

Offshore Petroleum Royalty Regulations

made under Section 23 of the

Offshore Petroleum Royalty Act

S.N.S. 1987, c. 9

O.I.C. 1999-337 (June 17, 1999), N.S. Reg. 71/99

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1 These regulations may be cited as the Offshore Petroleum Royalty Regulations.

Part I - Mandatory Provisions

Interpretation and application

2 (1) In these regulations

(a) “Abandonment Cost” has the meaning set forth in Section 3;

(b) “Abandonment Loss” has the meaning set forth in Section 4;

(c) “Accord Act (Canada)” means the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (Canada);

(d) “Accord Act (Nova Scotia)” means the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act;

(e) “Act” means, unless the context otherwise requires, the Offshore Petroleum Royalty Act;

(f) “Allowed Cumulative Field Costs” has the meaning set forth in Section 5;

(g) “Arm’s Length” has the meaning set forth in Section 22;

(h) “Arm’s-Length Transaction” means, subject to subsection 22(3), any transaction between Persons that are dealing at Arm’s Length;

(i) “Assessment” means an assessment made by the Minister pursuant to Section 9 of the Act;

(j) “Asset Proceeds Balance” has the meaning set forth in Section 6;

(k) “Assistance” in relation to a cost, expense or other amount means any amount that is a reimbursement, compensation or other payment from a government, municipality or other public authority in respect of the cost, expense or other amount, including any amount of related assistance, or reimbursement or benefit whether as a grant, subsidy, forgivable loan, investment allowance, tax credit or any other form of assistance, not including

(i) any resource allowance or a replacement or successor provision under the Income Tax Act (Canada),

(ii) any deduction in computing income or taxable income that is not in excess of net cost, or

(iii) any similar allowance, provision or deduction under a provincial income tax statute;

(l) “Average BTU Production Content” has the meaning set forth in subsection 7(1);

(m) “Average BTU Sale Content” has the meaning set forth in subsection 7(2);

(n) “Avoidance Transaction” has the meaning set forth in Section 28;

(o) “Board” means the Canada-Nova Scotia Offshore Petroleum Board;

(p) “Business Day” means a day on which chartered banks are open for business in both Calgary, Alberta and Halifax, Nova Scotia;

(q) “Buyout Payment” has the meaning set forth in Section 8;

(r) “Canada-Nova Scotia Benefits” has the meaning set forth in Section 9;

(s) “Commercial Discovery” means a commercial discovery as that term is used in the Accord Act (Nova Scotia);

(t) “Condensate” means a hydrocarbon other than crude oil that is in liquid form at the time of being measured by the relevant Petroleum Royalty Meter and that may contain LPG, excluding impurities;

(u) “Condensate Produced” means the volume of Condensate produced from the Field excluding any Condensate that is or will become LPG Produced from the Field, as measured by the relevant Petroleum Royalty Meter, adjusted to include Condensate that is Waste;

(v) “Condensate Sale Price” has the meaning set forth in subsection 11(1);

(w) “Condensate Sale Proceeds” has the meaning set forth in subsection 10(1);

(x) “Crude Oil” means

(i) crude oil, regardless of gravity, produced at a well head in liquid form, excluding impurities,

(ii) any other hydrocarbons except Condensate, Gas and LPG, and without limiting the generality of the foregoing, includes liquid hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from any other types of deposits on the surface or subsurface or the seabed or its subsoil of the Offshore Area, excluding impurities;

(y) “Crude Oil Produced” means the volume of Crude Oil produced from the Field as measured by the relevant Petroleum Royalty Meter, adjusted to include Crude Oil that is Waste;

(z) “Crude Oil Sale Price” has the meaning set forth in subsection 11(2);

(aa) “Crude Oil Sale Proceeds” has the meaning set forth in subsection 10(2);

(ab) “Cumulative Final Return Allowance” has the meaning set forth subsection 12(6);

(ac) “Cumulative Gross Revenue” has the meaning set forth in Section 16;

(ad) “Cumulative Primary Return Allowance” has the meaning set forth in subsection 12(2);

(ae) “Cumulative Secondary Return Allowance” has the meaning set forth in subsection 12(4);

(af) “Fair Market Value” has the meaning set forth in Section 14;

(ag) “Final Date of Field Payout” has the meaning set forth in subsection 13(3);

(ah) “Final Return Allowance” has the meaning set forth in subsection 12(5);

(ai) “Force Majeure” means an event including, without limiting the generality of the foregoing, an act of God, an act of the public enemy, war, revolution, insurrection, arrest, civil disturbance, blockade, riot, epidemic, strike, a lockout or other industrial disturbance, fire, lightning, earthquake, storms, floods, tsunami, washout, ice-flow, icebergs, high seas, fog, explosion, breakage or accident, shortage of or inability to obtain labour or materials or government restraint, action, delay or inaction, which the Interest Holder was unable to prevent or provide against by the exercise of reasonable diligence at a reasonable cost;

(aj) “GAAP” means Canadian generally accepted accounting principles and all relevant accounting procedures and conventions of the Interest Holder provided that such policies are in accordance with Canadian generally accepted accounting principles;

(ak) “Gas” means natural gas and includes all hydrocarbon substances, other than Crude Oil, Condensate, LPG and impurities, produced in association with gas;

(al) “Gas Produced” means the volume of Gas produced from the Field excluding any Gas that is or will become LPG Produced from the Field, as measured by the relevant Petroleum Royalty Meter adjusted to include Gas that is Waste;

(am) “Gas Sale Price” has the meaning set forth in subsection 11(3);

(an) “Gas Sale Proceeds” has the meaning set forth in subsection 10(3);

(ao) “Gross Revenue” has the meaning set forth in Section 15;

(ap) “Included Risk” for a Field means a risk relating to Field Assets, including the design, construction and assembly of Field Assets, or activities occurring in the Nova Scotia Area and that occur within, or in furtherance of activities within, the Field Area, other than activities in respect of Petroleum Produced that is downstream of the relevant Royalty Valuation Point, excluding political risks, abandonment other than risk related to the conduct of the abandonment work, business interruption or change in applicable Royalty;

(aq) “Income Tax Act (Canada)” means the Income Tax Act, R.S.C. 1985, First Supplement as amended from time to time, except as noted in subsection 22(1);

(ar) “Incremental Asset” means, subject to any agreement in writing between the Interest Holder and the Minister, the interest of the Interest Holder in any asset or any part thereof to the extent that that interest was acquired for use in respect of Petroleum other than Petroleum Produced from the Field, and where an asset would otherwise be a Field Asset, the Interest Holder may elect that the asset be deemed to be an Incremental Asset, provided that the result of the election may not reasonably be expected to result in a significant overall reduction in Royalty payable in respect of the Field or any Other Field;

(as) “Incremental Cost” means any cost that is

(i) incurred in respect of a Field Asset where the cost is a betterment under GAAP, to the extent that the cost is incurred for the purpose of use in respect of Petroleum other than Petroleum Produced from the Field, or

(ii) the cost of an Incremental Asset;

(at) “Independent Auditors’ Report” means a report by the independent auditors of an Interest Holder or of the operator of a Field or any Field Asset, in respect of a Royalty Return for a Period, stating that, in their opinion, the Royalty Return of the Interest Holder for the Period presents fairly, in all material respects, the amount of Royalty payable by the Interest Holder for the Period in accordance with these regulations and any agreement in writing between the Interest Holder and the Minister;

(au) “Interest Holder” for a Field or an area that is subsequently determined to be a Field means

(i) a holder of a share in a Production Licence in respect of the Field or a portion of the Field or a former holder of a share in a Production Licence that has expired, or

(ii) where a Production Licence has not been issued in respect of the Field or a portion of the Field, a holder of a share in an exploration licence or Significant Discovery licence in respect of the Field or a portion of the Field;

(av) “LPG” means hydrocarbons that are composed principally of hydrocarbons that are heavier than methane but lighter than pentane and which are extracted from Condensate or Gas and sold as liquid or compressed ethane, butane or propane, or a mixture of such hydrocarbons;

(aw) “LPG Produced” means, where LPG is extracted by or on behalf of the Interest Holder from Condensate or Gas that has been produced from the Field, the volume of LPG so extracted as measured by the relevant Petroleum Royalty Meter, adjusted to include LPG that is Waste;

(ax) “LPG Sale Price” has the meaning set forth in subsection 11(4);

(ay) “LPG Sale Proceeds” has the meaning set forth in subsection 10(4);

(az) “LTBR” has the meaning set forth in Section 17;

(ba) “Month” means a calendar month, except that where a Period is deemed to begin or end at a particular time under Section 40, the first or last Month of that Period may be a portion of a calendar month, and the first Month shall be the calendar month in which the Field Commencement Date occurs;

(bb) “Month of Cessation” means the Month in which Commercial Production from the Field ceases, other than where it may reasonably be considered that the cessation is only for a temporary period;

(bc) “Net Loss” has the meaning set forth in subsection 18(2);

(bd) “Net Revenue” has the meaning set forth in subsection 18(1);

(be) “Non-Technical Costs” means personnel costs, expenses or other amounts in respect of advertising, public relations, community liaison or legal services, other than in respect of the regulatory process or as required by or under any Canadian federal or provincial enactment, financial services, financial accounting, financial auditing, executive search consultants, human resources, clerical staff, charitable donations, general management consulting, or management consulting in relation to any of the foregoing matters but does not include a cost, expense or other amount described in subclauses (ck)(i) or (ii);

(bf) “Noon Day Rate” for a particular Month or day in a Month in respect of a particular foreign currency means the exchange rate quoted by the Bank of Canada as its noon day rate for converting foreign currency into Canadian dollars utilizing the same method as that used by the Interest Holder for accounting purposes in converting foreign currency into Canadian dollars, except that if the method is contrary to industry standards, another reasonable method shall be used that is not contrary to industry standards and is acceptable to the Minister;

(bg) “Notice” means any notice, consent, request and other document authorized or required to be given pursuant to these regulations or any agreement between the Minister and the Interest Holder entered into pursuant to the Act;

(bh) “Nova Scotia Area” means collectively the Offshore Area and the geographical area of the Province to the inner limit of the Offshore Area;

(bi) “Offshore Area” means the lands and submarine areas within the limits described in Schedule I of the Accord Act (Nova Scotia);

(bj) “Payout Statements” means the payout statements to be filed with a Royalty Return;

(bk) “Period” for an Interest Holder means a period of 12 consecutive Months ending on the last day of the fiscal period of the Interest Holder for financial reporting purposes, or such other date as is acceptable to the Minister, except that

(i) the following periods:

(A) the first Period (which shall start on the Field Commencement Date),

(B) the last Period (which shall end when the Interest Holder may no longer incur Abandonment Costs), and

(C) a Period that commences or ends by virtue of an assignment pursuant to Section 40,

may each be less than 12 Months in duration, and

(ii) the Minister may permit a lesser number of Months in any Period pursuant to a request by an Interest Holder;

(bl) “Person” means a natural person, corporation, association, union, government or government agency and includes a partnership or trust;

(bm) “Petroleum” means a hydrocarbon that is Condensate, Crude Oil, Gas or LPG;

(bn) “Petroleum Produced” means, subject to Section 55, collectively

- (i) Condensate Produced,
- (ii) Crude Oil Produced,
- (iii) Gas Produced, and
- (iv) LPG Produced,

and a “Component of Petroleum Produced” means any one of the types listed in subclauses (i) to (iv);

(bo) “Petroleum Royalty Meter” for a Field means a device used to measure volume of Petroleum that is located as provided in Section 19;

(bp) “Petroleum Sale Price” means any or all of the Condensate Sale Price, Crude Oil Sale Price, Gas Sale Price or LPG Sale Price;

(bq) “Pool” means a natural underground reservoir containing or appearing to contain an accumulation of Petroleum that is separated or appearing to be separated from any other such accumulation;

(br) “Primary Date of Field Payout” has the meaning set forth in subsection 13(1);

(bs) “Primary Return Allowance” has the meaning set forth in subsection 12(1);

(bt) “Production Licence” means a licence issued by the Board to produce Petroleum from a Field or Other Field or portion of a Field or Other Field;

(bu) “Production Startup Date” for a Field means the later of the Field Commencement Date and the first day of the Month in which Commercial Production first occurs;

(bv) “Related” and “Related Persons” have the meanings set forth in subsection 22(2);

(bw) “Relevant BTU Adjustment Factor” has the meaning set forth in subsection 7(3);

(bx) “Reservoir Performance Risk Amount” has the meaning set forth in Section 20;

(by) “Royalty” means, subject to any agreement in writing between the Minister and the Interest Holder, the royalty payable in respect to a Field pursuant to these regulations;

(bz) “Royalty Benefit” means a reduction, avoidance or deferral of Royalty or other amount payable under these regulations or an increase in a refund of the Royalty or other amount;

(ca) “Royalty Consequences” to a Person means the Royalty or other amount related to Royalty payable by or refundable to a Person under these regulations;

(cb) “Royalty Paying Month” of an Interest Holder for a Field means a Month for which Royalty is payable by the Interest Holder;

(cc) “Royalty Return” means the return to be filed with the Minister pursuant to Section 29;

(cd) “Royalty Valuation Point” means a place at which the Petroleum first leaves the Field Area;

(ce) “Secondary Date of Field Payout” has the meaning set forth in subsection 13(2);

(cf) “Secondary Return Allowance” has the meaning set forth in subsection 12(3);

(cg) “Short Term Rate” means the minimum rate, from time to time, at which the Bank of Canada makes short term Canadian dollar advances to members of the Canadian Payments Association;

(ch) “Significant Discovery” means significant discovery as that term is used in the Accord Act (Nova Scotia);

(ci) “Support Facility” means a facility located in the Nova Scotia Area including an office, railspur line other than a railspur line that was acquired or constructed primarily for the purpose of transporting Petroleum downstream of the relevant Petroleum Royalty Meter, weather station, helicopter pad, warehousing facility, pipeyard facility or other facility constructed in accordance with a requirement by a government or government authority that is used or intended to be used to provide services or support functions in respect of

(i) Petroleum Produced, or

(ii) activities that occur either within or outside the Nova Scotia Area and that are in regard to the Field, the Field Assets or Petroleum Produced,

other than services or support functions in respect of Petroleum that has passed downstream of the relevant Royalty Valuation Point;

(cj) “Tariff Balance” has the meaning set forth in Section 21;

(ck) “Technical Costs” means

(i) costs, expenses or other amounts in respect of engineers, geologists, geophysicists and other scientists, field personnel, environmental health and safety experts, all experts reasonably required in conjunction with the regulatory process (including public affairs, community liaison and consultants) and management consulting in relation to any of the foregoing matters,

(ii) charges of all regulatory bodies and agencies, excluding fines and penalties, and

(iii) any other costs of personnel which are not Non-Technical Costs;

(cl) “Third Party Costs” means, subject to the provisions of any agreement in writing between the Minister and the Interest Holder, any costs, expenses or other amounts incurred with a Person that deals at Arm’s Length with the Interest Owner and each Other Interest Holder other than

(i) an amount arising under a back-to-back arrangement which is indirectly payable to a Person that does not deal at Arm's Length with the Interest Holder or any Other Interest Holder of the Field,

(ii) salaries, wages, remuneration, fees or related benefits of an individual who is employed by, or who performs services primarily for and is akin to a contract employee of the Interest Holder, the operator of the Field or any Field Asset or an Other Interest Holder of the Field or a Person that is Related to any such Person, and

(iii) costs of temporary replacement of an individual described in subclause (ii), such as for vacation, sickness, disability, bereavement, maternity leave or paternity leave;

(cm) "Transaction" includes any arrangement or event, and a "Series of Transactions" includes any related Transactions completed in contemplation of the series; and

(cn) "Waste" means Petroleum that has been produced, saved and recovered from the Field Area (other than Petroleum that has passed through the relevant Petroleum Royalty Meter) that meets each of the following tests:

(i) it is waste within the ordinary meaning of that term or as understood in the oil and gas industry,

(ii) it arises as a result of Gross Negligence, and

(iii) it is attributable to one or more of the following:

(A) drilling, equipping, completing, operating or producing of any well in a manner that causes the unnecessary or excessive loss or destruction of Petroleum after being produced, saved and recovered (excluding blowouts),

(B) inefficient storage of Petroleum above ground or underground,

(C) production of Petroleum in excess of available storage, transportation or marketing facilities, or

(D) the escape or flaring of Gas that could be economically recovered or economically injected into an underground reservoir.

