

# 1989 TREATY BETWEEN AUSTRALIA AND THE REPUBLIC OF INDONESIA ON THE ZONE OF COOPERATION IN AN AREA BETWEEN THE INDONESIAN PROVINCE OF EAST TIMOR AND NORTHERN AUSTRALIA

*Adopted in Timor Sea (Zone of Cooperation) on 11 December 1989*

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## **1989 TREATY BETWEEN AUSTRALIA AND THE REPUBLIC OF INDONESIA ON THE ZONE OF COOPERATION IN AN AREA BETWEEN THE INDONESIAN PROVINCE OF EAST TIMOR AND NORTHERN AUSTRALIA<sup>1</sup>**

*Adopted in Timor Sea (Zone of Cooperation) on 11 December 1989*

AUSTRALIA AND THE REPUBLIC OF INDONESIA

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982<sup>2</sup> and, in particular, Article 83 which requires States with opposite coasts, in a spirit of understanding and cooperation, to make every effort to enter into provisional arrangements of a practical nature which do not jeopardize or hamper the reaching of final agreement on the delimitation of the continental shelf;

DESIRING to enable the exploration for and exploitation of the petroleum resources of the continental shelf of the area between the Indonesian Province of East Timor and northern Australia yet to be the subject of permanent continental shelf delimitation between the Contracting States;

CONSCIOUS of the need to encourage and promote development of the petroleum resources of the area;

DESIRING that exploration for and exploitation of these resources proceed without delay;

AFFIRMING existing agreements on the delimitation of the continental shelf between their two countries;

DETERMINED to cooperate further for the mutual benefit of their peoples in the development of the resources of the area of the continental shelf yet to be the subject of permanent continental shelf delimitation between their two countries;

FULLY COMMITTED to maintaining, renewing and further strengthening the mutual respect, friendship and cooperation between their two countries through existing agreements and arrangements, as well as their policies of promoting constructive neighbourly cooperation;

MINDFUL of the interests which their countries share as immediate neighbours, and in a spirit of cooperation, friendship and goodwill;

CONVINCED that this Treaty will contribute to the strengthening of the relations between their two countries; and

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<sup>1</sup> The following text contains amendments to Articles 4.4, 28.2, 44.1, 44.2, 45.1, 45.2 and 45.3 of the Petroleum Mining Code and to Subsections 4.7, 7.3 and 7.9 of the Model Production Sharing Contract as approved by the Ministerial Council at its inaugural meeting at Denpasar on 9 February 1991 pursuant to Article 6 of the Treaty. Further amendments adopted at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995 to Articles 28.1, 28.2 and 45.1 of the Petroleum Mining Code and to Subsections 4.2 and 4.4 of the Model Production Sharing Contract have subsequently been added.

<sup>2</sup> SD 30 Vol. I p. 1; ILM 21 p. 1261; Cmnd. 8941.

BELIEVING that the establishment of joint arrangements to permit the exploration for and exploitation of petroleum resources in the area will further augment the range of contact and cooperation between the Governments of the two countries and benefit the development of contacts between their peoples;

HAVE AGREED as follows:

## **PART I ZONE OF COOPERATION**

### **ARTICLE 1 DEFINITIONS**

1. For the purposes of this Treaty,
  - (a) "contract" or "production sharing contract" means a contract between the Joint Authority and corporations, concluded on the basis of the Model Production Sharing Contract, entered into under Article 8 of this Treaty and in accordance with Part III of the Petroleum Mining Code;
  - (b) "contract area" means the area constituted by the blocks specified in the contract that have not been relinquished or surrendered;
  - (c) "contractor" means a corporation or corporations which enter into a contract with the Joint Authority and which is registered as a contractor under Article 38 of the Petroleum Mining Code;
  - (d) "Contractors' Income Tax" means tax imposed by the Indonesian Laws No. 7 of 1983 on Income Tax and No. 6 of 1983 on General Tax Provisions and Procedures as amended from time to time;
  - (e) "criminal law" means any law in force in the Contracting States, whether substantive or procedural, that makes provision for or in relation to offences or for or in relation to the investigation or prosecution of offences or the punishment of offenders, including the carrying out of a penalty imposed by a court. For this purpose "investigation" includes entry to a structure in Area A, the exercise of powers of search and questioning and the apprehension of a suspected offender;
  - (f) "good oilfield practice" means all those things that are generally accepted as good and safe in the carrying on of petroleum operations;
  - (g) "Model Production Sharing Contract" means the model contract as appears in Annex C, on the basis of which production sharing contracts for Area A should be concluded, as may be modified from time to time by the Ministerial Council in accordance with paragraph 1(c) of Article 6 of this Treaty;
  - (h) "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 petroleum as defined by sub-paragraph (a) or (b) of this paragraph that has been returned to a reservoir in the contract area;

- (i) "Petroleum Mining Code" means the "Petroleum Mining Code for Area A of the Zone of Cooperation" to govern operational activities relating to exploration for and exploitation of the petroleum resources in Area A of the Zone of Cooperation contained in Annex B, as amended from time to time by the Ministerial Council in accordance with paragraph 1(b) of Article 6 of this Treaty;
  - (j) "petroleum operations" means activities undertaken to produce petroleum and includes exploration, development, field processing, production and pipeline operations, and marketing authorized or contemplated under a production sharing contract;
  - (k) "Resource Rent Tax" means tax imposed by the Petroleum Resource Rent Tax Act 1987 of Australia as amended from time to time;
  - (l) "structure" means an installation or structure used to carry out petroleum operations;
  - (m) "Taxation Code" means the "Taxation Code for the Avoidance of Double Taxation in Respect of Activities Connected with Area A of the Zone of Cooperation", contained in Annex D;
  - (n) "taxation law" means the federal law of Australia or the law of the Republic of Indonesia, from time to time in force, in respect of taxes to which this Treaty applies but shall not include a tax agreement between the Contracting States and a tax agreement of either Contracting State with a third country;
  - (o) "Treaty" means this Treaty including Annexes A, B, C and D;
  - (p) "Zone of Cooperation" refers to the area so designated and described in Annex A and illustrated in the maps forming part of that Annex, which consists of the whole of the area embraced by Areas A, B and C designated in that Annex.
2. For the purposes of Article 10 of this Treaty and the Taxation Code, resident of a Contracting State means:
- (a) in the case of Australia, a person who is liable to tax in Australia by reason of being a resident of Australia under the tax law of Australia; and
  - (b) in the case of the Republic of Indonesia, a person who is liable to tax in the Republic of Indonesia by reason of being a resident of the Republic of Indonesia under the tax law of the Republic of Indonesia, but does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.
3. Where by reason of the provisions of paragraph 2 of this Article, an individual is a resident of both Contracting States, then the status of the person shall be determined as follows:
- (a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
  - (b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;

- (c) if the person has an habitual abode in both Contracting States, or if the person does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer.
4. Where by reason of the provisions of paragraph 2 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

#### **ARTICLE 2 THE ZONE**

1. A Zone of Cooperation is hereby designated in an area between the Indonesian Province of East Timor and northern Australia, which comprises Areas A, B and C.
2. Within the Zone of Cooperation activities in relation to the exploration for and exploitation of petroleum resources shall be conducted on the following basis:
  - (a) In Area A, there shall be joint control by the Contracting States of the exploration for and exploitation of petroleum resources, aimed at achieving optimum commercial utilization thereof and equal sharing between the two Contracting States of the benefits of the exploitation of petroleum resources, as provided for in this Treaty;
  - (b) In Area B, Australia shall make certain notifications and share with the Republic of Indonesia Resource Rent Tax collections arising from petroleum production on the basis of Article 4 of this Treaty; and
  - (c) In Area C, the Republic of Indonesia shall make certain notifications and share with Australia Contractors' Income Tax collections arising from petroleum production on the basis of Article 4 of this Treaty.
3. Nothing contained in this Treaty and no acts or activities taking place while this Treaty is in force shall be interpreted as prejudicing the position of either Contracting State on a permanent continental shelf delimitation in the Zone of Cooperation nor shall anything contained in it be considered as affecting the respective sovereign rights claimed by each Contracting State in the Zone of Cooperation.
4. Notwithstanding the conclusion of this Treaty, the Contracting States shall continue their efforts to reach agreement on a permanent continental shelf delimitation in the Zone of Cooperation.

## **PART II EXPLORATION AND EXPLOITATION IN THE ZONE OF COOPERATION**

#### **ARTICLE 3 AREA A**

1. In relation to the exploration for and exploitation of petroleum resources in Area A, the rights and responsibilities of the two Contracting States shall be exercised by the Ministerial Council and the Joint Authority in accordance with this Treaty. Petroleum operations in Area A shall be carried out through production sharing contracts.

2. The Joint Authority shall enter into each production sharing contract with limited liability corporations specifically established for the sole purpose of the contract. This provision shall also apply to the successors or assignees of such corporations.

#### **ARTICLE 4 AREA B AND AREA C**

1. In relation to the exploration for and exploitation of petroleum resources in Area B Australia shall:
  - (a) notify the Republic of Indonesia of the grant, renewal, surrender, expiry and cancellation of titles made by Australia being exploration permits, retention leases and production licences; and
  - (b) pay to the Republic of Indonesia ten (10) per cent of gross Resource Rent Tax collected by Australia from corporations producing petroleum from Area B equivalent to sixteen (16) per cent of net Resource Rent Tax collected, calculated on the basis that general company tax is payable at the maximum rate.
2. In relation to exploration for and exploitation of petroleum resources in Area C the Republic of Indonesia shall:
  - (a) notify Australia of the grant, renewal, surrender, expiry and cancellation of petroleum exploration and production agreements made by the Republic of Indonesia; and
  - (b) pay to Australia ten (10) per cent of Contractors' Income Tax collected by the Republic of Indonesia from corporations producing petroleum from Area C.
3. In the event that Australia changes the basis upon which the Resource Rent Tax or general company tax is calculated or that the Republic of Indonesia changes the basis upon which Contractors' Income Tax is calculated, the Contracting States shall review the percentages set out in paragraphs 1(b) and 2(b) of this Article and agree on new percentages, ensuring that the relative shares paid by each Contracting State to the other in respect of revenue collected from corporations producing petroleum in Area B and Area C remain the same.
4. In the event of any change occurring in the relevant taxation regimes of either Contracting State, the Contracting States shall review the formulation set out in paragraphs 1(b) and 2(b) of this Article and agree on a new formulation, ensuring that the relative shares paid by each Contracting State to the other in respect of revenue collected from corporations producing petroleum in Area B and Area C remain the same.
5. With regard to Area B and Area C, the Contracting States shall enter into necessary administrative arrangements to give effect to the sharing arrangements in the two Areas as provided in paragraph 1(b) and paragraph 2(b) of this Article at the time that production from either Area commences. In particular, the arrangements shall provide for the manner in which such a share shall be paid from one Contracting State to the other Contracting State. A Contracting State when making a payment to the other Contracting State shall provide information on the basis on which the relevant payment was calculated.
6. The Contracting States shall take necessary measures to ensure the timely and optimum utilization of the petroleum resources in Area B and Area C.

## **PART III THE MINISTERIAL COUNCIL**

### **ARTICLE 5 THE MINISTERIAL COUNCIL**

1. A Ministerial Council for the Zone of Cooperation is hereby established.
2. The Ministerial Council shall consist of those Ministers who may from time to time be designated for that purpose by the Contracting States provided that, at any one time, there shall be an equal number of Ministers designated by each Contracting State.
3. The Ministerial Council shall meet annually or as often as may be required.
4. The Ministerial Council shall normally meet alternately in Australia or in the Republic of Indonesia. Its meetings shall be chaired alternately by a Minister nominated by each Contracting State.
5. Decisions of the Ministerial Council shall be arrived at by consensus. The Ministerial Council may establish procedures for taking decisions out of session.

### **ARTICLE 6 FUNCTIONS OF THE MINISTERIAL COUNCIL**

1. The Ministerial Council shall have overall responsibility for all matters relating to the exploration for and exploitation of the petroleum resources in Area A of the Zone of Cooperation and such other functions relating to the exploration for and exploitation of petroleum resources as the Contracting States may entrust to it. The functions of the Ministerial Council shall include:
  - (a) giving directions to the Joint Authority on the discharge of its functions;
  - (b) of its own volition or on recommendation by the Joint Authority, in a manner not inconsistent with the objectives of this Treaty, amending the Petroleum Mining Code to facilitate petroleum operations in Area A;
  - (c) of its own volition or on recommendation by the Joint Authority, in a manner not inconsistent with the objectives of this Treaty, modifying the Model Production Sharing Contract to facilitate petroleum operations in Area A;
  - (d) approving production sharing contracts which the Joint Authority may propose to enter into with corporations;
  - (e) approving the termination of production sharing contracts entered into between the Joint Authority and corporations;
  - (f) approving the variation of the following provisions of a production sharing contract, with the agreement of the contractor:
    - (i) the Joint Authority's or the contractor's production share;
    - (ii) the operating cost recovery provisions;
    - (iii) the term of the contract; and
    - (iv) the contract area relinquishment provisions;

- (g) approving the variation of the annual contract service fee;
  - (h) giving approval to the Joint Authority to market any or all petroleum production in circumstances determined by the Ministerial Council;
  - (i) approving the transfer of rights and responsibilities by contractors to other corporations that will then become contractors;
  - (j) approving the distribution to Australia and the Republic of Indonesia of revenues derived from production sharing contracts in Area A;
  - (k) through consultation, settling disputes in the Joint Authority;
  - (l) approving financial estimates of income and expenditure of the Joint Authority;
  - (m) approving rules, regulations and procedures for the effective functioning of the Joint Authority including staff regulations;
  - (n) reviewing the operation of this Treaty and making recommendations to the Contracting States that the Council may consider necessary for the amendment of this Treaty;
  - (o) appointment of the Executive Directors of the Joint Authority;
  - (p) at the request of a member of the Ministerial Council inspecting and auditing the Joint Authority's books and accounts;
  - (q) approving the result of inspections and audits of contractors' books and accounts conducted by the Joint Authority;
  - (r) considering and adopting the annual report of the Joint Authority; and
  - (s) reviewing the distribution among the Republic of Indonesia, Australia and third countries, of expenditure on petroleum operations related to Area A.
2. The Ministerial Council in exercising its functions shall ensure the achievement of the optimum commercial utilization of the petroleum resources of Area A consistent with good oilfield and sound environmental practice.
  3. The Ministerial Council shall authorize the Joint Authority to take all necessary steps to enable the commencement of exploration for and exploitation of the petroleum resources of Area A as soon as possible after the entry into force of this Treaty.

## **PART IV THE JOINT AUTHORITY**

### **ARTICLE 7 THE JOINT AUTHORITY**

1. A Joint Authority is hereby established.
2. The Joint Authority shall have juridical personality and such legal capacities under the law of both Contracting States as are necessary for the exercise of its powers and the performance of its functions. In particular, the Joint Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings.



3. The Joint Authority shall be responsible to the Ministerial Council.
4. Decisions of the Executive Directors of the Joint Authority shall be arrived at by consensus. Where consensus cannot be reached, the matter shall be referred to the Ministerial Council.
5. Unless otherwise decided by the Ministerial Council, the Joint Authority shall have its head office in the Republic of Indonesia and an office in Australia, each of which shall be headed by an Executive Director.
6. The Joint Authority shall commence to function on entry into force of this Treaty.

