

ENQUIRY NO.22472

CONTRACT NO. ....

# **DRAFT**

# **AIRCRAFT SERVICES AGREEMENT**

between

## **THE PETROLEUM OIL AND GAS CORPORATION OF SOUTH AFRICA (SOC) LTD**

**Registration No. 1970/008130/07**

and its Assignees or Successors-in-Title

(hereinafter referred to as "Company")

and

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**Registration No. \_\_\_\_\_**

and its Assignees or Successors-in-Title

(hereinafter referred to as "Contractor")

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# AIRCRAFT SERVICES AGREEMENT

- Company and Contractor are jointly referred to as “Parties” and individually referred to as “Party”.

## WHEREAS

- Company requires the exclusive use of suitable Aircraft efficiently crewed and maintained to render the Services in support of Company’s exploration and/or production activities offshore the Republic of South Africa; and
- Contractor has available the necessary Aircraft and Contract Staff to render the Services, subject to the terms and conditions of this Agreement.

## NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

### 1. Definitions

In this Agreement the following words shall bear the meanings as given.

- 1.1 **"Aircraft"** means helicopters equipped in accordance with the specifications given in Annexure E attached hereto.
- 1.2 **"Aircraft Accident"** means an occurrence associated with the operation of an Aircraft which takes place between the time any person boards the Aircraft with the intention of flight until such time as all such persons have disembarked, in which any person suffers death or serious injury as a result of being in or upon the Aircraft or by direct contact with the Aircraft or anything attached thereto or the Aircraft is substantially damaged. For purposes of this definition **"serious injury"** shall be defined as an injury that requires hospital or medical treatment and results (or is expected to result) in suspension of or substantial restriction to normal activities for a period of fifteen (15) days or more and **"substantial damage"** shall include loss of the Aircraft, any damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the Aircraft and which would normally require the repair or replacement of the affected component, and any event resulting in damages to the Aircraft of more than US\$20,000.
- 1.3 **"Aircraft Incident"** means an occurrence other than an Aircraft Accident, which jeopardises the safety of an Aircraft, involves an Aircraft and causes injury or severe mental strain to any person or causes damage to property.
- 1.4 **"Available"** means the Contractor is required to make the Aircraft available to the Company, such aircraft shall be airworthy, in accordance with the terms of the Agreement and the crew shall be present, ready and fit to fly.

- 1.5 **"Company Representative"** means a member of the Company's staff who shall make himself available to the Contractor's Representative to deal with all routine matters under this Agreement.
- 1.6 **"Contractor's Representative"** means a member of the Contract staff who shall make himself available to the Company Representative at the Operational Base to deal with all routine matters under this Agreement.
- 1.7 **"Contract Staff"** means Contractor's employees engaged in providing Services in terms of this Agreement and including, but not limited to pilots and licensed engineers, all of whom shall meet the minimum licence qualifications and experience requirements in accordance with Clause 2.7 (d) and Annexure G of this Agreement.
- 1.8 **"Daylight"** means that period between 1 (one) hour before sunrise and 1 (one) hour before sunset at surface level.
- 1.9 **"Emergency"** means any situation whereby there is or may be actual or potential injury or harm caused to any person, serious damage caused to property or serious pollution or harm caused to the environment.
- 1.10 **"Flying Hours"** means the period between which the Aircraft takes off and lands.
- 1.11 **"Major Maintenance"** or **"Major Inspections"** means that maintenance or those inspections defined as major in Annexure F attached hereto.
- 1.12 **"Month"** means one calendar month which is sub-divided into 30 equal parts for pro rata purposes.
- 1.13 **"Night"** means that period during which there is no Daylight.
- 1.14 **"Normal Operating Hours"** means the time between 1 (one) hour before sunrise and at sunset, 7 (seven) days a week.
- 1.15 **"Operational Base"** means the heliport at George Airport from which the Contractor will operate and maintain the Aircraft.
- 1.16 **"Other Accident/Incident"** means an occurrence that results, or may have resulted in personal injury or damage to property, and is not an Aircraft Accident or an Aircraft Incident.
- 1.17 **"Services"** means the services rendered by Contractor pursuant to the provisions of clause 2 of this Agreement.
- 1.18 **"Spare Parts"** means all parts of the Aircraft which are required by the Contractor for the maintenance of the Aircraft to ensure that it is capable of rendering the Services required by the Agreement.

- 1.19 **"Sub-contract"** means any contract entered into between the Contractor and a third party in terms of which the Contractor sub-contracts any part of the Services to be provided under this Agreement.
- 1.20 **"Sub-contractor"** means any party, other than the Contractor, to a Sub-contract.
- 1.21 **"Tools"** means both special and general tools and equipment needed by the Contractor for carrying out maintenance on and ensure operation of the Aircraft.

## 2. SERVICES

### 2.1 Task

Contractor shall for the duration of this Agreement provide, maintain and operate the Aircraft for the exclusive/shared use of the Company and shall, as instructed by the Company, carry out flight operations for the carriage of the Company's authorised passengers and goods throughout the Company's area of operation in accordance with flying schedules to be drawn up by the Company. Such schedules shall provide for Daylight operations only, except in cases of Emergency, provided always that the final decision as to the manner of performing operations under this Agreement including considerations of the Availability of the Aircraft, acceptable loads, routes to be followed, weather, suitability of flying and landing site, conditions at the time and whether or not a flight shall be undertaken, shall be made by the Aircraft pilot; and

### 2.2 Operations

2.2.1 Contractor warrants that it is familiar with and will at all times operate the Aircraft to standards not less than those laid down by the South African Civil Aviation Authority and all such other applicable and relevant South African Laws, rules and regulations relating to public transport operations and conduct its maintenance and servicing operations to the standards required for the granting of an operating permit.

2.2.2 Contractor shall at all times operate the Aircraft in accordance with its flight manual, and the Contractor's operations manual, which shall include procedures specific to the Services rendered in terms of this Agreement. Contractor shall be deemed to have satisfied himself in respect of the Services, area within which the Services is to be rendered, the availability of local facilities required for performance of the Services, the climatic and working conditions, local safety, security and environmental conditions and all other matters which may in any manner affect his performance of the Services and his other obligations hereunder.