(2) Additional definitions are found in Part II of these regulations, and, subject to subsection (3), will apply together with the definitions in subsection (1).

(3) Except as may otherwise be agreed between the Minister and an Interest Holder, Parts I and II of the regulations apply together in determining the obligations and liabilities of the Interest Holder and the Minister in respect of Royalty and other matters relating to a Field Area.

#### Abandonment Cost

3 (1) Subject to subsection (2), the Abandonment Cost of an Interest Holder for a Field shall be

(a) a cost, expense or other amount incurred in closing down, decommissioning, abandoning, or removing, in whole or in part, a Field Asset, including ongoing repair, maintenance, monitoring or keeping a Field Asset in a safe condition following the cessation of the use of that Field Asset in contemplation of abandonment of that Field Asset within the time frame contemplated by clause (2)(c), restoration of land or seabed in which a Field Asset is or was located and consulting in respect of, or obtaining approval to, any of the foregoing; or

(b) a Buyout Payment made by the Interest Holder, in connection with liabilities relating to a Field Asset, to a Person with whom the Interest Holder deals at Arm's Length, and where a Buyout Payment has been received by an Interest Holder in respect of a Field Asset, any amount incurred by the Interest Holder and otherwise falling within clause (a) in respect of the Field Asset shall be reduced, after taking into account the applicable Overhead Uplift, by the amount of the Buyout Payment attributable to the Field Asset, adjusted to reflect the intervening time period between the end of the Month in which the Buyout Payment was received and the end of the Month in which the Abandonment Cost under clause (a) is incurred, using the LTBR applicable at the end of the Month in which the Buyout Payment was received, and if such reduction is greater than the actual aggregate Abandonment Costs under clause (a) that are incurred in respect of the Field Asset, the difference shall be included in the Asset Proceeds Balance of the Interest Holder who received the Buyout Payment for the Month in which the final Abandonment Costs in respect of the Field Asset were incurred or the Month of Cessation, whichever is earlier.

(2) A cost, expense or other amount shall constitute an Abandonment Cost only to the extent that

(a) in the case of an amount that is not a Buyout Payment, it is a cost, expense or other amount that is

(i) required to be incurred by statute, regulation, rule or binding order of the Board or other applicable regulatory authority,

(ii) incurred in accordance with prudent and desirable industry practices, or

(iii) approved by the Minister for inclusion as an Abandonment Cost; or

(b) in the case of a Buyout Payment made by the Interest Holder, it is a cost, expense or other amount that may reasonably be expected to be

(i) required to be incurred at a later time by statute, regulation, rule or binding order of the Board or other applicable regulatory authority,

(ii) incurred in accordance with prudent and desirable industry practices, or

(iii) approved by the Minister for inclusion as an Abandonment Cost,

and that would have been an Abandonment Cost of the Interest Holder making the Buyout Payment if it were incurred by that Interest Holder at the later time referred to in subclause (i); and

(c) it is incurred

(i) prior to the end of the Month of Cessation or within 3 years after the end of the Month of Cessation, or

(ii) in accordance with a decision made by the Interest Holder within 2 years after the end of the Month of Cessation to abandon the relevant Field Assets and the abandonment of those Field Assets is completed as soon as reasonably practicable after the decision is made, and in

particular without any intentional material delay for the purposes of earning amounts that are of the type described in clause 21(a) respecting Tariff Balance.

#### Abandonment Loss

4 The Abandonment Loss of an Interest Holder for a Field at the end of the Month shall be

(a) where the Month is the Month of Cessation or any previous Month, the lesser of

(i) the Net Loss for that Month, taking into account any Net Loss brought forward under subsection 27(3) as an addition to Allowed Capital Costs, or

(ii) the aggregate of the Abandonment Costs incurred in that Month and the Abandonment Costs included in any Net Loss from the previous Month brought forward to that Month under subsection 27(3), inclusive in each case of Overhead Uplifts and taking into account any reductions to such Abandonment Costs under subsection 44(8), where the Abandonment Costs included in any Net Loss from the previous Month brought forward to that Month under subsection 27(3) means the lesser of

(A) the Net Loss from the previous Month, or

(B) the aggregate of the Abandonment Costs incurred in the previous Month and any Abandonment Costs included in a Net Loss brought forward to the previous Month under subsection 27(3), computed in accordance with this paragraph, inclusive in each case of Overhead Uplifts and taking into account any reductions to such Abandonment Costs under subsection 44(8);

(b) where the Month is after the Month of Cessation, the aggregate of

(i) the amount determined in clause (a) at the end of the Month of Cessation, and

(ii) the aggregate of all Abandonment Costs, inclusive of Overhead Uplifts, incurred after the Month of Cessation by the Interest Holder in respect of the Field Assets, taking into account any reductions thereto under subsection 44(8).

#### Allowed Cumulative Field Costs

5 The Allowed Cumulative Field Costs of an Interest Holder for a Field as at the end of any Month shall be the aggregate of

(a) Allowed Predevelopment Costs of the Interest Holder incurred on or before the end of the Month;

(b) Allowed Capital Costs of the Interest Holder incurred on or before the end of the Month, excluding any amount added to Allowed Capital Costs for a Month under subsection 27(3) or 27(4);

(c) Allowed Operating Costs of the Interest Holder incurred on or before the end of the Month;

(d) Royalty payable by the Interest Holder for all previous Months; and

(e) the Royalty that would be payable for the Month if the Royalty were calculated using the formula for calculating Royalty that was applicable in determining the Royalty payable for the immediately preceding Month,

minus

(f) the aggregate of the Tariff Balance and Asset Proceeds Balance of the Interest Holder, determined at the end of the Month but reduced to take into account any reduction in Tariff Balance or Asset Proceeds Balance as a result of the reduction under subsection 44(8) to Allowed Operating Costs or Allowed Capital Costs incurred during the Month.

Asset Proceeds Balance

6 (1) Subject to Section 40, the Asset Proceeds Balance of an Interest Holder at any time during a Month shall be the amount, if any, by which

(a) subject to subsection (2), the aggregate of all amounts, each of which is an amount that is receivable or has been received by the Interest Holder on or before that time, including any deemed proceeds of disposition under Sections 41 or 48, for the sale, lease, licence or other disposition of Field Assets, to the extent of the amount of the cost of the assets, including Overhead Uplift, and taking into account any reduction of the cost for Assistance or increase to the cost under Section 45, that have

been included as Allowed Predevelopment Costs or Allowed Capital Costs of the Interest Holder in respect of the Field, before any reduction under subsection 44(8), excluding

(i) any consideration received or receivable on a transaction to the extent that the consideration is for the sale or grant of a working interest, overriding royalty interest, carried interest, net profit interest, penalty associated with acquiring a carried interest or any similar interest in the Field, and

(ii) any insurance proceeds referred to in clause 18(1)(b) respecting Net Revenue, reading that clause without reference to the reductions contemplated by it,

exceeds the aggregate of

(b) the aggregate amount by which the Allowed Operating Costs or Allowed Capital Costs incurred in all previous Months have been reduced under clauses 44(8)(a), (b), or (f); and

(c) where the time is after the Month of Cessation, the amount included in Net Revenue for the Month of Cessation pursuant to subclause 18(1)(d)(i).

(2) For the purposes of clause (1)(a), the proceeds received or receivable by an Interest Holder for the disposition of a Field Asset shall be reduced by any amount that the Interest Holder pays to the purchaser or to another Person, under or concurrently with the disposition of the Field Asset, in consideration for the purchaser agreeing to assume the obligations of the Interest Holder in respect of Abandonment Costs in respect of the disposed Field Asset.

#### BTU content of Gas

7 (1) The Average BTU Production Content of the Interest Holder in a particular Month for Gas Produced shall be determined by dividing the total heating value of the share of Gas Produced of the Interest Holder that is measured by the relevant Petroleum Royalty Meter in that Month, by the total volume of the share of Gas Produced of an Interest Holder, expressed in such units as are consistent with the units used to determine the Average BTU Sale Content of the Interest Holder in a particular Month for Gas Produced.

(2) The Average BTU Sale Content of the Interest Holder in a particular Month for Gas Produced shall be determined by dividing the total heating value of the share of Gas Produced of the Interest Holder that is disposed of by the Interest Holder in that Month, by the total volume of the share of Gas Produced of the Interest Holder, expressed in such units as are reasonable in the circumstances.

(3) The Relevant BTU Adjustment Factor in a particular Month for Gas Produced shall be determined by dividing the Average BTU Production Content in that Month by the Average BTU Sale Content in that Month, and despite the foregoing, if in a particular Month there has been no sale of Gas Produced in that Month, the Relevant BTU Adjustment Factor for Gas Produced in that Month shall be deemed to be 1.

#### Buyout Payment

8 (1) Subject to subsections (2) and (3), a Buyout Payment shall be,

(a) an amount that an Interest Holder of a Field pays to another Person to assume in whole or in part the liabilities of an Interest Holder for Abandonment Costs in respect of a Field Asset of that Field, other than under or concurrently with a Transaction governed by Section 40 or other Transaction involving a disposition of that Field Asset, where the Interest Holder no longer proposes to use the asset for the purposes of any Field;

(b) an amount that an Interest Holder of a Field receives from an Interest Holder of an Other Field in consideration for assuming in part the liabilities of the Interest Holder of the Other Field for Abandonment Costs in respect of a Field Asset of the Other Field, other than under a transaction governed by Section 40 or other transaction involving a disposition of that Field Asset, where the payor no longer proposes to use the Field Asset in whole or in part for the purposes of the Field or any Other Field and the recipient proposes to use the asset for the purposes of the Field; or

(c) a cost of insurance in respect of liabilities for Abandonment Costs, which cost of insurance is not an Allowed Operating Cost, but would be an Allowed Operating Cost if the definition of Included Risk in clause 2(1)(ap) were read without reference to the words “abandonment other than risk related to the conduct of the abandonment work”.

(2) A Buyout Payment made by an Interest Holder of a Field, or the portion of a Buyout Payment that reasonably relates to a particular Abandonment Cost, shall be deemed to have been made on the later of

(a) the day that it is actually made; or

(b) the earlier of the last day of the Month of Cessation and the last day of the Month in which the related abandonment cost was incurred.

(3) Where a Buyout Payment is actually made before the end of the Month of Cessation, the amount of the Buyout Payment shall be adjusted to reflect the intervening time period between the end of the Month in which the Buyout Payment was actually made and the date on which it is deemed to have been made by this definition, using the Short Term Rate if the intervening period is not more than 3 years, and otherwise using the LTBR, applicable at the end of the Month in which the Buyout Payment was actually made.

#### Canada-Nova Scotia Benefits

9 Canada-Nova Scotia Benefits shall be costs, expenses or other amounts incurred by or on behalf of the Interest Holder in respect of research, development, training or any other matters that contribute to the economy, people or government of the Province that are approved by the Minister for inclusion as Canada-Nova Scotia Benefits.

#### Calculation of sale proceeds

10 (1) The Condensate Sale Proceeds of an Interest Holder in a particular Month shall be the sum of

(a) the aggregate actual sale or other proceeds of Condensate Produced that is disposed of in that Month by the Interest Holder in an Arm's-Length Transaction, adjusted for Allowed Netback Costs pursuant to these regulations or an agreement in writing between the Minister and the Interest Holder; and

(b) where Condensate Produced is disposed of by an Interest Holder otherwise than in a Transaction that is an Arm's-Length Transaction, or is delivered by the Interest Holder to another Person in satisfaction of any obligation of the Interest Holder, the amount determined to be the Fair Market Value of the Condensate at the Royalty Valuation Point; and, for greater certainty, the Fair Market Value determined under this clause shall be adjusted, if necessary, for Allowed Netback Costs pursuant to these regulations or an agreement in writing between the Minister and the Interest Holder.

(2) The Crude Oil Sale Proceeds of an Interest Holder in a particular Month shall be the sum of

(a) the aggregate actual sale or other proceeds of Crude Oil Produced that is disposed of in that Month by the Interest Holder in an Arm's-Length Transaction, adjusted for Allowed Netback Costs pursuant to these regulations or an agreement in writing between the Minister and the Interest Holder; and

(b) where Crude Oil Produced is disposed of by an Interest Holder otherwise than in a Transaction that is an Arm's-Length Transaction, or is delivered by the Interest Holder to another Person in satisfaction of any obligation of the Interest Holder, the amount determined to be the Fair

Market Value of the Crude Oil at the Royalty Valuation Point; and for greater certainty, the Fair Market Value determined under this clause shall be adjusted, if necessary, for Allowed Netback Costs pursuant to these regulations or an agreement in writing between the Minister and the Interest Holder.

