall not be unreasonably withheld, to exceed this ratio.

27. Indemnity and insurance

- 27.1. The Grantee, its successors and/or assigns, will, during the tenure of this Production Right, take all such necessary and reasonable steps and do all such acts, matters and things and carry out their Production Operations in such a manner as will adequately safeguard and protect the environment, the Production Area and any person or persons using or entitled to use the surface of the Production Area from any damage caused by or through or in consequence of the exercise by the Grantee of its aforesaid right to produce petroleum under this Production Right, of any activity or activities associated with the Grantee's operations in the Production Area, and will in so far as there is a legal liability, compensate such person or persons for any damage or losses, including but not limited to damage to

the surface, to any crops or improvements, which such person or persons may suffer as a result of, arising from or in connection with the exercise of his/her rights under this Production Right or of any act or omission in connection therewith.

- 27.2. The Grantee and its aforesaid successors and/or assigns will and do hereby undertake and bind themselves to hold harmless and indemnify the Grantor and/or its servants and employees against any claim or claims which may be instituted by any person as a result of any injury, loss (including loss of life), damage, cost, charges, and expenses which may be suffered or sustained by any person or persons whomsoever, as a result of, or which may in any way whatsoever be associated with the exercise by the Grantee, its successors and/or assigns, of the right to produce petroleum under this Production Right, and must also on request refund to the Grantor and/or its servants and employees all costs, charges and expenses which the Grantor and/or its servants and employees may be put to or sustain in connection with or arising out of any such claim made by such person or persons.

27.3. It is explicitly agreed that the Grantor will not be deemed to be a partner in any Operations carried out in terms of this Production Right. The Grantor will give notice to the Grantee and its aforesaid successors and/or assigns of any claim or occurrence in respect of which it proposes to invoke the provisions of this indemnity and will give the Grantee and its aforesaid successors and/or assigns the fullest opportunity to investigate, repudiate or otherwise deal with any matter that may arise from such claim. Provided always that nothing herein contained will be deemed to render the Grantee or its aforesaid successors and/or assigns liable for, or to indemnify the Grantor and/or its servants and employees against, any compensation or damages for or with respect to injuries or damage to persons or the Production Area directly resulting from any delict of the Grantor and/or its servants and employees during the currency of this Production Right, or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

- 27.4. The Grantor will hold harmless and indemnify the Grantee and its aforesaid successors and/or assigns from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of matters referred to in the proviso of sub-clause 27.1 of this clause.

- 27.5. The Grantee shall during the term of this Production Right obtain and maintain for and in relation to Operations, insurance to indemnify the Grantor and the Grantee against:

- (a) loss or damage to any or all assets being used in connection with Operations;
- (b) loss or damage for which the Grantee may be liable caused by pollution in the course of or as a result of Operations;
- (c) loss or destruction of property or damage to property as well as bodily injury, sickness or death suffered by any third party for which the Grantee may be liable;
- (d) the cost of removing wrecks and cleaning-up operations pursuant to an accident in the course of or as a result of Operations;
- (e) the Grantee's liability to its employees, consultants and agents engaged in Operations; and
- (f) any other risk of whatever nature as is customary to insure against in the international petroleum industry in accordance with good international oil-field practices.

- 27.6. The amount insured against, the type of insurance referred to in clause 27.5. above and the terms of such insurance shall be determined in accordance with good international oil-field practices.

- 27.7. The Grantee acknowledges that the Grantor cannot guarantee that the Grantee will at all times be in a position to exercise the rights granted in terms of this Production Right and that in certain instances a conflict may arise with the holders of other mineral and / or fishing rights which overlap with the Production Area. The Grantee hereby indemnifies and holds the Grantor harmless from and against all claims, liabilities and costs incurred by the Grantee should the rights of the Grantee in terms of this Production Right not be exercisable by a reason of such a conflict with other rights holders within the Production Area.

28. Health and Safety

- 28.1. The Grantee and its successors and/or assigns will and do hereby undertake and bind themselves during the currency of this Production Right to observe and comply with all relevant provisions of the Mine Health and Safety Act (Act no. 29 of 1996) as amended and regulations in terms thereof, or any subsequent law which amends or substitutes the Mine Health and Safety Act, 1996.

- 28.2. Without detracting from sections 42 and 43 of the Act, in the event of:

- 28.2.1. an emergency or accident arising from Operations affecting the environment, Grantee shall forthwith notify the Grantor accordingly; or
- 28.2.2. any fire or oil spill in the Production Area or from any facilities connecting the Production Area with the land, Grantee shall promptly implement the relevant contingency plan; or
- 28.2.3. any other emergency or accident arising from Operations affecting the environment, Grantee shall take such action as may be prudent and necessary in accordance with good international oil-field practice in such circumstances.

29. Data and information to be kept confidential and limitations on public announcements

In addition to the provisions of section 83 of the Act and Regulation 14 made in terms of the Act:

29.1. The Data (as defined in clause 13.1) and all programmes, tests, analyses, results, books, statements, records, returns, plans and information which the Grantee is or may from time to time be required to furnish under the provisions of this Production Right, shall be supplied at the expense of Grantee. Each Party shall each keep confidential the Data and such information and shall not disclose it to any person without the consent of the other Party except:

- (a) where disclosure is required by any law;
- (b) when this Production Right has expired or has been terminated;
- (c) to an Affiliate, provided such Affiliate maintains confidentiality as provided in this clause 29;
- (d) to the extent such Data and information is required to be furnished pursuant to any legal proceedings or because of any order of any court binding upon a Party;
- (e) to prospective or actual contractors, consultants and attorneys employed by any Party where disclosure of such Data or information is essential to such contractor's, consultant's or attorney's work;
- (f) to a bona fide prospective transferee of Party's interest (including an entity with whom a Party or its Affiliate are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares);
- (g) to a bank or other financial institution to the extent appropriate to a Party arranging for funding;
- (h) to the extent such Data and information must be disclosed pursuant to any rules or requirements of any government or stock exchange having jurisdiction over such Party or its Affiliates;
- (i) to its respective employees for the purposes of Operations, subject to each Party taking customary precautions to ensure such Data and information is kept confidential;
- (j) where any Data or information, through no fault of a Party, has become published in the public domain; and
- (k) where any relinquishment or abandonment has taken place (but only as to Data and information with regard to the relinquished or abandoned areas).

Disclosure as pursuant to clauses 29.1.(f) and 29.1.(g) shall not be made unless prior to such disclosure the disclosing Party has obtained a written undertaking from the recipient Party to keep the Data and information strictly confidential.

29.2. Each Party shall own the Data as defined in 13.1 above in its possession, whether original or a copy, and after termination of this Production Right or relinquishment of any portion of the Production Area each Party may sell, trade, license and otherwise disclose or dispose of such Data relating to the areas no longer included in the Production Area.

29.3. Except as may be required by applicable securities law or stock exchange requirements, no public announcement shall be made by any Party unless the other has been furnished with a copy and has given prior approval, which prompt approval shall not be unreasonably withheld. When a public announcement or statement becomes required by law or necessary or desirable because of impending danger to or loss of life, damage to property or pollution resulting from Operations, either Party is authorised to issue and make such announcement or statement without prior notice or the prior approval of the other where such prior notice and approval is not practical in the circumstances. In such a case, the Party making the announcement or statement shall promptly furnish the other Party with a copy of such announcement.

30. Cession, Transfer, Alienation

- 30.1. This Production Right may not be ceded, transferred, let, sub-let, assigned or otherwise disposed of without the written consent of the Minister in terms of section 11 of the Act.
- 30.2. The Minister hereby approves that the Grantee may cede, transfer, let, sub-let, assign or otherwise dispose of or mortgage, either wholly or in part, its rights and obligations under this Production Right, to an Affiliate but only if the Grantee's guarantor has bound itself to guarantee the obligations of the transferee. The Grantee shall advise the Grantor by notice within 10 days of effecting such transaction.

31. Law and interpretation

Subject to section 4 of the Act, and clauses 37 (Arbitration) and 23 (Tax) of this Production Right this Production Right, the interpretation thereof and any dispute arising thereunder or associated therewith shall be governed by and determined in accordance with the laws of the Republic of South Africa.

In this agreement the clause headings are inserted for reference purposes only and shall not govern or affect the meaning or interpretation thereof.

32. Grantee's Rights and Obligations Ensured

- 32.1. The Minister approves and adopts the terms and conditions of this Production Right on behalf of the Grantor, and undertakes on behalf of the State to do and perform all acts and things which are or may be required to be done or performed to give full effect to this Production Right in accordance with its provisions, and guarantees that the contractual rights and obligations of the Grantee under this Production Right will not be altered without prior written consent of the Grantor and the Grantee.
- 32.2. The Minister, on behalf of the Grantor, agrees and commits to the Grantee for the duration of this Production Right, to maintain the stability of the provisions of this Production Right as such provisions exist as of the Effective Date of this Production Right.

33. Vis Major

- 33.1. Any act, cause, thing or event outside the control of the Grantee including, but not limited to, acts of God, war, insurrection, civil commotion, blockade, strikes, flood, storm, lightning, fire or earthquake which prevents the Grantee from fulfilling its obligations under this Production Right, the Act or the regulations, or such other laws and regulations as may be applicable, may be declared a vis major event and such failure on the part of the Grantee shall not constitute breach. Financial inability, ordinary hardship and inconvenience, however caused or arising, shall not be a vis major circumstance.
- 33.2. If the Grantee by reason of the provisions of clause 33.1 above is prevented from fulfilling its obligations or of enjoying its rights under this Production Right, it shall immediately notify the Grantor in writing to that effect and shall take all reasonable steps to remove the cause thereof and to investigate the consequences. The Grantee shall promptly notify the Grantor as soon as conditions of vis major no longer prevent the Grantee from carrying out its obligations and following such notice shall resume Operations as soon as reasonably practicable.

