

# **APPENDIX**

**SUPPLEMENTAL BOND  
FORM MMS-2028A**

Cover Page  
**OUTER CONTINENTAL SHELF (OCS)  
MINERAL LESSEE'S AND OPERATOR'S  
SUPPLEMENTAL PLUGGING AND ABANDONMENT BOND**

**Form MMS-2028A**

**This form dated May 2007 supersedes all previous versions of form MMS-2028A**

**Paperwork Reduction Act of 1995 (PRA) Statement:** The PRA (44 U.S.C. 3501 et seq.) requires us to inform you that MMS collects this information to hold the surety liable for the obligations and liability of the Principal (lessee or operator). Responses are mandatory to obtain or retain a benefit. No proprietary information is collected. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, 1849 C Street, NW, Washington, DC 20240.

**U.S. DEPARTMENT OF THE INTERIOR  
Minerals Management Service**

Bond No. \_\_\_\_\_

OCS Lease No. and Area/Block \_\_\_\_\_

Bond Type \_\_\_\_\_

Amount \_\_\_\_\_

**OUTER CONTINENTAL SHELF (OCS) MINERAL LESSEE'S AND OPERATOR'S  
SUPPLEMENTAL PLUGGING AND ABANDONMENT BOND**

The **Surety** is the Company Guaranteeing Performance.

Name of Surety: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

If a Corporation, Incorporated in the State of: \_\_\_\_\_; County or Parish of: \_\_\_\_\_

Check here if Surety is certified by U.S. Treasury as an acceptable surety on Federal Bonds and listed in the current U.S. Treasury Circular No. 570.

The **Principal** is the Lessee or Operator for Whom the Bond is Issued.

Name of Principal: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Schedule A, the area or leases covered by this bond, is composed of: (Check one and add description)

The following Area: \_\_\_\_\_

The following leases: \_\_\_\_\_

In addition to the Obligations of the Principal during the period of liability of this bond, the Surety also accepts the following Obligations: (Check one)

No Obligations other than the Obligations of the Principal during the period of liability of this bond.

All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond.

All Obligations of all previous Sureties or guarantors even if the Obligations are not Obligations of the Principal during the period of liability of this bond with the following exceptions or limitations: \_\_\_\_\_

(use an attached sheet if needed)

**Definitions**

For the purposes of this document:

An **Obligation** includes any obligation arising from any regulations of the Department of the Interior or any Instrument issued, maintained, or approved under the OCS Lands Act (43 U.S.C. 1331 *et seq.*).

An **Instrument** includes individually or collectively any lease, operating agreement, designation of operator or agent, storage agreement, compensatory royalty agreement, transfer of operating rights, permit, license, or easement, whereunder the Principal has the right, privilege, or license to conduct operations on the OCS.

A **Person** includes an individual, a public or private corporation, a State, a political subdivision of a State, any association of individuals, corporations, States, or subdivisions of States, or a government agency.

**By signing below, the Principal verifies that the information above is correct and agrees to the following:**

The Principal as agent on behalf of all lessees, operating rights owners, and operators will fulfill all Obligations for the entire leasehold and to the same extent as though the Principal were the sole lessee for all leases in Schedule A or for all leases for which the Principal has an interest within an area designated in Schedule A.

**By signing below, the Surety verifies that the information above is correct and agrees to the following:**

1. The Surety does hereby absolutely and unconditionally bind itself to the United States of America acting through and by the Minerals Management Service (MMS), or such other official designated by the Secretary of the Interior for this purpose, for the payment of all of the cost of the plugging and abandonment Obligations.
2. The Surety agrees to meet all existing and future Obligations of the Principal on the lease or leases described in Schedule A or on all leases within the area described in Schedule A at a cost not to exceed \_\_\_\_\_.
3. The Surety will be responsible for all Obligations of the Principal in existence at the time this document becomes effective and all Obligations that accrue after that date and until all Obligations are met or until the Regional Director terminates the period of liability of this bond.
4. If the Regional Director terminates the period of liability of this bond, the Surety will remain responsible for Obligations that accrued during the period of liability until the Regional Director issues a written cancellation of the bond in favor of the Surety.
5. If this bond is cancelled, the Regional Director may reinstate this bond as if no cancellation had occurred if any payment of any Obligation of the Principal(s) is rescinded or must be restored pursuant to any insolvency, bankruptcy, reorganization, or receivership, or should the representation of the Principal that it has paid its financial Obligations or performed the other

Obligations of the lease in accordance with MMS specifications be materially false and the MMS relied upon such representation in canceling the instrument.

6. The Surety waives any right of notice of this bond taking effect and agrees that this bond will take effect upon delivery to MMS.
7. The Surety's Obligations will remain in full force and effect, even if:
  - (a) Any person assigns all or part of any interest in an Instrument covered by this document.
  - (b) Any person modifies an Instrument or Obligation under an Instrument in any manner including modifications that result from a commitment to a unit, cooperative, communitization, or storage agreement; suspension of operations or production; suspension or changes in rental, minimum royalty, or royalties; modification of regulations or interpretations of regulations; creation or modification of compensatory royalty agreements or payments; or creation of any mortgage, pledge, or other grant of security interest in the Instruments.
  - (c) Any person, event, or condition terminates any Instrument covered by this bond, whether the termination is by operation of law or otherwise.
  - (d) The MMS takes or fails to take any action in enforcing, as against any party to the Instrument, the payment of rentals or royalties or the performance of any other covenant, condition or agreement of the lease, or giving notice of or making demand with respect to such nonperformance.
  - (e) The Surety suffers any loss by reason of any law limiting, qualifying, or discharging the Principal's Obligation.
8. The Surety agrees to be bound under this bond as to the interests in any Instrument retained by the Principal when the MMS approves the transfer of any or all of the Instruments or interests in the Instruments.
9. In the event of any default under a lease, the Surety must perform the Obligations of the Principal upon demand by the MMS.
10. If the MMS decides to commence suit to enforce its rights, it may commence and prosecute any claim, suit, action, or other proceeding against the Principal and Surety, or either of them, whether or not the MMS joins the lessees or any other party.
11. In the event there is more than one Surety for the Principal's performance of the Obligations, as to any Instrument, the Surety's Obligation and liability under this bond is on a "solidary" or "joint and several" basis along with other guarantors or sureties.
12. The Surety agrees to give prompt notice to the MMS and the Principal of any action filed alleging the insolvency or bankruptcy of the Surety or the Principal, or alleging any violation that would result in suspension or revocation of the Surety's charter or license to do business.
13. The Surety's Obligation and liabilities under this Bond are binding upon the Surety's successors and assigns. Nothing in this document permits assignment of the Surety's Obligation without the written consent of the MMS.
14. The Surety hereby waives any defenses to liability on this bond based on an unauthorized Principal signature.

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Name of Principal

\_\_\_\_\_  
Signature of Person Executing for Surety

\_\_\_\_\_  
Signature of Person Executing for Principal

\_\_\_\_\_  
Name and Title Typed or Printed

\_\_\_\_\_  
Name and Title Typed or Printed

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Address

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the State of \_\_\_\_\_, in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Address


\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

*Note:* The party signing for the Surety must attach a corporate resolution and power of attorney stating his or her authority to undertake this Obligation, pursuant to the acts of the corporate board of directors and the laws of the State of incorporation. The corporation executing this bond as Surety and the lessee or operator, if a corporation, must affix their corporate seals.