(3) The Gas Sale Proceeds of an Interest Holder in a particular Month shall be the sum of

(a) the aggregate actual sale or other proceeds of Gas Produced that is disposed of in that Month by the Interest Holder in an Arm's-Length Transaction, adjusted for Allowed Netback Costs pursuant to these regulations or an agreement in writing between the Minister and the Interest Holder; and

(b) where Gas Produced is disposed of by an Interest Holder otherwise than in a Transaction that is an Arm's-Length Transaction, or is delivered by the Interest Holder to another Person in satisfaction of any obligation of the Interest Holder, the amount determined to be the Fair Market Value of the Gas at the Royalty Valuation Point; and for greater certainty, the Fair Market Value determined under this clause shall be adjusted, if necessary, for Allowed Netback Costs pursuant to these regulations or an agreement in writing between the Minister and the Interest Holder.

(4) The LPG Sale Proceeds realized by an Interest Holder in a particular Month for a particular type of LPG shall be the sum of

(a) the aggregate actual sale or other proceeds of LPG Produced of that type that is disposed of in that Month by the Interest Holder in an Arm's-Length Transaction, adjusted for Allowed Netback Costs pursuant to these regulations or an agreement in writing between the Minister and the Interest Holder; and

(b) where LPG Produced of that type is disposed of by an Interest Holder otherwise than in a Transaction that is an Arm's-Length Transaction, or is delivered by the Interest Holder to another Person in satisfaction of any obligation of the Interest Holder, the amount determined to be the Fair Market Value of the LPG at the Royalty Valuation Point; and for greater certainty, the Fair Market Value determined under this clause shall be adjusted, if necessary, for Allowed Netback Costs, pursuant to these regulations or an agreement in writing between the Minister and the Interest Holder.

#### Calculation of sale price

11 (1) The Condensate Sale Price of an Interest Holder in a particular Month shall be determined by dividing the Condensate Sale Proceeds for that Month by the volume of Condensate Produced that is disposed of in that Month by the Interest Holder, and where there are no Condensate Sale Proceeds for the Month, the Condensate Sale Price shall be equal to the Fair Market Value at the Royalty Valuation Point of the share of the Condensate Produced of the Interest Holder in the Month, divided by the volume of that share.

(2) The Crude Oil Sale Price of an Interest Holder in a particular Month shall be determined by dividing the Crude Oil Sale Proceeds for that Month by the volume of Crude Oil Produced that is disposed of in that Month by the Interest Holder, and where there are no Crude Oil Sale Proceeds for the Month, the Crude Oil Sale Price shall be equal to the Fair Market Value at the Royalty Valuation Point of the share of the Crude Oil Produced of the Interest Holder in the Month, divided by the volume of that share.

(3) The Gas Sale Price of an Interest Holder in a particular Month shall be determined by dividing the product of the Gas Sale Proceeds for that Month multiplied by the Relevant BTU Adjustment Factor, by the volume of Gas Produced that is disposed of in that Month by the Interest Holder, and where there are no Gas Sale Proceeds for the Month, the Gas Sale Price shall be equal to the Fair Market Value at the Royalty Valuation Point of the share of the Gas Produced of the Interest Holder in the Month, divided by the volume of that share.

(4) The LPG Sale Price of an Interest Holder in a particular Month for a particular type of LPG shall be determined by dividing the LPG Sale Proceeds for that Month for that type of LPG by the volume of LPG Produced of that type that is disposed of in that Month by the Interest Holder, and where there are no LPG Sale Proceeds for that type of LPG for the Month, the LPG Sale Price for that type of LPG shall be the Fair Market Value at the Royalty Valuation Point of the share of the LPG Produced of that type of the Interest Holder in the Month, divided by the volume of that share.

#### Return allowances

12 (1) The Primary Return Allowance of an Interest Holder for a Field for a particular Month, commencing with the Month in which the Field Commencement Date falls to and including the Month immediately preceding the Month in which the Primary Date of Field Payout occurs, shall be the product obtained by multiplying

$$(a) (X + LTBR) \div 12$$

where X is 0.05 or such other amount as may be specified in the provisions of an agreement in writing between the Interest Holder and the Minister, or if no such provisions exist, by the Governor in Council, in respect of the Field or a class of Fields to which the Field belongs and LTBR is expressed as a fraction,

by

(b) the amount at the end of the particular Month by which the Allowed Cumulative Field Costs exceed Cumulative Gross Revenue of the Interest Holder for the Field.

(2) The Cumulative Primary Return Allowance of an Interest Holder for a Field in respect of any Month shall be the aggregate of the Primary Return Allowances for all Months that precede that Month.

(3) The Secondary Return Allowance of an Interest Holder for a Field for a particular Month, commencing with the Month in which the Field Commencement Date falls to and including the Month immediately preceding the Month in which the Secondary Date of Field Payout occurs, shall be the product obtained by multiplying

$$(a) (Y + LTBR) \div 12$$

where Y is 0.20 or such other amount as may be specified in the provisions of an agreement in writing between the Interest Holder and the Minister, or if no such provisions exist, by the Governor in Council, in respect of the Field or a class of Fields to which the Field belongs and LTBR is expressed as a fraction,

by

(b) the amount at the end of the particular Month by which the Allowed Cumulative Field Costs exceed Cumulative Gross Revenue of the Interest Holder for the Field.

(4) The Cumulative Secondary Return Allowance of an Interest Holder for a Field in respect of any Month shall be the aggregate of the Secondary Return Allowances for all Months that precede that Month.

(5) The Final Return Allowance of an Interest Holder for a Field for a particular Month, commencing with the Month in which the Field Commencement Date falls to and including the Month immediately preceding the Month in which the Final Date of Field Payout occurs, shall be the product obtained by multiplying

$$(a)(Z + LTBR) \div 12$$

where Z is 0.45 or such other amount as may be specified in the provisions of an agreement in writing between the Interest Holder and the Minister, or if no such provisions exist, by the Governor in Council, in respect of the Field or a class of Fields to which the Field belongs and LTBR is expressed as a fraction,

by

(b) the amount at the end of the particular Month by which the Allowed Cumulative Field Costs exceed Cumulative Gross Revenue of the Interest Holder for the Field.

(6) The Cumulative Final Return Allowance of an Interest Holder for a Field in respect of any Month shall be the aggregate of the Final Return Allowances for all Months that precede that Month.

#### Dates of Field payout

13 (1) The Primary Date of Field Payout of an Interest Holder for a Field shall be the last day of the first Month in which Cumulative Gross Revenue is, at the end of that Month, equal to or greater than the sum of the Allowed Cumulative Field Costs and the Cumulative Primary Return Allowance.

(2) The Secondary Date of Field Payout of an Interest Holder for a Field shall be the last day of the first Month in which Cumulative Gross Revenue is, at the end of that Month, equal to or greater than the sum of the Allowed Cumulative Field Costs and the Cumulative Secondary Return Allowance.

(3) The Final Date of Field Payout of an Interest Holder for a Field shall be the last day of the first Month in which Cumulative Gross Revenue is, at the end of that Month, equal to or greater than the sum of the Allowed Cumulative Field Costs and the Cumulative Final Return Allowance.

#### Fair Market Value

14 Subject to any agreement in writing between the Minister and the Interest Holder, the Fair Market Value of any cost, expense, price, proceeds of disposition or other amount receivable or payable that arises in a Transaction that is not an Arm's-Length Transaction shall be, the amount thereof computed in accordance with subsection 22(5) and, in the case of a deemed disposition at a particular time of an asset by an Interest Holder under these regulations or any agreement in writing between the Interest Holder and the Minister, the "Fair Market Value" of the asset shall be the proceeds of disposition that would reasonably be expected to arise if the asset had actually been disposed of by the Interest Holder to another Person at that time under a Transaction between Persons dealing at Arm's Length, with neither Person under a compulsion to enter into the Transaction.

## Gross Revenue

15 Subject to an agreement in writing by the Minister and the Interest Holder, the Gross Revenue of an Interest Holder for a Field for any Month shall be the aggregate of the following amounts:

(a) the product obtained when the share of the volume of the Condensate Produced in that Month from the Field of the Interest Holder is multiplied by the Condensate Sale Price;

(b) the product obtained when the share of the volume of the Crude Oil Produced in that Month from the Field of the Interest Holder is multiplied by the Crude Oil Sale Price;

(c) the product obtained when the share of the volume of the Gas Produced in that Month from the Field of the Interest Holder is multiplied by the Gas Sale Price; and

(d) if LPG has been extracted by or on behalf of the Interest Holder from Condensate or Gas that was produced from the Field, for each type of LPG so extracted, the product obtained when the share of the volume of the LPG Produced of that type in that Month from the Field of the Interest Holder is multiplied by the LPG Sale Price for LPG of that type.

## Cumulative Gross Revenue

16 The Cumulative Gross Revenue of an Interest Holder for a Field as of the end of a Month shall be the aggregate of

(a) Gross Revenue for that Month and all previous Months;

(b) all amounts included in clause 18(1)(b) respecting Net Revenue for that Month and all previous Months; and

(c) Miscellaneous Amounts for that Month and all previous Months.

## LTBR

17 (1) The LTBR in respect of a Month shall be the average annual yield of securities issued by the Government of Canada in Canadian dollars during the 12 Months immediately preceding that Month

and maturing in over 10 years, as published by the Bank of Canada in the publication entitled the "Bank of Canada Review".

(2) If the rate described in subsection (1) is not available, the LTBR shall be

(a) a similar rate determined pursuant to the provisions of an agreement in writing between the Minister and the Interest Holder;

(b) if the provisions described in clause (a) do not exist, a similar rate agreed to in writing by the Minister and the Interest Holder; or

(c) in the absence of an agreement in writing, a similar rate reasonably specified by the Minister.

(3) Where it is necessary to apply the LTBR for purposes of these regulations or any agreement in writing between the Interest Holder and the Minister, other than to determine the Final Return Allowance, Primary Return Allowance or Secondary Return Allowance, each of which shall be calculated on a basis that does not involve any compounding, the LTBR shall be compounded with the same frequency as that used by the Bank of Canada in preparing the publication referred to in subsection (1) or by such alternative source as applicable.

#### Net Revenue and Net Loss

18 (1) The Net Revenue of an Interest Holder for a Month shall be determined by the amount, if any, by which the aggregate of

(a) Gross Revenue for the Month;

(b) any amount receivable or deemed by subsection 44(6) to be receivable in the Month as proceeds under a policy of insurance to the extent and only to the extent that the insurance premiums on the policy have been included as an Allowed Operating Cost, Allowed Predevelopment Cost or Allowed Capital Cost of the Interest Holder for the Field, and proceeds included under this clause shall be reduced by

(i) reasonable costs of claiming and collecting the proceeds, and

(ii) the amount

(A) incurred within one year of the date the proceeds are received or become receivable, or

(B) where it is yet to be incurred, as agreed to in writing by the Minister

to replace or repair or otherwise remedy the incident for which the insurance proceeds were received or are receivable, provided in either case to the extent that amounts so incurred reduce the proceeds pursuant to this clause, the amounts so incurred shall not be included in Allowed Capital Costs or Allowed Operating Costs except for the purposes of computing Overhead Uplifts;

(c) any Miscellaneous Amounts for the Month; and

(d) where the Month is the Month of Cessation, the aggregate of

(i) the Asset Proceeds Balance, and

(ii) the Tariff Balance,

in each case determined at the end of the Month and reduced by the amount of any reductions under subsection 44(8) to costs incurred in the Month,

exceeds the aggregate of

(e) the Allowed Capital Costs and the Allowed Operating Costs incurred during the Month; and

(f) the amount if any by which the Tariff Balance is less than zero immediately before the end of the Month.

(2) The Net Loss of an Interest Holder for a Month shall be the amount, if any, by which the aggregate of the amount determined in clauses (1)(e) and (f) for the Month exceeds the aggregate of the amounts determined under clauses (1)(a) to (d) for the Month.

(3) Where the Interest Holder receives, after the Month of Cessation, any insurance proceeds that would have been included in Net Revenue pursuant to clause (1)(b) but for the fact that they are received after the Month of Cessation, the Interest Holder and the Minister shall negotiate in good faith to determine by agreement the share of the Minister of the insurance proceeds.

(4) If the Interest Holder and the Minister are unable to reach an agreement pursuant to subsection (3) within 180 days of receipt by the Interest Holder of the insurance proceeds, the matter, subject to an agreement in writing between the Minister and the Interest Holder, shall be referred to a Board or Committee pursuant to Section 73.

#### Petroleum Royalty Meter

19 (1) Subject to an agreement in writing between the Minister and the Interest Holder, Petroleum Royalty Meters for the Field shall be selected by the Interest Holder and approved by the Minister, and placed at a location or locations selected by the Interest Holder and approved by the Minister that, unless otherwise agreed in the case of LPG Produced, shall be at or near the Royalty Valuation Point, recognizing there may be different Petroleum Royalty Meters for Condensate, Crude Oil, Gas or particular types of LPG.

(2) The approvals by the Minister of the meter or meters and their locations pursuant to subsection (1) shall not be unreasonably withheld.

#### Reservoir Performance Risk Amount

20 (1) Subject to subsections (2) and (3), the Reservoir Performance Risk Amount of an Interest Holder in respect of a Field shall be any amount that the Interest Holder is required to pay to another Person other than a government or government agency, to the extent that the amount

(a) is computed based on the amount or value of production from the Field or any part thereof, whether the amount is determined by reference to a specific period of time or otherwise;

(b) can reasonably be regarded as being for the acquisition of Field Assets or services provided within or in respect of activities within the Field Area; and

(c) is, or would be, but for any limitation relating to the treatment of a Reservoir Performance Risk Amount as a Disallowed Cost, an Allowed Predevelopment Cost, Allowed Capital Cost or Allowed Operating Cost of the Interest Holder for the Field.

(2) Despite subsection (1), an amount under subsection (1) shall be a Reservoir Performance Risk Amount only in situations where a contractor assumes financial risk relating to the performance of the underlying Pools by becoming a quasi working interest holder of the Field in economic terms.

(3) For greater certainty, the fact that a cash incentive payable by an Interest Holder is based on achievement of startup, construction or operating cost targets, completion or commencement of production within a specified time limit or performance or capacity of constructed facilities, as opposed to the underlying Pools, being of or in excess of a certain capacity, shall not in and of itself cause the incentive to be regarded as a Reservoir Performance Risk Amount.

