

## ANNEX "E"

### Parent Company Guarantee

**THIS GUARANTEE** is made the \_\_\_\_ day of \_\_\_\_\_ 2010.

#### **BETWEEN**

- (1) **XYZ**, a corporation established under the laws of ..... (the "**Guarantor**"), and,
  - (2) **THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE**, herein represented by the Minister of Mineral Resources (the "**Government**");
- (each a "**Party**" and collectively the "**Parties**")

#### **WHEREAS**

- A On \_\_\_\_\_, XYZ (the "**Concessionaire**") entered into an Exploration and Production Concession Contract (the "**EPCC**") for \_\_\_\_\_ Block, Mozambique, with the Government.
- B The Guarantor is the ultimate parent company of XYZ.
- C The Government requires that the due and proper performance of the Concessionaire Obligations shall be guaranteed by the Guarantor under the terms of this Guarantee and the Guarantor is willing to grant this Guarantee.
- D The Operator shall secure cross-indemnification guarantees from all other Persons constituting the Concessionaire in the Joint Operating Agreement as contemplated by the Joint Operating Agreement.

#### **NOW IT IS HEREBY AGREED AS FOLLOWS:**

##### **1. DEFINITIONS AND INTERPRETATION**

Capitalized terms used in this Guarantee and not otherwise defined herein shall have the respective meanings ascribed thereto in the EPCC.

- 1.1 "**Affiliate**" means, with respect to any Party, a company, partnership or other legal entity which controls, or is controlled by, or which is controlled by an entity which controls, such Party. Control means the legal or beneficial ownership directly or

indirectly, of fifty percent (50%) or more of the shares conferring upon the holder the right to vote for or appoint the directors or officers of such company, partnership or other legal entity.

- 1.2 **"Concessionaire Obligations"** means the Concessionaire obligations to the Government, related to or arising out of the Concessionaire's activities or Petroleum Operations under the EPCC during any period up to and including final implementation of decommissioning of facilities occurring any time after the date on which the Development Plan for the first Development and Production Area delineated pursuant to the terms of the EPCC is approved.

## **2. GUARANTEE**

- 2.1 The Guarantor irrevocably and unconditionally guarantees, subject to all the other terms of this Guarantee, that if the Concessionaire fails, in whole or in part, to perform any of the Concessionaire Obligations towards the Government as Concessionaire may be adjudged liable to pay by final, non-appealable order or judgment of a court or arbitral body of competent jurisdiction, as a result or consequence of the Concessionaire acts or omissions in carrying out the Concessionaire Obligations, the Guarantor shall as soon as reasonably practicable following a demand made in accordance with clause 3 of this Guarantee, take such steps itself as shall be necessary:
- (a) to perform such Concessionaire Obligation or remedy such breach; or
  - (b) where such failure or breach is not capable of remedy, restore performance of the breached Concessionaire Obligation.
- 2.2 This Guarantee shall become effective upon approval of the first Development Plan and shall terminate on termination of all relevant Petroleum Operations subject to the EPCC.
- 2.3 Upon termination of this Guarantee, the Guarantor shall have no further liability whatsoever to the Government under or in connection with this Guarantee save in respect of any breach notified by the Government in accordance with clause 3 of this Guarantee prior to its termination.

### **3. DEMANDS**

- 3.1 The Government shall notify the Concessionaire and the Guarantor in writing when a breach of a Concessionaire Obligation has occurred and such notice shall contain a description of such breach.
- 3.2 Subject to clauses 4 and 7 of this Guarantee, if the Concessionaire fails to remedy a breach specified in a notice given under clause 3.1 above within thirty (30) days of receipt of such notice by the Guarantor, the Government may then make a demand in writing to the Guarantor that shall (i) set out the alleged breach of the Concessionaire Obligation(s); and (ii) require the Guarantor to take such steps as are provided in clause 2 of this Guarantee.

### **4. RIGHTS AND OBLIGATIONS**

- 4.1 The Government shall be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by law:
- 4.1.1 to notify the Concessionaire of the breach of a Concessionaire Obligation;
- 4.1.2 if the Concessionaire disputes the breach notified by the Government, to have obtained an arbitral award or expert determination confirming such breach by the Concessionaire; or
- 4.1.3 to make or file any claim or proof in winding-up or dissolution of the Concessionaire(s) (to the extent applicable).

### **5. PRESERVATION OF RIGHTS**

- 5.1 The obligations of the Guarantor under this Guarantee shall not be discharged or impaired by any act or omission or any other event or circumstance whatsoever (whether or not known to the Concessionaire, the Guarantor or the Government) which would or might (but for this clause 5) operate to impair or discharge the Guarantor's liability under this Guarantee, including, but without limitation:
- 5.1.1 any of the Concessionaire Obligations being or becoming illegal or invalid, in any respect of all other Concessionaire Obligations;
- 5.1.2. any granting of time (or other indulgence) to the Concessionaire or any other person; or

5.1.3. any amendment to or variation, waiver or release of, any of the terms of the EPCC to the extent that such amendment, variation, waiver or release is made with the Guarantor's prior written consent.

## **6. ASSIGNMENT AND SUCCESSORS**

6.1 Any benefit of this Guarantee shall not be assignable by the Government to any person.

6.2 The Guarantor may not assign its rights and obligations under this Guarantee without the prior written consent of the Government.

## **7. LIMITATION AND MAXIMUM LIABILITY OF GUARANTOR**

7.1 Notwithstanding any other provisions of this Guarantee, the Guarantor shall have all of the rights, limitations and defences including, without limitation, all rights of set off, available to the Concessionaire under the EPCC, and in no circumstances shall the Guarantor be liable to pay any amount under this Guarantee which is greater than the Concessionaire would have been liable to pay if the Concessionaire had performed the Concessionaire Obligations.

7.2 Notwithstanding any other provisions of this Guarantee, the Government, prior to making any demand or attempt to collect under this Guarantee, shall first pursue collection from Concessionaire and shall exhaust all recourse against and liquidation of Concessionaire's assets including but not limited to any applicable insurance coverage available to satisfy any such Concessionaire Obligation.

7.3 This Guarantee shall be for the benefit of the Government, and no third party shall be entitled to any benefit hereunder.

## **8 GOVERNING LAW AND JURISDICTION**

This Guarantee shall be governed by and construed in accordance with the laws of the Republic of Mozambique. The provisions of Article 30 of the EPCC shall apply 'mutatis mutandis' to this Guarantee in respect of all disputes between or among the Government, the Guarantor or the Concessionaire.

## 9 NOTICES

- 9.1 Any notice to be given by either Party to the other under this Guarantee shall be in writing and shall be delivered by hand to the Guarantor or the Government, as the case may be, or sent to such recipient by recorded delivery or facsimile addressed to such recipient at such address and for the attention of such person as the Guarantor or the Government, as the case may be, shall from time to time designate by notice, and until such notice shall be given the addresses of the Guarantor and the Government shall be as follows:

The Guarantor

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telefax: \_\_\_\_\_

The Government

Avenida Fernão de Magalhães, 34, 1st floor

Caixa Postal 2904

Maputo, Mozambique

Attention: President, National Petroleum Institute

Telephone: +258 21 320 935

Telefax: +258 21 430 850

- 9.2 All notices delivered by recorded delivery or hand shall be deemed to be effective upon receipt. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form within twenty-four (24) hours of sending.

**IN WITNESS WHEREOF** this Guarantee has been executed by the Guarantor and has been accepted by the Government on the date specified above.

For and on behalf of

For and on behalf of **THE GOVERNMENT  
OF THE REPUBLIC OF MOZAMBIQUE**