

ARTICLE 2 – DEFINITIONS

2.11 Costs

The monetary amount of all expenditures (or indebtedness), including any fines or penalties (as permitted by law and except to the extent any such fines or penalties are assessed as a result of a Party's Gross Negligence or Willful Misconduct), incurred by the Operator and the Participating Parties in the conduct of activities and operations, determined under this Agreement.

2.70 Claim

Any claim, lawsuit, hearing (administrative or judicial) or other proceeding made against a Party or other person or entity on account of a matter involving activities or operations under this Agreement or affecting the Leases or the Contract Area.

2.71 Gross Negligence

With respect to a Party, shall mean:

[Select one of the following.]

any act or failure to act by any person or entity which constitutes gross negligence as defined by applicable law.

any act or failure to act (whether sole, joint, or concurrent) by any person or entity which was in reckless disregard of or wanton indifference to harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity.

any act of failure to act (whether sole, joint, or concurrent) by such Party's Senior Supervisory Personnel which was in reckless disregard of or wanton indifference to harmful consequences such Senior Supervisory Personnel knew, or should have known, such act or failure would have on the safety or property of another person or entity.

2.72 REGARDLESS OF FAULT

WITHOUT REGARD TO THE CAUSE OR CAUSES OF ANY LOSS, DAMAGE, COST, EXPENSE OR CLAIM, INCLUDING, WITHOUT LIMITATION, EVEN IF SUCH LOSS, DAMAGE, COST, EXPENSE OR CLAIM IS CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, COMPARATIVE, CONTRIBUTORY, ACTIVE, PASSIVE, GROSS OR OTHERWISE), WILLFUL MISCONDUCT, STRICT LIABILITY, OR OTHER FAULT OF ANY PARTY, INCLUDING THE INDEMNIFIED OR RELEASED PARTY, OR ITS AFFILIATES, OR ANY OTHER PERSON OR ENTITY, AND WHETHER OR NOT CAUSED BY A PRE-EXISTING DEFECT OR CONDITION OR THE UNSEAWORTHINESS OF ANY VESSEL OR UNAIRWORTHINESS OF ANY AIRCRAFT OF A PARTY WHETHER CHARTERED, OWNED OR PROVIDED BY THE INDEMNIFIED OR RELEASED PARTY.

2.73 Willful Misconduct

With respect to a Party, shall mean:

[Select one of the following.]

any act or failure to act by any person or entity which constitutes willful misconduct as defined by applicable law.

any act or failure to act (whether sole, joint, or concurrent) by any person or entity which was intended to cause harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity.

any act of failure to act (whether sole, joint, or concurrent) by such Party's Senior Supervisory Personnel which was intended to cause harmful consequences such Senior Supervisory Personnel knew, or should have known, such act or failure would have on the safety or property of another person or entity.

[Optional provision; check if applicable.]

2.74 Senior Supervisory Personnel

With respect to a Party, any director or officer of such Party, and any individual who functions for such Party or one of its Affiliates at a management level equivalent or superior to, but excluding all individuals functioning at a level below unless expressly provided otherwise herein, any individual functioning as such Party's:

[Select one of the following.]

senior manager who has authority over such Party's seismic acquisition, drilling, construction or production and related operations and activities in the deepwater Gulf of Mexico sufficient to direct the manner in which such operations and activities are conducted.

senior manager, and any manager who directly reports to such senior manager, and is responsible for exploration, appraisal, development, or production operations in the deepwater Gulf of Mexico.

vice president (or other manager or supervisor) reporting directly to the regional president of or for the Gulf of Mexico (or to a senior manager who is the functional equivalent of the regional president) and who is responsible for directing the performance of seismic acquisition, drilling, construction or production and related operations and activities of such Party in the deepwater Gulf of Mexico.

ARTICLE 22 – LIABILITY, CLAIMS, AND LAWSUITS

22.1 Individual Obligations

The obligations, duties, and liabilities of the Parties under this Agreement are several and not joint or collective, and, except as otherwise provided in Article 20 (Taxes), nothing in this Agreement shall be construed to create a partnership,

joint venture, association, or other form of business entity recognizable in law for any purpose. In their relations with each other under this Agreement, the Parties are not fiduciaries, but rather are free to act at arm's length in accordance with their own respective interests.