#### Tariff Balance

21 The Tariff Balance of an Interest Holder at any time during a Month shall be the positive or negative amount equal to the aggregate of

(a) the aggregate of all amounts, each of which is a Tariff Amount that is receivable or has been received by the Interest Holder on or before the earlier of that time and the end of the Month of Cessation, and if an Interest Holder makes a payment to or receives a payment from a Person to amend or terminate an agreement in writing under which there are amounts that would otherwise arise before the end of the Month of Cessation and be included under this clause, the portion of the payment that reasonably relates to such amounts shall be deemed to give rise to a negative amount or a positive amount, as applicable, under this [sub]clause immediately before the end of the Month in which the payment or receipt arises;

(b) any Post-Production Net Tariff Amounts; and

(c) any amount deducted in computing Net Revenue under clause 18(1)(f) respecting the definition of Net Revenue for any previous Month,

minus the aggregate of

(d) the aggregate amount (ignoring effects upon Overhead Uplift) by which the Allowed Operating Costs or Allowed Capital Costs (including Abandonment Costs) incurred in all previous Months have been reduced under clauses 44(8)(c), (d) and (e); and

(e) where the time is after the Month of Cessation, the amount included in the calculation of Net Revenue for the Month of Cessation under subclause 18(1)(d)(ii).

#### Non-Arm's-Length Persons

22 (1) In this Section, a reference to the Income Tax Act (Canada) means the Act as amended to September 1, 1998, as the Act applies to taxation years that include September 1, 1998.

(2) In these regulations, the provisions of the Income Tax Act (Canada) of general application together with paragraph 80(2)(j) of that Act shall apply, with the necessary changes in details as the circumstances require, in determining whether 2 Persons are Related Persons or whether 2 or more Persons are dealing at Arm's Length, except that in applying the definition of "related persons" in subsection 251(2) of the Income Tax Act (Canada), "controls" or "controlled" shall be understood as meaning controls, or controlled, directly or indirectly in any manner whatever and 2 Persons are "Related" for the purposes of these regulations if they are Related Persons.

(3) Where a transaction involves the sale, lease, licence or other disposition or acquisition of an asset or the provision of a service

(a) from or by the operator of a Field or any Field Assets of a Field to the operator of an Other Field or any Field Assets of an Other Field; or

(b) from or by the operator of an Other Field or any Field Assets of an Other Field to the operator of a Field or any Field Assets,

in each case on behalf of the Interest Holders of the respective Field or Other Field as applicable, the sale, lease, licence, disposition, acquisition of the asset or provision of the service shall prima facie be deemed to arise under an Arm's-Length Transaction unless the working interests of the Person or Persons, including for this purpose working interests of any Persons who do not deal at Arm's Length with the Persons, who are Interest Holders in the Field or Field Assets differs from the working interests of the Person or Persons, including for this purpose working interests of any Persons who do not deal at Arm's Length with the Persons, who are Interest Holders of the Other Field by less than a 25% working interest in the Field, Field Assets or Other Field.

(4) In determining whether any 2 or more Persons are dealing at Arm's Length in respect of a Field Area as a matter of fact, regard shall be given to all of the relevant circumstances, including Transactions in respect of and directly relevant to the activities carried on or to be carried on in connection with the Field Area and where it may reasonably be considered that one of the primary purposes of a Transaction or of the terms under which a Transaction is entered into was to cause 2 or

more Persons to not deal at Arm's Length in order to reduce the amount of a Tariff Amount that would otherwise arise, those Persons shall be deemed to deal at Arm's Length for the purposes of determining the amount of the Tariff Amount.

(5) Subject to subsection (6) and to the rules for computing and characterizing of Tariff Amounts, where an Interest Holder of a Field and another Person with whom the Interest Holder does not deal at Arm's Length are participants in a Transaction, or a Series of Transactions that is or may be relevant to the determination of any amount payable under these regulations, and

(a) the terms or conditions made or imposed, in respect of the Transaction or Series of Transactions, between any of the participants in the Transaction or Series of Transactions differ from those that would have been made between Persons dealing at Arm's Length; or

(b) the Transaction or Series of Transactions would not have been entered into between Persons dealing at Arm's Length and can reasonably be considered not to have been arranged primarily for bona fide purposes other than to obtain a Royalty Benefit or to obtain a reduction, avoidance or deferral of income tax under applicable income tax legislation which, if achieved, would result in a misuse of the provisions of the relevant income tax legislation or an abuse having regard to the provisions of the relevant income tax legislation, read as a whole, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes,

any amounts that, but for this Section and Section 28, would be determined for the purposes of these regulations in respect of the Interest Holder, and the nature of such amounts, shall be adjusted or recharacterized to the quantum or nature of the amounts that would have been determined if

(c) where clause (a) applies, the terms and conditions made or imposed, in respect of the Transaction or Series of Transactions, between the participants in the Transaction or Series of Transactions had been those that would have been made between Persons dealing at Arm's Length; or

(d) where clause (b) applies, the Transaction or Series of Transactions entered into between the participants had been the Transaction or Series of Transactions that would have been entered into between Persons dealing at Arm's Length, under terms and conditions that would have been made between Persons dealing at Arm's Length.

(6) Despite anything otherwise provided in this Section, in determining the amount of the Royalty payable in respect of a Field by an Interest Holder, the Minister shall be entitled to use the actual amount of any amount other than a Tariff Amount that is a cost, price or other amount, other than an insurance cost, arising in a Transaction that is not an Arm's-Length Transaction, irrespective of whether the Minister uses the actual amount or Fair Market Value of the amount for the purpose of determining the amount of any Royalty payable by any other Person, where either

(a) the Interest Holder so requests and the Minister agrees; or

(b) the Interest Holder reported an amount other than the Fair Market Value in a deliberate attempt to evade or avoid Royalties payable by the Interest Holder or by any other Person in respect of the Field or an Other Field.

#### Determining Fair Market Value

23 In determining the Fair Market Value of any Petroleum Produced or share of Petroleum Produced, regard may be given to any of the following matters:

- (a) the grade of the Petroleum Produced;
- (b) the points of disposition and delivery of the Petroleum Produced;
- (c) the state and nature of the market for the Petroleum Produced being sold at the relevant time;
- (d) the terms of relevant contracts or sales agreements and the quantities specified therein;
- (e) the provisions of the contracts or sales agreements relating to the variation or renegotiation of prices;
- (f) prices paid to producers of similar petroleum products in Arm's-Length Transactions;
- (g) any provisions in joint venture operating agreements that relate to Transactions between Related Persons; or
- (h) such other matters as are relevant in the circumstances.

#### Method of payment of Royalty

24 (1) An Interest Holder for a Field shall make payments to the Board to the credit of the Receiver General of Canada on account of Royalty arising in a Period in the following manner:

(a) subject to Section 25, by the end of each Month that follows a Royalty Paying Month in the Period, an amount equal to the aggregate Royalty owing for each Royalty Paying Month in the Period as estimated under Section 26, divided by the number of Royalty Paying Months for the Period as estimated under Section 26; and

(b) within 3 Months after the end of the Period, the balance of the Royalty owing for each Month in the Period.

(2) Any payments required to be made by an Interest Holder in respect of Royalty for a particular Field shall not be reduced other than by way of claims for adjustments in amounts payable under these regulations or any agreement in writing between the Minister and the Interest Holder in respect of the Field.

(3) Subject to Section 46 of the Accord Act (Nova Scotia), where any Royalty, interest or other amount payable under these regulations in respect of a Field is due and payable to the Board, the amount owed is a debt due to Her Majesty in Right of the Province.

(4) Payment of an amount to the Board shall be deemed to be payment jointly to the Board and Her Majesty in Right of the Province.

(5) Her Majesty in Right of the Province shall have a first and prior charge on the share of the Interest Holder of all unsold Petroleum Produced from the Field but not on Petroleum Produced that has been sold and on the share of the Interest Holder of the proceeds from the sale of any Petroleum Produced from the Field.

(6) In addition to any legal remedy available to Her Majesty in Right of the Province in respect of the Royalty, interest or other amount payable under these regulations, but subject to any agreement in writing between the Minister and the Interest Holder in respect of the Field, the Minister may, upon 1 week's Notice to each of

(a) the Interest Holder who is in default, or is reasonably expected to be in default within 30 days, in payment of any Royalty, interest or other amount payable under these regulations referred to in this subsection as the "Affected Interest Holder";

(b) the operator of the Field or any Field Asset; and

(c) all Other Interest Holders of the Field,

take immediate possession of the unsold Petroleum Produced of the Affected Interest Holder at the relevant Petroleum Royalty Meters or at such other location downstream of the relevant Petroleum Royalty Meter as is specified by the Minister and is reasonable in the circumstances or of the proceeds of disposition of Petroleum Produced of the Affected Interest Holder, where the Minister determines that it is necessary to do so in order to ensure that the Royalty, interest or other amount will be paid.

(7) Except as provided in Section 25, Royalty or amounts payable under these regulations on account of Royalty shall be paid in Canadian dollars.

#### Payment in kind

25 (1) Despite Section 24, the Minister may require a payment under clause 24(1)(a) to be made in whole or in part in kind at the relevant Petroleum Royalty Meter, in accordance with subsection (4), out of the share of the Interest Holder of such type or types of Petroleum Produced as may be specified by the Minister in accordance with subsection (3).

(2) Where the Minister requires that a payment be paid in kind pursuant to subsection (1), the Minister shall provide, in respect of a 12-Month period commencing on the first day of November or such other date as the Minister and the Interest Holder may agree, 6 Months prior Notice to the Interest Holder of the type or types of Petroleum Produced in respect of which the payments under clause 24(1)(a) are to be made in kind during the 12-Month period and, subject to any agreement in writing between the Minister and the Interest Holder in respect of the Field, may specify such conditions as are reasonable in the circumstances.

(3) Where the Minister gives a Notice under subsection (2) and the Interest Holder is entitled to a share of more than 1 type of Petroleum Produced from the Field, the Notice shall

(a) specify the types of Petroleum in respect of which the payment under clause 24(1)(a) is to be made in kind pursuant to subsection (1) during a 12-Month period commencing on November 1 of a year or such other date as the Minister and the Interest Holder may agree;

(b) require that, subject to subsection (6), Petroleum of the types specified, be delivered in kind as calculated and determined pursuant to subsection (4); and

(c) require that the payments in kind pursuant to subsection (1) in respect of the 12-Month period to which the Notice relates shall be made during the Royalty Paying Month in either of the ways prescribed in subsection (4).

(4) Payments in kind made pursuant to this Section shall be made in either of the following ways:

(a) for each type of Petroleum Produced from the Field to which the Interest Holder is entitled to a share and that is a type of Petroleum in respect of which a payment in kind is required to be made, payment shall consist of Petroleum of that type with a value equal to

$T \times P/R$

where

(i) T is the total amount of the payment that is required to be made at that time,

(ii) P is the estimated amount included in Gross Revenue for Petroleum of that type for the corresponding Royalty Paying Month, and

(iii) R is the estimated Gross Revenue for the corresponding Royalty Paying Month,

and P, R and T shall be based upon the estimates for the Period under Section 26; or

(b) in such other manner as may be agreed upon by the Minister and the Interest Holder.

(5) The balance, if any, of the payment under subsection 24(1) shall be made in cash.

(6) The obligation of an Interest Holder to pay in kind under this Section shall be subject to the following conditions:

(a) the Interest Holder shall not be required to make any payment in kind to the extent that it is unable to do so due to Force Majeure; and

(b) where there is a cutback or curtailment in production from the Field other than a cutback or curtailment that is entered into voluntarily primarily for the purpose of reducing Royalty payable in respect of the Field, the amount payable in kind under subsection (4) shall be reduced, pending any revision of the relevant estimates under Section 26, on a pro-rata basis in accordance with the amount of the cutback or curtailment in production.

(7) For the purposes of subsections (4) and (5), the value of each type of Petroleum included in the payment in kind shall be determined by using the corresponding Petroleum Sale Price for that type of Petroleum upon which the estimates for the Period under Section 26 are based.

(8) For the purpose of valuing a payment in kind in order to determine Net Revenue or Gross Revenue, the applicable Petroleum Sale Price, for the Month in which the payment in kind is made, shall be used.

(9) Where Petroleum Produced is to be delivered to the Minister as a payment of Royalty in kind and the Petroleum Produced is handled, stored, transported or processed by the Interest Holder, or using the capacity rights of the Interest Holder, downstream of the relevant Petroleum Royalty Meter to the point of delivery to the Minister, the Minister shall pay a fair and reasonable fee for the handling, storage, transportation and processing, determined on commercial terms, and that fee shall be paid in cash.

#### Estimates

26 (1) An Interest Holder for a Field shall provide to the Minister, in respect of each Period, written good faith estimates of the amount of the aggregate Royalty payable to the Board to the credit of the Receiver General of Canada and the number of Royalty Paying Months for the Period.

(2) The estimates shall be provided to the Minister not later than 30 days before the first day of the relevant Period except that, in the case of the 1st Period and any other Period that commences before production from the Field first occurs, the estimates shall be provided by the later of

(a) 60 days after the day on which these regulations come into effect; or

(b) 90 days before any production from the Field is reasonably expected to first occur.

(3) Subject to subsection (4), if in the opinion of the Minister, it may reasonably be considered that the estimates made pursuant to this Section were not made in good faith or where it appears there is manifest error in the estimates, the Minister shall so advise the Interest Holder and the Interest Holder and the Minister shall use reasonable efforts to prepare revised good faith estimates.

(4) The Minister and the Interest Holder shall have 30 Business Days from the date on which the Minister advises the Interest Holder under subsection (3) to revise the estimates made pursuant to this Section.

(5) The Minister may, at any time, require revised good faith estimates for a Period for which estimates have been prepared or are to be prepared by the Interest Holder where the Minister believes that the estimates previously made may be materially inaccurate.

(6) Where the Interest Holder believes that estimates previously submitted may be materially inaccurate, whether due to a change or an error in the initial estimates or to subsequent events including without limitation, material changes in Petroleum prices, other costs or in production levels or schedules, the Interest Holder may submit revised estimates to the Minister.

(7) The Minister shall duly consider the revised estimates prepared pursuant to subsections (5) and (6) and the other subsections of this Section shall apply with the necessary changes in detail in the event that the Minister disagrees with the revised estimates.