34. Amendments

The provisions of this Production Right replace all prior negotiations, representations and other communication between the parties hereto and may be amended only in writing between the parties.

35. Unitisation

- 35.1. A situation may arise where rights held by holders under two or more production rights and/or mining leases and/or exploration rights and/or prospecting leases or sub-leases extend over different areas which geologically form part of the same petroleum-bearing area. In such circumstance the Grantor may by notice in writing require the holders of such rights to prepare a scheme for the production of that petroleum-bearing area as a unit to be submitted to the Grantor within the period specified in the said notice which shall be not less than 90 (ninety) days. Where such petroleum-bearing area extends

over an area over which the State's rights have not been alienated then the Grantor shall be deemed to be the holder of an exploration right or a production right over such area.

- 35.2. A scheme so prepared shall maximise the exploitation and/or prospecting of the unitised area for the benefit of all holders of interests in the respective mining and/or prospecting sub-leases.
- 35.3. If no scheme is submitted within the period specified in the notice or such further period as the Grantor may approve, or if the scheme submitted is not acceptable to the Grantor, the Grantor may appoint a committee consisting of industry specialists to advise the Grantor.
- 35.4. Any committee so appointed shall after having considered any representation made by the Grantee submit a scheme to the Minister as soon as is practical.
- 35.5. The Minister may, if he/she is satisfied that any scheme submitted in terms of sub-clauses 35.2. or 35.4. is practical and fair and equitable to all parties concerned, confirm such scheme, and it shall thereupon become binding upon all parties.
- 35.6. If the Grantee fails to carry out any provision of the scheme which is binding upon him, the Minister may by notice in writing require the Grantee to do so within the period specified in the notice and if the Grantee fails to comply with the notice the Minister may terminate the exploration right or production right as the case may be.

36. Waiver of Lenience

No waiver of any of the Grantor's rights and no lenience granted or permitted by the Grantor from time to time in a form which does not constitute a formal amendment of this Production Right shall prejudice the Grantor's rights under this right or the Act and shall not constitute grounds for the Grantee to expect that the Grantor will continue to waive its rights or grant or permit lenience in the future.

37. Arbitration

- 37.1. All disputes relating to or arising out of this Production Right shall be finally settled under the rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such rules. Subject to clause 37.2, the venue of the arbitration shall be London, England and the proceedings and records of the proceedings shall be in the English language.
- 37.2. The venue of the arbitration shall be Cape Town, South Africa if the amount in dispute is less than US\$500 000,00 (FIVE HUNDRED THOUSAND UNITED STATES DOLLARS). However, if the relief sought is declaratory or specific relief, then the venue shall be as provided in clause 37.1.
- 37.3. Notwithstanding any such difference or dispute or reference to arbitration, the Parties shall, to the extent possible, proceed with the carrying out of their obligations under this Production Right, subject to the provisions of this Production Right.
- 37.4. The Parties irrevocably agree that the decision in those arbitration proceedings :
 - 37.4.1. shall be binding on them;**
 - 37.4.2. shall be carried into effect; and**
 - 37.4.3. can be made an order of any Court of competent jurisdiction.**

38. Environmental Protection

- 38.1. The Grantee hereby undertakes and binds itself to conduct all Production Operations in accordance with the requirements of the Act and any other legislation, and the Environmental Management Programme submitted by Grantee in support of its application for this right and approved by Grantor, in a manner that would facilitate the protection and conservation of the natural resources of the Republic of South Africa and of the environment in general.
- 38.2. Subject to the provisions of the Act, the Grantee shall on the expiration or termination of this Production Right or on relinquishment of part of the Production Area or on the voluntary abandonment of the Production Area:
 - 38.2.1. remove all equipment and installations from such relinquished or abandoned Production Area; and

38.2.2. perform all necessary site rehabilitation and shall take all other actions necessary to minimise hazards to human or other life or to the Production Area(s) of others or the environment in general for time to come.

38.3. The Grantee may from time to time appoint one or more independent contractors to carry out any work in relation to Production operations, but the Grantee shall always remain liable for the compliance and observation of the provisions of the Act, the Environmental Management Programme and of the terms and conditions of this Production Right.

38.4. The Grantee shall within 14 (fourteen) days of the Effective Date provide to the Grantor the financial provision for remediation of environmental damage as set out in regulations 32 and 33 and the approved Environmental Management Programme.

39. Costs and VAT

39.1. All expenses, fees, costs stamp and transfer duties flowing from this Production Right direct or incidental, and the costs of notarial execution and registration, deregistration (in cases of abandonment or relinquishment) including transfer duty, Value Added Tax at the prevailing rate and stamp duty, shall be paid by the Grantee.

39.2. The Grantee shall pay Value Added Tax (VAT) at the prevailing rate on all remittances and payments to the Grantor or Petroleum Agency in terms of this Production Right as applicable.

40. Further Developments

40.1 In the event of that, having discovered further deposits of petroleum in the Production Area, the Grantee considers that such further discovered petroleum can be developed for commercial production and wishes to carry out such development then the Grantee shall submit a development programme for approval by the Grantor. Such development programme shall:

- (i) subject to clause 35., relate exclusively to the Production Area applied for ;
- (ii) ensure the maximum efficient recovery of the petroleum;
- (iii) be compiled in accordance with sound engineering, economic, safety and environmental principles recognised in good international oil-field practice;
- (iv) address the following matters:
 - required production equipment, processing facilities (if any) and storage facilities;
 - feasible alternatives for transportation of petroleum, including pipelines;
 - onshore and offshore installations required;
 - production profiles;
 - cost estimates;
 - safety and environmental measures;
 - employment and training programme;
 - flaring provisions;
 - overall project economics; and
- (v) include an environmental impact assessment and management programme.

41. Grantor's Option

41.1. Should the Grantor have elected, in terms of Regulation 22(3), to retain and transfer an undivided interest in this Production Right the application by the Grantee for this Production Right in respect of such Mining Block shall be deemed to have been made in respect of an undivided share which excludes such retained undivided interest, and the Production Right shall be in respect of such residual undivided share.

41.2. The Grantor shall not be liable for any prior exploration costs in respect of the undivided interest so retained by it but shall be liable for its undivided interest share of all costs incurred under the Production Right henceforth, as provided in the Operating Agreement, Annexure I hereto.

- 41.3. *Should the Grantor retain an undivided ownership interest in the Production Right, the Grantor and the Grantee shall enter into the Operating Agreement (Annexure I hereto) contemporaneously with the grant of the Production Right. The Accounting Procedure (Exhibit A of Annexure I hereto) shall then apply between the parties to the Operating Agreement.*
- 41.4. *In the event that, at the time of granting of a Production Right, there is more than one Grantee Party and that an Operating Agreement (and associated Accounting Procedure) is already in effect between the Grantee Parties then the Grantee may invite the Grantor to agree to become a party to that agreement rather than the Operating Agreement described in clause 41.3. and the Grantor shall use its best endeavours to comply provided that the terms and conditions offered are not less favourable to the Grantor than those in the Operating Agreement described in clause 41.3.*
- 41.5. If the Grantor elects not to retain an undivided interest in the Production Right, the Production Right shall relate to the whole of the undivided interest in the Production Right.

42. Entire Agreement; The Act Prevails

Subject to the Act, this Production Right and the Appendices attached hereto (those Appendices being and forming an integral part of this Production Right) contain the entire agreement between the Parties and supersedes all their prior understandings, agreements and negotiations of whatsoever nature.

In the event of any inconsistency between this Production Right and the Act, the Act shall prevail.

43. Severability

Any provision of this Production Right which is in any way unenforceable or which may render it unenforceable or which may contravene the applicable laws or regulations of any jurisdiction to which this Production Right is subject shall be deemed, to the extent of such unenforceability or contravention, severable from this Production Right and of no force or effect and shall not affect any other provision of this Production Right and its enforceability or legality in all other respects.

44. Notices and Representatives

All notices, requests and reports provided for herein shall be in writing and shall be delivered either by hand to an authorised representative of the receiving Party, or sent by courier or telefax to the following addresses in the Republic of South Africa, provided that if given by telefax a copy thereof shall be sent immediately by prepaid registered airmail:

Grantor :

Minister of Minerals and Energy

Physical address :

Mineralia Centre
Cnr Visagie & Andries Streets
PRETORIA

Postal address :

Private Bag X59
PRETORIA
0001

Tel number : (27) 12 317 9000

Fax number : (27) 12 322 3416

PETROLEUM AGENCY:

Attention : Chief Executive

Physical address :

Petroleum House
151 Frans Conradie Drive
PAROW
Western Cape

Postal address :

P O Box 1174
PAROW
7499

Tel number : (27) 21 938 3500

Fax number : (27) 21 938 3520

GRANTEE :

.....LIMITED

Attention : Mr _____ or _____

Physical address :

Postal address :

Tel number : _____

Fax number : _____

Either Party may change its address to such other address in the Republic of South Africa as it may notify the other Party of on at least 30 (thirty) days prior notice.

All notices, requests and reports sent by telefax shall be deemed to have been received within 12 (twelve) hours of transmission. Those delivered by hand or sent by courier shall be deemed to have been received at the time of actual delivery.