- 2.2.3 Contractor shall report to the Company immediately and by the fastest means possible, all Aircraft Accidents, Aircraft Incidents, and Other Accidents/Incidents, wheresoever occurring while rendering the Services.
- 2.2.4 Contractor shall ensure that the Aircraft provided in terms of this Agreement are properly equipped and airworthy in accordance with the regulations laid down by the South African Civil Aviation Authority and shall maintain them in that condition for the duration of this Agreement.
- 2.2.5 Contractor shall wherever applicable, operate in accordance with the Category "A" (Class 1) standards as laid down in the South Africa Civil Aviation Authority and conduct its maintenance operations to the standards required by the Republic of South Africa Regulations of the Department of Transport for the granting of an Air Operator's Certificate.
- 2.2.6 If by reason of location, the requirements referred to in clause 2.2.5 above do not apply, then nevertheless the standards to which Contractor will operate shall not fall below those referred to in the South African Civil Aviation Authority Standards.
- 2.2.7 Contractor shall operate the Aircraft in accordance with flying schedules that will be provided by Company. Notwithstanding anything to the contrary herein contained, the final decision as to airworthiness of the Aircraft, manner of rendering the Services and performing operations, load limits, routes to be followed, weather, flying and landing conditions prevailing, and any other hazards shall be the responsibility of Contractor.

### **2.3 Maintenance**

- 2.3.1 The Contractor shall ensure that the Aircraft is at all times maintained by an approved Aircraft Maintenance Organisation according to the South African Civil Aviation Authority (SACAA) Civil Aviation Regulations, 2011, as amended throughout the term of this Agreement. The Aircraft shall be maintained according to an approved maintenance schedule. The schedule must provide for service reliability.
- 2.3.2 Scheduled Maintenance will be conducted at the main base of operations. The Company will provide the facilities. The Contractor will ensure that the maintainance base carries SACAA approval. The Contractor will further ensure that maintenance parts and components are available at the main base of operation and these parts and components will, as a minimum, include MEL items, high consumption items and Class II products as defined by the SACAA Civil Aviation Regulations, 2011, as amended.

- 2.3.3 The Contractor shall use its best endeavours to carry out scheduled maintenance and inspections during the periods of non-utilisation in order to avoid or minimise any interruption of the services. The Company has the right at its request to audit the maintenance records from time to time.
- 2.3.4 In the event of non-availability of the Aircraft for the performance of any flight during the Contract Period due to either damage or unscheduled maintenance, and only in such cases that the Aircraft-on-Ground (AOG) period exceeds seventy-two (72) hours, the Contractor will replace the Aircraft within seventy-two (72) hours with a similar type and variant of aircraft. The decision which aircraft is suitable for the operation intended will be agreed between Contractor and Company. In the event the Contractor is not able to replace the Aircraft within the aforementioned seventy-two (72) hours, the Contractor will be subject to *financial penalties*.
- 2.3.5 The maximum cumulative downtime for unscheduled maintenance or downtime experienced due to damage is calculated as 72 hours in any period of 30 days after which the Lessor will be subject to *financial penalties*.
- 2.3.6 The Financial penalty shall be one-thirtieth (1/30th) of the fixed monthly hire charge for each day in excess of the maximum cumulative downtime allowance that the Aircraft is not available.

## **2.4 Fuel**

- 2.4.1 Contractor shall provide, supply and pay for all aviation fuel, oils, fluids and greases for the operation of the Aircraft, and be responsible for carrying out quality control testing of fuel supplied for the Aircraft.
- 2.4.2 The Contractor is responsible for the management of the PetroSA heliport fuel facilities at George Airport. The Contractor shall provide trained personnel for refuelling operations and be responsible for the procurement/quality of fuel and associated logistics. The Company will maintain ownership of the onshore fuel tanks and will provide the maintenance of the facilities.

## **2.5 Radio, Navigation and Safety Equipment**

- 2.5.1 Contractor shall ensure flight monitoring in the operational area is maintained continuously whenever the Aircraft is airborne.
- 2.5.2 Contractor shall provide and maintain adequate safety and survival equipment, approved by the appropriate regulatory authority, on board the Aircraft when transporting personnel.
- 2.5.3 Contractor shall provide and maintain adequate firefighting and safety equipment at the Operational Base.

- 2.5.4 Contractor shall arrange, when necessary, for purposes of maintaining the Aircraft, an engineer holding licences to cover electronics, compasses, instruments, radio and communication equipment to the Operational Base at the required times, but not exceeding two months.
- 2.5.5 Contractor shall ensure that each Aircraft is equipped with an Electronic Locator Transmitter (ELT) which can be manually as well as automatically activated (Type AVAD).
- 2.5.6 Contractor shall ensure "EXIS" lighting and push out windows are available on each Aircraft.
- 2.5.7 Contractor shall ensure that Aircraft is fitted with a winch and stretchers suitable for winching.
- 2.5.8 Contractor shall ensure that each Aircraft and the Operational Base is equipped and fitted with CAPSAT.
- 2.5.9 Contractor shall ensure that each Aircraft is equipped and fitted with IHUMS.
- 2.5.10 Contractor shall ensure that each Aircraft is equipped with HERDS rescue equipment.
- 2.5.11 All aircraft utilised on the contract will be offshore Instrument Flight Rules (IFR) certified and equipped.
- 2.5.12 The Contractor will ensure that all aircraft are equipped for hoisting and slinging operations and a serviceable rescue hoist is available at the main base of operation for quick utilization. In case of third party aircraft or additional aircraft identified to be utilised on the contract, the same condition applies.
- 2.5.13 One (1) Helicopter Emergency Rapid Deployment System (HERDS) must be available at the main base of operation for quick utilization in case of search and rescue operations.
- 2.5.14 Each aircraft utilised on the contract will have an effective, reliable and regulatory approved satellite tracking system installed. The Contractor shall at all times maintain and monitor this system

## **2.6 Hangerage**

PetroSA shall endeavour to provide hangerage facilities at the George heliport.