(8) Where the Minister and the Interest Holder are not able to agree on revised estimates prepared pursuant to this Section, or the Interest Holder fails to provide a revised estimate within 30 days of being required to under subsection (4), the estimates of the Minister will prevail.

#### Calculating costs

27 (1) Except as provided for in these regulations or in any agreement in writing between the Interest Holder and the Minister, GAAP, including any accounting principles or conventions that are in accordance with GAAP and have been adopted by the Interest Holder or operator of the Field or any Field Asset, will be applied in determining when a cost, expense or other amount has been incurred or whether a cost, expense or other amount is capital or operating in nature.

(2) All costs, expenses and other amounts shall be deemed to arise at the time that they were incurred.

(3) The Net Loss of an Interest Holder, exclusive of any portion of an Abandonment Loss that is carried back under subsection (4), for any Month that is

(a) subsequent to the Secondary Date of Field Payout; and

(b) prior to the Month of Cessation,

shall be carried forward to the next Month by treating the Net Loss as an Allowed Capital Cost incurred in the next Month for the purpose of calculating the Net Revenue of the Interest Holder from the Field.

(4) Where the Month of Cessation is subsequent to the Month in which the Secondary Date of Field Payout occurs, and where at the end of a particular Month that is or is subsequent to the Month of Cessation the Abandonment Loss of the Interest Holder is greater than zero, the Abandonment Loss at the end of the particular Month shall be carried back in whole or in part to one or more previous Months, by treating the Abandonment Loss or a portion thereof as an Allowed Capital Cost incurred in the previous Month or Months for the purpose of calculating the Net Revenue of the Interest Holder from the Field for the previous Month or Months, provided that

(a) the Abandonment Loss at the end of the particular Month shall be carried back to earlier Months in reverse chronological order, starting with the Month of Cessation or, where the particular Month is the Month of Cessation, starting with the immediately preceding Month, and shall be applied to reduce or eliminate Net Revenue in each Month to the greatest extent possible, but not to a negative amount, before carrying the Abandonment Loss back to an earlier Month;

(b) no portion of the Abandonment Loss may be carried back to a Month that is prior to the Month in which the Secondary Date of Field Payout occurs;

(c) the aggregate amount carried back under this subsection to all previous Months in respect of the Abandonment Loss at the end of the particular Month shall not exceed the amount of such Abandonment Loss; and

(d) where at the end of each particular Month after the Month of Cessation up to and including the 36th Month after the Month of Cessation, the Asset Proceeds Balance of the Interest Holder is greater than zero, the Asset Proceeds Balance at that time shall be carried back to reduce the Abandonment Loss at the end of that particular Month, and any loss carrybacks previously allowed under this subsection shall be readjusted accordingly and a payment or refund of any resulting amount owing by the Interest Holder on account of Royalty shall be made by the end of the 3rd Month following the particular Month.

(5) The Primary Date of Field Payout, Secondary Date of Field Payout and Final Date of Field Payout for a Field shall not be affected by the operation of subsection (3) or (4), or subject to the operation of Section 54, by any subsequent events.

#### Anti-avoidance rule

28 (1) Where a Transaction is an Avoidance Transaction as defined in this Section, the Royalty Consequences to a Person shall be determined as is reasonable in the circumstances in order to deny a Royalty Benefit that, but for this Section, would result, directly or indirectly, from that Transaction or from a Series of Transactions that includes that Transaction.

(2) An Avoidance Transaction shall be any Transaction

(a) that, but for this Section, would result, directly or indirectly, in a Royalty Benefit, unless the Transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the Royalty Benefit; or

(b) that is part of a Series of Transactions, which Series of Transactions, but for this Section, would result, directly or indirectly, in a Royalty Benefit, unless the Transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the Royalty Benefit.

(3) For the purposes of subsection (2), where one of the primary purposes of entering into a Transaction or Series of Transactions was to obtain a benefit under applicable income tax legislation that, if achieved, would result in a misuse of the provisions of the relevant income tax legislation or abuse having regard to the provisions of the relevant income tax legislation, read as a whole, the Transaction shall be deemed to be an Avoidance Transaction.

(4) For greater certainty, a Transaction is not an Avoidance Transaction where it may reasonably be considered that the Transaction would not result directly or indirectly in a misuse of the provisions of these regulations or an abuse having regard to the provisions of these regulations, other than this Section, and any agreement in writing between the Interest Holder and the Minister relating to Royalty read as a whole.

(5) The fact that an Interest Holder has taken Royalty Consequences or the reduction, avoidance or deferral of income tax into account may not of itself justify a finding that a particular Transaction is

an Avoidance Transaction or a misuse of the provisions of these regulations or income tax legislation or an abuse having regard to the provisions of these regulations or income tax legislation.

(6) Without restricting the generality of subsection (1),

(a) any amount included in computing Allowed Capital Costs, Allowed Netback Costs, Allowed Operating Costs or Allowed Predevelopment Costs or otherwise applied to reduce Net Revenue or Gross Revenue may be allowed or disallowed in whole or in part;

(b) the amount of any relevant balance, including the Allowed Cumulative Field Costs, Tariff Balance or Asset Proceeds Balance of the Interest Holder may be revised;

(c) the nature of any payment or other amount may be recharacterized; or

(d) the Royalty Consequences that would otherwise result from the application of these regulations may be ignored,

in determining the Royalty Consequences to a Person as is reasonable in the circumstances in order to deny a Royalty Benefit that would, but for this Section, result, directly or indirectly, from an Avoidance Transaction.

(7) Despite any other provision of these regulations or any agreement between the Minister and an Interest Holder, the Royalty Consequences to any Person following the application of this Section shall only be determined through an Assessment delivered pursuant to these regulations involving the application of this Section to that Person.

(8) Where an Assessment involving the application of subsection (1) with respect to a Transaction has been sent to a Person, any other Person shall be entitled, within 180 days after the delivery of the Assessment, to request in writing that the Minister make an Assessment applying subsection (1).

(9) On receipt of a request by a Person made under subsection (8), the Minister shall, with all due dispatch, consider the request and an Assessment with respect to that Person may be made under this subsection only to the extent that it may reasonably be regarded as relating to the Transaction referred to in subsection (8).

## Royalty Returns and Assessments

29 (1) An Interest Holder for a Field shall file with the Minister a Royalty Return for the Field for each Period

(a) ending after the Field Commencement Date until the later of the [the] Month of Cessation and the last Month in which Abandonment Costs are incurred by the Interest Holder; and

(b) ending after the later of the Month of Cessation and the last Month in which Abandonment Costs are incurred by the Interest Holder in which proceeds of insurance that are required to be included in Net Revenue are received by the Interest Holder.

(2) The Royalty Return shall be filed on or before the later of 3 Months from the end of the Period to which the Royalty Return relates and the date on which these regulations come into force.

(3) A Royalty Return shall contain the following information in respect of each Month in the Period to which the return relates that is, or is prior to, the Month of Cessation:

(a) the respective total volumes of the share of the Interest Holder of Crude Oil Produced, Gas Produced, Condensate Produced and LPG Produced of each type;

(b) the respective total volumes of the share of the Interest Holder of Crude Oil Produced, Gas Produced, Condensate Produced and LPG Produced of each type sold;

(c) the respective total volumes of the share of the Interest Holder of Crude Oil Produced, Gas Produced, Condensate Produced and LPG Produced of each type disposed of otherwise than by way of sale;

(d) with respect to each of clauses (b) and (c), the respective amounts that arose in Transactions that were not Arm's-Length Transactions;

(e) the Crude Oil Sale Price, Average Gas Sale Price, Gas Sale Price and Condensate Sale Price and the LPG Sale Price for each type of LPG Produced;

(f) the amounts described in each of Section 15 respecting Gross Revenue and Section 16 respecting Cumulative Gross Revenue;

(g) the Allowed Predevelopment Costs, Abandonment Costs, Allowed Capital Costs and Allowed Operating Costs actually incurred in the Month and the amount of the costs that are deemed to have been incurred in the Month under Section 54;

(h) the Allowed Netback Costs incurred during the Month;

(i) the Abandonment Loss as at the end of the Month;

(j) the Net Loss as at the end of the Month;

(k) the Royalty payable in respect of the Month;

(l) the amount of the Asset Proceeds Balance and the Tariff Balance at the end of the Month, adjusted to take into account any reduction in Asset Proceeds Balance or Tariff Balance as a result of a reduction under subsection 44(8) to Allowed Operating Costs or Allowed Capital Costs incurred during the Month; and

(m) a Payout Statement for the Month, unless the Month is after the Final Date of Field Payout, providing the following information:

(i) the Cumulative Primary Return Allowance, Cumulative Secondary Return Allowance and Cumulative Final Return Allowance,

(ii) the amount, if any, by which the sum of Allowed Cumulative Field Costs and Cumulative Primary Return Allowance exceeds Cumulative Gross Revenue,

(iii) the amount, if any, by which the sum of Allowed Cumulative Field Costs and Cumulative Secondary Return Allowance exceeds Cumulative Gross Revenue,

(iv) the amount, if any, by which the sum of Allowed Cumulative Field Costs and Cumulative Final Return Allowance exceeds Cumulative Gross Revenue,

(v) whether any contracts are subsisting to which the Interest Holder is a party or by which the Interest Holder is bound that have or may give rise to a Reservoir Performance Risk Amount becoming payable by the Interest Holder and if so whether

(A) any such amount became so payable, and

(B) any such contracts have been entered into or amended in the Month,

(vi) whether any insurance policies have been placed, maintained or materially amended, in respect of Included Risks during the Month, by the Interest Holder or any Person that does not deal at Arm's Length with the Interest Holder,

(vii) whether any claims relating to an Included Risk have been made by the Interest Holder during the Period and any events have occurred that could give rise to such a claim during the Period under a policy of insurance,

(viii) whether any contracts for the sale of Petroleum have been entered into under which Petroleum Produced may be delivered 60 days or more after the date that the Petroleum Produced is paid for by the purchaser,

(ix) whether there is a material change or difference in the accounting practices or principles used by the Interest Holder from those used in the immediately preceding Period, and

(x) whether the accounting practices or principles used by the Interest Holder in each of the Months of the Period are the same as for the other Months of the Period.

(4) A Royalty Return shall contain the following information in respect of each Month in the Period to which the return relates that is after the Month of Cessation:

(a) the Abandonment Costs incurred in the Month;

(b) the Abandonment Loss as at the end of the Month and a calculation of any resulting carrybacks under subsection 27(4); and

(c) the Tariff Balance and Asset Proceeds Balance at the end of the Month after reducing any Abandonment Costs incurred in the Month under subsection 44(8).

(5) The information required to be provided in a Royalty Return shall be in the prescribed form or in such other form as may be agreed to by the Minister and the Interest Holder.

(6) A Royalty Return shall be accompanied by an Independent Auditors' Report or in the event that it is in the process of being prepared, the Independent Auditors' Report shall be submitted as soon as possible thereafter but in any event within 6 Months after the end of the Period.

(7) Where a payment, other than a payment in kind pursuant to Section 25, is made pursuant to these regulations or any agreement in writing between the Minister and the Interest Holder, the Interest Holder shall file a remittance statement with the Minister at the time of payment.

(8) The Royalty Return shall include a certificate by an officer, director or other Person employed by the Interest Holder who has the requisite authority to make the certificate, stating that the Person signing the certificate has examined the Royalty Return, including accompanying schedules and statements, and that the information given in the Royalty Return is, to the best of the knowledge of such Person, correct and complete.

(9) The Minister shall examine a Royalty Return and assess the Royalty payable for each Month in a Period and any related interest or penalties with all due dispatch following the receipt of a Royalty Return for the Period.

(10) An Assessment shall be delivered by the Minister to the Interest Holder and shall include information pertaining to Gross Revenues, Abandonment Costs, Allowed Capital Costs, Allowed Operating Costs, Allowed Netback Costs, status of payout points, Net Revenue, Net Loss, Royalty, Tariff Balance, Asset Proceeds Balance, Abandonment Loss and interest or penalties payable in respect of each Month of the Period.

(11) The Royalty Return filed by the Interest Holder for the Period in which the Month of Cessation falls shall disclose all pending or outstanding insurance claims to the knowledge of the Interest Holder that may give rise to the receipt of insurance proceeds pursuant to clause 18(1)(b) respecting Net Revenue, but for the fact that the insurance proceeds will be received after the Month of Cessation.

## Books and records

30 (1) An Interest Holder for a Field shall keep or cause to be kept all of the books, records, accounts, documents and other information of the operator pertaining to costs, expenses and other amounts attributable to the Field or any Field Asset at the head office of the Interest Holder or the operator of the Field or any Field Asset in Canada, or at such other place as may be provided for in an agreement in writing between the Minister and the Interest Holder, or as the Minister may permit.

(2) An Interest Holder for a Field shall keep or cause to be kept all of its books, records, accounts, documents and other information that are not maintained by the operator of the Field or any Field Asset pertaining to

(a) costs, expenses and other amounts attributable to the Field or the Field Assets or otherwise relevant to the calculation of Royalty;

(b) revenues relating to Petroleum Produced;

(c) other amounts received or receivable that are relevant to the calculation of Royalty; and

(d) Allowed Netback Costs,

at the head office of the Interest Holder in Canada or at such other place as may be provided for in an agreement in writing between the Minister and the Interest Holder, or as the Minister may permit.

(3) An Interest Holder shall not destroy any records referred to in subsections (1) or (2) without prior written approval by the Minister.

(4) Approval under subsection (3) shall not be unreasonably withheld, having regard to outstanding matters or issues relating to Royalty payable, in respect of requests to destroy records relating to Months that are at least 7 years prior to the time that the request is made.

(5) Where an Interest Holder or operator of a Field or any Field Asset maintains any of the materials referred to in subsection (1) outside the Province, the Interest Holder shall, at its election, either

(a) reimburse the Minister for all reasonable expenditures necessary for or incidental to verification of the amount of Royalty paid or payable and the information contained in the Royalty Return, including reasonable travel of Persons authorized by the Minister to examine the books, records, accounts, documents and other information at the location where they are maintained (but limited to the additional expenditure incurred by or on behalf of the Minister due to the information being located outside the Province); or

(b) provide access to the materials within the Province for that purpose.

(6) The Minister will use reasonable efforts to minimize the need for and costs of travel pursuant to subsection (5) and in selecting auditors shall take into consideration whether the auditors have audit personnel with the requisite expertise in the Province and the province where the books are maintained.

