

# **Petroleum Agency SA**

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**SOUTH AFRICAN AGENCY FOR PROMOTION OF PETROLEUM EXPLORATION AND EXPLOITATION  
SOC LTD  
(Company registration number 1999/05715/30)  
“Petroleum Agency”**

AND

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**“COMPANY”**

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**DATA CONFIDENTIALITY AND DATA USE AGREEMENT**

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**THIS AGREEMENT IS MADE BY AND BETWEEN :**

**SOUTH AFRICAN AGENCY FOR PROMOTION OF PETROLEUM EXPLORATION AND EXPLOITATION (SOC)**, a company incorporated under the laws of South Africa and having its registered office at Tygerpoort Building, 7 Mispel Street, Bellville, 7530, South Africa ("Petroleum Agency"); AND

....., a company incorporated under the laws of .....  
and having its offices at .....("Company");

(each a "**Party**" and together the "**Parties**").

**WHEREAS**

- A. Petroleum Agency is the custodian of Data (as defined below).
- B. Company intends to acquire from Petroleum Agency the right and licence to use the Data.
- C. Petroleum Agency is willing and able to grant such right and licence on the terms and conditions set out below.

The Parties agree as follows :

**1. INTERPRETATION**

1.1 The following terms, as used in this Agreement and the Recitals to it, will have the following meanings:

**"Affiliate (of Company)"** means

For this purpose:

- (a) Any company (other than the **Company**) which from time to time directly or indirectly controls, is controlled by or is under common control with the **Company**;

For this purpose :

- (1) a company is directly controlled by another company or companies if that latter company owns or those latter companies together own fifty percent (50%) or more of the voting rights attached to the issued share capital of the first mentioned company; and
  - (2) a company is indirectly controlled by another company or companies if a series of companies can be specified, beginning with that latter company or companies and ending with the first mentioned company, so related that each company of the series (except the latter company or companies) is directly controlled by one or more of the companies earlier in the series; or
- (b) any company which is managed or operated by Company or a company as defined in (a) above and/or has a service agreement with **Company** and/or another company as defined under (a) above, pursuant to which it pays on a

cost sharing or recovery basis a proportion of certain of the costs of Company or such other company;

“**Data**” means the data set out in the quotation from Petroleum Agency attached as Schedule 1 to this Agreement. Data shall not include any technical information of whatsoever nature on any medium, relating to the methodology or technology of whatsoever nature by means of which the Petroleum Agency created or acquired such Data. Furthermore, Data shall not include “Derivative Products” as defined below.

“**Derivative Products**” means interpretations, analyses, notes, summaries, compilations, studies or other documents developed or made by or for Company or its Affiliates that are derived from the Data.

“**Effective Date**” means the date of signature of this Agreement.

“**Intellectual Property Rights**” means all patents, copyright, database rights, design rights, know-how, trade mark and service marks (all whether registered or not and including all applications for any of them and all equivalent rights in all parts of the world) and all rights of confidence, whenever and however arising for their full term and including all renewals and extensions.

“**Reprocess**” means to reformat and process the data, using software or other technology, and “**Reprocessing**” or “**Reprocessed**” shall be construed accordingly.

“**Reprocessed Data**” means Data that Company has reprocessed pursuant to Clause 3.3, regardless of the form or medium on which it is displayed, stored, produced or developed.

“**State**” means the Republic of South Africa.

## **2. SUPPLY OF DATA**

- 2.1 Petroleum Agency shall provide **Company** with the Data within agreed timeframe after the Effective Date in the format of CD/DVD/download/USB Disk. It will send the Data per courier to the following address:

**COMPANY**  
PHYSICAL ADDRESS  
CONTACT PERSON  
E-MAIL ADDRESS  
TELEPHONE

## **3. LICENCE**

- 3.1 The Petroleum Agency hereby grants and licenses to the Company the rights to use the Data and all Intellectual Property Rights subsisting therein or relating thereto. In this clause 3, a reference to the Company shall include its Affiliates.

- 3.2 The Company may reproduce the Data in any medium necessary for its Reprocessing.
- 3.3 The ownership of any Intellectual Property and Intellectual Property Rights subsisting in, or relating to, the Data at the Effective Date shall remain unaffected by this Agreement. The Company shall not sell any Data to a third party.
- 3.4 The Company or, subject to clause 5, a consultant appointed by it, may freely Reprocess the Data.

#### **4. PAYMENT**

In consideration for the provision of the Data under Clause 2 and the grant of the licence to use such Data under Clause 3, Company shall pay the Petroleum Agency the amount set out in the quotation attached as Schedule 1 to this Agreement within 30 days after receipt of invoice.