#### **ARTICLE 8 FUNCTIONS OF THE JOINT AUTHORITY**

The Joint Authority, subject to directions from the Ministerial Council, shall be responsible for the management of activities relating to exploration for and exploitation of the petroleum resources in Area A in accordance with this Treaty, and in particular the Petroleum Mining Code and with production sharing contracts. These management functions shall be:

- (a) dividing Area A into contract areas, issuing prospecting approvals and commissioning environmental investigations prior to contract areas being advertised, advertising of contract areas, assessing applications, and making recommendations to the Ministerial Council on applications for production sharing contracts;
- (b) entering into production sharing contracts with corporations, subject to Ministerial Council approval, and supervising the activities of the contractor pursuant to the requirements of the Petroleum Mining Code, including regulations and directions thereunder, and the terms and conditions set out in the contract;
- (c) recommending to the Ministerial Council the termination of production sharing contracts where contractors do not meet the terms and conditions of those contracts;
- (d) terminating production sharing contracts by agreement with contractors;
- (e) recommending to the Ministerial Council the approval of transfer of rights and responsibilities by contractors to other corporations that will then become contractors;
- (f) collecting and, with approval of the Ministerial Council, distributing between the two Contracting States the proceeds of the Joint Authority's share of petroleum production from contracts;
- (g) preparation of annual estimates of income and expenditure of the Joint Authority for submission to the Ministerial Council. Any expenditure shall only be made in accordance with estimates approved by the Ministerial Council or otherwise in accordance with regulations and procedures approved by the Council;
- (h) controlling movements into, within and out of Area A of vessels, aircraft, structures and other equipment employed in exploration for and exploitation of petroleum resources; and, subject to Article 23, authorizing the entry of employees of contractors and their subcontractors and other persons into Area A;
- (i) establishment of safety zones and restricted zones, consistent with international law, to ensure the safety of navigation and petroleum operations;

- (j) issuing regulations and giving directions under the Petroleum Mining Code on all matters related to the supervision of and control of petroleum operations including on health, safety, environmental protection and assessments and work practices, pursuant to the Petroleum Mining Code;
- (k) making recommendations to the Ministerial Council to amend the Petroleum Mining Code and to modify the Model Production Sharing Contract consistent with the objectives of this Treaty;
- (l) requesting action by the appropriate Australian and Indonesian authorities consistent with this Treaty
  - (i) for search and rescue operations In Area A; and
  - (ii) in the event of terrorist threat to the vessels and structures engaged in petroleum operations in Area A;
- (m) requesting assistance with pollution prevention measures, equipment and procedures from appropriate Australian or Indonesian authorities or other bodies or persons;
- (n) preparation of annual reports for submission to the Ministerial Council;
- (o) with the approval of the Ministerial Council, the variation of the following provisions of a production sharing contract with the agreement of the contractor:
  - (i) the Joint Authority's or the contractor's production share;
  - (ii) the operating cost recovery provisions;
  - (iii) the term of the contract; and
  - (iv) the contract area relinquishment provisions;
- (p) with the approval of the Ministerial Council, the variation of the annual contract service fee;
- (q) variation, with the agreement of the contractor, of provisions in the production sharing contract other than those in paragraphs (o) and (p) of this Article;
- (r) with the approval of the Ministerial Council, the marketing of any or all petroleum production in circumstances determined by the Ministerial Council;
- (s) inspecting and auditing contractors' books and accounts relating to the production sharing contract for any calendar year;
- (t) monitoring and reporting to the Ministerial Council the distribution among the Republic of Indonesia, Australia and third countries, of expenditure on petroleum operations related to Area A; and
- (u) such other functions as may be conferred on it by the Ministerial Council.

## ARTICLE 9 STRUCTURE OF THE JOINT AUTHORITY

1. The Joint Authority shall consist of:
  - (a) Executive Directors appointed by the Ministerial Council comprising an equal number of persons nominated by each Contracting State;
  - (b) the following three Directorates responsible to the Executive Directors:
    - (i) a Technical Directorate responsible for operations involving exploration for and exploitation of petroleum resources including operations in respect of functions referred to in paragraph (l) of Article 8;
    - (ii) a Financial Directorate responsible for collecting fees and proceeds from the sale of the Joint Authority's share of production; and
    - (iii) a Legal Directorate responsible for providing advice on any legal issues relating to production sharing contracts and on the operation of law applying in Area A; and
  - (c) a Corporate Services Directorate, to provide administrative support to the Executive Directors and the three other Directorates and to service the meetings of the Ministerial Council.
2. The personnel of the Joint Authority shall be appointed by the Executive Directors under terms and conditions that have regard to the proper functioning of the Joint Authority and the nature of the exploration for and exploitation of petroleum resources being undertaken from time to time in Area A from amongst individuals nominated by each Contracting State. Of the four Directors heading the Directorates, the Executive Directors shall appoint two from each Contracting State. If an Indonesian nominee is appointed to head the Technical Directorate, then an Australian nominee shall be appointed to head the Financial Directorate, and vice versa.
3. Unless otherwise decided by the Ministerial Council, the Technical Directorate shall be in the Joint Authority office located in Australia.
4. The Executive Directors and the four Directors shall constitute the Executive Board.
5. The Executive Directors and personnel of the Joint Authority shall have no financial interest in any activity relating to exploration for and exploitation of petroleum resources in Area A.

## ARTICLE 10 TAXATION OF THE JOINT AUTHORITY AND ITS OFFICERS

1. The Joint Authority shall be exempt from the following existing taxes:
  - (a) in Australia, the income tax imposed under the federal law of Australia;
  - (b) in Indonesia, the income tax (Pajak-Penghasilan) imposed under the law of the Republic of Indonesia, as well as any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes.
2. The Executive Directors and other officers of the Joint Authority:

- (a) shall be exempt from taxation of salaries, allowances and other emoluments paid to them by the Joint Authority in connection with their service with the Joint Authority other than taxation under the law of the Contracting State in which they are deemed under the provisions of Article 1 of this Treaty to be resident for taxation purposes; and
  - (b) shall, at the time of first taking up a post with the Joint Authority located in the Contracting State in which they are not resident under the provisions of Article 1 of this Treaty, be exempt from customs duties and other such charges (except payments for services) in respect of imports of furniture and other household and personal effects in their ownership or possession or already ordered by them and intended for their personal use or for their establishment; such goods shall be imported within six months of an officer's first entry but in exceptional circumstances an extension of time shall be granted by the Government of the Contracting State; goods which have been acquired or imported by officers and to which exemptions under this sub-paragraph apply shall not be given away, sold, lent, hired out, or otherwise disposed of except under conditions agreed in advance with the Government of the Contracting State in which the officer is located.
3. The Ministerial Council may recommend to the Contracting States that additional privileges be conferred on the Joint Authority or its officers, if that is necessary to promote the effective functioning of the Joint Authority. Such privileges shall be conferred only following the agreement of the two Contracting States.

#### **ARTICLE 11 FINANCING**

1. The Joint Authority shall be financed from fees collected under Part VI of the Petroleum Mining Code, provided that the Contracting States shall advance such funds as they jointly determine to be necessary to enable the Joint Authority to commence operations.
2. In the event that the Joint Authority cannot meet an obligation under an arbitral award arising from a dispute under a production sharing contract, the Contracting States shall contribute the necessary funds in equal shares to enable the Joint Authority to meet that obligation.

### **PART V COOPERATION ON CERTAIN MATTERS IN RELATION TO AREA A**

#### **ARTICLE 12 SURVEILLANCE**

1. For the purposes of this Treaty, both Contracting States shall have the right to carry out surveillance activities in Area A.
2. The Contracting States shall cooperate on and coordinate any surveillance activities carried out in accordance with paragraph 1 of this Article.
3. The Contracting States shall exchange information derived from any surveillance activities carried out in accordance with paragraph 1 of this Article.

#### **ARTICLE 13 SECURITY MEASURES**

1. The Contracting States shall exchange information on likely threats to, or security incidents relating to, exploration for and exploitation of petroleum resources in Area A.

2. The Contracting States shall make arrangements for responding to security incidents in Area A.

#### **ARTICLE 14 SEARCH AND RESCUE**

The Contracting States shall cooperate on arrangements for search and rescue in Area A taking into account generally accepted international rules, regulations and procedures established through competent international organizations.

#### **ARTICLE 15 AIR TRAFFIC SERVICES**

The Contracting States shall cooperate on the provision of air traffic services in Area A taking into account generally accepted international rules, regulations and procedures established through competent international organizations.

#### **ARTICLE 16 HYDROGRAPHIC AND SEISMIC SURVEYS**

1. Both Contracting States shall have the right to carry out hydrographic surveys to facilitate petroleum operations in Area A. Both Contracting States shall cooperate on:
  - (a) the conduct of such surveys, including the provision of necessary on-shore facilities; and
  - (b) exchanging hydrographic information relevant to petroleum operations in Area A.
2. For the purposes of this Treaty, the Contracting States shall cooperate in facilitating the conduct of seismic surveys in Area A, including in the provision of necessary on-shore facilities.

#### **ARTICLE 17 MARINE SCIENTIFIC RESEARCH**

Without prejudice to the rights under international law in relation to marine scientific research in Area A claimed by the two Contracting States, a Contracting State which receives a request for consent to conduct marine scientific research into the non-living resources of the continental shelf in Area A shall consult with the other Contracting State on whether the research project is related to the exploration for and exploitation of petroleum resources in Area A. If the Contracting States decide that the research is so related they shall seek the views of the Joint Authority on the research project and, in the light of such views, mutually decide on the regulation, authorization and conduct of the research including the duty to provide data, samples and results of such research to both Contracting States and the Joint Authority and participation by both Contracting States in the research project.

#### **ARTICLE 18 PROTECTION OF THE MARINE ENVIRONMENT**

1. The Contracting States shall cooperate to prevent and minimize pollution of the marine environment arising from the exploration for and exploitation of petroleum in Area A. In particular:
  - (a) the Contracting States shall provide such assistance to the Joint Authority as may be requested pursuant to paragraph (m) of Article 8 of this Treaty; and
  - (b) where pollution of the marine environment occurring in Area A spreads beyond Area A, the Contracting States shall cooperate in taking action to prevent, mitigate and eliminate such pollution.

2. Pursuant to paragraph (j) of Article 8 of this Treaty the Joint Authority shall issue regulations to protect the marine environment in Area A. It shall establish a contingency plan for combating pollution from petroleum operations in that Area.

#### **ARTICLE 19 LIABILITY OF CONTRACTORS FOR POLLUTION OF THE MARINE ENVIRONMENT**

Contractors shall be liable for damage or expenses incurred as a result of pollution of the marine environment arising out of petroleum operations in Area A in accordance with contractual arrangements with the Joint Authority and the law of the State in which a claim in respect of such damage or expenses is brought.

#### **ARTICLE 20 UNITIZATION BETWEEN AREA A AND AREAS OUTSIDE AREA A**

If any single accumulation of petroleum extends across any of the boundary lines of Area A of the Zone of Cooperation as designated and described in Article 1 and Annex A of this Treaty, and the part of such accumulation that is situated on one side of a line is exploitable, wholly or in part, from the other side of the line, the Contracting States shall seek to reach agreement on the manner in which the accumulation shall be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

#### **ARTICLE 21 CONSTRUCTION OF FACILITIES**

In the event that exploration for and exploitation of petroleum resources in Area A necessitates the construction of facilities and provision of services outside Area A, the Contracting States shall provide every assistance to contractors and the Joint Authority to enable the construction and operation of those facilities, and the provision of those services. Construction and operation of such facilities and provision of such services shall be subject to the law and regulations of the relevant Contracting State and any terms and conditions set by the Contracting States.

### **PART VI APPLICABLE LAWS**

#### **ARTICLE 22 LAW APPLICABLE TO PRODUCTION SHARING CONTRACTS**

The law applicable to a production sharing contract shall be specified in that contract.

#### **ARTICLE 23 APPLICATION OF CUSTOMS, MIGRATION AND QUARANTINE LAWS**

1. Each Contracting State may, subject to paragraphs 3 and 5 of this Article, apply customs, migration and quarantine laws to persons, equipment and goods entering its territory from, or leaving its territory for, Area A. The Contracting States may adopt arrangements to facilitate such entry and departure.
2. Contractors shall ensure, unless otherwise authorized by the Contracting States, that persons, equipment and goods do not enter structures in Area A without first entering Australia or the Republic of Indonesia, and that their employees and the employees of their subcontractors are authorized by the Joint Authority to enter Area A.
3. One Contracting State may request consultations with the other Contracting State in relation to the entry of particular persons, equipment and goods to structures in Area A aimed at controlling the movement of such persons, equipment or goods.

4. Nothing in this Article prejudices the right of either Contracting State to apply customs, migration and quarantine controls to persons, equipment and goods entering Area A without the authority of either Contracting State. The Contracting States may adopt arrangements to coordinate the exercise of such rights.
5. (a) Goods and equipment entering Area A for purposes related to petroleum operations shall not be subject to customs duties.  
  
(b) Goods and equipment leaving or in transit through a Contracting State for the purpose of entering Area A for purposes related to petroleum operations shall not be subject to customs duties.  
  
(c) Goods and equipment leaving Area A for the purpose of being permanently transferred to a part of a Contracting State may be subject to customs duties of that Contracting State.

#### **ARTICLE 24 EMPLOYMENT**

1. The Contracting States shall take appropriate measures to ensure that preference is given in employment in Area A to nationals or permanent residents of Australia and the Republic of Indonesia, and to their employment in equivalent numbers over the term of a production sharing contract, but, with due regard to efficient operations and to good oilfield practice.
2. The terms and conditions under which persons are employed on structures in Area A shall be governed by employment contracts or collective agreements. The terms and conditions shall include provisions on insurance and compensation in relation to employment injuries, including death or disability benefits, and may provide for use of an existing compensation system established under the law of either Contracting State. The terms and conditions shall also include provisions in relation to remuneration, periods of duty or overtime, leave and termination. The terms and conditions shall be no less favourable than those which would apply from time to time to comparable categories of employment in both Australia and the Republic of Indonesia.
3. Paragraph 2 of this Article shall also apply to persons employed on seismic, drill, supply and service vessels regularly engaged in activities related to petroleum operations in Area A, regardless of the nationality of the vessel.
4. In relation to the provision of facilities and opportunities, there shall be no discrimination on the basis of nationality amongst persons to which paragraphs 2 and 3 of this Article apply.
5. Disputes arising between employers and employees shall be settled by negotiation in the first instance. Disputes which cannot be settled by negotiation shall be settled either by recourse to a tripartite dispute settlement committee, comprising representatives of employers, employees and persons nominated by the Contracting States, or by recourse to a conciliation and arbitration system available in either Contracting State.
6. Employer and employee associations recognised under the law of either Contracting State may respectively represent employers and employees in the negotiation of contracts or collective agreements and in conciliation and arbitration proceedings.
7. An employment contract or collective agreement shall provide that it shall be subject to the law of one or other Contracting State and shall identify, consistent with paragraph 5 of this Article, the applicable dispute settlement mechanism. Any arbitration decision shall be enforceable under the law of the Contracting State under which it is made.

## **ARTICLE 25 HEALTH AND SAFETY FOR WORKERS**

The Joint Authority shall develop, and contractors shall apply, occupational health and safety standards and procedures for persons employed on structures in Area A that are no less effective than those standards and procedures that would apply in relation to persons employed on similar structures in both Australia and the Republic of Indonesia. The Joint Authority may adopt, consistent with this Article, standards and procedures taking into account an existing system established under the law of either Contracting State.

## **ARTICLE 26 PETROLEUM INDUSTRY VESSELS**

Except as otherwise provided in this Treaty, vessels engaged in petroleum operations shall be subject to the law of the Contracting State whose nationality they possess and, unless they are a vessel with the nationality of the other Contracting State, the law of the Contracting State out of whose ports they operate, in relation to safety and operating standards, and crewing regulations. Such vessels that enter Area A and do not operate out of either Contracting State shall be subject to relevant international safety and operating standards under the law of both Contracting States.

