

PETROLEUM MINING CODE

FOR THE

**JOINT PETROLEUM
DEVELOPMENT AREA**

DRAFT FOR CONSULTATION

26 July 2004

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DISCUSSION DRAFT
JPDA PETROLEUM MINING CODE

PREAMBLE

In accordance with Article 7(a) of the Treaty, the following Petroleum Mining Code is adopted to govern the exploration, development and exploitation of Petroleum within the JPDA, as well as the export of Petroleum from the JPDA.

PART I
PRELIMINARY

Article 1 Interpretation

1.1 Definitions

In this Code:

“Access Authorisation” means an authorisation granted pursuant to Article 9

“Affiliate” means, in respect of an Authorised Person, a person that Controls, is Controlled by, or is under common Control with, the Authorised Person;

“Authorisation” means an Access Authorisation, a Production Sharing Contract or a Prospecting Authorisation, and an agreement (if any) made in respect of such an Authorisation or Production Sharing Contract;

“Authorised Activities” means the activities authorised by an Authorisation;

“Authorised Area” means the area from time to time the subject of an Authorisation;

“Authorised Person” means:

- (a) in respect of a Production Sharing Contract, the Contractor; and
- (b) in respect of any other Authorisation, the person to whom the Authorisation has been granted;

“Block” has the meaning in Clause 2.2;

“Calendar Year” means a period of twelve months commencing on January 1 and ending on the following December 31, according to the Gregorian calendar;

“Code” means this Petroleum Mining Code, as amended, modified or replaced from time to time, and regulations made and directions given under it;

“Contract Area” means the Authorised Area from time to time the subject of a Production Sharing Contract;

“Contractor” means a person with whom the Designated Authority has made a Production Sharing Contract;

“Control” means, in relation to a person, the power of another person to secure:

- (a) by means of the holding of shares or the possession of voting power, in or in relation to the first person or any other person; or
- (b) by virtue of any power conferred by the articles of association of, or any other document regulating, the first person or any other person,

that the affairs of the first person are conducted in accordance with the wishes or directions of that other person;

“Crude Oil” means crude mineral oil and all liquid hydrocarbons in their natural state or obtained from Natural Gas by condensation or extraction;

“Designated Authority” means the Timor Sea Designated Authority for the JPDA established pursuant to Article 6 of the Treaty;

“Good Oil Field Practice” means all those things that are generally accepted as good and safe in the carrying on of the exploration for, the development and exploitation of Petroleum, and in the processing, storage and transportation of it;

“Infrastructure Provider” has the meaning in sub-paragraph 9.1(a)(iii);

“Initially Processed” means, in relation to Petroleum, processed to a point where it is ready for off-take from the production facility and may include such processes as the removal of water, volatiles and other impurities;

“Joint Commission” means the Joint Commission for the JPDA established pursuant to Article 6 of the Treaty;

“JPDA” means the Joint Petroleum Development Area established pursuant to Article 3 of the Treaty;

“Operator” means the person appointed from time to time to organise and supervise Authorised Activities;

“Petroleum” means:

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid, or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, as well as other substances produced in association with such hydrocarbons;

and includes any petroleum as defined by sub-paragraphs (a), (b) or (c) that has been returned to a Reservoir;

“Petroleum Operations” means the Authorised Activities under a Production Sharing Contract;

“Pipeline” means a pipe or system of pipes, and associated equipment, for exporting Petroleum from the JPDA, but not a field gathering or flow line;

“Production Sharing Contract” means a contract between the Designated Authority and a limited liability corporation or entity with limited liability under which production from a specified area of the JPDA is shared between the parties to the contract;

“Prospecting Authorisation” means an authorisation granted pursuant to Article 8;

“Reservoir” means an accumulation of Petroleum in a geological unit limited by rock, water or other substances without pressure communication through liquid or gas to another accumulation of Petroleum;

“Sub-Block” has the meaning in Clause 2.2; and

“Treaty” means the Timor Sea Treaty between the Government of Timor-Leste and the Government of Australia signed on 20th May 2002.

1.2 Headings

As used herein, headings are for convenience and do not form a part of, and shall not affect the interpretation of, this Code.

1.3 Further Interpretation

In this Code, unless the contrary intention appears:

- (a) the words “including” and “in particular” shall be construed as being by way of illustration or emphasis only, and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (b) a reference to an agreement or instrument is to the same as amended, varied, novated, modified or replaced from time to time;
- (c) an agreement includes an arrangement, whether or not having the force of law;
- (d) “person” includes a corporation or other legal entity;
- (e) the singular includes the plural, and vice versa;
- (f) any gender includes the other; and
- (g) where a word or expression is defined, cognate words and expressions shall be construed accordingly.

1.4 Exercise by the Designated Authority of its Powers and Functions

- (a) The Designated Authority shall exercise its powers and discharge its functions under the Treaty, the Code and Authorisations in such a manner as, in its opinion, is best calculated to:
 - (i) promote the economic development of Timor-Leste; and

- (ii) develop Petroleum resources in a way that minimises damage to the natural environment, is economically sustainable, promotes further investment and contributes to the long-term development of Timor-Leste and Australia.
- (b) Before exercising any such power or discharging any such function, the Designated Authority:
 - (i) shall give opportunity to:
 - (aa) Authorised Persons, and others reasonably likely to be affected by the exercise of the power or by the discharge of the function;
 - (bb) recognised organisations committed to the representation of the interests of persons, or of classes of persons, mentioned in subparagraph 1.4(b)(i)(aa); and
 - (cc) recognised organisations committed to the protection of the environment

to make representations to it; and
 - (ii) shall give consideration to representations received by it.
- (c) The forgoing provisions of this Clause 1.4 are without prejudice to the power of the Joint Commission, in Annex D of the Treaty, to give directions to the Designated Authority on the discharge of its powers and functions.