**NTL NO. 2003-NO. 6  
SUPPLEMENTAL BOND  
PROCEDURES**

<b>MMS</b>	<a href="#">Home</a>	<a href="#">Search</a>	<a href="#">Topic Index</a>	<a href="#">About MMS</a>	<a href="#">What's New</a>	U.S. Department of the Interior
	<b>Offshore Minerals Management</b> Notices to Lessees and Operators					
<a href="#">Offshore Home</a>	NTL No. 2003-N06					Effective Date: June 17, 2003
<a href="#">Notices to Lessees</a>						
<a href="#">Alaska NTLs</a>	<b>Notice to Lessees and Operators (NTL) and Federal Oil, Gas, and Sulphur Leases in the Outer Continental Shelf</b>  <b>Supplemental Bond Procedures</b>					
<a href="#">Gulf of Mexico NTLs</a>						
<a href="#">Pacific NTLs</a>						
<a href="#">Inactive National NTLs</a>						
<a href="#">Safety Alerts</a>						
<a href="#">Privacy Act/Disclaimers</a>	NOTE: <a href="#">NTL 2003-N06</a> , <a href="#">Attachment 1</a> and <a href="#">Attachment 2</a>  are available for download in Adobe's Portable Document Format (PDF).					

The Minerals Management Service (MMS) is issuing this NTL to update the criteria MMS uses to determine when a supplemental bond is required to cover potential lease abandonment liability. The NTL has been revised to: 1) increase the allowable cumulative lease abandonment liability amount of a lessee as a percentage of its net worth provided other financial criteria are met; 2) remove the current ratio from the criteria used to determine the financial strength of a lessee; 3) allow a lessee to request the MMS to consider a percentage of a lessee's proved producing reserves in the calculation of its net worth; 4) reduce the initial payment amount a lessee is required to contribute to a lease-specific abandonment escrow account; and 5) extend the time for a lessee to meet supplemental bond requirements after notice from the MMS. This NTL supersedes and replaces NTL No. 98-18N, effective December 28, 1998, and NTL No. 98-18N (Addendum 1), effective September 12, 2000, on this subject.

### Background

For each OCS lease, 30 CFR 256.53(d) and (e) grant the Regional Director the authority to require additional security [i.e. security above the amounts prescribed in 30 CFR 256.52(a) and 256.53(a) and (b)] in the form of a supplemental bond, based upon a calculation of the potential lease abandonment liability and an evaluation of the lessee's ability to carry out present and future financial obligations. Each lease with lease abandonment liability must be covered by a supplemental bond unless at least one lessee demonstrates to the satisfaction of the MMS that it has the financial ability to ensure that wells and platforms can be abandoned and removed and the drilling and platform sites cleared of obstructions.

### I. General

This NTL sets forth the procedures and criteria that all MMS OCS Regions will use to calculate lease abandonment liability, determine the risk that the lessee will be unable to carry out present and future financial obligations, and to specify the types and terms of the supplemental bonds or other additional security the MMS may require or accept. MMS reserves the right to vary from the procedures or criteria in this NTL on a case-by-case basis within the framework established in the governing regulations.

### II. Timing of Review of Potential Lease Abandonment Liability

Generally, MMS will conduct an initial review of the potential lease abandonment liability when a lessee submits an Exploration Plan (EP) for approval.

1. Subsequent reviews will be conducted when a lessee requests approval of one of the following:
  - A. Assignment of a record title interest, or a portion thereof, in a lease.
  - B. Significant revision to an approved EP.

- C. Development and Production Plan (DPP) or a significant revision to an approved DPP.
  - D. Development Operations Coordination Document (DOCD) or a significant revision to an approved DOCD.
  - E. Application for a pipeline right-of-way (ROW) or modification of an existing pipeline ROW.
  - F. Assignment of an interest in a pipeline ROW grant with platform amenities.
  - G. Significant revision to an approved pipeline installation plan for a pipeline having platform amenities.
2. MMS also may conduct reviews:
- A. periodically;
  - B. when MMS becomes aware of information that indicates a change in the financial strength of the company or potential cumulative abandonment liability; or
  - C. when a Notice of an Incident of Noncompliance (INC) is issued related to safety, environment, non-payment of royalty, or other violations of MMS regulations.
3. If the lessee takes an action that causes MMS to initiate a review and then withdraws the action, at MMS's discretion, the review may continue and, if necessary, the submission of a supplemental bond be required.

### III. Determination of Financial Strength and Reliability

Generally, a supplemental bond will be required for the lease unless it is determined that at least one lessee meets the following conditions that demonstrate financial strength and reliability:

- 1. Cumulative lease abandonment liability is less than or equal to 50 % of the most recently available and independently audited calculation of net worth; MMS will use the procedure in section IV to calculate the cost of performing abandonment liability for each OCS lease for which the lessee owns a record title interest.
- 2. Demonstrates reliability as evidenced by the following:
  - A. number of years of successful operations and production of oil and gas or sulphur in the OCS or in the onshore oil and gas industry;
  - B. credit rating(s), trade references, and verified published sources;
  - C. a record of compliance with the current and previous governing laws, regulations, and lease terms; and



D. other items that indicate financial strength or reliability; and, the lessee either:

3. Produces fluid hydrocarbons in excess of an average of 20,000 barrels of oil equivalent (BOE) per day from the OCS leases, based on calculations of production for the most recent 12 months for which data and information are available. [For the purposes of computing BOE for natural gas, 5.62 thousand cubic feet of natural gas equals 1 barrel of oil equivalent, as measured fully saturated at 14.73 psi and 60 degrees Fahrenheit according to 30 CFR 250.1203(b).] or
4. Has stockholders' equity or net worth of at least \$50 million and demonstrates meeting the criteria set forth in the table below by providing audited financial statements, (including an independent auditor's report, balance sheet, and profit and loss sheet).

For lessees with stockholders' equity or net worth of:	If the lessee's cumulative lease abandonment liability is $\leq$ 25% of stockholder's equity or net worth, the lessee's debt to equity ratio (total liabilities/net worth) must be:	If the lessee's cumulative potential lease abandonment liability is $>$ 25% but $\leq$ 50% of stockholder's equity or net worth, the lessee's debt to equity ratio (total liabilities/net worth) must be:
\$50 Million to \$100 Million	$\leq$ 2.5	$\leq$ 2.0
Above \$100 Million	$\leq$ 3.0	$\leq$ 2.5

5. The lessee may request that the MMS consider the value of proved producing reserves in the calculation of the lessee's net worth by providing the following information to the MMS for all OCS leases in which the lessee owns a record title interest or operating rights interest:
  - A. an independent third-party estimate of the total proved producing reserves. This third-party reserve report shall break down proved producing reserves on a lease, reservoir and well completion basis. It shall also include a cash flow spreadsheet to show anticipated production, expenses, and cash flow.
  - B. reservoir depth structure maps, net sand and oil/gas isopach maps;
  - C. production information for all producing wells for the last 12-month period;
  - D. well test information for the last 12-month period for all producing wells; and
  - E. reservoir bottom-hole pressure information (this data must include

the well the pressure was recorded in, the date the pressure was recorded, the depth in MD and TVD of the recorded pressure and the calculated bottom-hole pressure corrected to reservoir datum depth).