## **ARTICLE 27 CRIMINAL JURISDICTION**

1. Subject to paragraph 3 of this Article a national or permanent resident of a Contracting State shall be subject to the criminal law of that State in respect of acts or omissions occurring in Area A connected with or arising out of exploration for and exploitation of petroleum resources, provided that a permanent resident of a Contracting State who is a national of the other Contracting State shall be subject to the criminal law of the latter State.
2. (a) Subject to paragraph 3 of this Article, a national of a third State, not being a permanent resident of either Contracting State, shall be subject to the criminal law of both Contracting States in respect of acts or omissions occurring in Area A connected with or arising out of the exploration for and exploitation of petroleum resources. Such a person shall not be subject to criminal proceedings under the law of one Contracting State if he or she has already been tried and discharged or acquitted by a competent tribunal or already undergone punishment for the same act or omission under the law of the other Contracting State or where the competent authorities of one Contracting State, in accordance with its law, have decided in the public interest to refrain from prosecuting the person for that act or omission.  
  
(b) In cases referred to in sub-paragraph (a) of this paragraph, the Contracting States shall, as and when necessary, consult each other to determine which criminal law is to be applied, taking into account the nationality of the victim and the interests of the Contracting State most affected by the alleged offence.
3. The criminal law of the flag State shall apply in relation to acts or omissions on board vessels including seismic or drill vessels in, or aircraft in flight over, Area A.
4. (a) The Contracting States shall provide assistance to and cooperate with each other, including through agreements or arrangements as appropriate, for the purposes of enforcement of criminal law under this Article, including the obtaining of evidence and information.



- (b) Each Contracting State recognizes the interest of the other Contracting State where a victim of an alleged offence is a national of that other State and shall keep that other State informed to the extent permitted by its law of action being taken with regard to the alleged offence.
5. The Contracting States may make arrangements permitting officials of one Contracting State to assist in the enforcement of the criminal law of the other Contracting State. Where such assistance involves the detention of a person who under paragraph 1 of this Article is subject to the jurisdiction of the other Contracting State that detention may only continue until it is practicable to hand the person over to the relevant officials of that other Contracting State.

#### **ARTICLE 28 CIVIL ACTIONS**

Claims for damages or restitution of expenses as a result of activities in Area A may be brought in the Contracting State which has or whose nationals or permanent residents have suffered the damage or incurred the expense. The court in which the action is brought shall apply the law and regulations of that State.

#### **ARTICLE 29 APPLICATION OF TAXATION LAW**

1. For the purposes of the taxation law related directly or indirectly to:
  - (a) the exploration for or the exploitation of petroleum in Area A; or
  - (b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation, Area A shall be deemed to be, and be treated by, each Contracting State as part of that Contracting State.
2. In the application of the taxation law:
  - (a) in Area A;
  - (b) to interest paid by a contractor; or
  - (c) to royalties paid by a contractor, each Contracting State shall grant relief from double taxation in accordance with the Taxation Code.
3. A Contracting State shall not impose a tax not covered by the provisions of the Taxation Code in respect of or applicable to:
  - (a) the exploration for or exploitation of petroleum in Area A; or
  - (b) any petroleum exploration or exploitation related activity carried on in Area A, unless the other Contracting State consents to the imposition of that tax.

### **PART VII SETTLEMENT OF DISPUTES**

#### **ARTICLE 30 SETTLEMENT OF DISPUTES**

1. Any dispute arising between the Contracting States concerning the interpretation or application of this Treaty shall be resolved by consultation or negotiation between the Contracting States.

2. Each production sharing contract entered into by the Joint Authority shall contain provisions to the effect that any dispute concerning the interpretation or application of such contract shall be submitted to a specified form of binding commercial arbitration. The Contracting States shall facilitate the enforcement in their respective courts of arbitral awards made pursuant to such arbitration.

## **PART VIII FINAL CLAUSES**

### **ARTICLE 31 AMENDMENT**

1. This Treaty may be amended at any time by agreement between the Contracting States.
2. The Petroleum Mining Code, in accordance with paragraph 1(b) of Article 6 of this Treaty and the Model Production Sharing Contract, in accordance with paragraph 1(c) of Article 6 of this Treaty, may also be amended or modified by decision of the Ministerial Council. Such amendments or modifications shall have the same status as the Petroleum Mining Code and the Model Production Sharing Contract.

### **ARTICLE 32 ENTRY INTO FORCE**

This Treaty shall enter into force thirty (30) days after the date on which the Contracting States have notified each other in writing that their respective requirements for entry into force of this Treaty have been complied with.<sup>3</sup>

### **ARTICLE 33 TERM OF THIS TREATY**

1. This Treaty shall remain in force for forty (40) years from the date of entry into force of this Treaty.
2. Unless the two Contracting States agree otherwise, this Treaty shall continue in force after the initial forty (40) year term for successive terms of twenty (20) years, unless by the end of each term, including the initial term of forty years, the two Contracting States have concluded an agreement on a permanent continental shelf delimitation in the area covered by the Zone of Cooperation.
3. Where the Contracting States have not concluded an agreement on a permanent continental shelf delimitation in the area covered by the Zone of Cooperation five years prior to the end of any of the terms referred to in paragraphs 1 or 2 of this Article, representatives of the two Contracting States shall meet with a view to reaching agreement on such permanent continental shelf delimitation.
4. This Article shall be without prejudice to the continued operation of Article 34 of this Treaty.

### **ARTICLE 34 RIGHTS OF CONTRACTORS**

1. In the event that
  - (a) this Treaty ceases to be in force following conclusion of an agreement between the Contracting States on permanent continental shelf delimitation in the area of the Zone of Cooperation; and

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<sup>3</sup> Notes to this effect were exchanged at Canberra 10 January 1991. The Treaty entered into force 9 February 1991.

(b) there are in existence immediately prior to the date on which this Treaty ceases to be in force, production sharing contracts with the Joint Authority, production sharing contracts shall continue to apply to each Contracting State or some other person nominated by the Contracting State concerned, in place of the Joint Authority, in so far as the contract is to be performed within the territorial jurisdiction of each Contracting State, having regard to the agreement on delimitation. Each Contracting State shall apply to contractors performing contracts within its territorial jurisdiction a regime no more onerous than that set out in this Treaty and the relevant production sharing contract.

2. The two Contracting States shall at the time of the conclusion of the permanent delimitation agreement make arrangements to give effect to paragraph 1 of this Article.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE over the Zone of Cooperation<sup>4</sup> on this eleventh day of December, one thousand nine hundred and eighty nine, in two originals in the English language.

FOR AUSTRALIA: **GARETH EVANS**, Minister for Foreign Affairs

FOR THE REPUBLIC OF INDONESIA: **ALI ALATAS**, Trade Minister for Foreign Affairs

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<sup>4</sup> The Treaty was concluded aboard an aircraft flying above the Timor Sea in an area designated as the Zone of Cooperation under this Treaty.

## **ANNEX A DESIGNATION AND DESCRIPTION INCLUDING MAPS<sup>5</sup> AND COORDINATES OF THE AREAS COMPRISING THE ZONE OF COOPERATION**

### **NOTE**

Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of 1/298.25 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude 25°56'54.5515" South and at Longitude 133°12'30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to above.

### **ZONE OF COOPERATION WHOLE**

The area bounded by the line-

- (a) commencing at the point of Latitude 9deg. 12' 19" South, Longitude 127deg. 33' 32" East;
- (b) running thence south-easterly along the geodesic to the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;
- (c) thence south-easterly along the geodesic to the point of Latitude 9deg. 28' 00" South, Longitude 127deg. 56' 00" East;
- (d) thence south-easterly along the geodesic to the point of Latitude 9deg. 29' 57" South, Longitude 127deg. 58' 47" East;
- (e) thence south-easterly along the geodesic to the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;
- (f) thence south-easterly along the geodesic to the point of Latitude 11deg. 42' 10" South, Longitude 128deg. 29' 10" East;
- (g) thence south-westerly along the geodesic to the point of Latitude 12deg. 03' 17" South, Longitude 127deg. 45' 00" East;
- (h) thence south-westerly along the geodesic to the point of Latitude 12deg. 15' 28" South, Longitude 127deg. 08' 28" East;
- (i) thence north-westerly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;
- (j) thence north-westerly along the geodesic to the point of Latitude 10deg. 28' 00" South, Longitude 126deg. 00' 00" East;
- (k) thence north-easterly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;

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<sup>5</sup> Two maps of the Zone of Cooperation are held in the rear pocket of printed text.

(l) thence north-easterly along the geodesic to the point of Latitude 9deg. 46' 01" South, Longitude 126deg. 00' 50" East; and

(m) thence north-easterly along the geodesic to the point of commencement.

#### **ZONE OF COOPERATION AREA A**

The area bounded by the line-

- (a) commencing at the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;
- (b) running thence south-westerly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;
- (c) thence south-westerly along the geodesic to the point of Latitude 10deg. 28' 00" South, Longitude 126deg. 00' 00" East;
- (d) thence south-easterly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;
- (e) thence north-easterly along the geodesic to the point of Latitude 11deg. 19' 46" South, Longitude 126deg. 47' 04" East;
- (f) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 36" South, Longitude 126deg. 57' 07" East;
- (g) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 30" South, Longitude 126deg. 58' 13" East;
- (h) thence north-easterly along the geodesic to the point of Latitude 11deg. 14' 24" South, Longitude 127deg. 31' 33" East;
- (i) thence north-easterly along the geodesic to the point of Latitude 10deg. 55' 26" South, Longitude 127deg. 47' 04" East;
- (j) thence north-easterly along the geodesic to the point of Latitude 10deg. 53' 42" South, Longitude 127deg. 48' 45" East;
- (k) thence north-easterly along the geodesic to the point of Latitude 10deg. 43' 43" South, Longitude 127deg. 59' 16" East;
- (l) thence north-easterly along the geodesic to the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;
- (m) thence north-westerly along the geodesic to the point of Latitude 9deg. 29' 57" South, Longitude 127deg. 58' 47" East;
- (n) thence north-westerly along the geodesic to the point of Latitude 9deg. 28' 00" South, Longitude 127deg. 56' 00" East; and
- (o) thence north-westerly along the geodesic to the point of commencement.

### **ZONE OF COOPERATION AREA B**

The area bounded by the line-

- (a) commencing at the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;
- (b) running thence south-easterly along the geodesic to the point of Latitude 11deg. 42' 10" South, Longitude 128deg. 29' 10" South;
- (c) thence south-westerly along the geodesic to the point of Latitude 12deg. 03' 17" South, Longitude 127deg. 45' 00" East;
- (d) thence south-westerly along the geodesic to the point of Latitude 12deg. 15' 28" South, Longitude 127deg. 08' 28" East;
- (e) thence north-westerly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;
- (f) thence north-easterly along the geodesic to the point of Latitude 11deg. 19' 46" South, Longitude 126deg. 47' 04" East;
- (g) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 36" South, Longitude 126deg. 57' 07" East;
- (h) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 30" South, Longitude 126deg. 58' 13" East;
- (i) thence north-easterly along the geodesic to the point of Latitude 11deg. 14' 24" South, Longitude 127deg. 31' 33" East;
- (j) thence north-easterly along the geodesic to the point of Latitude 10deg. 55' 26" South, Longitude 127deg. 47' 04" East;
- (k) thence north-easterly along the geodesic to the point of Latitude 10deg. 53' 42" South, Longitude 127deg. 48' 45" East;
- (l) thence north-easterly along the geodesic to the point of Latitude 10deg. 43' 43" South, Longitude 127deg. 59' 16" East; and
- (m) thence north-easterly along the geodesic to the point of commencement.

### **ZONE OF COOPERATION AREA C**

The area bounded by the line-

- (a) commencing at the point of Latitude 9deg. 12' 19" South, Longitude 127deg. 33' 32" East;
- (b) running thence south-easterly along the geodesic to the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;
- (c) thence south-westerly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;

- (d) thence north-easterly along the geodesic to the point of Latitude 9deg. 46' 01" South, Longitude 126deg. 00' 50" East; and
- (e) thence north-easterly along the geodesic to the point of commencement.

## **ANNEX B PETROLEUM MINING CODE FOR AREA A OF THE ZONE OF COOPERATION**

### **PART I DEFINITIONS**

#### **ARTICLE 1 DEFINITIONS**

1. For the purposes of this Petroleum Mining Code:
  - (a) "block" means a block constituted in accordance with Article 2 of this Petroleum Mining Code;
  - (b) "calendar year" means a period of twelve (12) months commencing on 1 January and ending on the following 31 December, according to the Gregorian Calendar;
  - (c) "contract operator" means the contractor appointed and authorized by the contractors to be responsible for petroleum operations and all dealings with the Joint Authority under the contract on behalf of the contractors;
  - (d) "contract year" means a period of twelve (12) consecutive months according to the Gregorian Calendar counted from the effective date of the contract or from the anniversary of such effective date;
  - (e) "discovery area" means the blocks declared by the Joint Authority under Article 16 of this Petroleum Mining Code to contain petroleum;
  - (f) "effective date" means the date a production sharing contract is entered into by and between the Joint Authority and the contractor;
  - (g) "operating costs" means those costs defined in a production sharing contract which are incurred and are recoverable by the contract operator in the course of undertaking petroleum operations;
  - (h) "petroleum pool" means a discrete accumulation of petroleum under a single pressure system;
  - (i) "pipeline" means a pipe or system of pipes and associated equipment necessary for conveying petroleum;
  - (j) "work program and budget of operating costs" means the details of petroleum operations to be carried out in or related to the contract area and the aggregate cost estimates for those operations;
  - (k) "Treaty" means the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia to which this Petroleum Mining Code is an Annex.
2. The terms used in this Petroleum Mining Code shall, unless otherwise specified, have the same meaning as those in the Treaty.



## **PART II AREA A**

### **ARTICLE 2 GRATICULATION OF AREA A**

1. The surface of Area A shall be divided by the Joint Authority into graticular sections defined by meridians of five (5) minutes of longitude (reference the meridian of Greenwich) and by parallels of latitude of five (5) minutes (reference the Equator). A block shall constitute a graticular section as described above and shall include part graticular sections. Each block in Area A shall be allocated a discrete identifying number.
2. The Joint Authority may subdivide each block into graticular sections. Where this is done, the graticular sections shall be defined by meridians of longitude and by parallels of latitude, and each section shall form a block. Each block so defined shall be allocated a discrete identifying number.
3. Contract areas within Area A shall be described in terms of the component blocks.