#### GAAP

31 (1) Except where otherwise expressly provided in these regulations, or as otherwise agreed to in writing by the Minister and the Interest Holder, GAAP shall be adhered to by an Interest Holder in the keeping and filing of all books, records, accounts, documents and other information under these regulations.

(2) The accounting principles referred to in subsection (1) shall be applied on a consistent basis from Month to Month and from Period to Period unless the following conditions are met:

(a) any changes are desirable or required under GAAP;

(b) any changes are implemented on a prospective rather than a retroactive basis; and

(c) any changes are made in a manner that does not create any leakage of Net Revenue, Gross Revenue or other amount that is relevant to the calculation of Royalty in the transition from the previous method of accounting to the revised method of accounting.

#### Confidentiality of records

32 (1) The Minister and any representatives of the Minister shall keep confidential all information and records obtained pursuant to these regulations or any agreement in writing between the Minister

and the Interest Holder, but these confidentiality requirements shall not apply to any information and records that

(a) are in the public domain at the time they are obtained;

(b) come into the public domain after they have been obtained other than by virtue of a breach of the provisions of this subsection;

(c) are available to the Province on a non-confidential basis from a source other than an Interest Holder if the source is entitled to disclose the information; or

(d) [that] are required by law to be disclosed, but only to the extent so required.

(2) Despite subsection (1), the Minister may disclose or provide information and records to any Person on a need-to-know basis for the purpose of enforcing or furthering any investigation under the Act or these regulations and any Person to whom a disclosure is made shall be considered to be a representative of the Minister for the purposes of this Section.

(3) All representatives of the Minister or their employers, other than governmental employees, shall, at the request of the Interest Holder, execute and deliver to the Interest Holder a confidentiality agreement prior to any information and records being made available to them by or on behalf of the Interest Holder.

(4) Subject to the terms of any agreement in writing between the Minister and the Interest Holder, the confidentiality agreement shall be in the prescribed form or in such form as is reasonably satisfactory in form and substance to the Interest Holder, provided that the approval of the Interest Holder to the form and substance of the confidentiality agreement shall not be unreasonably withheld.

#### Audits

33 (1) An Interest Holder for a Field shall, for the purpose of an audit or examination made in accordance with this Section,

(a) make the books, records, accounts, documents and other information of the Interest Holder available at all reasonable times to any Person authorized by the Minister for the purpose and shall provide the Person with copies of documents requested by the Person that are reasonable for the purposes of the audit;

(b) make available copies of any contracts that have been entered into or amended during the Period and that may give rise to a Reservoir Performance Risk Amount becoming payable by the Interest Holder, at all reasonable times to any Person authorized by the Minister for the purpose;

(c) make available copies of all insurance policies placed or maintained by the Interest Holder in respect of Included Risks, including any amendments to the insurance policies;

(d) make available copies of any joint operating agreement or agreements between operators, and between operator or operators and other Interest Holders, at all reasonable times to any Person authorized by the Minister for the purpose; and

(e) give all reasonable assistance to a Person authorized by the Minister to carry out the audit or examination, provide access to all relevant sites and answer orally or in writing all questions relating to the audit or examination in each case at such times, upon such Notice and under such supervision by or on behalf of the Interest Holder as is reasonable in the circumstances.

(2) The attendance by an authorized Person pursuant to clause (1)(e) shall be at the expense of the Minister, and the Interest Holder may require, as a condition of attendance, that the Person comply with any applicable safety or other requirements of the Interest Holder that are consistent with normal industry practices.

(3) The Minister shall be entitled to commence an audit of a Royalty of an Interest Holder arising in a Period and any related interest and penalties at any time following the date on which the Royalty Return for the Period was required to be filed, provided that the audit is commenced

(a) within 2 years, or 3 years where the Period ends on or before December 31 of the 6th year following the year in which the Production Startup Date occurs, after the later of the day on which the Royalty Return was required to be filed and the day on which the Independent Auditors' Report is filed, where

(i) the Minister has no reasonable basis to believe that the Interest Holder has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the Royalty Return for the Period or in supplying any information under these regulations or any agreement in writing between the Interest Holder and the Minister, and

(ii) the Interest Holder has not filed a waiver with the Minister; and

(b) at any time, where the Minister has a reasonable basis to believe that

(i) the Interest Holder has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the Royalty Return for the Period or in supplying any information under these regulations or any agreement in writing between the Interest Holder and the Minister, or

(ii) the Interest Holder has filed a waiver with the Minister which has not been revoked on at least 60 days prior Notice.

(4) Except as provided in subsection (7), the Minister shall give at least 30 days' Notice to an Interest Holder for a Field of the intention of the Minister to conduct an audit or examination.

(5) The audit or examination shall be conducted in a prompt and timely manner and once commenced shall be diligently pursued.

(6) At the conclusion of the audit or examination, the Minister and the Interest Holder shall endeavour to resolve any outstanding matters.

(7) The Minister shall not be required to give any Notice of an audit where the Minister has reasonable cause to believe that the Interest Holder for a Field has made any misrepresentation that is attributable to neglect, carelessness, or wilful default, or has committed any fraud in filing a Royalty Return for any Period or in supplying information required under these regulations.

(8) Where the Minister is conducting an audit or examination pursuant to this Section, the Interest Holder shall make available to the Minister such additional or other information or documentation requested by the Minister as is necessary to assess or verify the accuracy and completeness of the information contained in the Royalty Return including, without limiting the generality of the foregoing, the computation of the Royalty.

(9) The Minister shall, within 6 Months following the conclusion of an audit, provide a written report to the Interest Holder of any questions or exceptions arising from the audit.

(10) The Interest Holder shall reply to the questions and exceptions referred to in subsection (9) in writing within 3 Months, or such longer period as the Minister permits, from the date of receipt of the written report.

(11) The Minister and an Interest Holder shall make reasonable efforts to resolve the questions and exceptions referred to in subsection (9) within 3 Months following the date of receipt of the reply of the Interest Holder, and where the question or exception has been resolved, the adjustments permitted by the Minister and the Interest Holder shall be rectified promptly.

## Refunds

34 (1) The Minister shall refund, or apply against any other amounts owing by the Interest Holder under these regulations, any overpayment made on account of Royalty or other amount arising under these regulations or any agreement in writing between the Minister and the Interest Holder where

(a) there are reasonable grounds for concluding that an overpayment has been made, including an overpayment that arises as a result of the application of subsection 27(4);

(b) there are reasonable grounds for concluding that Royalties or other amounts were remitted in error; or

(c) it is evident from the Royalty Return, supported by the Independent Auditors' Report, that for any Period the Royalty payment pursuant to clause 24(1)(a) and subsection 25(1) exceeds the amount of the Royalty.

(2) The Minister shall effect a refund of any overpayment by making a payment in Canadian dollars regardless of whether the overpayment arose as a result of payments in cash or in kind.

## Interest

35 (1) Where an Interest Holder for a Field fails to make all or any portion of any payment required under these regulations by the day on which the payment is due, the Interest Holder shall pay to the Board to the credit of the Receiver General of Canada interest on the outstanding amount at the daily rate determined under subsection (6), calculated and payable in arrears from and including the date that the payment became due to the day before the day it is paid.

(2) Subject to subsection (3), where the Minister is required under subsection 34(1) to refund or apply an overpayment of Royalty or other amounts, Her Majesty in Right of the Province shall pay

interest on the amount of the overpayment at the daily rate determined under subsection (6), calculated and payable in arrears from and including the latest of the day that is

(a) 30 days after the day of receipt by the Minister of a Royalty Return for the Period;

(b) 15 days after the day of receipt by the Minister of the Independent Auditors' Report for the Period; and

(c) the date that the overpayment arose,

to the day before the day on which the refund is paid or applied.

(3) Where an overpayment of Royalty for a particular Month arises as a result of the application of subsection 27(4) to an Abandonment Loss of the Interest Holder that arises in a particular Month

(a) except to the extent provided in clause (b), clause (2)(a) shall be applied as if "day of receipt by the Minister of a Royalty Return for the Period" were replaced with "day of receipt by the Minister of a Royalty Return for the Period containing the Month in which the Abandonment Loss arose, containing a written request that subsection 27(4) be applied to the Abandonment Loss, or any later date on which such a request is made by the Interest Holder to the Minister"; and

(b) where

(i) all or part of the Abandonment Loss at the end of a particular Month that is after the Month of Cessation is carried back under subsection 27(4) to any previous Month that is contained in any earlier Period, and

(ii) the Interest Holder files the Royalty Return and Independent Auditors' Report for the Period that contains the particular Month within the respective times required under Section 29,

interest on the refund resulting from carrying back the Abandonment Loss to such previous Month shall be calculated from the end of the particular Month to but not including the date of payment of the refund by Her Majesty in right of the Province.

(4) Where the Minister and the Interest Holder disagree on revised estimates and the estimate of the Minister prevails in accordance with subsection 26(8) and the Interest Holder overpays the Royalty in an amount greater than 10% of the aggregate Royalty payable for the Period, the Minister shall pay interest to the Interest Holder, in addition to the interest payable under subsection (2), on the excess of the amount greater than 110% of the aggregate Royalty payable for the Period.

(5) In each case, the interest payable under subsection (4) shall be calculated from and including the date of the particular payment under subsection 24(1) or Section 25 to but not including the first day in respect of which the Minister is required to pay interest under subsection (2) or the day on which the Minister makes a refund or application of the overpayment under subsection 34(1) in respect of the overpayment, whichever is earlier.

(6) For the purpose of these regulations and Sections 4 and 14 of the Act, the prescribed daily interest rate for any day in any Month is the Short Term Rate divided by 365.

(7) Interest under this Section shall be compounded Monthly.

(8) Where the aggregate Royalty payable by an Interest Holder for all Months in the Period is more than 110% of the amount paid by the Interest Holder pursuant to the estimate or estimates for the Period, the Interest Holder shall pay to the Board to the credit of the Receiver General of Canada, interest pursuant to subsection (6) on the amount in excess of 110% of the aggregate Royalty payable actually paid.

## Penalty

36 (1) Where an Interest Holder fails to file a Royalty Return on or before the day required by these regulations in a form that is complete or substantially complete, the Interest Holder shall pay to the Board to the credit of the Receiver General of Canada, a penalty equal to the greater of either \$2000 or 1% of the amount of Royalty for the Period that is not paid by the time it became due and an additional 1% for each Month or part of a Month on the amount of the Royalty that remains unpaid at the beginning of the Month, and the penalty shall be due on the day that the Royalty Return was required to be filed.

(2) Where the amount claimed by an Interest Holder as an Allowed Operating Cost or an Allowed Capital Cost in respect of insurance costs for a Period under an insurance policy (other than a policy that was issued in an Arm's-Length Transaction and not reinsured in whole or in part as part of the same Series of Transactions with a Person who does not deal at Arm's Length with the Interest Holder), is more than 120% of the Fair Market Value of the insurance costs, the Interest Holder shall pay to the Board to the credit of the Receiver General of Canada, a penalty equal to 10% of the difference between the amount claimed and the Fair Market Value.

(3) A penalty under subsection (2) shall be due on the day that is 30 days after an Assessment is issued by the Minister in respect of the penalty.

#### Application of payments

37 Payments made by an Interest Holder pursuant to these regulations shall be applied

- (a) first, on account of any penalties due and not paid;
- (b) second, on account of any interest due and not paid; and
- (c) third, on account of Royalty due and not paid.

#### Waiver of penalty or interest

38 The Minister may waive in whole or in part any penalty or interest payable by an Interest Holder under these regulations.

#### Notices

39 (1) For the purposes of these regulations, subject to any agreement in writing between the Minister and the Interest Holder, any Notice shall be in writing and shall be delivered by hand or by courier, sent by prepaid double registered mail or be transmitted by facsimile.

#### (2) Any Notice

(a) delivered by double registered mail shall be deemed to be given to and received by the Person to whom it is addressed, at noon, Atlantic Standard Time, on the earlier of the actual date of receipt and the 5th Business Day following the date on which it is mailed;

(b) delivered by hand or by courier shall be deemed to be given to and received by the Person to whom it is given at the time of delivery;

(c) transmitted by facsimile shall be deemed to be given to and received by the Person to whom it is addressed at 10:00 a.m. (local time of the recipient) on the next Business Day following the day on which it is transmitted and received; or

(d) sent by such other manner as may be provided for in an agreement in writing between the Minister and the Interest Holder shall be deemed to be given to and received by the Person to whom it is addressed on the date provided for under the agreement.

(3) All Notices shall be sent to,

(a) in the case of the Minister:

Minister Responsible for the Petroleum Directorate

Nova Scotia Petroleum Directorate

PO Box 2664, Suite 400

Bank of Montreal Building

5151 George St.

Halifax, Nova Scotia

B3J 3P7

Facsimile: 902-424-0528

(b) in the case of an Interest Holder, the address provided for under an agreement in writing between the Minister and the Interest Holder or, if no address is so provided for, the address shown in the most recent exploration licence or Production Licence issued to the Interest Holder for the Field.

(4) An Interest Holder may change its address for the receipt of Notices or change or provide a facsimile number for the receipt of Notices at any time by giving Notice of the change to the Minister in accordance with this Section, and the Minister may change the address of the Minister for the receipt of Notices or change or provide a facsimile number for the receipt of Notices at any time by giving Notice of the change to the Interest Holder in accordance with this Section.

Assignments of working interest in the Field

40 (1) This Section shall apply where one Person, referred to in this Section and Sections 41 and 42 as the “New Interest Holder”, has acquired, from another Person who was at that time an Interest Holder, referred to in this Section, Sections 41 and 42, and subsection 45(4) as the “Former Interest Holder”, all or a portion of the working interest in a Field of the Former Interest Holder or in an area that is subsequently determined to be a Field, the interest so acquired being referred to in this Section and Sections 41 and 42 as the “Acquired Interest”, subject to the provisions of an agreement in writing between the Former Interest Holder and Minister, and the effective date of acquisition shall be the effective date as agreed to between the New Interest Holder and the Former Interest Holder.

