

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 199.

Petroleum (Gulf of Papua) Agreements.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Minerals and Energy at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 199.

Petroleum (Gulf of Papua) Agreements Act.

ARRANGEMENT OF SECTIONS.

1. Interpretation—

- "Agreement No. 1"
- "Agreement No. 2"
- "Agreement No. 3"
- "Agreement No. 4"
- "Agreement No. 5"
- "Agreement No. 6"
- "the Agreements"
- "the commencement date".

2. Approval of Agreements.

3. Effect on and of other laws.

SCHEDULE 1.—Agreement No. 1.

SCHEDULE 2.—Agreement No. 2.

SCHEDULE 3.—Agreement No. 3.

SCHEDULE 4.—Agreement No. 4.

SCHEDULE 5.—Agreement No. 5.

SCHEDULE 6.—Agreement No. 6.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 199.

Petroleum (Gulf of Papua) Agreements Act.

Being an Act to provide for the approval of certain Agreements between the State and certain companies relating to the exploration for petroleum in the Gulf of Papua and development of facilities to produce any commercial quantities of petroleum discovered, and for related purposes.

1. Interpretation.

In this Act, unless the contrary intention appears—

"Agreement No. 1" means the agreement a copy of which is set out in Schedule 1;

"Agreement No. 2" means the agreement a copy of which is set out in Schedule 2;

"Agreement No. 3" means the agreement a copy of which is set out in Schedule 3;

"Agreement No. 4" means the agreement a copy of which is set out in Schedule 4;

"Agreement No. 5" means the agreement a copy of which is set out in Schedule 5;

"Agreement No. 6" means the agreement a copy of which is set out in Schedule 6;

"the Agreements" means Agreements Nos. 1, 2, 3, 4, 5 and 6.

"the commencement date" means 17 February 1977 being the date on which the *Petroleum (Gulf of Papua) Agreements Act 1976* came into force.

2. Approval of Agreements.

The Agreements are approved and each shall take effect according to its tenor.

3. Effect on and of other laws.

(1) The following Articles and Clauses of the Agreements have the force of law as if contained in this Act and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea or a part of Papua New Guinea:—

(a) Articles 5 and 6 and Clauses 17.6 and 28.1 of Agreement No. 1; and

(b) Articles 5 and 6 and Clauses 17.6 and 28.1 of Agreement No. 2; and

(c) Articles 5 and 6, Clauses 17.6 and 28.1 and Article 30 (other than Clauses 30.3 and 30.5) of Agreement No. 3; and

(d) Articles 5 and 6, Clauses 17.6 and 28.1 and Article 30 (other than Clauses 30.3 and 30.5) of Agreement No. 4; and

(e) Articles 5 and 6, Clauses 17.6 and 28.1 and Article 30 (other than Clauses 30.3 and 30.5) of Agreement No. 5; and

(f) Articles 5 and 6, Clauses 17.6 and 28.1 and Article 30 (other than Clauses 30.3 and 30.5) of Agreement No. 6.

(2) No law at any time in force in Papua New Guinea or a part of Papua New Guinea made after the commencement date shall affect this Act or any of the Agreements—

(a) unless the contrary intention appears, either expressly or by implication, in that law; or

(b) except as provided by the Agreements.

(3) Except where the contrary intention appears, either expressly or by implication, in the Agreements or any of them, and subject to Subsections (1) and (2), all laws at any time in force in Papua New Guinea or a part of Papua New Guinea that are not inconsistent with this Act apply to and in relation to all acts, matters or things done or suffered under the Agreements or any of the Agreements, as the case may be.

SCHEDULE 1.

Sec. 1.

AGREEMENT NO. 1.

THIS AGREEMENT made the _____ day of _____, 1976 BETWEEN THE INDEPENDENT STATE OF PAPUA NEW GUINEA (herein called "the State") of the first part and ARCO AUSTRALIA LIMITED (herein called "Arco"), AUSTRALIAN SUPERIOR OIL COMPANY LIMITED (herein called "Australian"), CANADIAN SUPERIOR OIL (AUST.) PTY. LTD. (herein called "Canadian"), ESSO PAPUA NEW GUINEA INC. (herein called "EPNG"), and SUNRAY AUSTRALIAN OIL CO. (herein called "Sunray") (herein called collectively "the Oil Companies" which expression shall be taken to refer also to each such company severally) of the second part :

WHEREAS

A. Petroleum Prospecting Licence number 1 issued pursuant to the Petroleum (Submerged Lands) Act 1975 is held by the Oil Companies subject to their respective rights and obligations as specified :

- (i) in the said Petroleum (Submerged Lands) Act 1975,
- (ii) in the said Petroleum Prospecting Licence number 1,
- (iii) in an agreement dated the 2nd day of January, 1964 among Tasman Oil Pty. Ltd., Anacapa Corporation, Sunray Dx Oil Company and Phillips Petroleum Company, and
- (iv) in an agreement dated the 9th day of May, 1975 among Arco, Australian, Canadian and Sunray of the one part and EPNG of the other part,

in each case as varied by this Agreement;

B. The State recognises :

- (i) that discovery of commercial quantities of Petroleum in Papua New Guinea will be of major economic significance to the people of Papua New Guinea,
- (ii) that to enhance the prospects of such discovery, the State intends to rely on and permit companies such as the Oil Companies to explore for and produce any Petroleum discoveries,
- (iii) that the Oil Companies will spend large sums of money on exploration for Petroleum and on development of facilities to produce any commercial quantities of Petroleum discovered, and
- (iv) that the ability of the Oil Companies to spend amounts of money referred to above will be dependent in part upon the certainty and long term stability of the terms upon which the State permits the Oil Companies to operate within Papua New Guinea;

C. The State is anxious to ensure that the development of any commercial discoveries of Petroleum will secure the maximum benefit for and adequately contribute to the advancement and the social and economic welfare of the people of Papua New Guinea, including the people in the vicinity of the Oil Companies' operations in a manner consistent with their needs and the protection of their environment;

SCHEDULE 1.—*continued.*

D. The State and the Oil Companies have agreed on a number of matters which are set out in this Agreement and while acknowledging that legislative sovereignty in Papua New Guinea is vested in the National Parliament wish the matters agreed upon to be an enduring arrangement and do not intend that they should be altered other than by agreement between the State and the Oil Companies.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise requires :

"Accumulated Liability" has the meaning ascribed to it in Clause 13.1;

"Affiliated Corporation" means, in relation to any Party a related company of that Party and "related company" has the same meaning ascribed thereto by Section 6(3) of the Companies Act 1963;

"the Agreement" means this Agreement together with the Annexures hereto;

"Approved Proposals" means proposals or amended proposals submitted to the State pursuant to the provisions of the Offshore Act and approved pursuant to that Act;

"the Area" means the area covered by the Prospecting Licence;

"Budget Year" means a calendar year commencing on 1st January and ending on the next succeeding 31st December;

"Citizen" means a citizen, (whether natural born or naturalised) of the State;

"Development" means activities in or in relation to a Development Area carried on in accordance with the Operating Agreement or Joint Operating Agreement for the purpose of constructing and installing the facilities and infrastructure necessary to enable Production from the Area;

"Development Area" means the Blocks comprising a Development Licence;

"Development Licence" means a Development Licence granted under the Offshore Act;

"Exploration" and "Prospecting" mean activities in or in relation to the Area carried on for the purpose of identifying in the first instance the location of any Petroleum traps in the Area and thereafter in relation to each Petroleum trap to determine whether it constitutes a reservoir containing sufficient Petroleum to justify Development;

"Foregone Production" has the meaning ascribed to it in Clause 13.1;

"Investigations and Studies" means the investigations and studies required by the Minister under section 28A of the Offshore Act;

"Joint Operating Agreement" means the agreement to be negotiated by the Parties in substitution for the Operating Agreement;

"Licence" and "Petroleum Licence" mean Petroleum Prospecting Licence number 1 or any renewal, extension, or replacement thereof issued pursuant to the Offshore Act;

"Licence Conditions" means those conditions included in the Licence or any Development Licence by the Minister as provided for in the Offshore Act;

"Licence year" means a 12 month period commencing in the first instance on 1st September, 1975 and thereafter the 12 month period commencing on 1st September in each year;

"Offshore Act" means the Petroleum (Submerged Lands) Act 1975;

"Operating Agreement" means the agreement dated the 2nd day of January, 1964, among Tasman Oil Pty. Ltd., Anacapa Corporation, Sunray DX Oil Company and Phillips Petroleum Company as amended prior to the date hereof and as registered with the Minister for Mines and Energy, as further amended from time to time by the Parties;

"Operating Committee" has the same meaning in this Agreement as the meaning ascribed to it in the Operating Agreement;

"Operations" means operations and activities carried out under the Operating Agreement and the Joint Operating Agreement and includes Exploration, Development and Producing or any of them as the context permits;

"Party" or "Parties" means respectively a party or parties to this Agreement and their respective successors and permitted assigns;

SCHEDULE 1.—*continued.*

"Participating Interest" means the undivided percentage interest of each of the Oil Companies in the Venture Assets immediately prior to the assignment to the State of its Venture Interest. At the date of this Agreement the respective Participating Interests are:

Arco	10.0%
Australian	7.5%
Canadian	7.5%
EPNG	62.5%
Sunray	12.5%

"Petroleum Income Tax" and "Additional Profits Tax" have the same meaning in this Agreement as the meaning ascribed to them in the Income Tax Act 1959;

"Positive Day" has the meaning ascribed to it in Clause 13.1;

"Producing" means activities involved in or in relation to producing, treating, transmitting, transporting, storing or handling of Petroleum produced from within the Area, and includes extraction of Petroleum by any permitted method, and all work and operations necessary or convenient for the foregoing;

"Production Share" has the meaning ascribed to it in Clause 13.1;

"Shortfall Period" has the meaning ascribed to it in Clause 13.1;

"Simple Interest" has the meaning ascribed to it in Clause 13.1;

"Specified Volume" has the meaning ascribed to it in Clause 14.1;

"Venture Assets" means Property whether real or personal owned at the date the State gives notice under Clause 13.3 or thereafter acquired as tenants in common—

(a) by the Oil Companies in proportion to their respective Participating Interests until the State elects to acquire its Venture Interest, and thereafter

(b) by the Parties in proportion to their respective Venture Interests;

and includes the Licence, any Development Licences granted over the Area, materials, plant, and equipment and any Petroleum discovered in the Area;

"Venture Interest" means the undivided percentage interest from time to time in the Venture Assets and Operations of a Party after the assignment to the State of a percentage interest in the Venture Assets and Operations;

"Works and Facilities" and "Works or Facilities" have the meaning ascribed to them in Article 15;

"Block", "Norm Price", "Petroleum", and "Royalty" have the same meaning in this Agreement as the meaning ascribed to them in the Offshore Act.

ARTICLE 2 INTERPRETATION

2.1 In this Agreement unless the context otherwise requires—

(a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;

(a) the headings do not affect the interpretation or construction;

(b) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;

(c) words importing the singular include the plural and vice versa;

(d) words importing any gender include the other genders;

(e) references to a person include a corporation and vice versa;

(f) reference to an Article, Clause or Subclause is to an Article, Clause or Subclause of this Agreement;

(g) reference to a Minister shall mean the Minister for the time being having responsibility for the particular subject matter according to the context.

2.2 Where any provision of this Agreement constitutes an undertaking by one of the Parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right, concession or advantage that party shall by its

SCHEDULE 1.—*continued.*

execution hereof be deemed to have covenanted and agreed with the other Party accordingly and where any such provision constitutes such an undertaking by the Oil Companies there shall be deemed to be a covenant and agreement by all of them jointly and each of them severally in respect of such undertaking.

ARTICLE 3 EFFECT ON AND OF OTHER LAWS

3.1 The Articles and Clauses listed in Clause 3.2 are to have the force of law and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea, and no law at any time in force in Papua New Guinea made after the commencement of this Agreement shall affect those Articles and Clauses :

- (a) unless the contrary intention appears expressly in that law; or
- (b) except as provided by this Agreement.

3.2 The provisions of Clause 3.1 shall apply to the following :

- (a) Article 5
- (b) Article 6
- (c) Clause 17.6
- (d) Clause 28.1

ARTICLE 4 CONDITIONS PRECEDENT

4.1 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament in a form agreed upon by the Parties, a Bill for an Act to approve this Agreement and to give the force of law to the Articles and Clauses specified in Clause 3.2.

4.2 This Agreement shall be void and of no effect and none of the Parties shall have any claim against any other Party with respect to any matter or thing arising out of, done or performed under this Agreement unless the Act referred to in Subclause 4.1(a) shall come into effect prior to 31st day of March, 1977.

ARTICLE 5 CURRENCY

5.1 Words and expressions which have a certain meaning where used in the Foreign Exchange Regulations made under the Central Banking Act 1973 shall have the same meaning where used in this Article 5.

5.2 The Oil Companies shall be entitled to retain in foreign currency outside Papua New Guinea proceeds of sale of all Petroleum produced by the Oil Companies and exported overseas to the extent necessary to enable the Oil Companies to meet their obligations to pay foreign currency during the ensuing three (3) months in respect of :

- (a) the principal of, interest and services charges on and other fees and expenses related to loans made to the Oil Companies in foreign currency for purposes of their operations under this Agreement by persons not resident in Papua New Guinea, where the terms of such loans have been approved by the Bank of Papua New Guinea under the Foreign Exchange Regulations; and
- (b) commitments in foreign currency to persons not resident in Papua New Guinea for the supply of goods and services to the Oil Companies (including capital goods and services of foreign employees and consultants); and
- (c) commitments in respect of dividends payable to shareholders resident outside Papua New Guinea;

provided that the amounts concerned are established to the reasonable satisfaction of the State.

5.3 Where amounts of foreign currency expected to be required by any of the Oil Companies for the purposes described in Clause 5.2 in any three month period exceed the amounts of foreign currency earnings expected to be received by any of the Oil Companies in that period, such Oil Company may request the State to hold foreign currency for it to the level of the possible shortfall but not exceeding foreign currency requirements for purposes of loan repayments whereupon—

- (a) the Oil Company concerned shall notify the State of the amount of the expected shortfall and the currencies in which the shortfall is likely to occur;

SCHEDULE 1.—*continued.*

- (b) the State, after consultation with the Bank of Papua New Guinea, will advise the Oil Company concerned of the Kina equivalent of the shortfall at the exchange rate then prevailing;
- (c) the Oil Company concerned will lend to the State and the State will borrow from the Oil Company concerned that amount in Kina;
- (d) the State through the Bank of Papua New Guinea will hold deposits of foreign exchange in the currency to which payments will be made and of amounts sufficient to make such payments in accordance with the notice which the Oil Company concerned has given to the State under Subclause 5.3(a)
- (e) the State will pay interest to the Oil Company concerned on such foreign currency deposits at a rate per annum which is the rate which the Bank of Papua New Guinea earns for the State on those deposits less one half of one percent (0.5%) per annum to cover the Bank of Papua New Guinea's administrative and overhead costs; and
- (f) the State will repay any loan made by the Oil Company concerned under this Clause 5.3 in the currencies in which the deposits are held at the time payments in those currencies by the Oil Company concerned are due, such amounts in foreign currency to be applied in discharge of the Kina amount of the original loan at the exchange rate ruling at the time of the original loan.

5.4 The Oil Companies will not be subject to or limited by regulations or statutes relating to foreign exchange and the control thereof that are less favourable to the Oil Companies or any of them than the regulations and statutes of general application to persons dealing with foreign exchange in Papua New Guinea nor will regulations or statutes relating to foreign exchange and the control thereof be applied in relation to any of the Oil Companies in a manner less favourable to them than the manner in which they are generally applied to others to whom they are applicable.

5.5 At all times the Oil Companies shall have the right to buy and sell Kina at rates of exchange no less favourable than those available to other commercial buyers and sellers of that currency.

5.6 The Oil Companies may establish foreign currency accounts in Papua New Guinea PROVIDED THAT such deposits do not contravene Exchange Control requirements and contain deposits considered by the Government to be reasonable in relation to the Oil Companies' needs.

5.7 Unless otherwise directed by the State and except as provided in Clauses 5.2 and 5.6, each Oil Company shall convert all its foreign currency earnings from Operations under this Agreement into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Oil Company for its use.

5.8 Notwithstanding anything to the contrary in the Acts, the National Investment Development Authority Act, the Income Tax Act or other legislation applying to the Operations, the Oil Companies may—

- (a) keep their books of account and other records in both Kina and United States dollars; and
- (b) make all calculations under any statute or regulation (including but without limiting the generality of the foregoing calculations for Royalty, Petroleum Income Tax, Additional Profits Tax) and for the Foregone Production, and Specified Volume and other matters arising under this Agreement, the Operating Agreement and the Joint Operating Agreement in Kina or United States dollars. When applying for the first Development Licence within the Area each Oil Company shall elect to make such calculations thereafter in either Kina or United States dollars. If such calculations are made in United States dollars the State shall accept payment of such taxes and other moneys in Kina converted from United States dollars as provided in the following formula :

$$K = S \times D$$

where,

K means the sum in Kina payable to the State for any of the stated purposes;

S means the sum expressed in United States dollars to be converted to Kina;

D means the mean of the average of the Daily Published Buying and Selling Rates of Kina against the United States dollar during the Budget Year, or in the case of Royalty during the month, for which the calculation is being made. The "Daily

SCHEDULE 1.—*continued.*

Published Buying and Selling Rates" means the buying and selling rates from time to time published by the Bank of Papua New Guinea or such other buying and selling rates as may from time to time be published and recognised by the State as the official buying and selling rate. In calculating the mean of the average of the Daily Published Buying and Selling Rates the average of the buying and selling rates applying on each day on which the Bank of Papua New Guinea is open to the public for business transactions shall be aggregated and the result divided by that same number of days.

ARTICLE 6 NIDA REGISTRATION

6.1 Notwithstanding anything expressly or impliedly to the contrary contained in the National Investment and Development Act 1974 and in particular notwithstanding the provisions of Section 4 of that Act, the Oil Companies from the date of issue of the first Development Licence shall be deemed to be registered under that Act in respect of the activities of Exploration, Development and Producing (but not including refining of crude oil) and other activities necessarily incidental thereto and contemplated by or required to carry out Exploration or the Approved Proposals, on the following conditions :

- (a) the Oil Companies shall not without the approval of the National Investment and Development Authority carry on any activities except those necessarily incidental to Exploration or the Approved Proposals; and
- (b) the registration shall be for the duration of this Agreement and shall be deemed to be cancelled upon the termination of this Agreement for any reason whatsoever.

ARTICLE 7 PROPOSALS

7.1 The Oil companies shall submit to the State in support of any application for a Development Licence and in addition to detailed proposals as required by section 30 of the Offshore Act :

- (a) the financial analysis of prospective cash flows of the Operations;
- (b) matters which the Oil Companies may consider relevant to support a request pursuant to Clause 29.5 that the State elect to acquire a Venture Interest less than the maximum provided for in Clause 13.3.

7.2 The State shall treat as confidential all material and information supplied to the State under Subclause 7.1 (a) and under Section 28A(3) of the Offshore Act being the results of studies referred to in Section 28A(2)(a) and (b) of that Act PROVIDED THAT if this Agreement is terminated as provided in Article 26 the material and information shall become the property of the State and may be used by the State in such manner as it thinks fit.

7.3 If the Oil Companies desire to modify, expand or otherwise substantially vary their activities beyond those specified in any Approved Proposals, either by undertaking any new activity or by a major expansion of activities specified in the Approved Proposals, the Oil Companies shall give notice of such desire to the State and within two months thereafter shall submit to the State detailed proposals in respect of the desired modification, expansion or variation.

ARTICLE 8 CONSIDERATION OF PROPOSALS

8.1 The State shall not unreasonably withhold its approval to the proposals referred to in Subsection 30(1)(c) of the Offshore Act and if the State approves such proposals without amendment, it shall notify the Oil Companies accordingly at the same time as the Minister serves on the Oil Companies the instrument under section 31 of the Offshore Act.

8.2 If the State does not intend to approve without amendment the proposals referred to in Subsection 30(1)(c) of the Offshore Act, the State within three (3) months of receipt of such proposals shall notify the Oil Companies that it wishes to :—

- (a) defer consideration of or decision upon the same until such time as the Oil Companies submit a further proposal or proposals in respect of some matter mentioned in Section 28A of the Offshore Act not covered by the said proposals and in such case the State shall disclose to the Oil Companies the reasons therefor and specify the further proposal or proposals; or

SCHEDULE 1.—*continued.*

- (b) approve the said proposals subject to the Oil Companies making such alteration thereto or complying with such conditions as the State thinks reasonable and in such a case the State shall disclose its reasons for requiring such alterations or imposing such conditions.

8.3 If the decision of the State is to be as mentioned in Clause 8.2 the State shall afford the Oil Companies full opportunity to consult with it and should the Oil Companies so desire, to submit new proposals either generally or in respect of some particular matter.

ARTICLE 9 TRAINING AND LOCALISATION

9.1 The Oil Companies holding a Development Licence in regard to any part of the Area shall progressively replace foreign personnel (employed with the approval of the State) with Citizens, in accordance with the training and localisation programme which forms part of the report furnished to the Minister under section 28A of the Offshore Act PROVIDED THAT if the training and localisation programme is disrupted by circumstances or events (whether or not they constitute force majeure within the meaning of Article 11) which make it difficult or impossible for the Oil Companies to comply with their obligations under such programme, the Oil Companies may give notice thereof to the State, together with alternative or revised plans to achieve the objects of the part of the training and localisation programme which is affected, and the State within one (1) month of that notice shall either—

- (a) approve those alternative or revised plans; or
- (b) meet with the Oil Companies to discuss the alternative or revised plans. If such discussions do not lead to the State's approval of alternative or revised plans, which approvals shall not unreasonably be withheld, the Oil Companies shall be bound by their original obligations under the training and localisation programme, except that they shall not be liable for any delay caused by following the procedures under this Subclause and subject always to the Oil Companies being able to claim force majeure under Article 11.

9.2 The State shall give such assistance to the Oil Companies as is reasonably required in the formulation of their training and localisation programme and in recruitment of Citizens, and under normal conditions shall make available its facilities for vocational and technical training.

9.3 Training and instruction pursuant to the training and localisation programme shall be given by employees or agents of the Oil Companies who are proficient in the English language.

9.4 (a) The Oil Companies holding a Development Licence jointly shall arrange in co-operation with the State assignments for the State's Employees, not to exceed more than ten (10) in any year or at any time, to the Oil Companies' operations, whether in Papua New Guinea or overseas, to assist in training such employees for managerial, professional, and technical positions for the State PROVIDED THAT if any Oil Company being a party to this Agreement has fulfilled or partly fulfilled a like obligation under any like agreement with the State to which the Oil Companies are also a party this clause 9.4 shall be deemed to have been fulfilled to the extent that such like obligations have been fulfilled by the Oil Companies.

- (b) The salaries and other expenses of such State employees shall be borne by the State PROVIDED THAT whilst any such State employee is directly engaged in the Oil Companies' operations, salary and expenses of such employee shall be borne by the Oil Companies.

9.5 As far as is practicable the Oil Companies shall give first preference in employment to Citizens whose place of origin is in the area of any Development Licence.

ARTICLE 10 LOCAL SUPPLIES AND BUSINESS DEVELOPMENT

10.1 The Oil Companies shall :

- (a) use and purchase goods and services supplied, produced, or manufactured in Papua New Guinea whenever the same can be obtained at competitive prices and on competitive terms, conditions and delivery dates and are in all substantive respects of a quality comparable with those available from outside Papua New Guinea; and
- (b) encourage and assist Citizens desirous of establishing businesses providing goods and services for the Oil Companies' operations and for any town constructed primarily for purposes of the Oil Companies' operations and the residents thereof; PROVIDED THAT

SCHEDULE 1.—*continued.*

the Oil Companies shall not be obliged or called upon to grant or lend money to any Papua New Guinea Citizen or any local enterprise; and

- (c) make maximum use of Papua New Guinea subcontractors where services of comparable standards with those obtainable elsewhere whether inside or outside Papua New Guinea are available from them at competitive prices, and on competitive terms, conditions, and delivery or performance dates; and
- (d) where it is necessary to import vehicles, machinery, plant or equipment, and such items are not purchased direct from the manufacturer by the Oil Companies, effect the purchase of such items through traders operating in Papua New Guinea, PROVIDED THAT such items are available through such traders at a competitive price, and on competitive terms, conditions, and delivery date and provided always that the Oil Companies shall not be bound to comply with this Subclause in any case where compliance would adversely affect the financing of the Oil Companies' operations or any part thereof.

10.2 Insofar as it is practicable, the Oil Companies shall give first preference in their assistance under Subclauses (b) and (c) of Clause 10.1 to Citizens originating from the sub-province in which Petroleum is produced.

ARTICLE 11 FORCE MAJEURE

11.1 Any failure on the part of a Party hereto to comply with any of the terms, conditions, and provisions of this Agreement (except any obligation of the Oil Company to make payment of money to the State) shall not be grounds for termination or give another Party hereto any claim for damages insofar as such failure arises from force majeure, if the first-mentioned Party has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement. That Party shall take all reasonable measures to remove such inability to fulfill terms and conditions of this Agreement with the minimum of delay.

11.2 For the purposes of this Agreement, force majeure shall include war, insurrection, civil disturbances, blockades, riots, embargoes, strikes, bans, limitations, and other labour disputes (PROVIDED THAT the Oil Companies shall not be required to agree to a settlement of any particular labour dispute solely for the purposes of terminating a condition of force majeure), land disputes, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fires, lightning, breakdown of machinery or facilities, shortages of labour, transportation, fuel, power or essential plant equipment, or materials or any other event which the party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Oil Companies shall include any delay or failure by the State to give any consent or approval required under this Agreement or under any applicable law, but shall not include any event caused by the failure to observe good oilfield practice nor any event caused by negligence in the provision of adequate supervision of the Operation.

11.3 The Oil Companies shall notify the State on their becoming aware of an event of force majeure affecting their ability to fulfill the terms and conditions of this Agreement, or any event which may endanger the natural resources in the Area and shall similarly notify the State on the restoration of normal conditions.

ARTICLE 12 EXTENSIONS OF TIME

12.1 Notwithstanding any provision of this Agreement, the State may at the request of the Oil Companies from time to time extend any period referred to in this Agreement for such longer period or substitute for any date referred to in this Agreement such later date as it thinks fit, notwithstanding that at the time of such extension or substitution such period may have expired or such date may have been passed.

ARTICLE 13 STATE PARTICIPATION

13.1 In this Agreement, unless the context otherwise requires :

"Accumulated Liability" means an amount calculated in accordance with the following formula :

$$AL = SVI (E + D + OC) + S - F$$

where,

AL is the State's Accumulated Liability to an Oil Company;

SVI is the State's Venture Interest expressed as a fraction;

SCHEDULE 1.—*continued.*

E is the amount of allowable exploration and prospecting expenditure as defined in Subsection 164E(1) of the Income Tax Act 1951 or which would have been allowable but for an election under Section 164T of that Act spent by the Oil Company in or in relation to the area between September 1, 1975 and prior to the issue of the first development licence over part of the Area and in recognition of exploration and prospecting operations conducted by the Parties pursuant to rights or titles held by them prior to September 1, 1975 such additional amounts of allowable exploration and prospecting expenditure, defined as aforesaid, spent by the Oil Company in or in relation to the Area prior to September 1, 1975 and within 11 years prior to the issue of the first development licence over part of the Area, PROVIDED THAT if the term of the licence is extended as provided in Section 23A of the Offshore Act thereafter the amount of allowable exploration and prospecting expenditure, defined as aforesaid, shall be reduced each year during such extended term by the amount borne by the Oil Company of the total amount expended with the approval of the Operating Committee on Operations during the 12th year preceding that year.

D is the sum of the amounts of allowable capital expenditure and allowable exploration and prospecting expenditure as defined in Sections 164A and 164E of the Income Tax Act 1951 or which would have been allowable but for the election under Section 164T of that Act spent by the Oil Company in or in relation to the Area after the issue of a Development Licence and during a Shortfall Period;

OC is the amount spent by the Oil Companies on Operations during a Shortfall Period and not included in E or D;

S is the amount paid by the Oil Company to the State under Clause 13.7;

F is the value at Norm Price of Foregone Production received by the Oil Company less any amount paid under Subclauses 13.8(a) and (b);

"Foregone Production" means the volume of the State's Production Share foregone in favour of the Oil Companies or any of them in satisfaction or part satisfaction of the items referred to in Clause 13.8;

"Positive Day" means a day on which the State's Accumulated Liability to an Oil Company is reduced to zero;

"Production Share" means a proportion of the Petroleum produced from within the Area equal to a Party's Venture Interest which a Party from time to time may be entitled to receive and separately dispose of;

"Shortfall Period" means a continuous interval of time during which the State has and continues to have an Accumulated Liability to any one or more of the Oil Companies;

"Simple Interest" means a percentage interest rate equal to 5 percentage points in excess of—

- (a) the annual rate of interest on domestic corporation borrowings rated AAA in the U.S.A. as published in the Survey of Current Business by the U.S.A. Department of Commerce—Bureau of Economic Analysis applying at the date of issue of the first Development Licence issued over part of the Area, such rate to be adjusted quarterly; or
- (b) if such rate is not published, a comparable rate determined in such manner as the Parties shall agree;

13.2 (a) The Parties shall settle the terms of the Joint Operating Agreement as soon as practicable. Except as provided in Article 27, that Agreement shall accord substantially with the Operating Agreement but shall be subject to the terms of this Agreement and in the event of inconsistency, this Agreement shall prevail;

(b) The Joint Operating Agreement shall take effect when the last of the Parties executes such Agreement.

13.3 (a) The State may acquire an unencumbered interest in the Venture Assets and Operations to a nominated percentage (not exceeding 22½ percent either of such Venture Assets and Operations or of the Participating Interest of any particular Oil Company) by giving notice to each Oil Company to that effect within four (4) months after the issue of the first Development Licence over part of the Area. On and from the first day of the calendar month next following the month in which the State gave notice as aforesaid the

SCHEDULE 1.—*continued.*

Venture Interest of each Oil Company shall be equal to its Participating Interest appropriately reduced by the interest acquired by the State;

- (b) As soon as practicable after the State has given notice pursuant to Subclause 13.3(a), the Parties shall execute the Joint Operating Agreement (if not already executed) and shall do all things necessary formally to vest that Interest in the State;
- (c) If within two (2) months after the issue of the first Development Licence over part of the Area the State has not given notice under Subclause (a) the Oil Companies within the third month after the issue of that Development Licence shall give notice to the Prime Minister that such election has not been made by the State. Thereafter if a notice under Subclause (a) is not received by the Oil Companies within the time specified in Subclause (a) the State shall be deemed to have elected not to acquire a Venture Interest.
- (d) Forthwith after giving notice under Subclause 13.3(a) electing to acquire a Venture Interest the State shall be entitled to attend and vote at all meetings of the Operating Committee and to receive notice and agendas for all such meetings.

13.4 Except as otherwise provided in this Agreement each Party shall take in kind its Production Share produced and saved from the Area.

13.5 During each Shortfall Period :—

- (a) the State shall forego its Production Share in favour of those Oil Companies to which the State has for the time being an Accumulated Liability and the said Companies shall be entitled to and shall take all such Foregone Production free of encumbrance in the several proportions which each such Oil Company's respective Venture Interest bears to the sum of the Venture Interest of all such Companies;
- (b) an Oil Company shall be entitled to recoup out of Foregone Production—
 - (i) the State's Accumulated Liability to such Oil Company; and
 - (ii) Simple Interest on the State's Accumulated Liability commencing as the case may be on and from either,
 - aa. the date of the notice by the State under Clause 13.3, or
 - bb. the date on which such Oil Company reimburses the State under Clause 13.7; and

computed calendar monthly from the 1st day of each such month on the mean of the balances of Accumulated Liability at the opening of business on the first day and closing of business on the last day of the calendar month for which the calculation is being made PROVIDED THAT in determining the balance of Accumulated Liability at the close of business on the last day of the month, no reduction of the Accumulated Liability for that month shall be taken into account and in lieu thereof the amount of Simple Interest payable for the month shall be reduced by an amount equal to Simple Interest calculated on the amount by which Accumulated Liability is deemed to have been reduced in that month as provided in Sub-clause 13.8(c) computed for the period commencing from the date Accumulated Liability is deemed to have been reduced to the last day of that month; and

- (c) sales of Petroleum produced from the Area by an Oil Company, to which the State has for the time being an Accumulated Liability shall be deemed to have been composed of portion of that Oil Company's Production Share and portion of Foregone Production received by that Oil Company in the respective proportions which that Oil Company's Venture Interest bears to the product of the State's Venture Interest and that said Oil Company's Venture Interest divided by the sum of the Venture Interests of all Oil Companies to which the State had an Accumulated Liability at the time of each such sale.

- 13.6 (a) Except as provided in Subclause (b) the Parties shall bear all the costs of the Operations in proportion to their respective Venture Interests;
- (b) Subject to Clause 13.10 during each Shortfall Period the Oil Companies shall bear all the costs of the Operations in proportion to their respective Participating Interests until the occurrence of the first Positive Day. Thereafter, during the balance of each such Shortfall Period the said costs shall be borne as follows :

SCHEDULE 1.—*continued.*

- (i) by each Oil Company to which the State for the time being has no Accumulated Liability—as to a percentage equal to its Venture Interest;

and as to the balance

- (ii) by those other Oil Companies to which the State for the time being has an Accumulated Liability—in the several proportions which each such Company's respective Venture Interest bears to the sum of the Venture Interests of all such Companies PROVIDED THAT if during a Budget Year after a Positive Day all of the Oil Companies to which the State has an Accumulated Liability give notice to the other Oil Companies and produce evidence that the State's Venture Interest share of the costs of the Operations for the Budget Year exceeds the value of its Foregone Production for the same period all Oil Companies shall forthwith commence and thereafter continue to bear the costs of the Operations until the next Positive Day in proportion to their respective Participating Interest.

13.7 If during a Budget Year or part thereof which is not a Shortfall Period, the State gives notice to the Oil Companies and produces evidence that the State's Venture Interest share of the costs of the Operations for the preceding period of that Budget Year exceed the proceeds received by the State from disposal of the State's Production Share for that period the Oil Companies shall in proportion to their respective Participating Interests and within sixty (60) days after receipt of such notice and evidence reimburse the State the amount of such shortfall.

13.8 Foregone Production taken by an Oil Company shall be applied in the following order of priority :

- (a) to pay Royalty under the Offshore Act on such Foregone Production;
- (b) to pay Simple Interest on the State's Accumulated Liability calculated as provided in Clause 13.5;
- (c) to reduce the Accumulated Liability to the said Oil Company. Any reduction of Accumulated Liability under this Subclause 13.8(c) shall be deemed to be made on the day the Oil Company is to receive payment as provided in any contract of sale for Petroleum, which date shall be consistent with and reflect terms of credit allowed or recognised by the Minister as provided in Section Sch. 3.4 of the Offshore Act or as otherwise agreed upon between the State and the Oil Company.

13.9 Any rights under this Agreement in respect of unsatisfied Accumulated Liability shall cease and the State shall not be looked to for recoupment or reimbursement thereof :

- (a) by any Oil Company on termination of this Agreement as provided in Article 26, or
- (b) by an Oil Company upon its withdrawing from this Agreement and surrendering its Participating Interest or Venture Interest in the Licence and in all Development Licences over any part of the Area;

13.10 When electing to acquire its Venture Interest and thereafter at any Operating Committee meeting at which Operations and a Budget are to be agreed upon for a Budget Year, the State may elect to contribute all or part of its Venture Interest share of costs or expenses of any Operations in respect of which an Accumulated Liability would otherwise accrue to any Oil Company.

13.11 Each Oil Company shall within 30 days after the issue of the first Development Licence and thereafter, if the State has a Venture Interest, not less often than half yearly until it shall have recouped the amount of the State's Accumulated Liability, furnish to the State details of and the amount of such Accumulated Liability for the time being. The State may require reasonable verification of such details and amounts including an audit as provided for in the Operating Agreement or the Joint Operating Agreement as the case may be.

13.12 Notwithstanding the provisions of Clause 13.7, if the Operating Committee resolves that a "Petroleum Pool" (which expression shall have the same meaning in this Clause as ascribed to it in the Offshore Act) has been depleted in accordance with good oilfield practice and that to continue Producing from that Petroleum Pool cannot be justified for technical or economic reasons :

- (a) the cost of plugging and abandoning all wells drilled into the Petroleum Pool; and

SCHEDULE 1.—*continued.*

- (b) other costs and expenses paid or incurred in respect of dismantling, removing, disposing of, or otherwise dealing with all structures, installations, plant and equipment which are Venture Assets and which had been required for Producing from that Petroleum Pool;

shall be borne by the Parties in proportion to their respective Venture Interests.

ARTICLE 14 DISPOSAL OF STATE'S PRODUCTION SHARE

14.1 "Specified Volume" means that part of the State's Production Share which the State wishes an Oil Company to dispose of and specifies in a notice under Clause 14.2.

14.2 Within 30 days after the Operating Committee Meeting to agree upon Operations and a Budget for any Budget Year in which it is expected that a Positive Day will occur the State may give notice to the Oil Companies stating the Specified Volume for that Budget Year for any or each Oil Company. Thereafter, the State may give not less than 3 months notice to any of the Oil Companies reducing or increasing the Specified Volume.

- 14.3 (a) An Oil Company given notice under Clause 14.2 shall use its best efforts to dispose of a Specified Volume at a price which after taking into account the matters provided for in Section Sch. 3 to the Offshore Act will enable that Oil Company to account to the State for an amount equal to Norm Price in respect of that Specified Volume;
- (b) From time to time an Oil Company experiencing difficulty in disposing of any part of the Specified Volume as provided for in Subclause (a) may notify the State accordingly and thereafter the State and that Oil Company will negotiate in good faith in an effort to resolve the Oil Company's difficulty;
- (c) All contracts of sale by an Oil Company of any of the State's Production Share shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the circumstances, but in no event shall any such contract be for a period in excess of one year.

14.4 Following disposition of any of the Specified Volume an Oil Company shall account to the State on whichever shall be the earlier of:

- (a) the date three (3) months after taking delivery at the ship's loading flange of the relevant part of the Specified Volume; or
- (b) whichever of the following dates shall be appropriate:
 - (i) if the sale is at arm's length as defined in Section Sch. 3.2 of the Offshore Act, seven (7) days after receipt of payment in full or part thereof; or
 - (ii) if the sale is other than at arm's length as aforesaid, seven (7) days after the day the Oil Company is to receive payment as provided in the contract for sale for any Petroleum which includes any part of a Specified Volume.

14.5 Upon an Oil Company first becoming aware that a Positive Day has occurred or is likely to occur during a Budget Year which had not been expected at the time of an Operating Committee meeting as referred to in Clause 14.2 it shall notify the State accordingly. Such notice shall include—

- (a) the date on which the Positive Day occurred or is expected to occur as the case may be, and
- (b) the volume of production expected to be available as the State's Production Share for the balance of the Budget Year.

If the Positive Day occurred prior to the date of such notice the notice shall be accompanied by a full accounting for the volume of the State's Production Share disposed of by such Oil Company during the period between the Positive Day and the date of the notice.

14.6 Within 30 days after an Oil Company gives the State notice under Clause 14.5 the State shall give that Oil Company notice of the Specified Volume, if any, for that Oil Company for the balance of the current Budget Year.

14.7 Any Oil Company giving notice under Clause 14.5 shall not dispose of any of the State's Production Share between the date of that notice and receipt by it of a notice under Clause 14.6 except to the extent necessary to satisfy any contract entered into bona fide before the date of the notice under Clause 14.5 in which event the Oil Company shall account to the State in the manner provided in Clause 14.4.

SCHEDULE 1.—*continued.*

14.8 The Joint Operating Agreement shall provide for equitable adjustment on a regular periodic basis for any imbalance which may occur between the Production Share of each Party and the volume of Petroleum taken by or on behalf of the respective Parties and adjustment of any significant disparity in payment of operating costs and expenses caused by such imbalance.

ARTICLE 15 STATE ACQUISITION AND OWNERSHIP OF FACILITIES

15.1 "Works and Facilities" and "Works or Facilities" as the context permits means any of the installations and infrastructure provided for the Operations by either the State or the Oil Companies and capable of being used by the Oil Companies, the State, Citizens or other persons carrying on business in the locality thereof without interfering with the use thereof by the Oil Companies. Without limiting the generality of the foregoing the Parties envisage that Works and Facilities—

- (a) include air fields, roads, ports, water supply, and sewerage facilities, except to the extent that any of them are utilised to their full capacity by the Oil Companies, and
- (b) do not include residential accommodation and administration buildings, installations, and infrastructure directly used in Producing,

PROVIDED THAT provision by the Department of Posts and Telegraphs of facilities and services shall be the subject of a separate agreement.

15.2 (a) At any Operating Committee Meeting at which construction of Works and Facilities is to be approved the State may by written notice to the Oil Companies elect to provide the costs, or part thereof, of any such Works and Facilities; and

- (b) at any time after their construction the State may by notice require the Oil Companies to transfer to it ownership of any Works and Facilities. As soon as practicable after such notice the Oil Companies shall do all things necessary to transfer to the State title to the Works and Facilities nominated in the notice.

15.3 Where the State requires the Oil Companies to transfer to it any Works and Facilities as provided in Subclause 15.2 (b) the State shall pay to the Oil Companies, by annual instalments as provided in Subclause 15.3(a) a purchase price equal to the then depreciated value of such Works and Facilities, and the Oil Companies shall pay to the State annual capital user charges as provided in Subclause 15.3(b).

- (a) The Oil Companies each Budget Year shall nominate the amount of the annual instalments of the purchase price which shall be equal to the annual amount of depreciation that the Oil Companies could have claimed (and would have been entitled to claim) as a deduction allowable under the Income Tax Act in respect of that Work or Facility but for the transfer of ownership to the State. (It is the intention of the Parties that such instalments of purchase price shall not be assessable income in the hands of the Oil Companies for the purpose of assessment of Petroleum Income Tax);
- (b) The Oil Companies shall pay to the State within seven (7) days of the receipt of any instalment referred to in Subclause 15.3(a) a capital user charge equal to the said instalment. (It is the intention of the Parties that such capital user charge shall be a deduction allowed under the Income Tax Act for the purpose of assessment of Petroleum Income Tax and Additional Profits Tax);
- (c) If operations permanently cease in or in relation to the Area and as a result the State ceases to pay any instalment referred to in Subclause 15.3(a), the Oil Companies shall have the right to claim a deduction, as provided by the Income Tax Act for the purpose of assessment of Petroleum Income Tax, and Additional Profits Tax, equal to the amount that the Oil Companies would have claimed (and would have been entitled to claim) but for the transfer of ownership of that Work or Facility to the State.

15.4 If at any time the State acquires or provides any Works or Facilities under this Article 15, the State shall thereupon assume responsibility for maintaining the assets to a proper standard and shall charge the Oil Companies a maintenance charge (which may include an equitable proportion of direct operating costs) limited to the costs of that maintenance PROVIDED THAT the amount of such maintenance charge shall be reduced by any amount spent by an Oil Company under Clause 15.5.

15.5 Where the State has provided or acquired Works or Facilities for the purposes, of, or under this Agreement and fails properly to maintain the same the Oil Companies may, after 30 days notice to the State, and at their own expense, carry out such work as is necessary to bring the same up to a proper standard.

SCHEDULE 1.—*continued.*

ARTICLE 16 USE OF FACILITIES BY THIRD PARTIES

16.1 A third party will be permitted to use Works and Facilities acquired from the Oil Companies by the State and not utilised to their full capacity. The State undertakes to ensure that the third party will be required to pay a proportionate share of any operating, maintenance overhead and capital costs in respect of such Works and Facilities among other things having regard to :

- (a) the extent of the proportionate usage and likely future usage of the Works or Facilities by the third party and the Oil Companies;
- (b) the respective extents to which services are provided to the Oil Companies and the third party (where the Facility is a service Facility);
- (c) any other factor which results in or is likely to result in significant damage to or deterioration of the Work or Facility.

16.2 The State, the Oil Companies, and a third party shall agree upon an amount which the third party will pay to the Oil Companies (notwithstanding any prior transfer of the relevant Works and Facilities to the State under this Agreement) in United States dollars or the Kina equivalent at the date of payment a capital contribution reflecting the extent of the third party's intended use of the Works and Facilities.

16.3 Where the State provides the cost of any modification improvement extension or expansion of any Works or Facilities to meet the needs of the Oil Companies the State may charge the Oil Companies a capital user's charge in respect of that Work or Facility to allow for the recoupment over a reasonable period of the amount expended in providing the said cost by the State together with a reasonable return thereon.

16.4 Notwithstanding anything contained in Article 15 or Article 16 all such Works and Facilities not acquired and managed by the State shall continue to be managed by the Oil Companies and the Oil Companies shall have priority of use thereof over all other users.

ARTICLE 17 RATES AND DUTIES

17.1 Subject to any requirement of defence, foreign trade or foreign policy of this State, the safety of the public and quarantine and to the obligations of the State under multilateral international agreements to which the State is a party the Oil Companies any Affiliated Corporation and the agents and contractors of the Oil Companies or of any Affiliated Corporation shall have the right to acquire import into and move within Papua New Guinea and use any plant machinery equipment vehicles explosives fuels reagents and supplies which have a specialised application and use in the Operations and to export from Papua New Guinea the petroleum (whether processed or otherwise) resulting from the Operations.

17.2 The Oil Companies shall be subject to import duties and levies of general application in accordance with Papua New Guinea law from time to time except as hereinafter provided.

17.3 No rate tax charge due duty tariff or other levy shall be applied to or be payable by the Oil Companies on the export of or in respect of the right to export Petroleum from Papua New Guinea by an Oil Company or a Related Company.

17.4 No rate tax rent charge due duty tariff or other levy and no legislation which discriminates against all or any of the Oil Companies or any member of an Oil Company or any beneficial owner of shares in any of the Oil Companies or any person engaged in the Operations shall be payable by or (as the case may be) applicable to any of the Oil Companies or any such member or beneficial owner or person (as the case may be) in respect of the Operations or of any income arising directly or indirectly therefrom PROVIDED THAT nothing in the Clause is intended to provide a basis for challenging the validity of the petroleum income tax or additional profits tax.

17.5 Any import duty which is sought to be imposed on the importation of any plant machinery equipment explosives chemicals or other supplies which at the time when such duty is sought to be imposed are imported into Papua New Guinea solely for the purpose of and which have a specialised application and use in the Operations and which is sought to be imposed at a rate in excess of the average rate of duty from time to time payable on the importation into Papua New Guinea of the Customs Tariff items numbered 118 275 309 313 320 and 341 04 as set out at the date thereof in the Second Schedule to the Customs Tariff 1959 shall without in any way whatsoever limiting the interpretation of Clause 17.3 above be deemed to discriminate against the Oil Companies.

17.6 No Local Government Rates or Provincial Government Rates or taxes on land calculated so as to be other than approximately equal to a rate or tax calculated in relation to the unimproved capital

SCHEDULE 1.—*continued.*

value of the surface rights of the land shall be payable by the Oil Companies in respect of land held by the Oil Companies, on which mining or industrial activities are carried on.

ARTICLE 18 CONSULTATION

18.1 The Oil Companies shall consult from time to time with representatives of the State and shall furnish the State each six months with reports concerning the implementation of :

- (a) the training and localisation programme
- (b) the provisions relating to local purchasing of supplies
- (c) the provisions relating to local business development and
- (d) the provisions relating to environmental management.

ARTICLE 19 INSPECTION

19.1 The Oil Companies shall at all reasonable times allow the properly accredited servants or agents of the State (who shall establish their authority on request) to inspect any aspect of the Operations and likewise to inspect and take copies of the books of account and records of the Oil Companies relating to the Operations and to any shipment, sale or use of products of such Operations.

ARTICLE 20 PATENT AND TECHNOLOGY RIGHTS

20.1 All new processes, new methods of manufacture and other technological or mechanical innovations developed within the Oil Companies' Operations :

- (a) shall remain the property of the Oil Companies, which shall apply for, take out and retain such patents and other technology rights, in Papua New Guinea or elsewhere, as may be necessary and desirable to protect the same; and
- (b) shall not be sold, assigned, licenced, surrendered, or otherwise disposed of by the Oil Companies except :
 - (i) on the basis of an arm's length transaction; and
 - (ii) with the prior approval of the State which approval shall not be unreasonably withheld.

20.2 Contracts to which any Oil Company is a party providing for the purchase of the right to use in the Operations any process, method or other technological innovation :

- (a) which are not contracts at arms-length, shall not be entered into without the prior consent of the State which consent shall not be unreasonably withheld, and
- (b) which are contracts at arms-length shall be submitted to the State for information.

20.3 For the purposes of this Article the term "arms-length" shall have the same meaning as ascribed to it in Section Sch. 3.2 of the Offshore Act, except that contracts for provision of services which incidental to their performance require the use of any such process, method or other technological innovation the patent rights to which are the property of any Oil Company or an Affiliated Corporation of any Oil Company and which but for the provisions of Section Sch. 3.2(c) would be at arms-length shall for the purposes of this Clause be deemed to be at arms-length.

ARTICLE 21 ASSIGNMENT

21.1 The State may assign, without the consent of the Oil Companies, all or part of its Venture Interest to any Corporation, statutory or otherwise, formed in Papua New Guinea and either :

- (a) wholly owned by the State, or
- (b) wholly owned by the State and another corporation or other corporations, statutory or otherwise formed in Papua New Guinea and which are controlled by the State and in which the State has at least a 50% beneficial interest,

PROVIDED THAT vested in such corporation or corporations are powers and financial capacity sufficient to enable such of the State's continuing obligations under this Agreement as are assigned to such corporation to be fulfilled.

21.2 Subject to Clauses 21.1 and 21.3 and with the consent of the other Parties which consent shall not be unreasonably withheld, all or any of the Parties may assign, or otherwise dispose of their interest or rights under this Agreement.