Upon receipt of this information, MMS will determine the value of the proved producing reserves to be included in the net worth calculation. However, should the lessee wish the MMS to include the proved producing reserves for an operating rights interest, then the abandonment liability for such operating rights interest also will be included in the calculation of the lessee's cumulative lease abandonment liability. Based on potential risk associated with the reserves, MMS will include up to 50% of the reserve value in MMS's calculation of the lessee's net worth.

- 6. The determination of the lessee's financial strength is valid for 1 year. MMS will extend the determination for 1 year at a time if:
  - A. an independent accountant submits verification of the lessee's current financial capacity at least 60 days prior to the expiration of the determination; and
  - B. the lessee continues to meet the criteria established above.

**IV. Determination of the Lease Abandonment Liability**

When MMS requires the lessee to provide and maintain a supplemental bond, the amount of the supplemental bond for the lease will be determined as follows:

- 1. MMS will estimate the cost to plug and abandon wells, remove platforms and other facilities, and restore the lease to its original condition by clearing the obstructions from wells, platform sites, and pipeline ROW's. MMS assumes that the lessee will remove all facilities and abandon them onshore.
- 2. Costs will be estimated using available historical costs. The following calculation is drawn from historical data for 4-pile platforms in the Gulf of Mexico and includes costs for removing platforms from the lease and scrapping the platform onshore, plugging and abandoning wellbores according to the requirements of 30 CFR 250 Subpart G and Subpart Q, and clearing the site according to 30 CFR 250 Subpart I and Gulf of Mexico NTL No. 98-26. This estimate is based upon costs in the Gulf of Mexico and assumes that a lessee will use a rig to plug and abandon all wellbores. These figures will be adjusted when available information shows that the numbers are not accurate. Other OCS Regions will base estimates on the best available information. The lessee may provide additional information for consideration when MMS estimates the lease abandonment liability. When providing additional data, the lessee should explain the basis for the data.

We will estimate costs as follows:

- A. Plugging and abandoning a wellbore will cost \$100,000 per wellbore for all water depths.
- B. Dismantling and abandoning a platform will vary with water depth as follows:

Estimated Costs of Removing a Platform and Scrapping it Onshore (According to Water Depth)

Water depths of 150 feet or less	Water depths between 151 and 200 feet	Water depths between 201 and 299 feet	Water depths of 300 feet or more
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\$400,000	\$600,000	\$1,250,000	\$2,000,000+
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C. Site clearance will vary with water depth as follows:

Estimated Cost of Site Clearance (According to Water Depth)		
Water depths of 150 feet or less	Water depths between 151 and 249 feet	Water depths of 250 feet and greater
\$300,000	\$400,000	\$500,000+

3. The following procedure will be used to estimate the need for and amount of supplemental bonds for all companies that have provided a general bond for one or more leases:
  - A. Determine the abandonment liability for all leases for which the lessee owns a record title interest (and the abandonment liability associated with the lessee's operating rights interest where the lessee has requested the MMS to include proved producing reserves for such operating rights interest in the calculation of its net worth as provided above).
  - B. Apply lease-specific bonds (i.e., lease-specific general bonds, lease-specific supplemental bonds, and lease-specific guarantees) to identified leases.
  - C. Exclude from the lessee's abandonment liability calculation, for the purpose of supplemental bond determination, the full amount of the abandonment liability for any lease(s) for which MMS has determined that one or more co-lessees have sufficient financial strength such that it is not necessary to require a supplemental bond. MMS will exclude less than the full amount of the abandonment liability when it is determined that additional security is needed based upon the financial or operational history of the companies involved.
  - D. Deduct a reserve account for the Minerals Revenue Management from the general bonds on file. This account will be credited \$50,000 per lease or \$300,000 per area-wide bond on file.
  - E. After calculating the remaining potential liability, the financial strength and reliability of the company will be evaluated using the procedures above. MMS will then determine the need for a supplemental bond and the amount.
  - F. Request lease-specific supplemental bonds through the designated operator who coordinates the submittal with the lessees.
  
4. The lessee may facilitate the review and approval of the request by providing detailed information on existing leasehold facilities. The lessee may provide evidence to support an adjustment in the estimate of the cumulative potential abandonment liability. This evidence may include:
  - A. the itemized data and information by lease used as a basis for the estimate of the cumulative potential abandonment liability represented by wells and facilities on the lease(s), and
  - B. the itemized data and information by lease on which a third party bases its estimate of cumulative potential lease abandonment liability.

5. When conducting a subsequent review of the need for a supplemental bond, MMS will consider the number of wells drilled or plugged and abandoned in the time that has elapsed since the last review of the lessee's cumulative potential abandonment liability, the number of platform installations or removals since the last review, changes in the amount and value of reserves being produced, the projected rates of oil and gas production, inflation, and other changes in the market conditions. The objective of the review and analysis will be to ensure that the supplemental bond coverage or alternate form of security provided is not less than the amount established based upon the lessee's cumulative potential lease abandonment liability.

#### V. Acceptable Forms of Supplemental Bonds

Within 45 days following MMS written notification, the lessee must submit one of the following to meet the supplemental bond obligation:

1. A lease-specific supplemental bond, United States Treasury Securities, or an alternate form of supplemental security approved by us, in the full amount required. If the value of the lessee's security falls below this amount, or if the U.S. Treasury no longer certifies that the company that issued the bond is acceptable, the lessee must notify us within 15 days and take necessary action to meet the supplemental bond obligation.
2. A plan to MMS for review and approval whereby the lessee commits to fully fund a lease-specific abandonment escrow account according to 30 CFR 256.56. Generally, the lessee must fully fund a lease-specific abandonment account within four (4) years or by the beginning of the year in which it is projected that 80 percent of the originally recoverable reserves have been produced, whichever is earlier. The plan must include the following:
  - A. An initial payment into the lease-specific abandonment escrow account equal to or greater than 50 percent of the estimate of the cumulative potential lease abandonment liability. At the lessee's request, the MMS may approve an initial payment of less than 50 percent following the review of a third-party estimate of the proved producing reserves for the lease, if MMS determines that the lesser amount doesn't create a risk to the Government.
  - B. A prescribed time schedule for making specified incremental payments (e.g., monthly payments) in amounts that will ensure that the amount in the lease abandonment account will increase at a faster rate than the rate at which the originally recoverable reserves are being produced from the lease.
  - C. A commitment by the financial institution in which the lessee established the lease-specific abandonment account to notify us of the date and amount of the initial deposit and of each incremental payment into the account.
  - D. A risk insurance policy for the benefit of MMS that covers the residual liability in the event of any catastrophic failure that prevented the completion of the remaining payments. This requirement has been met, in the past, by including MMS as a beneficiary on existing policies.

MMS will review the above-described information and will approve it either as submitted or request specific revisions. For example, MMS will analyze both the initial payment amount as well as the time schedule for making specified incremental payments based on an analysis of current, past, and projected rates of production from the leasehold(s), or cash flow for facilities utilized by ROW, characteristics of the

producing reservoir(s), plugging and abandonment information available in MMS's databases, and/or other information provided.