Article 2 Graticulation of the Joint Petroleum Development Area

2.1 Sections and Sub-sections

For the purposes of this Code:

- (a) the surface of the Earth shall be divided:
 - (i) by the meridian of Greenwich and by meridians that are at a distance from that meridian of five (5) minutes, or a multiple of five (5) minutes, of longitude; and
 - (ii) the equator and by parallels of latitude that are at a distance from the equator of five (5) minutes, or a multiple of five (5) minutes, of latitude;

into sections, each of which is bounded:

 - (iii) by portions of two (2) of those meridians that are at a distance from each other of five (5) minutes of longitude; and
 - (iv) by portions of two (2) of those parallels of latitude that are at a distance from each other of five (5) minutes of latitude; and
- (b) the surface of the Earth shall further be divided:

- (i) by the meridian of Greenwich and by meridians that are at a distance from that meridian of one (1) minute, or a multiple of one (1) minute, of longitude; and
- (ii) the equator and by parallels of latitude that are at a distance from the equator of one (1) minute, or a multiple of one (1) minute, of latitude;

into sub-sections, each of which is bounded:

- (iii) by portions of two (2) of those meridians that are at a distance from each other of one (1) minute of longitude; and
- (iv) by portions of two (2) of those parallels of latitude that are at a distance from each other of one (1) minute of latitude.

2.2 Blocks and Sub-blocks

A section that is wholly or partly within the JPDA is a Block. A sub-section that is wholly or partly within the JPDA is a Sub-Block. The Designated Authority shall allocate an identifying number to each Block and Sub-Block. Where a Sub-Block is divided by depth, the Designated Authority shall allocate an identifying letter to each part.

Article 3 Geodetic Datum

Whenever it is necessary to determine the position of a point in the JPDA, that position shall be determined by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6378160 metres and a flattening of 100/29825 and by reference to the position of the Johnson Geodetic Station in the Northern Territory of Australia. The Johnson Geodetic Station shall be taken to be situated at 133 degrees, 12 minutes and 30.0771 seconds of East Longitude and at 25 degrees, 56 minutes and 54.5515 seconds of South Latitude and to have a ground level of 571.2 metres above the spheroid referred to above.

PART II

AUTHORISATION OF ACTIVITIES

Article 4 General Provisions

4.1 Prohibited without Authorisation

- (a) Except pursuant to an Authorisation, a person shall not explore for, develop or exploit Petroleum within the JPDA, nor export Petroleum from the JPDA.
- (b) Paragraph 4.1(a) includes:
 - (i) the construction, installation and operation of any structure, facility, installation, equipment or other property, and the carrying out of any other works, in the JPDA; and

- (ii) the marketing of Petroleum.

4.2 Acquisition of Title to Petroleum

A person shall not acquire title to Petroleum before it has been recovered from a Reservoir and Initially Processed.

4.3 Joint and Several Liability

If there is more than one Authorised Person in respect of a particular Authorisation, the obligations and liabilities of the Authorised Person under an Authorisation are the obligations and liabilities of them all, jointly and severally.

4.4 Joint Operating and Other Agreements

- (a) Except with the consent in writing of the Designated Authority and in accordance with the conditions of the consent, any agreement (whether an agreement commonly referred to as a joint operating agreement, or otherwise) made by and between any two or more persons with respect to any share of:

- (i) the rights, interests, benefits, obligations and liabilities of the Authorised Person under the Authorisation; or
- (ii) any Petroleum, or any proceeds of sale of any Petroleum, which, at the time the agreement is made, has not been, but might be, produced from the Authorised Area

is of no force or effect.

- (b) Paragraph 4.4(a) does not apply to an agreement for the sale or exchange of Crude Oil where the sale or exchange occurs after title thereto has passed to the Authorised Person.

- (c) A consent by the Designated Authority under this Clause 4.4:

- (i) is without prejudice to Clause 4.3; and
- (ii) unless the consent specifically provides otherwise, is not a consent to any subsequent assignment or other dealing, as mentioned in Clause 4.7, contemplated by the agreement with those rights, interests, benefits, obligations and liabilities upon the happening of certain events, including those events commonly referred to as sole risk operations, withdrawal and default.

4.5 Approval of Operator

- (a) The appointment of an Operator shall be subject to the prior approval of the Designated Authority where:
 - (i) there is more than one Authorised Person in respect of a particular Authorisation and the person appointed as Operator is one of those Authorised Persons, and

- (ii) the person appointed as Operator is not an Authorised Person.
- (b) Any change in Operator shall be subject to the prior approval of the Designated Authority.
- (c) Where the Designated Authority determines that an Operator is no longer competent to be an Operator, the Designated Authority may, by written notice to the Operator and to the Authorised Person, revoke its approval.

4.6 Change in Control

- (a) All changes in Control of an Authorised Person shall be subject to the prior approval of the Designated Authority.
- (b) Where a change in Control occurs without the prior approval of the Designated Authority, the Designated Authority may terminate the applicable Authorisation.
- (c) Paragraph 4.6(a) does not apply if the change in Control is the direct result of an acquisition of shares or other securities listed on a recognised stock exchange.
- (d) For the purposes of this Clause 4.6, “change in Control” includes a person ceasing to be in Control (whether or not another person becomes in Control), and a person obtaining Control (whether or not another person was in Control).