(2) The New Interest Holder shall, for the purpose of determining Royalties arising and due in respect of the Acquired Interest after the effective date of the acquisition, be deemed to have incurred all costs, expenses or other amounts incurred or deemed to have been incurred by or on behalf of the Former Interest Holder and to have received or to have receivable all amounts that were received or receivable or deemed to have been received or receivable by the Former Interest Holder, including any Assistance giving rise to a reduction in an Allowed Predevelopment Cost, Allowed Capital Cost, Allowed Netback Cost or Allowed Operating Cost that was received or receivable or deemed to have been received or receivable by the Former Interest Holder or by any Person claiming by, through or under the Former Interest Holder at the time the amounts were incurred, deemed to have been incurred, received, receivable or deemed to have been received or receivable by the Former Interest Holder or other Person as applicable, to the extent that the amounts arose on or before the effective date of the acquisition and are or were reasonably attributable to the Acquired Interest, to production from the Acquired Interest or to the ownership, design, purchase, construction, installation, operation or disposition of Field Assets pertaining to the Acquired Interest, and the amounts referred to in this subsection are “Acquired Interest Amounts”.

(3) Where the Former Interest Holder has retained a working interest in the Field, referred to in this Section as the “Retained Interest”, the Former Interest Holder shall be deemed not to have incurred, deemed to incur, received or have receivable, as applicable, any of the Acquired Interest Amounts for the purposes of computing the Royalty obligations of the Former Interest Holder in respect of the Retained Interest after the effective date of the acquisition of the Acquired Interest by the New Interest Holder.

(4) Subsections (2) and (3) shall continue to apply to successive transfers of a working interest or part of a working interest.

(5) For the purposes of computing the Royalty in respect of the Acquired Interest, including the application of Section 54 to the New Interest Holder and the Former Interest Holder,

(a) a Period shall be deemed to end for the Former Interest Holder and a new Period shall be deemed to begin at the beginning of the day that is the effective date of the acquisition; and

(b) the new Period for the New Interest Holder shall end on the last day of the fiscal period for financial reporting purposes of the New Interest Holder or such other date as is acceptable to the Minister.

(6) This Section shall not impose any obligation on the New Interest Holder in respect of Royalty or in respect of an obligation to make a payment pursuant to these regulations or any agreement in writing between the Minister and the Former Interest Holder in connection with Royalty that arose or accrued prior to the effective date of the acquisition of the Acquired Interest, subject to any obligation of the New Interest Holder to obtain a certificate in respect of the acquisition as contemplated by subsection 18(1) of the Act.

(7) Where the New Interest Holder has acquired a portion but not all of the Acquired Interest, in consideration for incurring costs in respect of the Acquired Interest and the Retained Interest, the costs shall be deemed to have been incurred by or on behalf of the New Interest Holder in respect of the Acquired Interest, and by or on behalf of the Former Interest Holder in respect of the Retained Interest, in such portions as reflect the relative percentage working interests represented by the Acquired Interest and the Retained Interest, immediately after the acquisition.

#### Assignment of working interest in Field Assets

41 (1) This Section applies where, concurrent with an acquisition of an Acquired Interest, a New Interest Holder does not acquire a working interest in a particular Field Asset, or acquires a working interest in the particular Field Asset, referred to in this Section as the “FA Portion”, that is a different percentage than the percentage interest in the Field acquired by the New Interest Holder, referred to in this Section as the “WI Portion”.

(2) Where the New Interest Holder does not acquire a working interest in the Field Asset, the Former Interest Holder shall be deemed to have disposed, immediately before the effective date of the acquisition referred to in subsection 40(1), of the WI Portion of the Field Asset for proceeds of disposition in an amount equal to the portion of the Fair Market Value at that time of the WI Portion of the Field Asset that is reasonably attributable to,

(a) where the Former Interest Holder may not reasonably be expected to dispose of the relevant portion of the Field Asset until at least 3 years after the Month of Cessation, future use on or before the end of the Month of Cessation; or

(b) in any other case, future use on or before the day that is 3 years after the end of the Month of Cessation.

(3) The Former Interest Holder shall be deemed to have immediately reacquired the WI Portion of the Field Asset at a cost equal to the same amount.

(4) The deemed cost to the Former Interest Holder of the reacquisition of the WI Portion of the Field Asset shall be deemed to be an Incremental Cost and the WI Portion of the Field Asset shall be deemed to be an Incremental Asset from the effective date of the deemed reacquisition.

(5) Where the FA Portion is less than the WI Portion, the New Interest Holder shall be deemed to have acquired the WI Portion of the Field Asset in an acquisition subject to Section 40.

(6) The Former Interest Holder shall be deemed to have disposed, immediately before the effective date of the acquisition referred to in subsection 40(1), of a portion of the Field Asset equal to the difference between the WI Portion and the FA Portion, referred to in this Section as the "Differential Portion", for proceeds of disposition in an amount equal to the portion of the Fair Market Value at that time of the Differential Portion of the Field Asset that is reasonably attributable to,

(a) where the Former Interest Holder may not reasonably be expected to dispose of the relevant portion of the Field Asset until at least 3 years after the Month of Cessation, future use on or before the end of the Month of Cessation; or

(b) in any other case, future use on or before the day that is 3 years after the end of the Month of Cessation.

(7) The Former Interest Holder shall be deemed to have immediately reacquired the Differential Portion of the Field Asset at a cost equal to the same amount.

(8) The deemed cost to the Former Interest Holder on the reacquisition of the Differential Portion of the Field Asset shall be deemed to be an Incremental Cost and the Differential Portion of the Field Asset shall be deemed to be an Incremental Asset from the effective date of the deemed reacquisition.

(9) Where the FA Portion is greater than the WI Portion, the Former Interest Holder shall be deemed to have disposed of the WI Portion of the Field Asset in an acquisition subject to Section 40 and to have separately disposed of the Differential Portion of the Field Asset to the New Interest Holder, in each case immediately before the effective date of the acquisition referred to in subsection 40(1), for proceeds of disposition equal to the Fair Market Value of the Differential Portion.

(10) The cost to the New Interest Holder of the Differential Portion shall be deemed to be an Incremental Cost and the Differential Portion of the Field Asset shall be deemed to be an Incremental Asset of the New Interest Holder.

(11) Where the Former Interest Holder and the New Interest Holder deal at Arm's Length and they agree in writing on the Fair Market Value of the WI Portion or the Differential Portion of the Field Asset or any portion of the Fair Market Value, the amount so agreed upon shall be prima facie evidence as to the Fair Market Value or portion.

#### Assignment of Assets Proceeds Balance

42 Where a New Interest Holder acquires a working interest in an acquisition governed by Sections 40 or 41, the Asset Proceeds Balance of the Former Interest Holder and the New Interest Holder shall be computed as follows:

(a) no adjustment shall be made to the Asset Proceeds Balance of the Former Interest Holder in respect of any proceeds of disposition arising under the portion of the acquisition made pursuant to Section 40;

(b) where any of subsections 41(1) to (10) apply, the Asset Proceeds Balance of the Former Interest Holder shall be adjusted to reflect the disposition by the Former Interest Holder that is deemed to occur under the applicable subsection; and

(c) where the relevant portion of the Asset Proceeds Balance of the Former Interest Holder at the effective date of the acquisition referred to in subsection 40(1) is greater than zero, after reducing any costs incurred before the effective date of the acquisition, the adjustment shall be carried over for the purposes of computing the Asset Proceeds Balance of the New Interest Holder.

#### Adjustment of Royalty Consequences

43 Where Section 41 applies and the resulting Royalty Consequences would not be reasonable in the circumstances, the Royalty Consequences shall be adjusted to such Royalty Consequences as are reasonable in the circumstances.

#### Further rules for determining costs and revenues

44 (1) Where a cost is denominated in a currency other than Canadian dollars, the amount shall be converted into Canadian dollars using the Noon Day Rate for the applicable Month, before applying Section 54.

(2) Where an amount received or receivable is denominated in a currency other than Canadian dollars, the amount shall be converted into Canadian dollars at the Noon Day Rate for the applicable Month.

(3) All revenues, costs, expenses and other amounts shall be determined on a basis that excludes taxes paid, payable or collected under Part IX of the Excise Tax Act (Canada) by or on behalf of the Interest Holder or any refundable sales taxes except, in the case of taxes paid or payable by or on behalf of the Interest Holder, taxes that the Interest Holder is not entitled to recover.

(4) Where payment is made by a buyer of Petroleum Produced to the Interest Holder at a time that is 60 days or more prior to the delivery of the Petroleum, the payment will not be Condensate Sale Proceeds, Crude Oil Sale Proceeds, Gas Sale Proceeds, or LPG Sale Proceeds; instead, the sale of that Petroleum Produced will give rise to Condensate Sale Proceeds, Crude Oil Sale Proceeds, Gas Sale Proceeds or LPG Sale Proceeds, as applicable, in the Month in which the Petroleum Produced is delivered in an amount equal to the Fair Market Value of the Petroleum Produced at the relevant Royalty Valuation Point, determined at the time of delivery to the buyer.

(5) If more than 75% of the Petroleum Produced in a Month of a particular type is delivered into storage outside the Field Area, other than into temporary storage for a period that may reasonably be expected not to exceed 120 days, without a sale occurring, the Petroleum Produced in the Month of that type that is so delivered into storage will be deemed to have been sold at the time of delivery into storage under a Transaction that is not an Arm's-Length Transaction.

(6) Where an Interest Holder is or may be entitled to receive an amount that if received would be included under clause 18(1)(b) respecting Net Revenue and the Interest Holder does not receive the amount, as a consequence of a decision by the Interest Holder not to claim the amount or pursue a claim for the amount, then unless the decision is made primarily because of business considerations relating to

(a) the validity of the claim;

(b) the likelihood of success in pursuing and enforcing the claim;

(c) the expected costs of pursuing and enforcing the claim;

(d) the effect that making or pursuing the claim would have upon the costs of insuring risks in the Nova Scotia Area; or

(e) any other factors that are directly and primarily relevant to the operations of the Interest Holder in the Nova Scotia Area,

insurance proceeds shall be deemed to be receivable by the Interest Holder, at such time as is reasonable to expect the receipt would have occurred if the claim had been duly made and pursued, in an amount equal to the net proceeds that would have been reasonably expected to be received if the claim had been made and pursued.

(7) Any expenses incurred by the Interest Holder to remedy the loss that was the subject of the insurance shall be reduced by the amount of the deemed proceeds under subsection (6) to the extent contemplated by clause 18(1)(b) respecting Net Revenue.

(8) Subject to Section 54, where an Interest Holder incurs or is deemed to incur Allowed Capital Costs or Allowed Operating Costs in a particular Month and either the Asset Proceeds Balance or the Tariff Balance of the Interest Holder immediately before the end of the Month is greater than zero, the amount of the balances shall be applied to reduce the costs in the following order and manner:

(a) the aggregate Allowed Capital Costs incurred in that Month by the Interest Holder shall be reduced, but not to a negative amount, by applying the Asset Proceeds Balance of the Interest Holder, determined immediately before the end of the Month;

(b) where the Allowed Capital Costs arising in a Month include Abandonment Costs and other Allowed Capital Costs, the reduction shall be applied first to reduce the Abandonment Costs incurred to the extent that the Asset Proceeds Balance reasonably relates to those costs and then to reduce the other Allowed Capital Costs;

(c) the aggregate Allowed Operating Costs incurred in that Month by the Interest Holder shall be reduced, but not to a negative amount, by applying the Tariff Balance of the Interest Holder, determined immediately before the end of the Month;

(d) the aggregate Allowed Capital Costs incurred in that Month after applying the reduction contemplated by clauses (a) and (b), if any, shall be further reduced, but not to a negative amount, by applying the Tariff Balance of the Interest Holder, determined immediately before the end of the Month, adjusted to take into account the consequential reduction under clause (c) in the Tariff Balance as a result of the reduction in Allowed Operating Costs incurred during the Month, if any;

(e) where the Allowed Capital Costs arising in a Month include Abandonment Costs and other Allowed Capital Costs, the reduction shall be applied first to reduce the Abandonment Costs

incurred to the extent that the Tariff Balance reasonably relates to those costs and then to reduce the other Allowed Capital Costs; and

(f) the aggregate Allowed Operating Costs incurred in that Month after applying the reduction contemplated by clause (c), if any, shall be further reduced, but not to a negative amount, by applying the Asset Proceeds Balance of the Interest Holder, determined immediately before the end of the Month, adjusted to take into account the consequential reduction in the Asset Proceeds Balance as a result of the reduction under clauses (a) and (b) to Allowed Capital Costs incurred during the Month, if any.

(9) For the purposes of determining Overhead Uplifts,

(a) the reductions of cost contemplated by subsection (8) in respect of an Asset Proceeds Balance shall be ignored; and

(b) the reductions of cost contemplated by subsection (8) in respect of a Tariff Balance shall be ignored.

#### Unrecovered Assistance

45 (1) Subject to any agreement in writing between the Minister and the Interest Holder and except as otherwise permitted by the Minister, this Section applies where

(a) any Assistance previously gave rise to a reduction of an Allowed Predevelopment Cost, Allowed Capital Cost or Allowed Operating Cost of the Interest Holder by the Applicable Reduction Percentage of the Assistance;

(b) the Assistance has not been received or deemed to have been received by the Interest Holder or other Person claiming by, through or under the Interest Holder as applicable; and

(c) as at a particular time, it is determined that neither the Interest Holder nor any Person claiming by, through or under the Interest Holder will receive, or be reasonably expected to receive the amount or a portion of the Assistance referred to in this Section and Section 49 as the “Unrecovered Assistance”.

(2) The Applicable Reduction Percentage of an amount equal to

(a) the Unrecovered Assistance,

minus

(b) 101% of any portion thereof that may reasonably be considered to have directly or indirectly given rise to a reduction in the Asset Proceeds Balance of the Interest Holder for the Month or any previous Month,

shall be adjusted to reflect the intervening period of time between the end of the Month in which the reduction referred to in clause (1)(a) was recorded and the earlier of

(c) the end of the Month in which the determination under clause (1)(c) is made; or

(d) the end of the Month of Cessation,

using the LTBR applicable at the end of the Month in which the reduction referred to in clause (1)(a) was recorded.

(3) The Applicable Reduction Percentage of the Unrecovered Assistance, adjusted as contemplated by subsection (2) shall be deemed to be,

(a) where the Applicable Reduction Percentage of the Unrecovered Assistance was previously applied to reduce Allowed Predevelopment Costs or Allowed Capital Costs, an Allowed Capital Cost of the Interest Holder that was incurred on the earlier of

(i) the date that the Interest Holder provides a Notice to the Minister that the condition in clause (1)(c) is met, or

(ii) the last day of the Month of Cessation, for the same purpose as the amount that was previously reduced; and

(b) where an amount was previously applied to reduce Allowed Operating Costs, an Allowed Operating Cost of the Interest Holder that was incurred on the earlier of

(i) the date that the Interest Holder provides a Notice to the Minister that the condition in clause (1)(c) is met, or

(ii) the last day of the Month of Cessation for the same purpose as the amount that was previously reduced.