SCHEDULE 1.—*continued*.

21.3 In the case of any assignment under this Article 21 the assignee shall undertake to the State to assume, observe and comply with all the obligations of the assignor in relation to the matter assigned or to the extent of the interest assigned as the case may be. After the giving of any such undertaking, the assignor shall be relieved of its obligations under this Agreement in relation to the matter assigned or to the extent of the interest assigned as the case may be without prejudice to pre-existing rights accrued to the State against the assignor.

21.4 Notwithstanding the foregoing provisions of the Clauses 21.2 and 21.3 but subject to normal statutory approvals in force from time to time,

- (a) any Oil Company may charge by way of fixed or floating charge the whole or any part of its Venture Interest to secure the repayment of, any payment of interest and other fees, costs and expenses related to, all loans made to that Oil Company to finance the project; and
- (b) the Oil Companies may mortgage and charge any specific asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset;

and any mortgagee or chargee under a mortgage or charge given by the Oil Companies may exercise all rights of sale and other rights included in any instrument of mortgage or charge provided it shall first give the State at least twenty-eight days' notice of intention to exercise those rights.

ARTICLE 22 ARBITRATION

22.1 If at any time there is any dispute, question or difference of opinion (in this Article 22 referred to as "Issue") between the Parties concerning the application of or arising out of section 99A of the Offshore Act other than any dispute, question, or difference of opinion in respect of which provision for settlement or determination is provided under the Income Tax Act 1959 the same shall, subject to Clause 22.2, stand referred to the arbitration of a single arbitrator, and such reference shall be considered a submission within the meaning of that expression given by the Arbitration Act 1951.

22.2 After any Issue has arisen between the State on the one hand and the Oil Companies or any of them on the other hand, any Party to that Issue may at any time prior to the appointment of an arbitrator by concurrence of the Parties or pursuant to the Arbitration Act, 1951 by notice to the other Party or Parties thereto elect that the provisions of this Clause shall apply to such Issue and in such event:

- (a) the Issue shall stand referred to the arbitration of three arbitrators, one of whom shall be appointed by the State and one of whom shall be appointed by the other Party or Parties to the Issue and the third of whom shall be agreed upon by the State and the other Party or Parties to the Issue in writing, and in default of agreement within fourteen (14) days after the State gives notice to the other Party or Parties to the Issue or the other Party or Parties to the Issue give notice to the State requiring the appointment of such a third arbitrator, shall be appointed in accordance with the provisions of the Arbitration Act 1951 from a panel of five (5) arbitrators to be nominated within a further period of fourteen (14) days thereafter by the President and Chairman of the Board of Directors (or failing him the Chief Executive) not being a Citizen of Papua New Guinea of the Asian Development Bank (or, failing such nomination, from any panel of arbitrators which the person or body appointing the third arbitrator considers satisfactory) PROVIDED THAT no person shall be eligible for appointment as a third arbitrator (unless the State and the Oil Companies otherwise agree in writing in any particular case) if at the time of his proposed appointment he is or has been at any time prior thereto a citizen or resident of Papua New Guinea, the Commonwealth of Australia, Canada, or the United States of America;
- (b) if any arbitrator refuses to act, is incapable of acting or dies, a new arbitrator shall be appointed by the party appointing the original arbitrator or (in the case of the third arbitrator) in accordance with the procedure provided for in Subclause 22.2(a);
- (c) if on such reference one Party fails to appoint an arbitrator either originally or by way of substitution as aforesaid within fourteen (14) days after the other Party (having appointed its arbitrator) has given to it notice to appoint such arbitrator, the arbitration may proceed in the absence of such arbitrator; and
- (d) such arbitration shall be held at such place (whether inside or outside Papua New Guinea) as the arbitrators determine.

SCHEDULE 1.—*continued.*

22.3 If any Party to any arbitration under this Clause so requests the arbitrator or arbitrators shall state, in the form of a special case for the opinion of the National Court of Papua New Guinea, any question of law arising in the course of the reference, and any opinion given shall be subject to the normal right of appeal.

22.4 An award made on an arbitration shall have force and effect as follows—

- (a) if by the award it is adjudged that the decision of the State is correct then the decision of the State in respect to the Issue shall stand; but
- (b) if the arbitrator adjudges that the decision of the State is incorrect then he shall further adjudge what the Norm Price should be in which event the decision of the Arbitrator shall be binding on the Parties.

ARTICLE 23 LAW APPLICABLE

23.1 This Agreement shall be governed by and construed in accordance with the law of Papua New Guinea.

ARTICLE 24 VARIATION

24.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Licences, any Development Licence, or any lease, licence, right or grant granted hereunder or pursuant hereto or any programme, proposal or plan approval hereunder, for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

24.2 Where an agreement made pursuant to Clause 24.1 constitutes an alteration of any Article or Clause referred to in Clause 3.2, the variation agreement shall contain a declaration to that effect, and the State shall as soon as is practicable introduce and sponsor in the National Parliament a Bill for an Act to approve that variation agreement and give force of law to the alteration of the rights hereunder. That variation agreement shall be subject to the coming into force of the approving Act.

24.3 Any agreement made pursuant to Clause 24.1 which does not constitute an amendment of any Clause referred to in Clause 3.2 shall be tabled by the State in the National Parliament within the first twelve (12) sitting days next following its execution.

ARTICLE 25 NOTICES

25.1 All notices, notifications, consents, approvals, undertakings, applications, requests, offers, reports, returns, elections, and proposals required to be or which may be given, made, furnished or submitted under this Agreement shall, unless the context otherwise requires, be in writing signed by a Minister of the State or the Director of the Office of Minerals and Energy or (as the case may be) a director or secretary or other designated representative of the Oil Companies, and if in writing shall be sufficiently given, furnished or submitted if delivery at or posted by prepaid post to the address for service of the Party or Parties to whom it is to be given, made, furnished or submitted, and all such communications if posted as aforesaid shall, unless proven otherwise, be deemed to have been received in the ordinary course of post.

25.2 The addresses for service :

(a) of the State shall be :

(i) for the purposes of Sub-clause 13.3(c)

The Prime Minister,
Central Government Offices,
Waigani,
Papua New Guinea

or by post to :

The Prime Minister,
Central Government Offices,
Wards Strip Post Office,
Waigani,
Papua New Guinea

Telephone: Port Moresby 27 1211
Telex: SENTROF NE 22144; and

SCHEDULE 1.—*continued.*

(ii) for all other purposes :

The Director,
Office of Minerals and Energy,
Konedobu,
Papua New Guinea

or by post to :

The Director,
Office of Minerals and Energy,
P.O. Box 2352,
Konedobu,
Papua New Guinea

Telephone : 25 1180
Telex : WABTRO NE 22211

(b) of the Oil Companies shall be :

Arco Australia Limited,
812 Bridge Street,
Sydney, Australia

or by post to:

Arco Australia Limited,
G.P.O. Box 2521,
Sydney N.S.W. 2001,
Australia

Telephone: Sydney 27 6901
Telex: 21297

Australian Superior Oil Company Limited,
4315 Australia Square Tower,
George Street,
Sydney N.S.W. 2000,
Australia

Attention: N. U. Ledingham

Telephone: Sydney 27 2873
Telex: 21273

and to

Australian Superior Oil Company Limited,
First City National Bank Building,
Houston, Texas U.S.A.

or by post to

Australian Superior Oil Company Limited,
P.O. Box 1521,
Houston, Texas, 77001, U.S.A.

Attention: J. E. Reid

Telephone: Houston 2245111
Telex: 77 5369

Canadian Superior Oil (Aust.) Pty. Ltd.,
Three Calgary Place,
355 Fourth Avenue S.W.,
Calgary, Alberta, T2P 0J3, Canada

Attention: H. J. Caine.

Telephone: (403) 267 4110
Telex: 038 26640

SCHEDULE 1.—*continued.*

Esso Papua New Guinea Inc.,
C/- Exploration Manager,
Esso Australia Limited,
127 Kent Street,
Sydney, N.S.W. 2000
Telephone: 20557
Telex: AA20549

Sunray Australian Oil Company Inc.,
Suite 404, Cathay Building,
Singapore 9
Attention: T. Adame.
Telephone: 32 3032
Telex: RS21591

and to

Sunray Australian Oil Company Inc.,
P.O. Box 30,
2001 Bryan Tower,
Dallas, Texas, 75221, U.S.A.
Attention: W. R. Broocks.
Telephone: (214) 744 2222
Telex: 73 2323

Any Party may change its address for service by prior notice in accordance with this Article.

25.3 Where the Oil Companies are required to submit any plans, proposals, or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State receives the said plans, proposals or other material.

ARTICLE 26 TERMINATION

26.1 The State may terminate this Agreement by notice to the Oil Companies in any of the following events—

- (a) if the Oil Companies abandon the Licence or repudiate their obligations under this Agreement and Operations are not resumed or such default made good within a period of sixty (60) days after notice as provided in Clause 26.2 is given by the State to the Oil Companies;
- (b) if the State can establish that in granting its approval to any proposal made under the Offshore Act or otherwise it relied upon a statement made by the Oil Companies not being an estimate based on judgement exercised in good faith on the application of knowledge available at the time the estimate is made and it is shown the Oil Companies intended such statement to be false or misleading;
- (c) if the Licence or any extensions or renewal thereof is properly forfeited due to default by the Oil Companies or is surrendered under the Onshore Act;
- (d) if the Oil Companies do not submit proposals in accordance with Article 7.

26.2 The notice to be given by the State in terms of Subclause 26.1(a) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the Party or Parties responsible therefor and shall be given to each of the Oil Companies.

26.3 For the purposes of Clause 26.1(a) the Oil Companies shall not be deemed to have abandoned the Licence or repudiated their obligations unless all persons for the time being bound, whether as assignees of the Oil Companies or otherwise, to perform the obligations of the Oil Companies hereunder, have abandoned the Licence or repudiated the obligations.

26.4 This Agreement shall terminate on the expiry or surrender of the Licence and all Development Licences issued over any part of the Area or any renewal or extension of any of them.

26.5 If this Agreement is terminated after the grant of a Development Licence all structures, installations, plant, and equipment:

SCHEDULE 1.—*continued.*

- (a) which can be removed from the Area within six (6) months after the notice of termination and without irreparable damage to the Area or any remaining structure, installations, plant and equipment may be removed by the Parties; and
- (b) all other structures, installations, plant, equipment and non-movable assets of the Parties in the Area shall thereupon become the property of the State without any cost to the State or any liability for the State to pay compensation therefor, and freed and discharged from all mortgages and other encumbrances. All materials, supplies and other movable assets of the Parties in the Area which are fully depreciated for tax purposes shall likewise become the property of the State, but any such materials, supplies and other movable assets which are not fully depreciated for tax purposes shall be offered by the Parties for sale to the State at their depreciated value.

26.6 The Oil Companies shall do all such things as the State may reasonably require to give effect to the provisions of this Article 26 and the Oil Companies shall make available to the State the results of the Investigations and Studies to the extent that they have been carried out by the Oil Companies before the date of termination.

26.7 This Article 26 shall continue in force notwithstanding the termination of the rest of this Agreement and may be sued upon or enforced against the Oil Companies.

26.8 Termination of this Agreement under this Article 26 shall be without prejudice to any rights of any of the Parties for any antecedent breach of covenant or agreement.

26.9 Notwithstanding anything to the contrary contained herein, should any law, statute or regulation be passed in Papua New Guinea or become effective in Papua New Guinea, subsequent to 31st March 1977, and should such law, statute or regulation abrogate or materially alter the fundamental contractual rights or obligations of the Oil Companies hereunder, the Oil Companies shall have the right to give the State 60 days notice of their intention to terminate this Agreement without further obligation to the State except as to rights or liabilities in respect of any antecedent breach of this Agreement.

ARTICLE 27 AMENDMENTS TO OPERATING AGREEMENT

27.1 For the purposes of this Article 27 the Operating Agreement shall be deemed to apply only in respect of the Area, the Licence or any Development Licence.

27.2 The Parties shall commence as soon as practicable to negotiate in good faith with the objective of agreeing on the form and content of a Joint Operating Agreement to accord substantially with the provisions of the Operating Agreement but to reflect:

- (a) changes in the parties bound thereby and the circumstances of their association, and
- (b) the possible acquisition by the State of a Venture Interest, and
- (c) amendments necessary to give effect to the provisions of this Agreement.

27.3 If the Parties have not executed the Joint Operating Agreement at the date the State elects to acquire a Venture Interest under Clause 13.3 the State shall as and from that date be deemed to be a party to the Operating Agreement with full rights to attend and vote at all Operating Committee Meetings.

27.4 After the date of this Agreement the Oil Companies may not amend or replace the Operating Agreement without the approval of the State.

27.5 Without limiting the generality of the foregoing the Parties agree that Article VII shall be deleted in its entirety and:

- (a) the following articles or clauses of the Operating Agreement should be reviewed for the purposes of Clause 27.2—

Clause 5.1, 6.2, and 6.3

Articles IX, X, XI, XII, XIII, and XVI;

and

- (b) that additional provisions be included in the Joint Operating Agreement to provide for Operations by less than all parties to that Agreement.

SCHEDULE 1.—*continued.*

ARTICLE 28 MISCELLANEOUS

28.1 No stamp duty or other fees or charges shall be payable to the State in respect of any assignment or transfer of any Participating Interest or Venture Interest in the Licence or the Venture Assets by an Oil Company to the State or to an Affiliated Corporation incorporated in Papua New Guinea if such assignment is required to comply with the provisions of the Acts.

28.2 Subject to considerations of national security the State shall grant to the Oil Companies such licences, permits and other rights and exemptions as are within its power to grant and which reasonably may be required by the Oil Companies to enable the Oil Companies to fulfil their obligations and enjoy their rights and benefits under the Licence, the Acts, or this Agreement.

28.3 If the State elects to acquire a Venture Interest thereafter the Parties shall own all the Venture Assets as tenants in common, however, the expenditure of the Oil Companies under this Agreement shall be shown on the accounting records of the Oil Companies entirely as expenses, charges, and costs of the Oil Companies in proportion to their respective Participating Interests and shall be reflected for purposes of the fiscal dispositions of the applicable United States law in the balance sheet and profit and loss accounts of only the Oil Companies.

28.4 Whether an election shall be made to have this Venture excluded from the application of the provisions of Sub-chapter K of Chapter 1 of Sub-title A of the United States Internal Revenue Code of 1954, shall be determined by EPNG for each Calendar Year during which EPNG has incurred expenditures under Article 13. The initial determination shall be made and furnished in writing to the other Parties no later than 15th April, 1977, and if requested by the Operator to do so, the State will execute a tax agreement for United States tax purposes in a form to be approved by the Parties.

28.5 Consistent with requirements of the law and national security the State shall use its best efforts to have foreign workers and their dependants to be employed in the Operations in accordance with the approved training and localisation programme expeditiously granted such permits as may be necessary to authorise them to enter, re-enter, move within, remain in and depart from Papua New Guinea and to work on or in connection with the Operations.

ARTICLE 29 NATURAL GAS AND GAS LIQUIDS

29.1 It shall be the responsibility of the Oil Companies to determine whether production of Natural Gas or Natural Gas Liquids is commercial and whether or not to construct and install facilities to enable production of such Natural Gas or Natural Gas Liquids.

29.2 Natural Gas and Natural Gas Liquids will be disposed of by the Parties at the first point of measurement downstream from the outlet flange of the field gas separator in the Area beyond which point the State's Venture Interest shall cease.

29.3 Norm Price for all purposes for Natural Gas and Natural Gas Liquids will be the price specified in contracts for its sale entered into with the prior approval of the State which will not be unreasonably withheld.

29.4 Subject to the absence of Regulations to the contrary under the Acts the Oil Companies may flare gas necessarily produced with crude oil and not needed in the Operations and the sale of which is not economically justified.

29.5 The State recognises that its election to acquire up to a 22.5% Venture Interest may prevent the Oil Companies from producing on a commercial basis Natural Gas or Gas Liquids discovered in the Area. Therefore, if the Oil Companies in a proposal under Clause 7.1 produce evidence that such Natural Gas or Gas Liquids cannot be produced on a commercial basis if the State elects to acquire a 22.5% Venture Interest, the State will negotiate in good faith with the intention of agreeing on such lesser Venture Interest as will allow a Natural Gas or Gas Liquids project to proceed on a commercial basis.

SCHEDULE 1.—*continued.*

IN WITNESS whereof this Agreement has been duly executed by the Parties, the day and year first hereinbefore written.

Signed for and on behalf of the Independent State of Papua New Guinea by the Governor General, Sir John Guise, acting with and in accordance with the advice of the National Executive Council:
C. Van Lieshout

Witness

John Guise

John Guise,
Governor General

Signed, sealed and delivered on behalf of Sunray Australian Oil Company Inc., by its duly constituted Attorney in the presence of:

Wendell J. Bares

Witness

Thomas Adame, Jr.

Signed, sealed and delivered on behalf of Arco Australia Limited by its duly constituted Attorney in the presence of:

Dezsee J. Hajdu

Witness

Walter E. Baker

The Common Seal of Canadian Superior Oil (Aust.) Pty. Ltd., was hereunto affixed by authority of the directors in the presence of:

N. V. Ledingham

Secretary

W.M. Blanshard

Director

Signed, sealed and delivered on behalf of Australian Superior Oil Company Limited by its duly constituted Attorney in the presence of: a

N. V. Ledingham

Witness

W. M. Blanshard

Signed, sealed and delivered on behalf of Esso Papua New Guinea Inc., by its duly constituted Attorney in the presence of:

F. M. Hooke

Witness

K. Richards

SCHEDULE 2.

Sec. 1.

Agreement No. 2.

THIS AGREEMENT made the _____ day of _____, 1976 BETWEEN THE INDEPENDENT STATE OF PAPUA NEW GUINEA (herein called "the State") of the first part and ARCO AUSTRALIA LIMITED (herein called "Arco"), AUSTRALIAN SUPERIOR OIL COMPANY LIMITED (herein called "Australian"), CANADIAN SUPERIOR OIL (AUST.) PTY. LTD. (herein called "Canadian"), ESSO PAPUA NEW GUINEA INC. (herein called "EPNG"), and SUNRAY AUSTRALIAN OIL CO. (herein called "Sunray") (herein called collectively "the Oil Companies" which expression shall be taken to refer also to each such company severally) of the second part :

WHEREAS

A. Petroleum Prospecting Licence number 2 issued pursuant to the Petroleum (Submerged Lands) Act 1975 is held by the Oil Companies subject to their respective rights and obligations as specified :

- (i) in the said Petroleum (Submerged Lands) Act 1975,
- (ii) in the said Petroleum Prospecting Licence number 2,
- (iii) in an agreement dated the 2nd day of January, 1964 among Tasman Oil Pty. Ltd., Anacapa Corporation, Sunray Dx Oil Company and Phillips Petroleum Company, and
- (iv) in an agreement dated the 9th day of May, 1975 among Arco, Australian, Canadian and Sunray of the one part and EPNG of the other part,

in each case as varied by this Agreement;

B. The State recognises :

- (i) that discovery of commercial quantities of Petroleum in Papua New Guinea will be of major economic significance to the people of Papua New Guinea,
- (ii) that to enhance the prospects of such discovery, the State intends to rely on and permit companies such as the Oil Companies to explore for and produce any Petroleum discoveries,
- (iii) that the Oil Companies will spend large sums of money on exploration for Petroleum and on development of facilities to produce any commercial quantities of Petroleum discovered, and
- (iv) that the ability of the Oil Companies to spend amounts of money referred to above will be dependent in part upon the certainty and long term stability of the terms upon which the State permits the Oil Companies to operate within Papua New Guinea;

C. The State is anxious to ensure that the development of any commercial discoveries of Petroleum will secure the maximum benefit for and adequately contribute to the advancement and the social and economic welfare of the people of Papua New Guinea, including the people in the vicinity of the Oil Companies' operations in a manner consistent with their needs and the protection of their environment;

D. The State and the Oil Companies have agreed on a number of matters which are set out in this Agreement and while acknowledging that legislative sovereignty in Papua New Guinea is vested in the National Parliament wish the matters agreed upon to be an enduring arrangement and do not intend that they should be altered other than by agreement between the State and the Oil Companies.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS :

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise requires :

"Accumulated Liability" has the meaning ascribed to it in Clause 13.1;

"Affiliated Corporation" means, in relation to any Party a related company of that Party and "related company" has the same meaning ascribed thereto by Section 6(3) of the Companies Act 1963;

SCHEDULE 2.—*continued.*

- "the Agreement" means this Agreement together with the Annexures hereto;
- "Approved Proposals" means proposals or amended proposals submitted to the State pursuant to the provisions of the Offshore Act and approved pursuant to that Act;
- "the Area" means the area covered by the Prospecting Licence;
- "Budget Year" means a calendar year commencing on 1st January and ending on the next succeeding 31st December;
- "Citizen" means a citizen, (whether natural born or naturalised) of the State;
- "Development" means activities in or in relation to a Development Area carried on in accordance with the Operating Agreement or Joint Operating Agreement for the purpose of constructing and installing the facilities and infrastructure necessary to enable Production from the Area;
- "Development Area" means the Blocks comprising a Development Licence;
- "Development Licence" means a Development Licence granted under the Offshore Act;
- "Exploration" and "Prospecting" mean activities in or in relation to the Area carried on for the purpose of identifying in the first instance the location of any Petroleum traps in the Area and thereafter in relation to each Petroleum trap to determine whether it constitutes a reservoir containing sufficient Petroleum to justify Development;
- "Foregone Production" has the meaning ascribed to it in Clause 13.1;
- "Investigations and Studies" means the investigations and studies required by the Minister under section 28A of the Offshore Act;
- "Joint Operating Agreement" means the agreement to be negotiated by the Parties in substitution for the Operating Agreement;
- "Licence" and "Petroleum Licence" mean Petroleum Prospecting Licence number 2 or any renewal, extension, or replacement thereof issued pursuant to the Offshore Act;
- "Licence Conditions" means those conditions included in the Licence or any Development Licence by the Minister as provided for in the Offshore Act;
- "Licence Year" means a 12 month period commencing in the first instance on 1st September, 1975 and thereafter the 12 month period commencing on 1st September in each year;
- "Offshore Act" means the Petroleum (Submerged Lands) Act 1975;
- "Operating Agreement" means the agreement dated the 2nd day of January, 1964, among Tasman Oil Pty. Ltd., Anacapa Corporation, Sunray DX Oil Company and Phillips Petroleum Company as amended prior to the date hereof and as registered with the Minister for Mines and Energy, as further amended from time to time by the Parties;
- "Operating Committee" has the same meaning in this Agreement as the meaning ascribed to it in the Operating Agreement;
- "Operations" means operations and activities carried out under the Operating Agreement and the Joint Operating Agreement and includes Exploration, Development and Producing or any of them as the context permits;
- "Party" or "Parties" means respectively a party or parties to this Agreement and their respective successors and permitted assigns;
- "Participating Interest" means the undivided percentage interest of each of the Oil Companies in the Venture Assets immediately prior to the assignment to the State of its Venture Interest. At the date of this Agreement the respective Participating Interests are :
- | | |
|------------|-------|
| Arco | 10.0% |
| Australian | 7.5% |
| Canadian | 7.5% |
| EPNG | 62.5% |
| Sunray | 12.5% |
- "Petroleum Income Tax" and "Additional Profits Tax" have the same meaning in this Agreement as the meaning ascribed to them in the Income Tax Act 1959;
- "Positive Day" has the meaning ascribed to it in Clause 13.1;

SCHEDULE 2.—*continued.*

"Producing" means activities involved in or in relation to producing, treating, transmitting, transporting, storing or handling of Petroleum produced from within the Area, and includes extraction of Petroleum by any permitted method, and all work and operations necessary or convenient for the foregoing;

"Production Share" has the meaning ascribed to it in Clause 13.1;

"Shortfall Period" has the meaning ascribed to it in Clause 13.1;

"Simple Interest" has the meaning ascribed to it in Clause 13.1;

"Specified Volume" has the meaning ascribed to it in Clause 14.1;

"Venture Assets" means Property whether real or personal owned at the date the State gives notice under Clause 13.3 or thereafter acquired as tenants in common—

(a) by the Oil Companies in proportion to their respective Participating Interests until the State elects to acquire its Venture Interest, and thereafter

(b) by the Parties in proportion to their respective Venture Interests;

and includes the Licence, any Development Licences granted over the Area, materials, plant, and equipment and any Petroleum discovered in the Area;

"Venture Interest" means the undivided percentage interest from time to time in the Venture Assets and Operations of a Party after the assignment to the State of a percentage interest in the Venture Assets and Operations;

"Works and Facilities" and "Works or Facilities" have the meaning ascribed to them in Article 15;

"Block", "Norm Price", "Petroleum", and "Royalty" have the same meaning in this Agreement as the meaning ascribed to them in the Offshore Act.

ARTICLE 2 INTERPRETATION

2.1 In this Agreement unless the context otherwise requires—

(a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;

(b) the headings do not affect the interpretation or construction;

(c) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;

(d) words importing the singular include the plural and vice versa;

(e) words importing any gender include the other genders;

(f) references to a person include a corporation and vice versa;

(g) reference to an Article, Clause or Subclause is to an Article, Clause or Subclause of this Agreement;

(h) reference to a Minister shall mean the Minister for the time being having responsibility for the particular subject matter according to the context

2.2 Where any provision of this Agreement constitutes an undertaking by one of the Parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right, concession or advantage that Party shall by its execution hereof be deemed to have covenanted and agreed with the other Party accordingly and where any such provision constitutes such an undertaking by the Oil Companies there shall be deemed to be a covenant and agreement by all of them jointly and each of them severally in respect of such undertaking.

ARTICLE 3 EFFECT ON AND OF OTHER LAWS

3.1 The Articles and Clauses listed in Clause 3.2 are to have the force of law and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea, and no law at any time in force in Papua New Guinea made after the commencement of this Agreement shall affect those Articles and Clauses:

(a) unless the contrary intention appears expressly in that law; or

SCHEDULE 2.—*continued.*

(b) except as provided by this Agreement.

3.2 The provisions of Clause 3.1 shall apply to the following:

- (a) Article 5
- (b) Article 6
- (c) Clause 17.6
- (d) Clause 28.1

ARTICLE 4 CONDITIONS PRECEDENT

4.1 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament in a form agreed upon by the Parties, a Bill for an Act to approve this Agreement and to give the force of law to the Articles and Clauses specified in Clause 3.2.

4.2 This Agreement shall be void and of no effect and none of the Parties shall have any claim against any other Party with respect to any matter or thing arising out of, done or performed under this Agreement unless the Act referred to in Subclause 4.1 (a) shall come into effect prior to 31st day of March, 1977.

ARTICLE 5 CURRENCY

5.1 Words and expressions which have a certain meaning where used in the Foreign Exchange Regulations made under the Central Banking Act 1973 shall have the same meaning where used in this Article 5.

5.2 The Oil Companies shall be entitled to retain in foreign currency outside Papua New Guinea proceeds of sale of all Petroleum produced by the Oil Companies and exported overseas to the extent necessary to enable the Oil Companies to meet their obligations to pay foreign currency during the ensuing three (3) months in respect of:

- (a) the principal of, interest and services charges on and other fees and expenses related to loans made to the Oil Companies in foreign currency for purposes of their operations under this Agreement by persons not resident in Papua New Guinea, where the terms of such loans have been approved by the Bank of Papua New Guinea under the Foreign Exchange Regulations; and
- (b) commitments in foreign currency to persons not resident in Papua New Guinea for the supply of goods and services to the Oil Companies (including capital goods and services of foreign employees and consultants); and
- (c) commitments in respect of dividends payable to shareholders resident outside Papua New Guinea;

provided that the amounts concerned are established to the reasonable satisfaction of the State.

5.3 Where amounts of foreign currency expected to be required by any of the Oil Companies for the purposes described in Clause 5.2 in any three month period exceed the amounts of foreign currency earnings expected to be received by any of the Oil Companies in that period, such Oil Company may request the State to hold foreign currency for it to the level of the possible shortfall but not exceeding foreign currency requirements for purposes of loan repayments whereupon—

- (a) the Oil Company concerned shall notify the State of the amount of the expected shortfall and the currencies in which the shortfall is likely to occur;
- (b) the State, after consultation with the Bank of Papua New Guinea, will advise the Oil Company concerned of the Kina equivalent of the shortfall at the exchange rate then prevailing;
- (c) the Oil Company concerned will lend to the State and the State will borrow from the Oil Company concerned that amount in Kina;
- (d) the State through the Bank of Papua New Guinea will hold deposits of foreign exchange in the currency to which payments will be made and of amounts sufficient to make such payments in accordance with the notice which the Oil Company concerned has given to the State under Subclause 5.3(a);
- (e) the State will pay interest to the Oil Company concerned on such foreign currency deposits at a rate per annum which is the rate which the Bank of Papua New Guinea

SCHEDULE 2.—*continued.*

earns for the State on those deposits less one half of one percent (0.5%) per annum to cover the Bank of Papua New Guinea's administrative and overhead costs; and

- (f) the State will repay any loan made by the Oil Company concerned under this Clause 5.3 in the currencies in which the deposits are held at the time payments in those currencies by the Oil Company concerned are due, such amounts in foreign currency to be applied in discharge of the Kina amount of the original loan at the exchange rate ruling at the time of the original loan.

5.4 The Oil Companies will not be subject to or limited by regulations or statutes relating to foreign exchange and the control thereof that are less favourable to the Oil Companies or any of them than the regulations and statutes of general application to persons dealing with foreign exchange in Papua New Guinea nor will regulations or statutes relating to foreign exchange and the control thereof be applied in relation to any of the Oil Companies in a manner less favourable to them than the manner in which they are generally applied to others to whom they are applicable.

5.5 At all times the Oil Companies shall have the right to buy and sell Kina at rates of exchange no less favourable than those available to other commercial buyers and sellers of that currency.

5.6 The Oil Companies may establish foreign currency accounts in Papua New Guinea PROVIDED THAT such deposits do not contravene Exchange Control requirements and contain deposits considered by the Government to be reasonable in relation to the Oil Companies' needs.

5.7 Unless otherwise directed by the State and except as provided in Clauses 5.2 and 5.6, each Oil Company shall convert all its foreign currency earnings from Operations under this Agreement into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Oil Company for its use.

5.8 Notwithstanding anything to the contrary in the Acts, the National Investment Development Authority Act, the Income Tax Act or other legislation applying to the Operations, the Oil Companies may—

- (a) keep their books of account and other records in both Kina and United States dollars; and
- (b) make all calculations under any statute or regulation (including but without limiting the generality of the foregoing calculations for Royalty, Petroleum Income Tax, Additional Profits Tax) and for Foregone Production, and Specified Volume and other matters arising under this Agreement, the Operating Agreement and the Joint Operating Agreement in Kina or United States dollars. When applying for the first Development Licence within the Area each Oil Company shall elect to make such calculations thereafter in either Kina or United States dollars. If such calculations are made in United States dollars the State shall accept payment of such taxes and other moneys in Kina converted from United States dollars as provided in the following formula :

$$K = S \times D$$

where,

K means the sum in Kina payable to the State for any of the stated purposes;

S means the sum expressed in United States dollars to be converted to Kina;

D means the mean of the average of the Daily Published Buying and Selling Rates of Kina against the United States dollar during the Budget Year, or in the case of Royalty during the month, for which the calculation is being made. The "Daily Published Buying and Selling Rates" means the buying and selling rates from time to time published by the Bank of Papua New Guinea or such other buying and selling rates as may from time to time be published and recognised by the State as the official buying and selling rate. In calculating the mean of the average of the Daily Published Buying and Selling Rates the average of the buying and selling rates applying on each day on which the Bank of Papua New Guinea is open to the public for business transactions shall be aggregated and the result divided by that same number of days.

ARTICLE 6 NIDA REGISTRATION

6.1 Notwithstanding anything expressly or impliedly to the contrary contained in the National Investment and Development Act 1974 and in particular notwithstanding the provisions of Section 4

SCHEDULE 2.—*continued.*

of that Act, the Oil Companies from the date of issue of the first Development Licence shall be deemed to be registered under that Act in respect of the activities of Exploration, Development and Producing (but not including refining of crude oil) and other activities necessarily incidental thereto and contemplated by or required to carry out Exploration or the Approved Proposals, on the following conditions:

- (a) the Oil Companies shall not without the approval of the National Investment and Development Authority carry on any activities except those necessarily incidental to Exploration or the Approved Proposals; and
- (b) the registration shall be for the duration of this Agreement and shall be deemed to be cancelled upon the termination of this Agreement for any reason whatsoever.

ARTICLE 7 PROPOSALS

7.1 The Oil Companies shall submit to the State in support of any application for a Development Licence and in addition to detailed proposals as required by section 30 of the Offshore Act:

- (a) the financial analysis of prospective cash flows of the Operations;
- (b) matters which the Oil Companies may consider relevant to support a request pursuant to Clause 29.5 that the State elect to acquire a Venture Interest less than the maximum provided for in Clause 13.3.

7.2 The State shall treat as confidential all material and information supplied to the State under Subclause 7.1(a) and under Section 28A(3) of the Offshore Act being the results of studies referred to in Section 28A(2)(a) and (b) of that Act PROVIDED THAT if this Agreement is terminated as provided in Article 26 the material and information shall become the property of the State and may be used by the State in such manner as it thinks fit.

7.3 If the Oil Companies desire to modify, expand or otherwise substantially vary their activities beyond those specified in any Approved Proposals, either by undertaking any new activity or by a major expansion of activities specified in the Approved Proposals, the Oil Companies shall give notice of such desire to the State and within two months thereafter shall submit to the State detailed proposals in respect of the desired modification, expansion or variation.

ARTICLE 8 CONSIDERATION OF PROPOSALS

8.1 The State shall not unreasonably withhold its approval to the proposals referred to in Subsection 30(1)(c) of the Offshore Act and if the State approves such proposals without amendment, it shall notify the Oil Companies accordingly at the same time as the Minister serves on the Oil Companies the instrument under section 31 of the Offshore Act.

8.2 If the State does not intend to approve without amendment the proposals referred to in Subsection 30(1)(c) of the Offshore Act, the State within three (3) months of receipt of such proposals shall notify the Oil Companies that it wishes to :—

- (a) defer consideration of or decision upon the same until such time as the Oil Companies submit a further proposal or proposals in respect of some matter mentioned in Section 28A of the Offshore Act not covered by the said proposals and in such case the State shall disclose to the Oil Companies the reasons therefor and specify the further proposal or proposals; or
- (b) approve the said proposals subject to the Oil Companies making such alteration thereto or complying with such conditions as the State thinks reasonable and in such a case the State shall disclose its reasons for requiring such alterations or imposing such conditions.

8.3 If the decision of the State is to be as mentioned in Clause 8.2 the State shall afford the Oil Companies full opportunity to consult with it and should the Oil Companies so desire, to submit new proposals either generally or in respect of some particular matter.

ARTICLE 9 TRAINING AND LOCALISATION

9.1 The Oil Companies holding a Development Licence in regard to any part of the Area shall progressively replace foreign personnel (employed with the approval of the State) with Citizens, in accordance with the training and localisation programme which forms part of the report furnished to the Minister under section 28A of the Offshore Act PROVIDED THAT if the training and localisation programme is disrupted by circumstances or events (whether or not they constitute force majeure within the meaning of Article 11) which make it difficult or impossible for the Oil Companies to

SCHEDULE 2.—*continued.*

comply with their obligations under such programme, the Oil Companies may give notice thereof to the State, together with alternative or revised plans to achieve the objects of the part of the training and localisation programme which is affected, and the State within one (1) month of that notice shall either—

- (a) approve those alternative or revised plans; or
- (b) meet with the Oil Companies to discuss the alternative or revised plans. If such discussions do not lead to the State's approval of alternative or revised plans, which approvals shall not unreasonably be withheld, the Oil Companies shall be bound by their original obligations under the training and localisation programme, except that they shall not be liable for any delay caused by following the procedures under this Subclause and subject always to the Oil Companies being able to claim force majeure under Article 11.

9.2 The State shall give such assistance to the Oil Companies as is reasonably required in the formulation of their training and localisation programme and in recruitment of Citizens, and under normal conditions shall make available its facilities for vocational and technical training.

9.3 Training and instruction pursuant to the training and localisation programme shall be given by employees or agents of the Oil Companies who are proficient in the English language.

9.4 (a) The Oil Companies holding a Development Licence jointly shall arrange in co-operation with the State assignments for the State's Employees, not to exceed more than ten (10) in any year or at any time, to the Oil Companies' operations, whether in Papua New Guinea or overseas, to assist in training such employees for managerial, professional, and technical positions for the State PROVIDED THAT if any Oil Company being a party to this Agreement has fulfilled or partly fulfilled a like obligation under any like agreement with the State to which the Oil Companies are also a party this Clause 9.4 shall be deemed to have been fulfilled to the extent that such like obligations have been fulfilled by the Oil Companies.

(b) The salaries and other expenses of such State employees shall be borne by the State PROVIDED THAT whilst any such State employee is directly engaged in the Oil Companies' operations, salary and expenses of such employee shall be borne by the Oil Companies.

9.5 As far as is practicable the Oil Companies shall give first preference in employment to Citizens whose place of origin is in the area of any Development Licence.

ARTICLE 10 LOCAL SUPPLIES AND BUSINESS DEVELOPMENT

10.1 The Oil Companies shall :

- (a) use and purchase goods and services supplied, produced, or manufactured in Papua New Guinea whenever the same can be obtained at competitive prices and on competitive terms, conditions and delivery dates and are in all substantive respects of a quality comparable with those available from outside Papua New Guinea; and
- (b) encourage and assist Citizens desirous of establishing businesses providing goods and services for the Oil Companies' operations and for any town constructed primarily for purposes of the Oil Companies' operations and the residents thereof; PROVIDED THAT the Oil Companies shall not be obliged or called upon to grant or lend money to any Papua New Guinea Citizen or any local enterprise; and
- (c) make maximum use of Papua New Guinea subcontractors where services of comparable standards with those obtainable elsewhere whether inside or outside Papua New Guinea are available from them at competitive prices, and on competitive terms, conditions, and delivery or performance dates; and
- (d) where it is necessary to import vehicles, machinery, plant or equipment, and such items are not purchased direct from the manufacturer by the Oil Companies, effect the purchase of such items through traders operating in Papua New Guinea, PROVIDED THAT such items are available through such traders at a competitive price, and on competitive terms, conditions, and delivery date and provided always that the Oil Companies shall not be bound to comply with this Subclause in any case where compliance would adversely affect the financing of the Oil Companies' operations or any part thereof.

SCHEDULE 2.—*continued.*

10.2 Insofar as it is practicable, the Oil Companies shall give first preference in their assistance under Subclauses (b) and (c) of Clause 10.1 to Citizens originating from the sub-province in which Petroleum is produced.

ARTICLE 11 FORCE MAJEURE

11.1 Any failure on the part of a Party hereto to comply with any of the terms, conditions, and provisions of this Agreement (except any obligation of the Oil Company to make payment of money to the State) shall not be grounds for termination or give another Party hereto any claim for damages insofar as such failure arises from force majeure, if the first-mentioned Party has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement. That Party shall take all reasonable measures to remove such inability to fulfil terms and conditions of this Agreement with the minimum of delay.

11.2 For the purposes of this Agreement, force majeure shall include war, insurrection, civil disturbances, blockades, riots, embargoes, strikes, bans, limitations, and other labour disputes (PROVIDED THAT the Oil Companies shall not be required to agree to a settlement of any particular labour dispute solely for the purposes of terminating a condition of force majeure), land disputes, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fires, lightning, breakdown of machinery or facilities, shortages of labour, transportation, fuel, power or essential plant equipment, or materials or any other event which the party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Oil Companies shall include any delay or failure by the State to give any consent or approval required under this Agreement or under any applicable law, but shall not include any event caused by the failure to observe good oilfield practice nor any event caused by negligence in the provision of adequate supervision of the Operation.

11.3 The Oil Companies shall notify the State on their becoming aware of an event of force majeure affecting their ability to fulfil the terms and conditions of this Agreement, or any event which may endanger the natural resources in the Area and shall similarly notify the State on the restoration of normal conditions.

ARTICLE 12 EXTENSIONS OF TIME

12.1 Notwithstanding any provision of this Agreement, the State may at the request of the Oil Companies from time to time extend any period referred to in this Agreement for such longer period or substitute for any date referred to in this Agreement such later date as it thinks fit, notwithstanding that at the time of such extension or substitution such period may have expired or such date may have been passed.

ARTICLE 13 STATE PARTICIPATION

13.1 In this Agreement, unless the context otherwise requires :

"Accumulated Liability" means an amount calculated in accordance with the following formula :

$$AL = SVI (E+D+OC) + S - F$$

where,

AL is the State's Accumulated Liability to an Oil Company;

SVI is the State's Venture Interest expressed as a fraction;

E is the amount of allowable exploration and prospecting expenditure as defined in Subsection 164E(1) of the Income Tax Act 1951 or which would have been allowable but for an election under Section 164T of that Act spent by the Oil Company in or in relation to the area between September 1, 1975 and prior to the issue of the first development licence over part of the Area and in recognition of exploration and prospecting operations conducted by the Parties pursuant to rights or titles held by them prior to September 1, 1975 such additional amounts of allowable exploration and prospecting expenditure, defined as aforesaid, spent by the Oil Company in or in relation to the Area prior to September 1, 1975 and within 11 years prior to the issue of the first development licence over part of the Area, PROVIDED THAT if the term of the licence is extended as provided in Section 23A of the Offshore Act thereafter the amount of allowable exploration and prospecting expenditure, defined as aforesaid, shall be reduced each year during

SCHEDULE 2.—*continued.*

such extended term by the amount borne by the Oil Company of the total amount expended with the approval of the Operating Committee on Operations during the 12th year preceding that year.

D is the sum of the amounts of allowable capital expenditure and allowable exploration and prospecting expenditure as defined in Sections 164A and 164E of the Income Tax Act 1951 or which would have been allowable but for the election under Section 164T of that Act spent by the Oil Company in or in relation to the Area after the issue of a Development Licence and during a Shortfall Period;

OC is the amount spent by the Oil Companies on Operations during a Shortfall Period and not included in E or D;

S is the amount paid by the Oil Company to the State under Clause 13.7;

F is the value at Norm Price of Foregone Production received by the Oil Company less any amount paid under Subclauses 13.8(a) and (b);

"Foregone Production" means the volume of the State's Production Share foregone in favour of the Oil Companies or any of them in satisfaction or part satisfaction of the items referred to in Clause 13.8;

"Positive Day" means a day on which the State's Accumulated Liability to an Oil Company is reduced to zero;

"Production Share" means a proportion of the Petroleum produced from within the Area equal to a Party's Venture Interest which a Party from time to time may be entitled to receive and separately dispose of;

"Shortfall Period" means a continuous interval of time during which the State has and continues to have an Accumulated Liability to any one or more of the Oil Companies;

"Simple Interest" means a percentage interest rate equal to 5 percentage points in excess of—

(a) the annual rate of interest on domestic corporation borrowings rated AAA in the U.S.A. as published in the Survey of Current Business by the U.S.A. Department of Commerce—Bureau of Economic Analysis applying at the date of issue of the first Development Licence issued over part of the Area, such rate to be adjusted quarterly; or

(b) if such rate is not published, a comparable rate determined in such manner as the Parties shall agree;

13.2 (a) The Parties shall settle the terms of the Joint Operating Agreement as soon as practicable. Except as provided in Article 27, that Agreement shall accord substantially with the Operating Agreement but shall be subject to the terms of this Agreement and in the event of inconsistency, this Agreement shall prevail;

(b) The Joint Operating Agreement shall take effect when the last of the Parties executes such Agreement.

13.3 (a) The State may acquire an unencumbered interest in the Venture Assets and Operations to a nominated percentage (not exceeding 22½ percent either of such Venture Assets and Operations or of the Participating Interest of any particular Oil Company) by giving notice to each Oil Company to that effect within four (4) months after the issue of the first Development Licence over part of the Area. On and from the first day of the calendar month next following the month in which the State gave notice as aforesaid the Venture Interest of each Oil Company shall be equal to its Participating Interest appropriately reduced by the interest acquired by the State;

(b) As soon as practicable after the State has given notice pursuant to Subclause 13.3(a), the Parties shall execute the Joint Operating Agreement (if not already executed) and shall do all things necessary formally to vest that Interest in the State;

(c) If within two (2) months after the issue of the first Development Licence over part of the Area the State has not given notice under Subclause (a) the Oil Companies within the third month after the issue of that Development Licence shall give notice to the Prime Minister that such election has not been made by the State. Thereafter if a notice under Subclause (a) is not received by the Oil Companies within the time specified in Subclause (a) the State shall be deemed to have elected not to acquire a Venture Interest.

SCHEDULE 2.—*continued.*

- (d) Forthwith after giving notice under Subclause 13.3(a) electing to acquire a Venture Interest the State shall be entitled to attend and vote at all meetings of the Operating Committee and to receive notice and agendas for all such meetings.

13.4 Except as otherwise provided in this Agreement each Party shall take in kind its Production Share produced and saved from the Area.

13.5 During each Shortfall Period :—

- (a) the State shall forego its Production Share in favour of those Oil Companies to which the State has for the time being an Accumulated Liability and the said Companies shall be entitled to and shall take all such Foregone Production free of encumbrance in the several proportions which each such Oil Company's respective Venture Interest bears to the sum of the Venture Interest of all such Companies;

- (b) an Oil Company shall be entitled to recoup out of Foregone Production—

- (i) the State's Accumulated Liability to such Oil Company; and
(ii) Simple Interest on the State's Accumulated Liability commencing as the case may be on and from either;

aa. the date of the notice by the State under Clause 13.3, or

bb. the date on which such Oil Company reimburses the State under Clause 13.7; and

computed calendar monthly from the 1st day of each such month on the mean of the balances of Accumulated Liability at the opening of business on the first day and closing of business on the last day of the calendar month for which the calculation is being made PROVIDED THAT in determining the balance of Accumulated Liability at the close of business on the last day of the month, no reduction of the Accumulated Liability for that month shall be taken into account and in lieu thereof the amount of Simple Interest payable for the month shall be reduced by an amount equal to Simple Interest calculated on the amount by which Accumulated Liability is deemed to have been reduced in that month as provided in Sub-clause 13.8(c) computed for the period commencing from the date Accumulated Liability is deemed to have been reduced to the last day of that month; and

- (c) sales of Petroleum produced from the Area by an Oil Company, to which the State has for the time being an Accumulated Liability shall be deemed to have been composed of portion of that Oil Company's Production Share and portion of Foregone Production received by that Oil Company in the respective proportions which that Oil Company's Venture Interest bears to the product of the State's Venture Interest and that said Oil Company's Venture Interest divided by the sum of the Venture Interests of all Oil Companies to which the State had an Accumulated Liability at the time of each such sale.

13.6 (a) Except as provided in Subclause (b) the Parties shall bear all the costs of the Operations in proportion to their respective Venture Interests;

- (b) Subject to Clause 13.10 during each Shortfall Period the Oil Companies shall bear all the costs of the Operations in proportion to their respective Participating Interests until the occurrence of the first Positive Day. Thereafter, during the balance of each such Shortfall Period the said costs shall be borne as follows :

- (i) by each Oil Company to which the State for the time being has no Accumulated Liability—as to a percentage equal to its Venture Interest;

and as to the balance

- (ii) by those other Oil Companies to which the State for the time being has an Accumulated Liability—in the several proportions which each such Company's respective Venture Interest bears to the sum of the Venture Interests of all such Companies PROVIDED THAT if during a Budget Year after a Positive Day all of the Oil Companies to which the State has an Accumulated Liability give notice to the other Oil Companies and produce evidence that the State's Venture Interest share of the costs of the Operations for the Budget Year exceeds the value of its Foregone Production for the same period all Oil Companies shall forthwith

SCHEDULE 2.—*continued.*

commence and thereafter continue to bear the costs of the Operations until the next Positive Day in proportion to their respective Participating Interest.

13.7 If during a Budget Year or part thereof which is not a Shortfall Period, the State gives notice to the Oil Companies and produces evidence that the State's Venture Interest share of the costs of the Operations for the preceding period of that Budget Year exceed the proceeds received by the State from disposal of the State's Production Share for that period the Oil Companies shall in proportion to their respective Participating Interests and within sixty (60) days after receipt of such notice and evidence reimburse the State the amount of such shortfall.

13.8 Foregone Production taken by an Oil Company shall be applied in the following order of priority:

- (a) to pay Royalty under the Offshore Act on such Foregone Production;
- (b) to pay Simple Interest on the State's Accumulated Liability calculated as provided in Clause 13.5;
- (c) to reduce the Accumulated Liability to the said Oil Company. Any reduction of Accumulated Liability under this Subclause 13.8(c) shall be deemed to be made on the day the Oil Company is to receive payment as provided in any contract of sale for Petroleum, which date shall be consistent with and reflect terms of credit allowed or recognised by the Minister as provided in Section Sch. 3.4 of the Offshore Act or as otherwise agreed upon between the State and the Oil Company.

13.9 Any rights under this Agreement in respect of unsatisfied Accumulated Liability shall cease and the State shall not be looked to for recoupment or reimbursement thereof:

- (a) by any Oil Company on termination of this Agreement as provided in Article 26, or
- (b) by an Oil Company upon its withdrawing from this Agreement and surrendering its Participating Interest or Venture Interest in the Licence and in all Development Licences over any part of the Area;

13.10 When electing to acquire its Venture Interest and thereafter at any Operating Committee meeting at which Operations and a Budget are to be agreed upon for a Budget Year, the State may elect to contribute all or part of its Venture Interest share of costs or expenses of any Operations in respect of which an Accumulated Liability would otherwise accrue to any Oil Company.