### **ARTICLE 3 GEODETIC DATUM**

Whenever it is necessary to determine the position of a line in Area A 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 Johnston Geodetic Station in the Northern Territory of Australia. That 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 III THE CONTRACT**

### **ARTICLE 4 RIGHTS CONFERRED BY CONTRACT**

1. A production sharing contract entered into by the Joint Authority, with the approval of the Ministerial Council, shall give to the contractor the exclusive right and the responsibility to undertake petroleum operations in a contract area, subject to the provisions of the Treaty, relevant regulations and directions issued by the Joint Authority, and the terms and conditions of the contract.
2. During each calendar year, any petroleum production shall be shared between the Joint Authority and the contractor.
3. The contract shall not confer on the contractor ownership of petroleum in the ground but shall provide for the contractor to take a share of petroleum production as payment from the Joint Authority for the petroleum operations undertaken by the contract operator pursuant to the contract. Ownership of the Joint Authority's share of petroleum production shall remain with the Joint Authority. Except as provided in paragraph 5 of this Article, the Joint Authority shall authorize the marketing of its share of petroleum production by the contractor who shall market all petroleum produced from the contract area.
4. Title to the contractor's share of petroleum production shall pass to the contractor at the point of tanker loading. Petroleum production shall be measured at the point of tanker loading. For the purposes of a production sharing contract, all such measured production shall be deemed to have been produced on the day of the commencement of tanker loading. Subject to paragraph 5 of this Article the contractor shall have the right to lift, dispose of and export its

share of petroleum, and retain abroad the proceeds obtained therefrom. Except where the Joint Authority markets petroleum as provided in paragraph 5 of this Article, the contract shall require the contractor to pay to the Joint Authority, at regular periods during each calendar year, an amount of money estimated to be equal to the value of the Joint Authority's share of petroleum production lifted for those periods. The contract shall specify the length of each period, monthly if workable, the means by which the value of the Joint Authority's share of petroleum production is estimated for each period, and when each payment shall be made. The estimated value of the Joint Authority's share of petroleum production for each period shall be based on the work program and budget of operating costs and revisions to it, and the expected value of quantities of petroleum to be produced. The estimated value shall be revised during the calendar year having regard to the actual operating costs and value of sales of petroleum.

5. The Joint Authority, with the approval of the Ministerial Council, may market any or all petroleum production. Where it is the Joint Authority's share of petroleum production which is to be marketed by the Joint Authority, the method of determining the estimated value of the Joint Authority's share shall be based on that method described in paragraph 4 of this Article. Where petroleum production marketed by the Joint Authority includes the contractor's share, the contract shall require the Joint Authority to pay to the contractor, at regular periods during each calendar year, an amount of money estimated to be equal to the value of the contractor's share of petroleum production so lifted for those periods. The method of determining the estimated value of the Joint Authority's and the contractor's shares shall be based on that method described in paragraph 4 of this Article. The contract operator shall be obliged to coordinate the efficient lifting of the petroleum production, including tanker nomination and scheduling.
6. The contract shall also specify that within thirty (30) days after the end of each calendar year, adjustments and cash settlements between the contractor and the Joint Authority shall be made on the basis of the actual quantities, amounts and prices involved, in order to ensure that the Joint Authority receives the correct share of petroleum production for each calendar year.
7. In the case of a contract entered into with a group of corporations, each corporation shall be jointly and severally liable for meeting the conditions of the contract, and for complying with the requirements of this Petroleum Mining Code and the regulations and directions issued by the Joint Authority. Each corporation shall be a signatory to the contract with the Joint Authority.

#### ARTICLE 5 THE CONTRACT

1. Without limiting the matters to be dealt with, the contract shall be concluded on the basis of the Model Production Sharing Contract and shall include:
  - (a) the definition of the responsibilities and rights of the contractor, the contract operator and the Joint Authority;
  - (b) the term of the contract and block relinquishment provisions;
  - (c) the work program and expenditure commitments;
  - (d) the definition of operating costs and the method of recovery of those costs by the contract operator;

- (e) the petroleum production share to be allocated to the contractor;
- (f) provisions for the termination of the contract;
- (g) provisions for exemption from and variation of contract conditions;
- (h) provisions for the resolution of disputes between the contractor and the Joint Authority;  
and
- (i) any other provisions that are consistent with the Treaty.

#### ARTICLE 6 CONTRACT OPERATOR

1. Where a number of corporations enters into a contract with the Joint Authority, the corporations shall appoint and authorize one of their number to be the contract operator responsible, on behalf of the group of corporations, for petroleum operations and all dealings with the Joint Authority under the contract.
2. The contract operator shall undertake petroleum operations in an efficient manner which minimizes costs and in a manner in accordance with the provisions of the production sharing contract. Costs incurred by the contract operator in undertaking petroleum operations shall not include any component of profit which accrues to the contract operator solely by virtue of its role as contract operator.
3. All communications on matters related to the contract shall be effected between the contract operator and the Joint Authority. The contract operator shall establish an office in either the Republic of Indonesia or Australia.

#### ARTICLE 7 TERM OF CONTRACT

1. Subject to the provisions of this Article, and Articles 22 and 48 of this Petroleum Mining Code, the term of a production sharing contract shall be thirty (30) years. In addition, the provisions of the production sharing contract shall include:
  - (a) an obligation on the Joint Authority to give sympathetic consideration to an extension of the term of the contract beyond the thirtieth (30th) contract year if petroleum production has not ceased by that year; and
  - (b) automatic extension of the term of the contract to allow continuation of petroleum production to meet natural gas sales contracts the terms of which extend beyond the thirtieth (30th) contract year of the production sharing contract.
2. The production sharing contract may also include a specified term after which the contract may be terminated if a discovery is not made.

### **PART IV PETROLEUM EXPLORATION AND EXPLOITATION**

#### ARTICLE 8 ADVERTISEMENT OF BLOCKS

1. The Joint Authority shall invite applications to enter into a contract over specific blocks. The invitation for applications shall specify:
  - (a) the blocks over which the rights shall be granted;

- (b) the bidding system to apply;
  - (c) the basis on which bids shall be assessed;
  - (d) details of the contract to be entered into including the rights and responsibilities of the parties to the contract; and
  - (e) the period within which applications may be made.
2. Details of the invitation for applications shall be published in official Australian and Indonesian Government Gazettes and in such other ways as the Joint Authority decides.

#### ARTICLE 9 BIDDING SYSTEM

1. The Joint Authority shall invite applications to enter into a contract over parts of Area A using a work program bidding system which identifies annual exploration work program and expenditure commitments to be undertaken in the contract area.
2. The Joint Authority shall make available full details of the bidding system to be used at the time applications are invited.

#### ARTICLE 10 APPLICATION FOR CONTRACTS

1. The Joint Authority shall set out in formal guidelines the form in which applications shall be prepared and lodged. As a minimum requirement a draft contract based on the Model Production Sharing Contract shall be completed and lodged, and applications shall set out details of the work program and expenditure commitments, and the financial capability and technical knowledge and ability available to the applicant.
2. Where an application is lodged by a group comprising several corporations, the application shall be accompanied by evidence that an agreement can be reached between those corporations for cooperation in petroleum operations in the contract area.
3. The application shall be accompanied by the fee specified in Article 44 of this Petroleum Mining Code.

#### ARTICLE 11 CONSIDERATION OF APPLICATION

1. The Joint Authority shall set out in formal guidelines the basis on which applications will be considered and the relevant criteria which applicants will be expected to meet. Contracts shall be offered in accordance with the published criteria for that bidding round. The principal criteria shall be the amount and quality of the exploration work bid.
2. The Joint Authority shall be satisfied that an applicant has the necessary financial capability and technical knowledge and ability to carry out petroleum operations in a manner consistent with the terms and conditions of the contract and this Petroleum Mining Code, including the necessary environmental and safety requirements.

#### ARTICLE 12 GRANT OR REFUSAL OF CONTRACTS

1. The Joint Authority shall seek prior approval from the Ministerial Council to enter into a contract with the preferred applicant or group of applicants.

2. Subject to that approval, the Joint Authority shall notify in writing the successful applicant that it has Ministerial Council approval to enter into a contract with the applicant covering petroleum operations in a specified contract area on terms and conditions set out in the contract. The applicant shall have thirty (30) days within which to accept or refuse the offer in writing. On the applicant accepting the offer, paying the contract service fee, and providing evidence that it has fulfilled any prerequisite conditions such as insurance cover, the Joint Authority shall enter into the contract with the applicant.
3. Unsuccessful applicants shall be advised accordingly.

#### ARTICLE 13 PUBLICATION OF CONTRACTS

The Joint Authority shall publish in official Australian and Indonesian Government Gazettes summary details of:

- (a) contracts entered into; and
- (b) termination of contracts.

#### ARTICLE 14 COMMENCEMENT OF WORK

The contract operator shall commence petroleum operations within six (6) months from the date the contract is entered into, except for reasons of force majeure.

#### ARTICLE 15 DISCOVERY OF PETROLEUM

1. The contract operator shall notify the Joint Authority in writing within twenty four (24) hours whenever any petroleum is discovered and on request by the Joint Authority shall provide details in writing of the:
  - (a) chemical composition and physical properties of the petroleum; and
  - (b) the nature of the sub-soil in which the petroleum occurs.
2. The contract operator shall provide the Joint Authority with any other information concerning the discovery on request by the Joint Authority.
3. The contract operator shall also do such things as the Joint Authority requests to determine the chemical composition and physical properties of any petroleum discovered, and to determine the geographical extent of any petroleum pool and the quantity of petroleum in that pool.

#### ARTICLE 16 DECLARATION OF DISCOVERY AREA

1. The Joint Authority shall declare the blocks within the contract area covering a petroleum pool as a discovery area, provided that the Joint Authority and contract operator agree that the petroleum pool can be produced commercially. These blocks shall form a single contiguous area.
2. At any time after a discovery area has been declared, the Joint Authority may, of its own volition or on request from the contract operator, agree that certain blocks be included in or excluded from the discovery area. Blocks included in the discovery area in this way shall be from within the contractor's contract area.

#### ARTICLE 17 APPROVAL TO PRODUCE PETROLEUM

The contract operator shall not construct any production structures without the approval of the Joint Authority. The Joint Authority shall not unreasonably withhold approvals.

#### ARTICLE 18 APPROVAL TO CONSTRUCT PIPELINE

1. The contract operator shall not construct a pipeline for the purpose of conveying petroleum within or from Area A without the approval of the Joint Authority, nor shall the contract operator operate or remove that pipeline without the approval of the Joint Authority.
2. The Joint Authority may direct a contract operator owning a pipeline to enter into a commercial agreement with another contract operator to enable the second mentioned operator to transport petroleum.

#### ARTICLE 19 PETROLEUM PRODUCTION WORK

Unless otherwise agreed between the contract operator and the Joint Authority, work on a permanent structure to produce petroleum shall commence within six (6) months of approval to construct the structure.

#### ARTICLE 20 RATES OF PRODUCTION

The Joint Authority may direct and make regulations about the commencement of petroleum production and the specific rates of petroleum production. In giving such directions and making such regulations the Joint Authority shall take account of good oilfield practice.

#### ARTICLE 21 UNITIZATION

Where a petroleum pool is partly within a contract area and partly within another contract area, but wholly within Area A, the Joint Authority shall require the contractors to enter into a unitization agreement with each other within a reasonable time, as determined by the Joint Authority, for the purpose of securing the more effective and optimized production of petroleum from the pool. If no agreement has been reached within such reasonable time, the Joint Authority shall decide on the unitization agreement. Without limiting the matters to be dealt with, the unitization agreement shall define or contain the approach to define the amount of petroleum in each contract area, the method of producing the petroleum, and shall appoint the contract operator responsible for production of the petroleum covered by the unitization agreement. The Joint Authority shall approve the unitization agreement before approvals under Article 17 of this Petroleum Mining Code are given. Any changes to the unitization agreement shall be subject to approval by the Joint Authority.

#### ARTICLE 22 BLOCK RELINQUISHMENT

1. The contract shall contain provisions for the progressive relinquishment of blocks from the contract area.
2. In calculating the relinquishment requirements, the blocks in a discovery area shall not be counted as part of the original number of blocks in the contract area.
3. In the event that no discovery area has been declared in the contract area before the end of an initial period specified in the contract, the contract operator shall either relinquish all remaining blocks in the contract area and the contract shall be terminated, or the contract operator shall exercise the option provided in the contract to extend the term of the contract.

#### ARTICLE 23 SURRENDER OF BLOCKS

1. The contractor may surrender some or all of the blocks in a contract area provided the conditions of the contract have been met to the satisfaction of the Joint Authority. Blocks surrendered in this way shall be credited towards the block relinquishment requirement in Article 22 of this Petroleum Mining Code.
2. Before agreeing to an application to surrender some or all of the blocks in a contract area, the Joint Authority may direct the contract operator to clean up the contract area or remove structures, equipment and other property from the contract area and the contract operator shall comply with that direction.

### **PART V GENERAL ARRANGEMENTS**

#### ARTICLE 24 WORK PRACTICES

It shall be the responsibility of the contract operator to ensure that petroleum operations are carried out in a proper and workmanlike manner and in accordance with good oilfield practice.

The contract operator shall take the necessary action to:

- (a) protect the environment in and about the contract area; and
- (b) secure the safety, health and welfare of persons engaged in petroleum operations in or about the contract area.

#### ARTICLE 25 INSURANCE

1. The Joint Authority shall require the contractor to take out and maintain from the effective date of the contract, to the satisfaction of the Joint Authority, insurance on a strict liability basis and for an amount determined by the Joint Authority in consultation with applicants for contracts. It shall also agree with the contractor on a mechanism whereby compensation claims can be determined. The insurance shall cover expenses or liabilities or any other specified things arising in connection with the carrying out of petroleum operations and other activities associated with those operations in the contract area, including expenses associated with the prevention and clean-up of the escape of petroleum.
2. The contract operator shall ensure that transportation of petroleum in bulk as cargo from Area A only takes place in tankers with appropriate insurance commensurate with relevant international agreements.

#### ARTICLE 26 MAINTENANCE OF PROPERTY

The contract operator shall be responsible for maintaining in safe and good condition and repair all structures, equipment and other property in the contract area.

#### ARTICLE 27 REMOVAL OF PROPERTY

1. As directed by the Joint Authority, the contract operator shall remove all property brought into the contract area and comply with regulations and directions concerning the containment and clean-up of pollution.

2. In the event that the contract operator does not remove property or pollution to the satisfaction of the Joint Authority or take such other action as is necessary for the conservation and protection of the marine environment in that contract area, the Joint Authority may direct the contract operator to take such remedial action as the Joint Authority deems necessary. If the contract operator does not comply with that direction, the contractor shall be liable for any costs incurred by the Joint Authority in rectifying the matter.

#### ARTICLE 28 EXEMPTION FROM OR VARIATION OF CONDITIONS

1. Subject to paragraph 2 of Article 28, the Joint Authority may agree to exempt the contractor from complying with the conditions of the contract.<sup>6</sup> The Joint Authority may also agree to vary those conditions.
2. The Joint Authority shall not exempt the contractor from or vary the following conditions of a contract without prior approval of the Ministerial Council:
  - (a) the Joint Authority's or the contractor's production shares;
  - (b) the operating cost recovery provisions;
  - (c) the term of the contract;
  - (d) the block relinquishment provisions;
  - (e) the annual contract service fee;
  - (f) obligations aimed at protecting the environment and preventing and cleaning up pollution as provided under the Treaty including the Petroleum Mining Code and the contract; and
  - (g) the exploration work program required to be performed by a contractor in the first three (3) years of a contract.<sup>7</sup>

#### ARTICLE 29 PROVISION OF INFORMATION

1. The Joint Authority may direct the contractor to provide the Joint Authority with data, documents or information relating to petroleum operations including but not limited to routine production and financial reports, technical reports and studies relating to petroleum operations.
2. The Joint Authority may require the contractor to provide that information in writing within a specified period. The Joint Authority shall have title to all data obtained from the petroleum operations.
3. A contractor shall not be excused from furnishing information on the grounds that the information might tend to incriminate the contractor but the information shall not be admissible in evidence against the contractor in criminal proceedings.

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<sup>6</sup> The words "Subject to paragraph 2 of Article 28," were added at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995.

<sup>7</sup> Subparagraph (g) was added at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995.