Each Party also chooses the physical address specified above as its domicilium citandi et executandi for all purposes arising under this Production Right, including service of process.

Grantee shall within 7 (SEVEN) calendar days of the Effective Date of this Production Right give notice to the Grantor in which it appoints one representative with whom the Grantor may deal concerning this Production Right. Such representative shall continue to represent Grantee unless Grantee notifies the Grantor of a change of representative.

45. Registration

In terms of section 81(2)(a) of the Act, the Grantee must lodge this Production Right for registration at the Mining Titles Office within the period specified in the said section.

Thus done and signed at _____ on the _____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

.....
for and on behalf of the Grantor

Thus done and signed at _____ on the _____ day of _____ 20__ on the presence of the undersigned witnesses:

AS WITNESSES:

1.

2.

.....
for and on behalf of the GranteeQUOD ATTESTORNOTARY PUBLIC

ANNEXURE A

PLAN AND DESCRIPTION OF THE PRODUCTION AREA

To be inserted

ANNEXURE D

PRODUCTION WORK PROGRAMME

To be negotiated as part of the application process

ANNEXURE B

ACCOUNT TO WHICH PAYMENTS TO THE GRANTOR ARE TO BE MADE

The amounts payable to the Grantor will be deposited by the Grantee into the account of the Petroleum Agency at:

Bank: ABSA
Branch
Branch code
Account no.

In the case of payments originating from outside the republic of South Africa the following further information will be of assistance:

For payments originating in the USA the following further information may be necessary

PAYMENT TO BE MADE TO:

Full name of Bank
Address

Harris Bank International
Corporation
3 Times Square
New York
New York, 10036

SWIFT Address

HATRUS33

Account Number

49-0-2945-7

For Credit of

ABSA Bank Limited
International Banking Services:
Corporate
Pretoria
South Africa

For Further Credit
Under Reference

CEF (PTY) LTD
SEF 8245Y55

The remitting Bank must confirm payments by
MT100 to:

ABSA Bank Limited
IBS Corporate
Pretoria
South Africa

SWIFT Code
For Attention

ABSAZAJJACPT
Amanda Reyneke

Kindly confirm payments per Fax to CEF (PTY) LTD
 Attention *Dolf Jonker/Kobus Geertsema* Fax No.
 (27)11 784 5494

In all cases, the Grantee is required to deliver proof of payment to the the Grantor within 3 working days of effecting the payment.

ANNEXURE D

CONTRIBUTIONS TO THE UPSTREAM TRAINING TRUST

In terms of clause 21 of the Production Right to which this schedule is annexed, the Grantee shall pay to the Upstream Training Trust the following amounts:

- (a) within 30 days of the Effective Date - US \$ _____ (_____ United States Dollars);
- (b) within 30 days of the first anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (c) within 30 days of the second anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (c) within 30 days of the third anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (d) within 30 days of the fourth anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (e) within 30 days of the fifth anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (f) within 30 days of the sixth anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (c) within 30 days of the third anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (g) within 30 days of the seventh anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);
- (h) within 30 days of the eighth anniversary of the Effective Date - US \$ _____ (_____ United States Dollars);

The amounts payable will be deposited by the Grantee into the account of the Upstream Training Trust at:

Bank: ABSA
 Branch:
 Branch code:
 Account no.

In all cases, the Grantee is required to deliver proof of payment to the Trust within three working days of effecting the payment.

ANNEXURE E**FINANCIAL GUARANTEE**

A financial guarantee acceptable to the Grantor in the form of one of the alternatives incorporated as examples under Appendix B to the regulations, to be attached

ANNEXURE F**BLACK INVESTMENT**

- 1 Pursuant to the provisions of clause 18, the State is desirous of encouraging black investment in the upstream sector of the petroleum industry in South Africa.
- 2 In furtherance of this goal, the Grantee shall make available not less than 1/10 (one tenth) undivided interest share in the Production Right for the participation of companies or groups of companies having at least 51% of their shareholding owned by black persons of South African nationality (Black Investor). No such company or group of companies shall hold less than 1/20 (one twentieth) undivided interest in the Production Right.
- 3 As a pre-requisite to the issue of any Production Right the Grantee shall demonstrate to the Grantor that:
 - (a) it has used its best endeavours to seek black investment partners to participate in the Production Right; and
 - (b) it has negotiated in good faith the terms and conditions of a Deed of Cession or Participation Agreement and that such terms and conditions conform to the following :
 - (i) In the event that the agreement is concluded prior to the Grantee incurring any expenditure relating to fulfilment of the minimum work obligation as described in any preceding exploration right or prospecting sub-lease then no premium shall be payable.
 - (ii) In the event that the agreement is concluded after the Grantee has incurred expenditure relating to fulfilment of the minimum work obligation as described in any preceding exploration right or prospecting sub-lease but prior to the declaration of a discovery then Black Investor shall reimburse the Grantee its proportionate share, in accordance with its interest in the said exploration right or prospecting sub-lease as the case may be, of such expenditure together with a premium equal to 100% (one hundred per cent) of Black Investor's proportionate share of such expenditure.
 - (iii) In the event that the agreement is concluded after declaration of a discovery then Black Investor shall reimburse the Grantee with its proportionate share, in accordance with its interest in the exploration right or prospecting sub-lease, of expenditure incurred by the Grantee in its fulfilment of the obligations set out in the exploration right or prospecting sub-lease as the case may be, together with a premium equal to 400 % (four hundred per cent) of Black Investor's proportionate share of such expenditure.

As from the effective date of the agreement Black Investor shall contribute to the expenditure incurred in fulfilment of the obligations contained in the exploration right or prospecting sub-lease, in accordance with its interest in the said exploration right or prospecting sub-lease, as determined by the operating agreement between the companies, the terms and conditions of which shall, except as determined in (i) to (iii) above, be the same as between Grantee and any other company holding an interest in the exploration right or prospecting sub-lease as the case may be.

ANNEXURE G

CAPITAL ALLOWANCE SCHEDULE

| FIRST YEAR OF PRE-PRODUCTION ACTIVITIES | | | |
|---|--------------------|--|--------------------|
| Actual capital expenditure qualifying for redemption | | Unredeemed balance of Capital Expenditure (C/E) for the purpose of calculating the Capital Allowance (C/A) | |
| Incurred during the year | R 2 000 000 | Incurred | R 2 000 000 |
| C/A for the year | <u>R 120 000</u> | C/A for the year | <u>R 120 000</u> |
| Carried forward | <u>R 2 120 000</u> | (at 12 %, pro rata for a portion of a year*, say) | <u>R 2 120 000</u> |
| SECOND YEAR OF PRE-PRODUCTION ACTIVITIES | | | |
| Balance brought forward | R 2 120 000 | Balance brought forward | R 2 120 000 |
| Incurred during the year ** | R 2 000 000 | Incurred during the year ** | <u>R 1 940 000</u> |
| C/A for the year | <u>R 370 800</u> | | R 4 060 000 |
| Carried forward | <u>R 4 490 800</u> | C/A for the year (at, say 12 %) | <u>R 370 800</u> |
| | | | <u>R 4 430 800</u> |
| <p>* C/E is calculated at 12 % (or other applicable percentage) from the end of the month during which it was incurred until the end of the tax year; in this example, however, it is supposed that all the qualifying C/E was incurred just before the end of the 6th month of the tax year</p> <p>** Interest and other finance charges on loans do not qualify for the C/A</p> | | | |

FIRST YEAR OF PRODUCTION

| | | |
|---|---|-------------------------------------|
| 1. Calculation of taxable income | 3. Calculation of C/A in determining the balance of C/E for the purposes of the C/A | |
| Gross income | R 3 000 000 | |
| Working costs | R 3 740 000 | |
| Working loss | R 740 000 | |
| Redemption of C/E | <u>R 6 626 896</u> | |
| Assessed loss | <u>R 7 366 896</u> | |
| 2. C/E qualifying for redemption | | |
| Unredeemed balance b/f | R 4 490 800 | |
| Incurred during the year | R 1 500 000 | |
| C/A for the year | <u>R 636 096</u> | |
| Total allowed for redemption | <u>R 6 626 896</u> | |
| Thus no balance carried forward | | |
| | <u>Unredeemed balance</u> | <u>C/A at 12 % *</u> |
| | Balance brought forward | R 4 430 800 |
| | C/E incurred | R 1 500 000 |
| | Possible C/E included in working costs but on which C/A is allowed | R 240 000 |
| | C/A for the year | <u>R 636 096</u> → <u>R 636 096</u> |
| | | R 6 806 896 |
| | <u>Deduct</u> | |
| | C/E allowed for redemption: amount deducted in the calculation of profits is R6 626 896 but the deduction is restricted under section 26(3) to the amount of the "profit", i.e. | <u>R NIL</u> |
| | Unredeemed balance carried forward | <u>R 6 806 896</u> |

* Or other applicable percentage

* Or other applicable percentage

SECOND YEAR OF PRODUCTION

1. Calculation of taxable income/loss

| | |
|----------------|--------------------|
| Gross income | R 7 000 000 |
| Working cost | <u>R 3 500 000</u> |
| Working profit | R 3 500 000 |

Deduct

| | | |
|-------------------------------|--------------------|--------------------|
| Redemption of C/E | R 1 900 828 | |
| Assessed loss b/f | <u>R 7 366 896</u> | <u>R 9 267 724</u> |
| Assessed loss carried forward | | <u>R 5 767 724</u> |