13.11 Each Oil Company shall within 30 days after the issue of the first Development Licence and thereafter, if the State has a Venture Interest, not less often than half yearly until it shall have recouped the amount of the State's Accumulated Liability, furnish to the State details of and the amount of such Accumulated Liability for the time being. The State may require reasonable verification of such details and amounts including an audit as provided for in the Operating Agreement or the Joint Operating Agreement as the case may be.

13.12 Notwithstanding the provisions of Clause 13.7, if the Operating Committee resolves that a "Petroleum Pool" (which expression shall have the same meaning in this Clause as ascribed to it in the Offshore Act) has been depleted in accordance with good oilfield practice and that to continue Producing from that Petroleum Pool cannot be justified for technical or economic reasons:

- (a) the cost of plugging and abandoning all wells drilled into the Petroleum Pool; and
- (b) other costs and expenses paid or incurred in respect of dismantling, removing, disposing of, or otherwise dealing with all structures, installations, plant and equipment which are Venture Assets and which had been required for Producing from the Petroleum Pool;

shall be borne by the Parties in proportion to their respective Venture Interests.

ARTICLE 14 DISPOSAL OF STATE'S PRODUCTION SHARE

14.1 "Specified Volume" means that part of the State's Production Share which the State wishes an Oil Company to dispose of and specifies in a notice under Clause 14.2.

14.2 Within 30 days after the Operating Committee Meeting to agree upon Operations and a Budget for any Budget Year in which it is expected that a Positive Day will occur the State may give notice to the Oil Companies stating the Specified Volume for that Budget Year for any or each Oil Company. Thereafter, the State may give not less than 3 months notice to any of the Oil Companies reducing or increasing the Specified Volume.

SCHEDULE 2.—*continued.*

- 14.3 (a) An Oil Company given notice under Clause 14.2 shall use its best efforts to dispose of a Specified Volume at a price which after taking into account the matters provided for in Section Sch. 3 to the Offshore Act will enable that Oil Company to account to the State for an amount equal to Norm Price in respect of that Specified Volume;
- (b) From time to time an Oil Company experiencing difficulty in disposing of any part of the Specified Volume as provided for in Subclause (a) may notify the State accordingly and thereafter and that Oil Company will negotiate in good faith in an effort to resolve the Oil Company's difficulty;
- (c) All contracts of sale by an Oil Company of any of the State's Production Share shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the circumstances, but in no event shall any such contract be for a period in excess of one year.

14.4 Following disposition of any of the Specified Volume an Oil Company shall account to the State on whichever shall be the earlier of :

- (a) the date three (3) months after taking delivery at the ship's loading flange of the relevant part of the Specified Volume; or
- (b) whichever of the following dates shall be appropriate :
- (i) if the sale is at arm's length as defined in Section Sch. 3.2 of the Offshore Act, seven (7) days after receipt of payment in full or part thereof; or
 - (ii) if the sale is other than at arm's length as aforesaid, seven (7) days after the day the Oil Company is to receive payment as provided in the contract for sale for any Petroleum which includes any part of a Specified Volume.

14.5 Upon an Oil Company first becoming aware that a Positive Day has occurred or is likely to occur during a Budget Year which had not been expected at the time of an Operating Committee meeting as referred to in Clause 14.2 it shall notify the State accordingly. Such notice shall include—

- (a) the date on which the Positive Day occurred or is expected to occur as the case may be, and
- (b) the volume of production expected to be available as the State's Production Share for the balance of the Budget Year.

If the Positive Day occurred prior to the date of such notice the notice shall be accompanied by a full accounting for the volume of the State's Production Share disposed of by such Oil Company during the period between the Positive Day and the date of the notice.

14.6 Within 30 days after an Oil Company gives the State notice under Clause 14.5 the State shall give that Oil Company notice of the Specified Volume, if any, for that Oil Company for the balance of the current Budget Year.

14.7 Any Oil Company giving notice under Clause 14.5 shall not dispose of any of the State's Production Share between the date of that notice and receipt by it of a notice under Clause 14.6 except to the extent necessary to satisfy any contract entered into bona fide before the date of the notice under Clause 14.5 in which event the Oil Company shall account to the State in the manner provided in Clause 14.4.

14.8 The Joint Operating Agreement shall provide for equitable adjustment on a regular periodic basis for any imbalance which may occur between the Production Share of each Party and the volume of Petroleum taken by or on behalf of the respective Parties and adjustment of any significant disparity in payment of operating costs and expenses caused by such imbalance.

ARTICLE 15 STATE ACQUISITION AND OWNERSHIP OF FACILITIES

15.1 "Works and Facilities" and "Works or Facilities" as the context permits means any of the installations and infrastructure provided for the Operations by either the State or the Oil Companies and capable of being used by the Oil Companies, the State, Citizens or other persons carrying on business in the locality thereof without interfering with the use thereof by the Oil Companies. Without limiting the generality of the foregoing the Parties envisage that Works and Facilities—

- (a) include air fields, roads, ports, water supply, and sewerage facilities, except to the extent that any of them are utilised to their full capacity by the Oil Companies, and

SCHEDULE 2.—*continued.*

- (b) do not include residential accommodation and administration buildings, installations, and infrastructure directly used in Producing,

PROVIDED THAT provision by the Department of Posts and Telegraphs of facilities and services shall be the subject of a separate agreement.

15.2 (a) At any Operating Committee Meeting at which construction of Works and Facilities is to be approved the State may by written notice to the Oil Companies elect to provide the costs, or part thereof, of any such Works and Facilities; and

- (b) at any time after their construction the State may by notice require the Oil Companies to transfer to it ownership of any Works and Facilities. As soon as practicable after such notice the Oil Companies shall do all things necessary to transfer to the State title to the Works and Facilities nominated in the notice.

15.3 Where the State requires the Oil Companies to transfer to it any Works and Facilities as provided in Subclause 15.2 (b) the State shall pay to the Oil Companies, by annual instalments as provided in Subclause 15.3(a) a purchase price equal to the then depreciated value of such Works and Facilities, and the Oil Companies shall pay to the State annual capital user charges as provided in Subclause 15.3(b).

- (a) The Oil Companies each Budget Year shall nominate the amount of the annual instalments of the purchase price which shall be equal to the annual amount of depreciation that the Oil Companies could have claimed (and would have been entitled to claim) as a deduction allowable under the Income Tax Act in respect of that Work or Facility but for the transfer or ownership to the State. (It is the intention of the Parties that such instalments of purchase price shall not be assessable income in the hands of the Oil Companies for the purpose of assessment of Petroleum Income Tax);

- (b) The Oil Companies shall pay to the State within seven (7) days of the receipt of any instalment referred to in Subclause 15.3(a) a capital user charge equal to the said instalment. (It is the intention of the Parties that such capital user charge shall be a deduction allowed under the Income Tax Act for the purpose of assessment of Petroleum Income Tax and Additional Profits Tax);

- (c) If operations permanently cease in or in relation to the Area and as a result the State ceases to pay any instalment referred to in Subclause 15.3(a), the Oil Companies shall have the right to claim a deduction, as provided by the Income Tax Act for the purpose of assessment of Petroleum Income Tax, and Additional Profits Tax equal to the amount that the Oil Companies would have claimed (and would have been entitled to claim) but for the transfer of ownership of that Work or Facility to the State.

15.4 If at any time the State acquires or provides any Works or Facilities under this Article 15, the State shall thereupon assume responsibility for maintaining the assets to a proper standard and shall charge the Oil Companies a maintenance charge (which may include an equitable proportion of direct operating costs) limited to the costs of that maintenance PROVIDED THAT the amount of such maintenance charge shall be reduced by any amount spent by an Oil Company under Clause 15.5.

15.5 Where the State has provided or acquired Works or Facilities for the purposes, of, or under this Agreement and fails properly to maintain the same the Oil Companies may, after 30 days notice to the State, and at their own expense, carry out such work as is necessary to bring the same up to a proper standard.

ARTICLE 16 USE OF FACILITIES BY THIRD PARTIES

16.1 A third party will be permitted to use Works and Facilities acquired from the Oil Companies by the State and not utilised to their full capacity. The State undertakes to ensure that the third party will be required to pay a proportionate share of any operating, maintenance overhead and capital costs in respect of such Works and Facilities among other things having regard to:

- (a) the extent of the proportionate usage and likely future usage of the Works or Facilities by the third party and the Oil Companies;
- (b) the respective extents to which services are provided to the Oil Companies and the third party (where the Facility is a service Facility);
- (c) any other factor which results in or is likely to result in significant damage to or deterioration of the Work or Facility.

SCHEDULE 2.—*continued.*

16.2 The State, the Oil Companies, and a third party shall agree upon an amount which the third party will pay to the Oil Companies (notwithstanding any prior transfer of the relevant Works and Facilities to the State under this Agreement) in United States dollars or the Kina equivalent at the date of payment a capital contribution reflecting the extent of the third party's intended use of the Works and Facilities.

16.3 Where the State provides the cost of any modification improvement extension or expansion of any Works or Facilities to meet the needs of the Oil Companies the State may charge the Oil Companies a capital user's charge in respect of that Work or Facility to allow for the recoupment over a reasonable period of the amount expended in providing the said cost by the State together with a reasonable return thereon.

16.4 Notwithstanding anything contained in Article 15 or Article 16 all such Works and Facilities not acquired and managed by the State shall continue to be managed by the Oil Companies and the Oil Companies shall have priority of use thereof over all other users.

ARTICLE 17 RATES AND DUTIES

17.1 Subject to any requirement of defence, foreign trade or foreign policy of this State, the safety of the public and quarantine and to the obligations of the State under multilateral international agreements to which the State is a party the Oil Companies any Affiliated Corporation and the agents and contractors of the Oil Companies or of any Affiliated Corporation shall have the right to acquire import into and move within Papua New Guinea and use any plant machinery equipment vehicles explosives fuels reagents and supplies which have a specialised application and use in the Operations and to export from Papua New Guinea the petroleum (whether processed or otherwise) resulting from the Operations.

17.2 The Oil Companies shall be subject to import duties and levies of general application in accordance with Papua New Guinea law from time to time except as hereinafter provided.

17.3 No rate, tax, charge, due, duty, tariff, or other levy shall be applied to or be payable by the Oil Companies on the export of or in respect of the right to export Petroleum from Papua New Guinea by an Oil Company or a Related Company.

17.4 No rate tax rent charge due duty tariff or other levy and no legislation which discriminates against all or any of the Oil Companies or any member of an Oil Company or any beneficial owner of shares in any of the Oil Companies or any person engaged in the Operations shall be payable by or (as the case may be) applicable to any of the Oil Companies or any such member or beneficial owner or person (as the case may be) in respect of the Operations or of any income arising directly or indirectly therefrom PROVIDED THAT nothing in the Clause is intended to provide a basis for challenging the validity of the petroleum income tax or additional profits tax.

17.5 Any import duty which is sought to be imposed on the importation of any plant machinery equipment explosives chemicals or other supplies which at the time when such duty is sought to be imposed are imported into Papua New Guinea solely for the purpose of and which have a specialised application and use in the Operations and which is sought to be imposed at a rate in excess of the average rate of duty from time to time payable on the importation into Papua New Guinea of the Customs Tariff items numbered 118 275 309 313 320 and 341 04 as set out at the date thereof in the Second Schedule to the Customs Tariff 1959 shall without in any way whatsoever limiting the interpretation of Clause 17.3 above be deemed to discriminate against the Oil Companies.

17.6 No Local Government Rates or Provincial Government Rates or taxes on land calculated so as to be other than approximately equal to a rate or tax calculated in relation to the unimproved capital value of the surface rights of the land shall be payable by the Oil Companies in respect of land held by the Oil Companies, on which mining or industrial activities are carried on.

ARTICLE 18 CONSULTATION

18.1 The Oil Companies shall consult from time to time with representatives of the State and shall furnish the State each six months with reports concerning the implementation of :

- (a) the training and localisation programme
- (b) the provisions relating to local purchasing of supplies
- (c) the provisions relating to local business development and
- (d) the provisions relating to environmental management.

SCHEDULE 2.—*continued.*

ARTICLE 19 INSPECTION

19.1 The Oil Companies shall at all reasonable times allow the properly accredited servants or agents of the State (who shall establish their authority on request) to inspect any aspect of the Operations and likewise to inspect and take copies of the books of account and records of the Oil Companies relating to the Operations and to any shipment, sale or use of products of such Operations.

ARTICLE 20 PATENT AND TECHNOLOGY RIGHTS

20.1 All new processes, new methods of manufacture and other technological or mechanical innovations developed within the Oil Companies' Operations :

- (a) shall remain the property of the Oil Companies, which shall apply for, take out and retain such patents and other technology rights, in Papua New Guinea or elsewhere, as may be necessary and desirable to protect the same; and
- (b) shall not be sold, assigned, licenced, surrendered, or otherwise disposed of by the Oil Companies except :
 - (i) on the basis of an arm's length transaction; and
 - (ii) with the prior approval of the State which approval shall not be unreasonably withheld.

20.2 Contracts to which any Oil Company is a party providing for the purchase of the right to use in the Operations any process, method or other technological innovation :

- (a) which are not contracts at arm's length, shall not be entered into without the prior consent of the State which consent shall not be unreasonably withheld, and
- (b) which are contracts at arm's length shall be submitted to the State for information.

20.3 For the purposes of this Article the term "arm's length" shall have the same meaning as ascribed to it in Section Sch. 3.2 of the Offshore Act, except that contracts for provision of services which incidental to their performance require the use of any such process, method or other technological innovation the patent rights to which are the property of any Oil Company or an Affiliated Corporation of any Oil Company and which but for the provisions of Section Sch. 3.2 (c) would be at arm's length shall for the purposes of this Clause be deemed to be at arm's length.

ARTICLE 21 ASSIGNMENT

21.1 The State may assign, without the consent of the Oil Companies, all or part of its Venture Interest to any corporation, statutory or otherwise, formed in Papua New Guinea and either :

- (a) wholly owned by the State, or
- (b) wholly owned by the State and another corporation or other corporations, statutory or otherwise formed in Papua New Guinea and which are controlled by the State and in which the State has at least a 50% beneficial interest,

PROVIDED THAT vested in such corporation or corporations are powers and financial capacity sufficient to enable such of the State's continuing obligations under this Agreement as are assigned to such corporation to be fulfilled.

21.2 Subject to Clauses 21.1 and 21.3 and with the consent of the other Parties which consent shall not be unreasonably withheld, all or any of the Parties may assign, or otherwise dispose of their interest or rights under this Agreement.

21.3 In the case of any assignment under this Article 21 the assignee shall undertake to the State to assume, observe and comply with all the obligations of the assignor in relation to the matter assigned or to the extent of the interest assigned as the case may be. After the giving of any such undertaking, the assignor shall be relieved of its obligations under this Agreement in relation to the matter assigned or to the extent of the interest assigned as the case may be without prejudice to pre-existing rights accrued to the State against the assignor.

21.4 Notwithstanding the foregoing provisions of the Clauses 21.2 and 21.3 but subject to normal statutory approvals in force from time to time,

- (a) any Oil Company may charge by way of fixed or floating charge the whole or any part of its Venture Interest to secure the repayment of, any payment of interest and other fees, costs and expenses related to, all loans made to that Oil Company to finance the project; and

SCHEDULE 2.—*continued.*

- (b) the Oil Companies may mortgage and charge any specific asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset;

and any mortgagee or chargee under a mortgage or charge given by the Oil Companies may exercise all rights of sale and other rights included in any instrument of mortgage or charge provided it shall first give the State at least twenty-eight days' notice of intention to exercise those rights.

ARTICLE 22 ARBITRATION

22.1 If at any time there is any dispute, question or difference of opinion (in this Article 22 referred to as "Issue") between the Parties concerning the application of or arising out of section 99A of the Offshore Act other than any dispute, question, or difference of opinion in respect of which provision for settlement or determination is provided under the Income Tax Act 1959 the same shall, subject to Clause 22.2, stand referred to the arbitration of a single arbitrator, and such reference shall be considered a submission within the meaning of that expression given by the Arbitration Act 1951.

22.2 After any Issue has arisen between the State on the one hand and the Oil Companies or any of them on the other hand, any Party to that Issue may at any time prior to the appointment of an arbitrator by concurrence of the Parties or pursuant to the Arbitration Act, 1951 by notice to the other Party or Parties thereto elect that the provisions of this Clause shall apply to such Issue and in such event:

- (a) the Issue shall stand referred to the arbitration of three arbitrators, one of whom shall be appointed by the State and one of whom shall be appointed by the other Party or Parties to the Issue and the third of whom shall be agreed upon by the State and the other Party or Parties to the Issue in writing, and in default of agreement with fourteen (14) days after the State gives notice to the other Party or Parties to the Issue or the other Party or Parties to the Issue give notice to the State requiring the appointment of such a third arbitrator, shall be appointed in accordance with the provisions of the Arbitration Act 1951 from a panel of five (5) arbitrators to be nominated within a further period of fourteen (14) days thereafter by the President and Chairman of the Board of Directors (or failing him the Chief Executive) not being a Citizen of Papua New Guinea of the Asian Development Bank (or, failing such nomination, from any panel of arbitrators which the person or body appointing the third arbitrator considers satisfactory) PROVIDED THAT no person shall be eligible for appointment as a third arbitrator (unless the State and the Oil Companies otherwise agree in writing in any particular case) if at the time of his proposed appointment he is or has been at any time prior thereto a citizen or resident of Papua New Guinea, the Commonwealth of Australia, Canada, or the United States of America;
- (b) if any arbitrator refuses to act, is incapable of acting or dies, a new arbitrator shall be appointed by the party appointing the original arbitrator or (in the case of the third arbitrator) in accordance with the procedure provided for in Subclause 22.2(a);
- (c) if on such reference one Party fails to appoint an arbitrator either originally or by way of substitution as aforesaid within fourteen (14) days after the other Party (having appointed its arbitrator) has given to it notice to appoint such arbitrator, the arbitration may proceed in the absence of such arbitrator; and
- (d) such arbitration shall be held at such place (whether inside or outside Papua New Guinea) as the arbitrators determine.

22.3 If any Party to any arbitration under this Clause so requests the arbitrator or arbitrators shall state, in the form of a special case for the opinion of the National Court of Papua New Guinea, any question of law arising in the course of the reference, and any opinion given shall be subject to the normal right of appeal.

22.4 An award made on an arbitration shall have force and effect as follows—

- (a) if by the award it is adjudged that the decision of the State is correct then the decision of the State in respect to the Issue shall stand; but
- (b) if the arbitrator adjudges that the decision of the State is incorrect then he shall further adjudge what the Norm Price should be in which event the decision of the Arbitrator shall be binding on the Parties.

SCHEDULE 2.—*continued.*

ARTICLE 23 LAW APPLICABLE

23.1 This Agreement shall be governed by and construed in accordance with the law of Papua New Guinea.

ARTICLE 24 VARIATION

24.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Licences, any Development Licence, or any lease, licence, right or grant granted hereunder or pursuant hereto or any programme, proposal or plan approval hereunder, for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

24.2 Where an agreement made pursuant to Clause 24.1 constitutes an alteration of any Article or Clause referred to in Clause 3.2, the variation agreement shall contain a declaration to that effect, and the State shall as soon as is practicable introduce and sponsor in the National Parliament a Bill for an Act to approve that variation agreement and give force of law to the alteration of the rights hereunder. That variation agreement shall be subject to the coming into force of the approving Act.

24.3 Any agreement made pursuant to Clause 24.1 which does not constitute an amendment of any Clause referred to in Clause 3.2 shall be tabled by the State in the National Parliament within the first twelve (12) sitting days next following its execution.

ARTICLE 25 NOTICES

25.1 All notices, notifications, consents, approvals, undertakings, applications, requests, offers, reports, returns, elections, and proposals required to be or which may be given, made, furnished or submitted under this Agreement shall, unless the context otherwise requires, be in writing signed by a Minister of the State or the Director of the Office of Minerals and Energy or (as the case may be) a director or secretary or other designated representative of the Oil Companies, and if in writing shall be sufficiently given, furnished or submitted if delivery at or posted by prepaid post to the address for service of the Party or Parties to whom it is to be given, made, furnished or submitted, and all such communications if posted as aforesaid shall, unless proven otherwise, be deemed to have been received in the ordinary course of post.

25.2 The addresses for service :

(a) of the State shall be :

(i) for the purposes of Sub-clause 13.3(c)

The Prime Minister,
Central Government Offices,
Waigani,
Papua New Guinea

or by post to :

The Prime Minister,
Central Government Offices,
Wards Strip Post Office,
Waigani,
Papua New Guinea

Telephone: Port Moresby 27 1211

Telex: SENTROF NE 22144; and

(ii) for all other purposes :

The Director,
Office of Minerals and Energy,
Konedobu,
Papua New Guinea

or by post to :

The Director,
Office of Minerals and Energy,
P.O. Box 2352,
Konedobu,
Papua New Guinea

SCHEDULE 2.—*continued.*

Telephone: 25 1180
Telex: WABTRO NE 22211

(b) of the Oil Companies shall be :

Arco Australia Limited,
812 Bridge Street,
Sydney, Australia

or by post to:

Arco Australia Limited,
G.P.O. Box 2521,
Sydney N.S.W. 2001,
Australia.

Telephone: Sydney 27 6901
Telex: 21297

Australian Superior Oil Company Limited,
4315 Australia Square Tower,
George Street,
Sydney, N.S.W. 2000
Australia.

Attention: N.U. Ledingham

Telephone: Sydney 27 2873
Telex: 21273

and to

Australian Superior Oil Company Limited,
First City National Bank Building,
Houston, Texas U.S.A.

or by post to:

Australian Superior Oil Company Limited,
P.O. Box 1521,
Houston, Texas, 77001, U.S.A.

Attention: J. E. Reid

Telephone: Houston 2245111
Telex: 77 5369

Canadian Superior Oil (Aust.) Pty. Ltd.,
Three Calgary Place,
355 Fourth Avenue S.W.,
Calgary, Alberta, T2P 0J3, Canada

Attention: H. J. Caine

Telephone: (403) 267 4110
Telex: 038 26640

Esso Papua New Guinea Inc.,
C/- Exploration Manager,
Esso Australia Limited,
127 Kent Street,
Sydney, N.S.W. 2000

Telephone: 20557
Telex: AA20549

Sunray Australian Oil Company Inc.,
Suite 404, Cathay Building,
Singapore 9

Attention: T. Adame.

Telephone: 32 3032
Telex: RS21591

SCHEDULE 2.—*continued.*

and to

Sunray Australian Oil Company Inc.,
P.O. Box 30,
2001 Bryan Tower,
Dallas, Texas, 75221, U.S.A.
Attention: W. R. Broocks.
Telephone: (214) 744 2222
Telex: 73 2323

Any Party may change its address for service by prior notice in accordance with this Article.

25.3 Where the Oil Companies are required to submit any plans, proposals, or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State receives the said plans, proposals or other material.

ARTICLE 26 TERMINATION

26.1 The State may terminate this Agreement by notice to the Oil Companies in any of the following events—

- (a) if the Oil Companies abandon the Licence or repudiate their obligations under this Agreement and Operations are not resumed or such default made good within a period of sixty (60) days after notice as provided in Clause 26.2 is given by the State to the Oil Companies;
- (b) if the State can establish that in granting its approval to any proposal made under the Offshore Act or otherwise it relied upon a statement made by the Oil Companies not being an estimate based on judgement exercised in good faith on the application of knowledge available at the time the estimate is made and it is shown the Oil Companies intended such statement to be false or misleading;
- (c) if the Licence or any extensions or renewal thereof is properly forfeited due to default by the Oil Companies or is surrendered under the Onshore Act;
- (d) if the Oil Companies do not submit proposals in accordance with Article 7.

26.2 The notice to be given by the State in terms of Subclause 26.1(a) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the Party or Parties responsible therefor and shall be given to each of the Oil Companies.

26.3 For the purposes of Clause 26.1(a) the Oil Companies shall not be deemed to have abandoned the Licence or repudiated their obligations unless all persons for the time being bound, whether as assignees of the Oil Companies or otherwise, to perform the obligations of the Oil Companies hereunder, have abandoned the Licence or repudiated the obligations.

26.4 This Agreement shall terminate on the expiry or surrender of the Licence and all Development Licences issued over any part of the Area or any renewal or extension of any of them.

26.5 If this Agreement is terminated after the grant of a Development Licence all structures, installations, plant, and equipment:

- (a) which can be removed from the Area within six (6) months after the notice of termination and without irreparable damage to the Area or any remaining structure, installations, plant and equipment may be removed by the Parties; and
- (b) all other structures, installations, plant, equipment and non-movable assets of the Parties in the Area shall thereupon become the property of the State without any cost to the State or any liability for the State to pay compensation therefor, and freed and discharged from all mortgages and other encumbrances. All materials, supplies and other movable assets of the Parties in the Area which are fully depreciated for tax purposes shall likewise become the property of the State, but any such materials, supplies and other movable assets which are not fully depreciated for tax purposes shall be offered by the Parties for sale to the State at their depreciated value.

26.6 The Oil Companies shall do all such things as the State may reasonably require to give effect to the provisions of this Article 26 and the Oil Companies shall make available to the State the results

SCHEDULE 2.—*continued.*

of the Investigations and Studies to the extent that they have been carried out by the Oil Companies before the date of termination.

26.7 This Article 26 shall continue in force notwithstanding the termination of the rest of this Agreement and may be sued upon or enforced against the Oil Companies.

26.8 Termination of this Agreement under this Article 26 shall be without prejudice to any rights of any of the Parties for any antecedent breach of covenant or agreement.

26.9 Notwithstanding anything to the contrary contained herein, should any law, statute or regulation be passed in Papua New Guinea or become effective in Papua New Guinea, subsequent to 31st March 1977, and should such law, statute or regulation abrogate or materially alter the fundamental contractual rights or obligations of the Oil Companies hereunder, the Oil Companies shall have the right to give the State 60 days notice of their intention to terminate this Agreement without further obligation to the State except as to rights or liabilities in respect of any antecedent breach of this Agreement.

ARTICLE 27 AMENDMENTS TO OPERATING AGREEMENT

27.1 For the purposes of this Article 27 the Operating Agreement shall be deemed to apply only in respect of the Area, the Licence or any Development Licence.

27.2 The Parties shall commence as soon as practicable to negotiate in good faith with the objective of agreeing on the form and content of a Joint Operating Agreement to accord substantially with the provisions of the Operating Agreement but to reflect:

- (a) changes in the parties bound thereby and the circumstances of their association, and
- (b) the possible acquisition by the State of a Venture Interest, and
- (c) amendments necessary to give effect to the provisions of this Agreement.

27.3 If the Parties have not executed the Joint Operating Agreement at the date the State elects to acquire a Venture Interest under Clause 13.3 the State shall as and from the date be deemed to be a party to the Operating Agreement with full rights to attend and vote at all Operating Committee Meetings.

27.4 After the date of this Agreement the Oil Companies may not amend or replace the Operating Agreement without the approval of the State.

27.5 Without limiting the generality of the foregoing the Parties agree that Article VII shall be deleted in its entirety and:

- (a) the following articles or clauses of the Operating Agreement should be reviewed for the purposes of Clause 27.2—
 Clause 5.1, 6.2, and 6.3
 Articles IX, X, XII, XIII, and XVI; and
- (b) that additional provisions be included in the Joint Operating Agreement to provide for Operations by less than all parties to that Agreement.

ARTICLE 28 MISCELLANEOUS

28.1 No stamp duty or other fees or charges shall be payable to the State in respect of any assignment or transfer of any Participating Interest or Venture Interest in the Licence or the Venture Assets by an Oil Company to the State or to an Affiliated Corporation incorporated in Papua New Guinea if such assignment is required to comply with the provisions of the Acts.

28.2 Subject to considerations of national security the State shall grant to the Oil Companies such licences, permits and other rights and exemptions as are within its power to grant and which reasonably may be required by the Oil Companies to enable the Oil Companies to fulfil their obligations and enjoy their rights and benefits under the Licence, the Acts, or this Agreement.

28.3 If the State elects to acquire a Venture Interest thereafter the Parties shall own all the Venture Assets as tenants in common, however, the expenditure of the Oil Companies under this Agreement shall be shown on the accounting records of the Oil Companies entirely as expenses, charges, and costs of the Oil Companies in proportion to their respective Participating Interests and shall be reflected for purposes of the fiscal dispositions of the applicable United States law in the balance sheet and profit and loss accounts of only the Oil Companies.

SCHEDULE 2.—*continued.*

28.4 Whether an election shall be made to have this Venture excluded from the application of the provisions of Sub-chapter K of Chapter 1 of Sub-title A of the United States Internal Revenue Code of 1954, shall be determined by EPNG for each Calendar Year during which EPNG has incurred expenditures under Article 13. The initial determination shall be made and furnished in writing to the other Parties no later than 15th April, 1977, and if requested by the Operator to do so, the State will execute a tax agreement for United States tax purposes in a form to be approved by the Parties.

28.5 Consistent with requirements of the law and national security the State shall use its best efforts to have foreign workers and their dependants to be employed in the Operations in accordance with the approved training and localisation programme expeditiously granted such permits as may be necessary to authorise them to enter, re-enter, move within, remain in and depart from Papua New Guinea and to work on or in connection with the Operations.

ARTICLE 29 NATURAL GAS AND GAS LIQUIDS

29.1 It shall be the responsibility of the Oil Companies to determine whether production of Natural Gas or Natural Gas Liquids is commercial and whether or not to construct and install facilities to enable production of such Natural Gas or Natural Gas Liquids.

29.2 Natural Gas and Natural Gas Liquids will be disposed of by the Parties at the first point of measurement downstream from the outlet flange of the field gas separator in the Area beyond which point the State's Venture Interest shall cease.

29.3 Norm Price for all purposes for Natural Gas and Natural Gas Liquids will be the price specified in contracts for its sale entered into with the prior approval of the State which will not be unreasonably withheld.

29.4 Subject to the absence of Regulations to the contrary under the Acts the Oil Companies may flare gas necessarily produced with crude oil and not needed in the Operations and the sale of which is not economically justified.

29.5 The State recognises that its election to acquire up to a 22.5% Venture Interest may prevent the Oil Companies from producing on a commercial basis Natural Gas or Gas Liquids discovered in the Area. Therefore, if the Oil Companies in a proposal under Clause 7.1 produce evidence that such Natural Gas or Gas Liquids cannot be produced on a commercial basis if the State elects to acquire a 22.5% Venture Interest, the State will negotiate in good faith with the intention of agreeing on such lesser Venture Interest as will allow a Natural Gas or Gas Liquids project to proceed on a commercial basis.

IN WITNESS whereof this Agreement has been duly executed by the Parties, the day and year first hereinbefore written.

Signed for and on behalf of the Independent State of Papua New Guinea by the Governor General, Sir John Guise, acting with and in accordance with the advice of the National Executive Council:

John Guise

John Guise,
Governor General

C. Van Lieshout

Witness

Signed, sealed and delivered on behalf of Sunray Australian Oil Company Inc., by its duly constituted Attorney in the presence of:

Thomas Adame, Jr.

Wendall J. Bares

Witness

Signed, sealed and delivered on behalf of Arco Australia Limited by its duly constituted Attorney in the presence of:

Walter E. Baker

Dezsee J. Hajdu

Witness

SCHEDULE 2.—*continued.*

The Common Seal of Canadian Superior Oil (Aust.) Pty. Ltd., was hereunto affixed by authority of the directors in the presence of : } W.M. Blanshard
Director

N. V. Ledingham
Secretary

Signed, sealed and delivered on behalf of Australian Superior Oil Company Limited by its duly constituted Attorney in the presence of : } W.M. Blanshard

N. V. Ledingham
Witness

Signed, sealed and delivered on behalf of Esso Papua New Guinea Inc., by its duly constituted Attorney in the presence of : } K. Richards

F. M. Hooke
Witness

SCHEDULE 3.

Sec. 1.

Agreement No. 3.

THIS AGREEMENT made the _____ day of _____, 1976 BETWEEN THE INDEPENDENT STATE OF PAPUA NEW GUINEA (herein called "the State") of the first part and ENDEAVOUR OIL COMPANY N.L. (herein called "Endeavour"), ESSO PAPUA NEW GUINEA INC. (herein called "EPNG"), and IOL PETROLEUM LIMITED (herein called "IOL") (herein called collectively "the Oil Companies" which expression shall be taken to refer also to each such company severally) of the second part :

WHEREAS

A. Petroleum Licence number 6 issued pursuant to the Petroleum (Prospecting and Mining) Act 1951, is held by the Oil Companies subject to their respective rights and obligations as specified—

- (i) in the said Petroleum (Prospecting and Mining) Act 1951,
- (ii) in the said Petroleum Licence number 6,
- (iii) in an agreement dated May 4th, 1971, between Endeavour of the first part and IOL (IOL therein being referred to as "Interstate Oil Limited") of the second part and certain other agreements therein referred to, and
- (iv) in an agreement dated the 9th May, 1975 among Endeavour and IOL of the one part and EPNG of the other part,

in each case as varied by this Agreement;

B. The State recognises—

- (i) that discovery of commercial quantities of Petroleum in Papua New Guinea will be of major economic significance to the people of Papua New Guinea,
- (ii) that to have the greatest likelihood of discovering commercial quantities of Petroleum the State intends to rely on and permit companies such as the Oil Companies to explore for and produce any Petroleum discoveries,

SCHEDULE 3.—continued.

- (iii) that the Oil Companies will spend large sums of money on exploration for Petroleum and on development of facilities to produce any commercial quantities of Petroleum discovered, and
- (iv) that the ability of the Oil Companies to spend amounts of money referred to above will be dependent in part upon the certainty and long term stability of the terms upon which the State permits the Oil Companies to operate within Papua New Guinea.

C. The State is anxious to ensure that the development of commercial discoveries of Petroleum will secure the maximum benefit for and adequately contribute to the advancement and the social and economic welfare of, the people of Papua New Guinea, including the people in the vicinity of the Oil Companies' operations in a manner consistent with their needs and the protection of their environment.

D. The State proposes to introduce and sponsor in the National Parliament by its first sitting in 1977, a Bill for an Act to provide for exploration for and production of Petroleum in areas other than the offshore area within the meaning of the Petroleum (Submerged Lands) Act 1975, and it is the State's intention that such Bill substantially reflect the spirit of this Agreement and contain no provisions which if enacted would materially affect the rights and obligations of the Oil Companies hereunder.

E. The State and the Oil Companies have agreed on a number of matters which are set out in this Agreement and while acknowledging that legislative sovereignty in Papua New Guinea is vested in the National Parliament wish the matters agreed upon to be an enduring arrangement and do not intend that they should be altered other than by agreement between the State and the Oil Companies.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS :

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise requires :

- "Accumulated Liability" has the meaning ascribed to it in Clause 13.1;
- "Acts" means both the Offshore Act and the Onshore Act;
- "Affiliated Corporation" means, in relation to any Party a related company of that Party and "related company" has the same meaning ascribed thereto by Section 6(3) of the Companies Act 1963;
- "the Agreement" means this Agreement together with the Annexures hereto;
- "Approved Proposals" means proposals or amended proposals submitted to the State pursuant to the provisions of the Offshore Act and approved pursuant to that Act;
- "the Area" means the area covered by the Prospecting Licence;
- "Budget Year" means a calendar year commencing on 1st January and ending on the next succeeding 31st December;
- "Citizen" means a citizen, (whether natural born or naturalised) of the State;
- "Development" means activities in or in relation to a Development Area carried on in accordance with the Operating Agreement or Joint Operating Agreement for the purpose of constructing and installing the facilities and infrastructure necessary to enable Production from the Area;
- "Development Area" means the Blocks comprising a Development Licence;
- "Development Licence" means a Development Licence granted under the Offshore Act or a lease granted under the Onshore Act within the Licence Area;
- "Exploration" and "Prospecting" mean activities in or in relation to the Area carried on for the purpose of identifying in the first instance the location of any Petroleum traps in the Area and thereafter in relation to each Petroleum trap to determine whether it constitutes a reservoir containing sufficient Petroleum to justify Development;
- "Foregone Production" has the meaning ascribed to it in Clause 13.1;
- "Investigations and Studies" means the investigations and studies required by the Minister under section 28A of the Offshore Act;

SCHEDULE 3.—continued.

- "Joint Operating Agreement" means the agreement to be negotiated by the Parties in substitution for the Operating Agreement;
- "Licence" and "Petroleum Licence" means Petroleum Licence L6 or any renewal, extension or replacement thereof issued pursuant to the Petroleum (Prospecting and Mining) Act 1951;
- "Licence Conditions" means those conditions included in the Licence or any Development Licence by the Minister as provided for in the Offshore Act;
- "Licence Year" means a 12 month period commencing in the first instance on 1 September, 1975 and thereafter the 12 month period commencing on 1st September in each year;
- "Offshore Act" means the Petroleum (Submerged Lands) Act 1975;
- "Onshore Act" means the Petroleum (Prospecting and Mining) Act 1951;
- "Operating Agreement" means the form of Agreements which comprises Annexure 'A' to this Agreement as amended from time to time by the Parties hereto;
- "Operating Committee" has the same meaning in this Agreement as the meaning ascribed to it in the Operating Agreement;
- "Operations" means operations and activities carried out under the Operating Agreement and the Joint Operating Agreement and includes Exploration, Development and Producing or any of them as the context permits;
- "Party" or "Parties" means respectively a party or parties to this Agreement and their respective successors and permitted assigns;
- "Participating Interest" means the undivided percentage interest of each of the Oil Companies in the Venture Assets immediately prior to the assignment of the State of its Venture Interest. At the date of this Agreement the respective Participating Interests are:
- | | |
|-----------|-----|
| Endeavour | 25% |
| IOL | 25% |
| EPNG | 50% |
- "Petroleum Income Tax" and "Additional Profits Tax" have the same meaning in this Agreement as the meaning ascribed to them in the Income Tax Act 1959;
- "Positive Day" has the meaning ascribed to it in Clause 13.1;
- "Producing" means activities involved in or in relation to producing, treating, transmitting, transporting, storing or handling of Petroleum produced within the Area, and includes extraction of Petroleum by any permitted method, and all work and operations necessary or convenient for the foregoing;
- "Production Share" has the meaning ascribed to it in Clause 13.1;
- "Shortfall Period" has the meaning ascribed to it in Clause 13.1;
- "Simple Interest" has the meaning ascribed to it in Clause 13.1;
- "Specified Volume" has the meaning ascribed to it in Clause 14.1;
- "Venture Assets" means Property whether real or personal owned at the date the State gives notice under Clause 13.3 or thereafter acquired as tenants in common—
- (a) by the Oil Companies in proportion to their respective Participating Interest until the State elects to acquire its Venture Interest, and thereafter
 - (b) by the Parties in proportion to their respective Venture Interests;
- and includes the Licence, any Development Licences granted over the Area, materials, plant, and equipment and any Petroleum discovered in the Area;
- "Venture Interest" means the undivided percentage interest from time to time in the Venture Assets and Operations of a Party after the assignment to the State of a percentage interest in the Venture Assets and Operations;
- "Work and Facilities" and "Works or Facilities" have the meaning ascribed to them in Article 15;
- "Block", "Norm Price", "Petroleum", and "Royalty" have the same meaning in this Agreement as the meaning ascribed to them in the Offshore Act.

SCHEDULE 3.—continued.

ARTICLE 2 INTERPRETATION

2.1 In this Agreement unless the context otherwise requires—

- (a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;
- (b) the headings do not affect the interpretation or construction;
- (c) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other genders;
- (f) references to a person include a corporation and vice versa;
- (g) reference to an Article, Clause or Subclause is to an Article, Clause or Subclause of this Agreement;
- (h) reference to a Minister shall mean the Minister for the time being having responsibility for the particular subject matter according to the context.

2.2 Where any provision of this Agreement constitutes an undertaking by one of the Parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right, concession or advantage that Party shall by its execution hereof be deemed to have covenanted and agreed with the other Party accordingly and where any such provision constitutes such an undertaking by the Oil Companies there shall be deemed to be a covenant and agreement by all of them jointly and each of them severally in respect of such undertaking.

ARTICLE 3 EFFECT ON AND OF OTHER LAWS

3.1 The Articles and Clauses listed in Clause 3.2 are to have the force of law and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea, and no law at any time in force in Papua New Guinea made after the commencement of this Agreement shall affect those Articles and Clauses :

- (a) unless the contrary intention appears expressly in that law; or
- (b) except as provided by this Agreement.

3.2 The provisions of Clause 3.1 shall apply to the following Articles and Clauses :

- (a) Article 5
- (b) Article 6
- (c) Clause 17.6
- (d) Clause 28.1
- (e) Article 30 except for Clause 30.3 and 30.5.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament in a form agreed upon by the Parties, a Bill for an Act to approve this Agreement and to give the force of law to the Articles and Clauses specified in Clause 3.2.

4.2 This Agreement shall be void and of no effect and none of the Parties shall have any claim against any other Party with respect to any matter or thing arising out of, done or performed under this Agreement unless the Act referred to in Subclause 4.1(a) shall come into effect prior to 31st day of March, 1977.

ARTICLE 5 CURRENCY

5.1 Words and expressions which have a certain meaning where used in the Foreign Exchange Regulations made under the Central Banking Act 1973 shall have the same meaning where used in this Article 5.

5.2 The Oil Companies shall be entitled to retain in foreign currency outside Papua New Guinea proceeds of sale of all Petroleum produced by the Oil Companies and exported overseas to the extent

SCHEDULE 3.—continued.

necessary to enable the Oil Companies to meet their obligations to pay foreign currency during the ensuing three (3) months in respect of:

- (a) the principal of, interest and services charges on and other fees and expenses related to loans made to the Oil Companies in foreign currency for purposes of their operations under this Agreement by persons not resident in Papua New Guinea, where the terms of such loans have been approved by the Bank of Papua New Guinea under the Foreign Exchange Regulations; and
- (b) commitments in foreign currency to persons not resident in Papua New Guinea for the supply of goods and services to the Oil Companies (including capital goods and services of foreign employees and consultants); and
- (c) commitments in respect of dividends payable to shareholders resident outside Papua New Guinea;

provided that the amounts concerned are established to the reasonable satisfaction of the State.

5.3 Where amounts of foreign currency expected to be required by any of the Oil Companies for the purposes described in Clause 5.2 in any three month period exceed the amounts of foreign currency earnings expected to be received by any of the Oil Companies in that period, such Oil Company may request the State to hold foreign currency for it to the level of the possible shortfall but not exceeding foreign currency requirements for purposes of loan repayments whereupon—

- (a) the Oil Company concerned shall notify the State of the amount of the expected shortfall and the currencies in which the shortfall is likely to occur;
- (b) the State, after consultation with the Bank of Papua New Guinea, will advise the Oil Company concerned of the Kina equivalent of the shortfall at the exchange rate then prevailing;
- (c) the Oil Company concerned will lend to the State and the State will borrow from the Oil Company concerned that amount in Kina;
- (d) the State through the Bank of Papua New Guinea will hold deposits of foreign exchange in the currency to which payments will be made and of amounts sufficient to make such payments in accordance with the notice which the Oil Company concerned has given to the State under Subclause 5.3(a);
- (e) the State will pay interest to the Oil Company concerned on such foreign currency deposits at a rate per annum which is the rate which the Bank of Papua New Guinea earns for the State on those deposits less one half of one percent (0.5%) per annum to cover the Bank of Papua New Guinea's administrative and overhead costs; and
- (f) the State will repay any loan made by the Oil Company concerned under this Clause 5.3 in the currencies in which the deposits are held at the time payments in those currencies by the Oil Company concerned are due, such amounts in foreign currency to be applied in discharge of the Kina amount of the original loan at the exchange rate ruling at the time of the original loan.

5.4 The Oil Companies will not be subject to or limited by regulations or statutes relating to foreign exchange and the control thereof that are less favourable to the Oil Companies or any of them than the regulations and statutes of general application to persons dealing with foreign exchange in Papua New Guinea nor will regulations or statutes relating to foreign exchange and the control thereof be applied in relation to any of the Oil Companies in a manner less favourable to them than the manner in which they are generally applied to others to whom they are applicable.

5.5 At all times the Oil Companies shall have the right to buy and sell Kina at rates of exchange no less favourable than those available to other commercial buyers and sellers of that currency.

5.6 The Oil Companies may establish foreign currency accounts in Papua New Guinea PROVIDED THAT such deposits do not contravene Exchange Control requirements and contain deposits considered by the Government to be reasonable in relation to the Oil Companies' needs.

5.7 Unless otherwise directed by the State and except as provided in Clauses 5.2 and 5.6, each Oil Company shall convert all its foreign currency earnings from Operations under this Agreement into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Oil Company for its use.

SCHEDULE 3.—continued.

5.8 Notwithstanding anything to the contrary in the Acts, the National Investment Development Authority Act, the Income Tax Act or other legislation applying to the Operations, the Oil Companies may—

- (a) keep their books of account and other records in both Kina and United States dollars; and
- (b) make all calculations under any statute or regulation (including but without limiting the generality of the foregoing calculations for Royalty, Petroleum Income Tax, Additional Profits Tax) and for Foregone Production, and Specified Volume and other matters arising under this Agreement, the Operating Agreement and the Joint Operating Agreement in Kina or United States dollars. When applying for the first Development Licence within the Area each Oil Company shall elect to make such calculations thereafter in either Kina or United States dollars. If such calculations are made in United States dollars the State shall accept payment of such taxes and other moneys in Kina converted from United States dollars as provided in the following formula :

$$K = S \times D$$

where,

K means the sum in Kina payable to the State for any of the stated purposes;

S means the sum expressed in United States dollars to be converted to Kina;

D means the mean of the average of the Daily Published Buying and Selling Rates of Kina against the United States dollar during the Budget Year, or in the case of Royalty during the month, for which the calculation is being made. The "Daily Published Buying and Selling Rates" means the buying and selling rates from time to time published by the Bank of Papua New Guinea or such other buying and selling rates as may from time to time be published and recognised by the State as the official buying and selling rate. In calculating the mean of the average of the Daily Published Buying and Selling Rates the average of the buying and selling rates applying on each day on which the Bank of Papua New Guinea is open to the public for business transactions shall be aggregated and the result divided by that same number of days.

ARTICLE 6 NIDA REGISTRATION

6.1 Notwithstanding anything expressly or impliedly to the contrary contained in the National Investment and Development Act 1974 and in particular notwithstanding the provisions of Section 4 of that Act, the Oil Companies from the date of issue of the first Development Licence shall be deemed to be registered under that Act in respect of the activities of Exploration, Development and Producing (but not including refining of crude oil) and other activities necessarily incidental thereto and contemplated by or required to carry out Exploration or the Approved Proposals, on the following conditions :

- (a) the Oil Companies shall not without the approval of the National Investment and Development Authority carry on any activities except those necessarily incidental to Exploration or the Approved Proposals; and
- (b) the registration shall be for the duration of this Agreement and shall be deemed to be cancelled upon the termination of this Agreement for any reason whatsoever.

ARTICLE 7 PROPOSALS

7.1 The Oil Companies shall submit to the State in support of any application for a Development Licence and in addition to detailed proposals as required by section 30 of the Offshore Act:

- (a) the financial analysis of prospective cash flows of the Operations;
- (b) matters which the Oil Companies may consider relevant to support a request pursuant to Clause 29.5 that the State elect to acquire a Venture Interest less than the maximum provided for in Clause 13.3.

7.2 The State shall treat as confidential all material and information supplied to the State under Subclause 7.1(a) and under Section 28A(3) of the Offshore Act being the results of studies referred to in Section 28A(2)(a) and (b) of that Act PROVIDED THAT if this Agreement is terminated as provided

SCHEDULE 3.—continued.

in Article 26 the material and information shall become the property of the State and may be used by the State in such manner as it thinks fit.

7.3 If the Oil Companies desire to modify, expand or otherwise substantially vary their activities beyond those specified in any Approved Proposals, either by undertaking any new activity or by a major expansion of activities specified in the Approved Proposals, the Oil Companies shall give notice of such desire to the State and within two months thereafter shall submit to the State detailed proposals in respect of the desired modification, expansion or variation.

ARTICLE 8 CONSIDERATION OF PROPOSALS

8.1 The State shall not unreasonably withhold its approval to the proposals referred to in Subsection 30(1)(c) of the Offshore Act and if the State approves such proposals without amendment, it shall notify the Oil Companies accordingly at the same time as the Minister serves on the Oil Companies the instrument under section 31 of the Offshore Act.

8.2 If the State does not intend to approve without amendment the proposals referred to in Subsection 30(1)(c) of the Offshore Act, the State within three (3) months of receipt of such proposals shall notify the Oil Companies that it wishes to :—

- (a) defer consideration of or decision upon the same until such time as the Oil Companies submit a further proposal or proposals in respect of some matter mentioned in Section 28A of the Offshore Act not covered by the said proposals and in such case the State shall disclose to the Oil Companies the reasons therefor and specify the further proposal or proposals; or
- (b) approve the said proposals subject to the Oil Companies making such alteration thereto or complying with such conditions as the State thinks reasonable and in such a case the State shall disclose its reasons for requiring such alterations or imposing such conditions.

8.3 If the decision of the State is to be as mentioned in Clause 8.2 the State shall afford the Oil Companies full opportunity to consult with it and should the Oil Companies so desire, to submit new proposals either generally or in respect of some particular matter.

ARTICLE 9 TRAINING AND LOCALISATION

9.1 The Oil Companies holding a Development Licence in regard to any part of the Area shall progressively replace foreign personnel (employed with the approval of the State) with Citizens, in accordance with the training and localisation programme which forms part of the report furnished to the Minister under section 28A of the Offshore Act PROVIDED THAT if the training and localisation programme is disrupted by circumstances or events (whether or not they constitute force majeure within the meaning of Article 11) which make it difficult or impossible for the Oil Companies to comply with their obligations under such programme, the Oil Companies may give notice thereof to the State, together with alternative or revised plans to achieve the objects of the part of the training and localisation programme which is affected, and the State within one (1) month of that notice shall either—

- (a) approve those alternative or revised plans; or
- (b) meet with the Oil Companies to discuss the alternative or revised plans. If such discussions do not lead to the State's approval of alternative or revised plans, which approvals shall not unreasonably be withheld, the Oil Companies shall be bound by their original obligations under the training and localisation programme, except that they shall not be liable for any delay caused by following the procedures under this Subclause and subject always to the Oil Companies being able to claim force majeure under Article 11.

