

DRAFT

2.63 Transfer of Interest

Any sale, conveyance, assignment, transfer, farmout, exchange, or other disposition of all or part of a Party's undivided Working Interest and a Party's rights and obligations under this Agreement.

2.75 Transfer Notice

A written notice from the transferring Party to the non-transferring Parties informing the non-transferring Parties that the transferring Party entered into a binding agreement for a Transfer of Interest. A Transfer Notice shall contain:

- (i) the transferee's name and address,
- (ii) the nature or type of transfer,
- (iii) the Working Interest being transferred, and
- (iv) the effective date of such transfer.

ARTICLE 24 – TRANSFER OF INTEREST AND PREFERENTIAL RIGHT TO PURCHASE

24.1 Transfer of Interest

~~Except~~Each Party may make a Transfer of Interest of all or part of its Working Interest and its rights and obligations under this Agreement either to a third party or to another Party in accordance with this Agreement, provided that except as provided in Article 24.1.1 (Exceptions to Transfer Notice), any Transfer of Interest shall be (a) preceded by ~~written notice to the Operator and the other Parties (“the transfer notice”). Any Transfer of Interest shall be~~ Transfer Notice and (b) made to a party financially capable of assuming the corresponding obligations under this Agreement. No Transfer of Interest shall release a Party from its obligations and liabilities under this Agreement, including its payment obligations, which are incurred or have accrued prior to the effective date of that Transfer of Interest, ~~or from debts or obligations incurred prior to the effective date of that Transfer of Interest, except to the extent expressly assumed by the transferee,~~ and the security rights under Article 6.3 (*Security Rights*) shall continue to burden the Working Interest transferred and to secure the payment of

any retained obligations and liabilities. Once a Transfer of Interest becomes effective under Article 24.1.2 (*Effective Date of Transfer of Interest*), except for a Transfer of Interest as a result of a merger, reorganization or consolidation or to an Affiliate, the transferor shall not be responsible for any obligations, debts, or liabilities under this Agreement, which accrue or are incurred by the Parties on or after the effective date of that Transfer of Interest.

[The following are optional provisions; check either the first or second option if desired.]

[Select this provision for continued liability of the transferor.]

Notwithstanding the foregoing, if the transferee fails to perform and/or pay for any obligations, debts, or liabilities accrued or incurred on or after the effective date of that Transfer of Interest, the transferor shall remain liable for any such obligations, debts or liabilities; provided, however, that the Parties are required to first exhaust all rights to enforce payment or other obligations against the non-paying transferee as provided in Article 6.3 (*Security Rights*) and Exhibit "C" (*Deepwater Accounting Procedure*) in this Agreement, before the Parties seek performance and/or payment from the transferor as provided in this Article 24.1. The foregoing shall not apply to, and the transferor shall not remain liable for any such obligations, debts, or liabilities as a result of, any Transfer of Interest made pursuant to Articles 16 (*Non-Consent Operations*), 17 (*Withdrawal From Agreement*), and 18 (*Abandonment and Salvage*).

[Select this provision for continuing liability of the transferor only if the transferee fails to meet the definition of financially capable party as provided in this optional provision.]

Notwithstanding the foregoing, if the transferee is (1) not a financially capable party (as defined below) as of the date of the Transfer Notice and (2) fails to perform and/or pay for any obligations, debts, or liabilities accrued or incurred on or after the effective date of the Transfer of Interest, the transferor shall remain liable to the Parties for such obligations, debts, or liabilities; provided however, the Parties are required to first exhaust all rights to enforce payment or other obligations against the non-paying transferee as provided in Article 6.3 (*Security Rights*) and Exhibit "C" (*Deepwater Accounting Procedure*) in this Agreement

before the Parties seek performance and/or payment from the transferor as provided in this Article 24.1. The foregoing shall not apply to, and the transferor shall not remain liable for any such obligations, debts, or liabilities as a result of, any Transfer of Interest made pursuant to Articles 16 (Non-Consent Operations), 17 (Withdrawal From Agreement), 18 (Abandonment and Salvage) and 24.2.2 (Exercise of Preferential Right to Purchase). If, however, the transferee is a financially cable party as of the date of the Transfer Notice, the other Parties shall provide the transferor, upon request, a written acknowledgement that the Transfer of Interest constitutes a novation.

As used in this Article 24.1, a transferee shall be considered a “financially capable party” if, as of the date of the Transfer Notice, the transferee fulfills one of the requirements set forth under clauses (a) – (d) below:

(a) Credit Rating: The transferee has a public credit rating of not less than Baa3 (in the case of Moody’s) or a public credit rating of not less than BBB- (in the case of Standard and Poor’s).

(b) Net Worth: The transferee shall have a net worth of not less than US Dollars (\$ _____), proportionately reduced to the greater of the (i) Working Interest assigned or (ii) transferee’s total Working Interest after the assignment. For purposes of this clause (b), the net worth of an entity shall be equal to the value of such entity’s total assets minus (x) the amount of such entity’s total liabilities, (y) the amount of such entity’s intangible assets, and (z) the amount of off-balance sheet obligations of such entity. “Intangible assets” include goodwill, patents, copyrights and unamortized loans. The net worth of an entity must be supported by either (1) audited financial statements or (2) unaudited financial statements prepared by outside accountants in accordance with U.S.A. Generally Accepted Accounting Principles only if such unaudited statements are personally certified true and correct by the Chief Executive Officer or Chief Financial Officer of such entity.