4.7 Restrictions on Assignment

- (a) Except with the consent in writing of the Designated Authority and in accordance with the conditions of the consent, no assignment or other dealing in respect of an Authorisation by an Authorised Person shall be of any force or effect.
- (b) Paragraph 4.7(a) includes any assignment, transfer, conveyance, novation, merger, encumbering or other dealing in any manner whatsoever or howsoever (whether legally, beneficially or otherwise, and whether conditionally or not) by an Authorised Person with:
 - (i) an Authorisation, or all or any part of its rights, interests, benefits, obligations and liabilities under it;
 - (ii) Petroleum which has not then been, but might be, recovered in the Contract Area, or any proceeds of sale of such Petroleum; and
 - (iii) anything whereby the Authorisation, that Petroleum or any of those rights, interests and benefits would, but for this Clause 4.7, be held for the benefit of, or be exercisable by or for the benefit of, any other person.
- (c) Sub-paragraph 4.7(b)(ii) does not apply to an agreement for the sale or exchange of Crude Oil where the sale or exchange occurs after title thereto has passed to the Authorised Person.
- (d) The Designated Authority may not consent to a dealing which would result in a person other than a limited liability corporation, or an entity with limited liability, specifically established for the sole purposes of the Production Sharing Contract, becoming a Contractor, and any consent otherwise is of no force or effect.

- (e) For the purposes of 4.7(b), encumbrance includes any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set off, counterclaim, trust arrangement, overriding royalty, net profits interest, or any other security, preferential right, equity or restriction, any agreement to give or to create any of the forgoing and any transaction which, in legal terms, is not a secured borrowing but which has an economic or financial effect similar to that of a secured borrowing.

4.8 Indemnification of Designated Authority and of Joint Commission

An Authorised Person shall:

- (a) defend, indemnify and hold harmless the Designated Authority and the Joint Commission from all claims by third parties resulting, directly or indirectly, from Authorised Activities; and
- (b) maintain insurance in respect thereof on a strict liability basis for such amount as the Designated Authority requires from time to time.

Article 5 Applications

5.1 Invitation

The Designated Authority may, by notice in official Timor-Leste and Australian Government gazettes, and in such other manner, if any, as it decides, from time to time invite applications to enter into an Authorisation.

5.2 Content of Invitation

An invitation mentioned in Clause 5.1 shall specify:

- (a) the area concerned, and the activities the Designated Authority proposes to authorise in respect of it;
- (b) the criteria upon which applications will be assessed;
- (c) the time by which, and the manner in which, applications may be made;
- (d) the fees, if any, which are to accompany the application; and
- (e) such other matters as the Designated Authority considers material or convenient to specify.

Unless the invitation specifically so states, the Designated Authority is not obliged to grant an Authorisation to any applicant.

5.3 Applicant's Proposals in respect of Health, Safety and the Environment

- (a) An application for an Authorisation shall include proposals:

- (i) for securing the health, safety and welfare of persons in or about the Authorised Activities; and
 - (ii) for protecting the natural and marine environment, and for preventing and minimising pollution and other environmental harm from the Authorised Activities.
- (b) An Authorisation awarded to an applicant obliges it to comply with its proposals as mentioned in paragraph 5.3(a), but without prejudice to its obligation to comply with more stringent requirements (if any) in the Treaty, the Code or the Authorisation.

5.4 Applicant's Proposals in respect of Training, Employment, and Local Goods and Services

- (a) An application for an Authorisation shall include proposals for:
 - (i) training, and, with due regard to occupational health and safety requirements, giving preference in employment in the Authorised Activities to nationals and permanent residents of Timor-Leste; and
 - (ii) the acquisition of goods and services from persons based in Timor-Leste.
- (b) An Authorisation awarded to an applicant obliges it to comply with its proposals as mentioned in paragraph 5.4(a), but without prejudice to its obligation to comply with more stringent requirements (if any) in the Treaty, the Code or the Authorisation.

5.5 Designated Authority to Consider Applications

The Designated Authority may not grant an Authorisation in respect of an area to the extent to which applications in respect of that area have been invited, until all applications submitted in compliance with the terms of such invitation have finally been considered.

5.6 Designated Authority not Obligated to Invite Applications

This Article 5 does not oblige the Designated Authority to invite applications. However, if the Designated Authority grants an Authorisation without inviting applications, it shall publish a brief explanation for its so doing in a convenient manner.

5.7 False or Misleading Information in an Application

The knowing or reckless giving of information that is false or misleading in a material respect in, or in connection with, any application under the Code, shall be grounds on which the Designated Authority may terminate any Authorisation granted as a result of that application.

Article 6 Making of Production Sharing Contracts

6.1 Power of Designated Authority

The Designated Authority may, with the approval of the Joint Commission:

- (a) subject to Clauses 6.2 and 5.5; and
- (b) in respect of all or any part of the JPDA (subject to any other Production Sharing Contract authorising activities in that area);

make a Production Sharing Contract with any person.

6.2 Restrictions on Choice of a Contractor

- (a) The Designated Authority may only make a Production Sharing Contract with a person, or group of persons, which:
 - (i) it is satisfied has, or has access to, the financial capability, and the technical knowledge and ability, to carry on the Petroleum Operations in a manner wholly consistent with the Treaty, the Code and the Production Sharing Contract; and
 - (ii) if a group, has made an agreement of a kind which, if the Production Sharing Contract were made with it, would be an agreement of the kind mentioned in Clause 4.4, and the Designated Authority has given its consent to the agreement and the group has agreed to act (and has acted and is acting) in accordance with the conditions (if any) of the consent.
- (b) A Production Sharing Contract may only be made with a person which is a limited liability corporation or entity with limited liability, or with persons who are limited liability corporations or entities with limited liability, specifically established for the sole purpose of the Production Sharing Contract. A Production Sharing Contract made other than with such a person or persons, as the case may be, is of no force or effect.
- (c) If a Contractor engages in a business other than the Petroleum Operations, the Designated Authority may terminate the Production Sharing Contract.