The lessee must immediately submit, and subsequently maintain, a supplemental bond in an amount equal to the remaining portion of the estimate of the amount of the lessee's cumulative potential lease abandonment liability in the event the lessee fails to:

- A. make the initial payment into a MMS approved lease-specific abandonment; or
- B. pay on the date due an incremental payment into the MMS-approved lease-specific abandonment account in the amount agreed.

The following table provides an example of an incremental payment schedule for a lease-specific abandonment escrow account.

The following is an example of a lease-specific abandonment account, the time schedule prescribed, and the amount of each incremental payment, to fund the account over a four-year period. This example describes a situation in which, based on our estimate of your cumulative potential lease abandonment liability, we required a \$5 million supplemental bond.

Year	Percent of Recoverable Reserves Produced at End of Year as a Percentage of Originally Recoverable Reserves	Dollar Amount (Security) Required at Start of Year	Quarterly Payment During Year
1	20%	\$2,500,000	\$156,250
2	40%	\$3,125,000	\$156,250
3	60%	\$3,750,000	\$156,250
4	80%	\$4,375,000	\$156,250

1. Total Supplemental Bond Amount: \$5,000,000
2. The amount of the initial payment is 50 percent of the cumulative potential lease abandonment liability since 50 percent is greater than the percentage of the originally recoverable reserves projected to be produced by the end of Year 1.
3. By the end of Year 3, MMS projects that 60 percent of the originally recoverable reserves will have been produced. Therefore, the lessee will need to fund at least 60 percent of the total supplemental bond (\$3,000,000 = 60% x \$5,000,000) by the start of Year 3.
4. By the end of Year 4, MMS projects that the lease will have produced over 80 percent of the originally recoverable reserves. Therefore, the lessee will need to fund the entire \$5,000,000 by the end of Year 4. Quarterly payments of \$156,250 during the 4-year period will increase

\_\_\_\_\_ the fund to \$5,000,000 by the end of Year 4. \_\_\_\_\_

#### VI. Using a Third-Party Guarantee In Lieu of a Supplemental Bond

The lessee may submit a third-party guarantee in lieu of a supplemental bond. The guarantee must be provided by a third party (guarantor) who will guarantee compliance with all lease obligations. The guarantor must also comply with all requirements in 30 CFR 256.57. MMS will accept a third-party guarantee only if the guarantor and the indemnity agreement meet all of the criteria below.

1. The guarantor must:
  - A. meet the qualifications for a lessee in 30 CFR 256.35(b);
  - B. demonstrate satisfactory levels of financial strength and business history that exceed financial and production thresholds in Section III; and
  - C. not have total outstanding and proposed guarantees that exceed 25 percent of its unencumbered net worth in the United States.
2. MMS will review the financial information that the lessee or the guarantor submit to determine a guarantor's financial strength, business history, and compliance with current financial and production thresholds. The lessee or the guarantor will provide information MMS determines is necessary including the guarantor's:
  - A. current rating for its most recent bond issuance by either Moody's Investor Service or Standard and Poor's Corporation;
  - B. net worth, taking into account potential liabilities under its guarantee of compliance with all the terms and conditions of the lease, MMS regulations, and any other existing guarantees to the MMS;
  - C. ratio of current assets to current liabilities, taking into account potential liabilities under its guarantee of compliance with all the terms and conditions of the lease, MMS regulations, and any existing guaranties to MMS; and
  - D. unencumbered fixed assets in the United States.
3. If the guarantor's financial data are not publicly available, MMS will review the following financial information that the lessee or the guarantor submits and that an officer of the company certifies as correct:
  - A. Financial statements for the most recently completed fiscal year verified by an independent certified public accountant (CPA) using generally accepted accounting principles and containing no adverse opinions by the CPA.
  - B. Yearly updates of the financial statements submitted 90 days before the end of the guarantor's fiscal year or an annual date MMS sets.
4. An evaluation will be based on of the stability of the guarantor. In part on the length of time that the guarantor has been in continuous operation. A guarantor's continuous operation:
  - A. is the time immediately before submission of a guarantee; and

- B. does not include periods of interruption of operations not within guarantor's control and that do not affect the likelihood of the guarantor remaining in business during the lessee's exploration, development, production, plugging, removal, and clearance operations on the lease.
5. The guarantor must meet the criteria in Section III for financial strength and reliability.
6. The guarantor must submit an indemnity agreement providing for compliance with all lease obligations, the obligations of all operating rights owners, and the obligations of all operators on the lease. A third-party guarantee must contain each of the following provisions:
  - A. If the lessee, the operator, or an operating rights owner fails to comply with any lease term or regulation, the guarantor must take corrective action or provide within seven (7) calendar days sufficient funds for us to complete corrective action.
  - B. If the guarantor takes corrective action to bring a lease into compliance with MMS requirements or provides funds for us to bring the lease into compliance, these actions do not reduce the guarantor's liability.
7. If a guarantor wishes to terminate the period of liability under its guarantee, it must:
  - A. Notify the lessee and us at least 90 days before the proposed termination date;
  - B. Obtain MMS approval for the termination of the period of liability for all or a specified portion of the guarantor's guarantee; and
  - C. Remain liable for all obligations accrued during the period that the guarantor's guarantee is in effect.
8. If MMS approves the third-party guarantee, the guarantor must submit an indemnity agreement that meets the following criteria, (see Attachment 1 for Example Agreement):
  - A. The indemnity agreement must be executed by the guarantor and all persons and parties bound by the agreement.
  - B. The indemnity agreement must bind each person and party executing the agreement jointly and severally.
  - C. When a person or party bound by the indemnity agreement is a corporate entity, two corporate officers who are authorized to bind the corporation must sign the indemnity agreement.
  - D. The guarantor and the other corporate entities bound by the indemnity agreement must provide us copies of:
    - (1) the authorization of the signatory corporate officials to bind their

respective corporations;

(2) an affidavit certifying that the agreement is valid under all applicable laws; and

(3) each corporation's corporate authorization to execute the indemnity agreement.

- E. If the third-party guarantor or another party bound by the indemnity agreement is a partnership, joint venture, or syndicate, the indemnity agreement must bind each party who has a beneficial interest in the guarantor; and provide that, upon MMS demand under the third-party guarantee, each party is jointly and severally liable for compliance with all terms and conditions of the lease.
- F. The indemnity agreement must provide that, within seven (7) calendar days of a demand for forfeiture under 30 CFR 256.59, the guarantor will either commit itself to take all necessary corrective action or provide sufficient funds for us to take corrective action.
- G. The indemnity agreement must contain a confession of judgment. It must provide that, if it is determined that the lessee, the operator, or an operating rights owner is in default of the terms of the lease or in violation of the OCS Lands Act (OCSLA) or its implementing regulations, the guarantor will not challenge the determination and will remedy the default.

- 9. Each indemnity agreement is deemed to contain all terms and conditions above, even if the guarantor has omitted them.

#### **VII. Termination of Supplemental Bond or Third-Party Guarantee, or Determination that a Supplemental Bond is Not Necessary**

MMS reserves the right to deny the lessee's request for a finding that a supplemental bond is not necessary, even though an independent accountant provides an audit and certification that the lessee meets the financial strength and performance criteria described herein. Normally, such a denial or revocation of a previous finding will be based on a review of independently audited information that indicates that recent or anticipated future events may adversely affect the lessee's ability to comply with current and/or future lease abandonment obligations. MMS may also require a supplemental bond on any lease, regardless of any prior determination under these requirements, if it is determined that the designated operator has not fully and consistently complied with MMS regulations.