22.2 Notice of Claim or Lawsuit

If, ~~on account of a matter involving activities or operations under this Agreement, or affecting the Leases or the Contract Area, a claim~~ Claim is made against or by a Party, ~~or if a party outside of this Agreement files a lawsuit against a Party, or if a Party files a lawsuit, or if a Party receives notice of a material administrative or judicial hearing or other proceeding,~~ that Party shall give written notice of the ~~claim, lawsuit, hearing, or proceeding ("Claim")~~ Claim to the other Parties as soon as reasonably practicable.

22.3 Settlements

The Operator may settle a Claim, or multiple Claims, arising out of the same incident, involving activities or operations under this Agreement or affecting the Leases or the Contract Area, if the aggregate expenditure does not exceed _____ dollars (\$_____) and if the payment is in complete settlement of these Claims. If the amount required for settlement exceeds this amount, the Parties shall determine the further handling of the Claims under Article 22.4 (*Defense of Claims ~~and~~ Lawsuits*).

22.4 Defense of Claims ~~and~~ Lawsuits

The Operator shall supervise the handling, conduct, and prosecution of all Claims involving activities or operations under this Agreement or affecting the Leases or the Contract Area. Claims may be settled in excess of the amount specified in Article 22.3 (*Settlements*) as follows: (i) if the aggregate expenditure of the settlement is below \$ _____ it must be approved by Vote; and (ii) if the aggregate expenditure of the settlement is at or above \$ _____ it must receive unanimous approval, of the Participating Parties in the activity or operation out of which the Claim arose, but a Party may independently settle a Claim or the portion of a Claim which is attributable to its Participating Interest Share alone as long as that settlement does not directly and adversely affect the interest or rights of the other Participating Parties. No charge shall be made for services performed by the staff attorneys of a Party, but all other expenses incurred by the Operator in the prosecution or defense of Claims for the Parties, together with

the amount paid to discharge a final judgment or other final adjudication or determination of the Claim, are Costs and shall be paid by the Parties in proportion to their Participating Interest Share in the activity or operation out of which the Claim arose. The employment of outside counsel, but not the selection of that counsel, requires approval by Vote of the Participating Parties in the activity or operation out of which the Claim arose. If the use of outside counsel is approved, the fees and expenses incurred as a result thereof shall be charged to the Parties in proportion to their Participating Interest Share in the activity or operation out of which that Claim arose. Each Party has the right to hire its own outside counsel at its sole cost with respect to its own defense.

22.5 **Liability for Damages**

Unless specifically provided otherwise in this Agreement, liability for losses, damages, Costs, expenses, or Claims involving activities or operations under this Agreement or affecting the Leases or the Contract Area ~~which are not covered by or in excess of the insurance carried for the Joint Account~~ shall be borne by each Party, subject to the provisions of this Article 22.5, in proportion to its Participating Interest Share in the activity or operation out of which that liability arises, ~~except that~~ **REGARDLESS OF FAULT**. However, subject to Articles 22.7 and 22.9, when any liability results from the ~~gross negligence~~ **Gross Negligence** or ~~willful misconduct~~ **Willful Misconduct** of a Party, that Party shall be solely responsible for such liability resulting from its gross negligence (including all losses, damages, Costs, expenses or Claims) willful misconduct. **UNDER NO CIRCUMSTANCES WILL A PARTY BE LIABLE TO ANOTHER PARTY FOR PUNITIVE DAMAGES, CONSEQUENTIAL, INDIRECT, UNFORSEEN, LOSS OF PROFIT, OR OTHER INDIRECT OR PENALTY DAMAGES EITHER IN LAW OR EQUITY.**

[Select this provision if the Participating Parties will share in the liability Regardless of Fault up to a specified dollar amount.]

in excess of _____ billion (\$ _____,000,000,000) dollars.

to the extent such liability is attributable to its Gross Negligence or Willful Misconduct.