### ARTICLE 30 SAFETY ZONES

1. The Joint Authority may declare a safety zone around any specified structure in Area A, and may require the contract operator to install, maintain or provide thereon, navigation, fog and illumination lighting, acoustic and other devices and equipment necessary for the safety of the petroleum operations. A safety zone may extend up to five hundred (500) metres from the extremities of the structure. Unauthorized vessels shall be prohibited from entering the safety zone.
2. Additionally, a restricted zone of one thousand two hundred and fifty (1250) metres may be declared around the extremities of safety zones and pipelines in which area unauthorized vessels employed in exploration for and exploitation of petroleum resources are prohibited from laying anchor or manoeuvring.

### ARTICLE 31 RECORDS TO BE KEPT

The Joint Authority shall require the contractor to keep accounts, records or other documents, including financial records, in connection with petroleum operations and to furnish to the Joint Authority in a specified manner data, reports, returns or other documents in connection with those activities. These arrangements shall also apply to cores, cuttings and samples taken in connection with petroleum operations in the contract area.

### ARTICLE 32 PROSPECTING APPROVAL

The Joint Authority may issue a prospecting approval to any person to carry out petroleum exploration activities in blocks not in contract areas. The prospecting approval shall specify those conditions to which the person shall be subject. The conditions of a prospecting approval shall not include any preference for or rights to enter into a contract over those blocks. All data and reports resulting from such activities shall be submitted to the Joint Authority for its own free use.

### ARTICLE 33 ACCESS APPROVAL

1. In order to promote the optimum exploration for and exploitation of petroleum resources in Area A, the Joint Authority may give approval to a contract operator, and persons holding prospecting approvals or undertaking marine scientific research, to enter a contract area, not being its contract area, to carry out activities in accordance with that approval. The Joint Authority shall consult with the contract operator of the contract area into which access is sought before giving approval. The terms and conditions of approval shall include an obligation to furnish to the Joint Authority in a specified manner data, reports, returns or other documents in connection with activities carried out under the access approval and a prohibition on the drilling of exploration wells.
2. The Joint Authority may also give approval to a contract operator to lay and fix petroleum production facilities on the seabed in a contract area not being its contract area, provided that such activities do not interfere with the petroleum operations in the first contract area.

### ARTICLE 34 INSPECTORS

1. The Joint Authority may appoint a person to be an inspector for the purposes of this Petroleum Mining Code, the regulations and directions issued under Article 37 of this Petroleum Mining Code, and contract terms and conditions applying to petroleum operations in Area A. A person so appointed shall, at all reasonable times and on production of a certificate of appointment:

- (a) have the right to enter any structure, vessel or aircraft in Area A being used for petroleum operations;
  - (b) have the right to inspect and test any equipment being used or proposed to be used for petroleum operations; and
  - (c) have the right to enter any structure, vessel, aircraft or building in which it is thought there are any documents relating to petroleum operations in Area A and may inspect, take extracts from and make copies of any of those documents.
2. The contractor shall provide an inspector with all reasonable facilities and assistance that the inspector requests for the effective exercise of the inspector's powers.

#### ARTICLE 35 SERVICE OF NOTICES

1. A document to be served on a person other than the Joint Authority or a corporation shall be served:
  - (a) by delivering the document to that person;
  - (b) by posting the document as a letter addressed to that person;
  - (c) by delivering the document to that address and leaving the document with a person apparently in the service of that person;
  - (d) by sending the document in the form of a telex or facsimile to that person's telex or facsimile number, as appropriate; or
  - (e) by sending the document as a telegram addressed to that person.
2. A document to be served on a corporation shall be served by complying with sub-paragraphs (b), (c), (d) or (e) of paragraph 1 of this Article.
3. A document to be served on the Joint Authority shall be served by leaving it with a person apparently employed in connection with the Joint Authority, at a place of business of the Joint Authority specified in the contract or by posting the document as a letter or telegram addressed to the Joint Authority at that place of business or by sending the document as a telex or facsimile to the Joint Authority's telex or facsimile number.
4. Where a document is posted as a letter, service shall be deemed to have been effected within seven (7) days of the letter having been posted, unless the contrary is proved.

#### ARTICLE 36 RELEASE OF INFORMATION AND DATA

1. The Joint Authority may make such use as it wishes of information and data contained in a report, return or other document furnished to the Joint Authority, provided that information and data is not made publicly known before the periods of confidentiality identified below have expired.
2. Basic information and data about petroleum operations in a contract area may be released two (2) years after it was lodged with the Joint Authority or when the blocks to which that information and data relates cease to be part of the contract area, if earlier. However, conclusions drawn or opinions based in whole or in part on that information and data shall not

be released until five (5) years after that information and data was lodged with the Joint Authority.

3. Information and data relating to a seismic or other geochemical or geophysical survey shall be deemed to have been lodged no later than six (6) months after the survey was essentially completed. Information and data on wells shall be deemed to have been lodged no later than three (3) months after the well was essentially completed.
4. Notwithstanding paragraph 2 of this Article, the contract operator shall have the right to have access to and use all information held by the Joint Authority relating to the blocks in Area A adjacent to its contract area. Where information and data has been released by the person or some party acting on the person's behalf, the Joint Authority shall not be obliged to maintain the confidentiality of that information and data.
5. The Joint Authority shall be free to use any information and data relating to relinquished, surrendered and other blocks outside the contract area, including releasing it to any party.
6. Contractors shall not use such information and data outside Australia or the Republic of Indonesia without the approval of the Joint Authority.
7. Officials of the Australian and Indonesian Governments may have access to information and data provided to the Joint Authority under this Petroleum Mining Code, provided such officials comply with the provisions of this Article.

#### ARTICLE 37 REGULATIONS AND DIRECTIONS

1. The Joint Authority shall issue regulations and directions to apply to persons, consistent with the Treaty including this Petroleum Mining Code, in order to carry out its functions. In particular, the regulations and directions shall deal with, but are not limited to, the following matters:
  - (a) the exploration for petroleum and the carrying on of operations, and the execution of works, for that purpose;
  - (b) the production of petroleum and the carrying on of operations, and the execution of works, for that purpose;
  - (c) the measurement and the sale or disposal of the Joint Authority's and the contractor's petroleum production, and the carrying on of operations for that purpose, including procedures for transfer of title to petroleum and measurement and verification of petroleum so transferred;
  - (d) the conservation, and prevention of the waste of, the natural resources, whether petroleum or otherwise;
  - (e) the construction, erection, maintenance, operation, use, inspection and certification and recertification of structures, pipelines or equipment;
  - (f) the control of the flow or discharge, and the prevention of the escape, of petroleum, water or drilling fluid, or a mixture of water or drilling fluid with petroleum or any other matter;
  - (g) the clean-up or other remedying of the effects of the escape of petroleum;
  - (h) the prevention of damage to petroleum-bearing strata;

- (i) the prevention of the waste or escape of petroleum;
  - (j) the removal from a contract area of structures, equipment and other property brought into the contract area for or in connection with petroleum operations;
  - (k) the carrying on of petroleum operations in a safe and environmentally sound manner;
  - (l) the preparation of assessments of the impact of petroleum operations on the environment;
  - (m) the authorization by the Joint Authority of entry into Area A by the employees of contractors and the employees of their sub-contractors; and
  - (n) the control of movement into, within and out of Area A of vessels, aircraft, structures and equipment employed in petroleum operations.
2. The Joint Authority may, by instrument in writing served on a person or class of persons, make a regulation or direction on a matter consistent with the above to apply specifically to that person or class of persons.

#### ARTICLE 38 REGISTER OF CONTRACTORS

The Joint Authority shall maintain a register setting out summary details of:

- (a) areas over which contracts are in force;
- (b) the contract operator and the contractor for each contract area;
- (c) work and expenditure commitments relating to the contract area;
- (d) changes to contract conditions, the contract operator and the undivided participating interest of the contractor in a contract area;
- (e) blocks relinquished or surrendered from contract areas;
- (f) changes in names and addresses of the contract operator and the contractor; and
- (g) unitization agreements.

#### ARTICLE 39 APPROVAL OF CONTRACTORS

Corporations wishing to hold an undivided participating interest which would result in changes to the contractor or the contract operator in a contract area shall be required to obtain the Joint Authority's approval of those changes. The Joint Authority shall note such approval in the register. Until such approval is given by the Joint Authority, with the prior consent of the Ministerial Council, the new participating interest holders' agreement shall not be recognized by the Joint Authority, and the contractor's and contract operator's liabilities under a contract shall remain unchanged.

#### ARTICLE 40 INSPECTION OF REGISTER

The Joint Authority shall ensure the register is available for inspection by any person at all convenient times.

#### ARTICLE 41 AUDITING OF CONTRACTOR'S BOOKS AND ACCOUNTS

The contractor's books and accounts shall be subject to audit by the Joint Authority, which shall be conducted annually. The Joint Authority may issue regulations and directions with respect to the auditing of books and accounts.

#### ARTICLE 42 SECURITY OF STRUCTURES

1. Operators of vessels, drilling rigs and structures in Area A shall be responsible for controlling access to their facilities; providing adequate surveillance of safety zones and their approaches; and establishing communications with, and arranging action by, the appropriate authorities in the event of an accident or incident involving threat to life or security.
2. To assist operators in meeting these responsibilities, the Joint Authority shall appoint persons, to be stationed at the office of the Technical Directorate of the Joint Authority, responsible for liaising with appropriate Australian and Indonesian authorities.

#### ARTICLE 43 AMENDMENT OF PETROLEUM MINING CODE

Except in the case of amendments to Part VI of this Petroleum Mining Code, where the provisions of this Petroleum Mining Code are amended, to the extent that the amendments are not consistent with the provisions of contracts in force prior to the amendments, those amendments may only apply to such contracts by agreement between the contract operator and the Joint Authority.

### **PART VI FEES**

#### ARTICLE 44 APPLICATION FEES

1. The fee to be lodged with applications for production sharing contracts is US\$ six thousand (6000).
2. The fee to be lodged with applications for a prospecting approval is US\$ one thousand (1000).
3. Application fees shall not be refunded to unsuccessful applicants.

#### ARTICLE 45 CONTRACT SERVICE FEE

1. At the beginning of each contract year, the contract operator shall pay to the Joint Authority a contract service fee of US\$ one hundred and twenty five thousand (125,000). Upon termination of a contract during the first six (6) contract years of the term of the contract, the contractor must immediately pay the Joint Authority the sum of US\$ seven hundred and fifty thousand (750,000) less any contract service fee previously paid by the contractor, to compensate the Joint Authority for any expense or loss incurred or suffered by the Joint Authority as a result of the termination of the contract.<sup>8</sup>

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<sup>8</sup> Paragraph 1 was amended at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995. It originally read:

"At the beginning of each contract year, the contract operator shall pay to the Joint Authority a contract service fee of US\$ one hundred thousand (100,000)."

2. In addition, if one or more discovery areas have been declared in the contract area, the contract operator shall pay to the Joint Authority at the beginning of the contract year a service fee of:
  - (a) US\$ forty thousand (40,000) for the first discovery area; and
  - (b) US\$ twenty thousand (20,000) for each additional discovery area within the contract area.
3. Where more than one production structure is installed in a discovery area in the contract area, the contract operator shall pay to the Joint Authority at the beginning of the contract year an additional service fee of US\$ twenty thousand (20,000).

#### ARTICLE 46 REGISTRATION FEES

For the approval and registration of agreements between corporations which result in changes to the undivided participating interests of the contractor in a contract area, a fee of US\$ five hundred (500) shall be payable.

#### ARTICLE 47 AMENDMENT OF FEES

With the approval of the Ministerial Council, the Joint Authority may change the fees specified in this Part to reflect any changes in the costs of administration. Those changes in fees shall not be made more frequently than once a year and shall not be applied retrospectively.

### **PART VII PENAL PROVISIONS**

#### ARTICLE 48 TERMINATION OF CONTRACTS

1. Where the contractor has not complied with the provisions of this Petroleum Mining Code, the regulations and directions issued by the Joint Authority, or the terms of the contract the Joint Authority may recommend to the Ministerial Council that the contract be terminated. The Joint Authority shall give thirty (30) days written notice to the contractor of the Joint Authority's intention to recommend termination of the contract.
2. The Ministerial Council shall not agree to the termination of the contract until the contractor has had an opportunity to provide the Joint Authority with reasons why the contract should not be terminated, and the Joint Authority has given full consideration to those reasons. The contractor must provide reasons for non-termination within thirty (30) days of receipt of notice of the Joint Authority's intention to terminate.
3. Notwithstanding the termination of a contract, the contractor shall remain liable to take such action as is necessary to clean-up the contract area and remove all property brought into that area. The contractor shall remain liable to the Joint Authority to pay any outstanding debts due to the Authority.

## **ANNEX C MODEL PRODUCTION SHARING CONTRACT BETWEEN THE JOINT AUTHORITY AND (CONTRACTORS)**

This production sharing contract, which has been approved by the Ministerial Council established under the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (hereinafter called the Treaty), is made and entered into on this day of, 19 by and between the Joint Authority established under the Treaty and , (a) corporation(s) organized and existing under the law of hereinafter called the "contractor", both hereinafter sometimes referred to either individually as the "Party" or collectively as the "Parties".

WITNESSETH

WHEREAS, petroleum existing within Area A of the Zone of Cooperation established by the Treaty is a resource to be exploited jointly by the Contracting States;

WHEREAS, the Joint Authority, with the approval of the Ministerial Council, has an exclusive authority to contract for petroleum operations in and throughout the area described in Appendix A of this Contract and outlined on the map which is Appendix B of this contract, which area is hereinafter referred to as the "contract area";

WHEREAS, the Joint Authority wishes to promote petroleum operations in the contract area and the contractor desires to join and assist the Joint Authority in accelerating the exploration and development of the potential petroleum resources within the contract area;

WHEREAS, the contractor has the necessary financial capability, and technical knowledge and ability to carry out the petroleum operations hereinafter described;

WHEREAS, in accordance with the Treaty, including the Petroleum Mining Code set out in Annex B of the Treaty, a cooperative agreement in the form of a production sharing contract may be entered into between the Joint Authority and corporations for the purpose of petroleum operations; and

NOW, therefore, in consideration of the mutual covenants herein contained, it is agreed as follows:

### **SECTION 1 SCOPE AND DEFINITIONS**

#### **SCOPE**

- 1.1. This contract is a production sharing contract subject to the Treaty, including the Petroleum Mining Code. The Joint Authority shall be responsible for the management of the operations contemplated hereunder in accordance with its management functions defined under the Treaty, including the Petroleum Mining Code. The contractor appoints and authorizes (name of corporation to be the contract operator), being one of the contracting corporations, to be the contract operator who, on behalf of the contractor, shall be responsible to the Joint Authority for the execution of petroleum operations in accordance with the provisions of this contract, and is hereby appointed and constituted as the exclusive corporation to conduct petroleum operations. The contractor shall provide all human, financial and technical resources required for the performance of petroleum operations authorized by the contract, and shall therefore have an economic interest in the development of the petroleum pools in the contract area and be entitled to share in petroleum produced from the contract area in accordance with the provisions of Section 7 of this contract.

- 1.2. Except for expenditures on capital costs for the development of petroleum pools, the contractor shall not incur interest expenses to finance petroleum operations.

## DEFINITIONS

- 1.3. Words and terms used in this contract shall have the same meaning as those defined in the Treaty, including the Petroleum Mining Code set out in Annex B to the Treaty, except where a new definition is expressly provided for in this contract.