- 1. When any of the following occur, the lessee must take necessary action immediately to meet these requirements. If the lessee does not, MMS may issue a civil penalty, stop operations on the lease, or take any other action authorized by the OCSLA or the implementing regulations.
  - A. MMS requires the lessee to provide a supplemental bond when it was previously determined that the lessee's financial strength was sufficient such that a bond was not required. In such cases, the lessee will have a minimum of 40 days notice before the lessee must furnish a supplemental bond.
  - B. The lessee's third-party guarantor ends the period of the guarantee.
  - C. The lessee's bonding company ends the period of bond protection.



- D. The value of the lessee's security falls below the required amount of the supplemental bond
  - E. The U.S. Treasury no longer certifies that the company that issued the bond is acceptable.
2. If the lessee chooses to provide a lease specific abandonment escrow account instead of providing a bond, the lessee may be allowed up to an additional 70 days to prepare and allow MMS to review a plan for incremental payments and to contribute funds to the account, according to the plan.

### VIII. Addresses

Use the following addresses to obtain further information or to submit information:

#### Alaska OCS:

Minerals Management Service  
Alaska OCS Region  
Attn: Jeffrey Walker, RS/FO  
949 East 36th Avenue, Third Floor  
Anchorage, AK 99508-4302  
[Jeffrey.Walker@mms.gov](mailto:Jeffrey.Walker@mms.gov)  
(907) 271-6190

#### Gulf of Mexico OCS or Atlantic OCS:

Minerals Management Service  
Gulf of Mexico OCS Region  
Attn: Carrol Williams, MS 5421  
1201 Elmwood Park Boulevard  
New Orleans, LA 70123-2394  
[Carrol.Williams@mms.gov](mailto:Carrol.Williams@mms.gov)  
(504) 736-2803

#### Pacific OCS:

Minerals Management Service  
Pacific OCS Region  
Attn: Frederick L. White, MS 7300  
770 Paseo Camarillo  
Camarillo, CA 93010-6064  
[Frederick.white@mms.gov](mailto:Frederick.white@mms.gov)  
(805) 389-7830

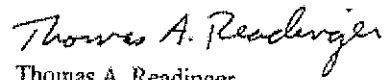
### Paperwork Reduction Act of 1995 (PRA) Statement

The information collection referred to in this NTL provides clarification, description, or interpretation of requirements in 30 CFR 256. The Office of Management and Budget (OMB) has approved the information collection requirements in these regulations and assigned OMB control number 1010-0006. This NTL also refers to approved information collection requirements in 30 CFR 250, subparts B, Q, and I. The respective OMB control numbers are 1010-0049, 1010-00142, and 1010-0058. This NTL does not impose additional information collection requirements subject to the PRA.

### Contact

Please contact Mr. Carrol Williams at (504) 736-2803 or [Carrol.Williams@mms.gov](mailto:Carrol.Williams@mms.gov) if

you have any questions regarding this NTL.



Thomas A. Readinger  
Associate Director for  
Offshore Minerals Management

Attachments:

1. Model form for "Third Party Indemnity Agreement"
2. Internet Web Sites and Information

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**ONLINE QUERY FOR  
PLUGGING AND  
ABANADONMENT  
LIABILITY**

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## Online Query for Plugging and Abandonment (P&A) Liability

Disclaimer: All queried liability data should be utilized as general guidance only. The Technical Assessment Section at MMS will make the final determination of any plugging and abandonment lease liability.

**This data was last updated on 12/10/2007 5:30:17 AM (CST)**

**and will be updated weekly.**

### Click The Links For Help On Each Selection

- [Lease Number:](#) .....
- [Area/Block:](#)     Alaminos Canyon (AC) .....
- [ROW Number:](#) .....
- [RUE Number:](#) .....

View the [Summary File for the Lease Liabilities Data](#)

Click here to [Download the P & A Lease Liabilities Index in Delimited ASCII format](#)

Click here to [Download the P & A Lease Liabilities Database](#)  
*(The database is in Access2002 format.)*

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**SUPPLEMENTAL BOND  
FOR DECOMMISSIONING  
LIABILITIES  
TRUST AGREEMENT**

OCS-\_\_\_\_\_

Map Area\_\_\_\_\_

Blocks \_\_\_\_\_

Right-of-Way OCS\_\_\_\_\_

**SUPPLEMENTAL BOND FOR DECOMMISSIONING LIABILITIES  
TRUST AGREEMENT**  
(per 30 CFR 256.52)

This Supplemental Bond For Decommissioning Liabilities Trust Agreement (as amended, supplemented, or restated from time to time, this "**Agreement**"), is dated effective as of \_\_\_\_\_, and is entered into among the following parties:

\_\_\_\_\_ (in its capacity as trustee, together with its successors and substitutes in trust pursuant to the terms hereof, the "**Trustee**");

\_\_\_\_\_ (the "**Settlor**"); and

The United States of America, acting by and through the **MINERALS MANAGEMENT SERVICE OF THE UNITED STATES DEPARTMENT OF THE INTERIOR** (the "**Beneficiary**").

WHEREAS, in order to fulfill certain obligations and conditions described below, the Settlor and the Beneficiary have entered into this Agreement;

WHEREAS, the Beneficiary has determined that the estimate of abandonment liability for those oil and gas leases bearing Serial Nos. OCS \_\_\_\_\_ (the "**OCS Leases**") and associated platforms, wells, equipment and pipelines, specifically Platforms \_\_\_\_\_, and Pipeline Right-of-Way OCS \_\_\_\_\_, is \$ \_\_\_\_\_ (the "**Abandonment Liability**");

WHEREAS, those certain record title interests in the OCS Leases that have been acquired by the Settlor are referred to herein as the "**Interests**";

WHEREAS, the interest in the federal pipeline right-of-way bearing Serial No. OCS \_\_\_\_\_ now held by \_\_\_\_\_ and have been acquired by Settlor is referred to as the "**Pipeline Interest**";

WHEREAS, the Settlor has agreed to deliver to the Trustee a U.S. Treasury Note in the original principal amount of \$ \_\_\_\_\_, which with reinvestment of the earnings from the Note, its replacement Notes and if necessary additional capital contributions shall be equal to \$ \_\_\_\_\_ on \_\_\_\_\_, which is

deemed by the Beneficiary as sufficient to serve as security for the Abandonment Liability (the "**Supplemental Bond Treasury Note**");

WHEREAS, the Settlor has established a trust account designated as "   Decommissioning Liabilities Trust Account," having account number                                  maintained with the Trustee (the "**Trust Account**"), which is a lease specific abandonment account pursuant to the Beneficiary's rules and regulations.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINED TERMS

1.1 Terms Defined Above. As used in this Agreement, the terms "Agreement", "Beneficiary", "Abandonment Liability", "Interests", "Pipeline Interests", "Supplemental Bond Treasury Note", "Settlor", "Trust Account", and "Trustee" and those other terms or words in the recitals of this Agreement are defined above.