## **2.7 Personnel**

2.7.1 Contractor shall advise the Company in writing of the name of the Contractor's Representative.

- 2.7.2 Contractor shall provide the Company at the commencement of this Agreement with a written list of the names of all the Contract Staff who are pilots, licensed engineers (and if applicable loadmasters, qualified winch operators, qualified winchmen) together with their age, experience and qualifications. Any proposed changes to the Contract Staff should be notified in writing to the Company before they are implemented.
- 2.7.3 Contractor shall select and provide sufficient Contract Staff for the efficient performance of the Services. The Contract Staff shall be sufficient to ensure that at the forecast Aircraft utilisation rate, pilots shall not be scheduled to fly more than eighty (80) hours in any consecutive twenty-eight (28) day period and actual hours flown shall not exceed ninety (90) hours within the same period unless caused by an emergency. Pilots on the Contract Staff shall not have flown more than eighty (80) hours during the twenty-eight days immediately prior to the commencement of the Agreement. The Contractor shall employ for the purposes of this Agreement only persons who are at all times in good health and are of good behaviour and who do not otherwise give the Company reasonable cause to doubt their suitability for such employment. Pilots should be in possession of a current medical certificate appropriate to the class of licence held.
- 2.7.4 Contractor shall ensure that the minimum qualifications and experience for Contractor's pilots and licensed engineers are as set out in the appropriate section of Annexure G attached hereto are complied with.
- 2.7.5 Contractor shall ensure that Aircraft crewing arrangements are in accordance with the following rules :
- (i) For flights conducted in terms of this Agreement, whether or not the Aircraft is certificated for flight by a single pilot, there shall be a crew complement of two pilots qualified and experienced on type in accordance with Annexure G.
  - (ii) Whenever the flight crew complement is comprised of two pilots, the duties of each crewmember at all stages of flight shall be clearly defined in the appropriate section of the Contractor's Operations Manual.
- 2.7.6 Contractor shall make all its own arrangements with regard to the engagement of Contract Staff, local or otherwise and in so far as this Agreement provides pay their onshore transportation, housing, maintenance, board and lodging. As far as reasonably practicable, Contractor shall employ South African Contract Staff for purposes of rendering the Services.

2.7.7 Contractor shall ensure that all of its Contract Staff comply with the applicable laws of the Republic of South Africa, including immigration laws and when required, be in possession of a valid work permit for the duration of this Agreement. When requested, details of such work permits shall be submitted to the Company.

2.7.8 Company shall have the right to instruct Contractor to remove from the Contract Staff any person who in the reasonable opinion of the Company is either:

- incompetent or negligence in the performance of their work; or
- engaged in activities which are contrary or detrimental to the interest of the Company; or
- not conforming with the relevant health and safety policies or persist in conduct likely to be prejudicial to the safety and health of the work environment.

Any such person shall be removed forthwith and Contractor shall provide a suitable replacement for such person removed within 24 (twenty-four) hours or such longer period as agreed by Company.

2.7.9 Contractor shall notify Company immediately of any proposed or actual work stoppages, industrial disputes or other labour matters likely to effect the rendering of the Services. When requested by Company, Contractor shall supply to Company such information relating to industrial relations, which shall include but not be limited to, minimum rates of pay, allowances, amenities, working hours, periods of unpaid leave and overtime.

2.7.10 The Contractor shall ensure sufficient fulltime personnel capable of meeting the demands of the contract are available for the duration of the contract. Freelance flight crew will not be utilised during normal operations. During peak periods the use of freelance flight crew will be considered. Their acceptance remains subject to the approval of the Company. Such crew members will be similarly qualified as fulltime flight crew members, familiar with both the type of operations of the contract as well as with the specific operational procedures of the Contractor.

## **2.8 Administration**

- 2.8.1 Contractor shall allow the Company Representative to have access at all times to all operational aspects of the Contractor's activities in order to satisfy himself that the Contractor is conducting its operations in a safe and proper manner. Contractor shall ensure that such access by the Company Representative is extended to the operational aspects of any sub-contractor's operation insofar as they relate to this Agreement. The Company's exercise or failure to exercise its right under this clause (whether negligently or not) shall not affect the liability of the Contractor.
- 2.8.2 Contractor shall hold valid and make available whenever necessary the Certificate of Airworthiness in respect of the Aircraft as required under the laws of the Republic of South Africa and if applicable any other regulatory authority.
- 2.8.3 Contractor shall obtain all necessary licences, permits and permissions for the Contract Staff and the operation of the Aircraft and ancillary equipment in the operating areas.
- 2.8.4 Company shall provide scales at the Operational Base for the purpose of weighing passengers.
- 2.8.5 Contractor shall provide for the approval of the Company at the commencement of this Agreement full written details of the Contractor's proposed Sub-contracts, provided always that the Contractor may delete clauses solely concerned with the financial terms of such Sub-contracts and may exclude amounts specified in other clauses to be paid by the Contractor to the Sub-contractor. Any proposed changes in Sub-contractors or to the said Sub-contracts should be notified in writing to the Company and approved by the Company before they are implemented.
- 2.8.6 The Contractor shall have a regulatory approved Safety Management System (SMS). It is the Contractor's responsibility to conduct risk assessments on any operational changes as well as on landing sites (on- or offshore) and to bring to the attention of the Company any identified risks which affects the safety of the operation. Where aviation related operational changes are contemplated by the Company, the Contractor will provide the Company with a risk assessment on the proposed change.
- 2.8.7 The Contractor will comply with the Company's Health, Safety and Environment rules, legislation and regulations.
- 2.8.8 The Contractor is responsible to develop offshore procedures applicable to the contract requirements, including offshore plates and checklists and where applicable ensure compliance with

regulatory requirements. Checklists to be utilised by the Flight Crew shall incorporate human factors.