- (a) "Affiliated corporation or affiliate" means a corporation or other entity that controls, or is controlled by, a Party to this contract, it being understood that control shall mean ownership by one corporation or entity of at least fifty (50) per cent of:
- (i) the voting stock, if the other corporation is a corporation issuing stock; or
  - (ii) the controlling rights or interests, if the other entity is not a corporation.
- (b) "Barrel" means a quantity or unit of oil, having a volume of forty-two (42) United States gallons at the temperature of sixty (60) degrees Fahrenheit.
- (c) "Contract area" means the area not relinquished or surrendered, constituted by the blocks which are the subject of this contract and which are specified in Appendices A and B of this contract.
- (d) "Crude oil" means crude mineral oil and all liquid hydrocarbons in their natural state or obtained from natural gas by condensation or extraction.
- (e) "Development plan" means a description of the proposed petroleum reservoir development and management program, details of the production facilities, the production profile for the expected life of the project, the estimated capital and non-capital expenditure covering the feasibility, fabrication, installation and pre-production stages of the project, and an evaluation of the commerciality of the development of the petroleum from within a discovery area.
- (f) "Exploration and appraisal strategy" means a brief description of the exploration/geological play concepts for, the extent to which the leads and prospects are identified in, and the data reviews, seismic surveys and exploration wells planned for the contract area.
- (g) "First tranche petroleum" means the quantity of petroleum production defined in subsection 9 of Section 7.
- (h) "Force majeure" means circumstances beyond the control and without the fault or negligence of the contract operator and the Joint Authority including but not restricted to acts of God or the public enemy, perils of navigation, fire, hostilities, war (declared or undeclared), blockade, labor disturbances, strikes, riots, insurrections, civil commotion, quarantine restrictions, epidemics, storms, earthquakes, or accidents.
- (i) "Natural gas" means all gaseous hydrocarbons, including wet mineral gas, dry mineral gas, casinghead gas and residue gas remaining after the extraction of liquid hydrocarbons from wet gas.



## SECTION 2 TERM OF THIS CONTRACT

- 2.1. Subject to the provisions of this Section and Section 13, the term of this contract shall be thirty (30) years as from the effective date.
- 2.2. If at the end of the initial six (6) years as from the effective date, no petroleum is discovered in commercial quantities in the contract area, the contractor shall have the option either to terminate this contract or to request the Joint Authority, by means of a sixty (60) days written notice prior to the end of the initial six (6) years, to extend this contract to the end of the tenth year from the effective date. Where a discovery is made but has not been appraised before the end of the tenth contract year, the Joint Authority shall extend the term of this contract so as to allow completion of an expeditious appraisal of the discovery, or if necessary in the case of a natural gas discovery, until marketing arrangements and sales contracts are completed. The extension shall be promptly granted, without prejudice to the provisions of Section 13 of this contract relating to termination, provided a work program and expenditures are agreed in accordance with subsection 3 of Section 4 of this contract.
- 2.3. If, at the end of the term of this contract as extended under subsection 2 of this Section, no petroleum is discovered in commercial quantities in the contract area, this contract shall automatically terminate in its entirety.
- 2.4. If petroleum is discovered in any block or blocks of the contract area within the initial six (6) year period or any extension pursuant to subsection 2 of this Section, which the Joint Authority and the contract operator agree can be produced commercially, based on the consideration of all pertinent operating and financial data, then as to that particular block or blocks of the contract area the Joint Authority shall declare a discovery area and the contract operator shall commence development. In other blocks in the contract area, the contract operator shall continue exploration without prejudice to the provisions of Section 3 regarding the relinquishment of blocks.
- 2.5. If petroleum production has not ceased permanently in and from the contract area by the end of the thirtieth contract year, the Joint Authority shall give sympathetic consideration to extending the term of this contract beyond the thirtieth contract year until production ceases permanently. In the case of a natural gas project, the contract term shall be automatically extended to the end of the term of the natural gas sales contract.
- 2.6. If petroleum production has ceased permanently in and from the contract area before the end of the thirtieth contract year, then this contract shall be terminated upon the permanent cessation of production.

## SECTION 3 RELINQUISHMENT OF BLOCKS

- 3.1. On or before the end of the third contract year as from the effective date, the contract operator shall relinquish twenty-five (25) per cent of the blocks in the original contract area.
- 3.2. On or before the end of the sixth contract year the contract operator shall relinquish an additional twenty-five (25) per cent of the blocks in the original total contract area.
- 3.3. Subject to the provisions of Section 2 of this contract, on or before the end of the tenth contract year, the contract operator shall relinquish all of the blocks in the contract area not contained in discovery areas.

- 3.4. The contract operator's obligation to relinquish parts of the contract area under the preceding provisions shall not apply to any blocks in the contract area declared as a discovery area. In this respect, in calculating the percentages under subsections 1 and 2 of this Section, blocks in discovery areas shall be excluded from the original contract area.
- 3.5. Upon thirty (30) days written notice to the Joint Authority prior to the end of any contract year, the contract operator shall have the right to surrender some, but not all, of the blocks in the contract area, provided the conditions of the contract have been met to the satisfaction of the Joint Authority and such blocks shall then be credited against the blocks in the contract area which the contract operator is next required to relinquish under the provisions of subsections 1, 2 and 3 of this Section.
- 3.6. The contract operator shall advise the Joint Authority in advance of the date of relinquishment of the blocks to be relinquished. For the purpose of relinquishments, the contract operator and the Joint Authority shall consult with each other regarding which blocks are to be relinquished. So far as is reasonable, such blocks shall form an area of sufficient size and convenient shape to enable petroleum operations to be conducted thereon.
- 3.7. For the purposes of calculating the number of blocks to be relinquished under subsections 1 and 2 of this Section, where the number of blocks is not exactly divisible by four (4), only the whole number of blocks after the division by four (4) shall be relinquished.

#### **SECTION 4 WORK PROGRAM AND EXPENDITURES**

- 4.1. The contract operator shall commence petroleum operations not later than six (6) months after the effective date.
- 4.2. The amount of exploration work to be undertaken by the contract operator pursuant to the terms of this contract during the first six (6) years following the effective date shall, subject to any negotiated change to the exploration work program and expenditures for contract years four (4) to six (6), be at least that specified for each of these six (6) years as follows:<sup>9</sup>

Data Review Seismic Surveys Wells Expenditure

US\$ Kms No. US\$

First Contract Year

Second Contract Year

Third Contract Year

Fourth Contract Year

Fifth Contract Year

Sixth Contract Year

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<sup>9</sup> First paragraph of subsection 4.2 was amended at the Sixth Ministerial Council Meeting at Brisbane on 20 October 1995. It originally read:

"The amount of exploration work to be undertaken by the contract operator pursuant to the terms of this contract during the first six (6) years following the effective date shall, unless otherwise approved by the Joint Authority, be at least that specified for each of these six (6) years as follows:"

- 4.3. If the contract is still in force after the sixth contract year, the Joint Authority and the contract operator shall agree to an exploration work program and expenditures for those subsequent contract years.
- 4.4. The Joint Authority and the contract operator may negotiate a change to the exploration work program and expenditures covering contract years four (4) to ten (10), provided the changes are made at least three (3) months prior to the beginning of the contract year affected by the changes. No changes will be made to the exploration work program and expenditures for contract years one (1) to three (3).
- 4.5. If during:
- (a) the first three (3) contract years the contract operator completes less than the amount of exploration work required to be completed during those years, the Joint Authority shall terminate the contract;
  - (b) any of the contract years four (4) to ten (10) the contract operator completes less than the amount of exploration work required within that year, the Joint Authority may terminate the contract and, if the contract is not terminated, the Joint Authority shall require the completion of that work in the following contract year; or
  - (c) any contract year the contract operator completes more than the amount of exploration work required to be completed by the end of that year, the excess shall be counted towards meeting the exploration work obligations of the contract operator during succeeding contract years.
- 4.6. For the purpose of subsection 5 of this Section, the Joint Authority, in determining whether the contract operator has completed the exploration work required to be completed in the first three (3) contract years, and in later contract years if work commitments are specified, shall have regard to the actual physical work completed, and not the estimates of expenditure. Where work commitments are not specified, the Joint Authority shall have regard to the estimates of expenditure.
- 4.7. At least two (2) months prior to the beginning of each calendar year, the contract operator shall prepare and submit, for approval by the Joint Authority, an exploration and appraisal strategy to be adopted for the ensuing contract year for the contract area.
- 4.8. At least one (1) month prior to the beginning of each calendar year, the contract operator shall prepare and submit, for approval by the Joint Authority, a work program and budget of operating costs to be carried out during the ensuing calendar year for the contract area.
- 4.9. Before work can commence on the development of a petroleum discovery, the contract operator shall prepare and submit, for approval by the Joint Authority, a development plan.
- 4.10. Should the Joint Authority wish to propose a revision to specified aspects of the work program and budget of operating costs, the Joint Authority shall specify its reasons for requesting those changes but shall not require the contract operator to undertake more petroleum operations than the minimum work program and expenditure commitments specified in this contract. The Parties shall reach agreement on any changes before they become effective.

- 4.11. It is recognized by the Joint Authority that the details of the work program and budget of operating costs, and the development plan may require changes in the light of existing circumstances and nothing herein contained shall limit the rights of the contract operator to make such changes, provided they do not change the general objective, quantity and quality of the petroleum operations.
- 4.12. The Joint Authority shall ensure that every effort is made to avoid delays in approving the exploration and appraisal strategy, the work program and budget of operating costs, and the development plan.

## **SECTION 5 RIGHTS AND OBLIGATIONS OF THE PARTIES**

- 5.1. The contract operator shall have the rights accorded to it under the Treaty, including the Petroleum Mining Code and the Taxation Code, and in particular shall:
- (a) subject to paragraph (k) of subsection 2 of this Section, have the right to enter and leave the contract area and move to and from the contract operator's facilities wherever located at all times;
  - (b) have the right to have access to and use all geological, geophysical, drilling, well (including well location maps), production and other information held by the Joint Authority relating to the contract area; and
  - (c) in accordance with the provisions of the Petroleum Mining Code, have the right to have access to and use all geological, geophysical, drilling, well, production and other information now or in the future held by the Joint Authority relating to the blocks in Area A adjacent to the contract area.
- 5.2. The contract operator shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and the Taxation Code, and the regulations and directions issued under the Petroleum Mining Code and, in particular, shall:
- (a) provide all human, financial and technical resources required for the performance of the petroleum operations;
  - (b) carry out petroleum operations in a proper and workmanlike manner and in accordance with good oilfield practice;
  - (c) take the necessary precautions to avoid interference with navigation and fishing;
  - (d) develop an environmental management plan to be approved by the Joint Authority, prevent pollution of the marine environment, and pay for the costs associated with clean-up of any pollution from any petroleum operations within the contract area;
  - (e) upon the termination of this contract, clean-up the contract area and remove all structures, equipment and other property brought into the contract area;
  - (f) submit to the Joint Authority copies of all original geological, geophysical, drilling, well, production and other data (including cores, cuttings and samples taken in connection with petroleum operations in the contract area) and reports compiled during the term of this contract;

- (g) appoint and authorize a person to represent the contract operator and communicate with the Joint Authority, and that person shall have an office in either Jakarta or Darwin or both;
  - (h) give preference to goods and services which are produced in Australia or the Republic of Indonesia, or provided by subcontractors operating out of Australia or the Republic of Indonesia, provided they are offered on competitive terms and conditions compared with those available from other countries;
  - (i) give preference to the employment of Indonesian and Australian nationals and permanent residents, and employ them in equivalent numbers over the term of this contract, having due regard to safe and efficient operations and good oilfield practice;
  - (j) take out and maintain, to the Joint Authority's satisfaction, from the effective date of this contract, insurance cover to the value of US\$ in accordance with Article 25 of the Petroleum Mining Code;
  - (k) except as otherwise approved by the Joint Authority, ensure that all persons, equipment and goods do not enter structures in the contract area without first entering Australia or the Republic of Indonesia, and notify the Joint Authority of all persons, vessels, aircraft and structures entering or leaving the contract area, and of movements within the contract area; and
  - (l) make secure and safe all structures in the contract area, including the installation of warning lights, radar and other appropriate equipment.
- 5.3. The contractor shall have the rights accorded under the Treaty, including the Petroleum Mining Code and the Taxation Code, and in particular shall:
- (a) have the right to appoint a new contract operator subject to prior approval by the Joint Authority;
  - (b) have the right to transfer all or part of its undivided participating interest in this contract to any affiliated corporation or any other corporation with the approval of the Joint Authority. Such approval shall not be unreasonably withheld provided the corporation taking up those rights and obligations under this contract has, in the opinion of the Joint Authority, the necessary financial capability and technical knowledge and ability, in accordance with Article 11 of the Petroleum Mining Code;
  - (c) have the right during the term of this contract to lift, dispose of and export its share of petroleum production, subject to Section 7 of this contract, and retain abroad the proceeds obtained therefrom; and
  - (d) have the right to retain ownership and control of all property purchased or leased for the purposes of complying with the conditions of this contract, and be entitled to freely remove the same from the contract area, Australia or the Republic of Indonesia provided the conditions of this contract have been met.
- 5.4. The contractor shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and the Taxation Code, and the regulations and directions issued under the Petroleum Mining Code and, in particular, shall:
- (a) be jointly and severally liable to meet the obligations imposed on the contract operator; and

(b) be subject to the taxation law of the Contracting States, in accordance with Article 29 of the Treaty.

5.5. The Joint Authority shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and, in particular, shall be responsible for the management of the petroleum operations contemplated hereunder having regard to the contract operator's responsibilities for undertaking the petroleum operations.

## **SECTION 6 OPERATING COSTS**

### GENERAL PROVISIONS

6.1. The accounting procedures in this Section shall be followed and observed in the performance of the contractor's obligations under the contract.

6.2. The contractor's books and accounts shall be prepared and maintained in accordance with a generally accepted and recognized accounting system consistent with modern petroleum industry practices and procedures. Books and accounts shall be available for the use of the Joint Authority in order that it may carry out its auditing responsibilities under this contract.

6.3. "Operating costs" means the sum of the following costs incurred in petroleum operations undertaken before or at the point of tanker loading:

- (a) current calendar year exploration costs;
- (b) current calendar year non-capital costs;
- (c) current calendar year depreciation of capital costs; and
- (d) allowable operating costs incurred in previous calendar years which have not been recovered in accordance with subsection 2 of Section 7 of this contract; less
- (e) miscellaneous receipts as defined in subsection 8 of this Section.

6.4. All calculations required to determine operating costs shall be done in United States dollars. Where costs are denoted in any other currency, they shall be translated into United States dollars at the exchange rate set, on the day the cost was incurred, by a bank designated by the Joint Authority.

### EXPLORATION COSTS

6.5. "Exploration costs" means those operating costs incurred which relate directly to the current calendar year's exploration operations in the contract area and include but are not limited to the following:

- (a) costs of exploratory and appraisal drilling in the contract area including labor, materials and services used in the drilling of wells with the object of finding unproven reservoirs of petroleum;
- (b) costs of surveys in the contract area including labor, materials and services (including desk studies and analysis of survey data) used in aerial, geological, geochemical, geophysical and seismic surveys, and core hole drilling; and

- (c) costs of other exploration directly related to petroleum operations in the contract area, including the cost of auxiliary or temporary facilities used in exploration.

#### NON-CAPITAL COSTS

6.6. "Non-capital costs" means those operating costs incurred that relate directly to the current calendar year's operations in the contract area, excluding exploration costs and capital costs.