9.2 The State shall give such assistance to the Oil Companies as is reasonably required in the formulation of their training and localisation programme and in recruitment of Citizens, and under normal conditions shall make available its facilities for vocational and technical training.

9.3 Training and instruction pursuant to the training and localisation programme shall be given by employees or agents of the Oil Companies who are proficient in the English language.

9.4 (a) The Oil Companies holding a Development Licence jointly shall arrange in co-operation with the State assignments for the State's Employees, not to exceed more than ten (10) in any year or at any time, to the Oil Companies' operations, whether in Papua New Guinea or overseas, to assist in training such employees for managerial, professional, and

SCHEDULE 3.—continued.

technical positions for the State PROVIDED THAT if any Oil Company being a party to this Agreement has fulfilled or partly fulfilled a like obligation under any like agreement with the State to which the Oil Companies are also a party this clause 9.4 shall be deemed to have been fulfilled to the extent that such like obligations have been fulfilled by the Oil Companies.

- (b) The salaries and other expenses of such State employees shall be borne by the State PROVIDED THAT whilst any such State employee is directly engaged in the Oil Companies' operations, salary and expenses of such employee shall be borne by the Oil Companies.

9.5 As far as is practicable the Oil Companies shall give first preference in employment to Citizens whose place of origin is in the area of any Development Licence.

ARTICLE 10 LOCAL SUPPLIES AND BUSINESS DEVELOPMENT

10.1 The Oil Companies shall :

- (a) use and purchase goods and services supplied, produced, or manufactured in Papua New Guinea whenever the same can be obtained at competitive prices and on competitive terms, conditions and delivery dates and are in all substantive respects of a quality comparable with those available from outside Papua New Guinea; and
- (b) encourage and assist Citizens desirous of establishing businesses providing goods and services for the Oil Companies' operations and for any town constructed primarily for purposes of the Oil Companies' operations and the residents thereof; PROVIDED THAT the Oil Companies shall not be obliged or called upon to grant or lend money to any Papua New Guinea Citizen or any local enterprise; and
- (c) make maximum use of Papua New Guinea sub-contractors where services of comparable standards with those obtainable elsewhere whether inside or outside Papua New Guinea are available from them at competitive prices, and on competitive terms, conditions, and delivery or performance dates; and
- (d) where it is necessary to import vehicles, machinery, plant or equipment, and such items are not purchased direct from the manufacturer by the Oil Companies, effect the purchase of such items through traders operating in Papua New Guinea, PROVIDED THAT such items are available through such traders at a competitive price, and on competitive terms, conditions, and delivery date and provided always that the Oil Companies shall not be bound to comply with this Subclause in any case where compliance would adversely affect the financing of the Oil Companies' operations or any part thereof.

10.2 Insofar as it is practicable, the Oil Companies shall give first preference in their assistance under Subclauses (b) and (c) of Clause 10.1 to Citizens originating from the sub-province in which Petroleum is produced.

ARTICLE 11 FORCE MAJEURE

11.1 Any failure on the part of a Party hereto to comply with any of the terms, conditions, and provisions of this Agreement (except any obligation of the Oil Company to make payment of money to the State) shall not be grounds for termination or give another Party hereto any claim for damages insofar as such failure arises from force majeure, if the first-mentioned Party has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement. That Party shall take all reasonable measures to remove such inability to fulfil terms and conditions of this Agreement with the minimum of delay.

11.2 For the purposes of this Agreement, force majeure shall include war, insurrection, civil disturbances, blockades, riots, embargoes, strikes, bans, limitations, and other labour disputes (PROVIDED THAT the Oil Companies shall not be required to agree to a settlement of any particular labour dispute solely for the purposes of terminating a condition of force majeure), land disputes, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fires, lightning, breakdown of machinery or facilities, shortages of labour, transportation, fuel, power or essential plant equipment, or materials or any other event which the party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Oil Companies shall include any delay or failure by the State to give any consent or approval required under this Agreement or under any applicable law, but shall not include any event caused by the failure to observe good oilfield practice nor any event caused by negligence in the provision of adequate supervision of the Operation.

SCHEDULE 3.—continued.

11.3 The Oil Companies shall notify the State on their becoming aware of an event of force majeure affecting their ability to fulfil the terms and conditions of this Agreement, or any event which may endanger the natural resources in the Area and shall similarly notify the State on the restoration of normal conditions.

ARTICLE 12 EXTENSIONS OF TIME

12.1 Notwithstanding any provision of this Agreement, the State may at the request of the Oil Companies from time to time extend any period referred to in this Agreement for such longer period or substitute for any date referred to in this Agreement such later date as it thinks fit, notwithstanding that at the time of such extension or substitution such period may have expired or such date may have been passed.

ARTICLE 13 STATE PARTICIPATION

13.1 In this Agreement, unless the context otherwise requires:

"Accumulated Liability" means an amount calculated in accordance with the following formula:

$$AL = SVI (E+D+OC) + S - F$$

where,

AL is the State's Accumulated Liability to an Oil Company;

SVI is the State's Venture Interest expressed as a fraction;

E is the amount of allowable exploration and prospecting expenditure as defined in Sub-section 164E(1) of the Income Tax Act 1951 or which would have been allowable but for an election under Section 164T of that Act spent by the Oil Company in or in relation to the area between September 1, 1975 and, prior to the issue of the first development licence over part of the Area and in recognition of exploration and prospecting operations conducted by the Parties pursuant to rights or titles held by them prior to September 1, 1975 such additional amounts of allowable exploration and prospecting expenditure, defined as aforesaid, spent by the Oil Company in or in relation to the Area prior to September 1, 1975 and within 11 years prior to the issue of the first development licence over part of the Area, PROVIDED THAT if the term of the licence is extended as provided in Section 23A of the Offshore Act thereafter the amount of allowable exploration and prospecting expenditure, defined as aforesaid, shall be reduced each year during such extended term by the amount borne by the Oil Company of the total amount expended with the approval of the Operating Committee on Operations during the 12th year preceding that year.

D is the sum of the amounts of allowable capital expenditure and allowable exploration and prospecting expenditure as defined in Sections 164A and 164E of the Income Tax Act 1951 or which would have been allowable but for the election under Section 164T of that Act spent by the Oil Company in or in relation to the Area after the issue of a Development Licence and during a Shortfall Period;

OC is the amount spent by the Oil Companies on Operations during a Shortfall Period, and not included in E or D;

S is the amount paid by the Oil Company to the State under Clause 13.7;

F is the value at Norm Price of Foregone Production received by the Oil Company less any amount paid under Subclauses 13.8(a) and (b);

"Foregone Production" means the volume of the State's Production Share foregone in favour of the Oil Companies or any of them in satisfaction or part satisfaction of the items referred to in Clause 13.8;

"Positive Day" means a day on which the State's Accumulated Liability to an Oil Company is reduced to zero;

"Production Share" means a proportion of the Petroleum produced from within the Area equal to a Party's Venture Interest which a Party from time to time may be entitled to receive and separately dispose of;

SCHEDULE 3.—continued.

"Shortfall Period" means a continuous interval of time during which the State has and continues to have an Accumulated Liability to any one or more of the Oil Companies;

"Simple Interest" means a percentage interest rate equal to 5 percentage points in excess of—

(a) the annual rate of interest on domestic corporation borrowings rated AAA in the U.S.A. as published in the Survey of Current Business by the U.S.A. Department of Commerce—Bureau of Economic Analysis applying at the date of issue of the first Development Licence issued over part of the Area, such rate to be adjusted quarterly; or

(b) if such rate is not published, a comparable rate determined in such manner as the Parties shall agree;

13.2 (a) The Parties shall settle the terms of the Joint Operating Agreement as soon as practicable. Except as provided in Article 27, that Agreement shall accord substantially with the Operating Agreement but shall be subject to the terms of this Agreement and in the event of inconsistency, this Agreement shall prevail;

(b) The Joint Operating Agreement shall take effect when the last of the Parties executes such Agreement.

13.3 (a) The State may acquire an unencumbered interest in the Venture Assets and Operations to a nominated percentage (not exceeding 22½ percent either of such Venture Assets and Operations or of the Participating Interest of any particular Oil Company) by giving notice to each Oil Company to that effect within four (4) months after the issue of the first Development Licence over part of the Area. On and from the first day of the calendar month next following the month in which the State gave notice as aforesaid the Venture Interest of each Oil Company shall be equal to its Participating Interest appropriately reduced by the interest acquired by the State;

(b) As soon as practicable after the State has given notice pursuant to Subclause 13.3(a), the Parties shall execute the Joint Operating Agreement (if not already executed) and shall do all things necessary formally to vest that Interest in the State;

(c) If within two (2) months after the issue of the first Development Licence over part of the Area the State has not given notice under Subclause (a) the Oil Companies within the third month after the issue of that Development Licence shall give notice to the Prime Minister that such election has not been made by the State. Thereafter if a notice under Subclause (a) is not received by the Oil Companies within the time specified in Subclause (a) the State shall be deemed to have elected not to acquire a Venture Interest.

(d) Forthwith after giving notice under Subclause 13.3(a) electing to acquire a Venture Interest the State shall be entitled to attend and vote at all meetings of the Operating Committee and to receive notice and agendas for all such meetings.

13.4 Except as otherwise provided in this Agreement each Party shall take in kind its Production Share produced and saved from the Area.

13.5 During each Shortfall Period :

(a) the State shall forego its Production Share in favour of those Oil Companies to which the State has for the time being an Accumulated Liability and the said Companies shall be entitled to and shall take all such Foregone Production free of encumbrance in the several proportions which each such Oil Company's respective Venture Interest bears to the sum of the Venture Interest of all such Companies;

(b) an Oil Company shall be entitled to recoup out of Foregone Production—

(i) the State's Accumulated Liability to such Oil Company; and

(ii) Simple Interest on the State's Accumulated Liability commencing as the case may be on and from either;

aa. the date of the notice by the State under Clause 13.3, or

bb. the date on which such Oil Company reimburses the State under Clause 13.7; and

computed calendar monthly from the 1st day of each such month on the mean of the balances of Accumulated Liability at the opening of business on the first day and closing of business on the last day of the calendar month for which the

SCHEDULE 3.—continued.

calculation is being made PROVIDED THAT in determining the balance of Accumulated Liability at the close of business on the last day of the month, no reduction of the Accumulated Liability for that month shall be taken into account and in lieu thereof the amount of Simple Interest payable for the month shall be reduced by an amount equal to Simple Interest calculated on the amount by which Accumulated Liability is deemed to have been reduced in that month as provided in Subclause 13.8(c) computed for the period commencing from the date Accumulated Liability is deemed to have been reduced to the last day of that month; and

- (c) sales of Petroleum produced from the Area by an Oil Company, to which the State has for the time being an Accumulated Liability shall be deemed to have been composed of portion of that Oil Company's Production Share and portion of Foregone Production received by that Oil Company in the respective proportions which that Oil Company's Venture Interest bears to the product of the State's Venture Interest and that said Oil Company's Venture Interest divided by the sum of the Venture Interests of all Oil Companies to which the State had an Accumulated Liability at the time of each such sale.

13.6 (a) Except as provided in Subclause (b) the Parties shall bear all the costs of the Operations in proportion to their respective Venture Interests;

- (b) Subject to Clause 13.10 during each Shortfall Period the Oil Companies shall bear all the costs of the Operations in proportion to their respective Participating Interests until the occurrence of the first Positive Day. Thereafter, during the balance of each such Shortfall Period the said costs shall be borne as follows :

- (i) by each Oil Company to which the State for the time being has no Accumulated Liability as to a percentage equal to its Venture Interest;

and as to the balance

- (ii) by those other Oil Companies to which the State for the time being has an Accumulated Liability—in the several proportions which each such Company's respective Venture Interest bears to the sum of the Venture Interests of all such Companies PROVIDED THAT if during a Budget Year after a Positive Day all of the Oil Companies to which the State has an Accumulated Liability give notice to the other Oil Companies and produce evidence that the State's Venture Interest share of the costs of the Operations for the Budget Year exceeds the value of its Foregone Production for the same period all Oil Companies shall forthwith commence and thereafter continue to bear the costs of the Operations until the next Positive Day in proportion to their respective Participating Interest.

13.7 If during a Budget Year or part thereof which is not a Shortfall Period, the State gives notice to the Oil Companies and produces evidence that the State's Venture Interest share of the costs of the Operations for the preceding period of that Budget Year exceed the proceeds received by the State from disposal of the State's Production Share for that period the Oil Companies shall in proportion to their respective Participating Interests and within sixty (60) days after receipt of such notice and evidence reimburse the State the amount of such shortfall.

13.8 Foregone Production taken by an Oil Company shall be applied in the following order of priority :

- (a) to pay Royalty under the Offshore Act on such Foregone Production;
- (b) to pay Simple Interest on the State's Accumulated Liability calculated as provided in Clause 13.5;
- (c) to reduce the Accumulated Liability to the said Oil Company. Any reduction of Accumulated Liability under this Subclause 13.8(c) shall be deemed to be made on the day the Oil Company is to receive payment as provided in any contract of sale for Petroleum, which date shall be consistent with and reflect terms of credit allowed or recognised by the Minister as provided in Section Sch. 3.4 of the Offshore Act or as otherwise agreed upon between the State and the Oil Company.

13.9 Any rights under this Agreement in respect of unsatisfied Accumulated Liability shall cease and the State shall not be looked to for recoupment or reimbursement thereof :

- (a) by an Oil Company on termination of this Agreement as provided in Article 26, or

SCHEDULE 3.—continued.

- (b) by an Oil Company upon its withdrawing from this Agreement and surrendering its Participating Interest or Venture Interest in the Licence and in all Development Licences over any part of the Area;

13.10 When electing to acquire its Venture Interest and thereafter at any Operating Committee meeting at which Operations and a Budget are to be agreed upon for a Budget Year, the State may elect to contribute all or part of its Venture Interest share of costs or expenses of any Operations in respect of which an Accumulated Liability would otherwise accrue to any Oil Company.

13.11 Each Oil Company shall within 30 days after the issue of the first Development Licence and thereafter, if the State has a Venture Interest, not less often than half yearly until it shall have recouped the amount of the State's Accumulated Liability, furnish to the State details of and the amount of such Accumulated Liability for the time being. The State may require reasonable verification of such details and amounts including an audit as provided for in the Operating Agreement or the Joint Operating Agreement as the case may be.

13.12 Notwithstanding the provisions of Clause 13.7, if the Operating Committee resolves that a "Petroleum Pool" (which expression shall have the same meaning in this Clause as ascribed to it in the Offshore Act) has been depleted in accordance with good oilfield practice and that to continue Producing from that Petroleum Pool cannot be justified for technical or economic reasons:

- (a) the cost of plugging and abandoning all wells drilled into the Petroleum Pool; and
- (b) other costs and expenses paid or incurred in respect of dismantling, removing, disposing of, or otherwise dealing with all structures, installations, plant and equipment which are Venture Assets and which had been required for Producing from that Petroleum Pool;

shall be borne by the Parties in proportion to their respective Venture Interests.

ARTICLE 14 DISPOSAL OF STATE'S PRODUCTION SHARE

14.1 "Specified Volume" means that part of the State's Production Share which the State wishes an Oil Company to dispose of and specifies in a notice under Clause 14.2.

14.2 Within 30 days after the Operating Committee Meeting to agree upon Operations and a Budget for any Budget Year in which it is expected that a Positive Day will occur the State may give notice to the Oil Companies stating the Specified Volume for that Budget Year for any or each Oil Company. Thereafter, the State may give not less than three months notice to any of the Oil Companies reducing or increasing the Specified Volume.

14.3 (a) An Oil company given notice under Clause 14.2 shall use its best efforts to dispose of a Specified Volume at a price which after taking into account the matters provided for in Section Sch. 3 to the Offshore Act will enable that Oil Company to account to the State for an amount equal to Norm Price in respect of that Specified Volume;

(b) From time to time an Oil Company experiencing difficulty in disposing of any part of the Specified Volume as provided for in Subclause (a) may notify the State accordingly and thereafter the State and that Oil Company will negotiate in good faith in an effort to resolve the Oil Company's difficulty;

(c) All contracts of sale by an Oil Company of any of the State's Production Share shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the circumstances, but in no event shall any such contract be for a period in excess of one year.

14.4 Following disposition of any of the Specified Volume an Oil Company shall account to the State on whichever shall be the earlier of:

- (a) the date three (3) months after taking delivery at the ship's loading flange of the relevant part of the Specified Volume; or
- (b) whichever of the following dates shall be appropriate:
 - (i) if the sale is at arm's length as defined in Section Sch. 3.2 of the Offshore Act, seven (7) days after receipt of payment in full or part thereof; or
 - (ii) if the sale is other than at arm's length as aforesaid, seven (7) days after the day the Oil Company is to receive payment as provided in the contract for sale for any Petroleum which includes any part of a Specified Volume.

SCHEDULE 3.—continued.

14.5 Upon an Oil Company first becoming aware that a Positive Day has occurred or is likely to occur during a Budget Year which had not been expected at the time of an Operating Committee meeting as referred to in Clause 14.2 it shall notify the State accordingly. Such notice shall include—

- (a) the date on which the Positive Day occurred or is expected to occur as the case may be, and
- (b) the volume of production expected to be available as the State's Production Share for the balance of the Budget Year.

If the Positive Day occurred prior to the date of such notice the notice shall be accompanied by a full accounting for the volume of the State's Production Share disposed of by such Oil Company during the period between the Positive Day and the date of the notice.

14.6 Within 30 days after an Oil Company gives the State notice under Clause 14.5 the State shall give that Oil Company notice of the Specified Volume, if any, for that Oil Company for the balance of the current Budget Year.

14.7 Any Oil Company giving notice under Clause 14.5 shall not dispose of any of the State's Production Share between the date of that notice and receipt by it of a notice under Clause 14.6 except to the extent necessary to satisfy any contract entered into bona fide before the date of the notice under Clause 14.5 in which event the Oil Company shall account to the State in the manner provided in Clause 14.4.

14.8 The Joint Operating Agreement shall provide for equitable adjustment on a regular periodic basis for any imbalance which may occur between the Production Share of each Party and the volume of Petroleum taken by or on behalf of the respective Parties and adjustment of any significant disparity in payment of operating costs and expenses caused by such imbalance.

ARTICLE 15 STATE ACQUISITION AND OWNERSHIP OF FACILITIES

15.1 "Works and Facilities" and "Works or Facilities" as the context permits means any of the installations and infrastructure provided for the Operations by either the State or the Oil Companies and capable of being used by the Oil Companies, the State, Citizens or other persons carrying on business in the locality thereof without interfering with the use thereof by the Oil Companies. Without limiting the generality of the foregoing the Parties envisage that Works and Facilities—

- (a) include air field, roads, ports, water supply, and sewerage facilities, except to the extent that any of them are utilised to their full capacity by the Oil Companies, and
- (b) do not include residential accommodation and administration buildings, installations, and infrastructure directly used in Producing,

PROVIDED THAT provision by the Department of Posts and Telegraphs of facilities and services shall be the subject of a separate agreement.

15.2 (a) At any Operating Committee Meeting at which construction of Works and Facilities is to be approved the State may by written notice to the Oil Companies elect to provide the costs, or part thereof, of any such Works and Facilities; and

- (b) at any time after their construction the State may by notice require the Oil Companies to transfer to it ownership of any Works and Facilities. As soon as practicable after such notice the Oil Companies shall do all things necessary to transfer to the State title to the Works and Facilities nominated in the notice.

15.3 Where the State requires the Oil Companies to transfer to it any Works and Facilities as provided in Subclause 15.2(b) the State shall pay to the Oil Companies, by annual instalments as provided in Subclause 15.3(a) a purchase price equal to the then depreciated value of such Works and Facilities, and the Oil Companies shall pay to the State annual capital user charges as provided in Subclause 15.3(b).

- (a) The Oil Companies each Budget Year shall nominate the amount of the annual instalments of the purchase price which shall be equal to the annual amount of depreciation that the Oil Companies could have claimed (and would have been entitled to claim) as a deduction allowable under the Income Tax Act in respect of that Work or Facility but for the transfer of ownership to the State. (It is the intention of the Parties that such instalments of purchase price shall not be assessable income in the hands of the Oil Companies for the purpose of assessment of Petroleum Income Tax);

SCHEDULE 3.—continued.

- (b) The Oil Companies shall pay to the State within seven (7) days of the receipt of any instalment referred to in Subclause 15.3(a) a capital user charge equal to the said instalment. (It is the intention of the Parties that such capital user charge shall be a deduction allowed under the Income Tax Act for the purpose of assessment of Petroleum Income Tax and Additional Profits Tax);
- (c) If operations permanently cease in or in relation to the Area and as a result the State ceases to pay any instalment referred to in Subclause 15.3(a), the Oil Companies shall have the right to claim a deduction, as provided by the Income Tax Act for the purpose of assessment of Petroleum Income Tax, and Additional Profits Tax, equal to the amount that the Oil Companies would have claimed (and would have been entitled to claim) but for the transfer of ownership of that Work or Facility to the State.

15.4 If at any time the State acquires or provides any Works or Facilities under this Article 15, the State shall thereupon assume responsibility for maintaining the assets to a proper standard and shall charge the Oil Companies a maintenance charge (which may include an equitable proportion of direct operating costs) limited to the costs of that maintenance PROVIDED THAT the amount of such maintenance charge shall be reduced by any amount spent by an Oil Company under Clause 15.5.

15.5 Where the State has provided or acquired Works or Facilities for the purpose, of, or under this Agreement and fails properly to maintain the same the Oil Companies may, after 30 days notice to the State, and at their own expense, carry out such work as is necessary to bring the same up to a proper standard.

ARTICLE 16 USE OF FACILITIES BY THIRD PARTIES

16.1 A third party will be permitted to use Works and Facilities acquired from the Oil Companies by the State and not utilised to their full capacity. The State undertakes to ensure that the third party will be required to pay a proportionate share of any operating, maintenance overhead and capital costs in respect of such Works and Facilities among other things having regard to:

- (a) the extent of the proportionate usage and likely future usage of the Works or Facilities by the third party and the Oil Companies;
- (b) the respective extents to which services are provided to the Oil Companies and the third party (where the Facility is a service Facility);
- (c) any other factor which results in or is likely to result in significant damage to or deterioration of the Work or Facility.

16.2 The State, the Oil Companies, and a third party shall agree upon an amount which the third party will pay to the Oil Companies (notwithstanding any prior transfer of the relevant Works and Facilities to the State under this Agreement) in United States dollars or the Kina equivalent at the date of payment a capital contribution reflecting the extent of the third party's intended use of the Works and Facilities.

16.3 Where the State provides the cost of any modification improvement extension or expansion of any Works or Facilities to meet the needs of the Oil Companies the state may charge the Oil Companies a capital user's charge in respect of that Work or Facility to allow for the recoupment over a reasonable period of the amount expended in providing the said cost by the State together with a reasonable return thereon.

16.4 Notwithstanding anything contained in Article 15 or Article 16 all such Works and Facilities not acquired and managed by the State shall continue to be managed by the Oil Companies and the Oil Companies shall have priority of use thereof over all other users.

ARTICLE 17 RATES AND DUTIES

17.1 Subject to any requirement of defence, foreign trade or foreign policy of this State, the safety of the public and quarantine and to the obligations of the State under multilateral international agreements to which the State is a party the Oil Companies any Affiliated Corporation and the agents and contractors of the Oil Companies or of any Affiliated Corporation shall have the right to acquire import into and move within Papua New Guinea and use any plant machinery equipment vehicles explosives fuels reagents and supplies which have a specialised application and use in the Operations and to export from Papua New Guinea the petroleum (whether processed or otherwise) resulting from the Operations.

SCHEDULE 3.—continued.

17.2 The Oil Companies shall be subject to import duties and levies of general application in accordance with Papua New Guinea law from time to time except as hereinafter provided.

17.3 No rate tax charge due duty tariff or other levy shall be applied to or be payable by the Oil Companies on the export of or in respect of the right to export Petroleum from Papua New Guinea by an Oil Company or a Related Company.

17.4 No rate tax rent charge due duty tariff or other levy and no legislation which discriminates against all or any of the Oil Companies or any member of an Oil Company or any beneficial owner of shares in any of the Oil Companies or any person engaged in the Operations shall be payable by or (as the case may be) applicable to any of the Oil Companies or any such member or beneficial owner or person (as the case may be) in respect of the Operations or of any income arising directly or indirectly therefrom PROVIDED THAT nothing in the Clause is intended to provide a basis for challenging the validity of the petroleum income tax or additional profits tax.

17.5 Any import duty which is sought to be imposed on the importation of any plant machinery equipment explosives chemicals or other supplies which at the time when such duty is sought to be imposed are imported into Papua New Guinea solely for the purpose of and which have a specialised application and use in the Operations and which is sought to be imposed at a rate in excess of the average rate of duty from time to time payable on the importation into Papua New Guinea of the Custom Tariff items numbered 118 275 309 313 320 and 341 04 as set out at the date thereof in the Second Schedule to the Customs Tariff 1959 shall without in any way whatsoever limiting the interpretation of Clause 17.3 above be deemed to discriminate against the Oil Companies.

17.6 No Local Government Rates or Provincial Government Rates or taxes on land calculated so as to be other than approximately equal to a rate or tax calculated in relation to the unimproved capital value of the surface rights of the land shall be payable by the Oil Companies in respect of land held by the Oil Companies, on which mining or industrial activities are carried on.

ARTICLE 18 CONSULTATION

18.1 The Oil Companies shall consult from time to time with representatives of the State and shall furnish the State each six months with reports concerning the implementation of:

- (a) the training and localisation programme
- (b) the provisions relating to local purchasing of supplies
- (c) the provisions relating to local business development and
- (d) the provisions relating to environmental management.

ARTICLE 19 INSPECTION

19.1 The Oil Companies shall at all reasonable times allow the properly accredited servants or agents of the State (who shall establish their authority on request) to inspect any aspect of the Operations and likewise to inspect and take copies of the books of account and records of the Oil Companies relating to the Operations and to any shipment, sale or use of products of such Operations.

ARTICLE 20 PATENT AND TECHNOLOGY RIGHTS

20.1 All new processes, new methods of manufacture and other technological or mechanical innovations developed within the Oil Companies' Operations:

- (a) shall remain the property of the Oil Companies, which shall apply for, take out and retain such patents and other technology rights, in Papua New Guinea or elsewhere, as may be necessary and desirable to protect the same; and
- (b) shall not be sold, assigned, licenced, surrendered, or otherwise disposed of by the Oil Companies except:
 - (i) on the basis of an arm's length transaction; and
 - (ii) with the prior approval of the State which approval shall not be unreasonably withheld.

20.2 Contracts to which any Oil Company is a party providing for the purchase of the right to use in the Operations any process, method or other technological innovation:

- (a) which are not contracts at arm's length, shall not be entered into without the prior consent of the State which consent shall not be unreasonably withheld, and

SCHEDULE 3.—continued.

(b) which are contracts at arm's length shall be submitted to the State for information.

20.3 For the purposes of this Article the term "arm's length" shall have the same meaning as ascribed to it in Section Sch. 3.2 of the Offshore Act, except that contracts for provision of services which incidental to their performance require the use of any such process, method or other technological innovation the patent rights to which are the property of any Oil Company or an Affiliated Corporation of any Oil Company and which but for the provisions of Section Sch. 3.2(c) would be at arm's length shall for the purposes of this Clause be deemed to be at arm's length.

ARTICLE 21 ASSIGNMENT

21.1 The State may assign, without the consent of the Oil Companies, all or part of its Venture Interest to any corporation, statutory or otherwise, formed in Papua New Guinea and either :

- (a) wholly owned by the State, or
- (b) wholly owned by the State and another corporation or other corporations, statutory or otherwise formed in Papua New Guinea and which are controlled by the State and in which the State has at least a 50% beneficial interest,

PROVIDED THAT vested in such corporation or corporations are powers and financial capacity sufficient to enable such of the State's continuing obligations under this Agreement as are assigned to such corporation to be fulfilled.

21.2 Subject to Clauses 21.1 and 21.3 and with the consent of the other parties which consent shall not be unreasonably withheld, all or any of the Parties may assign, or otherwise dispose of their interest or rights under this Agreement.

21.3 In the case of any assignment under this Article 21 the assignee shall undertake to the State to assume, observe and comply with all the obligations of the assignor in relation to the matter assigned or to the extent of the interest assigned as the case may be. After the giving of any such undertaking, the assignor shall be relieved of its obligations under this Agreement in relation to the matter assigned or to the extent of the interest assigned as the case may be without prejudice to pre-existing rights accrued to the State against the assignor.

21.4 Notwithstanding the foregoing provisions of the Clauses 21.2 and 21.3 but subject to normal statutory approvals in force from time to time,

- (a) any Oil Company may charge by way of fixed or floating charge the whole or any part of its Venture Interest to secure the repayment of, any payment of interest and other fees, costs and expenses related to, all loans made to that Oil Company to finance the project; and
- (b) the Oil Companies may mortgage and charge any specific asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset;

and any mortgagee or chargee under a mortgage or charge given by the Oil Companies may exercise all rights of sale and other rights included in any instrument of mortgage or charge provided it shall first give the State at least twenty-eight days' notice of intention to exercise those rights.

ARTICLE 22 ARBITRATION

22.1 If at any time there is any dispute, question or difference of opinion (in this Article 22 referred to as "Issue") between the Parties concerning the application of or arising out of section 99A of the Offshore Act other than any dispute, question, or difference of opinion in respect of which provision for settlement or determination is provided under the Income Tax Act 1959 the same shall, subject to Clause 22.2, stand referred to the arbitration of a single arbitrator, and such reference shall be considered a submission within the meaning of that expression given by the Arbitration Act 1951.

22.2 After any Issue has arisen between the State on the one hand and the Oil Companies or any of them on the other hand, any party to that Issue may at any time prior to the appointment of an arbitrator by concurrence of the Parties or pursuant to the Arbitration Act, 1951 by notice to the other Party or Parties thereto elect that the provisions of this Clause shall apply to such Issue and in such event :

- (a) the Issue shall stand referred to the arbitration of three arbitrators, one of whom shall be appointed by the State and one of whom shall be appointed by the other Party or Parties to the Issue and the third of whom shall be agreed upon by the State and the other Party

SCHEDULE 3.—continued.

or Parties to the Issue in writing, and in default of agreement within fourteen (14) days after the State gives notice to the other Party or Parties to the Issue or the other Party or Parties to the Issue give notice to the State requiring the appointment of such a third arbitrator, shall be appointed in accordance with the provisions of the Arbitration Act 1951 from a panel of five (5) arbitrators to be nominated within a further period of fourteen (14) days thereafter by the President and Chairman of the Board of Directors (or failing him the Chief Executive) not being a Citizen of Papua New Guinea of the Asian Development Bank (or, failing such nomination, from any panel of arbitrators which the person or body appointing the third arbitrator considers satisfactory) PROVIDED THAT no person shall be eligible for appointment as a third arbitrator (unless the State and the Oil Companies otherwise agree in writing in any particular case) if at the time of his proposed appointment he is or has been at any time prior thereto a citizen or resident of Papua New Guinea, the Commonwealth of Australia, Canada, or the United States of America;

- (b) if any arbitrator refuses to act, is incapable of acting or dies, a new arbitrator shall be appointed by the party appointing the original arbitrator or (in the case of the third arbitrator) in accordance with the procedure provided for in Subclause 22.2(a);
- (c) if on such reference one Party fails to appoint an arbitrator either originally or by way of substitution as aforesaid within fourteen (14) days after the other Party (having appointed its arbitrator) has given to it notice to appoint such arbitrator, the arbitration may proceed in the absence of such arbitrator; and
- (d) such arbitration shall be held at such place (whether inside or outside Papua New Guinea) as the arbitrators determine.

22.3 If any Party to any arbitration under this Clause so requests the arbitrator or arbitrators shall state, in the form of a special case for the opinion of the National Court of Papua New Guinea, any question of law arising in the course of the reference, and any opinion given shall be subject to the normal right of appeal.

22.4 An award made on an arbitration shall have force and effect as follows—

- (a) if by the award it is adjudged that the decision of the State is correct then the decision of the State in respect to the Issue shall stand; but
- (b) if the arbitrator adjudges that the decision of the State is incorrect then he shall further adjudge what the Norm Price should be in which event the decision of the Arbitrator shall be binding on the Parties.

ARTICLE 23 LAW APPLICABLE

23.1 This Agreement shall be governed by and construed in accordance with the law of Papua New Guinea.

ARTICLE 24 VARIATION

24.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Licences, any Development Licence, or any lease, licence, right or grant granted hereunder or pursuant hereto or any programme, proposal or plan approval hereunder, for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

24.2 Where an agreement made pursuant to Clause 24.1 constitute an alteration of any Article or Clause referred to in Clause 3.2, the variation agreement shall contain a declaration to that effect, and the State shall as soon as is practicable introduce and sponsor in the National Parliament a Bill for an Act to approve that variation agreement and give force of law to the alteration of the rights hereunder. That variation agreement shall be subject to the coming into force of the approving Act.

24.3 Any agreement made pursuant to Clause 24.1 which does not constitute an amendment of any Clause referred to in Clause 3.2 shall be tabled by the State in the National Parliament within the first twelve (12) sitting days next following its execution.

ARTICLE 25 NOTICES

25.1 All notices, notifications, consents, approvals, undertakings, applications, requests, offers, reports, returns, elections, and proposals required to be or which may be given, made, furnished or

SCHEDULE 3.—continued.

submitted under this Agreement shall, unless the context otherwise requires, be in writing signed by a Minister of the State or the Director of the Office of Minerals and Energy or (as the case may be) a director or secretary or other designated representative of the Oil Companies, and if in writing shall be sufficiently given, furnished or submitted if delivery at or posted by prepaid post to the address for service of the Party or Parties to whom it is to be given, made, furnished or submitted, and all such communications if posted as aforesaid shall, unless proven otherwise, be deemed to have been received in the ordinary course of post.

25.2 The addresses for service:

(a) of the State shall be:

(i) for the purposes of Sub-clause 13.3(c)

The Prime Minister,
Central Government Offices,
Waigani,
Papua New Guinea

or by post to:

The Prime Minister,
Central Government Offices,
Wards Strip Post Office,
Waigani,
Papua New Guinea

Telephone: Port Moresby 27 1211

Telex: SENTROF NE 22144; and

(ii) for all other purposes:

The Director,
Office of Minerals and Energy,
Konedobu,
Papua New Guinea

or by post to:

The Director,
Office of Minerals and Energy,
P.O. Box 2352,
Konedobu,
Papua New Guinea

Telephone: 25 1180

Telex: WABTRO NE 22211

(b) of the Oil Companies shall be:

The General Manager,
Endeavour Oil Company N.L.,
228 Victoria Parade,
East Melbourne, 3002, Australia

Telephone : 419 2577

Telex : Cookoil AA31859

or by post to :

P.O. Box 217,
East Melbourne, 3002, Australia.

Esso Papua New Guinea Inc.,
C/- Exploration Manager,
Esso Australia Limited,
127 Kent Street,
Sydney, N.S.W. 2000, Australia.

Telephone : 20557

Telex : AA20549

SCHEDULE 3.—continued.

Chief Executive Officer,
IOL Petroleum Limited,
95 Collins Street,
Melbourne, 3001, Australia.
Telephone : 63 0491
Telex : Conrio AA30108
or by post to :
G.P.O. Box 384D,
Melbourne, 3001, Australia.

Any Party may change its address for service by prior notice in accordance with this Article.

25.3 Where the Oil Companies are required to submit any plans, proposals, or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State receives the said plans, proposals or other material.

ARTICLE 26. TERMINATION

26.1 The State may terminate this Agreement by notice to the Oil Companies in any of the following events—

- (a) if the Oil Companies abandon the Licence or repudiate their obligations under this Agreement and Operations are not resumed or such default made good within a period of sixty (60) days after notice as provided in Clause 26.2 is given by the State to the Oil Companies;
- (b) if the State can establish that in granting its approval to any proposal made under the Offshore Act or otherwise it relied upon a statement made by the Oil Companies not being an estimate based on judgement exercised in good faith on the application of knowledge available at the time the estimate is made and it is shown the Oil Companies intended such statement to be false or misleading;
- (c) if the Licence or any extensions or renewal thereof is properly forfeited due to default by the Oil Companies or is surrendered under the Onshore Act;
- (d) if the Oil Companies do not submit proposals in accordance with Article 7.

26.2 The notice to be given by the State in terms of Subclause 26.1(a) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the Party or Parties responsible therefor and shall be given to each of the Oil Companies.

26.3 For the purposes of Clause 26.1(a) the Oil Companies shall not be deemed to have abandoned the Licence or repudiated their obligations unless all persons for the time being bound, whether as assignees of the Oil Companies or otherwise, to perform the obligations of the Oil Companies hereunder, have abandoned the Licence or repudiated the obligations.

26.4 This Agreement shall terminate on the expiry or surrender of the Licence and all Development Licences issued over any part of the Area or any renewal or extension of any of them.

26.5 If this Agreement is terminated after the grant of a Development Licence all structures, installations, plant, and equipment :

- (a) which can be removed from the Area within six (6) months after the notice of termination and without irreparable damage to the Area or any remaining structure, installations, plant and equipment may be removed by the Parties; and
- (b) all other structures, installations, plant, equipment and non-movable assets of the Parties in the Area shall thereupon become the property of the State without any cost to the State or any liability for the State to pay compensation therefor, and freed and discharged from all mortgages and other encumbrances. All materials, supplies and other movable assets of the Parties in the Area which are fully depreciated for tax purposes shall likewise become the property of the State, but any such materials, supplies and other movable assets which are not fully depreciated for tax purposes shall be offered by the Parties for sale to the State at their depreciated value.

26.6 The Oil Companies shall do all such things as the State may reasonably require to give effect to the provisions of this Article 26 and the Oil Companies shall make available to the State the results

SCHEDULE 3.—continued.

of the Investigations and Studies to the extent that they have been carried out by the Oil Companies before the date of termination.

26.7 This Article 26 shall continue in force notwithstanding the termination of the rest of this Agreement and may be sued upon or enforced against the Oil Companies.

26.8 Termination of this Agreement under this Article 26 shall be without prejudice to any rights of any of the Parties for any antecedent breach of covenant or agreement.

26.9 Notwithstanding anything to the contrary contained herein, should any law, statute or regulation be passed in Papua New Guinea or become effective in Papua New Guinea, subsequent to 31st March 1977, and should such law, statute or regulation abrogate or materially alter the fundamental contractual rights or obligations of the Oil Companies hereunder, the Oil Companies shall have the right to give the State 60 days notice of their intention to terminate this Agreement without further obligation to the State except as to rights or liabilities in respect of any antecedent breach of this Agreement.

ARTICLE 27 AMENDMENTS TO OPERATING AGREEMENT

27.1 For the purposes of this Article 27 the Operating Agreement shall be deemed to apply only in respect of the Area, the Licence or any Development Licence.

27.2 The Parties shall commence as soon as practicable to negotiate in good faith with the objective of agreeing on the form and content of a Joint Operating Agreement to accord substantially with the provisions of the Operating Agreement but to reflect:

- (a) changes in the parties bound thereby and the circumstances of their association, and
- (b) the possible acquisition by the State of a Venture Interest, and
- (c) amendments necessary to give effect to the provisions of this Agreement.

27.3 If the Parties have not executed the Joint Operating Agreement at the date the State elects to acquire a Venture Interest under Clause 13.3 the State shall as and from that date be deemed to be a party to the Operating Agreement with full rights to attend and vote at all Operating Committee Meetings.

27.4 After the date of this Agreement the Oil Companies may not amend or replace the Operating Agreement without the approval of the State.

27.5 Without limiting the generality of the foregoing the Parties agree that the following Articles and Clause of the Operating Agreement should be reviewed for the purposes of Clause 27.2:

Articles 3, 4, 7, 8, 11, and 13; and

Clause 19.05.

ARTICLE 28 MISCELLANEOUS

28.1 No stamp duty or other fees or charges shall be payable to the State in respect of any assignment or transfer of any Participating Interest or Venture Interest in the Licence or the Venture Assets by an Oil Company to the State or to an Affiliated Corporation incorporated in Papua New Guinea if such assignment is required to comply with the provisions of the Acts.

28.2 Subject to considerations of national security the State shall grant to the Oil Companies such licences, permits and other rights and exemptions as are within its power to grant and which reasonably may be required by the Oil Companies to enable the Oil Companies to fulfil their obligations and enjoy their rights and benefits under the Licence, the Acts, or this Agreement.

28.3 If the State elects to acquire a Venture Interest thereafter the Parties shall own all the Venture Assets as tenants in common, however, the expenditure of the Oil Companies under this Agreement shall be shown on the accounting records of the Oil Companies entirely as expenses, charges, and costs of the Oil Companies in proportion to their respective Participating Interests and shall be reflected for purposes of the fiscal dispositions of the applicable United States law in the balance sheet and profit and loss accounts of only the Oil Companies.

28.4 Whether an election shall be made to have this Venture excluded from the application of the provisions of Sub-chapter K of Chapter 1 of Sub-title A of the United States Internal Revenue Code of 1954, shall be determined by EPNG for each Calendar Year during which EPNG has incurred expenditures under Article 13. The initial determination shall be made and furnished in writing to the

SCHEDULE 3.—continued.

other Parties no later than 15th April, 1977, and if requested by the Operator to do so, the State will execute a tax agreement for United States tax purposes in a form to be approved by the Parties.

28.5 Consistent with requirements of the law and national security the State shall use its best efforts to have foreign workers and their dependants to be employed in the Operations in accordance with the approved training and localisation programme expeditiously granted such permits as may be necessary to authorise them to enter, re-enter, move within, remain in and depart from Papua New Guinea and to work on or in connection with the Operations.

ARTICLE 29 NATURAL GAS AND GAS LIQUIDS

29.1 It shall be the responsibility of the Oil Companies to determine whether production of Natural Gas or Natural Gas Liquids is commercial and whether or not to construct and install facilities to enable production of such Natural Gas or Natural Gas Liquids.

29.2 Natural Gas and Natural Gas Liquids will be disposed of by the Parties at the first point of measurement downstream from the outlet flange of the field gas separator in the Area beyond which point the State's Venture Interest shall cease.

29.3 Norm Price for all purposes for Natural Gas and Natural Gas Liquids will be the price specified in contracts for its sale entered into with the prior approval of the State which will not be unreasonably withheld.

29.4 Subject to the absence of Regulations to the contrary under the Acts the Oil Companies may flare gas necessarily produced with crude oil and not needed in the Operations and the sale of which is not economically justified.

29.5 The State recognises that its election to acquire up to a 22.5% Venture Interest may prevent the Oil Companies from producing on a commercial basis Natural Gas or Gas Liquids discovered in the Area. Therefore, if the Oil Companies in a proposal under Clause 7.1 produce evidence that such Natural Gas or Gas Liquids cannot be produced on a commercial basis if the State elects to acquire a 22.5% Venture Interest, the State will negotiate in good faith with the intention of agreeing on such lesser Venture Interest as will allow a Natural Gas or Gas Liquids project to proceed on a commercial basis.

ARTICLE 30 TITLES

30.1 Subject to Clause 30.2 the provisions of the Offshore Act and each of them shall apply *mutatis mutandis* to and in respect of the Licence in lieu of the provisions of the Onshore Act as if the Licence were a Petroleum Prospecting Licence issued pursuant to and in accordance with Section 18 of the Offshore Act.

30.2 The following provisions of the Onshore Act, that is to say :

Section 6;

Sections 11 to 24 inclusive, except for sub-section (3)(d) of Section 21;

Sections 26 to 28 inclusive;

Sections 30 to 34 inclusive;

Sections 37 and 38;

Sections 53 to 57 inclusive;

Sections 59 to 64 inclusive;

Sections 71 to 74 inclusive;

Sections 77 and 78;

Section 80;

Section 82;

Sections 86 to 91 inclusive;

Sections 94 and 95;

Section 99; and

SCHEDULE 3.—continued.

Section 100, and applicable regulations made thereunder;

shall apply mutatis mutandis to and in respect of the Licence PROVIDED THAT in the event of conflict or inconsistency between—

- (a) the definitions contained in Section 6 of the Onshore Act and a definition contained in Section 1 of the Offshore Act the latter shall prevail and apply to the Licence accordingly, and
- (b) the provisions of the Offshore Act and the provisions of the Onshore Act in respect to the rights of the Oil Companies to access to and occupation of the surface of the Area the latter shall prevail and apply to the Licence accordingly.

30.3 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament a Bill for an Act to regulate exploration for and production of Petroleum in those areas of Papua New Guinea other than the offshore area within the meaning of the Offshore Act. It is the State's intention that such Bill substantially reflects the spirit of this Agreement and contains no provisions which, if enacted, would materially affect the rights and obligations of the Oil Companies hereunder.

30.4 If new legislation providing for exploration for and production of Petroleum in the onshore area of Papua New Guinea is not enacted by the National Parliament and operative prior to the Oil Companies notifying the State of their intention to nominate a Block under section 28 of the Offshore Act, all the provisions of the Offshore Act shall thereupon cease to apply to the Licence, the provisions of the Onshore Act specified in Clause 30.2 shall continue to apply thereto and the remaining provisions of the Onshore Act shall thereupon apply to and in respect of the Licence to the extent to which they or any of them are or is capable of so applying and the Minister.

30.5 The State will prepare and submit to the Oil Companies a map of the Area showing the subdivision of the Area into Blocks. Such subdivision will be consistent with the existing subdivision of the area of the Territorial Sea and Continental Shelf of Papua New Guinea.

30.6 Notwithstanding anything contained in the Onshore Act or the Offshore Act, the Licence shall be deemed to have been granted to the Oil Companies for a term of six (6) years commencing on the first day of September, 1975.

30.7 If the Oil Companies have complied with the Licence Conditions and provisions of the Acts in so far as they apply to the Licences and the Area to the date of commencement of the Act referred to in Clause 30.3 the State shall forthwith after such commencement grant to the Oil Companies under such new Act, and in substitution for the Licence, the necessary rights and titles to authorise the Oil Companies to continue to explore and prospect for Petroleum or to produce Petroleum discovered within the Area on terms not less favourable than those previously applicable.

IN WITNESS whereof this Agreement has been duly executed by the Parties, the day and year first hereinbefore written.

Signed for and on behalf of the Independent State of Papua New Guinea by the Governor General, Sir John Guise, acting with and in accordance with the advice of the National Executive Council:

John Guise

John Guise,
Governor General

C Van Leishout
Witness

The Common Seal of Endeavour Oil Company N.L. was hereunto affixed in accordance with its Articles of Association and in the presence of:

E.A. Webb

Director

L. J. Cairns
Secretary

SCHEDULE 3.—continued.

Signed, sealed and delivered on behalf of Esso Papua New Guinea Inc., by its duly constituted Attorney in the presence of :

K. Richards

Attorney

F. M. Hooke
Witness

The Common Seal of IOL Petroleum Limited was affixed hereto in the presence of :

R. T. Madigan

Director

R. J. Knott
Secretary

SCHEDULE 4.

Sec. 1.

Agreement No. 4.

THIS AGREEMENT made the _____ day of _____, 1976 BETWEEN THE INDEPENDENT STATE OF PAPUA NEW GUINEA (herein called "the State") of the first part and ENDEAVOUR OIL COMPANY N.L. (herein called "Endeavour"), ESSO PAPUA NEW GUINEA INC. (herein called "EPNG"), and IOL PETROLEUM LIMITED (herein called "IOL") (herein called collectively "the Oil Companies" which expression shall be taken to refer also to each such company severally) of the second part :

WHEREAS

A. Petroleum Licence number 7 issued pursuant to the Petroleum (Prospecting and Mining) Act 1951, is held by the Oil Companies subject to their respective rights and obligations as specified—

- (i) in the said Petroleum (Prospecting and Mining) Act 1951,
- (ii) in the said Petroleum Licence number 7,
- (iii) in an agreement dated May 4th, 1971, between Endeavour of the first part and IOL (IOL therein being referred to as "Interstate Oil Limited") of the second part and certain other agreements therein referred to, and
- (iv) in an agreement dated the 9th May, 1975 among Endeavour and IOL of the one part and EPNG of the other part,

in each case as varied by this Agreement;

B. The State recognizes—

- (i) that discovery of commercial quantities of Petroleum in Papua New Guinea will be of major economic significance to the people of Papua New Guinea,
- (ii) that to have the greatest likelihood of discovering commercial quantities of Petroleum the State intends to rely on and permit companies such as the Oil Companies to explore for and produce any Petroleum discoveries,
- (iii) that the Oil Companies will spend large sums of money on exploration for Petroleum and on development of facilities to produce any commercial quantities of Petroleum discovered, and
- (iv) that the ability of the Oil Companies to spend amounts of money referred to above will be dependent in part upon the certainty and long term stability of the terms upon which the State permits the Oil Companies to operate within Papua New Guinea.

C. The State is anxious to ensure that the development of any commercial discoveries of Petroleum will secure the maximum benefit for and adequately contribute to the advancement and the social and economic welfare of, the people of Papua New Guinea, including the people in the vicinity of the Oil

SCHEDULE 4.—*continued.*

Companies' operations in a manner consistent with their needs and the protection of their environment.

D. The State proposes to introduce and sponsor in the National Parliament by its first sitting in 1977, a Bill for an Act to provide for exploration for and production of Petroleum in areas other than the offshore area within the meaning of the Petroleum (Submerged Lands) Act 1975, and it is the State's intention that such Bill substantially reflect the spirit of this Agreement and contain no provisions which if enacted would materially affect the rights and obligations of the Oil Companies hereunder.