Article 7 Rights and Obligations Conferred by Production Sharing Contract

7.1 Principal Rights and Exclusivity

- (a) A Production Sharing Contract authorises the Contractor exclusively to explore for, develop and exploit Petroleum in the Contract Area, and to export that Petroleum from the JPDA.
- (b) Paragraph 7.1(a) includes:
 - (i) the construction, installation and operation of structures, facilities, installations, equipment and other property, and the carrying out of other works, necessary for the purposes mentioned in it, in the Contract Area; and
 - (ii) the marketing of that Petroleum.
- (c) Without limiting the generality of the forgoing provisions of this Clause 7.1, the Petroleum Operations may be limited by reference to Crude Oil, Natural Gas or other constituents of Petroleum, and the Contract Area may be delineated vertically as well as horizontally.

7.2 Mandatory Provisions

A Production Sharing Contract obliges the Contractor to comply with its obligations under the Treaty and the Code. Subject thereto, the Production Sharing Contract shall:

- (a) oblige the Contractor to fund the Petroleum Operations;
- (b) oblige the Contractor to carry on the Petroleum Operations in accordance with programmes and budgets approved by the Designated Authority;
- (c) oblige the Contractor periodically to submit to the Designated Authority, in respect of the Petroleum Operations, data, information, reports, assessments and plans;
- (d) provide for the Contractor to share Petroleum from the Contract Area with the Designated Authority;
- (e) permit the Contractor to lift, dispose of and export from the Contract Area, its share of Petroleum from the Contract Area, and (without prejudice to its obligations under the Treaty, the Code and the Contract) to retain the proceeds from the sale thereof;
- (f) subject to Clause 4.2, specify the point or points at which title to the Contractor's share of Petroleum from the Contract Area will pass to it;
- (g) oblige the Contractor, at the request of the Designated Authority, to lift, dispose of and export from the Contract Area, all or a portion of the Designated Authority's share of Petroleum on terms no less favourable to the Designated Authority than those which the Contractor receives for its own share, and to account to the Designated Authority for the value thereof;
- (h) provide for third party access to structures, facilities, installations, equipment and other property, and other works, constructed, installed or operated in the course of the Petroleum Operations; and
- (i) provide for disputes between the Designated Authority and the Contractor to be resolved by an independent tribunal.

7.3 Other Provisions

A Production Sharing Contract may:

- (a) oblige the Contractor to carry out specified minimum levels of work and expenditure;
- (b) provide for the periodic relinquishment of parts of the Contract Area;
- (c) provide for the Contractor to maintain insurances in addition to those mentioned in Clause 4.8;
- (d) provide for the consequences of a failure of the Contractor to fulfil its obligations under the Production Sharing Contract;
- (e) oblige the Contractor to provide security for the funding and performance of its obligations under the Production Sharing Contract, including in respect of decommissioning;

- (f) specify the actions, in addition to those mentioned in Clause 7.4, to be taken by the Designated Authority and the Contractor, on the discovery of Petroleum;
- (g) oblige the Contractor to transfer title, to the Designated Authority, to structures, facilities, installations, equipment and other property, and to other works, constructed, installed or operated in the course of Petroleum Operations;
- (h) provide that the Contract is a commercial agreement and that both the Designated Authority and the Contractor waive any claim to sovereign immunity which they may have, both as to process and execution; and
- (i) provide for such other matters as may be convenient.

7.4 Discovery of Petroleum

A Contractor shall notify the Designated Authority in writing within twenty four hours whenever any Petroleum is discovered in its Authorised Area, and shall provide such information in regard thereto as the Designated Authority may request, including details in writing of the chemical composition and physical properties of the Petroleum, and the nature of the sub-soil in which the Petroleum occurs.

Article 8 Prospecting Authorisation

8.1 Grant

- (a) The Designated Authority may, in respect of all or any part of the JPDA, grant a Prospecting Authorisation to any person, subject to such conditions as the Designated Authority thinks fit and specifies in the Authorisation.
- (b) A Prospecting Authorisation, while it remains in force, authorises the holder to carry on, in the area specified in the Prospecting Authorisation, the acquisition of data and other information related to surface and subsurface areas.
- (c) Nothing in a Prospecting Authorisation authorises the holder to drill a well or to have any preference or right to make a Production Sharing Contract.

8.2 Notice to Other Persons

Where:

- (a) a person holds an Authorisation in respect of an area; and
- (b) a Prospecting Authorisation is granted to another person in respect of that area;

the Designated Authority shall, by written notice served on each of those persons, inform them of:

- (c) the Authorised Activities of the other; and
- (d) the conditions to which the Prospecting Authorisation granted to the other is subject.

8.3 Surrender and Cancellation

A Prospecting Authorisation:

- (a) may be surrendered by the holder at any time by instrument in writing served on the Designated Authority, provided that the Authorised Person has fulfilled all its obligations thereunder; and
- (b) may, if the holder has not complied with a condition to which the Prospecting Authorisation is subject, be cancelled by the Designated Authority by instrument in writing served on the holder.

Article 9 Access Authorisation

9.1 Grant

- (a) The Designated Authority may grant to:
 - (i) a Contractor (in respect of a part of the JPDA which is not the Contract Area under its Production Sharing Contract);
 - (ii) a person wishing to undertake a hydrographic survey to facilitate the exploration for, development or exploitation of Petroleum within the JPDA, or the export of Petroleum from the JPDA (in respect of all or a part of the JPDA); or
 - (iii) with the approval of the Joint Commission if in regard to a Pipeline, a person (an "Infrastructure Provider"), not being a Contractor, wishing to construct, install or operate, in the JPDA, structures, facilities, installations, equipment or other property, or carry out other works, for the exploration for, development or exploitation of Petroleum within the JPDA, or the export of Petroleum from the JPDA (in respect of a part of the JPDA);

an Access Authorisation, subject to such conditions as the Designated Authority thinks fit and specifies in the Access Authorisation;
- (b) An Access Authorisation authorises the holder:
 - (i) if a Contractor, to carry on, in the area specified in the Access Authorisation, and in relation to the Petroleum Operations authorised by its Production Sharing Contract, the operations so specified (including the construction, installation and operation of structures, facilities, installation, equipment and other property, and the carrying out of other works); and
 - (ii) if a person undertaking a hydrographic survey, to carry on, in the area specified in the Access Authorisation, and in relation to the matters mentioned in sub- paragraph 9.1(a)(ii), the operations so specified; and
 - (iii) if an Infrastructure Provider, to carry on, in the area specified in the Access Authorisation, and in relation to the matters mentioned in sub- paragraph 9.1(a)(iii), the operations so specified.
- (c) Nothing in an Access Authorisation authorises the holder to drill a well.