## **2.9 Costs of Test and Training Flights**

2.9.1 Contractor shall be responsible for all costs in connection with all proficiency training and test flights.

2.9.2 Company shall be responsible for all costs in connection with hoisting / winch and survival training. Contractor shall give Company prior written notice of such training before flying.

## **2.10 Salvage**

Irrespective of cause, if the Aircraft becomes an actual, constructive, compromised or arranged total loss or a wreck and as a result thereof becomes an obstruction to navigation or operations of Company, or Company is required under the terms of its licence, or by any applicable law or by any order of any court or other governmental body or agency to remove the Vessel or procure its removal, Contractor shall without delay and at its cost, remove the Aircraft and any associated debris produced from the location to the satisfaction of Company. If Contractor fails to remove the Aircraft without delay, then Company may remove it and Contractor shall indemnify and reimburse Company for all costs, expenses and liabilities incurred in connection with the removal thereof.

## **2.11 Operational Control**

2.11.1 The Aircraft and its (their) crews shall at all times remain under the operational control of the Contractor.

2.11.2 Notwithstanding any other provision of this Agreement an Aircraft shall not be flown or continue to be flown at any time when the pilot in command of it considers it operationally undesirable to do so and at all times the final decision as to the operational suitability of any landing or take-off site or as to the route speed or height of any flight made for the purpose of this Agreement shall rest with the said pilot.

2.11.3 The Company may notify the Contractor of landing or take-off sites which it considers may be suitable for use during the course of flights undertaken under this Agreement, however the Contractor will be solely responsible for ensuring that all or any such site can be safely used by all or any of the Aircraft and Contractor hereby indemnifies and holds Company harmless in respect of any liability whatsoever and howsoever arising either directly or indirectly out of the selection or use of any such landing or take-off site as aforesaid by the Contractor.

## **3. COMPANY'S RESPONSIBILITIES**

The Company shall at its expense except as stated elsewhere in this Agreement to the contrary:

- 3.1 Provide suitable landing facilities properly constructed and stressed for the Aircraft type.
- 3.2 Provide safety and operational facilities at the offshore rig/ drillship/ airstrip/ landing site / platform (referred to as the "Offshore Facilities") to the reasonable satisfaction of the Contractor including :
  - a) Firefighting equipment.
  - b) First aid equipment.
  - c) Crash/rescue equipment.
  - d) Windsock (capable of being illuminated).
  - e) Landing area lighting.
  - f) Obstruction lights.
  - g) Equipment for weighing passengers.
  - h) Helideck net (correctly tensioned).
  - j) Aircraft tie-down points.
- 3.3 Provide radio communication equipment and navigational beacon at the Offshore Facility as follows :
  - a) VHF Marine Band Transceiver.
  - b) VHF (AM) Transceiver.
  - c) HF (SSB) Transceiver.
  - d) MF Radio Beacon (Non Directional).
- 3.4 Company shall reimburse Contractor for all levies and charges excluding landing fees, which are paid by the Contractor to the airport authorities arising from the Contractors operations in this of this Agreement.
- 3.5 Provide competent Contract Staff to load and offload the Aircraft at places other than the Operational Base(s).
- 3.6 Provide, as appropriate, accommodation, subsistence and local transportation for Contract Staff at locations other than the Operational Base, when services provided under the terms of the Agreement (other than mobilisation and demobilisation) involve flights to and from locations.

- 3.7 Provide as a free issue the heliport, offices and equipment as specified on the attached Annexure I on the terms and conditions set out therein.
- 3.8 Provide competent Contract Staff to maintain a radio flight watch at the Offshore Facilities.

#### **4. LIABILITIES, INDEMNITIES AND INSURANCE**

##### **4.1 Liabilities and Indemnities**

- 4.1.1 For purposes of this clause 4, "Company Group" shall mean Company, its contractors, subcontractors, joint venturers, partners and their respective directors, officers, agents, functionaries, consultants, employees, servants and invitees; and "Contractor Group" shall mean Contractor, its Subcontractors, joint venturers, partners and their respective directors, officers, agents, functionaries, consultants, employees, servant and invitees (including Contract Staff).
- 4.1.2 Contractor agrees to defend, indemnify and hold harmless Company Group against all claims, demands, losses, costs, liabilities and expenses including also attorneys' fees as between attorney and client, in respect of damage to or destruction of the property of the Contractor Group and all claims, demands, losses, costs, liabilities and expenses including also attorneys' fees as between attorney and client arising out of bodily injury to or sickness of or death of any person forming part of the Contractor Group, arising directly or indirectly during the performance of the Service or anything done or omitted incidental thereto, regardless of cause and regardless of negligence.
- 4.1.3 Contractor agrees to defend, indemnify and hold harmless Company Group against all claims, demands, losses, costs, liabilities and expenses (including also attorneys' fees as between attorney and client) including but not limited to claims arising out of bodily injury to or sickness or death of any person arising directly or indirectly during the performance of the Services or anything done or omitted incidental thereto, regardless of cause and regardless of negligence provided that this indemnity is limited to the amount of USD\$150,000,000-00 (one hundred and fifty million United States Dollars) per occurrence as per clause 4.2.1 (iv) (a) and (c).
- 4.1.4 Contractor agrees to indemnify and hold harmless Company Group in respect of any destruction of or damage to property of the aforementioned or any destruction of or damage to property of third parties whilst transported by Contractor aboard its Aircraft, provided that this indemnity is limited to the amount of US\$100,000-00 (one hundred thousand United States Dollars) per occurrence as per clause 4.2.1 (iv) (d).

4.1.5 The Parties specifically agree with one another that, notwithstanding anything contained herein, neither Party shall be permitted to recover consequential, indirect, special and/or punitive damages from the other arising out of any act or omission under this Agreement.