2. C/E qualifying for redemption

| | |
|---------------------------|--------------------|
| Balance b/f | N I L |
| C/E incurred for the year | R 1 000 000 |
| C/A for the year | <u>R 900 828</u> |
| | <u>R 1 900 828</u> |

3. Calculation of C/A in determining the balance of C/E for the purposes of the C/A

Unredeemed balance

C/A at 12 %

| | | |
|--|------------------|--------------------|
| Balance brought forward | R 6 806 896 | R 816 828 |
| C/E incurred | R 1 000 000 | R 60 000 |
| Possible C/E included in working costs but which qualifies for C/A | R 400 000 | R 24 000 |
| C/A for the year | <u>R 900 828</u> | → <u>R 900 828</u> |
| | R 9 107 724 | |

Deduct

| | | |
|--|---|--------------------|
| C/E allowed for redemption as calculated below | * | <u>R 3 400 000</u> |
| Unredeemed balance carried forward | | <u>R 5 707 724</u> |

| | | | |
|--|---|---|-----------------------|
| | * | <u>C/E allowed for redemption</u> | |
| | | Deemed deduction [sec 26(4)] is R9 107 724 | |
| | | but the deduction is restricted under sec 26(3) | |
| | | to the amount of the "profit" i.e. Working profit | R 3 500 000 |
| | | <u>Plus</u> | |
| | | C/E included in working costs but which can | |
| | | for the purposes of the C/A be regarded as | |
| | | C/E | R 400 000 |
| | | | R 3 900 000 |
| | | <u>Deduct</u> | |
| | # | So much of the loss brought forward which | |
| | | is not ascribable to the C/E (see below) # | R 500 000 |
| | | | <u>R 3 400 000</u> |
| | | The portion of the loss brought forward not | |
| | | resulting from the deduction of C/E | |
| | | Assessed loss brought forward | R 7 366 896 |
| | | Actual C/E | |
| | | (redemption allowance) | R 6 626 896 |
| | | C/E in working costs | R 240 000 R 6 866 896 |
| | | | <u>R 500 000</u> |

ANNEXURE H

SCHEDULE OF EXPERTS (ACCOUNTING)

To be agreed between the parties as part of the application process.

ANNEXURE I

OPERATING AGREEMENT

An operating agreement based on the Association of International Petroleum Negotiators Model form Operating Agreement to be negotiated between the parties and attached.

STANDARD FORMS FOR FINANCIAL PROVISION FOR THE REMEDIATION OF ENVIRONMENTAL DAMAGE

FORM NN:

STANDARD FORM FOR APPROVED CONTRIBUTIONS TO A DEDICATED TRUST FUND

DEED OF TRUST

Made and entered into by and between

(hereinafter referred to as the "Founder")

AND

(the name(s) of the Trustee(s))

1. DEFINITIONS

In this Agreement, the following expressions have the meaning **assigned to them** and cognate expressions shall have corresponding meanings, unless it appears otherwise from the context:

- 1.1 "Beneficiary(ies) Account(s)" mean separate accounts in the accounting records of the Trust to be maintained and administered by the Trustees in respect of the Beneficiary or each of the Beneficiaries as the case may be which are required by this document.
- 1.2 "Statutory Obligations" mean the obligations described in clauses 2.2 and 2.3 of the recordal, clause 2.
- 1.3 "the Acts and Regulations" means all the relevant laws of the Republic of South Africa and the regulations thereunder, being *inter alia*, the Mineral and Petroleum Resources Development Act, 2002 (**Act No 15 of 2002**), the Atmospheric Pollution Prevention Act, 1965, the National Water Act, 1998, and any legislation and regulations which may be imposed from time to time to control the management of all the impacts of mining activities.
- 1.4 "the Beneficiary(ies)" means _____
- 1.5 "the Founder" means _____, a company incorporated in terms of the laws of the Republic of South Africa which is engaged in mining activities in the _____ Province at _____ (and the _____ Province at _____).
- 1.6 "the _____ Rehabilitation Trust" means a Trust created in terms of the provisions of clause 3 hereof.
- 1.7 "the Trustees" mean _____, _____ and _____ jointly, who have agreed to be the first trustees of the _____ REHABILITATION TRUST.
- 1.8 "the Commissioner" means the Commissioner for the South African Revenue Service as referred to in the South African Revenue Service Act, 1997.
- 1.9 "the Minister" means the Minister of Minerals and Energy.

2. RECORDAL

- 2.1 The Founder is engaged in mining activities consisting of _____
- 2.2 The Beneficiary(ies) are legally obliged to carry out rehabilitation and to prevent and control pollution at their respective mining operations in terms of the Acts and Regulations.
- 2.3 For the purpose of making provision for the discharge of the Beneficiary's(ies') obligations and contingent liabilities, the Founder is desirous of creating a Rehabilitation Trust to receive, hold and disburse such moneys as may be contributed by the Founder for the purpose of covering the costs, excluding the costs of on-going rehabilitation and pollution control, in terms of the Acts and Regulations on the closure of each of its mining operations, and where applicable, any post closure costs.

- 2.4 The Founder wishes to create a Trust for the benefit of the Beneficiary(ies) and for this purpose wishes to donate R100.00 (one hundred rand) to the Trustees of the Trust.

3. THE TRUST AND ITS OBJECTS

- 3.1 There is hereby created with the approval of the Commissioner for the South African Revenue Service, the Department of Minerals and Energy and of the Trustees in accordance with section 10(1)(cH) of the Income Tax Act, 1962, a Trust called the _____ **REHABILITATION TRUST.**
- 3.2 The main object of the Trust is to act as the financial provider for expenditure which the Beneficiary(ies) are required to undertake in order to comply with the Statutory Obligations.
- 3.3 The Fund shall be a body corporate having perpetual succession and be capable of acquiring and disposing of and owning property and assets and contracting in its own name and suing and being sued in its own name. The rights and obligations of the Fund shall vest in it independently of its beneficiary and/or contributing company.

4. DONATION

- 4.1 The Founder hereby irrevocably donates the sum of R100.00 (one hundred rand) **in cash** to the Trustees in trust, who in their capacity as such, hereby accepts such donation for the purposes and subject to the conditions of this Trust.
- 4.2 The donation made in terms of clause 4.1 hereof shall immediately vest in the Trustees but always subject to the terms of this Deed.

5. ADMINISTRATION OF THE TRUST

- 5.1 The Trust shall be administered by Trustees appointed by the Founder.
- 5.2 The Trustees shall not receive any remuneration from the Trust for their services.
- 5.3 There shall at all times be not less than two nor more than _____ Trustees.
- 5.4 The Trustees shall hold office until they resign or are deemed to have vacated their offices in terms of clause 6.
- 5.5 The Trustees shall control and administer the Trust, and shall perform and discharge the duties incumbent on them hereunder.

6. RESIGNATION OF TRUSTEES

- 6.1 A Trustee may resign at any time on giving notice in writing to the remaining Trustees of his intention to do so and shall in any case be deemed to have vacated his office if:
- 6.1.1 He/she is no longer employed by _____ or any of its subsidiaries; or
- 6.1.2 the Founder should resolve in writing that he should be removed from office.

Should any vacancy thus occur, the Founder shall be entitled forthwith to fill such vacancy.

7. CHAIRMAN AND VOTING

- 7.1 The Trustees shall from time to time nominate one of their number to be Chairman of the Trust and he shall continue to be Chairman until he resigns from that office or ceases to be a Trustee.
- 7.2 Should the Chairman be absent at any meeting of the Trustees, the Trustees pre-sent shall appoint one of their number as Chairman to preside at that meeting.
- 7.3 Questions arising at meeting of Trustees shall be decided by a simple majority of votes each Trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote.

8. SECRETARY

The Trustees shall appoint a Secretary (which may be a company), who shall not be remunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one Trustee, convene a meeting of the Trustees and be responsible for the minutes to be kept of all meetings and decisions of the Trustees.

9. MEETINGS AND QUORUM

- 9.1 The Trustees shall meet from time to time to transact the business of the Trust and the necessary quorum for any such meeting shall be two Trustees personally present.
- 9.2 Reasonable notice of every such meeting shall be given to each Trustee and all meetings of the Trustees shall, unless otherwise decided by the Trustees, be held in _____.
- 9.3 A resolution signed by all the Trustees shall have the same effect as if it had been passed at a duly constituted meeting.

10. TRUSTEES' LIABILITY

- 10.1 The Trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through their wilful misconduct or gross negligence in which event only the Trustees concerned and not all the Trustees shall be jointly and severally liable.
- 10.2 The Trustees shall have no responsibility or liability for the efficacy of the measures taken by it in terms of clause 15 or for the sufficiency of contributions and amounts paid by the Founder of the Trust in terms of clause 14.
- 10.3 The Trustees shall not have any liability whatsoever in respect of the creation of any of the conditions referred to in the recordal in clause 2 caused by the operations of the Beneficiary(ies) or in respect of any claims arising from the presence of such conditions.
- 10.4 The Beneficiary(ies) indemnify the Trustees against claims made against the Trustees or any of them arising from the loss or depreciation referred to in this clause 10 in respect of its monies (other than as a result of wilful misconduct or gross negligence on the part of the Trustees) or arising as a result of the measures taken on its behalf proving to be ineffective and/or the contributions and/ or amounts obtained from it proving to be insufficient.