In no event shall an assertion or allegation of Gross Negligence or Willful Misconduct of a Party constitute a defense to the other Parties' obligations to timely reimburse the Operator for its proportionate share of losses, damages, Costs, expenses and Claims in accordance with the provisions of Exhibit "C" (Accounting Procedure) to this Agreement. To the contrary, all Parties shall timely pay their proportionate share of such losses, damages, Costs, expenses and Claims until such assertion or allegation results in a final, non-appealable judgment or final determination of the arbitrators pursuant to Exhibit "H" (Dispute Resolution Procedure), subject to reimbursement or other adjustment for amounts paid

[Select this provision if the Participating Parties will share in the liability Regardless of Fault up to a specified dollar amount by checking the optional provision above.]

in excess of the _____ billion dollars (\$,000,000,000).

upon such final judgment or arbitration determination, if appropriate.

22.6 Indemnification for Non-Consent Operations

TO THE EXTENT ALLOWED BY LAW, THE PARTICIPATING PARTIES WILL HOLD THE NON-PARTICIPATING PARTIES (AND THEIR AFFILIATES, AGENTS, INSURERS, DIRECTORS, OFFICERS, AND EMPLOYEES) HARMLESS AND RELEASE, DEFEND, AND INDEMNIFY THEM AGAINST ALL CLAIMS, DEMANDS, LIABILITIES, REGULATORY DECREES, AND LIENS FOR ENVIRONMENTAL POLLUTION AND PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING SICKNESS AND DEATH, CAUSED BY OR OTHERWISE ARISING OUT OF NON-CONSENT OPERATIONS, AND ANY LOSS AND COST SUFFERED BY A NON-PARTICIPATING PARTY AS AN INCIDENT THEREOF, REGARDLESS OF FAULT, EXCEPT WHERE THAT LOSS OR COST RESULTS FROM THE SOLE, CONCURRENT, OR JOINTGROSS NEGLIGENCE, FAULT, OR STRICT LIABILITYWILLFUL MISCONDUCT OF THAT NON-PARTICIPATING PARTY, IN WHICH CASE EACHSUCH NON-PARTICIPATING PARTY SHALL PAY OR CONTRIBUTE TO THE SETTLEMENT OR SATISFACTION OF JUDGMENT IN THE PROPORTIONSOLELY TO THE EXTENT THAT ITS GROSS NEGLIGENCE, FAULT, OR STRICT LIABILITYWILLFUL MISCONDUCT CAUSED OR

CONTRIBUTED TO THE INCIDENT. ~~IF AN INDEMNITY IN THIS AGREEMENT IS DETERMINED TO VIOLATE LAW OR PUBLIC POLICY, THAT INDEMNITY SHALL THEN BE ENFORCEABLE ONLY TO THE MAXIMUM EXTENT ALLOWED BY LAW.~~

22.7 Damage to Reservoir and Loss of Reserves

NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS AGREEMENT, NO PARTY IS LIABLE TO ANY OTHER PARTY FOR, AND EACH PARTY HEREBY WAIVES AND RELEASES THE OTHER PARTIES FROM, LOSS OF OR DAMAGE TO A RESERVOIR OR LOSS OF HYDROCARBONS, EXCEPT IF THAT DAMAGE OR LOSS ARISES FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NOR DOES A PARTY INDEMNIFY ANY OTHER PARTY FOR THAT DAMAGE OR LOSS REGARDLESS OF FAULT.

22.8 Non-Essential Personnel

UNLESS OTHERWISE MUTUALLY AGREED BY THE PARTIES IN WRITING, IN THE EVENT A PARTY REQUESTS TRANSPORTATION OR ACCESS TO ANY DRILLING RIG, PRODUCTION SYSTEM, VESSEL, OR OTHER FACILITY OR LOCATION USED FOR ACTIVITIES OR OPERATIONS UNDER THIS AGREEMENT FOR ANY PERSON WHO IS NOT EMPLOYED BY, CONTRACTED BY, OR REPRESENTING SUCH PARTY IN CONNECTION WITH OPERATOR'S PERFORMANCE OF AN ACTIVITY OR OPERATION CONDUCTED PURSUANT TO THIS AGREEMENT, OTHER THAN GOVERNMENTAL OFFICIALS OR REPRESENTATIVES OF GOVERNMENTAL OR REGULATORY AGENCIES OR NON-OPERATORS' EMPLOYEES, CONTRACTORS, OR REPRESENTATIVES REQUESTED BY OPERATOR TO PARTICIPATE IN SUCH ACTIVITIES ("NON-ESSENTIAL PERSONNEL"), THE PARTY REQUESTING SUCH TRANSPORTATION OR ACCESS AGREES TO PROTECT, INDEMNIFY, RELEASE, DEFEND, AND HOLD HARMLESS THE OTHER PARTIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, INSURERS, AND REPRESENTATIVES FROM AND AGAINST ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIABILITIES, CONTRACTUAL LIABILITIES, AND OTHER COSTS (INCLUDING, WITHOUT LIMITATION,