1.2 Defined Terms. As used in this Agreement, the following terms shall have the following meanings, unless the context otherwise requires:

**"Trust Funds"** shall mean the Trust Account, the Supplemental Bond Treasury Note and all other funds that may be, from time to time, deposited into the Trust Account by the Settlor, including any interest earned on such funds and other property in the Trust Account, and all certificates, instruments, and documents representing, evidencing, or issued in connection therewith, and all proceeds thereof.

**"Property"** or **"Properties"** shall mean the OCS Leases and associated platforms, wells, equipment and pipelines, specifically, Platforms                                 , including without limitation, the Pipeline Right-of-Way bearing Serial No. OCS                                .

**"MMS Compliance Documents"** shall mean all assignments of the OCS Leases to the Settlor comprising the Interests and such other forms and documents required by the Beneficiary in connection therewith.

### 1.3 Other Definitional Provisions.

(a) The words "hereby", "herein", "herein after", "herein above", "herein below", "hereof", "hereto" and "hereunder" when used in this Agreement shall refer to this Agreement as a whole and not to any particular article, section or provision of this Agreement.

(b) References to any article, section or exhibit refer to, this Agreement unless otherwise specified.

## ARTICLE II

### DECLARATION OF TRUST

2.1 Appointment of Trustee. The Settlor and the Beneficiary hereby appoint \_\_\_\_\_ as the trustee under this Agreement, and the Trustee hereby accepts such appointment.

2.2 Transfer of Funds. The Settlor shall, on the date of approval of the MMS Compliance Documents and the acceptance by the Beneficiary approving the Settlor as the designated unit operator for the Unit, or immediately thereafter, deposit the Supplemental Bond Treasury Note into the Trust Account. Any and all funds so transferred into the Trust Account are deemed to be Trust Funds, are subject to this Agreement, and shall be held by the Trustee pursuant to the terms of this Agreement.

2.3 Declaration of Trust. The Trustee declares that it will hold the Trust Funds in trust on behalf of the Beneficiary and for the use and benefit of the Beneficiary pursuant to the terms of this Agreement.

2.4 Control and Administration of Trust Funds.

(a) Except as expressly provided in this Agreement (including upon termination of this Agreement pursuant to Section 5.11), the Trustee shall not permit the Settlor to withdraw or transfer any of the Trust Funds from the Trust Account. The Trustee shall not permit the Beneficiary to withdraw or transfer from the Trust Account any of the Trust Funds other than as expressly provided for herein. The Trustee shall comply with all orders and directions with respect to the Trust Funds from the Beneficiary without further consent from the Settlor

(b) The Supplemental Bond Treasury Note shall remain invested in such form in accordance with the terms thereof. The Settlor and the Beneficiary direct the Trustee to invest all other Trust Funds in interest bearing cash equivalents. In the absence of written, joint instructions, such interest and any other Trust Funds will be placed in a U.S. Bank National Association FDIC Insured Money Market Account. For tax reporting and withholding purposes, all income earned on investments of the Trust Funds shall be allocable to the Settlor.

2.5 Periodic Account Statements; Further Information. The Trustee shall provide to the Settlor and the Beneficiary monthly statements detailing all transactions affecting the Trust Funds and, promptly following the written request of the Settlor and the Beneficiary for any information regarding the Trust Funds that the Settlor and the Beneficiary may reasonably request.



## 2.6 Representations and Warranties.

(a) The Trustee represents and warrants to the Settlor and the Beneficiary that the Trustee has not received any prior notice of any assignment of, grant of security interest in, pledge of or claim against any of, the Trust Funds.

(b) The Settlor represents and warrants to the Trustee and the Beneficiary that the Settlor has not received any prior notice of any assignment, grant of security interest in, pledge of or claim against any of the Trust Funds.

2.7 Waiver of Right to Set-Off. The Trustee hereby waives all claims and rights of set-off and banker's and other possessory liens against the Trust Funds. The Trustee agrees not to set-off or reduce the amounts to be paid on the Trust Funds by reason of any liability or obligation that the Settlor or any other person or entity may have to the Trustee and acknowledges and agrees that its obligation to transfer all amounts owing with respect to the Trust Funds in accordance with the this Agreement and the instructions of the Beneficiary and the Settlor not in conflict with the terms hereof is absolute and unconditional.

2.8 Fees of Trustee. All usual and customary fees, expenses and other charges as set forth on Schedule "A" attached hereto shall be the responsibility of the Settlor, and the Trustee shall have no priority with respect to the Trust Funds for such purposes and shall not be entitled to any compensation from the Beneficiary in performing this Agreement.

2.9 Books, Records and Tax Returns. The Trustee shall maintain appropriate books and records relating to the receipt and disbursement of all Trust Fund monies. The Trustee agrees to sign and/or file all returns with respect to taxes as the Settlor may cause to be prepared with respect to the Trust Funds and direct the Trustee to sign and/or file. The Trustee shall have no liability for any tax due and payable in connection with this Agreement except for taxes based upon or measured by amounts paid to the Trustee as fees or compensation under this Agreement. All taxes due on interest earned with respect to the Trust Funds are the responsibility of the Settlor, and shall not be paid from the Trust Funds.

2.10 Scope of Undertaking. The duties and responsibilities of the Trustee in connection with this Agreement will be purely ministerial and limited to the duties and responsibilities expressly set forth in this Agreement. The Trustee is not a principal, participant or beneficiary in any transaction underlying this Agreement and will have no duty to inquire beyond the terms and provisions hereof. The Trustee will not be required to exercise any discretion hereunder and will have no responsibility with respect to investment or management of Trust Funds other than to act in accordance with the written instructions (including Section 2.4(b) above). The Trustee will never be required to use, advance, or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

The Trustee may rely on, and will not be liable for acting or refraining from acting upon, any written notice, instruction, request, or other communication furnished to it pursuant to this Agreement and believed by it to have been signed or presented by the proper party or parties.

The Trustee is authorized, in its sole discretion, to disregard any and all notices or instructions given by any other party hereto or by any other person, firm or corporation, which is not a party to this Agreement, except only (a) such notices or instructions as are herein provided for in this Agreement and (b) orders or process of any federal court entered or issued with or without jurisdiction.

If any property or Trust Funds subject hereto are at any time attached, garnished, or levied upon under any federal court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by a federal court order, or in case of any federal order, judgment or decree shall be made or entered by federal court affecting such property or any part hereof, then and in any of such events the Trustee is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it, provided that (unless otherwise ordered in such order, writ, judgment or decree) the Trustee shall not take any action until eleven (11) days after entry of such order, writ, judgment or decree, and if it complies with any such order, writ, judgment or decree it shall not be liable to any other party hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated; unless the Trustee has received written notice that such order, writ, judgment or decree has been stayed by court order pending appeal.

The Trustee may rely, and shall be protected in acting or refraining from acting, upon any instrument furnished to it hereunder and reasonably believed by it to be genuine and reasonably believed by it to have been signed or presented by the appropriate party or parties (including without limitation, with respect to any party which is a corporation, any instrument purporting to have been signed on its behalf by an authorized officer).

The Trustee shall make a reasonable effort to verify the validity and genuineness of any documents mentioned in this Section 2.10. If the Trustee has made such a reasonable effort, the Trustee shall not be responsible for the sufficiency or accuracy, or the form, execution, validity or genuineness, of documents or securities presented to it, nor shall it be responsible or liable in any respect on account of the identity, authority or rights of any person executing, depositing or delivering, or purporting to execute, deposit or deliver any such document, security or endorsement or this Agreement, or on account of or by reason of forgeries, false representations, or the exercise of its discretion in any particular manner.