11. SECURITY BY THE TRUSTEES

The Trustees shall not be required to lodge security with the Master of the High Court or any other official or authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

12. TRUSTEES' POWERS

- 12.1 The Trustees shall have general control over the funds of the Trust and shall strive to attain the main object for which the Trust is established.
- 12.2 The Trustees shall have plenary powers to enable them to achieve the main object of the Trust.
- 12.3 The Trustees shall receive, hold, apply or disburse in terms of this agreement such monies as may be contributed to the Trust in terms of this agreement by the Founder and funds or assets received from any other source approved by the Commissioner, together with the net income thereon. Except as may be otherwise provided herein, the Trustees shall not distribute any of its profits or gains to any person and shall use the funds solely for the objects for which the Trust has been established.
- 12.4 The Trustees shall not engage in any trade or undertaking nor shall they participate in any business or the affairs of the Beneficiary(ies) or its associates, or provide any financial assistance or services or facilities other than such as required in terms of clause 12.3.
- 12.5 The management of the affairs and all the powers of the Trust shall vest in the Trustees and without derogating from the generality of the foregoing, the Trustees shall have full legal power:
 - 12.5.1 to invest, realise and re-invest the contributions made to the Trust by the Founder and the net income accrued thereon on such terms and at such rates of interest as the Trustees shall in their absolute discretion decide provided that, except as otherwise agreed in writing, prior to the making of such investment, by the Commissioner, they shall be limited to making investments with deposit-taking institutions as defined in the **Deposit-taking Institutions Act No. 94 of 1990** as amended, and shall not lend to nor be permitted to invest directly or indirectly monies of the Trust with the Beneficiary(ies) of the Trust or any of its affiliated companies;
 - 12.5.2 to appropriate firstly the net income defined in 13.6 and secondly the contributions and/or amounts paid in terms of clause 14 for the measures taken for compliance with the Statutory Obligations of the Beneficiary(ies);
 - 12.5.3 to institute any legal action for the recovery of monies owing to the Trust and to prosecute, compromise, settle or withdraw any such action;
 - 12.5.4 to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgment debtors;
 - 12.5.5 to execute all documents for and on behalf of the Trust and in this regard to delegate their authority so to execute to two of the Trustees or to one of the Trustees and the Secretary of the Trust; and
 - 12.5.6 generally to perform all acts connected with any of the Trust's affairs.

13. TRUST'S BOOKS OF ACCOUNT AND ACCOUNTING PROCEDURES

- 13.1 The Trustees shall cause proper books of account to be kept for the Trust and shall appoint independent auditors to report on the financial statements for each financial year of the Trust.
- 13.2 The financial statements of the Trust for each financial year (which shall be reckoned from _____ to _____) shall be forwarded by the Trustees to the Beneficiary(ies) of the Trust and to the Commissioner and the Regional Manager within six calendar months after the end of each financial year of the Trust.

- 13.3 The Trustees shall open a banking account in the name of the Trust which shall be operated upon by the joint signatures of one of the Trustees and the secretary, or another duly appointed authorised joint signatory.
- 13.4 All documents (other than documents relating to banking) requiring to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the Trustees.
- 13.5 All costs, charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust. Such costs, charges and expense shall be paid out of income of the Trust.
- 13.6 The balance of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be the net income for the financial year, but if such costs, charges and expenses exceed the income, then the excess shall be the net loss for that financial year.
- 13.7 Such net income or net loss, as the case may be, shall be transferred (credited/ debited) to the account(s) of the Beneficiary(ies).
Should there be a multiple of Beneficiaries, the net income or net loss shall be allocated to the respective accounts on a proportionate basis.
- 13.8 The Trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilise the Trusts solely for investment or the objects for which the Trust has been established.
- 13.9 No surplus funds will be refunded to the Founder or any other person (natural or juristic) but will be dealt with in accordance with paragraph 17.2

14. ESTIMATES OF COST OF COMPLIANCE WITH THE STATUTORY OBLIGATIONS AND CONTRIBUTIONS TO THE TRUST

- 14.1 Annually but at least ninety days before the end of each of their respective financial years, each of the Beneficiaries shall cause written estimates to be prepared, by suitably qualified persons, of the probable cost of measures, excluding those measures which are of an ongoing nature, that will be required to be taken in order to comply with the Statutory Obligations of such Beneficiary(ies) in respect of any defined period or mining activities in which a Beneficiary(ies) is engaged. The estimates may be made separately in respect of each duty, requirement or function of each group of duties, requirements, or functions as may be necessary or convenient. The estimates shall be certified as being fair and shall thereafter be forwarded together with the calculations per clause 14.2 for approval to the Commissioner, and a copy thereof to the Regional Manager.
- 14.2 The Founder shall before the end of the Founder's financial year concerned pay into the bank account of the Trust the approved contribution towards the estimated cost of implementing the measures so approved. The contributions shall be calculated in accordance with the following formula:

(A - B)
C

where: A : the total current estimates as envisaged in 14.1
 B : the total net balances of the account in respect of the Beneficiary's(ies) account as at the date of the said current estimates
 C : the estimated remaining number of year's life of each of a Beneficiary's(ies) mining operations

- 14.3 The Beneficiary(ies) of the Trust shall be entitled at any time to revise its/their estimates in the light of new or changed circumstances and the Commissioner or the Regional Manager shall likewise have the right to require the Beneficiary(ies) at any time to submit new estimates. Such revised or new estimates shall be certified and approved as provided in 14.1.
- 14.4 The Trustees may require payment from the Founder of a further contribution calculated *mutatis mutandis* as stipulated in 14.2 should new or revised estimates submitted in terms of 14.3 reflect a shortfall in the total amounts standing to the credit of the Beneficiary's(ies) accounts.

15. COMPLIANCE WITH THE STATUTORY OBLIGATIONS

- 15.1 The Trustees undertake to ensure that when the Statutory Obligations, as stated herein, have been properly carried out by the Beneficiary(ies) in accordance with the requirements laid down by the Regional Manager, the funds will be placed at the disposal of such Beneficiary(ies). This undertaking shall be a stipulation in favour of the Regional Manager and be enforceable by him.
- 15.2 In fulfilling the beforementioned undertaking the Trustees shall not utilise moneys standing to the credit of one beneficiary "for measures needed to comply with the statutory obligations of another beneficiary", and accordingly expenditure by the Trustees on measures needed to comply with the statutory obligations of any beneficiary shall be limited to monies standing to the credit of such beneficiary of the Fund.
- 15.3 Any disbursement of moneys shall be endorsed by the Regional Manager.
- 15.4 Should there be a balance standing to the credit of any Beneficiary(ies) after all the measures required to be taken in order to comply with its statutory obligations have been executed to the satisfaction of the Trustees

and the Commissioner, the said balance shall be credited to the remaining Beneficiary's(ies') ac-counts *pro rata* to the balance of each of such remaining Beneficiary's(ies') ac-counts as at the end of the month in which all the said measures were so executed, unless the Beneficiary(ies) shall have elected that the balance be paid to a body referred to in 17.

16. CESSATION OF MINING ACTIVITIES AND SHORTFALL

- 16.1 Should a Beneficiary(ies) decide to terminate its mining operations (other than a temporary cessation of such operations) and/or should the Beneficiary(ies) go into liquidation prior to them having complied with all of the Statutory Obligations which they have, it shall, not earlier than three months and not later than one month prior to taking any steps for the winding up of such mining operations or going into liquidation, as the case may be, have final estimates prepared of the probable cost of compliance with such outstanding Statutory Obligations which shall be certified and approved as provided in 14.1.
- 16.2 Should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of a Beneficiary's(ies') account, the Founder shall forthwith pay to the Trust the shortfall.

17. WITHDRAWAL FROM THE FUND

- 17.1 The Founder may withdraw from the Trust giving to the Trustees 3 (three) months' written notice of the intention to do so, provided that the permission of the Regional Manager and the Commissioner for such withdrawal is first obtained. In such case, the Trustees undertake to pay the Regional Manager, on demand, the moneys available in the Beneficiary's(ies') accounts which are required to fulfil the Beneficiary's(ies') rehabilitation responsibilities.
- 17.2 Should any one of the beneficiaries of the Fund cease to be under the administration and technical control of _____ it shall withdraw from the Fund as soon as reasonably possible provided that if any of the statutory obligations which it has remain unsatisfied at the time it is to withdraw, it shall obtain the written approval of the Regional Manager and the Commissioner to such withdrawal. Funds standing to the credit of the beneficiary must be dealt with in accordance with sub-clause (3).
- 17.3 Should, at the time of the withdrawal, it be that all its obligations have not been met to the satisfaction of the relevant authorities, any funds standing to the credit of the withdrawing beneficiary will (subject to clause 13.9) be dealt with in a manner agreed to in writing between the beneficiary and the Regional Manager.

18. TERMINATION OF THE TRUST

- 18.1 The Trust may only be terminated after all the Beneficiary's(ies') obligations including any post closure obligation set out in terms of the Acts and Regulations have been met to the satisfaction and approval of the Regional Manager as well as the Commissioner.
- 18.2 Should any monies and/or other assets remain after the requirements of sub-paragraph 17.1 have been met, those monies and other assets are to be given or transferred to a company, society or other association of persons or Trust which fulfil the requirements of section 10(1)(cH) of the Income Tax Act, 1962, and is approved by the Commissioner.

19. VARIATION OF THIS AGREEMENT

The provisions of this agreement may from time to time be amended by a resolution of the Founder and after the prior approval of the Commissioner and the Regional Manager.

THUS done and signed in _____ on the _____ day of _____ by the Founder.

AS WITNESSES:

1. _____
2. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the Trustee.

AS WITNESSES:

1. _____
2. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the
Trustee.

AS WITNESSES:

1. _____
2. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the
Trustee.

AS WITNESSES:

1. _____
2. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the
Trustee.