9.2 Notice to Other Persons

The Designated Authority may not grant an Access Authorisation with any person in respect of an area that is the subject of a Production Sharing Contract with, or a Prospecting Authorisation held by, another person, or vary an Access Authorisation in force in respect of such an area, unless:

- (a) it has, by instrument in writing served on that other person, given not less than one month's notice of its intention to grant, or vary, as the case may be, the Access Authorisation;
- (b) it has served a copy of the instrument:
 - (i) on such other persons as it thinks fit; and
 - (ii) in a case where it intends to vary an Access Authorisation, on the holder of the Access Authorisation;
- (c) it has, in the instrument:
 - (i) given particulars of the Access Authorisation proposed to be granted, or of the variation proposed to be made, as the case may be; and
 - (ii) specified a date on or before which a person on whom the instrument, or a copy of the instrument, is served may, by instrument in writing served on the Designated Authority, submit any matters that it wishes the Designated Authority to consider; and
- (d) it has taken into account any matters so submitted to it on or before the specified date by such a person.

9.3 Surrender and Cancellation

- (a) An Access Authorisation:
 - (i) may be surrendered by the holder at any time by instrument in writing served on the Designated Authority, provided that the Authorised Person has fulfilled all its obligations thereunder; and
 - (ii) may, if the holder has not complied with a condition to which the Access Authorisation is subject, be cancelled by the Designated Authority by instrument in writing served on the holder.
- (b) The Designated Authority shall serve a copy of the instrument concerned on any Contractor or holder of a Prospecting Authorisation in whose Authorised Area operations were authorised to be carried on by the Access Authorisation concerned.

9.4 Reports to Other Persons

An Access Authorisation in respect of an area that is the subject of a Production Sharing Contract shall,

- (a) to the extent that the Designated Authority is satisfied that it is right and proper to do so having regard to the operations authorised by the Access Authorisation and to the

rights, interests, benefits, obligations and liabilities of the Contractor under the Production Sharing Contract, and

- (b) having taking into account any matters submitted to it by the Contractor and those other persons mentioned in Clause 9.2,

require that the holder of the Access Authorisation furnish to the Contractor, at such times and in such manner as are specified in the Access Authorisation, such data, information and reports as are so specified.

9.5 Third Party Access

The conditions to which an Access Authorisation granted to a Contractor or to an Infrastructure Provider are subject shall include conditions as to third party access to the structures, facilities, installations, equipment and other property, and other works concerned.

9.6 Directions

The Designated Authority may give directions to the holders of Access Authorisations and to other Authorised Persons, regarding the coordination of their respective operations.

Article 10 Unitisation

10.1 Power of Designated Authority to Require Unitisation

- (a) Where a Reservoir is partly within a Contract Area and partly within another Contract Area, but wholly within the JPDA, the Designated Authority shall require the Contractors to enter into a unitisation agreement with each other within a reasonable time, as determined by the Designated Authority, for the purpose of securing the more effective and optimised production of Petroleum from the Reservoir.
- (b) Where a Reservoir is partly within a Contract Area and partly within an area not the subject of a Production Sharing Contract, but wholly within the JPDA, the Designated Authority may require the Contractor to enter into a unitisation agreement with the Designated Authority for the purpose of securing the more effective and optimised production of Petroleum from the Reservoir.

10.2 Designated Authority to Decide

If no agreement has been reached within such a reasonable time, the Designated Authority shall decide on the unitisation agreement.

10.3 Timing

The Designated Authority shall approve or decide on the unitisation agreement before any approvals of the development or exploitation of the Reservoir concerned are given.

10.4 Changes to Unitisation

Any changes to the unitisation agreement shall be subject to the prior approval of the Designated Authority.

Article 11 Additional Powers

11.1 Agreements with Other Persons

The Designated Authority may make an agreement with a person with respect to any matter incidental to or connected with an Authorisation, including assurances to providers of finance to the Contractor regarding the exercise of the Designated Authority's power and functions in regard to assignments, termination and rates of production of Petroleum.

11.2 Power of Designated Authority

The Designated Authority may exempt an Authorised Person from complying with the conditions of its Authorisation, and may also agree to vary or suspend those conditions, either with or without conditions and either temporarily or permanently.

11.3 Approval of Joint Commission

Notwithstanding Clause 11.2, the Designated Authority may not, without the approval of the Joint Commission, exempt an Authorised Person from complying with, or vary or suspend:

- (a) any condition of a Production Sharing Contract; or
- (b) any condition of an Authorisation in respect of a Pipeline.

PART III

CONDUCT OF AUTHORISED ACTIVITIES

Article 12 Work Practices

12.1 Proper and Workmanlike Manner

An Authorised Person shall carry out Authorised Activities in a proper, efficient and workmanlike manner, and in accordance with the Treaty and the Code, its Authorisation and Good Oil Field Practice.