~~COURT COSTS, INTEREST, PENALTIES, LITIGATION EXPENSES, AND REASONABLE ATTORNEYS' FEES) FOR DAMAGE TO, DESTRUCTION OR LOSS OF PROPERTY, AND FOR PERSONAL INJURY OR DEATH OF PERSONS, AND FOR DAMAGE OR HARM TO THE ENVIRONMENT (INCLUDING WITHOUT LIMITATION, SPILL RESPONSE, ENVIRONMENTAL POLLUTION AND CONTAMINATION AND CLEAN-UP COSTS) ARISING OUT OF OR RELATED IN ANY WAY TO THE NEGLIGENCE, FAULT, OR LIABILITY WITHOUT FAULT OF THE NON-ESSENTIAL PERSONNEL BROUGHT BY OR ON BEHALF OF ANY PARTY WHOMSOEVER (INCLUDING, WITHOUT LIMITATION, ALL THIRD PARTIES AND GOVERNMENTAL AGENCIES), WITHOUT REGARD TO THE CAUSES THEREOF, INCLUDING PRE-EXISTING CONDITIONS, THE UNSEAWORTHINESS OF ANY VESSEL, THE STRICT LIABILITY, NEGLIGENCE, OR OTHER FAULT OF ANY PARTY, REGARDLESS OF WHETHER THE NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, ACTIVE OR PASSIVE, EXCEPT IF CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY SO INDEMNIFIED AND PROTECTED. FINES AND PENALTIES, LITIGATION EXPENSES, AND REASONABLE ATTORNEYS' FEES) FOR:~~

(I) DAMAGE TO, DESTRUCTION OR LOSS OF PROPERTY OF THE NON-ESSENTIAL PERSONNEL, AND FOR PERSONAL INJURY OR DEATH OF THE NON-ESSENTIAL PERSONNEL ARISING OUT OF OR RELATED IN ANY WAY TO SUCH NON-ESSENTIAL PERSONNEL'S ACCESS TO THE DRILLING RIG, PRODUCTION SYSTEM, VESSEL OR OTHER FACILITY OR LOCATION AND/OR TRANSPORTATION THERETO, REGARDLESS OF FAULT; AND

(II) ALL OTHER DAMAGE TO PROPERTY, INJURY OR DEATH TO PERSONS, AND THE ENVIRONMENT (INCLUDING WITHOUT LIMITATION, SPILL RESPONSE, ENVIRONMENTAL POLLUTION AND CONTAMINATION AND CLEAN-UP COSTS) TO THE EXTENT SUCH DAMAGE ARISES DIRECTLY OR INDIRECTLY FROM THE NEGLIGENCE OR OTHER FAULT OF THE NON-ESSENTIAL PERSONNEL.

22.9 Liability for Consequential and Indirect Damages

UNDER NO CIRCUMSTANCES WILL ANY PARTY BE LIABLE TO ANOTHER PARTY AND EACH PARTY HEREBY AGREES TO WAIVE AND RELEASE THE OTHER PARTIES FROM ITS OWN CONSEQUENTIAL, INDIRECT, UNFORSEEN, LOSS OF PROFIT, OR OTHER INDIRECT DAMAGES EITHER IN LAW OR EQUITY, AND FROM PUNITIVE DAMAGES, REGARDLESS OF FAULT; PROVIDED, HOWEVER, THAT THIS ARTICLE 22.9 SHALL NOT APPLY WITH REGARD TO SUCH CLAIMS OF THIRD PARTIES FOR WHICH ONE PARTY HERETO HAS EXPRESSLY AGREED TO INDEMNIFY BY CONTRACT.

22.922.10 Dispute Resolution Procedure

Any claim, controversy, or dispute arising out of, relating to, or in connection with this Agreement or an activity or operation conducted under this Agreement shall be resolved under the Dispute Resolution Procedure in Exhibit "H" to this Agreement.