AS WITNESSES:

1. _____
2. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the
Trustee.

AS WITNESSES:

1. _____
2. _____

For and on behalf of

**FORM OO:
STANDARD FORM FOR A WRITTEN GUARANTEE FROM A BANK OR FINANCIAL
INSTITUTION**

(BANK OR GUARANTOR'S LETTER HEAD)

The Minister
.....
.....
.....
.....

Sir

FINANCIAL GUARANTEE FOR THE REHABILITATION OF LAND DISTURBED BY MINING (EXECUTION OF ENVIRONMENTAL MANAGEMENT PROGRAMME)

1. Concerning the responsibility in terms of the Mineral and Petroleum Resources Development Bill, which is incumbent on (hereinafter referred to as "the mine owner") to execute the environmental management programme approved in terms of the provisions of the said Act for the mine known as....., situate in the magisterial district of Province I/We in my/our capacity/capacities and as duly authorized representative/s of

(hereinafter referred to as "the guarantor") confirm that the amount of R..... (.....) is available to you for the purpose of executing the said environmental management programme.
2. The guarantor, who hereby waives the advantages of the exceptions *non numeratae pecuniae non causa debiti excussionis et divisionis*, the meaning and the consequences of which is known to the guarantor, undertakes to pay to you the said sum of R..... (.....) upon receipt of a written claim from you to do so and the claim may be submitted by you, if (in your opinion and discretion) the mine owner fails or remains in default to execute the said environmental management programme, or if he ceases mining/prospecting operations, or if his estate is sequestrated, or if he should hand over his estate in terms of the Insolvency acts which are applicable in the Republic of South Africa, or if the guarantor gives written notice to you in terms of clause 5 of this agreement. The said claim may be instituted by you at any stage commencing from the date of signature of this guarantee.
3. The said amount of R..... may be held by you on the condition that you, after having complied with all the provisions of the said environmental management programme, will give account to the guarantor of how the amount was appropriated and repay any unappropriated amount to the guarantor.
4. This undertaking is neither negotiable nor transferable, and -
 - (a) must be returned to the guarantor when giving account to the guarantor in terms of clause 3 above,
 - (b) shall lapse on the granting of a closure certificate in terms of the Act and
 - (c) shall not be construed as placing any other responsibility on the guarantor other than the paying of the guaranteed amount.

5. The guarantor reserves the right to withdraw from this guarantee after having given you at least three months' written notice in advance of his intention to do so.

Yours faithfully

.....
(SIGNATURE)

.....
(SIGNATURE)

ADDRESS:

.....

.....

.....

DATE:

PLEASE NOTE: (1) No amendments and/or additions to the wording of this guarantee will be accepted.

(2) The address of the guarantee must be stated clearly.

(3) This guarantee must be returned to:

.....

.....

.....

.....

Made and entered into by and between

(hereinafter referred to as the "Founder")

AND

(the name(s) of the Trustee(s))

2. DEFINITIONS

In this Agreement, the following expressions have the meaning respectively set opposite them unless it appears otherwise from the context:

- 1.2 "Beneficiary(ies) Account(s)" mean separate accounts in the accounting records of the Trust to be maintained and administered by the Trustees in respect of the Beneficiary or each of the Beneficiaries as the case may be which are required by this document.
- 1.3 "Statutory Obligations" mean the obligations described in clauses 2.2 and 2.3 of the recordal, clause 2.
- 1.4 "the Acts and Regulations" means all the relevant laws of the Republic of South Africa and the regulations thereunder, being *inter alia*, the Mineral and Petroleum Resources Development Act, 2002, the Atmospheric Pollution Prevention Act, 1965, the National Water Act, 1998, and any legislation and regulations which may be imposed from time to time to control the management of all the impacts of mining activities.
- 1.5 "the Beneficiary(ies)" means _____
- 1.6 "the Founder" means _____, a company incorporated in terms of the laws of the Republic of South Africa with limited liability which is engaged in mining activities in the _____ Province at _____ (and the _____ Province at _____).
- 1.7 "the _____ Rehabilitation Trust" means a Trust created in terms of the provisions of clause 3 hereof.
- 1.8 "the Trustees" mean _____, _____, _____ and _____ jointly, who have agreed to be the first trustees of the _____ REHABILITATION TRUST.
- 1.9 "the Commissioner" means the Commissioner for the South African Revenue Service as referred to in the South African Revenue Service Act, 1997.
- 1.10 "the Minister" means the Minister of Minerals and Energy.

3. RECORDAL

- 2.2 The Founder is engaged in mining activities consisting of _____
- 2.3 The Beneficiary(ies) are legally obliged to carry out rehabilitation and to prevent and control pollution at their respective mining operations in terms of the Acts and Regulations.
- 2.4 For the purpose of making provision for the discharge of the Beneficiary's(ies') obligations and contingent liabilities, the Founder is desirous of creating a Rehabilitation Trust to receive, hold and disburse such moneys as may be contributed by the Founder for the purpose of covering the costs, excluding the costs of on-going rehabilitation and pollution control, in terms of the Acts and Regulations on the closure of each of its mining operations, and where applicable, any post closure costs.
- 2.5 The Founder wishes to create a Trust for the benefit of the Beneficiary(ies) and for this purpose wishes to donate R100.00 (one hundred rand) to the Trustees of the Trust.

4. THE TRUST AND ITS OBJECTS

- 3.2 There is hereby created with the approval of the Commissioner for the South African Revenue Service, the Department of Minerals and Energy and of the Trustees in accordance with section 10(1)(cH) of the Income Tax Act, 1962, a Trust called the _____ **REHABILITATION TRUST**.
- 3.4 The main object of the Trust is to act as the financial provider for expenditure which the Beneficiary(ies) are required to undertake in order to comply with the Statutory Obligations.

- 3.5 The Fund shall be a body corporate having perpetual succession and be capable of acquiring and disposing of and owning property and assets and contracting in its own name and suing and being sued in its own name. The rights and obligations of the Fund shall vest in it independently of its beneficiary and/or contributing company.

5. DONATION

- 4.2 The Founder hereby irrevocably donates the sum of R100.00 (one hundred rand) to the Trustees in trust, who in their capacity as such, hereby accepts such donation for the purposes and subject to the conditions of this Trust.
- 4.3 The donation made in terms of clause 4.1 hereof shall immediately vest in the Trustees but always subject to the terms of this Deed.

6. ADMINISTRATION OF THE TRUST

- 5.2 The Trust shall be administered by Trustees appointed by the Founder.
- 5.3 The Trustees shall not receive any remuneration from the Trust for their services.
- 5.4 There shall at all times be not less than two nor more than _____ Trustees.
- 5.5 The Trustees shall hold office until they resign or are deemed to have vacated their offices in terms of clause 6.
- 5.6 The Trustees shall control and administer the Trust, and shall perform and discharge the duties incumbent on them hereunder.

7. RESIGNATION OF TRUSTEES

- 6.2 A Trustee may resign at any time on giving notice in writing to the remaining Trustees of his intention to do so and shall in any case be deemed to have vacated his office if:
- 6.1.2 He/she is no longer employed by _____ or any of its subsidiaries; or
- 6.1.3 the Founder should resolve in writing that he should be removed from office.

Should any vacancy thus occur, the Founder shall be entitled forthwith to fill such vacancy.

8. CHAIRMAN AND VOTING

- 7.2 The Trustees shall from time to time nominate one of their number to be Chairman of the Trust and he shall continue to be Chairman until he resigns from that office or ceases to be a Trustee.
- 7.3 Should the Chairman be absent at any meeting of the Trustees, the Trustees present shall appoint one of their number as Chairman to preside at that meeting.
- 7.4 Questions arising at meeting of Trustees shall be decided by a simple majority of votes each Trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote.

9. SECRETARY

The Trustees shall appoint a Secretary (which may be a company), who shall not be remunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one Trustee, convene a meeting of the Trustees and be responsible for the minutes to be kept of all meetings and decisions of the Trustees.

10. MEETINGS AND QUORUM

- 9.2 The Trustees shall meet from time to time to transact the business of the Trust and the necessary quorum for any such meeting shall be two Trustees personally present.
- 9.3 Reasonable notice of every such meeting shall be given to each Trustee and all meetings of the Trustees shall, unless otherwise decided by the Trustees, be held in _____.
- 9.4 A resolution signed by all the Trustees shall have the same effect as if it had been passed at a duly constituted meeting.

11. TRUSTEES' LIABILITY

- 10.2 The Trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through their wilful misconduct or gross negligence in which event only the Trustees concerned and not all the Trustees shall be jointly and severally liable.
- 10.3 The Trustees shall have no responsibility or liability for the efficacy of the measures taken by it in terms of clause 15 or for the sufficiency of contributions and amounts paid by the Founder of the Trust in terms of clause 14.
- 10.4 The Trustees shall not have any liability whatsoever in respect of the creation of any of the conditions referred to in the recordal in clause 2 caused by the operations of the Beneficiary(ies) or in respect of any claims arising from the pre-sence of such conditions.

- 10.5 The Beneficiary(ies) indemnify the Trustees against claims made against the Trustees or any of them arising from the loss or depreciation referred to in this clause 10 in respect of its monies (other than as a result of wilful misconduct or gross negligence on the part of the Trustees) or arising as a result of the measures taken on its behalf proving to be ineffective and/or the contributions and/ or amounts obtained from it proving to be insufficient.