## 4.2 Insurance

4.2.1 Without in any way limiting the obligations, liabilities and responsibilities of the Contractor under this Agreement or otherwise, the Contractor, unless otherwise specified in this Agreement, shall timeously and at its own cost procure, before commencing the Service, and shall maintain until the expiry of this Agreement the following insurances with insurers approved by Company:

- (i) *workmen's compensation insurance* as required in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act, Act No. 130 of 1993 ("The Compensation Act") as amended or any similar enactment which may replace that Act;
- (ii) *employer's common law liability insurance* in respect of the Contractor' legal liability for any damages or compensation payable at law, including legal costs as between attorney and client relevant thereto, in respect of or in consequence of any accident to or any injury to or sickness of or deaths of Owner Group who falls outside the provisions of The Compensation Act or any similar enactment which may replace that Act with a limit of liability at all times of not less than US\$1,000,000-00 (one million United States Dollars) for each occurrence or such larger amounts for which the Contractor already have cover; the territorial limits of the policy are to be world-wide;
- (iii) *hull and machinery insurance* for the full value of the Aircraft used in rendering the Services;
- (iv) *Aircraft aviation liability Insurance* incorporating war risks, third party liability and passenger legal liability on the following basis:
  - (a) *Aircraft liability* with a combined single limit of not less than US\$150,000,000-00 (one hundred million United States Dollars) per occurrence;

- (b) *Airport owners and Operator's liability* with a combined single limit of not less than US\$10,000,000-00 (ten million United States Dollars) per occurrence;
- (c) *Third party liability* with a combined single limit of not less than US\$150,000,000-00 (one hundred million United States Dollars) per occurrence; and
- (d) *Liability insurance* in respect of loss of or damage to property of Company Group earned onboard by the Aircraft with a limited of liability of not less than US\$100,000-00 (one hundred thousand United States Dollars) per occurrence.

4.2.2 Contractor shall ensure that the insurance policies procured in pursuance of clauses 4.2.1 (iii) and 4.2.1 (iv), shall be in the name of the Contractor and shall be extended to include Company Group as additional insured Parties. Furthermore, the said insurances procured in pursuance of clauses 4.2.1 (iii) and (iv), shall provide a complete waiver by insurers of all express or implied rights of subrogation against the Company Group. These policies shall expressly provide that they are deemed to be separate insurance in respect of each insured and additional insured as if a separate policy had been issued to each.

4.2.3 The Contractor shall ensure that Contractor Group is made aware of the insurance requirements of this Agreement and the Contractor shall ensure their compliance with these requirements.

4.2.4 All insurance policies which the Contractor shall procure to be effected and maintained in terms of Clause 4.2 shall be endorsed to provide that such policies shall not expire or be cancelled unless at least thirty (30) days prior notice of expiry of cancellation shall be given to the Company by the insurer. If the Contractor neglects or fails or refuses to obtain any insurances required to be effected by them under the provisions of clause 4.2, the Company shall have the right to procure such insurances and any sums paid by the Company in this regard shall immediately become due and payable to the Company by the Contractor and the Company shall furthermore be entitled to deduct such sums from any moneys due or which may become due to the Contractor in addition to any other remedies which the Company may have, whether under this Agreement or otherwise. The existence of this right to the Company so to procure insurances shall in no way impose a duty on the Company to exercise such right.

- 4.2.5 Notice of any claim arising under the insurances outlined in Clause 4.2 shall be given to the Company without delay stating full details of each incident. Each relevant Party shall at its own cost provide the other with all reasonable assistance which may be requested in preparing, negotiating and enforcing any insurance claim and such costs are to be reimbursed if forming part of the relevant claim and recovered.
- 4.2.6 Certain further insurances may be procured, renewed and maintained by Company. Such insurance(s), where applicable, to the extent possible, will be extended to include the Contractor Group as an additional insured and these insurances will be deemed to be separate insurances in respect of each insured as if a separate policy has been issued to each and provide a complete waiver by insurers of all express or implied rights of subrogation against Contractor Group.
- 4.2.7 The Contractor shall expeditiously after signature of the Agreement furnish evidence to the Company of coverage by insurance as required to be furnished in terms of this Agreement.
- 4.2.9 The Contractor shall not permit any sub-contractor to commence the Service nor shall the Contractor be entitled to commence rendering the Service in terms of this Agreement until written evidence of required insurance coverage has been furnished to the Company and approved by it in writing. This clause shall not be read or operate so as to relieve the Contractor from their obligation to perform timeously under this Agreement.
- 4.2.10 It is specifically agreed between the Contractor and the Company that nothing contained or referred to in this Agreement or any of the Annexures thereto shall be to the prejudice of the rights, indemnification's, benefits and cover derived by the Company under the provisions of clause 4.1.
- 4.2.11 Any risk assumed or indemnity given by the Company to Contractor in terms of this Agreement shall be limited to those instances where Contractor is not insured therefore. In those cases where the Contractor is insured, the Company's liability in terms of the indemnity or risk assumed shall be limited to the applicable deductible, if any.

## 5. TERM OF AGREEMENT AND EARLY TERMINATION

- 5.1 This Agreement shall commence from **01 September 2022** (the "Commencement Date") and shall endure for a period of **1 (one), 2(two), 3(three) or 5 (five) years** (the "Initial Term") and any extension referred to in clause 5.2 below, unless early terminated in terms of the provisions of this Agreement.

- 5.2 Notwithstanding the fact that the Initial Term or extended term of this Agreement may have expired, this Agreement shall endure in the discretion of the Company until the completion of the then current operations.
- 5.3 Notwithstanding anything to the contrary contained in this Agreement, in the event that Company ceases or diminishes its exploration and/or production related operations offshore the Republic of South Africa prior to the expiry of this Agreement, Company shall have the right at any time to early terminate this Agreement by giving Contractor 60 (sixty) days prior written notice of its intention to early terminate. In such event Company shall be liable to pay the Consideration to the date of such early termination and the applicable Demobilisation Fee. In no event shall Company be liable to Contractor for any other payment arising from such early termination.