E. The State and the Oil Companies have agreed on a number of matters which are set out in this Agreement and while acknowledging that legislative sovereignty in Papua New Guinea is vested in the National Parliament wish the matters agreed upon to an enduring arrangement and do not intend that they should be altered other than by agreement between the State and the Oil Companies.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS :

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise requires :

- "Accumulated Liability" has the meaning ascribed to it in Clause 13.1;
- "Acts" means both the Offshore Act and the Onshore Act;
- "Affiliated Corporation" means, in relation to any Party a related company of that Party and "related company" has the same meaning ascribed thereto by Section 6(3) of the Companies Act 1963;
- "the Agreement" means this Agreement together with the Annexures hereto;
- "Approved Proposals" means proposals or amended proposals submitted to the State pursuant to the provisions of the Offshore Act and approved pursuant to that Act;
- "the Area" means the Area covered by the Prospecting Licence;
- "Budget Year" means a calendar year commencing on 1st January and ending on the next succeeding 31st December;
- "Citizen" means a citizen (whether natural born or naturalised) of the State;
- "Development" means activities in or in relation to a Development Area carried on in accordance with the Operating Agreement or Joint Operating Agreement for the purpose of constructing and installing the facilities and infrastructure necessary to enable Production from the Area;
- "Development Area" means the Blocks comprising a Development Licence;
- "Development Licence" means a Development Licence granted under the Offshore Act or a lease granted under the Onshore Act within the Licence Area;
- "Exploration" and "Prospecting" mean activities in or in relation to the Area carried on for the purpose of identifying in the first instance the location of any Petroleum traps in the Area and thereafter in relation to each Petroleum trap to determine whether it constitutes a reservoir containing sufficient Petroleum to justify Development;
- "Foregone Production" has the meaning ascribed to it in Clause 13.1;
- "Investigations and Studies" means the investigations and studies required by the Minister under section 28A of the Offshore Act;
- "Joint Operating Agreement" means the agreement to be negotiated by the Parties in substitution for the Operating Agreement;
- "Licence" and "Petroleum Licence" mean Petroleum Licence L7 or any renewal, extension or replacement thereof issued pursuant to the Petroleum (Prospecting and Mining) Act 1951;
- "Licence Conditions" means those conditions included in the Licence or any Development Licence by the Minister as provided for in the Offshore Act;
- "Licence Year" means a 12 month period commencing in the first instance on 1st September, 1975 and thereafter the 12 month period commencing on 1st September in each year;
- "Offshore Act" means the Petroleum (Submerged Lands) Act 1975;
- "Onshore Act" means the Petroleum (Prospecting and Mining) Act 1951;

SCHEDULE 4.—*continued.*

"Operating Agreement" means the form of Agreements which comprise Annexure "A" to this Agreement as amended from time to time by the Parties hereto;

"Operating Committee" has the same meaning in this Agreement as the meaning ascribed to it in the Operating Agreement;

"Operations" means operations and activities carried out under the Operating Agreement and the Joint Operating Agreement and includes Exploration, Development and Producing or any of them as the context permits;

"Party" or "Parties" means respectively a party or parties to this Agreement and their respective successors and permitted assigns;

"Participating Interest" means the undivided percentage interest of each of the Oil Companies in the Venture Assets immediately prior to the assignment to the State of its Venture Interest. At the date of this Agreement the respective Participating Interests are:

Endeavour	25%
IOL	25%
EPNG	50%

"Petroleum Income Tax" and "Additional Profits Tax" have the same meaning in this Agreement as the meaning ascribed to them in the Income Tax Act 1959;

"Positive Day" has the meaning ascribed to it in Clause 13.1;

"Producing" means activities involved in or in relation to producing, treating, transmitting, transporting, storing or handling of Petroleum produced from within the Area, and includes extraction of Petroleum by any permitted method, and all work and operations necessary or convenient for the foregoing;

"Production Share" has the meaning ascribed to it in Clause 13.1;

"Shortfall Period" has the meaning ascribed to it in Clause 13.1;

"Simple Interest" has the meaning ascribed to it in Clause 13.1;

"Specified Volume" has the meaning ascribed to it in Clause 14.1;

"Venture Assets" means Property whether real or personal owned at the date the State gives notice under Clause 13.3 or thereafter acquired as tenants in common—

(a) by the Oil Companies in proportion to their respective Participating Interest until the State elects to acquire its Venture Interest, and thereafter

(b) by the Parties in proportion to their respective Venture Interests;

and includes the Licence, any Development Licences granted over the Area, materials, plant, and equipment and any Petroleum discovered in the Area;

"Venture Interest" means the undivided percentage interest from time to time in the Venture Assets and Operations of a Party after the assignment to the State of a percentage interest in the Venture Assets and Operations;

"Works and Facilities" and "Works or Facilities" have the meaning ascribed to them in Article 15;

"Block", "Norm Price", "Petroleum", and "Royalty" have the same meaning in this Agreement as the meaning ascribed to them in the Offshore Act.

ARTICLE 2 INTERPRETATION

2.1 In this Agreement unless the context otherwise requires—

- (a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;
- (b) the headings do not affect the interpretation or construction;
- (c) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other genders;

SCHEDULE 4.—*continued.*

- (f) references to a person include a corporation and vice versa;
- (g) reference to an Article, Clause or Subclause is to an Article, Clause or Subclause of this Agreement;
- (h) reference to a Minister shall mean the Minister for the time being having responsibility for the particular subject matter according to the context.

2.2 Where any provision of this Agreement constitutes an undertaking by one of the Parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right, concession or advantage that Party shall by its execution hereof be deemed to have covenanted and agreed with the other Party accordingly and where any such provision constitutes such an undertaking by the Oil Companies there shall be deemed to be a covenant and agreement by all of them jointly and each of them severally in respect of such undertaking.

ARTICLE 3 EFFECT ON AND OF OTHER LAWS

3.1 The Articles and Clauses listed in Clause 3.2 are to have the force of law and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea, and no law at any time in force in Papua New Guinea made after the commencement of this Agreement shall affect those Articles and Clauses:

- (a) unless the contrary intention appears expressly in that law; or
- (b) except as provided by this Agreement.

3.2 The provisions of Clause 3.1 shall apply to the following Articles and Clauses:

- (a) Article 5
- (b) Article 6
- (c) Clause 17.6
- (d) Clause 28.1
- (e) Article 30 except for Clause 30.3 and 30.5.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament in a form agreed upon by the Parties, a Bill for an Act to approve this Agreement and to give the force of law to the Articles and Clauses specified in Clause 3.2.

4.2 This Agreement shall be void and of no effect and none of the Parties shall have any claim against any other Party with respect to any matter or thing arising out of, done or performed under this Agreement unless the Act referred to in Subclause 4.1(a) shall come into effect prior to 31st day of March, 1977.

ARTICLE 5 CURRENCY

5.1 Words and expressions which have a certain meaning where used in the Foreign Exchange Regulations made under the Central Banking Act 1973 shall have the same meaning where used in this Article 5.

5.2 The Oil Companies shall be entitled to retain in foreign currency outside Papua New Guinea proceeds of sale of all Petroleum produced by the Oil Companies and exported overseas to the extent necessary to enable the Oil Companies to meet their obligations to pay foreign currency during the ensuing three (3) months in respect of:

- (a) the principal of, interest and services charges on and other fees and expenses related to loans made to the Oil Companies in foreign currency for purposes of their operations under this Agreement by persons not resident in Papua New Guinea, where the terms of such loans have been approved by the Bank of Papua New Guinea under the Foreign Exchange Regulations; and
- (b) commitments in foreign currency to persons not resident in Papua New Guinea for the supply of goods and services to the Oil Companies (including capital goods and services of foreign employees and consultants); and

SCHEDULE 4.—*continued.*

- (c) commitments in respect of dividends payable to shareholders resident outside Papua New Guinea;

provided that the amounts concerned are established to the reasonable satisfaction of the State.

5.3 Where amounts of foreign currency expected to be required by any of the Oil Companies for the purposes described in Clause 5.2 in any three month period exceed the amounts of foreign currency earnings expected to be received by any of the Oil Companies in that period, such Oil Company may request the State to hold foreign currency for it to the level of the possible shortfall but not exceeding foreign currency requirements for purposes of loan repayments whereupon—

- (a) the Oil Company concerned shall notify the State of the amount of the expected shortfall and the currencies in which the shortfall is likely to occur;
- (b) the State, after consultation with the Bank of Papua New Guinea, will advise the Oil Company concerned of the Kina equivalent of the shortfall at the exchange rate then prevailing;
- (c) the Oil Company concerned will lend to the State and the State will borrow from the Oil Company concerned that amount in Kina;
- (d) the State through the Bank of Papua New Guinea will hold deposits of foreign exchange in the currency to which payments will be made and of amounts sufficient to make such payments in accordance with the notice which the Oil Company concerned has given to the State under Subclause 5.3(a);
- (e) the State will pay interest to the Oil Company concerned on such foreign currency deposits at a rate per annum which is the rate which the Bank of Papua New Guinea earns for the State on those deposits less one half of one percent (0.5%) per annum to cover the Bank of Papua New Guinea's administrative and overhead costs; and
- (f) the State will repay any loan made by the Oil Company concerned under this Clause 5.3 in the currencies in which the deposits are held at the time payments in those currencies by the Oil Company concerned are due, such amounts in foreign currency to be applied in discharge of the Kina amount of the original loan at the exchange rate ruling at the time of the original loan.

5.4 The Oil Companies will not be subject to or limited by regulations or statutes relating to foreign exchange and the control thereof that are less favourable to the Oil Companies or any of them than the regulations and statutes of general application to persons dealing with foreign exchange in Papua New Guinea nor will regulations or statutes relating to foreign exchange and the control thereof be applied in relation to any of the Oil Companies in a manner less favourable to them than the manner in which they are generally applied to others to whom they are applicable.

5.5 At all times the Oil Companies shall have the right to buy and sell Kina at rates of exchange no less favourable than those available to other commercial buyers and sellers of that currency.

5.6 The Oil Companies may establish foreign currency accounts in Papua New Guinea PROVIDED THAT such deposits do not contravene Exchange Control requirements and contain deposits considered by the Government to be reasonable in relation to the Oil Companies' needs.

5.7 Unless otherwise directed by the State and except as provided in Clauses 5.2 and 5.6, each Oil Company shall convert all its foreign currency earnings from Operations under this Agreement into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Oil Company for its use.

5.8 Notwithstanding anything to the contrary in the Acts, the National Investment Development Authority Act, the Income Tax Act or other legislation applying to the Operations, the Oil Companies may—

- (a) keep their books of account and other records in both Kina and United States dollars; and
- (b) make all calculations under any statute or regulation (including but without limiting the generality of the foregoing calculations for Royalty, Petroleum Income Tax, Additional Profits Tax) and for Foregone Production, and Specified Volume and other matters arising under this Agreement, the Operating Agreement and the Joint Operating Agreement in Kina or United States dollars. When applying for the first Development Licence within the Area each Oil Company shall elect to make such calculations thereafter in either Kina or United States dollars. If such calculations are made in United

SCHEDULE 4.—*continued.*

States dollars the State shall accept payment of such taxes and other moneys in Kina converted from United States dollars as provided in the following formula :

$$K = S \times D$$

where,

K means the sum in Kina payable to the State for any of the stated purposes;

S means the sum expressed in United States dollars to be converted to Kina;

D means the mean of the average of the Daily Published Buying and Selling Rates of Kina against the United States dollar during the Budget Year, or in the case of Royalty during the month, for which the calculation is being made. The "Daily Published Buying and Selling Rates" means the buying and selling rates from time to time published by the Bank of Papua New Guinea or such other buying and selling rates as may from time to time be published and recognised by the State as the official buying and selling rate. In calculating the mean of the average of the Daily Published Buying and Selling Rates the average of the buying and selling rates applying on each day on which the Bank of Papua New Guinea is open to the public for business transactions shall be aggregated and the result divided by that same number of days.

ARTICLE 6 NIDA REGISTRATION

6.1 Notwithstanding anything expressly or impliedly to the contrary contained in the National Investment and Development Act 1974 and in particular notwithstanding the provisions of Section 4 of that Act, the Oil Companies from the date of issue of the first Development Licence shall be deemed to be registered under that Act in respect of the activities of Exploration, Development and Producing (but not including refining of crude oil) and other activities necessarily incidental thereto and contemplated by or required to carry out Exploration or the Approved Proposals, on the following conditions :

- (a) the Oil Companies shall not without the approval of the National Investment and Development Authority carry on any activities except those necessarily incidental to Exploration or the Approved Proposals; and
- (b) the registration shall be for the duration of this Agreement and shall be deemed to be cancelled upon the termination of this Agreement for any reasons whatsoever.

ARTICLE 7 PROPOSALS

7.1 The Oil Companies shall submit to the State in support of any application for a Development Licence and in addition to detailed proposals as required by section 30 of the Offshore Act :

- (a) the financial analysis of prospective cash flows of the Operations;
- (b) matters which the Oil Companies may consider relevant to support a request pursuant to Clause 29.5 that the State elect to acquire a Venture Interest less than the maximum provided for in Clause 13.3.

7.2 The State shall treat as confidential all material and information supplied to the State under Subclause 7.1(a) and under Section 28A(3) of the Offshore Act being the results of studies referred to in Section 28A(2)(a) and (b) of that Act PROVIDED THAT if this Agreement is terminated as provided in Article 26 the material and information shall become the property of the State and may be used by the State in such manner as it thinks fit.

7.3 If the Oil Companies desire to modify, expand or otherwise substantially vary their activities beyond those specified in any Approved Proposals, either by undertaking any new activity or by a major expansion of activities specified in the Approved Proposals, the Oil Companies shall give notice of such desire to the State and within two months thereafter shall submit to the State detailed proposals in respect of the desired modification, expansion or variation.

ARTICLE 8 CONSIDERATION OF PROPOSALS

8.1 The State shall not unreasonably withhold its approval to the proposals referred to in Subsection 30(1)(c) of the Offshore Act and if the State approves such proposals without amendment, it shall notify the Oil Companies accordingly at the same time as the Minister serves on the Oil Companies the instrument under section 31 of the Offshore Act.

SCHEDULE 4.—*continued*.

8.2 If the State does not intend to approve without amendment the proposals referred to in Subsection 30(1)(c) of the Offshore Act, the State within three (3) months of receipt of such proposals shall notify the Oil Companies that it wishes to:—

- (a) defer consideration of or decision upon the same until such time as the Oil Companies submit a further proposal or proposals in respect of some matter mentioned in Section 28A of the Offshore Act not covered by the said proposals and in such case the State shall disclose to the Oil Companies the reasons therefor and specify the further proposal or proposals; or
- (b) approve the said proposals subject to the Oil Companies making such alteration thereto or complying with such conditions as the State thinks reasonable and in such a case the State shall disclose its reasons for requiring such alterations or imposing such conditions.

8.3 If the decision of the State is to be as mentioned in Clause 8.2 the State shall afford the Oil Companies full opportunity to consult with it and should the Oil Companies so desire, to submit new proposals either generally or in respect of some particular matter.

ARTICLE 9 TRAINING AND LOCALISATION

9.1 The Oil Companies holding a Development Licence in regard to any part of the Area shall progressively replace foreign personnel (employed with the approval of the State) with Citizens, in accordance with the training and localisation programme which forms part of the report furnished to the Minister under section 28A of the Offshore Act PROVIDED THAT if the training and localisation programme is disrupted by circumstances or events (whether or not they constitute force majeure within the meaning of Article 11) which make it difficult or impossible for the Oil Companies to comply with their obligations under such programme, the Oil Companies may give notice thereof to the State, together with alternative or revised plans to achieve the objects of the part of the training and localisation programme which is affected, and the State within one (1) month of that notice shall either—

- (a) approve those alternative or revised plans; or
- (b) meet with the Oil Companies to discuss the alternative or revised plans. If such discussions do not lead to the State's approval of alternative or revised plans, which approvals shall not unreasonably be withheld, the Oil Companies shall be bound by their original obligations under the training and localisation programme, except that they shall not be liable for any delay caused by following the procedures under this Subclause and subject always to the Oil Companies being able to claim force majeure under Article 11.

9.2 The State shall give such assistance to the Oil Companies as is reasonably required in the formulation of their training and localisation programme and in recruitment of Citizens, and under normal conditions shall make available its facilities for vocational and technical training.

9.3 Training and instruction pursuant to the training and localisation programme shall be given by employees or agents of the Oil Companies who are proficient in the English language.

9.4 (a) The Oil Companies holding a Development Licence jointly shall arrange in co-operation with the State assignments for the State's Employees, not to exceed more than ten (10) in any year or at any time, to the Oil Companies' operations, whether in Papua New Guinea or overseas, to assist in training such employees for managerial, professional, and technical positions for the State PROVIDED THAT if any Oil Company being a party to this Agreement has fulfilled or partly fulfilled a like obligation under any like agreement with the State to which the Oil Companies are also a party this clause 9.4 shall be deemed to have been fulfilled to the extent that such like obligations have been fulfilled by the Oil Companies.

(b) The salaries and other expenses of such State employees shall be borne by the State PROVIDED THAT whilst any such State employee is directly engaged in the Oil Companies' operations, salary and expenses of such employee shall be borne by the Oil Companies.

9.5 As far as is practicable the Oil Companies shall give first preference in employment to Citizens whose place of origin is in the area of any Development Licence.

SCHEDULE 4.—*continued*.

ARTICLE 10 LOCAL SUPPLIES AND BUSINESS DEVELOPMENT

10.1 The Oil Companies shall :

- (a) use and purchase goods and services supplied, produced, or manufactured in Papua New Guinea whenever the same can be obtained at competitive prices and on competitive terms, conditions and delivery dates and are in all substantive respects of a quality comparable with those available from outside Papua New Guinea; and
- (b) encourage and assist Citizens desirous of establishing businesses providing goods and services for the Oil Companies' operations and for any town constructed primarily for purposes of the Oil Companies' operations and the residents thereof; PROVIDED THAT the Oil Companies shall not be obliged or called upon to grant or lend money to any Papua New Guinea Citizen or any local enterprise; and
- (c) make maximum use of Papua New Guinea subcontractors where services of comparable standards with those obtainable elsewhere whether inside or outside Papua New Guinea are available from them at competitive prices, and on competitive terms, conditions, and delivery or performance dates; and
- (d) where it is necessary to import vehicles, machinery, plant or equipment, and such items are not purchased direct from the manufacturer by the Oil Companies, effect the purchase of such items through traders operating in Papua New Guinea, PROVIDED THAT such items are available through such traders at a competitive price, and on competitive terms, conditions, and delivery date and provided always that the Oil Companies shall not be bound to comply with this Subclause in any case where compliance would adversely affect the financing of the Oil Companies' operations or any part thereof.

10.2 Insofar as it is practicable, the Oil Companies shall give first preference in their assistance under Subclause (b) and (c) of Clause 10.1 to Citizens originating from the sub-province in which Petroleum is produced.

ARTICLE 11 FORCE MAJEURE

11.1 Any failure on the part of a Party hereto to comply with any of the terms, conditions, and provisions of this Agreement (except any obligation of the Oil Company to make payment of money to the State) shall not be grounds for termination or give another Party hereto any claim for damages insofar as such failure arises from force majeure, if the first-mentioned Party has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement. That Party shall take all reasonable measures to remove such inability to fulfil terms and conditions of this Agreement with the minimum of delay.

11.2 For the purposes of this Agreement, force majeure shall include war, insurrection, civil disturbances, blockades, riots, embargoes, strikes, bans, limitations, and other labour disputes (PROVIDED THAT the Oil Companies shall not be required to agree to a settlement of any particular labour dispute solely for the purposes of terminating a condition of force majeure), land disputes, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fires, lightning, breakdown of machinery or facilities, shortages of labour, transportation, fuel, power or essential plant equipment, or materials or any other event which the party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Oil Companies shall include any delay or failure by the State to give any consent or approval required under this Agreement or under any applicable law, but shall not include any event caused by the failure to observe good oilfield practice nor any event caused by negligence in the provision of adequate supervision of the Operation.

11.3 The Oil Companies shall notify the State on their becoming aware of an event of force majeure affecting their ability to fulfil the terms and conditions of this Agreement, or any event which may endanger the natural resources in the Area and shall similarly notify the State on the restoration of normal conditions.

ARTICLE 12 EXTENSIONS OF TIME

12.1 Notwithstanding any provision of this Agreement, the State may at the request of the Oil Companies from time to time extend any period referred to in this Agreement for such longer period or substitute for any date referred to in this Agreement such later date as it thinks fit, notwithstanding that at the time of such extension or substitution such period may have expired or such date may have been passed.

SCHEDULE 4.—*continued*.

ARTICLE 13 STATE PARTICIPATION

13.1 In this Agreement, unless the context otherwise requires :

"Accumulated Liability" means an amount calculated in accordance with the following formula :

$$AL = SVI (E+D+OC) + S - F$$

where,

AL is the State's Accumulated Liability to an Oil Company;

SVI is the State's Venture Interest expressed as a fraction;

E is the amount of allowable exploration and prospecting expenditure as defined in Subsection 164E(1) of the Income Tax Act 1951 or which would have been allowable but for an election under Section 164T of that Act spent by the Oil Company in or in relation to the area between September 1, 1975 and prior to the issue of the first development licence over part of the Area and in recognition of exploration and prospecting operations conducted by the Parties pursuant to rights or titles held by them prior to September 1, 1975 such additional amounts of allowable exploration and prospecting expenditure, defined as aforesaid, spent by the Oil Company in or in relation to the Area prior to September 1, 1975 and within 11 years prior to the issue of the first development licence over part of the Area, PROVIDED THAT if the term of the licence is extended as provided in Section 23A of the Offshore Act thereafter the amount of allowable exploration and prospecting expenditure, defined as aforesaid, shall be reduced each year during such extended term by the amount borne by the Oil Company of the total amount expended with the approval of the Operating Committee on Operations during the 12th year preceding that year.

D is the sum of the amounts of allowable capital expenditure and allowable exploration and prospecting expenditure as defined in Sections 164A and 164E of the Income Tax Act 1951 or which would have been allowable but for the election under Section 164T of that Act spent by the Oil Company in or in relation to the Area after the issue of a Development Licence and during a Shortfall Period;

OC is the amount spent by the Oil Companies on Operations during a Shortfall Period and not included in E or D;

S is the amount paid by the Oil Company to the State under Clause 13.7;

F is the value at Norm Price of Foregone Production received by the Oil Company less any amount paid under Subclauses 13.8(a) and (b);

"Foregone Production" means the volume of the State's Production Share foregone in favour of the Oil Companies or any of them in satisfaction or part satisfaction of the items referred to in Clause 13.8;

"Positive Day" means a day on which the State's Accumulated Liability to an Oil Company is reduced to zero;

"Production Share" means a proportion of the Petroleum produced from within the Area equal to a Party's Venture Interest which a Party from time to time may be entitled to receive and separately dispose of;

"Shortfall Period" means a continuous interval of time during which the State has and continues to have an Accumulated Liability to any one or more of the Oil Companies;

"Simple Interest" means a percentage interest rate equal to 5 percentage points in excess of—

(a) the annual rate of interest on domestic corporation borrowings rated AAA in the U.S.A. as published in the Survey of Current Business by the U.S.A. Department of Commerce—Bureau of Economic Analysis applying at the date of issue of the first Development Licence issued over part of the Area, such rate to be adjusted quarterly;

or

(b) if such rate is not published, a comparable rate determined in such manner as the Parties shall agree;

SCHEDULE 4.—*continued.*

- 13.2 (a) The Parties shall settle the terms of the Joint Operating Agreement as soon as practicable. Except as provided in Article 27, that Agreement shall accord substantially with the Operating Agreement but shall be subject to the terms of this Agreement and in the event of inconsistency, this Agreement shall prevail;
- (b) The Joint Operating Agreement shall take effect when the last of the Parties executes such Agreement.
- 13.3 (a) The State may acquire an unencumbered interest in the Venture Assets and Operations to a nominated percentage (not exceeding 22½ percent either of such Venture Assets and Operations or of the Participating Interest of any particular Oil Company) by giving notice to each Oil Company to that effect within four (4) months after the issue of the first Development Licence over part of the Area. On and from the first day of the calendar month next following the month in which the State gave notice as aforesaid the Venture Interest of each Oil Company shall be equal to its Participating Interest appropriately reduced by the interest acquired by the State;
- (b) As soon as practicable after the State has given notice pursuant to Subclause 13.3(a), the Parties shall execute the Joint Operating Agreement (if not already executed) and shall do all things necessary formally to vest that Interest in the State;
- (c) If within two (2) months after the issue of the first Development Licence over part of the Area the State has not given notice under Subclause (a) the Oil Companies within the third month after the issue of that Development Licence shall give notice to the Prime Minister that such election has not been made by the State. Thereafter if a notice under Subclause (a) is not received by the Oil Companies within the time specified in Subclause (a) the State shall be deemed to have elected not to acquire a Venture Interest.
- (d) Forthwith after giving notice under Subclause 13.3(a) electing to acquire a Venture Interest the State shall be entitled to attend and vote at all meetings of the Operating Committee and to receive notice and agendas for all such meetings.
- 13.4 Except as otherwise provided in this Agreement each Party shall take in kind its Production Share produced and saved from the Area.
- 13.5 During each Shortfall Period :—
- (a) the State shall forego its Production Share in favour of those Oil Companies to which the State has for the time being an Accumulated Liability and the said Companies shall be entitled to and shall take all such Foregone Production free of encumbrance in the several proportions which each such Oil Company's respective Venture Interest bears to the sum of the Venture Interest of all such Companies;
- (b) an Oil Company shall be entitled to recoup out of Foregone Production—
- (i) the State's Accumulated Liability to such Oil Company; and
 - (ii) Simple Interest on the State's Accumulated Liability commencing as the case may be on and from either;
 - aa. the date of the notice by the State under Clause 13.3, or
 - bb. the date on which such Oil Company reimburses the State under Clause 13.7; and

computed calendar monthly from the 1st day of each such month on the mean of the balances of Accumulated Liability at the opening of business on the first day and closing of business on the last day of the calendar month for which the calculation is being made PROVIDED THAT in determining the balance of Accumulated Liability at the close of business on the last day of the month, no reduction of the Accumulated Liability for that month shall be taken into account and in lieu thereof the amount of Simple Interest payable for the month shall be reduced by an amount equal to Simple Interest calculated on the amount by which Accumulated Liability is deemed to have been reduced in that month as provided in Sub-clause 13.8(c) computed for the period commencing from the date Accumulated Liability is deemed to have been reduced to the last day of that month; and
- (c) sales of Petroleum produced from the Area by an Oil Company, to which the State has for the time being an Accumulated Liability shall be deemed to have been composed of

SCHEDULE 4.—*continued.*

portion of that Oil Company's Production Share and portion of Foregone Production received by that Oil Company in the respective proportions which that Oil Company's Venture Interest bears to the product of the State's Venture Interest and that said Oil Company's Venture Interest divided by the sum of the Venture Interests of all Oil Companies to which the State had an Accumulated Liability at the time of each such sale.

13.6 (a) Except as provided in Subclause (b) the Parties shall bear all the costs of the Operations in proportion to their respective Venture Interests;

(b) Subject to Clause 13.10 during each Shortfall Period the Oil Companies shall bear all the costs of the Operations in proportion to their respective Participating Interests until the occurrence of the first Positive Day. Thereafter, during the balance of each such Shortfall Period the said costs shall be borne as follows :

(i) by each Oil Company to which the State for the time being has no Accumulated Liability—as to a percentage equal to its Venture Interest;

and as to the balance

(ii) by those other Oil Companies to which the State for the time being has an Accumulated Liability—in the several proportions which each such Company's respective Venture Interest bears to the sum of the Venture Interests of all such Companies PROVIDED THAT if during a Budget Year after a Positive Day all of the Oil Companies to which the State has an Accumulated Liability give notice to the other Oil Companies and produce evidence that the State's Venture Interest share of the costs of the Operations for the Budget Year exceed the value of its Foregone Production for the same period all Oil Companies shall forthwith commence and thereafter continue to bear the costs of the Operations until the next Positive Day in proportion to their respective Participating Interest.

13.7 If during a Budget Year or part thereof which is not a Shortfall Period, the State gives notice to the Oil Companies and produces evidence that the State's Venture Interest share of the costs of the Operations for the preceding period of that Budget Year exceed the proceeds received by the State from disposal of the State's Production Share for that period the Oil Companies shall in proportion to their respective Participating Interests and within sixty (60) days after receipt of such notice and evidence reimburse the State the amount of such shortfall.

13.8 Foregone Production taken by an Oil Company shall be applied in the following order of priority :

(a) to pay Royalty under the Offshore Act on such Foregone Production;

(b) to pay Simple Interest on the State's Accumulated Liability calculated as provided in Clause 13.5;

(c) to reduce the Accumulated Liability to the said Oil Company. Any reduction of Accumulated Liability under this Subclause 13.8(c) shall be deemed to be made on the day the Oil Company is to receive payment as provided in any contract of sale for Petroleum, which date shall be consistent with and reflect terms of credit allowed or recognised by the Minister as provided in Section Sch. 3.4 of the Offshore Act or as otherwise agreed upon between the State and the Oil Company.

13.9 Any rights under this Agreement in respect of unsatisfied Accumulated Liability shall cease and the State shall not be looked to for recoupment or reimbursement thereof :

(a) by any Oil Company on termination of this Agreement as provided in Article 26, or

(b) by an Oil Company upon its withdrawing from this Agreement and surrendering its Participating Interest or Venture Interest in the Licence and in all Development Licences over any part of the Area;

13.10 When electing to acquire its Venture Interest and thereafter at any Operating Committee meeting at which Operations and a Budget are to be agreed upon for a Budget Year, the State may elect to contribute all or part of its Venture Interest share of costs or expenses of any Operations in respect of which an Accumulated Liability would otherwise accrue to any Oil Company.

13.11 Each Oil Company shall within 30 days after the issue of the first Development Licence and thereafter, if the State has a Venture Interest, not less often than half yearly until it shall have recouped the amount of the State's Accumulated Liability, furnish to the State details of and the amount of such Accumulated Liability for the time being. The State may require reasonable verification of such details

SCHEDULE 4.—*continued.*

and amounts including an audit as provided for in the Operating Agreement or the Joint Operating Agreement as the case may be.

13.12 Notwithstanding the provisions of Clause 13.7, if the Operating Committee resolves that a "Petroleum Pool" (which expression shall have the same meaning in this Clause as ascribed to it in the Offshore Act) has been depleted in accordance with good oilfield practice and that to continue Producing from that Petroleum Pool cannot be justified for technical or economic reasons :

- (a) the cost of plugging and abandoning all wells drilled into the Petroleum Pool; and
- (b) other costs and expenses paid or incurred in respect of dismantling, removing, disposing of, or otherwise dealing with all structures, installations, plant and equipment which are Venture Assets and which had been required for Producing from that Petroleum Pool;

shall be borne by the Parties in proportion to their respective Venture Interests.

ARTICLE 14 DISPOSAL OF STATE'S PRODUCTION SHARE

14.1 "Specified Volume" means that part of the State's Production Share which the State wishes an Oil Company to dispose of as specified in a notice under Clause 14.2.

14.2 Within 30 days after the Operating Committee Meeting to agree upon Operations and a Budget for any Budget year in which it is expected that a Positive Day will occur the State may give notice to the Oil Companies stating the Specified Volume for that Budget year for any or each Oil Company. Thereafter, the State may give not less than 3 months notice to any of the Oil Companies reducing or increasing the Specified Volume.

- 14.3 (a) An Oil Company given notice under Clause 14.2 shall use its best efforts to dispose of a Specified Volume at a price which after taking into account the matters provided for in Section Sch. 3 to the Offshore Act will enable that Oil Company to account to the State for an amount equal to Norm Price in respect of that Specified Volume;
- (b) From time to time an Oil Company experiencing difficulty in disposing of any part of the Specified Volume as provided for in Subclause (a) may notify the State accordingly and thereafter the State and that Oil Company will negotiate in good faith in an effort to resolve the Oil Company's difficulty;
- (c) All contracts of sale by an Oil Company of any of the State's Production Share shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the circumstances, but in no event shall any such contract be for a period in excess of one year.

14.4 Following disposition of any of the Specified Volume an Oil Company shall account to the State on whichever shall be the earlier of :

- (a) the date three (3) months after taking delivery at the ship's loading flange of the relevant part of the Specified Volume; or
- (b) whichever of the following dates shall be appropriate:
 - (i) if the sale is at arm's length as defined in Section Sch. 3.2. of the Offshore Act, seven (7) days after receipt of payment in full or part thereof; or
 - (ii) if the sale is other than at arm's length as aforesaid, seven (7) days after the day the Oil Company is to receive payment as provided in the contract for sale for any Petroleum which includes any part of a Specified Volume.

14.5 Upon an Oil Company first becoming aware that a Positive Day has occurred or is likely to occur during a Budget Year which had not been expected at the time of an Operating Committee meeting as referred to in Clause 14.2 it shall notify the State accordingly. Such notice shall include—

- (a) the date on which the Positive Day occurred or is expected to occur as the case may be, and
- (b) the volume of production expected to be available as the State's Production Share for the balance of the Budget Year.

If the Positive Day occurred prior to the date of such notice the notice shall be accompanied by a full accounting for the volume of the State's Production share disposed of by such Oil Company during the period between the Positive Day and the date of the notice.

SCHEDULE 4.—*continued.*

14.6 Within 30 days after an Oil Company gives the State notice under Clause 14.5 the State shall give that Oil Company notice of the Specified Volume, if any, for that Oil Company for the balance of the current Budget Year.

14.7 Any Oil Company giving notice under Clause 14.5 shall not dispose of any of the State's Production Share between the date of that notice and receipt by it of a notice under Clause 14.6 except to the extent necessary to satisfy any contract entered into bona fide before the date of the notice under Clause 14.5 in which event the Oil Company shall account to the State in the manner provided in Clause 14.4.

14.8 The Joint Operating Agreement shall provide for equitable adjustment on a regular periodic basis for any imbalance which may occur between the Production Share of each Party and the volume of Petroleum taken by or on behalf of the respective Parties and adjustment of any significant disparity in payment of operating costs and expenses caused by such imbalance.

ARTICLE 15 STATE ACQUISITION AND OWNERSHIP OF FACILITIES

15.1 "Works and Facilities" and "Works or Facilities" as the context permits means any of the installations and infrastructure provided for the Operations by either the State or the Oil Companies and capable of being used by the Oil Companies, the State, Citizens or other persons carrying on business in the locality thereof without interfering with the use thereof by the Oil Companies. Without limiting the generality of the foregoing the Parties envisage that Works and Facilities—

- (a) include air fields, roads, ports, water supply, and sewerage facilities, except to the extent that any of them are utilised to their full capacity by the Oil Companies, and
- (b) do not include residential accommodation and administration buildings, installations, and infrastructure directly used in Producing,

PROVIDED THAT provision by the Department of Posts and Telegraphs of facilities and services shall be the subject of a separate agreement.

- 15.2 (a) At the Operating Committee Meeting at which construction of Works and Facilities is to be approved the State may by written notice to the Oil Companies elect to provide the costs, or part thereof, of any such Works and Facilities; and
- (b) at any time after their construction the State may by notice require the Oil Companies to transfer to it ownership of any Works and Facilities. As soon as practicable after such notice the Oil Companies shall do all things necessary to transfer to the State title to the Works and Facilities nominated in the notice.

15.3 Where the State requires the Oil Companies to transfer to it any Works and Facilities as provided in Subclause 15.2 (b) the State shall pay to the Oil Companies, by annual instalments as provided in Subclause 15.3(a) a purchase price equal to the then depreciated value of such Works and Facilities, and the Oil Companies shall pay to the State annual capital user charges as provided in Subclause 15.3(b).

- (a) The Oil Companies each Budget Year shall nominate the amount of the annual instalments of the purchase price which shall be equal to the annual amount of depreciation that the Oil Companies could have claimed (and would have been entitled to claim) as a deduction allowable under the Income Tax Act in respect of that Work or Facility but for the transfer of ownership to the State. (It is the intention of the Parties that such instalments of purchase price shall not be assessable income in the hands of the Oil Companies for the purpose of assessment of Petroleum Income Tax);
- (b) The Oil Companies shall pay to the State within seven (7) days of the receipt of any instalment referred to in Subclause 15.3(a) a capital user charge equal to the said instalment. (It is the intention of the Parties that such capital user charge shall be a deduction allowed under the Income Tax Act for the purpose of assessment of Petroleum Income Tax and Additional Profits Tax);
- (c) If operations permanently cease in or in relation to the Area and as a result the State ceases to pay any instalment referred to in Subclause 15.3(a), the Oil Companies shall have the right to claim a deduction, as provided by the Income Tax Act for the purpose of assessment of Petroleum Income Tax, the Additional Profits Tax, equal to the amount that the Oil Companies would have claimed (and would have been entitled to claim) but for the transfer of ownership of that Work or Facility to the State.

SCHEDULE 4.—*continued.*

15.4 If at any time the State acquires or provides any Works or Facilities under this Article 15, the State shall thereupon assume responsibility for maintaining the assets to a proper standard and shall charge the Oil Companies a maintenance charge (which may include an equitable proportion of direct operating costs) limited to the costs of that maintenance PROVIDED THAT the amount of such maintenance charge shall be reduced by any amount spent by an Oil Company under Clause 15.5.

15.5 Where the State has provided or acquired Works or Facilities for the purposes, of, or under this Agreement and fails properly to maintain the same the Oil Companies may, after 30 days notice to the State, and at their own expense, carry out such work as is necessary to bring the same up to a proper standard.

ARTICLE 16 USE OF FACILITIES BY THIRD PARTIES

16.1 A third party will be permitted to use Works and Facilities acquired from the Oil Companies by the State and not utilised to their full capacity. The State undertakes to ensure that the third party will be required to pay a proportionate share of any operating, maintenance overhead and capital costs in respect of such Works and Facilities among other things having regard to :

- (a) the extent of the proportionate usage and likely future usage of the Works or Facilities by the third party and the Oil Companies;
- (b) the respective extents to which services are provided to the Oil Companies and the third party (where the Facility is a service Facility);
- (c) any other factor which results in or is likely to result in significant damage to or deterioration of the Work or Facility.

16.2 The State, the Oil Companies, and a third party shall agree upon an amount which the third party will pay to the Oil Companies (notwithstanding any prior transfer of the relevant Works and Facilities to the State under this Agreement) in United States dollars or the Kina equivalent at the date of payment a capital contribution reflecting the extent of the third party's intended use of the Works and Facilities.

16.3 Where the State provides the cost of any modification improvement extension or expansion or any Works or Facilities to meet the needs of the Oil Companies the State may charge the Oil Companies a capital user's charge in respect of that Work or Facility to allow for the recoupment over a reasonable period of the amount expended in providing the said cost by the State together with a reasonable return thereon.

16.4 Notwithstanding anything contained in Article 15 or Article 16 all such Works and Facilities not acquired and managed by the State shall continue to be managed by the Oil Companies and the Oil Companies shall have priority of use thereof over all other users.

ARTICLE 17 RATES AND DUTIES

17.1 Subject to any requirement of defence, foreign trade or foreign policy of this State, the safety of the public and quarantine and to the obligations of the State under multilateral international agreements to which the State is a party the Oil Companies any affiliated Corporation and the agents and contractors of the Oil Companies or of any Affiliated Corporation shall have the right to acquire import into and move within Papua New Guinea and use any plant machinery equipment vehicles explosives fuels reagents and supplies which have a specialised application and use in the Operations and to export from Papua New Guinea the petroleum (whether processed or otherwise) resulting from the Operations.

17.2 The Oil Companies shall be subject to import duties and levies of general application in accordance with Papua New Guinea law from time to time except as hereinafter provided.

17.3 No rate tax charge due duty tariff or other levy shall be applied to or be payable by the Oil Companies on the export of or in respect of the right to export Petroleum from Papua New Guinea by an Oil Company or a Related Company.

17.4 No rate tax rent charge due duty tariff or other levy and no legislation which discriminates against all or any of the Oil Companies or any member of an Oil Company or any beneficial owner of shares in any of the Oil Companies or any person engaged in the Operations shall be payable by or (as the case may be) applicable to any of the Oil Companies or any such member or beneficial owner or person (as the case may be) in respect of the Operations or of any income arising directly or indirectly therefrom PROVIDED THAT nothing in the Clause is intended to provide a basis for challenging the validity of the petroleum income tax or additional profits tax.

SCHEDULE 4.—*continued.*

17.5 Any import duty which is sought to be imposed on the importation of any plant machinery equipment explosives chemicals or other supplies which at the time when such duty is sought to be imposed are imported into Papua New Guinea solely for the purpose of and which have a specialised application and use in the Operations and which is sought to be imposed at a rate in excess of the average rate of duty from time to time payable on the importation into Papua New Guinea of the Customs Tariff items numbered 118 275 309 313 320 and 341 04 as set out at the date thereof in the Second Schedule to the Customs Tariff 1959 shall without in any way whatsoever limiting the interpretation of Clause 17.3 above be deemed to discriminate against the Oil Companies.

17.6 No Local Government Rates or Provincial Government Rates or taxes on land calculated so as to be other than approximately equal to a rate or tax calculated in relation to the unimproved capital value of the surface rights of the land shall be payable by the Oil Companies in respect of land held by the Oil Companies, on which mining or industrial activities are carried on.

ARTICLE 18 CONSULTATION

18.1 The Oil Companies shall consult from time to time with representatives of the State and shall furnish the State each six months with reports concerning the implementation of:

- (a) the training and localisation programme
- (b) the provisions relating to local purchasing of supplies
- (c) the provisions relating to local business development and
- (d) the provisions relating to environmental management.

ARTICLE 19 INSPECTION

19.1 The Oil Companies shall at all reasonable times allow the properly accredited servants or agents of the State (who shall establish their authority on request) to inspect any respect of the Operations and likewise to inspect and take copies of the books of account and records of the Oil Companies relating to the Operations and to any shipment, sale or use of products of such Operations.

ARTICLE 20 PATENT AND TECHNOLOGY RIGHTS

20.1 All new processes, new methods of manufacture and other technological or mechanical innovations developed within the Oil Companies' Operations :

- (a) shall remain the property of the Oil Companies, which shall apply for, take out and retain such patents and other technology rights, in Papua New Guinea or elsewhere, as may be necessary and desirable to protect the same; and
- (b) shall not be sold, assigned, licenced, surrendered, or otherwise disposed of by the Oil Companies except :
 - (i) on the basis of an arm's length transaction; and
 - (ii) with the prior approval of the State which approval shall not be unreasonably withheld.

20.2 Contracts to which any Oil Company is a party providing for the purchase of the right to use in the Operations any process, method or other technological innovation:

- (a) which are not contracts at arm's length, shall not be entered into without the prior consent of the State which consent shall not be unreasonably withheld, and
- (b) which are contracts at arm's length shall be submitted to the State for information.

20.3 For the purposes of this Article the term "arm's length" shall have the same meaning as ascribed to it Section Sch. 3.2 of the Offshore Act, except that contracts for provision of services which incidental to their performance require the use of any such process, method or other technological innovation the patent rights to which are the property of any Oil Company or an Affiliated Corporation of any Oil Company and which but for the provisions of Section Sch. 3.2 (c) would be at arm's length shall for the purposes of this Clause be deemed to be at arm's length.

ARTICLE 21 ASSIGNMENT

21.1 The State may assign, without the consent of the Oil Companies, all or part of its Venture Interest to any corporation, statutory or otherwise, formed in Papua New Guinea and either :

- (a) wholly owned by the State, or

SCHEDULE 4.—*continued*.

- (b) wholly owned by the State and another corporation or other corporations, statutory or otherwise formed in Papua New Guinea and which are controlled by the State and in which the State has at least a 50% beneficial interest,

PROVIDED THAT vested in such corporation or corporations are powers and financial capacity sufficient to enable such of the State's continuing obligations under this Agreement as are assigned to such corporation to be fulfilled.

21.2 Subject to Clauses 21.1 and 21.3 and with the consent of the other Parties which consent shall not be unreasonably withheld, all or any of the Parties may assign, or otherwise dispose of their interest or rights under this Agreement.

21.3 In the case of any assignment under this Article 21 the assignee shall undertake to the State to assume, observe and comply with all the obligations of the assignor in relation to the matter assigned or to the extent of the interest assigned as the case may be. After the giving of any such undertaking, the assignor shall be relieved of its obligations under this Agreement in relation to the matter assigned or to the extent of the interest assigned as the case may be without prejudice to pre-existing rights accrued to the State against the assignor.

21.4 Notwithstanding the foregoing provisions of the Clauses 21.2 and 21.3 but subject to normal statutory approvals in force from time to time,

- (a) any Oil Company may charge by way of fixed or floating charge the whole or any part of its Venture Interest to secure the repayment of, any payment of interest and other fees, costs and expenses related to, all loans made to that Oil Company to finance the project; and
- (b) the Oil Companies may mortgage and charge any specific asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset;

and any mortgagee or chargee under a mortgage or charge given by the Oil Companies may exercise all rights of sale and other rights included in any instrument of mortgage or charge provided it shall first give the State at least twenty-eight days' notice of intention to exercise those rights.

ARTICLE 22 ARBITRATION

22.1 If at any time there is any dispute, question or difference of opinion (in this Article 22 referred to as 'Issue') between the Parties concerning the application of or arising out of section 99A of the Offshore Act other than any dispute, question, or difference of opinion in respect of which provision for settlement or determination is provided under the Income Tax Act 1959 the same shall, subject to Clause 22.2, stand referred to the arbitration of a single arbitrator, and such reference shall be considered a submission within the meaning of that expression given by the Arbitration Act 1951.

22.2 After any Issue has arisen between the State on the one hand and the Oil Companies or any of them on the other hand, any Party to that Issue may at any time prior to the appointment of an arbitrator by concurrence of the Parties or pursuant to the Arbitration Act, 1951 by notice to the other Party or Parties thereto elect that the provisions of this Clause shall apply to such Issue and in such event:

- (a) the Issue shall stand referred to the arbitration of three arbitrators, one of whom shall be appointed by the State and one of whom shall be appointed by the other Party or Parties to the Issue and the third of whom shall be agreed upon by the State and the other Party or Parties to the Issue in writing, and in default of agreement within fourteen (14) days after the State gives notice to the other Party or Parties to the Issue or the other Party or Parties to the Issue give notice to the State requiring the appointment of such a third arbitrator, shall be appointed in accordance with the provisions of the Arbitration Act 1951 from a panel of five (5) arbitrators to be nominated within a further period of fourteen (14) days thereafter by the President and Chairman of the Board of Directors (or failing him the Chief Executive) not being a Citizen of Papua New Guinea of the Asian Development Bank (or, failing such nomination, from any panel of arbitrators which the person or body appointing the third arbitrator considers satisfactory) PROVIDED THAT no person shall be eligible for appointment as a third arbitrator (unless the State and the Oil Companies otherwise agree in writing in any particular case) if at the time of his proposed appointment he is or has been at any time prior thereto a citizen or resident of Papua New Guinea, the Commonwealth of Australia, Canada, or the United States of America;

SCHEDULE 4.—*continued.*

- (b) if any arbitrator refuses to act, is incapable of acting or dies, a new arbitrator shall be appointed by the party appointing the original arbitrator or (in the case of the third arbitrator) in accordance with the procedure provided for in Subclause 22.2(a);
- (c) if on such reference one Party fails to appoint an arbitrator either originally or by way of substitution as aforesaid within fourteen (14) days after the other Party (having appointed its arbitrator) has given to it notice to appoint such arbitrator, the arbitration may proceed in the absence of such arbitrator; and
- (d) such arbitration shall be held at such place (whether inside or outside Papua New Guinea) as the arbitrators determine.

22.3 If any Party to any arbitration under this Clause so requests the arbitrator or arbitrators shall state, in the form of a special case for the opinion of the National Court of Papua New Guinea, any question of law arising in the course of the reference, and any opinion given shall be subject to the normal right of appeal.

22.4 An award made on an arbitration shall have force and effect as follows—

- (a) if by the award it is adjudged that the decision of the State is correct then the decision of the State in respect to the Issue shall stand; but
- (b) if the arbitrator adjudges that the decision of the State is incorrect then he shall further adjudge what the Norm Price should be in which event the decision of the Arbitrator shall be binding on the Parties.

ARTICLE 23 LAW APPLICABLE

23.1 This Agreement shall be governed by and construed in accordance with the law of Papua New Guinea.

ARTICLE 24 VARIATION

24.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Licences, any Development Licence, or any lease, licence, right or grant granted hereunder or pursuant hereto or any programme, proposal or plan approval hereunder, for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

24.2 Where an agreement made pursuant to Clause 24.1 constitutes an alteration of any Article or Clause referred to in Clause 3.2, the variation agreement shall contain a declaration to that effect, and the State shall as soon as is practicable introduce and sponsor in the National Parliament a Bill for an Act to approve that variation agreement and give force of law to the alteration of the rights hereunder. That variation agreement shall be subject to the coming into force of the approving Act.

24.3 Any agreement made pursuant to Clause 24.1 which does not constitute an amendment of any Clause referred to in Clause 3.2 shall be tabled by the State in the National Parliament within the first twelve (12) sitting days next following its execution.

ARTICLE 25 NOTICES

25.1 All notices, notifications, consents, approvals, undertakings, applications, requests, offers, reports, returns, elections, and proposals required to be or which may be given, made, furnished or submitted under this Agreement shall, unless the context otherwise requires, be in writing signed by a Minister of the State or the Director of the Office of Minerals and Energy or (as the case may be) a director or secretary or other designated representative of the Oil Companies, and if in writing shall be sufficiently given, furnished or submitted if delivery at or posted by prepaid post to the address for service of the Party or Parties to whom it is to be given, made, furnished or submitted, and all such communications if posted as aforesaid shall, unless proven otherwise, be deemed to have been received in the ordinary course of post.