12. SECURITY BY THE TRUSTEES

The Trustees shall not be required to lodge security with the Master of the Supreme Court or any other official or authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

13. TRUSTEES' POWERS

- 12.2 The Trustees shall have general control over the funds of the Trust and shall strive to attain the main object for which the Trust is established.
- 12.3 The Trustees shall have plenary powers to enable them to achieve the main object of the Trust.
- 12.4 The Trustees shall receive, hold, apply or disburse in terms of this agreement such monies as may be contributed to the Trust in terms of this agreement by the Founder and funds or assets received from any other source approved by the Commissioner, together with the net income thereon. Except as may be otherwise provided herein, the Trustees shall not distribute any of its profits or gains to any person and shall use the funds solely for the objects for which the Trust has been established.
- 12.5 The Trustees shall not engage in any trade or undertaking nor shall they participate in any business or the affairs of the Beneficiary(ies) or its associates, or provide any financial assistance or services or facilities other than such as required in terms of clause 12.3.
- 12.6 The management of the affairs and all the powers of the Trust shall vest in the Trustees and without derogating from the generality of the foregoing, the Trustees shall have full legal power:
- 12.5.2 to invest, realise and re-invest the contributions made to the Trust by the Founder and the net income accrued thereon on such terms and at such rates of interest as the Trustees shall in their absolute discretion decide provided that, except as otherwise agreed in writing, prior to the making of such investment, by the Commissioner, they shall be limited to making investments with deposit-taking institutions as defined in the **Deposit-taking Institutions Act No. 94 of 1990** as amended, and shall not lend to nor be permitted to invest directly or indirectly monies of the Trust with the Beneficiary(ies) of the Trust or any of its affiliated companies;
- 12.5.3 to appropriate firstly the net income defined in 13.6 and secondly the contributions and/or amounts paid in terms of clause 14 for the measures taken for compliance with the Statutory Obligations of the Beneficiary(ies);
- 12.5.4 to institute any legal action for the recovery of monies owing to the Trust and to prosecute, compromise, settle or withdraw any such action;
- 12.5.5 to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgment debtors;
- 12.5.6 to execute all documents for and on behalf of the Trust and in this regard to delegate their authority so to execute to two of the Trustees or to one of the Trustees and the Secretary of the Trust; and
- 12.5.7 generally to perform all acts connected with any of the Trust's affairs.

14. TRUST'S BOOKS OF ACCOUNT AND ACCOUNTING PROCEDURES

- 13.2 The Trustees shall cause proper books of account to be kept for the Trust and shall appoint independent auditors to report on the financial statements for each financial year of the Trust.
- 13.3 The financial statements of the Trust for each financial year (which shall be reckoned from _____ to _____) shall be forwarded by the Trustees to the Beneficiary(ies) of the Trust and to the Commissioner and the Regional Manager within six calendar months after the end of each financial year of the Trust.
- 13.4 The Trustees shall open a banking account in the name of the Trust which shall be operated upon by the joint signatures of one of the Trustees and the secretary, or another duly appointed authorised joint signatory.
- 13.5 All documents (other than documents relating to banking) requiring to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the Trustees.
- 13.6 All costs, charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust. Such costs, charges and expense shall be paid out of income of the Trust.
- 13.7 The balance of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be the net income for the financial year, but if such costs, charges and expenses exceed the income, then the excess shall be the net loss for that financial year.

- 13.8 Such net income or net loss, as the case may be, shall be transferred (credited/ debited) to the account(s) of the Beneficiary(ies).
Should there be a multiple of Beneficiaries, the net income or net loss shall be allocated to the respective accounts on a proportionate basis.
- 13.9 The Trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilise the Trusts solely for investment or the objects for which the Trust has been established.
- 13.10 No surplus funds will be refunded to the Founder or any other person (natural or juristic) but will be dealt with in accordance with paragraph 17.2

15. ESTIMATES OF COST OF COMPLIANCE WITH THE STATUTORY OBLIGATIONS AND CONTRIBUTIONS TO THE TRUST

- 14.2 Annually but at least ninety days before the end of each of their respective financial years, each of the Beneficiaries shall cause written estimates to be prepared, by suitably qualified persons, of the probable cost of measures, excluding those measures which are of an ongoing nature, that will be required to be taken in order to comply with the Statutory Obligations of such Beneficiary(ies) in respect of any defined period or mining activities in which a Beneficiary(ies) is engaged. The estimates may be made separately in respect of each duty, requirement or function of each group of duties, requirements, or functions as may be necessary or convenient. The estimates shall be certified as being fair and shall thereafter be forwarded together with the calculations per clause 14.2 for approval to the Commissioner, and a copy thereof to the Regional Manager.
- 14.3 The Founder shall before the end of the Founder's financial year concerned pay into the bank account of the Trust the approved contribution towards the estimated cost of implementing the measures so approved. The contributions shall be calculated in accordance with the following formula:

(A - B)
C

where: A : the total current estimates as envisaged in 14.1
B : the total net balances of the account in respect of the Beneficiary's(ies') account as at the date of the said current estimates
C : the estimated remaining number of year's life of each of a Beneficiary's(ies') mining operations

- 14.4 The Beneficiary(ies) of the Trust shall be entitled at any time to revise its/their estimates in the light of new or changed circumstances and the Commissioner or the Regional Manager shall likewise have the right to require the Beneficiary(ies) at any time to submit new estimates. Such revised or new estimates shall be certified and approved as provided in 14.1.
- 14.5 The Trustees may require payment from the Founder of a further contribution calculated *mutatis mutandis* as stipulated in 14.2 should new or revised estimates submitted in terms of 14.3 reflect a shortfall in the total amounts standing to the credit of the Beneficiary's(ies') accounts.

16. COMPLIANCE WITH THE STATUTORY OBLIGATIONS

- 15.2 The Trustees undertake to ensure that when the Statutory Obligations, as stated herein, have been properly carried out by the Beneficiary(ies) in accordance with the requirements laid down by the Regional Manager, the funds will be placed at the disposal of such Beneficiary(ies). This undertaking shall be a stipulation in favour of the Regional Manager and be enforceable by him.
- 15.3 In fulfilling the beforementioned undertaking the Trustees shall not utilise moneys standing to the credit of one beneficiary "for measures needed to comply with the statutory obligations of another beneficiary", and accordingly expenditure by the Trustees on measures needed to comply with the statutory obligations of any beneficiary shall be limited to monies standing to the credit of such beneficiary of the Fund.
- 15.5 Any disbursement of moneys shall be endorsed by the Regional Manager.
- 15.6 Should there be a balance standing to the credit of any Beneficiary(ies) after all the measures required to be taken in order to comply with its statutory obligations have been executed to the satisfaction of the Trustees and the Commissioner, the said balance shall be credited to the remaining Beneficiary's(ies') accounts *pro rata* to the balance of each of such remaining Beneficiary's(ies') accounts as at the end of the month in which all the said measures were so executed, unless the Beneficiary(ies) shall have elected that the balance be paid to a body referred to in 17.

20. CESSATION OF MINING ACTIVITIES AND SHORTFALL

- 16.2 Should a Beneficiary(ies) decide to terminate its mining operations (other than a temporary cessation of such operations) and/or should the Beneficiary(ies) go into liquidation prior to them having complied with all of the Statutory Obligations which they have, it shall, not earlier than three months and not later than one month prior to taking any steps for the winding up of such mining operations or going into liquidation, as the case may be,

have final estimates prepared of the probable cost of compliance with such outstanding Statutory Obligations which shall be certified and approved as provided in 14.1.

- 16.3 Should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of a Beneficiary's(ies') account, the Founder shall forthwith pay to the Trust the shortfall.

21. WITHDRAWAL FROM THE FUND

- 17.4 The Founder may withdraw from the Trust giving to the Trustees 3 (three) months' written notice of the intention to do so, provided that the permission of the Regional Manager and the Commissioner for such withdrawal is first obtained. In such case, the Trustees undertake to pay the Regional Manager, on demand, the moneys available in the Beneficiary's(ies') accounts which are required to fulfil the Beneficiary's(ies') rehabilitation responsibilities.
- 17.5 Should any one of the beneficiaries of the Fund cease to be under the administration and technical control of _____ it shall withdraw from the Fund as soon as reasonably possible provided that if any of the statutory obligations which it has remain unsatisfied at the time it is to withdraw, it shall obtain the written approval of the Regional Manager and the Commissioner to such withdrawal. Funds standing to the credit of the beneficiary must be dealt with in accordance with sub-clause (3).
- 17.6 Should, at the time of the withdrawal, it be that all its obligations have not been met to the satisfaction of the relevant authorities, any funds standing to the credit of the withdrawing beneficiary will (subject to clause 13.9) be dealt with in a manner agreed to in writing between the beneficiary and the Regional Manager.

22. TERMINATION OF THE TRUST

- 18.3 The Trust may only be terminated after all the Beneficiary's(ies') obligations including any post closure obligation set out in terms of the Acts and Regulations have been met to the satisfaction and approval of the Regional Manager as well as the Commissioner.
- 18.4 Should any monies and/or other assets remain after the requirements of sub-paragraph 17.1 have been met, those monies and other assets are to be given or transferred to a company, society or other association of persons or Trust which fulfil the requirements of section 10(1)(cH) of the Income Tax Act, 1962, and is approved by the Commissioner.

23. VARIATION OF THIS AGREEMENT

The provisions of this agreement may from time to time be amended by a resolution of the Founder and after the prior approval of the Commissioner and the Regional Manager.

THUS done and signed in _____ on the _____ day of _____ by the Founder.

AS WITNESSES:

3. _____
4. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the Trustee.