12.2 Particular Obligations

In particular, an Authorised Person shall carry out Authorised Activities in such a manner as is required by Clause 12.1 to:

- (a) protect the environment in and about the Authorised Area, ensure that Authorised Activities result in minimum ecological damage or destruction, and clean up pollution;
 - (b) ensure the health, safety and welfare of persons in or about the Authorised Activities;
 - (c) maintain in safe and good condition and repair, the Authorised Area and all structures, facilities, installations, equipment and other property, and other works, used or to be used, in Authorised Activities;
 - (d) manage the resources in a way benefiting Timor-Leste, Australia and the Contractors and in accordance with good reservoir management;
 - (e) on the earlier of:
 - (i) termination of the Authorisation; and
 - (ii) when no longer required for Authorised Activities;
- and, in either case:
- (iii) except with the consent in writing of the Designated Authority and in accordance with the conditions of the consent; or
 - (iv) unless the Authorisation otherwise provides;

abandon, decommission, remove and dispose of the property and other works mentioned in paragraph 12.2(c), clean up the Authorised Area and make it good and safe, and protect the environment.

PART IV

INFORMATION AND INVESTIGATION

Article 13 Data and Information

13.1 Ownership of Data

- (a) The Designated Authority shall have title to all data and information acquired in the course of, or as a result of, Authorised Activities.
- (b) Paragraph 13.1(a) includes:
 - (i) all data and information, whether raw, processed, interpreted or analysed (including cores, cuttings, samples, and all other geological, geophysical, geochemical, drilling, well, production and engineering data and information); and
 - (ii) all conclusions drawn wholly or partly therefrom, and all opinions based wholly or partly thereon.

13.2 Records and Reporting

An Authorised Person shall:

- (a) keep such financial, commercial, legal, operational, technical and other data, information and records relating to Authorised Activities (including the sale or other disposition of Petroleum, and the data and information mentioned in Clause 13.1) in such manner and at such place;
- (b) make available to the Designated Authority all such data, information and records in such manner and at such time and at such place; and
- (c) provide the Designated Authority with such reports in respect thereof and otherwise in respect of Authorised Activities

as the Designated Authority specifies.

Article 14 Release of Information and Data

14.1 Use of Data and Information

- (a) The Designated Authority may make such use as it wishes of the data and information mentioned in Article 13, and nothing in Clauses 14.2 or 14.3 prevents the Designated Authority using data and information for the purposes of general statistical and other general reporting (publicly or otherwise) on its activities.
- (b) Except with the consent in writing of the Designated Authority and in accordance with the conditions (if any) of the consent, the Authorised Person may only use the data and information mentioned in Clause 13.1 for its Authorised Activities or for an application for an Authorisation.

14.2 Confidentiality of Data and Information

- (a) Except as otherwise provided in the Authorisation or with the consent of the Authorised Person, the Designated Authority shall not publicly disclose or, other than for the purpose of the administration of the Treaty or the Code, or as otherwise required by the Treaty or the Code, make available to any person, any data or information mentioned in Clause 13.1 until:
 - (i) other than in the case of a conclusion or opinion which has been clearly marked as such when submitted to the Designated Authority the earlier of:
 - (aa) two years after the data or information was acquired by the Authorised Person; and
 - (bb) the Authorisation under which the data or information was acquired ceasing to apply;
 - (ii) in the case of a conclusion or opinion which has been clearly marked as such when submitted to the Designated Authority, the earlier of:
 - (aa) five years after the conclusion or opinion was reached; and

- (bb) the Authorisation under which the data and information from which the conclusion or opinion was drawn, or on which it was based, wholly or partly, ceasing to apply.
- (b) Except with the consent of the Designated Authority, and in accordance with the conditions (if any) of the consent, an Authorised Person shall not disclose the data or information mentioned in Clause 13.1 other than:
 - (i) to its employees, agents, contractors and Affiliates to the extent necessary for the proper and efficient carrying on of its Authorised Activities;
 - (ii) as required by law; or
 - (iii) for the purpose of the resolution of disputes under its Authorisation.

The Authorised Person shall procure that a person mentioned in sub-paragraph 14.2(b)(i) maintains the data and information disclosed to it confidential in the terms of this Clause 14.2.

14.3 Trade Secrets

- (a) Except as otherwise provided in the Authorisation or with the consent of the Authorised Person, and notwithstanding Clause 14.2, the Designated Authority shall not publicly disclose or, other than for the purpose of the administration of the Treaty or the Code, or as otherwise required by the Treaty or the Code, make available to any person, any data or information submitted to it by an Authorised Person which:
 - (i) is a trade secret of, or other data and information the disclosure of which would, or could reasonably be expected to, adversely affect, the Authorised Person in respect of its lawful business, commercial or financial affairs; and
 - (ii) was clearly marked as such when it was submitted to the Designated Authority.
- (b) Without prejudice to sub-paragraph 14.3(a)(i):
 - (i) the Designated Authority may, at any time and from time to time, serve notice on an Authorised Person requiring it to show cause, within the time specified for the purpose in the notice, why information which it has marked pursuant to sub-paragraph 14.3(a)(ii) above should still be considered a trade secret or other information as mentioned in that sub-paragraph 14.3(a)(ii); and
 - (ii) if the Authorised Person does not show cause within that time, the data and information shall no longer be a trade secret or other such information for the purposes of this Clause 14.3.

14.4 Speculative Seismic Surveys

The Designated Authority may, in an agreement of a type as is mentioned in Clause 11.1, agree longer periods of confidentiality with a person wishing to engage in a speculative seismic survey where it is the intention of that person to sell the data and information acquired on a non-exclusive basis.

14.5 Public Announcement

Except with the consent of the Designated Authority and in accordance with the conditions (if any) of the consent, or as required by law or the rules of an established stock exchange, an Authorised Person shall not make any public statement about its Authorisation or the Authorised Activities. In no event shall such a public statement state or imply that the Designated Authority approves or agrees with its contents.

Article 15 Inspections

15.1 Power of Appointment

The Designated Authority may, by instrument in writing, appoint a person to be an inspector for the purposes of the Code.