SCHEDULE 4.—*continued.*

25.2 The addresses for service:

(a) of the State shall be:

(i) for the purposes of Sub-clause 13.3(c)

The Prime Minister,
Central Government Offices,
Waigani,
Papua New Guinea

or by post to:

The Prime Minister,
Central Government Offices,
Wards Strip Post Office,
Waigani,
Papua New Guinea

Telephone: Port Moresby 27 1211

Telex: SENTROF NE 22144; and

(ii) for all other purposes:

The Director,
Office of Minerals and Energy,
Konedobu,
Papua New Guinea

or by post to:

The Director,
Office of Minerals and Energy,
P.O. Box 2352,
Konedobu,
Papua New Guinea

Telephone: 25 1180

Telex: WABTRO NE 22211

(b) of the Oil Companies shall be:

The General Manager
Endeavour Oil Company N.L.,
228 Victoria Parade,
East Melbourne, 3002, Australia

Telephone: 419 2577

Telex: Cookoil AA31859

or by post to:

P.O. Box 217,
East Melbourne, 3002, Australia.

Esso Papua New Guinea Inc.,
C/- Exploration Manager,
Esso Australia Limited,
127 Kent Street,
Sydney, N.S.W. 2000, Australia.

Telephone: 20557

Telex: AA20549

Chief Executive Officer,
IOL Petroleum Limited,
95 Collins Street,
Melbourne, 3001, Australia

Telephone: 63 0491

Telex: Conrio AA30108

or by post to:

SCHEDULE 4.—*continued.*

G.P.O. Box 384D,
Melbourne, 3001, Australia.

Any Party may change its address for service by prior notice in accordance with this Article.

25.3 Where the Oil Companies are required to submit any plans, proposals, or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State receives the said plans, proposals or other material.

ARTICLE 26 TERMINATION

26.1 The State may terminate this Agreement by notice to the Oil Companies in any of the following events—

- (a) if the Oil Companies abandon the Licence or repudiate their obligations under this Agreement and Operations are not resumed or such default made good within a period of sixty (60) days after notice as provided in Clause 26.2 is given by the State to the Oil Companies;
- (b) if the State can establish that in granting its approval to any proposal made under the Offshore Act or otherwise it relied upon a statement made by the Oil Companies not being an estimate based on judgement exercised in good faith on the application of knowledge available at the time the estimate is made and it is shown the Oil Companies intended such statement to be false or misleading;
- (c) if the Licence or any extensions or renewal thereof is properly forfeited due to default by the Oil Companies or is surrendered under the Onshore Act;
- (d) if the Oil Companies do not submit proposals in accordance with Article 7.

26.2 The notice to be given by the State in terms of Subclause 26.1(a) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the Party or Parties responsible therefor and shall be given to each of the Oil Companies.

26.3 For the purposes of Clause 26.1(a) the Oil Companies shall not be deemed to have abandoned the Licence or repudiated their obligations unless all persons for the time being bound, whether as assignees of the Oil Companies or otherwise, to perform the obligations of the Oil Companies hereunder, have abandoned the Licence or repudiated the obligations.

26.4 This Agreement shall terminate on the expiry or surrender of the Licence and all Development Licences issued over any part of the Area or any renewal or extension of any of them.

26.5 If this Agreement is terminated after the grant of a Development Licence all structures, installations, plant, and equipment:

- (a) which can be removed from the Area within six (6) months after the notice of termination and without irreparable damage to the Area or any remaining structure, installations, plant and equipment may be removed by the Parties; and
- (b) all other structures, installations, plant, equipment and non-movable assets of the Parties in the Area shall thereupon become the property of the State without any cost to the State or any liability for the State to pay compensation therefor, and freed and discharged from all mortgages and other encumbrances. All materials, supplies and other movable assets of the Parties in the Area which are fully depreciated for tax purposes shall likewise become the property of the State, but any such materials, supplies and other movable assets which are not fully depreciated for tax purposes shall be offered by the Parties for sale to the State at their depreciated value.

26.6 The Oil Companies shall do all such things as the State may reasonably require to give effect to the provisions of this Article 26 and the Oil Companies shall make available to the State the results of the Investigations and Studies to the extent that they have been carried out by the Oil Companies before the date of termination.

26.7 This Article 26 shall continue in force notwithstanding the termination of the rest of this Agreement and may be sued upon or enforced against the Oil Companies.

26.8 Termination of this Agreement under this Article 26 shall be without prejudice to any rights of any of the Parties for any antecedent breach of covenant or agreement.

SCHEDULE 4.—*continued.*

26.9 Notwithstanding anything to the contrary contained herein, should any law, statute or regulation be passed in Papua New Guinea or become effective in Papua New Guinea, subsequent to 31st March 1977, and should such law, statute or regulation abrogate or materially alter the fundamental contractual rights or obligations of the Oil Companies hereunder, the Oil Companies shall have the right to give the State 60 days notice of their intention to terminate this Agreement without further obligation to the State except as to rights or liabilities in respect of any antecedent breach of this Agreement.

ARTICLE 27 AMENDMENTS TO OPERATING AGREEMENT

27.1 For the purposes of this Article 27 the Operating Agreement shall be deemed to apply only in respect of the Area, the Licence or any Development Licence.

27.2 The Parties shall commence as soon as practicable to negotiate in good faith with the objective of agreeing on the form and content of a Joint Operating Agreement to accord substantially with the provisions of the Operating Agreement but to reflect:

- (a) changes in the parties bound thereby and the circumstances of their association, and
- (b) the possible acquisition by the State of a Venture Interest, and
- (c) amendments necessary to give effect to the provisions of this Agreement.

27.3 If the Parties have not executed the Joint Operating Agreement at the date the State elects to acquire a Venture Interest under Clause 13.3 the State shall as and from that date be deemed to be a party to the Operating Agreement with full rights to attend and vote at all Operating Committee Meetings.

27.4 After the date of this Agreement the Oil Companies may not amend or replace the Operating Agreement without the approval of the State.

27.5 Without limiting the generality of the foregoing the Parties agree that the following Articles and Clause of the Operating Agreement should be reviewed for the purposes of Clause 27.2:

Articles 3, 4, 7, 8, 11, and 13; and Clause 19.05.

ARTICLE 28 MISCELLANEOUS

28.1 No stamp duty or other fees or charges shall be payable to the State in respect of any assignment or transfer of any Participating Interest or Venture Interest in the Licence or the Venture Assets by an Oil Company to the State or to an Affiliated Corporation incorporated in Papua New Guinea if such assignment is required to comply with the provisions of the Acts.

28.2 Subject to considerations of national security the State shall grant to the Oil Companies such licences, permits and other rights and exemptions as are within its power to grant and which reasonably may be required by the Oil Companies to enable the Oil Companies to fulfill their obligations and enjoy their rights and benefits under the Licence, the Acts, or this Agreement.

28.3 If the State elects to acquire a Venture Interest thereafter the Parties shall own all the Venture Assets as tenants in common, however, the expenditure of the Oil Companies under this Agreement shall be shown on the accounting records of the Oil Companies entirely as expenses, charges, and costs of the Oil Companies in proportion to their respective Participating Interests and shall be reflected for purposes of the fiscal dispositions of the applicable United States law in the balance sheet and profit and loss accounts of only the Oil Companies.

28.4 Whether an election shall be made to have this Venture excluded from the application of the provisions of Sub-chapter K of Chapter 1 of Sub-title A of the United States Internal Revenue Code of 1954, shall be determined by EPNG for each Calendar Year during which EPNG has incurred expenditures under Article 13. The initial determination shall be made and furnished in writing to the other Parties no later than 15th April, 1977, and if requested by the Operator to do so, the State will execute a tax agreement for United States tax purposes in a form to be approved by the Parties.

28.5 Consistent with requirements of the law and national security the State shall use its best efforts to have foreign workers and their dependants to be employed in the Operations in accordance with the approved training and localisation programme expeditiously granted such permits as may be necessary to authorise them to enter, re-enter, move within, remain in and depart from Papua New Guinea and to work on or in connection with the Operations.

SCHEDULE 4.—*continued.*

ARTICLE 29 NATURAL GAS AND GAS LIQUIDS

29.1 It shall be the responsibility of the Oil Companies to determine whether production of Natural Gas or Natural Gas Liquids is commercial and whether or not to construct and install facilities to enable production of such Natural Gas or Natural Gas Liquids.

29.2 Natural Gas and Natural Gas Liquids will be disposed of by the Parties at the first point of measurement downstream from the outlet flange of the field gas separator in the Area beyond which point the State's Venture Interest shall cease.

29.3 Norm Price for all purposes for Natural Gas and Natural Gas Liquids will be the price specified in contracts for its sale entered into with the prior approval of the State which will not be unreasonably withheld.

29.4 Subject to the absence of Regulations to the contrary under the Acts the Oil Companies may flare gas necessarily produced with crude oil and not needed in the Operations and the sale of which is not economically justified.

29.5 The State recognises that its election to acquire up to a 22.5% Venture Interest may prevent the Oil Companies from producing on a commercial basis Natural Gas or Gas Liquids discovered in the Area. Therefore, if the Oil Companies in a proposal under Clause 7.1 produce evidence that such Natural Gas or Gas Liquids cannot be produced on a commercial basis if the State elects to acquire a 22.5% Venture Interest, the State will negotiate in good faith with the intention of agreeing on such lesser Venture Interest as will allow a Natural Gas or Gas Liquids project to proceed on a commercial basis.

ARTICLE 30 TITLES

30.1 Subject to Clause 30.2 the provisions of the Offshore Act and each of them shall apply *mutatis mutandis* to and in respect of the Licence in lieu of the provisions of the Onshore Act as if the Licence were a Petroleum Prospecting Licence issued pursuant to and in accordance with Section 18 of the Offshore Act.

30.2 The following provisions of the Onshore Act, that is to say:

- Section 6;
- Sections 11 to 24 inclusive, except for sub-section (3)(d) of Section 21;
- Sections 26 to 28 inclusive;
- Sections 30 to 34 inclusive;
- Sections 37 and 38;
- Sections 53 to 57 inclusive;
- Sections 59 to 64 inclusive;
- Sections 71 to 74 inclusive;
- Sections 77 and 78;
- Section 80;
- Section 82;
- Sections 86 to 91 inclusive;
- Sections 94 and 95;
- Section 99; and
- Section 100, and applicable regulations made thereunder;

shall apply *mutatis mutandis* to and in respect of the Licence PROVIDED THAT in the event of conflict or inconsistency between—

- (a) the definitions contained in Section 6 of the Onshore Act and a definition contained in Section 1 of the Offshore Act the latter shall prevail and apply to the Licence accordingly, and
- (b) the provisions of the Offshore Act and the provisions of the Onshore Act in respect to the rights of the Oil Companies to access to and occupation of the surface of the Area the latter shall prevail and apply to the Licence accordingly.

SCHEDULE 4.—*continued.*

30.3 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament a Bill for an Act to regulate exploration for and production of Petroleum in those areas of Papua New Guinea other than the offshore area within the meaning of the Offshore Act. It is the State's intention that such Bill substantially reflects the spirit of this Agreement and contains no provisions which, if enacted, would materially affect the rights and obligations of the Oil Companies hereunder.

30.4 If new legislation providing for exploration for and production of Petroleum in the onshore area of Papua New Guinea is not enacted by the National Parliament and operative prior to the Oil Companies notifying the State of their intention to nominate a Block under section 28 of the Offshore Act, all the provisions of the Offshore Act shall thereupon cease to apply to the Licence, the provisions of the Onshore Act specified in Clause 30.2 shall continue to apply thereto and the remaining provisions of the Onshore Act shall thereupon apply to and in respect of the Licence to the extent to which they or any of them are or is capable of so applying and the Minister.

30.5 The State will prepare and submit to the Oil Companies a map of the Area showing the subdivision of the Area into Blocks. Such subdivision will be consistent with the existing subdivision of the area of the Territorial Sea and Continental Shelf of Papua New Guinea.

30.6 Notwithstanding anything contained in the Onshore Act or the Offshore Act, the Licence shall be deemed to have been granted to the Oil Companies for a term of six (6) years commencing on the first day of September, 1975.

30.7 If the Oil Companies have complied with the Licence Conditions and provisions of the Acts in so far as they apply to the Licences and the Area to the date of commencement of the Act referred to in Clause 30.3 the State shall forthwith after such commencement grant to the Oil Companies under such new Act, and in substitution for the Licence, the necessary rights and titles to authorise the Oil Companies to continue to explore and prospect for Petroleum or to produce Petroleum discovered within the Area on terms not less favourable than those previously applicable.

IN WITNESS whereof this Agreement has been duly executed by the Parties, the day and year first hereinbefore written.

Signed for and on behalf of the Independent State of Papua New Guinea by the Governor General, Sir John Guise, acting with and in accordance with the advice of the National Executive Council:

John Guise

C. Van Lieshout
Witness

John Guise,
Governor General

The Common Seal of Endeavour Oil Company N.L. was hereunto affixed in accordance with its Articles of Association and in the presence of:

E.A. Webb

L. J. Cairns
Secretary

Director

Signed, sealed and delivered on behalf of Esso Papua New Guinea Inc., by its duly constituted Attorney in the presence of:

K. Richards

F. M. Hooke
Witness

Attorney

The Common Seal of IOL Petroleum Limited was affixed hereto in the presence of:

R.T. Madigan

R. J. Knott
Secretary

Director

SCHEDULE 5.

Sec.1.

Agreement No.5.

THIS AGREEMENT made the _____ day of _____, 1976 BETWEEN THE INDEPENDENT STATE OF PAPUA NEW GUINEA (herein called 'the State') of the first part and ARCO AUSTRALIA LIMITED (herein called 'Arco'), AUSTRALIAN SUPERIOR OIL COMPANY LIMITED (herein called 'Australian'), CANADIAN SUPERIOR OIL (AUST.) PTY. LTD. (herein called 'Canadian'), ESSO PAPUA NEW GUINEA INC. (herein called 'EPNG'), and SUNRAY AUSTRALIAN OIL CO. (herein called 'Sunray') (herein called collectively 'the Oil Companies' which expression shall be taken to refer also to each such company severally) of the second part:

WHEREAS

A. Permit number 67 issued pursuant to the Petroleum (Prospecting and Mining) Act 1951 is held by the Oil Companies subject to their respective rights and obligations as specified:

- (i) in the said Petroleum (Prospecting and Mining) Act 1951;
- (ii) in the said Permit number 67;
- (iii) in an agreement dated the 2nd day of May, 1964, among Tasman Oil Pty. Ltd., Anacapa Corporation, Sunray Dx Oil Company, and Phillips Petroleum Company; and
- (iv) in an agreement dated the 9th day of May, 1975 among Arco, Australian, Canadian, and Sunray of the one part and EPNG of the other part,

in each case as varied by this Agreement;

B. The State recognises:

- (i) that discovery of commercial quantities of Petroleum in Papua New Guinea will be of major economic significance to the people of Papua New Guinea,
- (ii) that to enhance the prospects of such discovery, the State intends to rely on and permit companies such as the Oil Companies to explore for and produce any Petroleum discoveries,
- (iii) that the Oil Companies will spend large sums of money on exploration for Petroleum and on development of facilities to produce any commercial quantities of Petroleum discovered, and
- (iv) that the ability of the Oil Companies to spend amounts of money referred to above will be dependent in part upon the certainty and long term stability of the terms upon which the State permits the Oil Companies to operate within Papua New Guinea.

C. The State is anxious to ensure that the development of any commercial discoveries of Petroleum will secure the maximum benefit for and adequately contribute to the advancement and the social and economic welfare of, the people of Papua New Guinea, including the people in the vicinity of the Oil Companies' operations in a manner consistent with their needs and the protection of their environment.

D. The State proposes to introduce and sponsor in the National Parliament by its first sitting in 1977, a Bill for an Act to provide for exploration for and production of Petroleum in areas other than the offshore area within the meaning of the Petroleum (Submerged Lands) Act 1975, and it is the State's intention that such Bill substantially reflects the spirit of this Agreement and contain no provisions which if enacted would materially affect the rights and obligations of the Oil Companies.

E. The State and the Oil Companies have agreed on a number of matters which are set out in this Agreement and while acknowledging that legislative sovereignty in Papua New Guinea is vested in the National Parliament wish the matters agreed upon to be an enduring arrangement and do not intend that they should be altered other than by agreement between the State and the Oil Companies.

SCHEDULE 5.—*continued*.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS :

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise requires :

- "Accumulated Liability" has the meaning ascribed to it in Clause 13.1;
- "Acts" means both the Offshore Act and the Onshore Act;
- "Affiliated Corporation" means, in relation to any Party a related company of that Party and "related company" has the same meaning ascribed thereto by Section 6(3) of the Companies Act 1963;
- "the Agreement" means this Agreement together with the Annexures hereto;
- "Approved Proposals" means proposals or amended proposals submitted to the State pursuant to the provisions of the Offshore Act and approved by the State pursuant to that Act;
- "the Area" means the area covered by the Prospecting Licence;
- "Budget Year" means a calendar year commencing on 1st January and ending on the next succeeding 31st December;
- "Citizen" means a citizen, (whether natural born or naturalised) of the State;
- "Development" means activities in or in relation to a Development Area carried on in accordance with the Operating Agreement or Joint Operating Agreement for the purpose of constructing and installing the facilities and infrastructure necessary to enable Production from the Area;
- "Development Area" means the Blocks comprising a Development Licence;
- "Development Licence" means a Development Licence granted under the Offshore Act or a lease granted under the Onshore Act within the Licence Area;
- "Exploration" and "Prospecting" mean activities in or in relation to the Area carried on for the purpose of identifying in the first instance the location of any Petroleum traps in the Area and thereafter in relation to each Petroleum trap to determine whether it constitutes a reservoir containing sufficient Petroleum to justify Development;
- "Foregone Production" has the meaning ascribed to it in Clause 13.1;
- "Investigations and Studies" means the investigations and studies required by the Minister under section 28A of the Offshore Act;
- "Joint Operating Agreement" means the agreement to be negotiated by the Parties in substitution for the Operating Agreement;
- "Licence" and "Petroleum Licence" mean Permit number 67 or any renewal, extension or replacement thereof or any petroleum licence issued to the Oil Companies over any of the Area pursuant to the Onshore Act;
- "Licence Conditions" means those conditions included in the Licence or any Development Licence by the Minister as provided for in the Offshore Act;
- "Licence Year" means a 12 month period commencing in the first instance on 1st September, 1975 and thereafter the 12 month period commencing on 1st September in each year;
- "Offshore Act" means the Petroleum (Submerged Lands) Act 1975;
- "Onshore Act" means the Petroleum (Prospecting and Mining) Act 1951;
- "Operating Agreement" means the agreement dated the 2nd day of January 1964 among Tasman Oil Pty. Ltd., Anacapa Corporation, Sunray DX Oil Company and Phillips Petroleum Company, as amended prior to the date hereof and as registered with the Minister for Mines and Energy, and to which all the Oil Companies are now deemed to be, or are, parties, as further amended from time to time by the Parties;
- "Operating Committee" has the same meaning in this Agreement as the meaning ascribed to it in the Operating Agreement;
- "Operations" means operations and activities carried out under the Operating Agreement and the Joint Operating Agreement and includes Exploration, Development and Producing or any of them as the context permits;

SCHEDULE 5.—*continued.*

"Party" or "Parties" means respectively a party or parties to this Agreement and their respective successors and permitted assigns;

"Participating Interest" means the undivided percentage interest of each of the Oil Companies in the Venture Assets immediately prior to the assignment to the State of its Venture Interest. At the date of this Agreement the respective Participating Interests are :

Arco	10.0%
Australian	7.5%
Canadian	7.5%
EPNG	62.5%
Sunray	12.5%

"Petroleum Income Tax" and "Additional Profits Tax" have the same meaning in this Agreement as the meaning ascribed to them in the Income Tax Act 1959;

"Positive Day" has the meaning ascribed to it in Clause 13.1;

"Producing" means activities involved in or in relation to producing, treating, transmitting, transporting, storing, or handling of Petroleum produced from within the Area, and includes extraction of Petroleum by any permitted method, and all work and operations necessary or convenient for the foregoing;

"Production Share" has the meaning ascribed to it in Clause 13.1;

"Shortfall Period" has the meaning ascribed to it in Clause 13.1;

"Simple Interest" has the meaning ascribed to it in Clause 13.1;

"Specified Volume" has the meaning ascribed to it in Clause 14.1;

"Venture Assets" means Property whether real or personal owned at the date the State gives notice under Clause 13.3 or thereafter acquired as tenants in common—

(a) by the Oil Companies in proportion to their respective Participating Interest until the State elects to acquire its Venture Interest, and thereafter

(b) by the Parties in proportion to their respective Venture Interest;

and includes the Licence, any Development Licences granted over the Area, materials, plant, and equipment and any Petroleum discovered in the Area;

"Venture Interest" means the undivided percentage interest from time to time in the Venture Assets and Operations of a Party after the assignment to the State of a percentage interest in the Venture Assets and Operations;

"Works and Facilities" and "Works or Facilities" have the meaning ascribed to them in Article 15;

"Block", "Norm Price", "Petroleum", and "Royalty" have the same meaning in this Agreement as the meaning ascribed to them in the Offshore Act.

ARTICLE 2 INTERPRETATION

2.1 In this Agreement unless the context otherwise requires—

- (a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;
- (b) the headings do not affect the interpretation or construction;
- (c) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other genders;
- (f) references to a person include a corporation and vice versa;
- (g) reference to an Article, Clause or Subclause is to an Article, Clause or Subclause of this Agreement;

SCHEDULE 5.—*continued*.

- (b) reference to a Minister shall mean the Minister for the time being having responsibility for the particular subject matter according to the context.

2.2 Where any provision of this Agreement constitutes an undertaking by one of the Parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right, concession or advantage that Party shall by its execution hereof be deemed to have covenanted and agreed with the other Party accordingly and such provision constitutes such an undertaking by the Oil Companies there shall be deemed to be a covenant and agreement by all of them jointly and each of them severally in respect of such undertaking.

ARTICLE 3 EFFECT ON AND OF OTHER LAWS

3.1 The Articles and Clauses listed in Clause 3.2 are to have the force of law and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea, and no law at any time in force in Papua New Guinea made after the commencement of this Agreement shall affect those Articles and Clauses:

- (a) unless the contrary intention appears expressly in that law; or
- (b) except as provided by this Agreement.

3.2 The provisions of Clause 3.1 shall apply to the following:

- (a) Article 5
- (b) Article 6
- (c) Clause 17.6
- (d) Clause 28.1
- (e) Article 30 except for Clauses 30.3 and 30.5.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament in a form agreed upon by the Parties, a Bill for an Act to approve this Agreement and to give the force of law to the Articles and Clauses specified in Clause 3.2.

4.2 This Agreement shall be void and of no effect and none of the Parties shall have any claim against any other Party with respect to any matter or thing arising out of, done or performed under this Agreement unless the Act referred to in Subclause 4.1(a) shall come into effect prior to 31st day of March, 1977.

ARTICLE 5 CURRENCY

5.1 Words and expressions which have a certain meaning where used in the Foreign Exchange Regulations made under the Central Banking Act 1973 shall have the same meaning where used in this Article 5.

5.2 The Oil Companies shall be entitled to retain in foreign currency outside Papua New Guinea proceeds of sale of all Petroleum produced by the Oil Companies and exported overseas to the extent necessary to enable the Oil Companies to meet their obligations to pay foreign currency during the ensuing three (3) months in respect of:

- (a) the principal of, interest and services charges on and other fees and expenses related to loans made to the Oil Companies in foreign currency for purposes of their operations under this Agreement by persons not resident in Papua New Guinea, where the terms of such loans have been approved by the Bank of Papua New Guinea under the Foreign Exchange Regulations; and
- (b) commitments in foreign currency to persons not resident in Papua New Guinea for the supply of goods and services to the Oil Companies (including capital goods and services of foreign employees and consultants); and
- (c) commitments in respect of dividends payable to shareholders resident outside Papua New Guinea;

provided that the amounts concerned are established to the reasonable satisfaction of the State.

5.3 Where amounts of foreign currency expected to be required by any of the Oil Companies for the purposes described in Clause 5.2 in any three month period exceed the amounts of foreign currency earnings expected to be received by any of the Oil Companies in that period, such Oil

SCHEDULE 5.—*continued.*

Company may request the State to hold foreign currency for it to the level of the possible shortfall but not exceeding foreign currency requirements for purposes of loan repayments whereupon—

- (a) the Oil Company concerned shall notify the State of the amount of the expected shortfall and the currencies in which the shortfall is likely to occur;
- (b) the State, after consultation with the Bank of Papua New Guinea, will advise the Oil Company concerned of the Kina equivalent of the shortfall at the exchange rate then prevailing;
- (c) the Oil Company concerned will lend to the State and the State will borrow from the Oil Company concerned that amount in Kina;
- (d) the State through the Bank of Papua New Guinea will hold deposits of foreign exchange in the currency to which payments will be made and of amounts sufficient to make such payments in accordance with the notice which the Oil Company concerned has given to the State under Subclause 5.3(a);
- (e) the State will pay interest to the Oil Company concerned on such foreign currency deposits at a rate per annum which is the rate which the Bank of Papua New Guinea earns for the State on those deposits less one half of one percent (0.5%) per annum to cover the Bank of Papua New Guinea's administrative and overhead costs; and
- (f) the State will repay any loan made by the Oil Company concerned under this Clause 5.3 in the currencies in which the deposits are held at the time payments in those currencies by the Oil Company concerned are due, such amounts in foreign currency to be applied in discharge of the Kina amount of the original loan at the exchange rate ruling at the time of the original loan.

5.4 The Oil Companies will not be subject to or limited by regulations or statutes relating to foreign exchange and the control thereof that are less favourable to the Oil Companies or any of them than the regulations and statutes of general application to persons dealing with foreign exchange in Papua New Guinea nor will regulations or statutes relating to foreign exchange and the control thereof be applied in relation to any of the Oil Companies in a manner less favourable to them than the manner in which they are generally applied to others to whom they are applicable.

5.5 At all times the Oil Companies shall have the right to buy and sell Kina at rates of exchange no less favourable than those available to other commercial buyers and sellers of that currency.

5.6 The Oil Companies may establish foreign currency accounts in Papua New Guinea PROVIDED THAT such deposits do not contravene Exchange Control requirements and contain deposits considered by the Government to be reasonable in relation to the Oil Companies' needs.

5.7 Unless otherwise directed by the State and except as provided in Clauses 5.2 and 5.6, each Oil Company shall convert all its foreign currency earnings from Operations under this Agreement into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Oil Company for its use.

5.8 Notwithstanding anything to the contrary in the Acts, the National Investment Development Authority Act, the Income Tax Act or other legislation applying to the Operations, the Oil Companies may—

- (a) keep their books of account and other records in both Kina and United States dollars; and
- (b) make all calculations under any statute or regulation (including but without limiting the generality of the foregoing calculations for Royalty, Petroleum Income Tax, Additional Profits Tax) and for Foregone Production, and Specified Volume and other matters arising under this Agreement, the Operating Agreement and the Joint Operating Agreement in Kina or United States dollars. When applying for the first Development Licence within the Area each Oil Company shall elect to make such calculations thereafter in either Kina or United States dollars. If such calculations are made in United

SCHEDULE 5.—*continued.*

States dollars the State shall accept payment of such taxes and other moneys in Kina converted from United States dollars as provided in the following formula :

$$K = S \times D$$

where,

K means the sum in Kina payable to the State for any of the stated purposes; S means the sum expressed in United States dollars to be converted to Kina; D means the mean of the average of the Daily Published Buying and Selling Rates of Kina against the United States dollar during the Budget Year, or in the case of Royalty during the month, for which the calculation is being made. The "Daily Published Buying and Selling Rates" means the buying and selling rates from time to time published by the Bank of Papua New Guinea or such other buying and selling rates as may from time to time be published and recognised by the State as the official buying and selling rate. In calculating the mean of the average of the Daily Published Buying and Selling Rates the average of the buying and selling rates applying on each day on which the Bank of Papua New Guinea is open to the public for business transactions shall be aggregated and the result divided by that same number of days.

ARTICLE 6 NIDA REGISTRATION

6.1 Notwithstanding anything expressly or impliedly to the contrary contained in the National Investment and Development Act 1974 and in particular notwithstanding the provisions of Section 4 of that Act, the Oil Companies from the date of issue of the first Development Licence shall be deemed to be registered under that Act in respect of the activities of Exploration, Development and Producing (but not including refining of crude oil) and other activities necessarily incidental thereto and contemplated by or required to carry out Exploration or the Approved Proposals, on the following conditions :

- (a) the Oil Companies shall not without the approval of the National Investment and Development Authority carry on any activities except those necessarily incidental to Exploration or the Approved Proposals; and
- (b) the registration shall be for the duration of this Agreement and shall be deemed to be cancelled upon the termination of this Agreement for any reason whatsoever.

ARTICLE 7 PROPOSALS

7.1 The Oil Companies shall submit to the State in support of any application for a Development Licence and in addition to detailed proposals as required by section 30 of the Offshore Act:

- (a) the financial analysis of prospective cash flows of the Operations;
- (b) matters which the Oil Companies may consider relevant to support a request pursuant to Clause 29.5 that the State elect to acquire a Venture Interest less than the maximum provided for in Clause 13.3.

7.2 The State shall treat as confidential all material and information supplied to the State under Subclause 7.1(a) and under Section 28A(3) of the Offshore Act being the results of studies referred to in Section 28A(2)(a) and (b) of that Act PROVIDED THAT if this Agreement is terminated as provided in Article 26 the material and information shall become the property of the State and may be used by the State in such manner as it thinks fit.

7.3 If the Oil Companies desire to modify, expand or otherwise substantially vary their activities beyond those specified in any Approved Proposals, either by undertaking any new activity or by a major expansion of activities specified in the Approved Proposals, the Oil Companies shall give notice of such desire to the State and within two months thereafter shall submit to the State detailed proposals in respect of the desired modification, expansion or variation.

ARTICLE 8 CONSIDERATION OF PROPOSALS

8.1 The State shall not unreasonably withhold its approval to the proposals referred to in Subsection 30(1)(c) of the Offshore Act and if the State approves such proposals without amendment, it shall notify the Oil Companies accordingly at the same time as the Minister serves on the Oil Companies the instrument under section 31 of the Offshore Act.

SCHEDULE 5.—*continued.*

8.2 If the State does not intend to approve without amendment the proposals referred to in Subsection 30(1)(c) of the Offshore Act, the State within three (3) months of receipt of such proposals shall notify the Oil Companies that it wishes to:—

- (a) defer consideration of or decision upon the same until such time as the Oil Companies submit a further proposal or proposals in respect of some matter mentioned in Section 28A of the Offshore Act not covered by the said proposals and in such case the State shall disclose to the Oil Companies the reasons therefor and specify the further proposal or proposals; or
- (b) approve the said proposals subject to the Oil Companies making such alteration thereto or complying with such conditions as the State thinks reasonable and in such a case the State shall disclose its reasons for requiring such alterations or imposing such conditions.

8.3 If the decision of the State is to be as mentioned in Clause 8.2 the State shall afford the Oil Companies full opportunity to consult with it and should the Oil Companies so desire, to submit new proposals either generally or in respect of some particular matter.

ARTICLE 9 TRAINING AND LOCALISATION

9.1 The Oil Companies holding a Development Licence in regard to any part of the Area shall progressively replace foreign personnel (employed with the approval of the State) with Citizens, in accordance with the training and localisation programme which forms part of the report furnished to the Minister under section 28A of the Offshore Act PROVIDED THAT if the training and localisation programme is disrupted by circumstances or events (whether or not they constitute force majeure within the meaning of Article 11) which make it difficult or impossible for the Oil Companies to comply with their obligations under such programme, the Oil Companies may give notice thereof to the State, together with alternative or revised plans to achieve the objects of the part of the training and localisation programme which is affected, and the State within one (1) month of that notice shall either—

- (a) approve those alternative or revised plans; or
- (b) meet with the Oil Companies to discuss the alternative or revised plans. If such discussions do not lead to the State's approval of alternative or revised plans, which approvals shall not unreasonably be withheld, the Oil Companies shall be bound by their original obligations under the training and localisation programme, except that they shall not be liable for any delay caused by following the procedures under this Subclause and subject always to the Oil Companies being able to claim force majeure under Article 11.

9.2 The State shall give such assistance to the Oil Companies as is reasonably required in the formulation of their training and localisation programme and in recruitment of Citizens, and under normal conditions shall make available its facilities for vocational and technical training.

9.3 Training and instruction pursuant to the training and localisation programme shall be given by employees or agents of the Oil Companies who are proficient in the English language.

9.4 (a) The Oil Companies holding a Development Licence jointly shall arrange in co-operation with the State assignments for the State's Employees, not to exceed more than ten (10) in any year or at any time, to the Oil Companies' operations, whether in Papua New Guinea or overseas, to assist in training such employees for managerial, professional, and technical positions for the State PROVIDED THAT if any Oil Company being a party to this Agreement has fulfilled or partly fulfilled a like obligation under any like agreement with the State to which the Oil Companies are also a party this clause 9.4 shall be deemed to have been fulfilled to the extent that such like obligations have been fulfilled by the Oil Companies.

(b) The salaries and other expenses of such State employees shall be borne by the State PROVIDED THAT whilst any such State employee is directly engaged in the Oil Companies' operations, salary and expenses of such employee shall be borne by the Oil Companies.

9.5 As far as is practicable the Oil Companies shall give first preference in employment to Citizens whose place of origin is in the area of any Development Licence.

SCHEDULE 5.—*continued.*

ARTICLE 10 LOCAL SUPPLIES AND BUSINESS DEVELOPMENT

10.1 The Oil Companies shall :

- (a) use and purchase goods and services supplied, produced, or manufactured in Papua New Guinea whenever the same can be obtained at competitive prices and on competitive terms, conditions and delivery dates and are in all substantive respects of a quality comparable with those available from outside Papua New Guinea; and
- (b) encourage and assist Citizens desirous of establishing businesses providing goods and services for the Oil Companies' operations and for any town constructed primarily for purposes of the Oil Companies' operations and the residents thereof; PROVIDED THAT the Oil Companies shall not be obliged or called upon to grant or lend money to any Papua New Guinea Citizen or any local enterprise; and
- (c) make maximum use of Papua New Guinea subcontractors where services of comparable standards with those obtainable elsewhere whether inside or outside Papua New Guinea are available from them at competitive prices, and on competitive terms, conditions, and delivery or performance dates; and
- (d) where it is necessary to import vehicles, machinery, plant or equipment, and such items are not purchased direct from the manufacturer by the Oil Companies, effect the purchase of such items through traders operating in Papua New Guinea, PROVIDED THAT such items are available through such traders at a competitive price, and on competitive terms, conditions, and delivery date and provided always that the Oil Companies shall not be bound to comply with this Subclause in any case where compliance would adversely affect the financing of the Oil Companies' operations or any part thereof.

10.2 Insofar as it is practicable, the Oil Companies shall give first preference in their assistance under Subclauses (b) and (c) of Clause 10.1 to Citizens originating from the sub-province in which Petroleum is produced.

ARTICLE 11 FORCE MAJEURE

11.1 Any failure on the part of a Party hereto to comply with any of the terms, conditions, and provisions of this Agreement (except any obligation of the Oil Company to make payment of money to the State) shall not be grounds for termination or give another Party hereto any claim for damages insofar as such failure arises from force majeure, if the first-mentioned Party has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement. That Party shall take all reasonable measures to remove such inability to fulfill terms and conditions of this Agreement with the minimum of delay.

11.2 For the purposes of this Agreement, force majeure shall include war, insurrection, civil disturbances, blockades, riots, embargoes, strikes, bans, limitations, and other labour disputes (PROVIDED THAT the Oil Companies shall not be required to agree to a settlement of any particular labour dispute solely for the purposes of terminating a condition of force majeure), land disputes, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fires, lightning, breakdown of machinery or facilities, shortages of labour, transportation, fuel, power or essential plant equipment, or materials or any other event which the party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Oil Companies shall include any delay or failure by the State to give any consent or approval required under this Agreement or under any applicable law, but shall not include any event caused by the failure to observe good oilfield practice nor any event caused by negligence in the provision of adequate supervision of the Operation.

11.3 The Oil Companies shall notify the State on their becoming aware of an event of force majeure affecting their ability to fulfill the terms and conditions of this Agreement, or any event which may endanger the natural resources in the Area and shall similarly notify the State on the restoration of normal conditions.

ARTICLE 12 EXTENSIONS OF TIME

12.1 Notwithstanding any provision of this Agreement, the State may at the request of the Oil Companies from time to time extend any period referred to in this Agreement for such longer period or substitute for any date referred to in this Agreement such later date as it thinks fit, notwithstanding that at the time of such extension or substitution such period may have expired or such date may have been passed.

SCHEDULE 5.—continued.

ARTICLE 13 STATE PARTICIPATION

13.1 In this Agreement, unless the context otherwise requires :

"Accumulated Liability" means an amount calculated in accordance with the following formula :

$$AL = SVI (E+D+OC) + S - F$$

where,

AL is the State's Accumulated Liability to an Oil Company;

SVI is the State's Venture Interest expressed as a fraction;

E is the amount of allowable exploration and prospecting expenditure as defined in Subsection 164E(1) of the Income Tax Act 1951 or which would have been allowable but for an election under Section 164T of that Act spent by the Oil Company in or in relation to the area between September 1, 1975 and prior to the issue of the first development licence over part of the Area and in recognition of exploration and prospecting operations conducted by the Parties pursuant to rights or titles held by them prior to September 1, 1975 such additional amounts of allowable exploration and prospecting expenditure, defined as aforesaid, spent by the Oil Company in or in relation to the Area prior to September 1, 1975 and within 11 years prior to the issue of the first development licence over part of the Area, PROVIDED THAT if the term of the licence is extended as provided in Section 23A of the Offshore Act thereafter the amount of allowable exploration and prospecting expenditure, defined as aforesaid, shall be reduced each year during such extended term by the amount borne by the Oil Company of the total amount expended with the approval of the Operating Committee on Operations during the 12th year preceding that year.

D is the sum of the amounts of allowable capital expenditure and allowable exploration and prospecting expenditure as defined in Sections 164A and 164E of the Income Tax Act 1951 or which would have been allowable but for the election under Section 164T of that Act spent by the Oil Company in or in relation to the Area after the issue of a Development Licence and during a Shortfall Period;

OC is the amount spent by the Oil Companies on Operations during a Shortfall Period and not included in E or D;

S is the amount paid by the Oil Company to the State under Clause 13.7;

F is the value at Norm Price of Foregone Production received by the Oil Company less any amount paid under Subclauses 13.8(a) and (b);

"Foregone Production" means the volume of the State's Production Share foregone in favour of the Oil Companies or any of them in satisfaction or part satisfaction of the items referred to in Clause 13.8;

"Positive Day" means a day on which the State's Accumulated Liability to an Oil Company is reduced to zero;

"Production Share" means a proportion of the Petroleum produced from within the Area equal to a Party's Venture Interest which a Party from time to time may be entitled to receive and separately dispose of;

"Shortfall Period" means a continuous interval of time during which the State has and continues to have an Accumulated Liability to any one or more of the Oil Companies;

"Simple Interest" means a percentage interest rate equal to 5 percentage points in excess of—

- (a) the annual rate of interest on domestic corporation borrowings rated AAA in the U.S.A. as published in the Survey of Current Business by the U.S.A. Department of Commerce—Bureau of Economic Analysis applying at the date of issue of the first Development Licence issued over part of the Area, such rate to be adjusted quarterly; or
- (b) if such rate is not published, a comparable rate determined in such manner as the Parties shall agree;

SCHEDULE 5.—*continued.*

- 13.2 (a) The Parties shall settle the terms of the Joint Operating Agreement as soon as practicable. Except as provided in Article 27, that Agreement shall accord substantially with the Operating Agreement but shall be subject to the terms of this Agreement and in the event of inconsistency, this Agreement shall prevail;
- (b) The Joint Operating Agreement shall take effect when the last of the Parties executes such Agreement.
- 13.3 (a) The State may acquire an unencumbered interest in the Venture Assets and Operations to a nominated percentage (not exceeding 22½ percent either of such Venture Assets and Operations or of the Participating Interest of any particular Oil Company) by giving notice to each Oil Company to that effect within four (4) months after the issue of the first Development Licence over part of the Area. On and from the first day of the calendar month next following the month in which the State gave notice as aforesaid the Venture Interest of each Oil Company shall be equal to its Participating Interest appropriately reduced by the interest acquired by the State;
- (b) As soon as practicable after the State has given notice pursuant to Subclause 13.3(a), the Parties shall execute the Joint Operating Agreement (if not already executed) and shall do all things necessary formally to vest that Interest in the State;
- (c) If within two (2) months after the issue of the first Development Licence over part of the Area the State has not given notice under Subclause (a) the Oil Companies within the third month after the issue of that Development Licence shall give notice to the Prime Minister that such election has not been made by the State. Thereafter if a notice under Subclause (a) is not received by the Oil Companies within the time specified in Subclause (a) the State shall be deemed to have elected not to acquire a Venture Interest.
- (d) Forthwith after giving notice under Subclause 13.3(a) electing to acquire a Venture Interest the State shall be entitled to attend and vote at all meetings of the Operating Committee and to receive notice and agendas for all such meetings.
- 13.4 Except as otherwise provided in this Agreement each Party shall take in kind its Production Share produced and saved from the Area.
- 13.5 During each Shortfall Period :—
- (a) the State shall forego its Production Share in favour of those Oil Companies to which the State has for the time being an Accumulated Liability and the said Companies shall be entitled to and shall take all such Foregone Production free of encumbrance in the several proportions which each such Oil Company's respective Venture Interest bears to the sum of the Venture Interest of all such Companies;
- (b) an Oil Company shall be entitled to recoup out of Foregone Production—
- (i) the State's Accumulated Liability to such Oil Company; and
- (ii) Simple Interest on the State's Accumulated Liability commencing as the case may be on and from either;
- aa. the date of the notice by the State under Clause 13.3, or
- bb. the date on which such Oil Company reimburses the State under Clause 13.7; and
- computed calendar monthly from the 1st day of each such month on the mean of the balances of Accumulated Liability at the opening of business on the first day and closing of business on the last day of the calendar month for which the calculation is being made PROVIDED THAT in determining the balance of Accumulated Liability at the close of business on the last day of the month, no reduction of the Accumulated Liability for that month shall be taken into account and in lieu thereof the amount of Simple Interest payable for the month shall be reduced by an amount equal to Simple Interest calculated on the amount by which Accumulated Liability is deemed to have been reduced in that month as provided in Sub-clause 13.8(c) computed for the period commencing from the date Accumulated Liability is deemed to have been reduced to the last day of that month; and
- (c) sales of Petroleum produced from the Area by an Oil Company, to which the State has for the time being an Accumulated Liability shall be deemed to have been composed of

SCHEDULE 5.—*continued.*

portion of that Oil Company's Production Share and portion of Foregone Production received by that Oil Company in the respective proportions which that Oil Company's Venture Interest bears to the product of the State's Venture Interest and that said Oil Company's Venture Interest divided by the sum of the Venture Interests of all Oil Companies to which the State had an Accumulated Liability at the time of each such sale.

13.6 (a) Except as provided in Subclause (b) the Parties shall bear all the costs of the Operations in proportion to their respective Venture Interests;

(b) Subject to Clause 13.10 during each Shortfall Period the Oil Companies shall bear all the costs of the Operations in proportion to their respective Participating Interests until the occurrence of the first Positive Day. Thereafter, during the balance of each such Shortfall Period the said costs shall be borne as follows :

(i) by each Oil Company to which the State for the time being has no Accumulated Liability - as to a percentage equal to its Venture Interest;

and as to the balance

(ii) by those other Oil Companies to which the State for the time being has an Accumulated Liability - in the several proportions which each such Company's respective Venture Interest bears to the sum of the Venture Interests of all such Companies PROVIDED THAT if during a Budget Year after a Positive Day all of the Oil Companies to which the State has an Accumulated Liability give notice to the other Oil Companies and produce evidence that the State's Venture Interest share of the costs of the Operation for the Budget Year exceeds the value of its Foregone Production for the same period all Oil Companies shall forthwith commence and thereafter continue to bear the costs of the Operations until the next Positive Day in proportion to their respective Participating Interest.

13.7 If during a Budget Year or part thereof which is not a Shortfall Period, the State gives notice to the Oil Companies and produces evidence that the State's Venture Interest share of the costs of the Operations for the preceding period of that Budget Year exceed the proceeds received by the State from disposal of the State's Production Share for that period the Oil Companies shall in proportion to their respective Participating Interests and within sixty (60) days after receipt of such notice and evidence reimburse the State the amount of such shortfall.

13.8 Foregone Production taken by an Oil Company shall be applied in the following order of priority:

(a) to pay Royalty under the Offshore Act on such Foregone Production;

(b) to pay Simple Interest on the State's Accumulated Liability calculated as provided in Clause 13.5;

(c) to reduce the Accumulated Liability to the said Oil Company. Any reduction of Accumulated Liability under this Subclause 13.8(c) shall be deemed to be made on the day the Oil Company is to receive payment as provided in any contract of sale for Petroleum, which date shall be consistent with and reflect terms of credit allowed or recognised by the Minister as provided in Section Sch. 3.4 of the Offshore Act or as otherwise agreed upon between the State and the Oil Company.

13.9 Any rights under this Agreement in respect of unsatisfied Accumulated Liability shall cease and the State shall not be looked to for recoupment or reimbursement thereof:

(a) by any Oil Company on termination of this Agreement as provided in Article 26, or

(b) by an Oil Company upon its withdrawing from this Agreement and surrendering its Participating Interest or Venture Interest in the Licence and in all Development Licences over any part of the Area;

13.10 When electing to acquire its Venture Interest and thereafter at any Operating Committee meeting at which Operations and a Budget are to be agreed upon for a Budget Year, the State may elect to contribute all or part of its Venture Interest share of costs or expenses of any Operations in respect of which an Accumulated Liability would otherwise accrue to any Oil Company.

13.11 Each Oil Company shall within 30 days after the issue of the first Development Licence and thereafter, if the State has a Venture Interest, not less often than half yearly until it shall have recouped the amount of the State's Accumulated Liability, furnish to the State details of and the amount of such Accumulated Liability for the time being. The State may require reasonable verification of such details

SCHEDULE 5.—*continued.*

and amounts including an audit as provided for in the Operating Agreement or the Joint Operating Agreement as the case may be.

13.12 Notwithstanding the provisions of Clause 13.7, if the Operating Committee resolves that a "Petroleum Pool" (which expression shall have the same meaning in this Clause as ascribed to it in the Offshore Act) has been depleted in accordance with good oilfield practice and that to continue Producing from that Petroleum Pool cannot be justified for technical or economic reasons:

- (a) the cost of plugging and abandoning all wells drilled into the Petroleum Pool; and
- (b) other costs and expenses paid or incurred in respect of dismantling, removing, disposing of, or otherwise dealing with all structures, installations, plant and equipment which are Venture Assets and which had been required for Producing from that Petroleum Pool;

shall be borne by the Parties in proportion to their respective Venture Interests.

ARTICLE 14 DISPOSAL OF STATE'S PRODUCTION SHARE

14.1 "Specified Volume" means that part of the State's Production Share which the State wishes an Oil Company to dispose of and specifies in a notice under Clause 14.2.

14.2 Within 30 days after the Operating Committee Meeting to agree upon Operations and a Budget for any Budget Year in which it is expected that a Positive Day will occur the State may give notice to the Oil Companies stating the Specified Volume for that Budget Year for any or each Oil Company. Thereafter, the State may give not less than 3 months notice to any of the Oil Companies reducing or increasing the Specified Volume.

14.3 (a) An Oil Company given notice under Clause 14.2 shall use its best efforts to dispose of a Specified Volume at a price which after taking into account the matters provided for in Section Sch. 3 to the Offshore Act will enable that Oil Company to account to the State for an amount equal to Norm Price in respect of that Specified Volume;

(b) From time to time an Oil Company experiencing difficulty in disposing of any part of the Specified Volume as provided for in Subclause (a) may notify the State accordingly and thereafter the State and that Oil Company will negotiate in good faith in an effort to resolve the Oil Company's difficulty;

(c) All contracts of sale by an Oil Company of any of the State's Production Share shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the circumstances, but in no event shall any such contract be for a period in excess of one year.

14.4 Following disposition of any of the Specified Volume an Oil Company shall account to the State on whichever shall be the earlier of:

(a) the date three (3) months after taking delivery at the ship's loading flange of the relevant part of the Specified Volume; or

(b) whichever of the following dates shall be appropriate:

(i) if the sale is at arm's length as defined in Section Sch. 3.2 of the Offshore Act, seven (7) days after receipt of payment in full or part thereof; or

(ii) if the sale is other than at arm's length as aforesaid, seven (7) days after the day the Oil Company is to receive payment as provided in the contract for sale for any Petroleum which includes any part of a Specified Volume.

14.5 Upon an Oil Company first becoming aware that a Positive Day has occurred or is likely to occur during a Budget Year which had not been expected at the time of an Operating Committee meeting as referred to in Clause 14.2 it shall notify the State accordingly. Such notice shall include—

(a) the date on which the Positive Day occurred or is expected to occur as the case may be, and

(b) the volume of production expected to be available as the State's Production Share for the balance of the Budget Year.

If the Positive Day occurred prior to the date of such notice the notice shall be accompanied by a full accounting for the volume of the State's Production Share disposed of by such Oil Company during the period between the Positive Day and the date of the notice.

SCHEDULE 5.—*continued.*

14.6 Within 30 days after an Oil Company gives the State notice under Clause 14.5 the State shall give that Oil Company notice of the Specified Volume, if any, for that Oil Company for the balance of the current Budget Year.