The Trustee shall not be liable for any damage, loss, liability, or delay caused by accidents, strikes, fire, flood, war, riot, equipment breakdown, electrical or mechanical

failure, acts of God or any cause which is reasonably unavoidable or beyond its reasonable control.

The Trustee may consult with legal counsel of its own choosing reasonably acceptable to the Settlor and the Beneficiary who will not unreasonably withhold their consent to counsel, and shall be entitled to advice of such legal counsel concerning all matters of this Trust Agreement. The Trustee may act upon the opinion or advice of such legal counsel in the exercise of its reasonable care.

The Settlor hereby agrees to protect, defend, indemnify and hold harmless the Trustee against and from any and all costs, losses, liabilities, expenses (including counsel fees and expenses) and claims imposed upon or asserted against the Trustee on account of any action taken or omitted to be taken in connection with its acceptance of or performance of its duties and obligations under this Agreement, except as a result of its gross negligence or willful malfeasance, as well as the costs and expenses of defending itself against any claim or liability arising out of or relating to this Agreement. This indemnification shall survive the release, discharge, termination and/or satisfaction of the Agreement. If the Settlor is required to make payment to the Trustee with respect to any claims asserted under this Section 2.10, such payment shall not be deducted from the Trust Funds, but shall be paid from the Settlor's corporate resources.

The Settlor and the Trustee acknowledge and agree that the Beneficiary shall have any obligation to pay any fees, costs or expenses of the Trustee or the Settlor under this Agreement, and the Beneficiary has any obligation to indemnify or hold harmless the Settlor or the Trustee under this Agreement.

### ARTICLE III

#### **RESIGNATION AND REMOVAL OF TRUSTEE: APPOINTMENT OF SUCCESSORS**

3.1 Resignation; Removal; Successor Trustee. The Trustee or any successor thereto may, with respect to the trust created hereby, resign at any time without cause by giving at least ten (10) days' prior written notice to the Settlor and the Beneficiary such resignation to be effective on the date of appointment of a successor Trustee as hereinafter provided. In the case of the resignation of the Trustee, the Settlor and the Beneficiary will appoint a successor Trustee by written instrument signed by the Settlor and the Beneficiary.

In the event the Settlor and the Beneficiary shall not have appointed a successor Trustee within ten (10) days after such resignation by the Trustee, the Trustee will continue as Trustee and may, at the sole expense of the Settlor, apply to a state or federal court in the State of \_\_\_\_\_, having jurisdiction (the "**Court**"), to appoint a successor Trustee to act effective as of the date specified by the Court until such time, if any, as a successor is appointed by the Settlor and the Beneficiary as above provided. Any successor Trustee so appointed by such Court will immediately and without further act be superseded by any successor Trustee thereafter appointed

by the Settlor and the Beneficiary. In addition, the Settlor and the Beneficiary may at any time remove the Trustee with or without cause by written notice to the Trustee signed by the Settlor and the Beneficiary designating the effective date of any such removal and the party to serve as successor Trustee. A successor Trustee hereunder will be deemed the Trustee for all purposes hereof, and each reference herein to the Trustee will thereafter be deemed to refer to such successor.

3.2 Acceptance of Appointment. Any successor Trustee, whether appointed by the Court or by the Settlor and the Beneficiary, will execute and deliver to its predecessor Trustee an instrument reasonably satisfactory to such predecessor Trustee accepting the appointment, and thereupon such successor Trustee, without further act, will become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Trustee under this Agreement with like effect as if the successor had been originally named as the Trustee in this Agreement.

Upon the written request of such successor Trustee, such predecessor Trustee will execute and deliver an instrument reasonably satisfactory to such successor Trustee transferring to the successor Trustee, all the estates, properties, rights, powers and trusts of such predecessor Trustee, and such predecessor Trustee will duly assign, transfer, deliver and pay over to such successor Trustee any property or monies then held by such predecessor Trustee which are subject to this Agreement.

3.3 Qualifications of Successor Trustee. Any successor to the Trustee, however appointed, will be a bank or trust company organized under the laws of the United States or any jurisdiction thereof having (or, in the case of a subsidiary or a bank holding company, its corporate parent shall have) a combined capital and surplus of at least \$500,000,000 and will be able to perform the duties of the Trustee hereunder upon commercially reasonable or customary terms.

3.4 Merger of Trustee. Any corporation into which the Trustee may be merged, consolidated, or converted or any successor by merger, conversion or consolidation or any corporation to which the Trustee may transfer all or substantially all of its corporate trust business (including the administration of the trust created by this Agreement) may be the Trustee under this Agreement without any further act.

3.5 Status of Successor Trustee. A successor Trustee will have the same duties, powers and discretion as conferred on its predecessor Trustee. A successor Trustee may accept the assets of the trusts delivered to it by its predecessor Trustee as constituting the entire assets of the trust created under this Agreement and will not be required to investigate whether or not the entirety has been delivered to it or to investigate any acts, omissions, or misconduct of its predecessor Trustee.

## ARTICLE IV

### DISBURSEMENTS

4.1 Lease Obligations. In accordance with all applicable federal laws and regulations, the Settlor will commence to perform all lease obligations pertaining to the Interests on the date of approval of the MMS Compliance Documents and the acceptance by the Beneficiary thereof.

4.2 Notice after Plugging. Upon completion of all plugging and abandonment operations pertaining to all wells now existing or hereafter drilled and completed, and all wells hereafter redrilled and recompleted on the OCS Leases or the Interests, the Settlor will provide the Beneficiary and the Trustee a certificate executed by an officer of the Settlor verifying that the operation was conducted in compliance with (a) applicable federal laws and regulations, (b) the OCS Leases, affected by such operation, and (c) the applicable operating agreement(s) pertaining to such leases.

4.3 The Settlor will be entitled, with the written concurrence of the Beneficiary, to a disbursement of the amount incurred in such plugging and abandonment operations, which shall be released from the Trust Funds to the Settlor, as provided in Section 4.3. Prior to release of funds, proof of payment of all royalties, penalties, and other lease obligations, and proof of full payment to all vendors may be required. Should the Beneficiary agree to release such funds for any work performed by a subcontractor(s), the check(s) for payment may be issued jointly in the name of the Settlor and the vendor(s).

4.4 Final Notice. When all wells, equipment, facilities and structures associated with or attributable to the Interests have been properly and prudently plugged, abandoned and restored in compliance with (a) applicable Federal laws and regulations, (b) the OCS Leases, and (c) the applicable operating agreement(s), then the Settlor will deliver to the Beneficiary and the Trustee a certificate, executed by an officer of the Settlor, certifying that such matters have been completed and listing all invoices and confirm that all invoices associated with such work have been fully paid and discharged. Upon the Beneficiary's written concurrence to release of all or a portion of the Trust Funds (which concurrence will be promptly given if the Settlor has complied with the terms of this Agreement), the Trustee shall be authorized to immediately release to the Settlor all or such portion of all funds, including principal and interest, remaining in the Trust Funds, as set forth in a joint certificate of the Settlor, the Beneficiary delivered to the Trustee. The Beneficiary will furnish its written concurrence (if the Settlor has complied with the terms of this Agreement) by executing and delivering such joint certificate within thirty (30) days after the Beneficiary's receipt of the Settlor's certificate referenced above.