15.2 Powers of Inspector

A person so appointed may, at all reasonable times and on production of the appropriate credentials:

- (a) enter any area, structure, vehicle, vessel, aircraft or building in the JPDA, Australia or Timor-Leste that, in his opinion, has been, is being or is to be used for or in connection with the Authorised Activities or the furnishing of information mentioned in Clause 17.1 or in which, in his opinion, there may be documents or records relating to such activities;
- (b) inspect and test, or have tested by a qualified person, any machinery or equipment that, in his opinion, has been, is being or is to be, used for such activities;
- (c) take or remove, for the purpose of analysis or testing, or for use in evidence, samples of Petroleum, water or other substances from a well;
- (d) inspect, take extracts from and make copies of, any document, book or other record relating to, or which in his opinion might relate to, such activities or matters;
- (e) with respect to the health, safety and welfare of persons in or about such activities in the JPDA, issue directions to, and impose restrictions on, the Authorised Person or any person so engaged;
- (f) order, by instrument in writing:
 - (i) the cessation of operations on or in, and the withdrawal of any person from, any area, structure, facility, installation or other works in the JPDA that is being used in connection with such activities; or
 - (ii) the discontinuance of the use of any machinery or equipment in the JPDA;

which he considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and completed;

- (g) make such examinations and inquiries as are necessary to ensure that the provisions of the Code, and any direction issued, restrictions imposed or orders made under the Code, are being complied with; and
- (h) obtain and record statements from witnesses, and appear at or conduct inquiries held regarding accidents occurring in the course of such activities, and appear at inquests and call and examine and cross examine witnesses.

15.3 Provision of Facilities

An Authorised Person and any person who is the occupier or person in charge of any structure, facility, installation, works or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in Clause 15.2, shall provide an inspector with all reasonable facilities and assistance (including, if an Authorised Person and the Inspector requires access to its offshore facilities, the provision of necessary means of transport) that the inspector requests for the effective exercise of his powers.

15.4 Right of Appeal

- (a) A person aggrieved by a decision, direction or order of an inspector made under this Article 15 may appeal in writing to the Designated Authority, which shall as soon as practicable hear and dispose of the appeal, but the bringing of an appeal does not affect the execution and operation of the decision, direction or order appealed from pending disposition of the appeal.
- (b) On appeal under paragraph 15.4(a), the Designated Authority may rescind or affirm the decision, direction or order appealed or may make a new decision, direction or order in substitution therefor, and that new decision, direction or order shall not be subject to further appeal.

15.5 Inspector may be Accompanied

An inspector may be accompanied by any person who the Designated Authority believes has special or expert knowledge of any matter being investigated, tested or examined.

15.6 Inspector not to be Hindered

A person shall not:

- (a) without reasonable excuse, obstruct, molest or hinder an inspector in the exercise of his powers;
- (b) knowingly or recklessly make a statement or produce a document that is false or misleading in a material respect to an inspector engaged in carrying out his duties and functions; or
- (c) with intent to mislead or deceive an inspector when so engaged, perform any act or withhold any information.

Article 16 Auditing

16.1 Audit

An Authorised Person's books and accounts shall be audited at such times and in such manner as may be provided in the Code and its Authorisation.

16.2 Independent Audit

Notwithstanding Clause 16.1, at the written request of the Designated Authority, an Authorised Person shall arrange for, and pay for, an independent audit of its activities under its Authorisation. There shall be a period of at least twelve (12) months between independent audits.

Article 17 Investigations

17.1 Power of Designated Authority

Where the Designated Authority, or an inspector, has reason to believe that an Authorised Person in the JPDA, Australia or Timor-Leste is capable of giving information or producing or making available documents or records relating to Authorised Activities which have been, or are being, carried on, it may, by instrument in writing served on that person, give to that person a direction:

- (a) to furnish to it in writing, within the period and in the manner specified in the instrument, any such information;
- (b) to cause any person to attend before it, or before a person specified in the instrument, at such time and place as is so specified and there to answer questions relating to those matters; or
- (c) to make available to it or a person specified in the instrument, at such time and place as is so specified, such documents or records.

17.2 Self-Incrimination no Excuse

An Authorised Person shall not be excused from furnishing information on the grounds that the information might tend to incriminate that person but the information shall not be admissible in evidence against that person in criminal proceedings.

17.3 Right to copy

Where documents or records are made available pursuant to a requirement under this Article 17, the person to whom the documents or records are made available may make copies of, or take extracts from, them.

17.4 Misleading Information

An Authorised Person who, in purported compliance with a direction under Section 17.1, knowingly or recklessly provides or permits to be provided any information which is false or misleading in a material respect shall have failed to comply with that direction.

PART V

SAFETY ZONES

Article 18 Safety Zones

In accordance with international law, the Designated Authority may declare the extent of safety and restricted zones around structures, facilities, installations, equipment and other property, and other works, in the JPDA, the installation, maintenance and provision on such of navigation, fog and illumination lighting, acoustic and other devices and equipment for the safety of Authorised Activities, and the prohibition and restriction on the movements of vessels in safety and restricted zones.

PART VI

PUBLIC INFORMATION

Article 19 Publication of Details of Authorisations

The Designated Authority shall publish, in official Australian and Timor-Leste Government gazettes, summary details of Authorisations made and granted, and terminated.

Article 20 Public Register

20.1 Copies of Authorisation

The Designated Authority shall maintain a register containing copies of all Authorisations made or granted (and of all amendments thereto), and whether or not terminated, and, in respect of each, summary details of:

- (a) the original Authorised Area and all changes thereto;
- (b) the original Authorised Person (and, if a group, the undivided participating interest of each member of the group) and the identity of the Operator, and all changes thereto;
- (c) exemptions or variations to the conditions thereof;
- (d) unitisation agreements, including the unit area, tract participations and unit interests, and changes thereto; and

- (e) subject to commercial confidence as to the commercial terms, all assignments and other dealings consented to in respect thereof.