#### **5. CONFIDENTIALITY**

- 5.1 The Company acknowledges that the Data is the property of the State and a valuable commercial asset of the Petroleum Agency.
- 5.2 The Company shall not disclose the Data, Derivative Products or any conclusions on either the Data or Derivative Products to any third party, save that Company shall have the right to disclose the Data and Derivative Products to:
  - 5.2.1 employees, directors and officers of the Company;
  - 5.2.2 its Affiliates and employees, directors and officers of such affiliates;
  - 5.2.3 any joint venture partners, co-venturers, agents, consultants or contractors; and
  - 5.2.4 as required by law or regulatory or judicial order, or by the rules of any relevant stock exchange, provided that Company gives prompt written notice to Petroleum Agency prior to the disclosure.
- 5.3 Prior to the disclosure of any Data and Derivative Products in accordance with clause 5.2, the Company shall procure that the proposed recipient of such Data is made aware of the terms of this Agreement, or is bound by obligations no less stringent than those assumed by the Company hereunder.
- 5.4 The Petroleum Agency acknowledges and agrees that the Reprocessed Data and the Derivative Products are valuable assets of the Company and constitutes confidential and proprietary information of the Company.
  - 5.4.1 Subject to the provisions of clauses 5.4.2 and 5.4.3, the Petroleum Agency agrees that the Reprocessed Data and Derivative Products shall be kept strictly confidential and shall not be sold, traded, published or otherwise disclosed to anyone in any manner whatsoever, including by means of photocopy or reproduction, for a period of four (4) years from the date of

delivery thereof by the Company to the Petroleum Agency in terms of clause 9.1.

5.4.2 The Petroleum Agency shall have the right to disclose the Reprocessed Data and Derivative Products to its employees, Directors and officers during this four (4) year period.

5.4.3 The Petroleum Agency shall also have the right to disclose the Reprocessed Data and Derivative Products as may be required by law or regulatory or judicial order, or by the rules of a stock exchange, provided that the Petroleum Agency shall give prompt written notice to the Company prior to the disclosure.

## **6. WARRANTIES, LIABILITY AND INSURANCE**

6.1 Petroleum Agency warrants and represents that it controls the ownership rights of the Data and has full authority and power to grant to Company the right to use the Data as set out in Clause 3.

6.2 Petroleum Agency warrants and represents that in creating and/or acquiring the Data and control of the ownership rights therein, Petroleum Agency has not infringed the Intellectual Property Rights of any third party.

6.3 Although every care has been taken to ensure quality of the Data, Petroleum Agency does not accept responsibility for the integrity, accuracy or quality of the Data. Petroleum Agency will not be held liable for any decisions or actions of the Company based on the Data supplied by the Petroleum Agency.

6.4 Petroleum Agency will promptly replace defective or damaged Data and deliverables delivered to Company at no additional cost to Company.

6.5 Neither Party is liable for any action initiated by one against the other for any of the following classes of damages resulting from nor arising out of this Agreement, however, these losses may be calculated:

(a) Indirect or consequential loss, including: (i) loss of production, including production of petroleum or petroleum products; (ii) loss of prospective economic advantage or benefit; or (iii) loss of business opportunity.

(b) Punitive damages

(c) Lost profits

## **7. ASSIGNMENT**

Neither party shall assign any of its rights nor obligations under this Agreement without the prior written consent of the other party, save that Company have the right to assign any of its rights or obligations under this Agreement to any Affiliate of Company.

## **8. TERM AND TERMINATION**

This agreement shall remain valid for an initial period of 10 (ten) years from the effective date.

## **9. RETURN OF DATA**

9.1 The Company shall, within ninety (90) days of termination of this Agreement in terms of clause 8, or any other period agreed between the Parties, return the Data (or destroy it as set out in this clause) and deliver the Derivative Products and the Reprocessed Data to the Petroleum Agency.

9.2 Notwithstanding clause 9.1, it is understood that Company's computer systems may be periodically backed up creating copies of all information resident in these systems. To the extent Company's computer back-up procedures create a copy which includes the Data, Company may retain such copy for the period it normally archives back-up computer records and the terms of the Agreement pertaining to the disclosure and the confidentiality of the Data shall survive and be applicable until the back-up copy is destroyed.

9.3 The Company hereby grants the Petroleum Agency a license to use, and sub-license any third parties to use, the Reprocessed Data and Derivative Products after the termination of the four (4) year confidentiality period set out in clause 5.4.1.

## **10. AMENDMENTS**

This Agreement including this clause may not be amended, modified or terminated orally; no provision of this Agreement may be waived orally; and no amendment, modification or waiver of the provisions hereof shall be binding unless in writing and signed by both Parties.