## 6. AVAILABILITY

- 6.1 The Contractor shall make the Aircraft available for use by the Company during Normal Operating Hours/As and when required.. In case of an emergency where human lives are at stake and the Aircraft is the only available means of rescue or providing assistance in the search efforts, the Contractor may request the Aircraft to be released for a time determined and agreed between the Company and the Contractor. The Company will not be responsible for any cost incurred while the aircraft is engaged in any activity other than servicing this Agreement.
- 6.2 Notwithstanding the above the Contractor shall be allowed a maximum cumulative downtime allowance of ~~two (2)~~ three (3) days in any period of thirty (30) days for maintenance and/or rectification/repair in addition to the time allowed for scheduled major maintenance in accordance with Annexure F - Programme of Scheduled Major and other Maintenance.
- 6.3 If the Aircraft is not Available for any reason for more than the maximum cumulative downtime allowance in any period of thirty (30) days the fixed monthly hire charge shall be reduced by one-thirtieth (1/30th) for each day in excess of the maximum cumulative downtime allowance that the Aircraft is not available.
- 6.4 For the purpose of calculating the time the Aircraft is deemed unavailable a day shall be taken as the period of Normal Operating Hours. If the Contractor is unable to make the Aircraft available for any period during Normal Operating Hours the Aircraft shall be deemed to be unavailable according to the following schedule: Unavailable for:

0-2	Hours	Counted as available.
2-4	Hours	Counted as unavailable for quarter of a day.

4-6	Hours	Counted as unavailable for half a day.
6-8	Hours	Counted as unavailable for three quarters of a day.
Over	Hours	Counted as unavailable for the day.

- 6.5 Subject to Clause 6 below, if the Aircraft is not Available due to any reason outside the Contractor's control this shall not be deemed unavailable in accordance with 6.4.
- 6.6 For the purpose of Clause 6.5 the term "outside the Contractor's control" shall be limited to the following occurrences :
- a) bad weather below the limits stated in the Contractor's operations manual
  - b) any act, law, regulation or directive of the Government, any local authority or agency thereof making flight operations impossible.
- 6.7 If any of the Aircraft is not Available for more than ~~1 (one)~~ three (3) days, Contractor shall at no cost to the Company obtain a replacement Aircraft acceptable to the Company until such time that the out of service Aircraft is once again available. No mobilisation or demobilisation charges shall be levied against the Company for this replacement Aircraft.
- 6.8 If the Aircraft becomes a total or a constructive total loss, the Contractor shall within 24 (twenty four) hours from the date and time of the event giving rise to the total or constructive loss, promptly replace it with an Aircraft acceptable to the Company and the fixed monthly hire charge set out in Clause 7.1 shall cease from the date following the loss or the constructive total loss and shall again come into force when the replacement Aircraft is in services.
- 6.10 Where the Contractor elected to, depending on demand, bring in a third-party or additional aircraft during peak periods, the Contractor shall ensure that the aircraft to be used is of the same type as the aircraft utilised in this Agreement. The additional aircraft is subject to Company evaluation and approval.

## 7. CONSIDERATION

Company shall pay Contractor in full discharge of its obligations the amounts and rates as specified below. Such amounts, except as specifically otherwise provided in this Agreement is inclusive of all costs, liabilities and expenses incurred by Contractor in rendering the services to Company:

- 7.1 A fixed monthly/daily hire charge at the rate of US\$\_\_\_\_\_ per month
- 7.2 A charge at the rate of US\$\_\_\_\_\_ per flying hour

- 7.3 A mobilisation charge of 0 (zero) payable at the commencement of the Agreement and a demobilisation charge of 0 (zero) payable at the termination of the Agreement.
- 7.4 Contractor shall invoice Company for the reimbursable costs set out in clause 3.4 of this Agreement.
- 7.5 All rates and prices are exclusive of Value Added Tax, as applicable in the Republic of South Africa, will be added to Contractor's invoices. Contractor shall provide Company with VAT invoices for the period that the Services rendered and shall take all such action as is required to enable Company to recover VAT paid on Contractor's invoices.
- 7.6 The rates and prices as set out above are fixed for the Initial Term of this Agreement. Should Company exercise the option, as provided in Clause 5.1 to extend this Agreement beyond the Initial Term, Contractor shall be entitled to request an increase in the Consideration provided that such increase can be substantiated by documented increases to Contractor in its operating costs. The Parties shall meet and in good faith agree upon the proposed increase by Contractor to Consideration having due regard to the impact, such increases has upon both Company and Contractor.

## **8. DOCUMENTATION**

- 8.1 Records with adequate information about each flight hours shall be kept and attached to the monthly invoice.
- 8.2 Passenger manifests and multi-sector load sheets shall be used and made available to the Company Representative at the termination of each flight sector.
- 8.3 The Contractor shall, as required, participate in and comply with the Company's own procedures relating to the issue of passenger tickets and performance of baggage checks.

## **9. PAYMENT**

- 9.1 Contractor shall invoice Company for all amounts due by Company in South African Rands within 30 (thirty) days of the relevant amounts being incurred. Such invoices shall be accompanied by all the necessary documentation to enable Company to verify the amounts specified on the invoice, which shall include but not be limited to captains logs, manifest, passenger lists and documentation substantiating the Rand/Dollar conversion.
- 9.2 Company shall pay all amounts as specified in the relevant invoice within 30 (thirty) days of receipt of Contractor's invoice.

- 9.3 In the event that the Company disputes an item in the invoice, the Company shall, within twenty (20) days, notify the Contractor of the item under dispute specifying its complaint. Payment of said particular item shall be withheld until the settlement of the dispute, either by mutual agreement or in accordance with the provisions for arbitration of the Agreement. The undisputed amount, however, shall be paid without delay. Payment without withholding shall not preclude the Company from disputing any item at a later date.
- 9.4 In respect of the Dollar amounts Contractor shall use the First National Bank published Rand/Dollar conversion rate (i.e. simple average for buying and selling, excluding the telegraphic transfer rate) applicable on the day Contractor has invoiced Company.