Non-capital costs include, but are not limited to the following:

- (a) costs of labor, materials and services used in day to day well operations, field production facilities operations, secondary recovery operations, storage handling, transportation and delivery operations, gas processing auxiliaries and utilities, and other operating activities, including repairs and maintenance;
- (b) costs of office, services and general administration directly related to the petroleum operations carried out in the contract area including technical and related services, office supplies, office rentals and other rentals of services and property, and personnel expenses;
- (c) costs of production drilling in the contract area including labor, materials and services used in drilling wells with the object of penetrating a proven reservoir such as the drilling of delineation wells as well as re-drilling, deepening or recompleting wells;
- (d) costs of feasibility studies and environmental impact assessments directly related to petroleum operations in the contract area;
- (e) application fees, contract service fees, and registration fees directly related to petroleum operations in the contract area;
- (f) premiums paid for insurance normally required to be carried for the petroleum operations carried out by the contract operator under this contract;
- (g) closing down costs, being those expenditures incurred at the end of the production life of a petroleum pool in the contract area which could include the costs of:
  - (i) removal of all production facilities including the removal of platforms and associated facilities;
  - (ii) environmental restoration including any feasibility studies; and
- (h) costs of purchased geological and geophysical information.

#### CAPITAL COSTS

6.7. "Capital costs" means expenditures made for items directly related to petroleum operations in the contract area and which normally have a useful life of more than one (1) year. Capital costs include but are not limited to the following:

- (a) costs of construction utilities and auxiliaries, workshops, power and water facilities, warehouses, site offices, access and communication facilities;
- (b) costs of production facilities including offshore platforms (including the costs of labor, fuel hauling and supplies for both the offsite fabrication and onsite installation of platforms, and other construction costs in erecting platforms), wellhead production tubing, sucker

rods, surface pumps, flow lines, gathering equipment, delivery lines, storage facilities, all other equipment, facilities and modules on platforms, oil jetties and anchorages, treating plants and equipment, secondary recovery systems, gas plants and steam systems;

- (c) costs of pipelines and other facilities for the transporting of petroleum produced in the contract area to the point of tanker loading;
- (d) costs of movable assets and subsurface drilling and production tools, equipment and instruments, and miscellaneous equipment used for production in the contract area;
- (e) costs of floating craft, automotive equipment, furniture and office equipment; and
- (f) if approved by the Joint Authority, costs of employee and welfare housing, recreational, educational, health and meals facilities, and other similar costs necessary for petroleum operations in Area A.

#### MISCELLANEOUS RECEIPTS

6.8. "Miscellaneous receipt" means the value of property defined in paragraph (c) below and all monies received by the contractor, other than for the disposal of petroleum produced from the contract area, which are directly related to the conduct of petroleum operations in the contract area. Miscellaneous receipts include, but are not limited to, the following:

- (a) any amounts received from the sale or disposal of petroleum produced from production testing operations undertaken in exploration and appraisal wells;
- (b) any amounts received for the disposal, loss, or destruction of property the cost of which is an operating cost;
- (c) the value of property, the cost of which is an operating cost, when that property ceases to be used in petroleum operations in the contract area;
- (d) any amounts received by the contract operator under an insurance policy, the premiums of which are operating costs, in respect of damage to or loss of property;
- (e) any amounts received as insurance, compensation or indemnity in respect of petroleum production lost or destroyed prior to the point of tanker loading;
- (f) any amounts received from the hiring or leasing of property, the cost of which is an operating cost;
- (g) any amounts received from supplying information obtained from surveys, appraisals, or studies the cost of which is an operating cost;
- (h) any amounts received as charges for the use of employee amenities, the cost of which is an operating cost; and
- (i) any amounts received in respect of expenditures which are operating costs, by way of indemnity or compensation for the incurring of the expenditure, refund of the expenditure, or rebate, discount or commission in respect of the expenditure.



## INELIGIBLE COSTS

6.9. The following expenditures are not eligible as operating costs:

- (a) payments of principal or interest on a loan or other borrowing costs unless approved by the Joint Authority under paragraph (c) of subsection 10 of this Section;
- (b) payments of interest components of credit-purchase payments;
- (c) payments of dividends or the cost of issuing shares;
- (d) repayments of equity capital;
- (e) payments of private override royalties;
- (f) payments associated with a farm-in agreement;
- (g) payments of taxes under the taxation law of either Contracting State made in accordance with Article 29 of the Treaty;
- (h) payments of administrative accounting costs, and other costs indirectly associated with petroleum operations in the contract area;
- (i) costs incurred once petroleum production has passed the point of tanker loading;
- (j) costs incurred as a result of non-compliance by the contract operator with the provisions of this contract, the Petroleum Mining Code or the regulations and directions issued under the Petroleum Mining Code; and
- (k) unless otherwise approved by the Joint Authority, costs incurred by contractors other than the contract operator.

## ACCOUNTING METHODS TO BE USED TO CALCULATE RECOVERY OF OPERATING COSTS

6.10. The following methods shall be used to calculate the recovery of operating costs.

- (a) Depreciation

Depreciation shall be calculated beginning in the calendar year in which the asset to be depreciated is placed into service. A full year's depreciation shall be allowed in that calendar year. In each calendar year the allowable recovery of capital cost depreciation shall be twenty (20) per cent of the individual asset's initial capital cost (calculated using the straight line method of depreciation).

- (b) Allocation of overhead costs

General and administration costs, such as those listed in paragraph (b) of subsection 6 of this Section, but other than direct charges, allocable to petroleum operations in the contract area shall be determined by a detailed study, and the method determined by such a study shall be applied each year consistently. The method determined shall require agreement of the Joint Authority and the contractor.

(c) Interest Recovery

Interest on loans obtained by a contractor at rates not exceeding prevailing commercial interest rates on loans for capital investments in development of petroleum pools may be recoverable as an operating cost provided the Joint Authority has given its approval. The Joint Authority may give its approval if it is satisfied that recovery of interest is necessary to ensure the financial viability of the project.

(d) Gas Costs

The following procedures shall be used to allocate operating costs related to natural gas production.

- (i) Operating costs directly related to the production of natural gas shall be directly chargeable against natural gas revenues in determining the entitlements of the Joint Authority and the contractor under Section 7.
- (ii) Operating costs incurred for the production of both natural gas and crude oil shall be allocated to natural gas and crude oil revenues based on the relative value of the products produced for the current calendar year. Common support costs shall be allocated on an equitable basis agreed to by both Parties.
- (iii) If after commencement of production, the natural gas revenues do not permit full recovery of natural gas costs, as outlined above, then the excess costs shall be recovered from crude oil revenues. Likewise, if there are excess crude oil costs (crude oil costs less crude oil revenues), this excess shall be recovered from natural gas revenues.
- (iv) If production of either natural gas or crude oil has commenced while the other has not, the allocable production costs and common support costs shall be allocated on an equitable basis agreed to by both Parties. Propane and butane fractions extracted from natural gas but not spiked in crude oil shall be deemed as natural gas for the purpose of accounting.

(e) Inventory Accounting

Inventory levels shall be based on normal good oilfield practice. The value of inventory items used outside the contract area or sold, the cost of which has been recovered as an operating cost, shall be treated as miscellaneous receipts in accordance with subsection 8 of this Section. The costs of items purchased for inventory shall be recoverable as operating costs at such time as the items are landed in Area A.

(f) Insurance and Claims

Operating costs shall include premiums paid for insurance normally required to be carried for the petroleum operations relating to the contractor's obligations conducted under the contract, together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgements and other expenses, including fees relating to the contractor's obligations under the contract.

(g) Apportioning of Costs and Miscellaneous Receipts

Where property, or any other thing, for which an operating cost is allowable or a miscellaneous receipt is assessable, is only used partially in conducting petroleum operations in the contract area, only that proportion of the cost or the receipt which relates to the conduct of petroleum operations in the contract area shall be allowed as an operating cost or assessed as a miscellaneous receipt.

**SECTION 7 RECOVERY OF OPERATING COSTS AND SHARING OF PETROLEUM PRODUCTION**

- 7.1. The contractor is authorized by the Joint Authority and obliged to market all petroleum produced and saved from the contract area subject to the following provisions.
- 7.2. Subject to subsections 9 and 10 of this Section, to recover operating costs, the contract operator shall be entitled to a quantity of petroleum production, which is produced and saved hereunder and not used in petroleum operations, equal in value to those costs. If in any calendar year, the operating costs exceed the value of petroleum produced and saved hereunder and not used in petroleum operations, then the unrecovered excess of operating costs shall be carried forward and recovered in succeeding years.
- 7.3. In each calendar year in which petroleum is produced from the contract area, if the investment credit and operating costs recoverable under subsections 10 and 2 of this Section respectively are less than the value of the quantity of petroleum produced from the contract area, then of the petroleum production remaining after deducting the quantity of petroleum production equal in value to the investment credit and operating costs, the Parties shall be entitled to take and receive the following:
- (a) the Joint Authority fifty (50) per cent and the contractor fifty (50) per cent for the tranche of 0 to 50,000 barrels daily average of all crude oil production from the contract area for the calendar year;
  - (b) the Joint Authority sixty (60) per cent and the contractor forty (40) per cent for the tranche of 50,001 to 150,000 barrels daily average of all crude oil production from the contract area for the calendar year; and
  - (c) the Joint Authority seventy (70) per cent and the contractor thirty (30) per cent for the tranche of more than 150,000 barrels daily average of all crude oil production from the contract area for the calendar year.

For the purposes of calculating the daily average of all crude oil production in the calendar year when the first commercial production of crude oil from the contract area is produced, the daily average production shall be calculated by reference to the number of days in the calendar year from the day when commercial production commenced. In the calendar year when commercial production of crude oil from a contract area is terminated, the daily average production shall be calculated by reference to the number of days in the calendar year up to the day on which production is terminated in the contract area.

- 7.4. The method of recovering investment credits and operating costs before the entitlements are taken by each Party as provided under subsection 3 of this Section shall be subject to the following proration method. For each calendar year, the recoverable investment credits and operating costs shall be apportioned for deduction from the production of each of the tranches

- defined in subsection 3 of this Section using the same ratios as the production from each such tranche over the total production of that calendar year.
- 7.5. Of the amount of natural gas, including propane and butane fractions extracted from natural gas but not spiked in crude oil, remaining after recovering investment credits and operating costs associated with natural gas operations, the Joint Authority shall be entitled to take and receive fifty (50) per cent and the contractor shall be entitled to take and receive fifty (50) per cent.
- 7.6. Title to the contractor's share of petroleum production under subsections 3, 5 and 9 of this Section as well as to the shares of petroleum production exported and sold to recover investment credits and operating costs under subsections 10 and 2 of this Section respectively shall pass to the contractor at the point of tanker loading.
- 7.7. The contractor shall use its best reasonable efforts to market petroleum production to the extent markets are available.
- 7.8. Any natural gas produced from the contract area and not used in petroleum operations hereunder may be flared if the processing and utilization of the natural gas is not considered by the Parties to be economic. Such flaring shall be permitted to the extent that gas is not required to enable the maximum economic recovery of petroleum by secondary recovery operations, including repressuring and recycling.
- 7.9. Notwithstanding the other provisions of this Section, in the initial five (5) calendar years of production from the contract area, the Parties shall be entitled to take and receive a quantity of petroleum equal to ten (10) per cent of the petroleum production in those years, called the "first tranche petroleum", before any recovery of investment credits and operating costs. In each subsequent calendar year, the first tranche petroleum shall be equal to twenty (20) per cent of the petroleum produced in that year. The quantity of first tranche petroleum from crude oil production for each calendar year shall be shared between the Joint Authority and the contractor in accordance with the sharing percentages as provided under subsection 3 of this Section, by apportioning it as applicable to the respective production tranches as therein defined, using the same ratios as the production from each such tranche over the total production of that calendar year. The quantity of first tranche petroleum from natural gas production for each calendar year shall be shared between the Joint Authority and the contractor in accordance with the sharing percentages as provided under subsection 5 of this Section. The initial five (5) calendar years of production is to commence on the day when the first commercial production of petroleum is produced and shall end at midnight (2400 hours) local time, being 1600 hours Greenwich Mean, Time on the day preceding the fifth anniversary of this first commercial production from the contract area.
- 7.10. Investment credits for exploration and capital costs defined in subsection 5 of Section 6 and paragraphs (b), (c) and (d) of subsection 7 of Section 6 shall be allowed to the contract operator, and, in each calendar year, shall be recoverable by the contract operator after the sharing of the first tranche petroleum but before the recovery of operating costs. The contract operator shall recover the investment credits, as a quantity of petroleum production equal in value to one hundred and twenty seven (127) per cent of such exploration and capital costs incurred. Investment credits not recovered in the calendar year in which the exploration and capital costs were incurred may be carried forward and recovered in subsequent years.

7.11. Notwithstanding the provisions of subsection 1 of this Section which oblige the contractor to market all petroleum produced from the contract area, the Joint Authority may market any or all petroleum when the Joint Authority secures a net realized price for the petroleum, f.o.b. the contract area, which is greater than the price which can be realized by the contractor. The Joint Authority's right to market any or all of the petroleum shall continue for such period as it can secure a net realized price, f.o.b. the contract area, greater than that which can be realized by the contractor. The contract operator shall coordinate the efficient lifting of the petroleum production, including tanker nomination and scheduling.

## **SECTION 8 VALUATION OF PETROLEUM PRODUCTION**

8.1. Petroleum production sold to third parties shall be valued as follows:

- (a) all petroleum production to which the contractor is entitled under this contract and which is sold to third parties, shall be valued at the net realized price, f.o.b. the contract area;
- (b) all petroleum production to which the Joint Authority is entitled under this contract which is sold to third parties shall be valued at the net realized price, f.o.b. the contract area; and
- (c) where a contract of sale involves other than a net realized price f.o.b., the Joint Authority shall determine a fair and reasonable net f.o.b. price for the purposes of that sale.

8.2. Petroleum production sold to other than third parties shall be valued by the Joint Authority as follows:

- (a) by using the weighted average per unit price, adjusted as necessary for quality, quantity, grade and specific gravity of the petroleum production, received by the contractor and the Joint Authority from sales to third parties during the three (3) months preceding such sale, excluding commissions and brokerages incurred in relation to such third party sales; and
- (b) if there are no third party sales as defined in paragraph (a), at prevailing market prices, adjusted to take account of quality, quantity, grade and specific gravity of the petroleum production and taking into consideration any special circumstances with respect to sales of such petroleum production.

8.3. For the purpose of this Section, "third party sales" means sales by the contractor to independent purchasers with whom, at the time the sale is made, the contractor has no direct or indirect contractual relationship or joint interest.

8.4. Commissions or brokerages incurred in connection with sales to third parties, if any, shall not exceed the customary and prevailing rate.

8.5. During any calendar year in which petroleum is produced from the contract area, the contractor shall be liable to make provisional payments to the Joint Authority, equal to the estimated value of petroleum to which the Joint Authority is entitled under Section 7 of this contract. The provisional payments shall be made on a monthly basis unless the Joint Authority and the contractor agree on alternate arrangements. The amount of each provisional payment shall be calculated by the contractor using the estimates of operating costs contained in the work program and budget of operating costs, and the contractor's estimate of the value of quantities of petroleum sold. During the calendar year the provisional payments may be adjusted having regard to actual operating costs and the actual value of sales of petroleum. Within thirty (30) days after the end of the calendar year, adjustments and cash settlements between the Joint Authority and the contractor shall be made on the basis of

the actual amounts of the operating costs and actual value of sales of petroleum made during the calendar year, in order to comply with Section 7. Similarly, where the Joint Authority markets petroleum production pursuant to subsection 11 of Section 7, the Joint Authority shall be liable to make provisional payments to the contractor in a manner consistent with this subsection.

- 8.6. Petroleum production disposed of other than by sale or destruction shall be valued using the method defined in subsection 2 of this Section.
- 8.7. The contractor shall notify the Joint Authority of quantities and sales prices of all petroleum production sold or disposed of before the sales or disposals are made.