14.7 Any Oil Company giving notice under Clause 14.5 shall not dispose of any of the State's Production Share between the date of that notice and receipt by it of a notice under Clause 14.6 except to the extent necessary to satisfy any contract entered into bona fide before the date of the notice under Clause 14.5 in which event the Oil Company shall account to the State in the manner provided in Clause 14.4.

14.8 The Joint Operating Agreement shall provide for equitable adjustment on a regular periodic basis for any imbalance which may occur between the Production Share of each Party and the volume of Petroleum taken by or on behalf of the respective Parties and adjustment of any significant disparity in payment of operating costs and expenses caused by such imbalance.

ARTICLE 15 STATE ACQUISITION AND OWNERSHIP OF FACILITIES

15.1 "Works and Facilities" and "Works or Facilities" as the context permits means any of the installations and infrastructure provided for the Operations by either the State or the Oil Companies and capable of being used by the Oil Companies, the State, Citizens or other persons carrying on business in the locality thereof without interfering with the use thereof by the Oil Companies. Without limiting the generality of the foregoing the Parties envisage that Works and Facilities—

- (a) include air fields, roads, ports, water supply, and sewerage facilities, except to the extent that any of them are utilised to their full capacity by the Oil Companies, and
- (b) do not include residential accommodation and administration buildings, installations, and infrastructure directly used in Producing,

PROVIDED THAT provision by the Department of Posts and Telegraphs of facilities and services shall be the subject of a separate agreement.

15.2 (a) At any Operating Committee Meeting at which construction of Works and Facilities is to be approved the State may by written notice to the Oil Companies elect to provide the costs, or part thereof, of any such Works and Facilities; and

- (b) at any time after their construction the State may by notice require the Oil Companies to transfer to it ownership of any Works and Facilities. As soon as practicable after such notice the Oil Companies shall do all things necessary to transfer to the State title to the Works and Facilities nominated in the notice.

15.3 Where the State requires the Oil Companies to transfer to it any Works and Facilities as provided in Subclause 15.2 (b) the State shall pay to the Oil Companies, by annual instalments as provided in Subclause 15.3(a) a purchase price equal to the then depreciated value of such Works and Facilities, and the Oil Companies shall pay to the State annual capital user charges as provided in Subclause 15.3(b).

- (a) The Oil Companies each Budget Year shall nominate the amount of the annual instalments of the purchase price which shall be equal to the annual amount of depreciation that the Oil Companies could have claimed (and would have been entitled to claim) as a deduction allowable under the Income Tax Act in respect of that Work or Facility but for the transfer of ownership to the State. (It is the intention of the Parties that such instalments of purchase price shall not be assessable income in the hands of the Oil Companies for the purpose of assessment of Petroleum Income Tax);
- (b) The Oil Companies shall pay to the State within seven (7) days of the receipt of any instalment referred to in Subclause 15.3(a) a capital user charge equal to the said instalment. (It is the intention of the Parties that such capital user charge shall be a deduction allowed under the Income Tax Act for the purpose of assessment of Petroleum Income Tax and Additional Profits Tax);
- (c) If operations permanently cease in or in relation to the Area and as a result the State ceases to pay any instalment referred to in Subclause 15.3(a), the Oil Companies shall have the right to claim a deduction, as provided by the Income Tax Act for the purpose of assessment of Petroleum Income Tax, and Additional Profits Tax, equal to the amount that the Oil Companies would have claimed (and would have been entitled to claim) but for the transfer of ownership of that Work or Facility to the State.

SCHEDULE 5.—*continued.*

15.4 If at any time the State acquires or provides any Works or Facilities under this Article 15, the State shall thereupon assume responsibility for maintaining the assets to a proper standard and shall charge the Oil Companies a maintenance charge (which may include an equitable proportion of direct operating costs) limited to the costs of that maintenance PROVIDED THAT the amount of such maintenance charge shall be reduced by any amount spent by an Oil Company under Clause 15.5.

15.5 Where the State has provided or acquired Works or Facilities for the purposes, of, or under this Agreement and fails properly to maintain the same the Oil Companies may, after 30 days notice to the State, and at their own expense, carry out such work as is necessary to bring the same up to a proper standard.

ARTICLE 16 USE OF FACILITIES BY THIRD PARTIES

16.1 A third party will be permitted to use Works and Facilities acquired from the Oil Companies by the State and not utilised to their full capacity. The State undertakes to ensure that the third party will be required to pay a proportionate share of any operating, maintenance overhead and capital costs in respect of such Works and Facilities among other things having regard to:

- (a) the extent of the proportionate usage and likely future usage of the Works or Facilities by the third party and the Oil Companies;
- (b) the respective extents to which services are provided to the Oil Companies and the third party (where the Facility is a service Facility);
- (c) any other factor which results in or is likely to result in significant damage to or deterioration of the Work or Facility.

16.2 The State, the Oil Companies, and a third party shall agree upon an amount which the third party will pay to the Oil Companies (notwithstanding any prior transfer of the relevant Works and Facilities to the State under this Agreement) in United States dollars or the Kina equivalent at the date of payment a capital contribution reflecting the extent of the third party's intended use of the Works and Facilities.

16.3 Where the State provides the cost of any modification improvement extension or expansion of any Works or Facilities to meet the needs of the Oil Companies the State may charge the Oil Companies a capital user's charge in respect of that Work or Facility to allow for the recoupment over a reasonable period of the amount expended in providing the said cost by the State together with a reasonable return thereon.

16.4 Notwithstanding anything contained in Article 15 or Article 16 all such Works and Facilities not acquired and managed by the State shall continue to be managed by the Oil Companies and the Oil Companies shall have priority of use thereof over all other users.

ARTICLE 17 RATES AND DUTIES

17.1 Subject to any requirement of defence, foreign trade or foreign policy of this State, the safety of the public and quarantine and to the obligations of the State under multilateral international agreements to which the State is a party the Oil Companies any Affiliated Corporation and the agents and contractors of the Oil Companies or of any Affiliated Corporation shall have the right to acquire import into and move within Papua New Guinea and use any plant machinery equipment vehicles explosives fuels reagents and supplies which have a specialised application and use in the Operations and to export from Papua New Guinea the petroleum (whether processed or otherwise) resulting from the Operations.

17.2 The Oil Companies shall be subject to import duties and levies of general application in accordance with Papua New Guinea law from time to time except as hereinafter provided.

17.3 No rate tax charge due duty tariff or other levy shall be applied to or be payable by the Oil Companies on the export of or in respect of the right to export Petroleum from Papua New Guinea by an Oil Company or a Related Company.

17.4 No rate tax rent charge due duty tariff or other levy and no legislation which discriminates against all or any of the Oil Companies or any member of an Oil Company or any beneficial owner of shares in any of the Oil Companies or any person engaged in the Operations shall be payable by or (as the case may be) applicable to any of the Oil Companies or any such member or beneficial owner or person (as the case may be) in respect of the Operations or of any income arising directly or indirectly therefrom PROVIDED THAT nothing in the Clause is intended to provide a basis for challenging the validity of the petroleum income tax or additional profits tax.

SCHEDULE 5.—*continued.*

17.5 Any import duty which is sought to be imposed on the importation of any plant machinery equipment explosives chemicals or other supplies which at the time when such duty is sought to be imposed are imported into Papua New Guinea solely for the purpose of and which have a specialised application and use in the Operations and which is sought to be imposed at a rate in excess of the average rate of duty from time to time payable on the importation into Papua New Guinea of the Customs Tariff numbered 118 275 309 313 320 and 341 04 as set out at the date thereof in the Second Schedule to the Customs Tariff 1959 shall without in any way whatsoever limiting the interpretation of Clause 17.3 above be deemed to discriminate against the Oil Companies.

17.6 No Local Government Rates or Provincial Government Rates or taxes on land calculated so as to be other than approximately equal to a rate or tax calculated in relation to the unimproved capital value of the surface rights of the land shall be payable by the Oil Companies in respect of land held by the Oil Companies, on which mining or industrial activities are carried on.

ARTICLE 18 CONSULTATION

18.1 The Oil Companies shall consult from time to time with representatives of the State and shall furnish the State each six months with reports concerning the implementation of:

- (a) the training and localisation programme
- (b) the provisions relating to local purchasing of supplies
- (c) the provisions relating to local business development and
- (d) the provisions relating to environmental management.

ARTICLE 19 INSPECTION

19.1 The Oil Companies shall at all reasonable times allow the properly accredited servants or agents of the State (who shall establish their authority on request) to inspect any aspect of the Operations and likewise to inspect and take copies of the books of account and records of the Oil Companies relating to the Operations and to any shipment, sale or use of products of such Operations.

ARTICLE 20 PATENT AND TECHNOLOGY RIGHTS

20.1 All new processes, new methods of manufacture and other technological or mechanical innovations developed within the Oil Companies' Operations:

- (a) shall remain the property of the Oil Companies, which shall apply for, take out and retain such patents and other technology rights, in Papua New Guinea or elsewhere, as may be necessary and desirable to protect the same; and
- (b) shall not be sold, assigned, licenced, surrendered, or otherwise disposed of by the Oil Companies except:
 - (i) on the basis of an arm's length transaction; and
 - (ii) with the prior approval of the State which approval shall not be unreasonably withheld.

20.2 Contracts to which any Oil Company is a party providing for the purchase of the right to use in the Operations any process, method or other technological innovation:

- (a) which are not contracts at arm's length, shall not be entered into without the prior consent of the State which consent shall not be unreasonably withheld, and
- (b) which are contracts at arm's length shall be submitted to the State for information.

20.3 For the purposes of this Article the term "arm's length" shall have the same meaning as ascribed to it in Section Sch. 3.2 of the Offshore Act, except that contracts for provision of services which incidental to their performance require the use of any such process, method or other technological innovation the patent rights to which are the property of any Oil Company or an Affiliated Corporation of any Oil Company and which but for the provisions of Section Sch. 3.2(c) would be at arm's length shall for the purposes of this Clause be deemed to be at arm's length.

ARTICLE 21 ASSIGNMENT

21.1 The State may assign, without the consent of the Oil Companies, all or part of its Venture Interest to any corporation, statutory or otherwise, formed in Papua New Guinea and either:

- (a) wholly owned by the State, or

SCHEDULE 5.—*continued.*

- (b) wholly owned by the State and another corporation or other corporations, statutory or otherwise formed in Papua New Guinea and which are controlled by the State and in which the State has at least a 50% beneficial interest,

PROVIDED THAT vested in such corporation or corporations are powers and financial capacity sufficient to enable such of the State's continuing obligations under this Agreement as are assigned to such corporation to be fulfilled.

21.2 Subject to Clauses 21.1 and 21.3 and with the consent of the other Parties which consent shall not be unreasonably withheld, all or any of the Parties may assign, or otherwise dispose of their interest or rights under this Agreement.

21.3 In the case of any assignment under this Article 21 the assignee shall undertake to the State to assume, observe and comply with all the obligations of the assignor in relation to the matter assigned or to the extent of the interest assigned as the case may be. After the giving of any such undertaking, the assignor shall be relieved of its obligations under this Agreement in relation to the matter assigned or to the extent of the interest assigned as the case may be without prejudice to pre-existing rights accrued to the State against the assignor.

21.4 Notwithstanding the foregoing provisions of the Clauses 21.2 and 21.3 but subject to normal statutory approvals in force from time to time,

- (a) any Oil Company may charge by way of fixed or floating charge the whole or any part of its Venture Interest to secure the repayment of, any payment of interest and other fees, costs and expenses related to, all loans made to that Oil Company to finance the project; and
- (b) the Oil Companies may mortgage and charge any specific asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset;

and any mortgagee or chargee under a mortgage or charge given by the Oil Companies may exercise all rights of sale and other rights included in any instrument of mortgage or charge provided it shall first give the State at least twenty-eight days' notice of intention to exercise those rights.

ARTICLE 22 ARBITRATION

22.1 If at any time there is any dispute, question or difference of opinion (in this Article 22 referred to as "Issue") between the Parties concerning the application of or arising out of section 99A of the Offshore Act other than any dispute, question, or difference of opinion in respect of which provision for settlement or determination is provided under the Income Tax Act 1959 the same shall, subject to Clause 22.2, stand referred to the arbitration of a single arbitrator, and such reference shall be considered a submission within the meaning of that expression given by the Arbitration Act 1951.

22.2 After any Issue has arisen between the State on the one hand and the Oil Companies or any of them on the other hand, any Party to that Issue may at any time prior to the appointment of an arbitrator by concurrence of the Parties or pursuant to the Arbitration Act, 1951 by notice to the other Party or Parties thereto elect that the provisions of this Clause shall apply to such Issue and in such event:

- (a) the Issue shall stand referred to the arbitration of three arbitrators, one of whom shall be appointed by the State and one of whom shall be appointed by the other Party or Parties to the Issue and the third of whom shall be agreed upon by the State and the other Party or Parties to the Issue in writing, and in default of agreement within fourteen (14) days after the State gives notice to the other Party or Parties to the Issue or the other Party or Parties to the Issue give notice to the State requiring the appointment of such a third arbitrator, shall be appointed in accordance with the provisions of the Arbitration Act 1951 from a panel of five (5) arbitrators to be nominated within a further period of fourteen (14) days thereafter by the President and Chairman of the Board of Directors (or failing him the Chief Executive) not being a Citizen of Papua New Guinea of the Asian Development Bank (or, failing such nomination, from any panel of arbitrators which the person or body appointing the third arbitrator considers satisfactory) PROVIDED THAT no person shall be eligible for appointment as a third arbitrator (unless the State and the Oil Companies otherwise agree in writing in any particular case) if at the time of his proposed appointment he is or has been at any time prior thereto a citizen or resident of Papua New Guinea, the Commonwealth of Australia, Canada, or the United States of America;

SCHEDULE 5.—*continued.*

- (b) if any arbitrator refuses to act, is incapable of acting or dies, a new arbitrator shall be appointed by the party appointing the original arbitrator or (in the case of the third arbitrator) in accordance with the procedure provided for in Subclause 22.2(a);
- (c) if on such reference one Party fails to appoint an arbitrator either originally or by way of substitution as aforesaid within fourteen (14) days after the other Party (having appointed its arbitrator) has given to it notice to appoint such arbitrator, the arbitration may proceed in the absence of such arbitrator; and
- (d) such arbitration shall be held at such place (whether inside or outside Papua New Guinea) as the arbitrators determine.

22.3 If any Party to any arbitration under this Clause so requests the arbitrator or arbitrators shall state, in the form of a special case for the opinion of the National Court of Papua New Guinea, any question of law arising in the course of the reference, and any opinion given shall be subject to the normal right of appeal.

22.4 An award made on an arbitration shall have force and effect as follows—

- (a) if by the award it is adjudged that the decision of the State is correct then the decision of the State in respect to the Issue shall stand; but
- (b) if the arbitrator adjudges that the decision of the State is incorrect then he shall further adjudge what the Norm Price should be in which event the decision of the Arbitrator shall be binding on the Parties.

ARTICLE 23 LAW APPLICABLE

23.1 This Agreement shall be governed by and construed in accordance with the law of Papua New Guinea.

ARTICLE 24 VARIATION

24.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Licences, any Development Licence, or any lease, licence, right or grant granted hereunder or pursuant hereto or any programme, proposal or plan approval hereunder, for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

24.2 Where an agreement made pursuant to Clause 24.1 constitutes an alteration of any Article or Clause referred to in Clause 3.2, the variation agreement shall contain a declaration to that effect, and the State shall as soon as is practicable introduce and sponsor in the National Parliament a Bill for an Act to approve that variation agreement and give force of law to the alteration of the rights hereunder. That variation agreement shall be subject to the coming into force of the approving Act.

24.3 Any agreement made pursuant to Clause 24.1 which does not constitute an amendment of any Clause referred to in Clause 3.2 shall be tabled by the State in the National Parliament within the first twelve (12) sitting days next following its execution.

ARTICLE 25 NOTICES

25.1 All notices, notifications, consents, approvals, undertakings, applications, requests, offers, reports, returns, elections, and proposals required to be or which may be given, made, furnished or submitted under this Agreement shall, unless the context otherwise requires, be in writing signed by a Minister of the State or the Director of the Office of Minerals and Energy or (as the case may be) a director or secretary or other designated representative of the Oil Companies, and if in writing shall be sufficiently given, furnished or submitted if delivery at or posted by prepaid post to the address for service of the Party or Parties to whom it is to be given, made, furnished or submitted, and all such communications if posted as aforesaid shall, unless proven otherwise, be deemed to have been received in the ordinary course of post.

SCHEDULE 5.—*continued.*

25.2 The addresses for service:

(a) of the State shall be:

(i) for the purposes of Sub-clause 13.3(c)

The Prime Minister,
Central Government Offices,
Waigani,
Papua New Guinea

or by post to:

The Prime Minister,
Central Government Offices,
Wards Strip Post Office,
Waigani,
Papua New Guinea

Telephone: Port Moresby 27 1211

Telex: SENTROF NE 22144; and

(ii) for all other purposes:

The Director,
Office of Minerals and Energy,
Konedobu,
Papua New Guinea

or by post to:

The Director,
Office of Minerals and Energy,
P.O. Box 2352,
Konedobu,
Papua New Guinea

Telephone: 25 1180

Telex: WABTRO NE 22211

(b) of the Oil Companies shall be:

Arco Australia Limited,
812 Bridge Street,
Sydney, Australia

or by post to:

Arco Australia Limited,
G.P.O. Box 2521,
Sydney N.S.W. 2001,
Australia

Telephone: Sydney 27 6901
Telex: 21297

Australian Superior Oil Company Limited,
4315 Australia Square Tower,
George Street,
Sydney, N.S.W. 2000
Australia

Attention: N.U. Ledingham

Telephone: Sydney 27 2873
Telex: 21273

and to

Australian Superior Oil Company Limited,
First City National Bank Building,
Houston, Texas USA

or by post to:

SCHEDULE 5.—*continued.*

Australian Superior Oil Company Limited,
P.O. Box 1521,
Houston, Texas, 77001, U.S.A.
Attention: J.E. Reid
Telephone: Houston 2245111
Telex: 77 5369

Canadian Superior Oil (Aust.) Pty. Ltd.,
Three Calgary Place,
355 Fourth Avenue S.W.,
Calgary, Alberta, T2P 0J3, Canada
Attention: H.J. Caine
Telephone: (403) 267 4110
Telex: 038 26640

Esso Papua New Guinea Inc.,
C/- Exploration Manager,
Esso Australia Limited,
127 Kent Street,
Sydney, N.S.W. 2000
Telephone: 20557
Telex: AA20549

Sunray Australian Oil Company Inc.,
Suite 404, Cathay Building,
Singapore 9
Attention: T. Adame.
Telephone: 32 3032
Telex: RS21591

and to:

Sunray Australian Oil Company Inc.,
P.O. Box 30,
2001 Bryan Tower,
Dallas, Texas, 75221, U.S.A.
Attention: W.R. Brooks.
Telephone: (214) 744 2222
Telex: 73 2323

Any Party may change its address for service by prior notice in accordance with this Article.

25.3 Where the Oil Companies are required to submit any plans, proposals, or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State receives the said plans, proposals or other material

ARTICLE 26 TERMINATION

26.1 The State may terminate this Agreement by notice to the Oil Companies in any of the following events—

- (a) if the Oil Companies abandon the Licence or repudiate their obligations under this Agreement and Operations are not resumed or such default made good within a period of sixty (60) days after notice as provided in Clause 26.2 is given by the State to the Oil Companies;
- (b) if the State can establish that in granting its approval to any proposal made under the Offshore Act or otherwise it relied upon a statement made by the Oil Companies not being an estimate based on judgment exercised in good faith on the application of knowledge available at the time the estimate is made and it is shown the Oil Companies intended such statement to be false or misleading;
- (c) if the Licence or any extensions or renewal thereof is properly forfeited due to default by the Oil Companies or is surrendered under the Onshore Act;
- (d) if the Oil Companies do not submit proposals in accordance with Article 7.

SCHEDULE 5.—*continued.*

26.2 The notice to be given by the State in terms of Subclause 26.1(a) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the Party or Parties responsible therefor and shall be given to each of the Oil Companies.

26.3 For the purposes of Clause 26.1(a) the Oil Companies shall not be deemed to have abandoned the Licence or repudiated their obligations unless all persons for the time being bound, whether as assignees of the Oil Companies or otherwise, to perform the obligations of the Oil Companies hereunder, have abandoned the Licence or repudiated the obligations.

26.4 This Agreement shall terminate on the expiry or surrender of the Licence and all Development Licences issued over any part of the Area or any renewal or extension of any of them.

26.5 If this Agreement is terminated after the grant of a Development Licence all structures, installations, plant, and equipment:

- (a) which can be removed from the Area within six (6) months after the notice of termination and without irreparable damage to the Area or any remaining structure, installations, plant and equipment may be removed by the Parties; and
- (b) all other structures, installations, plant, equipment and non-movable assets of the Parties in the Area shall thereupon become the property of the State without any cost to the State or any liability for the State to pay compensation therefor, and freed and discharged from all mortgages and other encumbrances. All materials supplies and other movable assets of the Parties in the Area which are fully depreciated for tax purposes shall likewise become the property of the State, but any such materials, supplies and other movable assets which are not fully depreciated for tax purposes shall be offered by the Parties for sale to the State at their depreciated value.

26.6 The Oil Companies shall do all such things as the State may reasonably require to give effect to the provisions of this Article 26 and the Oil Companies shall make available to the State the results of the Investigations and Studies to the extent that they have been carried out by the Oil Companies before the date of termination.

26.7 This Article 26 shall continue in force notwithstanding the termination of the rest of this Agreement and may be sued upon or enforced against the Oil Companies.

26.8 Termination of this Agreement under this Article 26 shall be without prejudice to any rights of any of the Parties for any antecedent breach of covenant or agreement.

26.9 Notwithstanding anything to the contrary contained herein, should any law, statute or regulation be passed in Papua New Guinea or become effective in Papua New Guinea, subsequent to 31st March 1977, and should such law, statute or regulation abrogate or materially alter the fundamental contractual rights or obligations of the Oil Companies hereunder, the Oil Companies shall have the right to give the State 60 days notice of their intention to terminate this Agreement without further obligation to the State except as to rights or liabilities in respect of any antecedent breach of this Agreement.

ARTICLE 27 AMENDMENTS TO OPERATING AGREEMENT

27.1 For the purposes of this Article 27 the Operating Agreement shall be deemed to apply only in respect of the Area, the Licence or any Development Licence.

27.2 The Parties shall commence as soon as practicable to negotiate in good faith with the objective of agreeing on the form and content of a Joint Operating Agreement to accord substantially with the provisions of the Operating Agreement but to reflect:

- (a) changes in the parties bound thereby and the circumstances of their association, and
- (b) the possible acquisition by the State of a Venture Interest, and
- (c) amendments necessary to give effect to the provisions of this Agreement.

27.3 If the Parties have not executed the Joint Operating Agreement at the date the State elects to acquire a Venture Interest under Clause 13.3 the State shall as and from that date be deemed to be a party to the Operating Agreement with full rights to attend and vote at all Operating Committee Meetings.

27.4 After the date of this Agreement the Oil Companies may not amend or replace the Operating Agreement without the approval of the State.

SCHEDULE 5.—*continued.*

27.5 Without limiting the generality of the foregoing the Parties agree that Article VII shall be deleted in its entirety and :

(a) the following articles or clauses of the Operating Agreement should be reviewed for the purposes of Clauses 27.2—

Clause 5.1, 6.2, and 6.3

Articles IX, X, XI, XII, XIII, and XVI; and

(b) that additional provisions to included in the Joint Operating Agreement to provide for Operations by less than all parties to that Agreement.

ARTICLE 28 MISCELLANEOUS

28.1 No stamp duty or other fees or charges shall be payable to the State in respect of any assignment or transfer of any Participating Interest or Venture Interest in the Licence or the Venture Assets by an Oil Company to the State or to an Affiliated Corporation incorporated in Papua New Guinea if such assignment is required to comply with the provisions of the Acts.

28.2 Subject to considerations of national security the State shall grant to the Oil Companies such licences, permits and other rights and exemptions as are within its power to grant and which reasonably may be required by the Oil Companies to enable the Oil Companies to fulfil their obligations and enjoy their rights and benefits under the Licence, the Acts, or this Agreement.

28.3 If the State elects to acquire a Venture Interest thereafter the Parties shall own all the Venture Assets as tenants in common, however, the expenditure of the Oil Companies under this Agreement shall be shown on the accounting records of the Oil Companies entirely as expenses, charges, and costs of the Oil Companies in proportion to their respective Participating Interests and shall be reflected for purposes of the fiscal dispositions of the applicable United States law in the balance sheet and profit and loss accounts of only the Oil Companies.

28.4 Whether an election shall be made to have this Venture excluded from the application of the provisions of Sub-chapter K of Chapter 1 of Sub-title A of the United States Internal Revenue Code of 1954, shall be determined by EPNG for each Calendar Year during which EPNG has incurred expenditures under Article 13. The initial determination shall be made and furnished in writing to the other Parties no later than 15th April, 1977, and if requested by the Operator to do so, the State will execute a tax agreement for United States tax purposes in a form to be approved by the Parties.

28.5 Consistent with requirements of the law and national security the State shall use its best efforts to have foreign workers and their dependants to be employed in the Operations in accordance with the approved training and localisation programme expeditiously granted such permits as may be necessary to authorise them to enter, re-enter, move within, remain in and depart from Papua New Guinea and to work on or in connection with the Operations.

ARTICLE 29 NATURAL GAS AND GAS LIQUIDS

29.1 It shall be the responsibility of the Oil Companies to determine whether production of Natural Gas or Natural Gas Liquids is commercial and whether or not to construct and install facilities to enable production of such Natural Gas or Natural Gas Liquids.

29.2 Natural Gas and Natural Gas Liquids will be disposed of by the Parties at the first point of measurement downstream from the outlet flange of the field gas separator in the Area beyond which point the State's Venture Interest shall cease.

29.3 Norm Price for all purposes for Natural Gas and Natural Gas Liquids will be the price specified in contracts for its sale entered into with the prior approval of the State which will not be unreasonably withheld.

29.4 Subject to the absence of Regulations to the contrary under the Acts the Oil Companies may flare gas necessarily produced with crude oil and not needed in the Operations and the sale of which is not economically justified.

29.5 The State recognises that its election to acquire up to a 22.5% Venture Interest may prevent the Oil Companies from producing on a commercial basis Natural Gas or Gas Liquids discovered in the Area. Therefore, if the Oil Companies in a proposal under Clause 7.1 produce evidence that such Natural Gas or Gas Liquids cannot be produced on a commercial basis if the State elects to acquire a 22.5% Venture Interest, the State will negotiate in good faith with the intention of agreeing on such

SCHEDULE 5.—*continued.*

lesser Venture Interest as will allow a Natural Gas or Gas Liquids project to proceed on a commercial basis.

ARTICLE 30 TITLES

30.1 Subject to Clause 30.2 the provisions of the Offshore Act and each of them shall apply *mutatis mutandis* to and in respect of the Licence in lieu of the provisions of the Onshore Act as if the Licence were a Petroleum Prospecting Licence issued pursuant to and in accordance with Section 18 of the Offshore Act.

30.2 The following provisions of the Onshore Act, that is to say :

- Section 6;
- Sections 11 to 24 inclusive, except for sub-section (3)(d) of Section 21;
- Sections 26 to 28 inclusive;
- Sections 30 to 34 inclusive;
- Sections 37 and 38;
- Sections 53 to 57 inclusive;
- Sections 59 to 64 inclusive;
- Sections 71 to 74 inclusive;
- Sections 77 and 78;
- Section 80;
- Section 82;
- Sections 86 to 91 inclusive;
- Sections 94 and 95;
- Section 99; and
- Section 100, and applicable regulations made thereunder;

shall apply *mutatis mutandis* to and in respect of the Licence PROVIDED THAT in the event of conflict or inconsistency between—

- (a) the definitions contained in Section 6 of the Onshore Act and a definition contained in Section 1 of the Offshore Act the latter shall prevail and apply to the Licence accordingly, and
- (b) the provisions of the Offshore Act and the provisions of the Onshore Act in respect to the rights of the Oil Companies to access to and occupation of the surface of the Area the latter shall prevail and apply to the Licence accordingly.

30.3 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament a Bill for an Act to regulate exploration for and production of Petroleum in those areas of Papua New Guinea other than the offshore area within the meaning of the Offshore Act. It is the State's intention that such Bill substantially reflects the spirit of this Agreement and contains no provisions which, if enacted, would materially affect the rights and obligations of the Oil Companies hereunder.

30.4 If new legislation providing for exploration for and production of Petroleum in the onshore area of Papua New Guinea is not enacted by the National Parliament and operative prior to the Oil Companies notifying the State of their intention to nominate a Block under section 28 of the Offshore Act, all the provisions of the Offshore Act shall thereupon cease to apply to the Licence, the provisions of the Onshore Act specified in clause 30.2 shall continue to apply thereto and the remaining provisions of the Onshore Act shall thereupon apply to and in respect of the Licence to the extent to which they or any of them are or is capable of so applying and the Minister.

30.5 The State will prepare and submit to the Oil Companies a map of the Area showing the subdivision of the Area into Blocks. Such subdivision will be consistent with the existing subdivision of the area of the Territorial Sea and Contiental Shelf of Papua New Guinea.

30.6 Notwithstanding anything contained in the Onshore Act or the Offshore Act, the Licence shall be deemed to have been granted to the Oil Companies for a term of six (6) years commencing on the first day of September, 1975.

SCHEDULE 5.—*continued*.

30.7 If the Oil Companies have complied with the Licence Conditions and provisions of the Acts in so far as they apply to the Licences and the Area to the date of commencement of the Act referred to in Clause 30.3 the State shall forthwith after such commencement grant to the Oil Companies under such new Act, and in substitution for the Licence, the necessary rights and titles to authorise the Oil Companies to continue to explore and prospect for Petroleum or to produce Petroleum discovered within the Area on terms not less favourable than those previously applicable.

IN WITNESS whereof this Agreement has been duly executed by the Parties, the day and year first hereinbefore written.

Signed for and on behalf of the Independent State of Papua New Guinea by the Governor General, Sir John Guise, acting with and in accordance with the advice of the National Executive Council:

John Guise

C. Van Lieshout
Witness

John Guise,
Governor General
Thomas Adame, Jr.

Signed, sealed and delivered on behalf of Sunray Australian Oil Company Inc., by its duly constituted Attorney in the presence of:

Wendell J. Bares
Witness

Walter E. Baker

Signed, sealed and delivered on behalf of Arco Australia Limited by its duly constituted Attorney in the presence of:

Dezsee J. Hajdu
Witness

W.M. Blanshard

The Common Seal of Canadian Superior Oil (Aust.) Pty. Ltd., was hereunto affixed by authority of the directors in the presence of:

N. V. Ledingham
Secretary

Director

Signed, sealed and delivered on behalf of Australian Superior Oil Company Limited by its duly constituted Attorney in the presence of:

W.M. Blanshard

N. V. Ledingham
Witness

K. Richards

Signed, sealed and delivered on behalf of Esso Papua New Guinea Inc., by its duly constituted Attorney in the presence of:

F. M. Hooke
Witness

SCHEDULE 6.

Sec. 1.

Agreement No. 6.

THIS AGREEMENT made the _____ day of _____, 1976 BETWEEN THE INDEPENDENT STATE OF PAPUA NEW GUINEA (herein called "the State") of the first part and ARCO AUSTRALIA LIMITED (herein called "Arco"), AUSTRALIAN SUPERIOR OIL COMPANY LIMITED (herein called "Australian"), CANADIAN SUPERIOR OIL (AUST.) PTY. LTD. (herein called "Canadian"), ESSO PAPUA NEW GUINEA INC. (herein called "EPNG"), and SUNRAY AUSTRALIAN OIL CO. (herein called "Sunray") (herein called collectively "the Oil Companies" which expression shall be taken to refer also to each such company severally) of the second part:

SCHEDULE 6.—*continued.*

WHEREAS

A. Permit number 69 issued pursuant to the Petroleum (Prospecting and Mining) Act 1951 is held by the Oil Companies subject to their respective rights and obligations as specified :

- (i) in the said Petroleum (Prospecting and Mining) Act 1951;
- (ii) in the said Permit number 69;
- (iii) in an agreement dated the 2nd day of May, 1964, among Tasman Oil Pty. Ltd., Anacapa Corporation, Sunray Dx Oil Company, and Phillips Petroleum Company; and
- (iv) in an agreement dated the 9th day of May, 1975 among Arco, Australian, Canadian, and Sunray of the one part and EPNG of the other part,

in each case as varied by this Agreement;

B. The State recognises :

- (i) that discovery of commercial quantities of Petroleum in Papua New Guinea will be of major economic significance to the people of Papua New Guinea,
- (ii) that to enhance the prospects of such discovery, the State intends to rely on and permit companies such as the Oil Companies to explore for and produce any Petroleum discoveries,
- (iii) that the Oil Companies will spend large sums of money on exploration for Petroleum and on development of facilities to produce any commercial quantities of Petroleum discovered, and
- (iv) that the ability of the Oil Companies to spend amounts of money referred to above will be dependent in part upon the certainty and long term stability of the terms upon which the State permits the Oil Companies to operate within Papua New Guinea.

C. The State is anxious to ensure that the development of any commercial discoveries of Petroleum will secure the maximum benefit for and adequately contribute to the advancement and the social and economic welfare of, the people of Papua New Guinea, including the people in the vicinity of the Oil Companies' operations in a manner consistent with their needs and the protection of their environment.

D. The State proposes to introduce and sponsor in the National Parliament by its first sitting in 1977, a Bill for an Act to provide for exploration for and production of Petroleum in areas other than the offshore area within the meaning of the Petroleum (Submerged Lands) Act 1975, and it is the State's intention that such Bill substantially reflect the spirit of this Agreement and contain no provisions which if enacted would materially affect the rights and obligations of the Oil Companies.

E. The State and the Oil Companies have agreed on a number of matters which are set out in this Agreement and while acknowledging that legislative sovereignty in Papua New Guinea is vested in the National Parliament wish the matters agreed upon to be an enduring arrangement and do not intend that they should be altered other than by agreement between the State and the Oil Companies.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS :

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise requires :

- "Accumulated Liability" has the meaning ascribed to it in Clause 13.1;
- "Acts" means both the Offshore Act and the Onshore Act;
- "Affiliated Corporation" means, in relation to any Party a related company of that Party and "related company" has the same meaning ascribed thereto by Section 6(3) of the Companies Act 1963;
- "the Agreement" means this Agreement together with the Annexures hereto;
- "Approved Proposals" means proposals or amended proposals submitted to the State pursuant to the provisions of the Offshore Act and approved by the State pursuant to that Act;
- "the Area" means the area covered by the Prospecting Licence;

SCHEDULE 6.—*continued.*

- "Budget Year" means a calendar year commencing on 1st January and ending on the next succeeding 31st December;
- "Citizen" means a citizen, (whether natural born or naturalised) of the State;
- "Development" means activities in or in relation to a Development Area carried on in accordance with the Operating Agreement or Joint Operating Agreement for the purpose of constructing and installing the facilities and infrastructure necessary to enable Production from the Area;
- "Development Area" means the Blocks comprising a Development Licence;
- "Development Licence" means a Development Licence granted under the Offshore Act or a lease granted under the Onshore Act within the Licence Area;
- "Exploration" and "Prospecting" mean activities in or in relation to the Area carried on for the purpose of identifying in the first instance the location of any Petroleum traps in the Area and thereafter in relation to each Petroleum trap to determine whether it constitutes a reservoir containing sufficient Petroleum to justify Development;
- "Foregone Production" has the meaning ascribed to it in Clause 13.1;
- "Investigations and Studies" means the investigations and studies required by the Minister under section 28A of the Offshore Act;
- "Joint Operating Agreement" means the agreement to be negotiated by the Parties in substitution for the Operating Agreement;
- "Licence" and "Petroleum Licence" mean Permit number 69 or any renewal, extension or replacement thereof or any petroleum licence issued to the Oil Companies over any of the Area pursuant to the Onshore Act;
- "Licence Conditions" means those conditions included in the Licence or any Development Licence by the Minister as provided for in the Offshore Act;
- "Licence Year" means a 12 month period commencing in the first instance on 1st September, 1975 and thereafter the 12 month period commencing on 1st September in each year;
- "Offshore Act" means the Petroleum (Submerged Lands) Act 1975;
- "Onshore Act" means the Petroleum (Prospecting and Mining) Act 1951;
- "Operating Agreement" means the agreement dated the 2nd day of January 1964 among Tasman Oil Pty. Ltd., Anacapa Corporation, Sunray DX Oil Company and Phillips Petroleum Company, as amended prior to the date hereof and as registered with the Minister for Mines and Energy, and to which all the Oil Companies are now deemed to be, or are, parties, as further amended from time to time by the Parties;
- "Operating Committee" has the same meaning in this Agreement as the meaning ascribed to it in the Operating Agreement;
- "Operations" means operations and activities carried out under the Operating Agreement and the Joint Operating Agreement and includes Exploration, Development and Producing or any of them as the context permits;
- "Party" or "Parties" means respectively a party or parties to this Agreement and their respective successors and permitted assigns;
- "Participating Interest" means the undivided percentage interest of each of the Oil Companies in the Venture Assets immediately prior to the assignment to the State of its Venture Interest. At the date of this Agreement the respective Participating Interests are:
- | | |
|------------|-------|
| Arco | 10.0% |
| Australian | 7.5% |
| Canadian | 7.5% |
| EPNG | 62.5% |
| Sunray | 12.5% |
- "Petroleum Income Tax" and "Additional Profits Tax" have the same meaning in this Agreement as the meaning ascribed to them in the Income Tax Act 1959;
- "Positive Day" has the meaning ascribed to it in Clause 13.1;

SCHEDULE 6.—*continued.*

"Producing" means activities involved in or in relation to producing, treating, transmitting, transporting, storing, or handling of Petroleum produced from within the Area, and includes extraction of Petroleum by any permitted method, and all work and operations necessary or convenient for the foregoing;

"Production Share" has the meaning ascribed to it in Clause 13.1;

"Shortfall Period" has the meaning ascribed to it in Clause 13.1;

"Simple Interest" has the meaning ascribed to it in Clause 13.1;

"Specified Volume" has the meaning ascribed to it in Clause 14.1;

"Venture Assets" means Property whether real or personal owned at the date the State gives notice under Clause 13.3 or thereafter acquired as tenants in common—

(a) by the Oil Companies in proportion to their respective Participating Interest until the State elects to acquire its Venture Interest, and thereafter

(b) by the Parties in proportion to their respective Venture Interests;

and includes the Licence, any Development Licences granted over the Area, materials, plant, and equipment and any Petroleum discovered in the Area;

"Venture Interest" means the undivided percentage interest from time to time in the Venture Assets and Operations of a Party after the assignment to the State of a percentage interest in the Venture Assets and Operations;

"Works and Facilities" and "Works or Facilities" have the meaning ascribed to them in Article 15;

"Block", "Norm Price", "Petroleum", and "Royalty" have the same meaning in this Agreement as the meaning ascribed to them in the Offshore Act.

ARTICLE 2 INTERPRETATION

2.1 In this Agreement unless the context otherwise requires—

(a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;

(b) the headings do not affect the interpretation or construction;

(c) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefore and any regulations for the time being in force thereunder;

(d) words importing the singular include the plural and vice versa;

(e) words importing any gender include the other genders;

(f) references to a person include a corporation and vice versa;

(g) reference to an Article, Clause or Subclause is to an Article, Clause or Subclause of this Agreement;

(h) reference to a Minister shall mean the Minister for the time being having responsibility for the particular subject matter according to the context.

2.2 Where any provision of this Agreement constitutes an undertaking by one of the Parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right, concession or advantage that Party shall by its execution hereof be deemed to have covenanted and agreed with the other Party accordingly and where any such provision constitutes such an undertaking by the Oil Companies there shall be deemed to be a covenant and agreement by all of them jointly and each of them severally in respect of such undertaking.

ARTICLE 3 EFFECT ON AND OF OTHER LAWS

3.1 The Articles and Clauses listed in Clause 3.2 are to have the force of law and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea, and no law at any time in force in Papua New Guinea made after the commencement of this Agreement shall affect those Articles and Clauses:

(a) unless the contrary intention appears expressly in that law; or

SCHEDULE 6.—*continued.*

- (b) except as provided by this Agreement.
- 3.2 The provisions of Clause 3.1 shall apply to the following—
 - (a) Article 5
 - (b) Article 6
 - (c) Clause 17.6
 - (d) Clause 28.1
 - (e) Article 30 except for Clause 30.3 and 30.5.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament in a form agreed upon by the Parties, a Bill for an Act to approve this Agreement and to give the force of law to the Articles and Clauses specified in Clause 3.2.

4.2 This Agreement shall be void and of no effect and none of the Parties shall have any claim against any other Party with respect to any matter or thing arising out of, done or performed under this Agreement unless the Act referred to in Subclause 4.1(a) shall come into effect prior to 31st day of March, 1977.

ARTICLE 5 CURRENCY

5.1 Words and expressions which have a certain meaning where used in the Foreign Exchange Regulations made under the Central Banking Act 1973 shall have the same meaning where used in this Article 5.

5.2 The Oil Companies shall be entitled to retain in foreign currency outside Papua New Guinea proceeds of sale of all Petroleum produced by the Oil Companies and exported overseas to the extent necessary to enable the Oil Companies to meet their obligations to pay foreign currency during the ensuing three (3) months in respect of:

- (a) the principal of, interest and services charges on and other fees and expenses related to loans made to the Oil Companies in foreign currency for purposes of their operations under this Agreement by persons not resident in Papua New Guinea, where the terms of such loans have been approved by the Bank of Papua New Guinea under the Foreign Exchange Regulations; and
- (b) commitments in foreign currency to persons not resident in Papua New Guinea for the supply of goods and services to the Oil Companies (including capital goods and services of foreign employees and consultants); and
- (c) commitments in respect of dividends payable to shareholders resident outside Papua New Guinea;

provided that the amounts concerned are established to the reasonable satisfaction of the State.

5.3 Where amounts of foreign currency expected to be required by any of the Oil Companies for the purposes described in Clause 5.2 in any three month period exceed the amounts of foreign currency earnings expected to be received by any of the Oil Companies in that period, such Oil Company may request the State to hold foreign currency for it to the level of the possible shortfall but not exceeding foreign currency requirements for purposes of loan repayments whereupon—

- (a) the Oil Company concerned shall notify the State of the amount of the expected shortfall and the currencies in which the shortfall is likely to occur;
- (b) the State, after consultation with the Bank of Papua New Guinea, will advise the Oil Company concerned of the Kina equivalent of the shortfall at the exchange rate then prevailing;
- (c) the Oil Company concerned will lend to the State and the State will borrow from the Oil Company concerned that amount in Kina;
- (d) the State through the Bank of Papua New Guinea will hold deposits of foreign exchange in the currency to which payments will be made and of amounts sufficient to make such payments in accordance with the notice which the Oil Company concerned has given to the State under Subclause 5.3(a);

SCHEDULE 6.—*continued.*

- (e) the State will pay interest to the Oil Company concerned on such foreign currency deposits at a rate per annum which is the rate which the Bank of Papua New Guinea earns for the State on those deposits less one half of one percent (0.5%) per annum to cover the Bank of Papua New Guinea's administrative and overhead costs; and
- (f) the State will repay any loan made by the Oil Company concerned under this Clause 5.3 in the currencies in which the deposits are held at the time payments in those currencies by the Oil Company concerned are due, such amounts in foreign currency to be applied in discharge of the Kina amount of the original loan at the exchange rate ruling at the time of the original loan.

5.4 The Oil Companies will not be subject to or limited by regulations or statutes relating to foreign exchange and the control thereof that are less favourable to the Oil Companies or any of them than the regulations and statutes of general application to persons dealing with foreign exchange in Papua New Guinea nor will regulations or statutes relating to foreign exchange and the control thereof be applied in relation to any of the Oil Companies in a manner less favourable to them than the manner in which they are generally applied to others to whom they are applicable.

5.5 At all times the Oil Companies shall have the right to buy and sell Kina at rates of exchange no less favourable than those available to other commercial buyers and sellers of that currency.

5.6 The Oil Companies may establish foreign currency accounts in Papua New Guinea PROVIDED THAT such deposits do not contravene Exchange Control requirements and contain deposits considered by the Government to be reasonable in relation to the Oil Companies' needs.

5.7 Unless otherwise directed by the State and except as provided in Clauses 5.2 and 5.6, each Oil Company shall convert all its foreign currency earnings from Operations under this Agreement into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Oil Company for its use.

5.8 Notwithstanding anything to the contrary in the Acts, the National Investment Development Authority Act, the Income Tax Act or other legislation applying to the Operations, the Oil Companies may—

- (a) keep their books of account and other records in both Kina and United States dollars; and
- (b) make all calculations under any statute or regulation (including but without limiting the generality of the foregoing calculations for Royalty, Petroleum Income Tax, Additional Profits Tax) and for Foregone Production, and Specified Volume and other matters arising under this Agreement, the Operating Agreement and the Joint Operating Agreement in Kina or United States dollars. When applying for the first Development Licence within the Area each Oil Company shall elect to make such calculations thereafter in either Kina or United States dollars. If such calculations are made in United States dollars the State shall accept payment of such taxes and other moneys in Kina converted from United States dollars as provided in the following formula :

$$K = S \times D$$

where,

K means the sum in Kina payable to the State for any of the stated purposes; S means the sum expressed in United States dollars to be converted to Kina; D means the mean of the average of the Daily Published Buying and Selling Rates of Kina against the United States dollar during the Budget Year, or in the case of Royalty during the month, for which the calculation is being made. The "Daily Published Buying and Selling Rates" means the buying and selling rates from time to time published by the Bank of Papua New Guinea or such other buying and selling rates as may from time to time be published and recognised by the State as the official buying and selling rate. In calculating the mean of the average of the Daily Published Buying and Selling Rates the average of the buying and selling rates applying on each day on which the Bank of Papua New Guinea is open to the public for business transactions shall be aggregated and the result divided by that same number of days.

SCHEDULE 6.—*continued.*

ARTICLE 6 NIDA REGISTRATION

6.1 Notwithstanding anything expressly or impliedly to the contrary contained in the National Investment and Development Act 1974 and in particular notwithstanding the provisions of Section 4 of that Act, the Oil Companies from the date of issue of the first Development Licence shall be deemed to be registered under that Act in respect of the activities of Exploration, Development and Producing (but not including refining of crude oil) and other activities necessarily incidental thereto and contemplated by or required to carry out Exploration or the Approved Proposals, on the following conditions :

- (a) the Oil Companies shall not without the approval of the National Investment and Development Authority carry on any activities except those necessarily incidental to Exploration or the Approved Proposals; and
- (b) the registration shall be for the duration of this Agreement and shall be deemed to be cancelled upon the termination of this Agreement for any reason whatsoever.

ARTICLE 7 PROPOSALS

7.1 The Oil Companies shall submit to the State in support of any application for a Development Licence and in addition to detailed proposals as required by section 30 of the Offshore Act :

- (a) the financial analysis of prospective cash flows of the Operations;
- (b) matters which the Oil Companies may consider relevant to support a request pursuant to Clause 29.5 that the State elect to acquire a Venture Interest less than the maximum provided for in Clause 13.3.

7.2 The State shall treat as confidential all material and information supplied to the State under Subclause 7.1(a) and under Section 28A(3) of the Offshore Act being the results of studies referred to in Section 28A(2)(a) and (b) of that Act PROVIDED THAT if this Agreement is terminated as provided in Article 26 the material and information shall become the property of the State and may be used by the State in such manner as it thinks fit.

7.3 If the Oil Companies desire to modify, expand or otherwise substantially vary their activities beyond those specified in any Approved Proposals, either by undertaking any new activity or by a major expansion of activities specified in the Approved Proposals, the Oil Companies shall give notice of such desire to the State and within two months thereafter shall submit to the State detailed proposals in respect of the desired modification, expansion or variation.

ARTICLE 8 CONSIDERATION OF PROPOSALS

8.1 The State shall not unreasonably withhold its approval to the proposals referred to in Subsection 30(1)(c) of the Offshore Act and if the State approves such proposals without amendment, it shall notify the Oil Companies accordingly at the same time as the Minister serves on the Oil Companies the instrument under section 31 of the Offshore Act.

8.2 If the State does not intend to approve without amendment the proposals referred to in Subsection 30(1)(c) of the Offshore Act, the State within three (3) months of receipt of such proposals shall notify the Oil Companies that it wishes to :—

- (a) defer consideration of or decision upon the same until such time as the Oil Companies submit a further proposal or proposals in respect of some matter mentioned in Section 28A of the Offshore Act not covered by the said proposals and in such case the State shall disclose to the Oil Companies the reasons therefor and specify the further proposal or proposals; or
- (b) approve the said proposals subject to the Oil Companies making such alteration thereto or complying with such conditions as the State thinks reasonable and in such a case the State shall disclose its reasons for requiring such alterations or imposing such conditions.

8.3 If the decision of the State is to be as mentioned in Clause 8.2 the State shall afford the Oil Companies full opportunity to consult with it and should the Oil Companies so desire, to submit new proposals either generally or in respect of some particular matter.

ARTICLE 9 TRAINING AND LOCALISATION

9.1 The Oil Companies holding a Developing Licence in regard to any part of the Area shall progressively replace foreign personnel (employed with the approval of the State) with Citizens, in

SCHEDULE 6.—*continued*.

accordance with the training and localisation programme which forms part of the report furnished to the Minister under section 28A of the Offshore Act PROVIDED THAT if the training and localisation programme is disrupted by circumstances or events (whether or not they constitute force majeure within the meaning of Article 11) which make it difficult or impossible for the Oil Companies to comply with their obligations under such programme, the Oil Companies may give notice thereof to the State, together with alternative or revised plans to achieve the objects of the part of the training and localisation programme which is affected, and the State within one (1) month of that notice shall either—

- (a) approve those alternative or revised plans; or
- (b) meet with the Oil Companies to discuss the alternative or revised plans. If such discussions do not lead to the State's approval of alternative or revised plans, which approvals shall not unreasonably be withheld, the Oil Companies shall be bound by their original obligations under the training and localisation programme, except that they shall not be liable for any delay caused by following the procedures under this Subclause and subject always to the Oil Companies being able to claim force majeure under Article 11.