## **10. FORCE MAJEURE**

- 10.1 Notwithstanding any provision to the contrary elsewhere in this Agreement, should either party be prevented from fulfilling its obligations under this Agreement by events of Force Majeure, such as Acts of God, Government regulations for National Defence, strikes, riots, insurrection, rebellion or any other cause outside the reasonable control of the party affected, both parties shall be relieved of their obligations under this Agreement for the duration of the Force Majeure. In the event of any circumstances occurring as aforesaid the parties shall consult together with the view to determining mutually acceptable means to overcome the difficulty arising thereof. Notwithstanding the foregoing, a strike limited to the workforce of the Contractor shall not constitute Force Majeure.
- 10.2 For the avoidance of doubt during the period of Force Majeure there shall be no charge to the Company, neither shall any charges accrue to the Company during this period.
- 10.3 If the period of Force Majeure exceeds 90 (ninety) days either the Contractor or the Company shall have the right to cancel the Agreement without penalty.
- 10.4 In the event of a Force Majeure occurrence, the party delayed in performing this Agreement shall immediately by the most direct possible means and in writing notify the other party giving the full particulars thereof and shall use its best efforts to remedy the situation immediately.

## **11. TERMINATION BY REASON OF BREACH OF CONTRACT**

- 11.1 If either Party (A) has breached any of the provisions of this Agreement, then the other Party (B) may, without prejudice to any of its other legal rights, serve notice on (A) in writing, informing it of the nature of the breach and requiring it to remedy such breach within 10 (ten) working days after receipt of such notice. In the event of (A)'s failure to remedy such breach, such breach shall be deemed to be

material and (B) may without prejudice to its other rights in law, cancel this Agreement forthwith in whole or in part.

- 11.2 In the event that Company terminates this Agreement in terms of clause 11.1, Company shall have no obligation to pay the Demob Fee.

## **12. CONTRACT STAFF**

### **12.1 Salaries**

The Contract Staff are the servants of the Contractor who shall be solely responsible for payment of salaries to such Contract Staff.

### **12.2 Replacement**

The Company, at its sole discretion, shall have the right to request that Contractor replaces any of its staff at the Contractors expense, provided that such right is not exercised frivolously or vexatiously. Upon such request by Company, Contractor shall forthwith proceed with such replacement.

### **12.3 Drug and Alcohol Abuse**

The Contractor is aware of the potential problem of drug and alcohol abuse on the part of Contract Staff and warrants that it has an active policy in force covering its services under this Agreement. The Contractor further warrants that this policy will remain in force during the period of this Agreement and that due diligence will be exercised by the Contractor to ensure that the policy is complied with. The Contractor warrants that alcoholic beverages will not be consumed in the eight (8) hours :

- a) before a pilot begins any flying or standby duty period
- b) before an engineer carried out maintenance on the Aircraft. Additionally, during the sixteen (16) hours prior to this, alcoholic beverage consumption should not be more than moderate which for the purpose of interpretation in accordance with this Agreement is agreed to be five (5) units of alcohol with one (1) unit being equal to a small measure of spirit, one-half (½) pint of beer or one (1) glass of wine.

The Contractor is responsible for ensuring that the Contractor's Staff do not at any time during the performance of the task possess, partake or be under the influence of any drug or other intoxicating substance, other than for bone fide medical reasons for which the Contractor shall obtain the approval of the

Company prior to any such individual being engaged or performing any part of the task.

#### **12.4 Health, Safety and Environment**

Contractor shall operate a Safety Management System ("SMS") and is responsible for the safety of operations and shall execute this responsibility, subject to Company's safety rules, legislation and regulations.

### **13. LAW**

13.1 This Agreement is governed by the law of the Republic of South Africa, which shall be used for interpreting the Agreement and resolving all claims or disputes arising out of or in connection with this Agreement whether based in contract, in tort or any other legal doctrine.

13.2 Except as otherwise expressly stated in this Agreement, the Contractor shall comply with the Laws of the Republic of South Africa, including the Laws and Regulations of local authorities in relation to :

- (i) All laws and regulations for the time being in force in the area of operations relating to the employment, recruitment and conditions of service of workmen and other employees or relating to or affecting any of the operations under this Agreement.
- (ii) All permits, licences or clearances which are granted by competent authorities to either the Company or the Contractor in connection with the operations under this Agreement.
- (iii) All instructions, practices and procedures as to the safety and welfare of workmen and other employees which the Company may from time to time recommend to the Contractor.

### **14. STATUS OF THE CONTRACTOR**

The Contractor shall undertake these services and all services relating thereto as an Independent Contractor and neither it nor its agents, servants or employees shall be deemed to be employees of the Company.

### **15. SECRECY AND CONFIDENTIALITY**

15.1 The Contractor undertakes to keep and hold secret and confidential all information regarding the business of the Company, howsoever obtained, and shall not use the same other than for purposes of the parties' association with each other, nor disclose to or discuss the same with any other party without the express prior consent of Company.

- 15.2 The foregoing restrictions shall not, however, apply to any portion of the said information which the Contractor can show was in its possession prior to receipt thereof from Company, or at the time of disclosure is or thereafter becomes part of public domain by publication or otherwise, or corresponds in substance to information furnished to the Contractor as a matter of right without restriction on disclosure and was not acquired directly from Company.
- 15.3 The Contractor undertakes to obtain a signed Undertaking of Secrecy from its key personnel, in the format attached hereto (Annexure "A"), which said undertakings shall be forwarded to Company upon request.
- 15.4 The contents of this Clause 9 shall be valid and effective for the duration of this Agreement and a period of 15 years after termination thereof.

## **16. CARRIAGE OF DANGEROUS GOODS BY AIR**

- 16.1 Before dangerous goods are carried in the Aircraft the Contractor, if necessary with the assistance of the Company, shall seek authorisation from the relevant authorities. Dangerous goods shall at all times be carried in the Aircraft in accordance with the provisions of the International Civil Aviation Organisation's latest version of the Technical Instructions for the Safe Transport of Dangerous Goods by Air.
- 16.2 Contractor shall implement adequate precautions applicable on each particular occasion.

## **17. TAXES AND DUTIES**

Except as otherwise provided in this Agreement, Contractor shall assume full and exclusive liability for payment of all corporate taxes, personal income taxes, payroll taxes and turnover taxes, and other direct and indirect taxes, currently in place and being applied at the time of entering into this Agreement, as may be imposed on Contractor, in South Africa or the country of Contractor's registration or flag state, which directly result from the carrying out of the service by Contractor. Contractor hereby indemnifies and hold Company harmless from and against any and all claims and demands with respect to taxes that Contractor is responsible for, pursuant to this clause.