### **SECTION 9 PAYMENTS**

- 9.1. The contract operator shall make all payments to the Joint Authority for which it is liable under this contract in United States dollars or some other currency agreed between the contract operator and the Joint Authority. Payments shall be made to a bank designated by the Joint Authority. Where a payment is made in currency other than United States dollars, the exchange rate used to convert the United States dollars liability into that currency shall be the exchange rate set down on the day of payment by a bank designated by the Joint Authority.
- 9.2. The Joint Authority shall make all payments to the contract operator in United States dollars or some other currency agreed between the contract operator and the Joint Authority. Where a payment is made in currency other than United States dollars, the exchange rate used to convert the United States dollar liability into that currency shall be the exchange rate set down on the day of payment by a bank designated by the Joint Authority.
- 9.3. Any payments required to be made pursuant to this contract shall be made within ten (10) days following the end of the month in which the obligation to make such payments is incurred.

### **SECTION 10 TENDERS FOR PETROLEUM OPERATIONS**

- 10.1. The contract operator shall draw invitations to tender for sub-contracts to the attention of Australian and Indonesian sub-contractors.
- 10.2. Subject to subsection 4 of this Section, all tenders for petroleum operations called by the contract operator shall be subject to approval by the Joint Authority.
- 10.3. The Joint Authority shall provide its approval or non-approval within thirty (30) days of receipt of the tender details from the contract operator. The tender details to be provided by the contract operator shall include a summary of the tenders received compared against the tender criteria determined by the contract operator and the reasons for the selection of the preferred tender.
- 10.4. Notwithstanding subsection 2 of this Section, the contract operator may enter into subcontracts without the approval of the Joint Authority where:
  - (a) the tender for petroleum operations is expected to involve expenditure of less than US\$ two million (2,000,000);

(b) the tender for petroleum operations is expected to involve expenditure of less than US\$ ten million (10,000,000) and those operations form part of a project for the development of petroleum resources, the cost of which is expected to exceed US\$ one hundred million (100,000,000); or

(c) the tender selected by the contract operator is the lowest cost tender and has been submitted by an Australian or Indonesian corporation.

10.5. The contract operator shall provide the Joint Authority, for information, with the full financial details of the sub-contract, irrespective of the amount of the expenditure involved.

### **SECTION 11 TITLE TO EQUIPMENT**

11.1. Equipment purchased by the contract operator pursuant to the work program and budget of operating costs remains the property of the contractor and shall be used in petroleum operations.

### **SECTION 12 CONSULTATION AND ARBITRATION**

12.1. Periodically, the Joint Authority and the contract operator shall meet to discuss the conduct of petroleum operations under this contract and shall make every effort to settle amicably any problems arising therefrom.

12.2. Disputes, if any, arising between the Joint Authority and contractor relating to this contract or the interpretation and performance of this contract which cannot be settled amicably shall be submitted to arbitration.

12.3. Except as may be otherwise agreed by the Parties, arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce.

12.4. The Joint Authority on the one hand and the contractor on the other hand shall each appoint one arbitrator and so advise the other Party, and these two arbitrators shall appoint a third. If either Party fails to appoint an arbitrator within thirty (30) days after receipt of a written request to do so, such arbitrator shall, at the request of the other Party, if the Parties do not otherwise agree, be appointed by the President of the International Chamber of Commerce. If the first two arbitrators appointed as aforesaid fail to agree on a third within thirty (30) days following the appointment of the second arbitrator, the third arbitrator shall, if the Parties do not otherwise agree, be appointed, at the request of either Party, by the President of the International Chamber of Commerce. If an arbitrator fails or is unable to act, that arbitrator's successor shall be appointed in the same manner as the arbitrator who is replaced.

12.5. The decision of a majority of the arbitrators shall be final and binding upon the Parties and an award may be enforced in any court having jurisdiction for that purpose. In accordance with paragraph 2 of Article 11 of the Treaty, in the event that the Joint Authority cannot meet an obligation under an arbitral award arising from a dispute under this contract, the Contracting States shall contribute the necessary funds in equal shares to enable the Joint Authority to meet that obligation.

12.6. The place of arbitration shall be (to be agreed by the Parties before the contract is signed). The language of the arbitration shall be (to be agreed by the Parties before the contract is signed).

### **SECTION 13 TERMINATION**

- 13.1. This contract shall not be terminated during the first three (3) years from the effective date.
- 13.2. Subject to subsection 1 of this Section, this contract may be terminated at any time by agreement of the Parties or in accordance with Article 48 of the Petroleum Mining Code.

### **SECTION 14 BOOKS, ACCOUNTS AND AUDITS**

#### BOOKS AND ACCOUNTS

- 14.1. In addition to any requirements pursuant to paragraph (b) of subsection 4 of Section 5, the contractor shall keep complete books and accounts recording all operating costs as well as monies received from the sale or disposal of petroleum production.

#### AUDITS

- 14.2. The Joint Authority may require independent auditing of the contractor's books and accounts relating to this contract for any calendar year and may require the independent auditor to perform such auditing procedures as are deemed appropriate by the Joint Authority. The contractor shall forward a copy of the independent accountant's report to the Joint Authority within sixty (60) days following the completion of the audit. The Joint Authority reserves the right to inspect and audit the contractor's books and accounts relating to this contract.

### **SECTION 15 OTHER PROVISIONS**

#### NOTICES

- 15.1. Any notices required or given by either Party to the other shall be served in accordance with Article 35 of the Petroleum Mining Code.
- 15.2. All notices to be served on the contract operator shall be addressed to: (contract operator's address)
- 15.3. All notices to be served on the Joint Authority relating to matters for which the head office of the Joint Authority is responsible shall be addressed to: (address of the Joint Authority's head office)
- 15.4. All notices to be served on the Joint Authority relating to matters for which the Technical Directorate of the Joint Authority is responsible shall be addressed to: (address of the Joint Authority's Technical Directorate)
- 15.5. Either Party may substitute or change the above such address by giving written notice to the other.

#### APPLICABLE LAW

- 15.6. Subject to the provisions of the Treaty, including the Petroleum Mining Code, the law of shall apply to this contract.



### SUSPENSION OF OBLIGATIONS

- 15.7. Any failure or delay on the part of either Party in the performance of its obligations or duties under the contract shall be excused to the extent that such failure or delay is attributable to force majeure.
- 15.8. If exploration is delayed, curtailed or prevented by force majeure the Joint Authority shall agree to vary the work program and expenditure commitments or exempt the contract operator from part or all of the work program and expenditure commitments during the period of force majeure.
- 15.9. The Party whose ability to perform its obligations is so affected by force majeure shall immediately notify the other Party in writing, stating the cause, and both Parties shall do all that is reasonably within their power to discharge their obligations.

### **SECTION 16 EFFECTIVENESS**

- 16.1. This contract shall come into effect on the day it is entered into by and between the Joint Authority and the contractor.
- 16.2. This contract shall not be amended or modified in any respect, except by the mutual consent in writing of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this contract, in triplicate and in the English language, on this \_\_\_ day of 19\_\_.

### **THE JOINT AUTHORITY**

**BY**

**(CONTRACTOR)**

**BY**

**APPROVED BY THE MINISTERIAL COUNCIL** on this \_\_\_ day of, 19\_\_

**BY**

Minister of \_\_\_\_\_

on behalf of the **GOVERNMENT OF THE REPUBLIC OF INDONESIA**

**BY**

Minister for \_\_\_\_\_

on behalf of the **GOVERNMENT OF AUSTRALIA**

## **ANNEX D TAXATION CODE FOR THE AVOIDANCE OF DOUBLE TAXATION IN RESPECT OF ACTIVITIES CONNECTED WITH AREA A OF THE ZONE OF COOPERATION**

### **ARTICLE 1 GENERAL DEFINITIONS**

1. In this Taxation Code, unless the context otherwise requires:
  - (a) the term "Australian tax" means tax imposed by Australia, other than any penalty or interest, being tax to which this Taxation Code applies;
  - (b) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
  - (c) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the Republic of Indonesia, the Minister of Finance or an authorised representative of the Minister;
  - (d) the term "Indonesian tax" means tax imposed by the Republic of Indonesia, other than any penalty or interest, being tax to which this Taxation Code applies;
  - (e) the term "law of a Contracting State" means the law of that Contracting State from time to time in force relating to the taxes to which this Taxation Code applies;
  - (f) the term "person" includes an individual, a company and any other body of persons; and
  - (g) the terms "tax" or "taxation" mean Australian tax or Indonesian tax, as the context requires.
2. In the application of this Taxation Code by a Contracting State any term not defined in this Taxation Code or elsewhere in the Treaty shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State from time to time in force relating to the taxes to which this Taxation Code applies.

### **ARTICLE 2 PERSONAL SCOPE**

The provisions of this Taxation Code shall apply to persons who are residents of one or both of the Contracting States as well as in respect of persons who are not residents of either of the Contracting States, but only for taxation purposes related directly or indirectly to:

- (a) the exploration for or the exploitation of petroleum in Area A; or
- (b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation.

### **ARTICLE 3 TAXES COVERED**

1. The existing taxes to which this Taxation Code shall apply are:
  - (a) in Australia:

- (i) the income tax imposed under the federal law of Australia;
  - (ii) the fringe benefits tax imposed under the federal law of Australia; and
  - (iii) the sales tax imposed under the federal law of Australia;
- (b) in Indonesia:
- (i) the income tax (Pajak-Penghasilan), including the tax on profits after income tax payable by a contractor, imposed under the law of the Republic of Indonesia, and its implementing regulations;
  - (ii) the value-added tax on goods and services and sales tax on luxury goods (Pajak Pertambahan Nilai atas Barang dan Jasa dan Pajak Penjualan atas Barang Mewah) imposed under the law of the Republic of Indonesia, and its implementing regulations.
2. The provisions of this Taxation Code shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

#### **ARTICLE 4 BUSINESS PROFITS**

1. For the purposes of the taxation law of each Contracting State, the business profits or losses of a person, other than an individual, derived from, or incurred in, Area A in a year shall be reduced by fifty (50) per cent.
2. Business profits derived from Area A in a year by an individual who is a resident of a Contracting State shall be taxable only in that Contracting State.
3. Business profits derived from Area A in a year by an individual who is not a resident of either Contracting State may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable on those profits in that Contracting State.
4. Business losses, incurred in Area A in a year by an individual who is not a resident of either Contracting State, that are eligible under the law of a Contracting State to be carried forward for deduction against future income shall, for the purposes of that law, be reduced by fifty (50) per cent.
5. For the purposes of paragraphs 1 and 4 of this Article any losses brought forward from prior years in accordance with the law of a Contracting State as a deduction from income shall not be taken into account in determining the profit or loss for the year.
6. For the purposes of this Article:
  - (a) the term "year" means:
    - (i) in Australia, any year of income;
    - (ii) in Indonesia, any taxable year; and

- (b) the terms "business profits" and "business losses" do not include gains or losses of a capital nature to which Article 8 of this Taxation Code applies.

#### **ARTICLE 5 DIVIDENDS**

1. Dividends which are paid by a company which is a resident of a Contracting State wholly or partly out of profits derived from sources in Area A, and which are beneficially owned by a resident of the other Contracting State, may be taxed only in that other Contracting State.
2. The term "dividends" as used in this Article means income from shares or other rights participating in profits and not relating to debt claims, as well as other income which is subjected to the same taxation treatment as income from shares by the law of the Contracting State of which the company making the distribution is a resident.

#### **ARTICLE 6 INTEREST**

1. Interest paid by a contractor, being interest to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.
2. Such interest may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the interest.
3. Where such interest is taxed in the other Contracting State in accordance with paragraph 2 of this Article, that interest shall, for the purposes of determining a foreign tax credit entitlement under the taxation law of the Contracting State referred to in paragraph 1 of this Article, be deemed to be income derived from sources in the other Contracting State.
4. Interest paid by a contractor, being interest to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such interest shall be an amount equivalent to fifty (50) per cent of the amount that would be the taxable amount but for this paragraph.

#### **ARTICLE 7 ROYALTIES**

1. Royalties paid by a Contractor, being royalties to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.
2. Such royalties may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the royalties.
3. Where such royalties are taxed in the other Contracting State in accordance with paragraph 2 of this Article, those royalties shall, for the purposes of determining a foreign tax credit entitlement under the taxation law of the Contracting State referred to in paragraph 1 of this Article, be deemed to be income derived from sources in the other Contracting State.
4. Royalties paid by a Contractor, being royalties to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such royalties shall be an amount equivalent to fifty (50) per cent of the amount that would be the taxable amount but for this paragraph.

### **ARTICLE 8 ALIENATION OF PROPERTY**

1. Where a gain or loss of a capital nature accrues to or is incurred by an individual who is a resident of a Contracting State, from the alienation of property situated in Area A or shares or comparable interests in a company, the assets of which consist wholly or principally of property situated in Area A, the amount of the gain or loss shall be taxable, or otherwise recognised for taxation purposes, only in that Contracting State.
2. Where a gain or loss of a capital nature accrues to or is incurred by a person, other than an individual who is a resident of a Contracting State, from the alienation of property situated in Area A or shares or comparable interests in a company, the assets of which consist wholly or principally of property situated in Area A, the amount of the gain or loss shall, for the purposes of the law of a Contracting State, be an amount equivalent to fifty (50) per cent of the amount that would be the gain or loss but for this paragraph.

### **ARTICLE 9 INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services, or other independent activities of a similar character, performed in Area A shall be taxable only in that Contracting State.
2. Income derived by an individual who is not a resident of either Contracting State in respect of professional services, or other independent activities of a similar character, performed in Area A may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

### **ARTICLE 10 DEPENDENT PERSONAL SERVICES**

1. Salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of employment exercised in Area A shall be taxable only in that Contracting State.
2. Remuneration derived by an individual who is not a resident of either Contracting State in respect of employment exercised in Area A may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

### **ARTICLE 11 OTHER INCOME**

1. Items of income of a resident of a Contracting State, derived from sources in Area A, not dealt with in the foregoing Articles of this Taxation Code shall be taxable only in that Contracting State.
2. Items of income of a person who is not a resident of either Contracting State, derived from sources in Area A and not dealt with in the foregoing Articles of this Taxation Code may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

## **ARTICLE 12 FRINGE BENEFITS**

For the purposes of the taxation law of Australia, the taxable value of any fringe benefits provided in a year of tax to employees, who are not residents of either Contracting State, in a year of tax in respect of employment exercised in Area A shall be reduced by fifty (50) per cent.

## **ARTICLE 13 GOODS IMPORTED INTO AREA A**

Goods imported into Area A from a place other than either Contracting State shall not be taxable in either Contracting State unless and until such goods are permanently transferred to another part of a Contracting State in which case the goods may be taxed only in the Contracting State last referred to.

## **ARTICLE 14 MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Taxation Code, the person may, irrespective of the remedies provided by the domestic law of the Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident, or to either competent authority in the case of persons who are not residents of either Contracting State. The case must be presented within three (3) years from the first notification of the action resulting in taxation not in accordance with the provisions of this Taxation Code.
2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Taxation Code. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Taxation Code.

## **ARTICLE 15 EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Taxation Code or of the domestic law of the Contracting States concerning taxes covered by this Taxation Code, insofar as the taxation thereunder is not contrary to this Taxation Code, in particular for the prevention of avoidance or evasion of such taxes. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Taxation Code and shall be used only for such purposes.
2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on the competent authority of a Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the law or the administrative practice of that or of the other Contracting State;

- (b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State; or
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.