## **11. FORCE MAJEURE**

Delay or failure to comply with or breach of any of the terms and conditions of this Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, or any circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of this Agreement nor will it subject either Party to any liability to the other.

## **12. WAIVER**

No leniency or delay by either Party in enforcing its rights shall prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

## **13. SEVERABILITY**

Each provision of this Agreement is severable and if any provision is determined to be invalid, unenforceable or illegal under any existing or future law by a court, arbitrator or by operation of Applicable Law, such invalidity, unenforceability or illegality will not impair the operation of, or affect the remainder of the provisions of this Agreement that are valid, enforceable and legal.

## **14. GOVERNING LAW, JURISDICTION, AND RESOLUTION OF DISPUTES**

- 14.1 All questions arising out of or in connection with this Agreement or a License or its validity, interpretation, performance or breach shall be governed and decided by application of the laws of South Africa excluding any provisions thereunder with respect to the conflicts of laws.
- 14.2 The Parties to this Master Agreement or a License shall endeavor to settle by negotiation any dispute arising out of or in connection with this Agreement, and all the consequences thereof. Such dispute shall be duly notified by the claiming Party to the other Party, and the Parties shall endeavor to settle such dispute by negotiation within forty-five (45) days from receipt of said notice.
- 14.3 Any and all disputes between the Parties arising out of or in connection with this Agreement or a License that cannot be resolved by amicable settlement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules:
- The president of the tribunal of arbitration shall be a lawyer.
  - The tribunal of arbitration shall decide at law and not ex aequo et bono.
  - The arbitration shall take place in South Africa and shall be conducted in English.
  - Each Party may at any time request from competent judicial authority any interim or conservatory measure.
- 14.4 The Parties undertake to keep strictly confidential the contents of the arbitration proceedings.



invoices, tax receipts and any other documentation that may be required for Company to obtain tax reimbursement, credit, abatement or refund of any taxes assessed against Company and collected by Petroleum Agency. To the extent Petroleum Agency fails to provide such timely assistance and documentation, Company will not reimburse Petroleum Agency for such taxes.

16.2.1 In terms of the Value Added Tax Act No 89 of 1991, the Petroleum Agency is required to levy output of value added tax at 14% where payment was not received within 90 days of invoice date.

16.3 Registration, Reports and Withholding. Petroleum Agency shall fully and timely comply with all applicable tax requirements, submit all tax reports, file all registrations (including all registrations required in connection with Article 16.2 and take all actions necessary to make its tax payments in connection with this Agreement or the Data. Petroleum Agency shall provide Company with written proof that it has made all registrations required by the preceding sentence if requested by Company. Company will, as appropriate, report, withhold and pay to the taxing authorities any taxes levied or assessed on account of this Agreement or the Data based on written representations provided by Petroleum Agency and accepted by Company. Company will provide Petroleum Agency with tax receipts (or other proof of payment if receipts are unavailable) but will not reimburse Petroleum Agency for withheld taxes.

## **17. ADDITIONAL PROVISIONS**

17.1 Improper Influence. No member of either the Company or the Petroleum Agency may offer or make any payment, or offer or give anything of value to any Government Official, any immediate family member of a Government Official or any political party to influence the Government Official's or organization's decision, or to gain any other advantage for Company, Petroleum Agency or any of them arising out of this Agreement. In addition, no member of Petroleum Agency shall offer or make any payment or offer or give anything of value to any person if the member knows or has reason to believe that any portion of the payment or gift will be given directly, indirectly or through a third party to any Government Official, any immediate family member of any Government Official or any political party. "Government Official" means any officer or employee of any government (including federal, state, local municipal and national governments, and any governmental department, agency, company or other instrumentality) or Public International Organization, or any political party official or any candidate for political office.

17.2 Reporting Violations, Reimbursement and Termination. Petroleum Agency shall immediately notify Company of any violation of Clause 17.1 or 17.2. In addition to any other remedies to which Company may be legally entitled and notwithstanding termination of this Agreement, Petroleum Agency shall reimburse or issue a credit to Company equal to any benefit that was realized or paid in violation of these Articles. Notwithstanding any other provision of this Agreement, Company has the right to terminate this Agreement at any time for any violation of Clause 17.1 or 17.2, and Company is not obligated to pay Petroleum Agency for any services performed after the date of the violation or event in question.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in duplicate original by duly authorised representatives at the places and on the dates indicated below.

**South African Agency for Promotion of  
Petroleum Exploration and Exploitation  
SOC Ltd,**

**COMPANY**

At .....

At.....

On .....

On.....

Signature:.....

Signature:.....

Name (print):.....

Name (print):.....

Title:.....

Title: .....