## **18. ASSIGNMENT AND SUB-CONTRACTS**

- 18.1 The Company may without the assent of the Contractor freely assign in whole or part any of its rights and duties under this Agreement to an affiliated Company and if it does so, shall immediately give the Contractor written notice thereof; provided always that the Company shall remain liable for the performance of the Company's obligations thereunder.

- 18.2 Except with the Company's prior written approval (which approval shall be solicited prior to any commitment by the Contractor) the Contractor shall not assign, encumber, sub-contract or suffer to be assigned, encumbered or sub-contracted any rights, duties or interests arising under this Agreement, in whole or in part, voluntarily, by operation of law or otherwise, provided always that the Contractor shall, notwithstanding any such approval, be responsible for any acts, defaults and neglects of any Sub-contractor, its employees, servants or agents as fully as if they were the acts, defaults and neglects of the Contractor, its employees, servants or agents.
- 18.3 The Contractor shall ensure that Sub-contracts bind Sub-contractors such that the Company's rights and the Contractor's obligations in accordance with this Agreement are extended to apply at least as fully with respect to Sub-contractors (by means of the Sub-contract) and any Sub-contract as to the Contractor and this Agreement respectively.
- 18.4 If there shall be such a change in the ownership of the share-holding of the Contractor as would alter control of the Contractor from that existing at the date of the Agreement (and for this purpose control shall be deemed to exist by virtue of the holding of more than half of the issued equity share capital carrying the right to vote at a General Meeting of the Contractor) the Company may at its discretion and either forthwith or at a later date terminate this Agreement without further payment or penalty.

## **19. SECURITY AND PUBLICITY**

- 19.1 The Contractor undertakes that the Contract Staff shall not (except with the prior written consent of the Company) –
- a) make any reference publicly either to the Press or in books, magazines and periodicals or by advertisement or by radio, television or films or by any other medium of communication to :
    - (i) the terms and conditions of this Agreement; or
    - (ii) the method, materials or equipment used and Contract Staff employed in the Company's operations; or
    - (iii) any information in the possession of the Contractor or any of the Contract Staff as to the operations of the Company; or
  - b) disclose any such matters to any third party not directly concerned with the work hereunder or to any other person not being an employee of the Company.

The Company reserves the right to refuse consent to any such public reference without assigning any reasons therefor and to attach such conditions to its consent as it may see fit.

## **20. NOTICES**

- 20.1 Any notice under the provisions of this Agreement shall be in writing and shall be delivered personally to the Representative of the relevant party or sent by telex or registered mail addressed as notified hereunder .
- 20.2 Unless the contrary shall be proved such notice or communication shall be deemed to have been given or made and delivered if by letter forty-eight (48) hours after posting, if by delivery when left at the relevant address or if by telex at the time of the transmission of the telex.

**COMPANY: PetroSA**

*Street Address*

*Postal Address*

....

...

...

Telephone: + 27 (0) 21 417

Facsimile: + 27 (0) 21 417

**CONTRACTOR:**

*Street Address:*

*Postal Address:*

...

...

...

Telephone:

Facsimile:

**21. ARBITRATION**

- 21.1 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Act of the Republic of South Africa as at present in force.
- a) The number of arbitrators shall be one.
  - b) The place of arbitration shall be Cape Town, South Africa.
  - c) The language to be used in the arbitral proceedings shall be English.
- 21.2 A dispute, controversy or claim shall be deemed to have arisen when either party notifies the other party in written to this effect. Judgement in the award rendered may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order for enforcement as the case may be.

**22. BANKRUPTCY OR INSOLVENCY OF CONTRACTOR**

If the Contractor becomes bankrupt or makes a composition or arrangement with its creditors, or has a winding-up order made or (except for the purposes amalgamation or reconstruction) a resolution for voluntary winding-up passed or has a provisional liquidator appointed, or has possession taken by or on behalf of the holders of any debenture secured by a floating charge does of any property comprised in or subject to the floating charge, or suffers any equivalent thing under any applicable law, Contractor shall be in breach hereof and Company may be notice terminate this Agreement without prejudice to any rights of action or claims accrued at the date of termination.

**23. RIGHT TO AUDIT**

- 23.1 The Company or its nominee shall have sufficient access to Contractor locations, facilities, and any kind of information for the purpose of an operational and technical audit at any time given reasonable notice.
- 23.2 If appropriate for the purpose of reviewing and verifying the costs of cost reimbursable items and the quantities, both of these, and any items chargeable by specified rate, or for any other reasonable purpose, the Company or its authorised representatives shall have access at office hours to all Contract Staff, books, records, computer programs, tapes, correspondence, instructions, plans, drawings, receipts, vouchers and memoranda of both the Contractor and any Sub-Contractors pertaining to the Services. The Company or its authorised representatives shall have the right to reproduce and retain copies of any of the aforesaid documents.
- 23.3 The Company or its authorised representatives shall have sufficient access to any rate information to satisfy themselves that no Service that is supposed to be included in the rates of the Contractor is invoiced as directly reimbursable costs and that all the Services that are supposed to be provided for in the rates of the Contractor are so provided. If any costs are in dispute and the Contractor refuses to provide access, such costs shall be deemed to be included in the rates of the Contractor and shall not be allowable as reimbursable costs.
- 23.4 The above audit rights of the Company shall continue for a period of two (2) years after expiry, or if earlier, discontinuation of the Agreement, and the Contractor shall preserve and shall cause its Sub-Contractors to preserve all documents for the same said period.

SIGNED AT ..... ON THIS ..... DAY OF ..... 2022

**Witnesses:**

1. ....

2. ....

.....

***For COMPANY***

SIGNED AT ..... ON THIS ..... DAY OF ..... 2022

**Witnesses:**

1. ....

2. ....

.....

***For CONTRACTOR***