20.2 Public Inspection

The register shall be available for inspection by any person at all convenient times and the Designated Authority may require payment of a fee therefor.

PART VIII

TERMINATION

Article 21 Termination of Authorisations

21.1 Generally

Termination of an Authorisation for any reason (including the passage of time) is without prejudice to rights and obligations expressed in the Code or the Authorisation to survive termination, or to rights and obligations accrued thereunder prior to termination, and all provisions of an Authorisation reasonably necessary for the full enjoyment and enforcement of those rights and obligations survive termination for the period necessary.

21.2 Partial Termination

If the Authorised Person is more than one person and circumstances arise in which the Designated Authority may terminate an Authorisation, or an agreement as mentioned in Clause 11.1, the Designated Authority may, on such conditions as it may decide, terminate the Authorisation or agreement only in respect of those persons whose acts or omissions (or in relation to whom acts, omissions or events have occurred which) have led to such circumstances arising, if:

- (a) it is satisfied that the other persons did not connive in such acts, omissions or events, and could not reasonably have been expected to prevent them occurring; and
 - (b) it is satisfied that it is fair and reasonable to do so in all the circumstances;
- and the other persons agree (including to such conditions).

PART IX

MISCELLANEOUS

Article 22 Regulations and Directions

22.1 Regulations

- (a) The Designated Authority may make regulations prescribing all matters that by the Code are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Code.
- (b) Without limiting the generality of paragraph 22.1(a), the regulations may make provision for all or any of the following matters:
- (i) the exploration for Petroleum and the carrying on of operations, and the execution of works, for that purpose;
 - (ii) the production of Petroleum (including the rate at which it is recovered) and the carrying on of operations, and the execution of works, for that purpose;
 - (iii) the measurement and sale or disposal of the Designated Authority's and a Contractor's Petroleum, and the carrying on of operations for that purpose;
 - (iv) the conservation, and prevention of the waste, of natural resources, whether Petroleum or otherwise;
 - (v) the construction, erection, maintenance, operation, use, inspection, certification and re-certification of structures, facilities, installations, other works, equipment and other property;
 - (vi) the control of the flow or discharge, and the prevention of the escape, of Petroleum, water or drilling fluid, or a mixture of water and drilling fluid with Petroleum or any other matter;
 - (vii) the clean-up or other remedying of the effects of the escape of Petroleum;
 - (viii) the prevention of damage to Petroleum-bearing strata;
 - (ix) the prevention of waste or escape of Petroleum;
 - (x) the abandonment, decommissioning, removal and disposal of structures, facilities, installations, equipment and other property, and of other works, used or held for use in Authorised Activities and the cleaning up of Authorised Areas, including steps required to prevent hazard to human life, property and the environment;
 - (xi) the carrying on of Authorised Activities in a safe and environmentally sound manner;
 - (xii) the preparation of assessments of the impact of Authorised Activities on the environment;
 - (xiii) the authorisation by the Designated Authority of entry into the JPDA by the employees of Authorised Persons and the employees of their sub-contractors;
 - (xiv) the control of movement into, within and out of the JPDA of vessels, aircraft, structures, facilities, installations, equipment and other property used or held for use in Authorised Activities;
 - (xv) the actions, in addition to those mentioned in Clause 7.4, to be taken by the Designated Authority and the Contractor on the discovery of Petroleum;

- (xvi) the content and information to be provided in respect of programmes and budgets requiring the prior approval of the Designated Authority;
 - (xvii) the control of tariffs charged for the use of structures, facilities, installations and other works, and the conditions of such use;
 - (xviii) the auditing of an Authorised Person and of its accounts and records;
 - (xix) fees to be paid to the Designated Authority including fees to be paid by:
 - (a) applicants for Authorisations;
 - (b) Authorised Persons;
 - (c) persons wishing to inspect the register mentioned in Clause 20.1; and
 - (xx) any other matters relating to the Code.
- (c) The power under this Article 22 to make regulations may be exercised:
- (i) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and
 - (ii) so as to make, as respects the cases in relation to which it is exercised:
 - (aa) the same provision for all those cases, a different provision for different cases or classes of cases, or different provisions as respects the same case or classes of case for different purposes of the Code; or
 - (bb) any such provision either unconditionally or subject to any specified condition.
- (d) The Designated Authority may, by instrument in writing served on a person or a class of person, make a regulation on a matter consistent with the forgoing provisions of this Clause 22.1 to apply to that person or class of persons.

22.2 Directions

- (a) The Designated Authority may, by instrument in writing served on an Authorised Person, give to that person a direction as to any matter with respect to which regulations may be made under Clause 22.1, or as otherwise provided in the Code.
- (b) In the event of a conflict between a regulation and a direction, the direction shall prevail.
- (c) Where a person fails or neglects to comply with a direction given to it under paragraph 22.2(a), the Designated Authority may cause to be done all or any of the things required by the direction to be done.
- (d) Costs and expenses incurred by the Designated Authority under paragraph 22.2(c) in relation to a direction shall be a debt due to the Designated Authority by the person to whom the direction was given and may be recovered in a court of competent jurisdiction.

22.3 Removal of Property

- (a) Without prejudice to the generality of Clause 22.2, where an Authorised Person fails or neglects to comply with a direction to remove and dispose of property from an Authorised Area, the Designated Authority may remove all or any of the property, and dispose of all or any of it in any manner it thinks fit (including by sale, whether at public auction or otherwise), without notice to the owner.
- (b) The Designated Authority may deduct from the proceeds of any sale of any such property all or any part of any costs and expenses incurred by it under Clauses 22.2 and 22.3 in relation to that property and any other amounts owed to the Designated Authority by the Authorised Person pursuant to the Treaty, the Code or an Authorisation.

Article 23 Provisions in Authorisations

Notwithstanding the provisions of the Code, the Designated Authority may include a more stringent provision in an Authorisation, and that provision will have effect.

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