4.5 Defaults. Any one of the following events shall be an event of default attributed to the Settlor:

(a) if the Beneficiary has not received a true copy of the documentation submitted by the Settlor which demonstrates that the Settlor has satisfied the plugging, abandonment, and restoration obligations with respect to the Interests no later than thirty (30) days after the obligation accrues in accordance with federal laws and regulations;

(b) the Abandonment Liabilities are not performed and completed in a timely and faithful manner;

(c) in the Settlor's insolvency, application for adjudication in bankruptcy, application by or against the Settlor for assignment, composition, extension or receivership, or

(d) the Settlor's failure to comply with any material obligation or covenant of this Agreement, subject to the Settlor's cure rights in Section 4.5 below.

If the Trustee receives from the Beneficiary a certificate to the effect that an event of default has occurred, on which certificate the Trustee may rely, without inquiry, then it shall be lawful for, and the Settlor does hereby authorize the Trustee to, without notice to the Settlor, assign, transfer and deliver the all or any portion of the Trust Funds and any other amounts herein pledged and deposited, without recourse to judicial proceedings and without either demand, appraisal, advertisement or notice of any kind, all of which are hereby expressly waived by the Settlor, to the Beneficiary.

**4.6 Payments to the Beneficiary.** If the Settlor fails to comply with any term or provision of this Agreement, the Beneficiary will notify the Settlor of such noncompliance. If the Settlor has not made the necessary corrections to comply with this Agreement within five (5) business days after such notification, then the Beneficiary may remedy such noncompliance, without prejudice to the Beneficiary's rights against the Settlor, and direct the Trustee to distribute to the Beneficiary funds from the Trust Funds to pay or reimburse the Beneficiary for the expenses incurred or to be incurred in remedying the noncompliance. The Trustee shall within three (3) business days of its receipt of notice and documentation of the expense incurred or to be incurred by the Beneficiary, distribute funds to the Beneficiary, or as otherwise directed by the Beneficiary, to pay or reimburse to the Beneficiary for expenses incurred or to be incurred to remedy the noncompliance. The Trustee may rely on documents delivered to it pursuant to this Section 4.5 without inquiry.

**4.7 Audit by the Beneficiary.** The Beneficiary shall have the right, at its own costs and expense, to audit the Settlor's records relating to the plugging, abandonment and restoration of the wells, equipment, facilities and structures associated with or attributable to the Properties in order to satisfy itself that the Settlor has complied with all of its obligations under this Agreement.

## ARTICLE V

### MISCELLANEOUS

5.1 Amendment. The parties hereto agree and acknowledge that they shall not amend, modify or waive any term or condition of this Agreement except in writing.

5.2 No Liens. The Settlor represents and warrants that the funds to be deposited into the Trust Account shall be unencumbered and free and clear of liens, encumbrances, security interest or other burdens. The Settlor and the Beneficiary further agree to execute any such further documents as may be reasonably required to have the Trust Funds which are pledged to the Beneficiary paid and delivered to the Trustee.

5.3 Parties to Agreement. The Trustee, the Beneficiary and the Settlor are parties to this Agreement.

5.4 Notices. All notices, requests, demands, and other communications to the respective parties of this Agreement and others shall be in writing (including telecopy), and shall be deemed to have been duly given or made when delivered by hand, on the date shown on the receipt by a recognized overnight courier delivery service, or, in the case of delivery by mail, two (2) business days after the day deposited postage prepaid in the United States mail, certified mail with return receipt requested and postage prepaid, or, in the case of telecopy notice, when receipt thereof is acknowledged orally or by written confirmation report by the party to whom it was addressed. The addresses for all notices are as follows:

Trustee:

Settlor:

Beneficiary: United States of America  
Department of the Interior  
Minerals Management Service

Any person may, by proper notice complying with this Section 5.4, change any and all parts of its addresses. All notices shall be effective only upon actual receipt.

5.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Trustee, the Settlor, and the Beneficiary and their respective legal representatives, successors and assigns. The rights, duties, and obligations of the Trustee hereunder may not be transferred, assigned, or delegated by the Trustee except as expressly provided in this Agreement. The rights, duties and obligations of the Settlor hereunder may not be transferred, assigned or delegated by the Settlor without the prior written consent of the Beneficiary.

5.6 Counterparts. This Agreement may be executed by one or more of the parties to this Trust Agreement in any number of separate counterparts, and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

5.7 Number and Gender. Whenever the context requires, reference made to the singular shall be understood to include the plural; and likewise, the plural shall be understood to include the singular. Words denoting gender shall be construed to include the masculine, feminine, and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be construed as cumulative. Definitions of terms defined in the singular and plural shall be equally applicable to the plural or singular, as the case may be, unless otherwise indicated.

5.8 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter and shall supersede any prior agreements, whether written or oral, among the parties.

5.9 Invalidity. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

5.10 Titles of Articles and Sections. All titles or headings to articles or sections of this Agreement are only for the convenience of the parties and shall not be used to interpret or construe this Agreement.

5.11 Termination. This Agreement shall terminate upon the occurrence of any of the following conditions: The Settlor's compliance with all plugging and abandonment obligations and other lease obligations and all other Abandonment Liabilities and as evidenced by certification by the Beneficiary. In such case, the Trustee shall transfer the Trust Funds as directed by the Settlor.



5.12 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF \_\_\_\_\_ WITHOUT GIVING EFFECT TO THAT STATE'S CONFLICTS OF LAWS RULES.

5.13 USA Patriot Act Information. The Settlor, the Beneficiary and each other party to this Agreement shall provide to the Trustee such information as the Trustee may reasonably require to permit the Trustee to comply with its obligations under the federal USA Patriot Act. The Trustee shall not credit any amount of interest or investment proceeds earned on the Trust Funds pursuant to Section 2.4(b), or make any payment of all or a portion of monies held by it in escrow pursuant to this Agreement, to any person unless and until such person has provided to the Trustee such documents as the Trustee may require to permit the Trustee to comply with its obligations under such Act.

5.14 Tax Reporting Documentation. Within thirty (30) days after the execution of this Agreement, the Settlor shall provide to the Trustee its certified tax identification number on Form W-9 (or Form W-8 if such Party is a non-U.S. person) and such other forms and documents as the Trustee may reasonably request (collectively, "**Tax Reporting Documentation**"). The parties to this Agreement understand that, notwithstanding the provisions of Section 2.4(b), if such Tax Reporting Documentation is not so certified to the Trustee, the Trustee may be required by the Internal Revenue Code of 1986, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Trustee pursuant to this Agreement.

*[signatures begin on following page]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date first above written.

TRUSTEE:

BY: \_\_\_\_\_

Printed Name:

Title:

SETTLOR:

BY: \_\_\_\_\_

Printed Name:

Title:

BENEFICIARY:

THE UNITED STATES OF AMERICA,  
ACTING BY AND THROUGH THE MINERALS  
MANAGEMENT SERVICE UNITED STATES  
DEPARTMENT OF THE INTERIOR

BY: \_\_\_\_\_

Printed Name:

Title:

Schedule "A"

Trustee's Fee Schedule

*[see attached]*