(c) Affiliate Guarantee: If the transferee fails to satisfy the requirements set forth above in clauses (a) or (b) above, the transferee may fulfill the financially capable criteria by delivering to the other Parties an unconditional guarantee of the transferee’s obligations under this Agreement in form and substance reasonably satisfactory to the Parties from an Affiliate that has (i) a public credit rating of not less than Baa3 (in the case of Moody’s) or a public credit

rating of not less than BBB- (in the case of Standard and Poor's) and (ii) a Net Worth of not less than _____ US Dollars (\$ _____), proportionately reduced to the greater of the (i) Working Interest assigned or (ii) transferee's total Working Interest after the assignment.

(d) Alternate Financial Assurances: If the transferee fails to satisfy the requirements set forth in clauses (a), (b), or (c) above, the transferee may (with the written consent of the non-transferring Parties, which consent may be withheld in the sole reasonable discretion of the non-transferring Parties) fulfill the financially capable criteria by delivering to the Parties a combination of alternate financial assurances described below in this paragraph totaling an amount equal to or greater than the net worth value set forth in clause (b) above, proportionately reduced to the greater of the (i) Working Interest assigned or (ii) transferee's total Working Interest after the assignment. The alternate financial assurances may consist of, and the non-transferring Parties shall consider in exercising their discretion, a combination of (x) the relevant entity's net worth, (y) additional insurance coverage and/or (z) a letter of credit or similar instrument reasonably acceptable to the Parties on which the Operator may draw at any time (subject only to the satisfaction of customary drawing conditions), issued by a U.S. bank or other U.S. financial institution that has a credit rating of not less than A- (in the case of Standard and Poor's) and A3 (in the case of Moody's).

24.1.1 Exceptions to Transfer Notice

Notwithstanding any contrary provision of this Agreement, the ~~transfer notice~~Transfer Notice is not required: (i) when a Party proposes to mortgage, pledge, hypothecate, or grant a security interest in all or a portion of its Working Interest (including ~~Assignments~~assignments of Hydrocarbon production executed as further security for the debt secured by that security device); and/or its Participating Interest Share of any Production Systems, Facilities, or equipment; or (ii) when any interest is conveyed in accordance with Articles 16 (*Non-Consent Operations*), 17 (*Withdrawal From Agreement*), and 18 (*Abandonment and Salvage*). ~~However,~~However, the Party creating an encumbrance under (i) above remains liable for all obligations under and pursuant to such encumbrance and an encumbrance arising from the financing

transaction shall be expressly made subject and subordinated to this Agreement.

24.1.2 Effective Date of Transfer of Interest

The effective date of a Transfer of Interest shall ~~be at least sixty (60) days, but not~~ not be more than one hundred eighty (180) days prior to the date of the receipt of the Transfer Notice nor more than one hundred eighty (180) days, after the date of ~~the~~ receipt of the ~~transfer notice~~ Transfer Notice, unless such requirement is waived by the Parties in writing. A Transfer of Interest, other than those provided in Article 17.1 (*Right to Withdrawal*) and Article 24.1.1 (*Exceptions to Transfer Notice*), is effective and shall be binding upon the Parties at the latest date of occurrence of all of the following: (i) the transferor or transferee provides all remaining Parties with a photocopy of ~~the~~ fully executed documents evidencing the Transfer of Interest and an executed MMSBOEM Form 1123, "Designation of Operator," and an "Application for Certification of Oil Spill Responsibility" form and (ii) evidence of receipt of all necessary approvals by the MMSDOI. The Parties shall promptly undertake all reasonable actions necessary to secure those approvals and shall execute and deliver all documents necessary to effectuate that Transfer of Interest. ~~All~~ costs attributable to a Transfer of Interest are the sole obligation of the ~~assigning~~ transferring Party.

24.1.3 Maintenance of Uniform Interest and Minimum Transfer of Interest

Except as otherwise provided in this Agreement, a Transfer of Interest shall cover an undivided Working Interest in the entire Contract Area, including such undivided interest of the Party in all leases, wells, equipment, Production and Development Systems, Facilities, Hydrocarbons and other property, both real and personal within the Contract Area. Prior to the approval of the Execution AFE for the initial Development System, no Transfer of Interest shall be made that is not at least an undivided _____ percent (___%) Working Interest, unless the Parties unanimously agree to a different minimum Transfer of Interest. After the Execution AFE Election on the initial Development System, a Transfer of Interest to a third party shall be limited to a

minimum Working Interest of ____ percent (___%), unless the Parties unanimously agree to a different minimum Transfer of Interest.

24.1.4 Form of Transfer of Interest

Any documents evidencing a Transfer of Interest shall incorporate provisions that the Transfer of Interest is subordinate to and made expressly subject to this Agreement and provide for the assumption by the assignee/transferee of the performance of all of the assigning/transferring Party's obligations under this Agreement, except as to any obligation that the transferring Party may remain liable for, if applicable, in accordance with Article 24.1. Any Transfer of Interest not in compliance with this ~~provision~~Article 24.1.4 is voidable by the non-assigning/transferring Parties.

24.1.5 Warranty

Any Transfer of Interest, vesting, or relinquishment of Working Interest between the Parties under this Agreement shall be made without warranty of title, except as to persons claiming by, through or under the transferor, but not otherwise.