9.2 The State shall give such assistance to the Oil Companies as is reasonably required in the formulation of their training and localisation programme and in recruitment of Citizens, and under normal conditions shall make available its facilities for vocational and technical training.

9.3 Training and instruction pursuant to the training and localisation programme shall be given by employees or agents of the Oil Companies who are proficient in the English language.

9.4 (a) The Oil Companies holding a Development Licence jointly shall arrange in co-operation with the State assignments for the State's Employees, not to exceed more than ten (10) in any year or at any time, to the Oil Companies' operations whether in Papua New Guinea or overseas, to assist in training such employees for managerial, professional, and technical positions for the State PROVIDED THAT if any Oil Company being a party to this Agreement has fulfilled or partly fulfilled a like obligation under any like agreement with the State to which the Oil Companies are also a party this clause 9.4 shall be deemed to have been fulfilled to the extent that such like obligations have been fulfilled by the Oil Companies.

- (b) The salaries and other expenses of such State employees shall be borne by the State PROVIDED THAT whilst any such State employee is directly engaged in the Oil Companies' operations, salary and expenses of such employee shall be borne by the Oil Companies.

9.5 As far as is practicable the Oil Companies shall give first preference in employment to Citizens whose place of origin is in the area of any Development Licence.

ARTICLE 10 LOCAL SUPPLIES AND BUSINESS DEVELOPMENT

10.1 The Oil Companies shall:

- (a) use and purchase goods and services supplied, produced, or manufactured in Papua New Guinea whenever the same can be obtained at competitive prices and on competitive terms, conditions and delivery dates and are in all substantive respects of a quality comparable with those available from outside Papua New Guinea; and
- (b) encourage and assist Citizens desirous of establishing businesses providing goods and services for the Oil Companies' operations and for any town constructed primarily for purposes of the Oil Companies' operations and the residents thereof; PROVIDED THAT the Oil Companies shall not be obliged or called upon to grant or lend money to any Papua New Guinea Citizen or any local enterprise; and
- (c) make maximum use of Papua New Guinea sub-contractors where services of comparable standards with those obtainable elsewhere inside or outside Papua New Guinea are available from them at competitive prices, and on competitive terms, conditions, and delivery or performance dates; and
- (d) where it is necessary to import vehicles, machinery, plant or equipment, and such items are not purchased direct from the manufacturer by the Oil Companies, effect the purchase of such items through traders operating in Papua New Guinea, PROVIDED THAT such items are available through such traders at a competitive price, and on competitive terms, conditions, and delivery date and provided always that the Oil Companies shall not

SCHEDULE 6.—*continued.*

be bound to comply with this Subclause in any case where compliance would adversely affect the financing of the Oil Companies' operations or any part thereof.

10.2 Insofar as it is practicable, the Oil Companies shall give first preference in their assistance under Subclauses (b) and (c) of Clause 10.1 to Citizens originating from the sub-province in which Petroleum is produced.

ARTICLE 11 FORCE MAJEURE

11.1 Any failure on the part of a Party hereto to comply with any of the terms, conditions, and provisions of this Agreement (except any obligation of the Oil Company to make payment of money to the State) shall not be grounds for termination or give another Party hereto any claim for damages insofar as such failure arises from force majeure, if the first-mentioned Party has taken all appropriate precautions, due care and reasonable alternative measures with objective of avoiding such failure and of carrying out its obligations under this Agreement. That Party shall take all reasonable measures to remove such inability to fulfil terms and conditions of this Agreement with the minimum of delay.

11.2 For the purposes of this Agreement, force majeure shall include war, insurrection, civil disturbances, blockades, riots, embargoes, strikes, bans, limitations, and other labour disputes (PROVIDED THAT the Oil Companies shall not be required to agree to a settlement of any particular labour dispute solely for the purposes of terminating a condition of force majeure), land disputes, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fires, lightning, breakdown of machinery or facilities, shortages of labour, transportation, fuel, power or essential plant equipment, or materials or any other event which the party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Oil Companies shall include any delay or failure by the State to give any consent or approval required under this Agreement or under any applicable law, but shall not include any event caused by the failure to observe good oilfield practice nor any event caused by negligence in the provision of adequate supervision of the Operation.

11.3 The Oil Companies shall notify the State on their becoming aware of an event of force majeure affecting their ability to fulfil the terms and conditions of this Agreement, or any event which may endanger the natural resources in the Area and shall similarly notify the State on the restoration of normal conditions.

ARTICLE 12 EXTENSIONS OF TIME

12.1 Notwithstanding any provision of this Agreement, the State may at the request of the Oil Companies from time to time extend any period referred to in this Agreement for such longer period or substitute for any date referred to in this Agreement such later date as it thinks fit, notwithstanding that at the time of such extension or substitution such period may have expired or such date may have been passed.

ARTICLE 13 STATE PARTICIPATION

13.1 In this Agreement, unless the context otherwise requires :

"Accumulated Liability" means an amount calculated in accordance with the following formula :

$$AL = SVI (E + D + OC) + S - F$$

where,

AL is the State's Accumulated Liability to an Oil Company;

SVI is the State's Venture Interest expressed as a fraction;

E is the amount of allowable exploration and prospecting expenditure as defined in Subsection 164E(1) of the Income Tax Act 1951 or which would have been allowable but for an election under Section 164T of that Act spent by the Oil Company in or in relation to the area between September 1, 1975 and prior to the issue of the first development licence over part of the Area and in recognition of exploration and prospecting operations conducted by the Parties pursuant to rights or titles held by them prior to September 1, 1975 such additional amounts of allowable exploration and prospecting expenditure, defined as aforesaid, spent by the Oil Company in or in relation to the Area prior to September 1, 1975 and within 11 years prior to the issue of the first development licence over part of the Area, PROVIDED THAT if the term of licence is extended as provided in Section

SCHEDULE 6.—*continued.*

23A of the Offshore Act thereafter the amount of allowable exploration and prospecting expenditure, defined as aforesaid, shall be reduced each year during such extended term by the amount borne by the Oil Company of the total amount expended with the approval of the Operating Committee on Operations during the 12th year preceding that year.

D is the sum of the amounts of allowable capital expenditure and allowable exploration and prospecting expenditure as defined in Sections 164A and 164E of the Income Tax Act 1951 or which would have been allowable but for the election under Section 164T of that Act spent by the Oil Company in or in relation to the Area after the issue of a Development Licence and during a Shortfall Period;

OC is the amount spent by the Oil Companies on Operations during a Shortfall Period and not included in E or D;

S is the amount paid by the Oil Company to the State under Clause 13.7;

F is the value at Norm Price of Foregone Production received by the Oil Company less any amount paid under Subclauses 13.8(a) and (b);

"Foregone Production" means the volume of the State's Production Share foregone in favour of the Oil Companies or any of them in satisfaction or part satisfaction of the items referred to in Clause 13.8;

"Positive Day" means a day on which the State's Accumulated Liability to an Oil Company is reduced to zero;

"Production Share" means a proportion of the Petroleum produced from within the Area equal to a Party's Venture Interest which a Party from time may be entitled to receive and separately dispose of;

"Shortfall Period" means a continuous interval of time during which the State has and continues to have an Accumulated Liability to any one or more of the Oil Companies;

"Simple Interest" means a percentage interest rate equal to 5 percentage points in excess of—

(a) the annual rate of interest on domestic corporation borrowings rated AAA in the U.S.A. as published in the Survey of Current Business by the U.S.A. Department of Commerce—Bureau of Economic Analysis applying at the date of issue of the first Development Licence issued over part of the Area, such rate to be adjusted quarterly; or

(b) if such rate is not published, a comparable rate determined in such manner as the Parties shall agree;

13.2 (a) The Parties shall settle the terms of the Joint Operating Agreement as soon as practicable. Except as provided in Article 27, that Agreement shall accord substantially with the Operating Agreement but shall be subject to the terms of this Agreement and in the event of inconsistency, this Agreement shall prevail;

(b) The Joint Operating Agreement shall take effect when the last of the Parties executes such Agreement.

13.3 (a) The State may acquire an unencumbered interest in the Venture Assets and Operations to a nominated percentage (not exceeding 22½ percent either of such Venture Assets and Operations or of the Participating Interest of any particular Oil Company) by giving notice to each Oil Company to that effect within four (4) months after the issue of the first Development Licence over part of the Area. On and from the first day of the calendar month next following the month in which the State gave notice as aforesaid the Venture Interest of each Oil Company shall be equal to its Participating Interest appropriately reduced by the interest acquired by the State;

(b) As soon as practicable after the State has given notice pursuant to Subclause 13.3(a), the Parties shall execute the Joint Operating Agreement (if not already executed) and shall do all things necessary formally to vest that Interest in the State;

(c) If within two (2) months after the issue of the first Development Licence over part of the Area the State has not given notice under Subclause (a) the Oil Companies within the third month after the issue of that Development Licence shall give notice to the Prime Minister that such election has not been made by the State. Thereafter if a notice under

SCHEDULE 6.—*continued.*

Subclause (a) is not received by the Oil Companies within the time specified in Subclause (a) the State shall be deemed to have elected not to acquire a Venture Interest.

- (d) Forthwith after giving notice under Subclause 13.3(a) electing to acquire a Venture Interest the State shall be entitled to attend and vote at all meetings of the Operating Committee and to receive notice and agendas for all such meetings.

13.4 Except as otherwise provided in this Agreement each Party shall take in kind its Production Share produced and saved from the Area.

13.5 During each Shortfall Period :—

- (a) the State shall forego its Production Share in favour of those Oil Companies to which the State has for the time being an Accumulated Liability and the said Companies shall be entitled to and shall take all such Foregone Production free of encumbrance in the several proportions which each such Oil Company's respective Venture Interest bears to the sum of the Venture Interest of all such Companies;

- (b) an Oil Company shall be entitled to recoup out of Foregone Production—

(i) the State's Accumulated Liability to such Oil Company; and

- (ii) Simple Interest on the State's Accumulated Liability commencing as the case may be on and from either;

aa. the date of the notice by the State under Clause 13.3, or

bb. the date on which such Oil Company reimburses the State under Clause 13.7; and

computed calendar monthly from the 1st day of each such month on the mean of the balances of Accumulated Liability at the opening of business on the first day and closing of business on the last day of the calendar month for which the calculation is being made PROVIDED THAT in determining the balance of Accumulated Liability at the close of business on the last day of the month, no reduction of the Accumulated Liability for that month shall be taken into account and in lieu thereof the amount of Simple Interest payable for the month shall be reduced by an amount equal to Simple Interest calculated on the amount by which Accumulated Liability is deemed to have been reduced in that month as provided in Sub-clause 13.8(c) computed for the period commencing from the date Accumulated Liability is deemed to have been reduced to the last day of that month; and

- (c) sales of Petroleum produced from the Area by an Oil Company, to which the State has for the time being an Accumulated Liability shall be deemed to have been composed of portion of that Oil Company's Production Share and portion of Foregone Production received by that Oil Company in the respective proportions which that Oil Company's Venture Interest bears to the product of the State's Venture Interest and that said Oil Company's Venture Interest divided by the sum of the Venture Interests of all Oil Companies to which the State had an Accumulated Liability at the time of each such sale.

13.6 (a) Except as provided in Subclause (b) the Parties shall bear all the costs of the Operations in proportion to their respective Venture Interests;

- (b) Subject to Clause 13.10 during each Shortfall Period the Oil Companies shall bear all the costs of the Operations in proportion to their respective Participating Interests until the

SCHEDULE 6.—*continued.*

occurrence of the first Positive Day. Thereafter, during the balance of each such Shortfall Period the said costs shall be borne as follows :

- (i) by each Oil Company to which the State for the time being has no Accumulated Liability—as to a percentage equal to its Venture Interest;

and as to the balance

- (ii) by those other Oil Companies to which the State for the time being has an Accumulated Liability—in the several proportions which each such Company's respective Venture Interest bears to the sum of the Venture Interests of all such Companies PROVIDED THAT if during a Budget Year after a Positive Day all of the Oil Companies to which the State has an Accumulated Liability give notice to the other Oil Companies and produce evidence that the State's Venture Interest share of the costs of the Operations for the Budget Year exceeds the value of its Foregone Production for the same period all Oil Companies shall forthwith commence and thereafter continue to bear the costs of the Operations until the next Positive Day in proportion to their respective Participating Interest.

13.7 If during a Budget Year or part thereof which is not a Shortfall Period, the State gives notice to the Oil Companies and produces evidence that the State's Venture Interest share of the costs of the Operations for the preceeding period of that Budget Year exceed the proceeds received by the State from disposal of the State's Production Share for that period the Oil Companies shall in proportion to their respective Participating Interests and within sixty (60) days after receipt of such notice and evidence reimburse the State the amount of such shortfall.

13.8 Foregone Production taken by an Oil Company shall be applied in the following order of priority :

- (a) to pay Royalty under the Offshore Act on such Foregone Production;
- (b) to pay Simple Interest on the State's Accumulated Liability calculated as provided in Clause 13.5;
- (c) to reduce the Accumulated Liability to the said Oil Company. Any reduction of Accumulated Liability under this Subclause 13.8(c) shall be deemed to be made on the day the Oil Company is to receive payment as provided in any contract of sale for Petroleum, which date shall be consistent with and reflect terms of credit allowed or recognised by the Minister as provided in Section Sch.3.4 of the Offshore Act or as otherwise agreed upon between the State and the Oil Company.

13.9 Any rights under this Agreement in respect of unsatisfied Accumulated Liability shall cease and the State shall not be looked to for recoupment or reimbursement thereof :

- (a) by any Oil Company on termination of this Agreement as provided in Article 26, or
- (b) by an Oil Company upon its withdrawing from this Agreement and surrendering its Participating Interest or Venture Interest in the Licence and in all Development Licences over any part of the Area;

13.10 When electing to acquire its Venture Interest and thereafter at any Operating Committee meeting at which Operations and a Budget are to be agreed upon for a Budget Year, the State may elect to contribute all or part of its Venture Interest share of costs or expenses of any Operations in respect of which an Accumulated Liability would otherwise accrue to any Oil Company.

13.11 Each Oil Company shall within 30 days after the issue of the first Development Licence and thereafter, if the State has a Venture Interest, not less often than half yearly until it shall have recouped the amount of the State's Accumulated Liability, furnish to the State details of and the amount of such Accumulated Liability for the time being. The State may require reasonable verification of such details and amounts including an audit as provided for in the Operating Agreement or the Joint Operating Agreement as the case may be.

13.12 Notwithstanding the provisions of Clause 13.7, if the Operating Committee resolves that a "Petroleum Pool" (which expression shall have the same meaning in this Clause as ascribed to it in the Offshore Act) has been depleted in accordance with good oilfield practice and that to continue Producing from that Petroleum Pool cannot be justified for technical or economic reasons :

- (a) the cost of plugging and abandoning all wells drilled into the Petroleum Pool; and

SCHEDULE 6.—*continued.*

- (b) other costs and expenses paid or incurred in respect of dismantling, removing, disposing of, or otherwise dealing with all structures, installations, plant and equipment which are Venture Assets and which had been required for Producing from that Petroleum Pool;

shall be borne by the Parties in proportion to their respective Venture Interests.

ARTICLE 14 DISPOSAL OF STATE'S PRODUCTION SHARE

14.1 "Specified Volume" means that part of the State's Production Share which the State wishes and Oil Company to dispose of and specifies in a notice under Clause 14.2.

14.2 Within 30 days after the Operating Committee Meeting to agree upon Operations and a Budget for any Budget Year in which it is expected that a Positive Day will occur the State may give notice to the Oil Companies stating the Specified Volume for that Budget Year for any or each Oil Company. Thereafter, the State may give not less than 3 months notice to any of the Oil Companies reducing or increasing the Specified Volume.

14.3 (a) An Oil Company given notice under Clause 14.2 shall use its best efforts to dispose of a Specified Volume at a price which after taking into account the matters provided for in Section Sch. 3 to the Offshore Act will enable that Oil Company to account to the State for an amount equal to Norm Price in respect of that Specified Volume;

(b) From time to time an Oil Company experiencing difficulty in disposing of any part of the Specified Volume as provided for in Subclause (a) may notify the State accordingly and thereafter the State and that Oil Company will negotiate in good faith in an effort to resolve the Oil Company's difficulty;

(c) All contracts of sale by an Oil Company of any of the State's Production Share shall be only for such reasonable periods of time as are consistent with the minimum needs of the industry under the circumstances, but in no event shall any such contract be for a period in excess of one year.

14.4 Following disposition of any of the Specified Volume an Oil Company shall account to the State on whichever shall be the earlier of:

- (a) the date three (3) months after taking delivery at the ship's loading flange of the relevant part of the Specified Volume; or
- (b) whichever of the following dates shall be appropriate:
 - (i) if the sale is at arm's length as defined in Section Sch. 3.2 of the Offshore Act, seven (7) days after receipt of payment in full or part thereof; or
 - (ii) if the sale is other than at arm's length as aforesaid, seven (7) days after the day the Oil Company is to receive payment as provided in the contract for sale for any Petroleum which includes any part of a Specified Volume.

14.5 Upon an Oil Company first becoming aware that a Positive Day has occurred or is likely to occur during a Budget Year which had not been expected at the time of an Operating Committee meeting as referred to in Clause 14.2 it shall notify the State accordingly. Such notice shall include—

- (a) the date on which the Positive Day occurred or is expected to occur as the case may be, and
- (b) the volume of production expected to be available as the State's Production Share for the balance of the Budget Year.

If the Positive Day occurred prior to the date of such notice the notice shall be accompanied by a full accounting for the volume of the State's Production Share disposed of by such Oil Company during the period between the Positive Day and the date of the notice.

14.6 Within 30 days after an Oil Company gives the State notice under Clause 14.5 the State shall give that Oil Company notice of the Specified Volume, if any, for that Oil Company for the balance of the current Budget Year.

14.7 Any Oil Company giving notice under Clause 14.5 shall not dispose of any of the State's Production Share between the date of that notice and receipt by it of a notice under Clause 14.6 except to the extent necessary to satisfy any contract entered into bona fide before the date of the notice under Clause 14.5 in which event the Oil Company shall account to the State in the manner provided in Clause 14.4.

SCHEDULE 6.—*continued.*

14.8 The Joint Operating Agreement shall provide for equitable adjustment on a regular periodic basis for any imbalance which may occur between the Production Share of each Party and the volume of Petroleum taken by or on behalf of the respective Parties and adjustment of any significant disparity in payment of operating costs and expenses caused by such imbalance.

ARTICLE 15 STATE ACQUISITION AND OWNERSHIP OF FACILITIES

15.1 "Works and Facilities" and "Works or Facilities" as the context permits means any of the installations and infrastructure provided for the Operations by either the State or the Oil Companies and capable of being used by the Oil Companies, the State, Citizens or other persons carrying on business in the locality thereof without interfering with the use thereof by the Oil Companies. Without limiting the generality of the foregoing the Parties envisage that Works and Facilities—

- (a) include air fields, roads, ports, water supply, and sewerage facilities, except to the extent that any of them are utilised to their full capacity by the Oil Companies, and
- (b) do not include residential accommodation and administration buildings, installations, and infrastructure directly used in Producing,

PROVIDED THAT provision by the Department of Posts and Telegraphs of facilities and services shall be the subject of a separate agreement.

- 15.2 (a) At any Operating Committee Meeting at which construction of Works and Facilities is to be approved the State may by written notice to the Oil Companies elect to provide the costs, or part thereof, of any such Works and facilities; and
- (b) at any time after their construction the State may by notice require the Oil Companies to transfer to it ownership of any Works and Facilities. As soon as practicable after such notice the Oil Companies shall do all things necessary to transfer to the State title to the Works and Facilities nominated in the notice.

15.3 Where the State requires the Oil Companies to transfer to it any Works and Facilities as provided in Subclause 15.2(b) the State shall pay to the Oil Companies, by annual instalments as provided in Subclause 15.3(a) a purchase price equal to the then depreciated value of such Works and Facilities, and the Oil Companies shall pay to the State annual capital user charges as provided in Subclause 15.3(b).

- (a) The Oil Companies each Budget Year shall nominate the amount of the annual instalments of the purchase price which shall be equal to the annual amount of depreciation that the Oil Companies could have claimed (and would have been entitled to claim) as a deduction allowable under the Income Tax Act in respect of that Work or Facility but for the transfer of ownership to the State. (It is the intention of the Parties that such instalments of purchase price shall not be assessable income in the hands of the Oil Companies for the purpose of assessment of Petroleum Income Tax);
- (b) The Oil Companies shall pay to the State within seven (7) days of the receipt of any instalment referred to in Subclause 15.3(a) a capital user charge equal to the said instalment. (It is the intention of the Parties that such capital user charge shall be a deduction allowed under the Income Tax Act for the purpose of assessment of Petroleum Income Tax and Additional Profits Tax);
- (c) If operations permanently cease in or in relation to the Area and as a result the State ceases to pay any instalment referred to in Subclause 15.3(a), the Oil Companies shall have the right to claim a deduction, as provided by the Income Tax Act for the purpose of assessment of Petroleum Income Tax, and Additional Profits Tax, equal to the amount that the Oil Companies would have claimed (and would have been entitled to claim) but for the transfer of ownership of that Work or Facility to the State.

15.4 If at any time the State acquires or provides any Works or Facilities under this Article 15, the State shall thereupon assume responsibility for maintaining the assets to a proper standard and shall charge the Oil Companies a maintenance charge (which may include an equitable proportion of direct operating costs) limited to the costs of that maintenance PROVIDED THAT the amount of such maintenance charge shall be reduced by any amount spent by an Oil Company under Clause 15.5.

15.5 Where the State has provided or acquired Works or Facilities for the purpose, of, or under this Agreement and fails properly to maintain the same the Oil Companies may, after 30 days notice to the State, and at their own expense, carry out such work as is necessary to bring the same up to a proper standard.

SCHEDULE 6.—*continued.*

ARTICLE 16 USE OF FACILITIES BY THIRD PARTIES

16.1 A third party will be permitted to use Works and Facilities acquired from the Oil Companies by the State and not utilised to their full capacity. The State undertakes to ensure that the third party will be required to pay a proportionate share of any operating, maintenance overhead and capital costs in respect of such Works and Facilities among other things having regard to :

- (a) the extent of the proportionate usage and likely future usage of the Works or Facilities by the third party and the Oil Companies;
- (b) the respective extents to which services are provided to the Oil Companies and the third party (where the Facility is a service Facility);
- (c) any other factor which results in or is likely to result in significant damage to or deterioration of the Work or Facility.

16.2 The State, the Oil Companies, and a third party shall agree upon an amount which the third party will pay to the Oil Companies (notwithstanding any prior transfer of the relevant Works and Facilities to the State under this Agreement) in United States dollars or the Kina equivalent at the date of payment a capital contribution reflecting the extent of the third party's intended use of the Works and Facilities.

16.3 Where the State provides the cost of any modification improvement extension or expansion of any Works or Facilities to meet the needs of the Oil Companies the State may charge the Oil Companies a capital user's charge in respect of that Work or Facility to allow for the recoupment over a reasonable period of the amount expended in providing the said cost by the State together with a reasonable return thereon.

16.4 Notwithstanding anything contained in Article 15 or Article 16 all such Works and Facilities not acquired and managed by the State shall continue to be managed by the Oil Companies and the Oil Companies shall have priority of use thereof over all other users.

ARTICLE 17 RATES AND DUTIES

17.1 Subject to any requirement of defence, foreign trade or foreign policy of this State, the safety of the public and quarantine and to the obligations of the State under multilateral international agreements to which the State is a party the Oil Companies any Affiliated Corporation and the agents and contractors of the Oil Companies or of any Affiliated Corporation shall have the right to acquire import into and move within Papua New Guinea and use any plant machinery equipment vehicles explosives fuels reagents and supplies which have a specialised application and use in the Operations and to export from Papua New Guinea the petroleum (whether processed or otherwise) resulting from the Operations.

17.2 The Oil Companies shall be subject to import duties and levies of general application in accordance with Papua New Guinea law from time to time except as hereinafter provided.

17.3 No rate tax charge due duty tariff or other levy shall be applied to or be payable by the Oil Companies on the export of or in respect of the right to export Petroleum from Papua New Guinea by an Oil Company or a Related Company.

17.4 No rate tax rent charge due duty tariff or other levy and no legislation which discriminates against all or any of the Oil Companies or any member of an Oil Company or any beneficial owner of shares in any of the Oil Companies or any person engaged in the Operations shall be payable by or (as the case may be) applicable to any of the Oil Companies or any such member or beneficial owner or person (as the case may be) in respect of the Operations or of any income arising directly or indirectly therefrom PROVIDED THAT nothing in the Clause is intended to provide a basis for challenging the validity of the petroleum income tax or additional profits tax.

17.5 Any import duty which is sought to be imposed on the importation of any plant machinery equipment explosives chemicals or other supplies which at the time when such duty is sought to be imposed are imported into Papua New Guinea solely for the purpose of and which have a specialised application and use in the Operations and which is sought to be imposed at a rate in excess of the average rate of duty from time to time payable on the importation into Papua New Guinea of the Customs Tariff items numbered 118 275 309 313 320 and 341 04 as set out at the date thereof in the Second Schedule to the Customs Tariff 1959 shall without in any way whatsoever limiting the interpretation of Clause 17.3 above be deemed to discriminate against the Oil Companies

17.6 No Local Government Rates or Provincial Government Rates or taxes on land calculated so as to be other than approximately equal to a rate or tax calculated in relation to the unimproved capital

SCHEDULE 6.—*continued.*

value of the surface rights of the land shall be payable by the Oil Companies in respect of land held by the Oil Companies, on which mining or industrial activities are carried on.

ARTICLE 18 CONSULTATION

18.1 The Oil Companies shall consult from time to time with representatives of the State and shall furnish the State each six months with reports concerning the implementation of:

- (a) the training and localisation programme
- (b) the provisions relating to local purchasing of supplies
- (c) the provisions relating to local business development and
- (d) the provisions relating to environmental management.

ARTICLE 19 INSPECTION

19.1 The Oil Companies shall at all reasonable times allow the properly accredited servants or agents of the State (who shall establish their authority on request) to inspect any aspect of the Operations and likewise to inspect and take copies of the books of account and records of the Oil Companies relating to the Operations and to any shipment, sale or use of products of such Operations.

ARTICLE 20 PATENT AND TECHNOLOGY RIGHTS

20.1 All new processes, new methods of manufacture and other technological or mechanical innovations developed within the Oil Companies' Operations:

- (a) shall remain the property of the Oil Companies, which shall apply for, take out and retain such patents and other technology rights, in Papua New Guinea or elsewhere, as may be necessary and desirable to protect the same; and
- (b) shall not be sold, assigned, licenced, surrendered, or otherwise disposed of by the Oil Companies except:
 - (i) on the basis of an arm's length transaction; and
 - (ii) with the prior approval of the State which approval shall not be unreasonably withheld.

20.2 Contracts to which any Oil Company is a party providing for the purchase of the right to use in the Operations any process, method or other technological innovation:

- (a) which are not contracts at arm's length, shall not be entered into without the prior consent of the State which consent shall not be unreasonably withheld, and
- (b) which are contracts at arm's length shall be submitted to the State for information.

20.3 For the purposes of this Article the term "arm's length" shall have the same meaning as ascribed to it in Section Sch. 3.2 of the Offshore Act, except that contracts for provision of services which incidental to their performance require the use of any such process, method or other technological innovation the patent rights to which are the property of any Oil Company or an Affiliated Corporation of any Oil Company and which but for the provisions of Section Sch. 3.2(c) would be at arm's length shall for the purposes of this Clause be deemed to be at arm's length.

ARTICLE 21 ASSIGNMENT

21.1 The State may assign, without the consent of the Oil Companies, all or part of its Venture Interest to any corporation, statutory or otherwise, formed in Papua New Guinea and either:

- (a) wholly owned by the State, or
- (b) wholly owned by the State and another corporation or other corporations, statutory or otherwise formed in Papua New Guinea and which are controlled by the State and in which the State has at least a 50% beneficial interest,

PROVIDED THAT vested in such corporation or corporations are powers and financial capacity sufficient to enable such of the State's continuing obligations under this Agreement as are assigned to such corporation to be fulfilled.

21.2 Subject to Clauses 21.1 and 21.3 and with the consent of the other Parties which consent shall not be unreasonably withheld, all or any of the Parties may assign, or otherwise dispose of their interest or rights under this Agreement.

SCHEDULE 6.—*continued.*

21.3 In the case of any assignment under this Article 21 the assignee shall undertake to the State to assume, observe and comply with all the obligations of the assignor in relation to the matter assigned or to the extent of the interest assigned as the case may be. After the giving of any such undertaking, the assignor shall be relieved of its obligations under this Agreement in relation to the matter assigned or to the extent of the interest assigned as the case may be without prejudice to pre-existing rights accrued to the State against the assignor.

21.4 Notwithstanding the foregoing provisions of the Clauses 21.2 and 21.3 but subject to normal statutory approvals in force from time to time,

- (a) any Oil Company may charge by way of fixed or floating charge the whole or any part of its Venture Interest to secure the repayment of, any payment of interest and other fees, costs and expenses related to, all loans made to that Oil Company to finance the project; and
- (b) the Oil Companies may mortgage and charge any specific asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset;

and any mortgagee or chargee under a mortgage or charge given by the Oil Companies may exercise all rights of sale and other rights included in any instrument of mortgage or charge provided it shall first give the State at least twenty-eight days' notice of intention to exercise those rights.

ARTICLE 22 ARBITRATION

22.1 If at any time there is any dispute, question or difference of opinion (in this Article 22 referred to as "Issue") between the Parties concerning the application of or arising out of section 99A of the Offshore Act other than any dispute, question, or difference or opinion in respect of which provision for settlement or determination is provided under the Income Tax Act 1959 the same shall, subject to Clause 22.2, stand referred to the arbitration of a single arbitrator, and such reference shall be considered a submission within the meaning of that expression given by the Arbitration Act 1951.

22.2 After any Issue has arisen between the State on the one hand and the Oil Companies or any of them on the other hand, any Party to that Issue may at any time prior to the appointment of an arbitrator by concurrence of the Parties or pursuant to the Arbitration Act, 1951 by notice to the other Party or Parties thereto elect that the provisions of this Clause shall apply to such Issue and in such event:

- (a) the Issue shall stand referred to the arbitration of three arbitrators, one of whom shall be appointed by the State and one of whom shall be appointed by the other Party or Parties to the Issue and the third of whom shall be agreed upon by the State and the other Party or Parties to the Issue in writing, and in default of agreement within fourteen (14) days after the State gives notice to the other Party or Parties to the Issue or the other Party or Parties to the Issue give notice to the State requiring the appointment of such a third arbitrator, shall be appointed in accordance with the provisions of the Arbitration Act 1951 from a panel of five (5) arbitrators to be nominated within a further period of fourteen (14) days thereafter by the President and Chairman of the Board of Directors (or failing him the Chief Executive) not being a Citizen of Papua New Guinea of the Asian Development Bank (or, failing such nomination, from any panel of arbitrators which the person or body appointing the third arbitrator considers satisfactory) PROVIDED THAT no person shall be eligible for appointment as a third arbitrator (unless the State and the Oil Companies otherwise agree in writing in any particular case) if at the time of his proposed appointment he is or has been at any time prior thereto a citizen or resident of Papua New Guinea, the Commonwealth of Australia, Canada, or the United States of America;
- (b) if any arbitrator refuses to act, is incapable of acting or dies, a new arbitrator shall be appointed by the party appointing the original arbitrator or (in the case of the third arbitrator) in accordance with the procedure provided for in Subclause 22.2(a);
- (c) if on such reference one Party fails to appoint an arbitrator either originally or by way of substitution as aforesaid within fourteen (14) days after the other Party (having appointed its arbitrator) has given to it notice to appoint such arbitrator, the arbitration may proceed in the absence of such arbitrator; and
- (d) such arbitration shall be held at such place (whether inside or outside Papua New Guinea) as the arbitrators determine.

SCHEDULE 6.—*continued.*

22.3 If any Party to any arbitration under this Clause so requests the arbitrator or arbitrators shall state, in the form of a special case for the opinion of the National Court of Papua New Guinea, any question of law arising in the course of the reference, and any opinion given shall be subject to the normal right of appeal.

22.4 An award made on an arbitration shall have force and effect as follows—

- (a) if by the award it is adjudged that the decision of the State is correct then the decision of the State in respect to the Issue shall stand; but
- (b) if the arbitrator adjudges that the decision of the State is incorrect then he shall further adjudge what the Norm Price should be in which event the decision of the Arbitrator shall be binding on the Parties.

ARTICLE 23 LAW APPLICABLE

23.1 This Agreement shall be governed by and construed in accordance with the law of Papua New Guinea.

ARTICLE 24 VARIATION

24.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Licences, any Development Licence, or any lease, licence, right or grant granted hereunder or pursuant hereto or any programme, proposal or plan approval hereunder, for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

24.2 Where an agreement made pursuant to Clause 24.1 constitutes an alteration of any Article or Clause referred to in Clause 3.2, the variation agreement shall contain a declaration to that effect, and the State shall as soon as is practicable introduce and sponsor in the National Parliament a Bill for an Act to approve that variation agreement and give force of law to the alteration of the rights hereunder. That variation agreement shall be subject to the coming into force of the approving Act.

24.3 Any agreement made pursuant to Clause 24.1 which does not constitute an amendment of any Clause referred to in Clause 3.2 shall be tabled by the State in the National Parliament within the first twelve (12) sitting days next following its execution.

ARTICLE 25 NOTICES

25.1 All notice, notifications, consents, approvals, undertakings, applications, requests, offers, reports, returns, elections, and proposals required to be or which may be given, made, furnished or submitted under this Agreement shall, unless the context otherwise requires, be in writing signed by a Minister of the State or the Director of the Office of Minerals and Energy or (as the case may be) a director or secretary or other designated representative of the Oil Companies, and if in writing shall be sufficiently given, furnished or submitted if delivery at or posted by prepaid post to the address for service of the Party or Parties to whom it is to be given, made, furnished or submitted, and all such communications if posted as aforesaid shall, unless proven otherwise, be deemed to have been received in the ordinary course of post.

25.2 The addresses for service:

(a) of the State shall be:

(i) for the purpose of Sub-clause 13.3(c)

The Prime Minister,
Central Government Offices,
Waigani,
Papua New Guinea

or by post to:

The Prime Minister,
Central Government Offices,
Wards Strip Post Office,
Waigani,
Papua New Guinea

Telephone: Port Moresby 27 1211
Telex: SENTROF NE 22144; and

SCHEDULE 6.—*continued.*

(ii) for all other purposes:

The Director,
Office of Minerals and Energy,
Konedobu,
Papua New Guinea

or by post to:

The Director,
Office of Minerals and Energy,
P.O. Box 2352,
Konedobu,
Papua New Guinea

Telephone: 25 1180

Telex: WABTRO NE 22211

(b) of the Oil Companies shall be:

Arco Australia Limited,
812 Bridge Street,
Sydney, Australia

or by post to:

Arco Australia Limited,
G.P.O. Box 2521,
Sydney N.S.W. 2001,
Australia.

Telephone: Sydney 27 6901

Telex: 21297

Australian Superior Oil Company Limited,
4315 Australia Square Tower,
George Street,
Sydney, N.S.W. 2000
Australia.

Attention: N.U. Ledingham

Telephone: Sydney 27 2873

Telex: 21273

and to

Australian Superior Oil Company Limited,
First City National Bank Building,
Houston, Texas USA

or by post to:

Australian Superior Oil Company Limited,
P.O. Box 1521,
Houston, Texas, 77001, U.S.A.

Attention: J.E. Reid

Telephone: Houston 2245111

Telex: 77 5369

Canadian Superior Oil (Aust.) Pty. Ltd.,
Three Calgary Place,
355 Fourth Avenue S.W.,
Calgary, Alberta, T2P 0J3, Canada

Attention: H.J. Caine

Telephone: (403) 267 4110

Telex: 038 26640

SCHEDULE 6.—*continued.*

Esso Papua New Guinea Inc.,
C/- Exploration Manager,
Esso Australia Limited,
127 Kent Street,
Sydney, N.S.W. 2000

Telephone: 20557
Telex: AA20549

Sunray Australian Oil Company Inc.,
Suite 404, Cathay Building,
Singapore 9

Attention: T. Adame.

Telephone: 32 3032
Telex: RS21591

and to

Sunray Australian Oil Company Inc.,
P.O. Box 30,
2001 Bryan Tower,
Dallas, Texas, 75221, U.S.A.

Attention: W.R. Brooks.

Telephone: (214) 744 2222
Telex: 73 2323

Any Party may change its address for service by prior notice in accordance with this Article.

25.3 Where the Oil Companies are required to submit any plans, proposals, or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State receives the said plans, proposals or other material.

ARTICLE 26 TERMINATION

26.1 The State may terminate this Agreement by notice to the Oil Companies in any of the following events—

- (a) if the Oil Companies abandon the Licence or repudiate their obligations under this Agreement and Operations are not resumed or such default made good within a period of sixty (60) days after notice as provided in Clause 26.2 is given by the State to the Oil Companies;
- (b) if the State can establish that in granting its approval to any proposal made under the Offshore Act or otherwise it relied upon a statement made by the Oil Companies not being an estimate based on judgement exercised in good faith on the application of knowledge available at the time the estimate is made and it is shown the Oil Companies intended such statement to be false or misleading;
- (c) if the Licence or any extensions or renewal thereof is properly forfeited due to default by the Oil Companies or is surrendered under the Onshore Act;
- (d) if the Oil Companies do not submit proposals in accordance with Article 7.

26.2 The notice to be given by the State in terms of Subclause 26.1(a) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the Party or Parties responsible therefor and shall be given to each of the Oil Companies.

26.3 For the purposes of Clause 26.1(a) the Oil Companies shall not be deemed to have abandoned the Licence or repudiated their obligations unless all persons for the time being bound, whether as assignees of the Oil Companies or otherwise, to perform the obligations of the Oil Companies hereunder, have abandoned the Licence or repudiated the obligations.

26.4 This Agreement shall terminate on the expiry or surrender of the Licence and all Development Licences issued over any part of the Area or any renewal or extension of any of them.

SCHEDULE 6.—*continued.*

26.5 If this Agreement is terminated after the grant of a Development Licence all structures, installations, plant, and equipment :

- (a) which can be removed from the Area within six (6) months after the notice of termination and without irreparable damage to the Area or any remaining structure, installations, plant and equipment may be removed by the Parties; and
- (b) all other structures, installations, plant, equipment and non-movable assets of the Parties in the Area shall thereupon become the property of the State without any cost to the State or any liability for the State to pay compensation therefor, and freed and discharged from all mortgages and other encumbrances. All materials, supplies and other movable assets of the Parties in the Area which are fully depreciated for tax purposes shall likewise become the property of the State, but any such materials, supplies and other movable assets which are not fully depreciated for tax purposes shall be offered by the Parties for sale to the State at their depreciated value.

26.6 The Oil Companies shall do all such things as the State may reasonably require to give effect to the provisions of this Article 26 and the Oil Companies shall make available to the State the results of the Investigations and Studies to the extent that they have been carried out by the Oil Companies before the date of termination.

26.7 This Article 26 shall continue in force notwithstanding the termination of the rest of this Agreement and may be sued upon or enforced against the Oil Companies.

26.8 Termination of this Agreement under this Article 26 shall be without prejudice to any rights of any of the Parties for any antecedent breach of covenant or agreement.

26.9 Notwithstanding anything to the contrary contained herein, should any law, statute or regulation be passed in Papua New Guinea or become effective in Papua New Guinea, subsequent to 31st March 1977, and should such law, statute or regulation abrogate or materially alter the fundamental contractual rights or obligations of the Oil Companies hereunder, the Oil Companies shall have the right to give the State 60 days notice of their intention to terminate this Agreement without further obligation to the State except as to rights or liabilities in respect of any antecedent breach of this Agreement.

ARTICLE 27 AMENDMENTS TO OPERATING AGREEMENT

27.1 For the purposes of this Article 27 the Operating Agreement shall be deemed to apply only in respect of the Area, the Licence or any Development Licence.

27.2 The Parties shall commence as soon as practicable to negotiate in good faith with the objective of agreeing on the form and content of a Joint Operating Agreement to accord substantially with the provisions of the Operating Agreement but to reflect :

- (a) changes in the parties bound thereby and the circumstances of their association, and
- (b) the possible acquisition by the State of a Venture Interest, and
- (c) amendments necessary to give effect to the provisions of this Agreement.

27.3 If the Parties have not executed the Joint Operating Agreement at the date the State elects to acquire a Venture Interest under Clause 13.3 the State shall as and from that date be deemed to be a party to the Operating Agreement with full rights to attend and vote at all Operating Committee Meetings.

27.4 After the date of this Agreement the Oil Companies may not amend or replace the Operating Agreement without the approval of the State.

27.5 Without limiting the generality of the foregoing the Parties agree that Article VII shall be deleted in its entirety and :

- (a) the following articles or clauses of the Operating Agreement should be reviewed for the purposes of Clause 27.2—
 - Clause 5.1, 6.2, and 6.3
 - Articles IX, X, XI, XII, XIII, and XVI;
- and
- (b) that additional provisions be included in the Joint Operating Agreement to provide for Operations by less than all parties to that Agreement.

SCHEDULE 6.—*continued.*

ARTICLE 28 MISCELLANEOUS

28.1 No stamp duty or other fees or charges shall be payable to the State in respect of any assignment or transfer of any Participating Interest or Venture Interest in the Licence or the Venture Assets by an Oil Company to the State or to an Affiliated Corporation incorporated in Papua New Guinea if such assignment is required to comply with the provisions of the Acts.

28.2 Subject to considerations of national security the State shall grant to the Oil Companies such licences, permits and other rights and exemptions as are within its power to grant and which reasonably may be required by the Oil Companies to enable the Oil Companies to fulfill their obligations and enjoy their rights and benefits under the Licence, the Acts, or this Agreement.

28.3 If the State elects to acquire a Venture Interest thereafter the Parties shall own all the Venture Assets as tenants in common, however, the expenditure of the Oil Companies under this Agreement shall be shown on the accounting records of the Oil Companies entirely as expenses, charges, and costs of the Oil Companies in proportion to their respective Participating Interests and shall be reflected for purposes of the fiscal dispositions of the applicable United States law in the balance sheet and profit and loss accounts of only the Oil Companies.

28.4 Whether an election shall be made to have this Venture excluded from the application of the provisions of Sub-chapter K of Chapter 1 of Sub-title A of the United States Internal Revenue Code of 1954, shall be determined by EPNG for each Calendar Year during which EPNG has incurred expenditures under Article 13. The initial determination shall be made and furnished in writing to the other Parties no later than 15th April, 1977, and if requested by the Operator to do so, the State will execute a tax agreement for United States tax purposes in a form to be approved by the Parties.

28.5 Consistent with requirements of the law and national security the State shall use its best efforts to have foreign workers and their dependants to be employed in the Operations in accordance with the approved training and localisation programme expeditiously granted such permits as may be necessary to authorise them to enter, re-enter, move within, remain in and depart from Papua New Guinea and to work on or in connection with the Operations.

ARTICLE 29 NATURAL GAS AND GAS LIQUIDS

29.1 It shall be the responsibility of the Oil Companies to determine whether production of Natural Gas or Natural Gas Liquids is commercial and whether or not to construct and install facilities to enable production of such Natural Gas or Natural Gas Liquids.

29.2 Natural Gas and Natural Gas Liquids will be disposed of by the Parties at the first point of measurement down-stream from the outlet flange of the field gas separator in the Area beyond which point the State's Venture Interest shall cease.

29.3 Norm Price for all purposes for Natural Gas and Natural Gas Liquids will be the price specified in contracts for its sale entered into with the prior approval of the State which will not be unreasonably withheld.

29.4 Subject to the absence of Regulations to the contrary under the Acts the Oil Companies may flare gas necessarily produced with crude oil and not needed in the Operations and the sale of which is not economically justified.

29.5 The State recognises that its election to acquire up to a 22.5% Venture Interest may prevent the Oil Companies from producing on a commercial basis Natural Gas or Gas Liquids discovered in the Area. Therefore, if the Oil Companies in a proposal under Clause 7.1 produce evidence that such Natural Gas or Gas Liquids cannot be produced on a commercial basis if the State elects to acquire a 22.5% Venture Interest, the State will negotiate in good faith with the intention of agreeing on such lesser Venture Interest as will allow a Natural Gas or Gas Liquids project to proceed on a commercial basis.

ARTICLE 30 TITLES

30.1 Subject to Clause 30.2 the provisions of the Offshore Act and each of them shall apply mutatis mutandis to and in respect of the Licence in lieu of the provisions of the Onshore Act as if the Licence were a Petroleum Prospecting Licence issued pursuant to and in accordance with Section 18 of the Offshore Act.

30.2 The following provisions of the Onshore Act, that is to say :

Section 6;

SCHEDULE 6.—*continued.*

Sections 11 to 24 inclusive, except for sub-section (3)(d) of Section 21;

Sections 26 to 28 inclusive;

Sections 30 to 34 inclusive;

Sections 37 and 38;

Sections 53 to 57 inclusive;

Sections 59 to 64 inclusive;

Sections 71 to 74 inclusive;

Sections 77 and 78;

Section 80;

Section 82;

Sections 86 to 91 inclusive;

Sections 94 and 95;

Section 99; and

Section 100, and applicable regulations made thereunder;

shall apply *mutatis mutandis* to and in respect of the Licence PROVIDED THAT in the event of conflict or inconsistency between—

- (a) the definitions contained in Section 6 of the Onshore Act and a definition contained in Section 1 of the Offshore Act the latter shall prevail and apply to the Licence accordingly, and
- (b) the provisions of the Offshore Act and the provisions of the Onshore Act in respect to the rights of the Oil Companies to access to and occupation of the surface of the Area the latter shall prevail and apply to the Licence accordingly.

30.3 As soon as reasonably practicable after execution of this Agreement the State shall introduce and sponsor in the National Parliament a Bill for an Act to regulate exploration for and production of Petroleum in those areas of Papua New Guinea other than the offshore area within the meaning of the Offshore Act. It is the State's intention that such Bill substantially reflects the spirit of this Agreement and contains no provisions which, if enacted, would materially affect the rights and obligations of the Oil Companies hereunder.

30.4 If new legislation providing for exploration for and production of Petroleum in the onshore area of Papua New Guinea is not enacted by the National Parliament and operative prior to the Oil Companies notifying the State of their intention to nominate a Block under section 28 of the Offshore Act, all the provisions of the Offshore Act shall thereupon cease to apply to the Licence, the provisions of the Onshore Act specified in clause 30.2 shall continue to apply thereto and the remaining provisions of the Onshore Act shall thereupon apply to and in respect of the Licence to the extent to which they or any of them are or is capable of so applying and the Minister.

30.5 The State will prepare and submit to the Oil Companies a map of the Area showing the subdivision of the Area into Blocks. Such subdivision will be consistent with the existing subdivision of the area of the Territorial Sea and Continental Shelf of Papua New Guinea.

30.6 Notwithstanding anything contained in the Onshore Act or the Offshore Act, the Licence shall be deemed to have been granted to the Oil Companies for a term of six (6) years commencing on the first day of September, 1975.

30.7 If the Oil Companies have complied with the Licence Conditions and provisions of the Acts in so far as they apply to the Licences and the Area to the date of commencement of the Act referred to in Clause 30.3 the State shall forthwith after such commencement grant to the Oil Companies under such new Act, and in substitution for the Licence, the necessary rights and titles to authorise the Oil Companies to continue to explore and prospect for Petroleum or to produce Petroleum discovered within the Area on terms not less favourable than those previously applicable.

SCHEDULE 6.—*continued.*

IN WITNESS whereof this Agreement has been duly executed by the Parties, the day and year first hereinbefore written.

Signed for and on behalf of the Independent State of Papua New Guinea by the Governor General, Sir John Guise, acting with and in accordance with the advice of the National Executive Council:

John Guise

C. Van Lieshout
Witness

John Guise,
Governor General
Thomas Adame, Jr.

Signed, sealed and delivered on behalf of Sunray Australian Oil Company Inc., by its duly constituted Attorney in the presence of:

Wendell J. Bares
Witness

Walter E. Baker

Signed, sealed and delivered on behalf of Arco Australia Limited by its duly constituted Attorney in the presence of:

Dezsee J. Hajdu
Witness

W.M. Blanshard

The Common Seal of Canadian Superior Oil (Aust.) Pty. Ltd., was hereunto affixed by authority of the directors in the presence of:

N. V. Ledingham
Secretary

Director

Signed, sealed and delivered on behalf of Australian Superior Oil Company Limited by its duly constituted Attorney in the presence of:

W.M. Blanshard

N. V. Ledingham
Witness

K. Richards

Signed, sealed and delivered on behalf of Esso Papua New Guinea Inc., by its duly constituted Attorney in the presence of:

F. M. Hooke
Witness

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 199.

Petroleum (Gulf of Papua) Agreements.

APPENDIX.

SOURCE OF THE PETROLEUM (GULF OF PAPUA) AGREEMENT ACT.

Part A.—Previous Legislation.

Petroleum (Gulf of Papua) Agreements Act 1976. (No. 80 of 1976).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹
1	1
2	2
3	3
Schedule 1	Schedule 1
Schedule 2	Schedule 2
Schedule 3	Schedule 3
Schedule 4	Schedule 4
Schedule 5	Schedule 5
Schedule 6	Schedule 6

¹Unless otherwise indicated, references are to the Act set out in Part A.

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