AS WITNESSES:

3. _____
4. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the Trustee.

AS WITNESSES:

3. _____

4. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the
Trustee.

AS WITNESSES:

3. _____

4. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the
Trustee.

AS WITNESSES:

3. _____

4. _____

For and on behalf of

THUS done and signed in _____ on the _____ day of _____ by the
Trustee.

AS WITNESSES:

3. _____

4. _____

For and on behalf of

FORM PP:
STANDARD FORM FOR FINANCIAL DEPOSITS PLACED WITH THE DEPARTMENT

MEMORANDUM OF AGREEMENT

Made and entered into by and between

the **Minister of Minerals and Energy** of the Republic of South Africa he/she being authorised thereto by virtue of the powers vested in him/her in terms of the Mineral and Petroleum Resources Development Act ("the Minister")

and

.....
 (ID No)
 ("the HOLDER")

WHEREAS the HOLDER is the holder of a reconnaissance permission (No...), or prospecting right(No...), or mining right (No.....) or mining permit (No....) or reconnaissance permit (No...), or exploration right (No...) or production right (No...) in terms of the Mineral and Petroleum Resources Development Act ("the Act") to enable him/her to prospect or mine, for on the farm, Magisterial District of ("the property")

AND WHEREAS in terms of the Act, the rehabilitation of land concerned in any prospecting, mining, reconnaissance, exploration or production operations shall be carried out by the holder of such right or permit -

- (i) in accordance with an approved environmental management programme or plan;
- (ii) as an integral part of the mining operations;
- (iii) simultaneously with such operations, unless otherwise determined; and

AND WHEREAS the MINISTER requires in terms of the Act, that the HOLDER has the means and ability and can make the necessary provision to prospect or mine optimally and safely on the property, to rehabilitate the land concerned satisfactorily and to carry out the environmental management programme or plan;

AND WHEREAS the adequacy of the HOLDER'S financial provision includes that the MINISTER shall be satisfied that -

- (i) the HOLDER will have the financial means to fulfil the environmental requirements of the Act;
- (ii) there will be sufficient financial provision for the final closure of the mine/operation;
- (iii) such funds remain available to the MINISTER to complete rehabilitation work as required in the environmental management plan or programme in the case of demise, sequestration or abscondence of the HOLDER or any failure of the HOLDER to fulfil the environmental requirements of the EMP and that such funds be protected from incorporation into the estate of the HOLDER in case of the circumstances described above; and
- (iv) the financial provision made to fulfil the requirements of the environmental management plan or programme, shall be utilized solely for rehabilitation until a closure certificate in terms of the Act has been issued;

AND WHEREAS the MINISTER and the HOLDER concur that the method of financial provision will be by the depositing of an acceptable amount of money in an account with the MINISTER where it will be held as guarantee and pledge for the aforesaid purposes;

NOW THEREFORE THESE PRESENT WITNESS-

That the parties hereto have contracted and agreed, as they do hereby contract and agree with one another as follows:

1.

As security for the proper and timeous performance by the HOLDER of all his obligations concerning rehabilitation work conducted in terms of the approved environmental management programme or plan, the HOLDER hereby pledges to the MINISTER all right title and interest whatever which the HOLDER may have to and arising out of monies paid into the account with the MINISTER (hereinafter referred to as the account) where it will be held as guarantee and pledge that rehabilitation will be completed and the environmental management programme or plan carried out satisfactorily.

2.

In order to effect the pledge of the monies to be paid into the account, the HOLDER shall simultaneously with the signing hereof or prior hereto, deliver and pay into the account with the MINISTER an amount of R.....

3.

Payment from the account shall only be made for rehabilitation work done in terms of the environmental management programme or plan and after the MINISTER has certified that such work has been completed. If the MINISTER deems it necessary for rehabilitation purposes, the MINISTER may authorise prior payment from the account for such purposes. Payment of the HOLDER or any person doing rehabilitation work in terms of the environmental management programme or plan, can be authorised by the MINISTER from the account. The MINISTER will be entitled to ensure that sufficient funds always remain available to perform the HOLDER'S rehabilitation obligations.

4.

The HOLDER must annually, to the satisfaction of the MINISTER and in consultation with an expert acceptable to the MINISTER, determine the quantum of pecuniary provision which is required in terms of the regulations promulgated under the Act. If the quantum differs from the amount originally deposited in terms of clause 2, the amount must be increased or decreased accordingly. If the quantum so determined is more than the amount originally deposited by the HOLDER, the HOLDER must within 30 days of such determination pay the difference into the account with the MINISTER. Any amount deposited into the account with the MINISTER shall be deemed to have been pledged to the MINISTER in terms hereof. If the quantum so determined is less than the amount deposited with the MINISTER, the MINISTER will within 30 days, return such excess money to the HOLDER.

5.

Notwithstanding anything to the contrary herein contained, any payment made to the MINISTER in terms of this agreement shall be irrevocable and the HOLDER or his estate shall have no claim, right or title of whatsoever nature on such monies other than for the purpose of rehabilitation. Payments from the account may only be made in terms of clauses 3 and 4 above and 10 hereunder.

6.

The HOLDER hereby absolves the MINISTER and the State absolutely from, and indemnifies the MINISTER and the State against any loss, liability, damages or expense which the HOLDER may suffer as a consequence directly or indirectly, of the MINISTER or the State lawfully exercising any of its rights set out herein.

7.

If:

- 7.1 the HOLDER breaches any of the terms or conditions of this agreement or fails to perform any rehabilitation duties in terms of the Act or the regulations promulgated under the Act and fails to remedy such breach or failure within 14 days of dispatch of a notice calling upon him to do so; or
- 7.2 the HOLDER is sequestered or surrenders his estate (in the case of an individual), is liquidated or placed under judicial management (in the case of a company or close corporation) (whether provisionally or finally); or
- 7.3 a meeting of the HOLDER's shareholders or members (in the case of a company or close corporation) is called for the purpose of a voluntary liquidation of the HOLDER or a resolution to that effect is taken; or
- 7.4 the HOLDER enters into or attempts to enter into a compromise or composition with any of its creditors; or
- 7.5 any of the HOLDER's property is attached pursuant to an order of court; or
- 7.6 a judgement is given against the HOLDER which is not satisfied within ten days of it being given, or against which an application for rescission or an appeal is not noted within that time (provided that such application or appeal is proceeded with expeditiously and with due care and diligence);

the MINISTER shall be entitled to demand immediate payment of all amounts that may be necessary to rehabilitate the surface of the land concerned and to use the money in the account to carry out the environmental management plan or programme, without prejudice to any rights which the MINISTER or the State may otherwise have as a result of that breach.

8.

No variation, consensual cancellation, or novation hereof shall be of any force or effect unless reduced to writing and signed by both the HOLDER and the MINISTER.

9.

Without detracting from the right of the HOLDER to liquidate his indebtedness to the MINISTER in full at any time hereafter, the MINISTER shall be entitled to keep any amounts deposited in terms of this agreement, until such time as the HOLDER has complied in full with all his obligations and duties in terms of this agreement. No interest will be payable by the MINISTER for any amounts deposited under this agreement.

10.

Should excess money remain in the account after a certificate has been granted to the HOLDER in terms of the Act, such excess money must be returned to the HOLDER within 30 days of such certificate being issued.

11.

All communications with regard to this agreement shall be addressed as follows and the physical addresses chosen by the MINISTER and the HOLDER are chosen as their respective *domicilium citandi et executandi* :

MINISTER
Postal Address

Physical Address

HOLDER
Postal Address

Physical Address

Notice shall be deemed to have been duly given:

- If delivered by hand, on the date of delivery.
- If sent by post, fourteen (14) days after posting.
- If sent by telefax, on the day following the day on which the telefax is transmitted.

THUS DONE and SIGNED by, in his capacity as Minister at on the day of 199..

.....
MINISTER

AS WITNESSES:

1.
2.

THUS DONE and SIGNED by the HOLDER or duly authorised thereto by at on the day of 20..

.....
HOLDER

AS WITNESSES:

1.
2.

ANNEXURE 2

Maximum quantities of ores and minerals removable

| Class | Mineral / Ore | Quantities that can be carried away without any payment | Maximum quantity that can be carried away by payment of royalty |
|---------|--|---|---|
| 1 | 2 | 3 | 4 |
| Class-A | Asbestos, graphite, mica, native sulphur, auriferous rock with visible uranium mineral and uranium bearing minerals, minerals of rare earths group, beryl, tantalite, columbite-concentrates of ores of antimony, arsenic, bismuth, chromium, copper, lead, nickel, tin, titanium, tungsten, zinc. | | |
| Class-B | Auriferous rock and gravel containing no visible gold, metalliferous ores meant for extracting cadmium, cobalt, mercury, molybdenum, silver, helium, vanadium, barytes, bitumen, borax, corundum, emery, grossularite, felsper, fluorspar and calcite. | | |
| Class-C | Uraniferous rock without visible uranium minerals, metalliferous ores meant for extracting antimony, arsenic, bismuth, chromium, copper, lead, nickel, tin, titanium, tungsten, zinc and compound ores containing metals of cadmium, cobalt, mercury, molybdenum, silver, helium and vanadium, gypsum, limestone, iron pyrites, shales, red and yellow ochre, bauxite metalliferous ores meant for extracting aluminium, iron and manganese. | | |
| Class-D | Limestone, sillimanite, kyanite, magnesite, serpentine, steatite, vermiculite, fireclay, kaolin and other refractory materials, coal and lignite. | | |
| Class-E | All other minerals not specified above. | | |

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