(4) For the purposes of this Section, where the Interest Holder acquired the relevant working interest in the Field in a transaction governed by Sections 40 to 43 from a Person who is a Former Interest Holder as defined in subsection 40(1) in respect of such working interest, a reference to the Interest Holder includes the Former Interest Holder, and any other Person that is or was a Former Interest Holder in respect of that working interest.

#### Cost allocated among Field(s)

46 Where a cost, expense or other amount is incurred by or on behalf of an Interest Holder in respect of property that is acquired or services that are provided in respect of a Field and one or more Other Fields, the cost, expense or other amount shall be allocated among the Field and the Other Fields in which the Interest Holder has an interest, on a just and equitable basis, provided that the Interest Holder shall not be required to make any such allocation in respect of a Field or Other Field, referred to in this Section as a “Future Development”, that is not in Commercial Production on, or that may not reasonably be expected to come into Commercial Production within 2 years of, the date the cost, expense or other amount was incurred unless the Field and each of the Other Fields are Future Developments.

#### Cost respecting assets not used in the Field

47 Where a cost, expense or other amount would otherwise be an Allowed Capital Cost or an Allowed Operating Cost of an Interest Holder in respect of a Field and the cost, expense or other amount relates to an asset that is not used in the Field within 18 Months of the later of the date it was incurred and the Production Startup Date or to services that are not provided within 18 Months of the date the obligation to pay the amount was incurred, the cost, expense or other amount shall be deemed not to have been incurred until the asset is actually used for the purposes of the Field or the services are provided, as applicable, provided that where it was reasonable and prudent to incur the cost, expense or other amount at the time that it was actually incurred, the asset shall be deemed to be in use in the Field, or services shall be deemed to have been provided within the 18 Months.

#### Assets deemed to be in use

48 (1) For the purposes of these regulations, assets that are available for use in the Field Area in accordance with normal and prudent industry practices at a particular time shall be deemed to be in use at that time for the purposes of the Field.

(2) Where

(a) at any particular time, a Field Asset, other than a well, of an Interest Holder in respect of a particular Field ceases, other than for a temporary period, to be used for the purposes of a Field Area; and

(b) the Field Asset is not used within 12 Months after the particular time for the purposes of one or more Field Areas, whether or not the Interest Holder is an Interest Holder in such Field Area or Field Areas,

the Interest Holder shall be deemed to have disposed of the Field Asset on the day that is 12 Months after the particular time for proceeds of disposition equal to its Fair Market Value at the time of the deemed disposition, for the purpose of computing the amount received or receivable by the Interest Holder for the purposes of clause 6(1)(a) and subsection 6(2) respecting Asset Proceeds Balance.

Amount received or receivable

49 (1) An amount received or receivable by an Interest Holder, deemed to be so received or receivable or that the Interest Holder is entitled or may reasonably be expected to receive shall not be brought into account for the purposes of these regulations to the extent that, in a prior Month, it has been treated as received, receivable, deemed to be so received or receivable or, where relevant, as an amount that the Interest Holder may reasonably be expected to receive.

(2) Where an amount, other than an amount of Unrecovered Assistance as defined in Section 45, is brought into account in a particular Month on the basis that it is receivable and it is established in a later Month that the amount has not been and may not reasonably be expected to be received, a corresponding adjustment shall be made in the later Month in such manner as is reasonable in the circumstances to reflect the fact that the amount may not reasonably be expected to be received.

(3) In making an adjustment under this Section, the original amount shall be grossed up for the intervening period of time, using the LTBR applicable in the Month that the amount was initially brought into account.

(4) Where an adjustment is made under this Section and the amount is nonetheless received in a subsequent Month, a further adjustment shall be made in the subsequent Month to reflect the receipt, using the same principles with the necessary changes in details.

#### Deemed Allowed Operating Cost and Allowed Capital Cost

50 Where at any time after the Production Startup Date

(a) an asset of an Interest Holder is used for activities conducted within, or in furtherance of activities within, the Field Area; and

(b) the cost of that asset is not an Allowed Capital Cost of the Interest Holder for any Field because all or substantially all of the use of the asset is not to occur within, or in direct furtherance of activities within, the Field Area or an Other Field Area,

the Interest Holder shall be deemed to have incurred an Allowed Operating Cost or Allowed Capital Cost, as applicable, in respect of the use of that asset, equal to the amount that would be the Fair Market Value of the use of the asset that relates to the activities conducted within, or in direct furtherance of activities within, the Field Area if the Interest Holder had leased the asset from another Person.

#### Deemed acquisition

51 Where at any time an asset of an Interest Holder that was not a Field Asset for any Field immediately before that time commences to be used, other than in circumstances governed by Section 50, in a way that would have made the cost of the asset or a portion of that cost an Allowed Capital Cost if the asset had been acquired for that purpose, the asset shall be deemed to have been acquired at that time by the Interest Holder for the purpose of being so used at a cost equal to its Fair Market Value at that time.

#### Double counting

52 It is intended that accounting for costs and revenues for Royalty purposes shall be performed in a manner that does not involve double counting of such items and without limiting the generality of the foregoing, these regulations shall not be read or construed

(a) to require or allow the inclusion or deduction of any amount in computing Gross Revenue of an Interest Holder for a Field for any Month to the extent that it has been otherwise so included or deducted in computing Gross Revenue from the Field for the Month or a previous Month;

(b) to require or allow the inclusion or deduction of any amount in computing Net Revenue of an Interest Holder for a Field for any Month to the extent that it has been otherwise so included or deducted in respect of the Field for the Month or for a previous Month or has been applied to reduce or increase the amount of any cost, expense or other amount of the Interest Holder that is relevant in computing Net Revenue from the Field, provided that a cost or expense may be apportioned between 2 Fields to the extent permitted by Section 46;

(c) subject to subsections 27(3) and 27(4), to require or allow the inclusion of any amount as an Allowed Predevelopment Cost, Allowed Capital Cost, Allowed Netback Cost or Allowed Operating Cost of an Interest Holder for a Field for any Month in a Period to the extent that it has otherwise been included as an Allowed Predevelopment Cost, Allowed Capital Cost or Allowed Operating Cost of the Interest Holder in respect of the Field for the Month or for a previous Month, or has been otherwise applied to reduce the Net Revenue of the Interest Holder from the Field, provided that an amount may be apportioned between 2 or more Fields to the extent permitted by Section 46;

(d) to require or allow the inclusion of any amount in computing Allowed Cumulative Field Costs of an Interest Holder for a Field to the extent that the amount has otherwise been so included in computing Allowed Cumulative Field Costs of the Interest Holder for the Field;

(e) to require or allow other than in cases of apportionment the same cost to be applied against more than one Field, and where the Interest Holders of one Field lease, licence, purchase or otherwise acquire an asset from one or more Interest Holders of an Other Field, the cost to the Interest Holders leasing, licencing, purchasing or otherwise acquiring the asset shall not be restricted or otherwise affected by virtue of this clause on the basis that the Interest Holders from whom the asset was leased, licenced, purchased or otherwise acquired have been allowed to claim the cost to them of the asset for Royalty purposes; and

(f) to require or allow the inclusion or deduction of any amount actually paid with respect to a particular transaction where an amount has otherwise been deemed to have been paid with respect to that particular transaction.

#### Leasing an asset

53 (1) Subject to an agreement in writing between the Minister and the Interest Holder, where an amount would otherwise be an Allowed Capital Cost, Allowed Netback Cost, Allowed Operating Cost or an Allowed Predevelopment Cost of an Interest Holder and the amount is a cost of leasing, licensing, hiring or chartering an asset, the cost shall be reduced by any direct or indirect recovery of the cost by the Interest Holder through a sublease, sublicense, subcharter, subhiring or cost sharing arrangement.

(2) This Section shall not apply to an Interest Holder solely by virtue of the fact that the Interest Holder incurs a cost of leasing, licensing or chartering or hiring an asset from a Related Person.

#### Smoothing of costs

54 (1) This Section applies where a particular Period ends after the Secondary Date of Field Payout, in allocating the Allowed Capital Costs and Allowed Operating Costs incurred during the Period other than Allowed Capital Costs that arise under subsections 27(3) or 27(4) between the various Months in the Period for the purpose of determining the amount of the costs that are deemed to have been incurred during each Month.

(2) Any cost, expense or other amount that was actually incurred in a Month that

(a) is the Month or is prior to the Month in which the Secondary Date of Field Payout occurs; or

(b) is the Month subsequent to the Month of Cessation,

shall be deemed to have been incurred at the time it would otherwise be considered to have incurred.

(3) The amount of Allowed Capital Costs that were incurred in any Month in a Period other than a month identified in subsection (2), other than Allowed Capital Costs that arise under subsections 27(3) or 27(4), shall be determined by

(a) calculating, without reference to the other provisions of this clause or to subsections 44(8) and 44(9), the aggregate of all Allowed Capital Costs that were actually incurred during the Period but were not incurred during any Months described in subsection (2), other than Allowed Capital Costs that arise under subsections 27(3) or 27(4); and

(b) dividing the aggregate in clause (a) by the number of Months in the Period, excluding any Months described in subsection (2).

(4) The amount of Allowed Operating Costs that were incurred in any Month that begins after the Secondary Date of Field Payout shall be determined by

(a) calculating, without reference to the other provisions of this clause or to subsections 44(8) or 44(9), the aggregate of all Allowed Operating Costs that were actually incurred during the Period but were not incurred during any Months described in subsection (2); and

(b) dividing the aggregate in clause (a) by the number of Months in the Period excluding any Months described in subsection (2).

#### Consuming Petroleum Produced

55 Subject to the terms of an agreement in writing between the Minister and the Interest Holder, and despite any other provision of these regulations, where an Interest Holder consumes Petroleum Produced within the Field or the Field Area for the purposes of furthering the activities therein, and the Petroleum has, prior to being so consumed, first been removed from the Field Area and then transported to another part of the Field Area, the Minister may, following discussion with the Interest Holder,

(a) treat any portion of the Petroleum as not being included in Petroleum Produced or any Component of Petroleum Produced;

(b) allow a portion of the costs of transporting the Petroleum back to the Field Area as an Allowed Operating Cost, with or without Overhead Uplift; and

(c) disallow the value of the Petroleum as an Allowed Operating Cost,

where the Royalty Consequences of so doing would be reasonable in the circumstances.

#### General

56 (1) The allowance or acquiescence by the Minister of any default in payment by an Interest Holder under any Section of these regulations shall not be deemed to be a waiver of that Section or of any other subsequent default pursuant to that Section by the Interest Holder.

(2) Subject to the terms of an agreement in writing between the Interest Holder and the Minister, and unless the Minister gives an Interest Holder for a Field Notice to the contrary, all payments required to be made under these regulations by an Interest Holder shall be made to the Board by certified cheque made payable to the Receiver General of Canada, Consolidated Revenue Fund, or as otherwise directed in writing by the Minister.

(3) The Minister may authorize an officer, clerk or employee or class of officers, clerks or employees to exercise powers and duties of the Minister under these regulations.

(4) For the purposes of Section 22 of the Act, an agreement shall be deemed not to be entered into until the date on which the agreement is stated to come into effect.

## Part II - Further Provisions

### Application of Part II

57 This part applies to all Interest Holders, unless otherwise agreed between the Minister and the Interest Holder.

### Interpretation

58 In these regulations,

- (a) “Allowed Capital Costs” has the meaning set forth in Section 59;
- (b) “Allowed Netback Costs” has the meaning set forth in Section 60;
- (c) “Allowed Operating Costs” has the meaning set forth in Section 61;
- (d) “Allowed Predevelopment Costs” has the meaning set forth in Section 62;
- (e) “Applicable Reduction Percentage” of a cost, expense or other amount means 100%;
- (f) “Commercial Production” has the meaning set forth in Section 63;
- (g) “Disallowed Costs” has the meaning set forth in Section 64;

(h) “Field” has the meaning set forth in Section 65;

(i) “Field Area” has the meaning set forth in Section 66;

(j) “Field Asset” has the meaning set forth in Section 67;

(k) “Field Commencement Date” for a Field is the first day of the Month that is the earlier of the Month in which a development plan for the Field is approved by the Board and the Month that includes the day that is 270 days after the first day by which a complete or substantially complete development plan for the Field has been submitted to the Board for approval, or such earlier date as may be agreed to by the Minister;

(l) “Gross Negligence” means gross negligence, wilful misconduct or wilful failure to act, where the negligence, misconduct or failure is a marked departure from normal and prudent applicable industry standards or practices, on the part of the most senior management personnel of the Interest Holder, the operator of the Field, the Field Assets, or a fully operational component of the Field Assets, such as the platform facilities or a gas plant, or any management personnel who are in charge of the day-to-day operation of the Field Area, or fully operational component of the Field Assets;

(m) “Miscellaneous Amounts” of an Interest Holder for a Month means the aggregate of all amounts, each of which is an amount that becomes receivable, or is deemed to become receivable by these regulations, by the Interest Holder on or before the Month of Cessation, for the sale, lease, licence or other disposition of any substance or commodity (other than Petroleum or a Field Asset) where the substance or commodity is derived by the Interest Holder within the Field Area from Petroleum produced in the Field before being measured at the relevant Royalty Petroleum Meter;

(n) “Other Field” means, in relation to a Field, any other Field;

(o) “Other Field Area” means the Field Area in respect of an Other Field;

(p) “Other Interest Holder” means, in relation to a particular Interest Holder of a Field, any other Interest Holder of the same Field;

(q) “Overhead Uplift” means, in respect of an Allowed Capital Cost or an Allowed Operating Cost, the additional amount, if any, allowed under clause 59(1)(o) respecting Allowed Capital Costs or clause 61(1)(p) respecting Allowed Operating Costs, as applicable;

(r) “Post-Production Net Tariff Amounts” means all amounts that are not included under clause 21(a) respecting Tariff Balance but which would be included under that clause had they been received or receivable before the end of the Month of Cessation, net of any applicable amounts that arise after the Month of Cessation that would have been Allowed Capital Costs or Allowed Operating Costs if they had arisen before the end of the Month of Cessation;

(s) “Processing” means, subject to any agreement in writing between the Minister and the Interest Holder, the removal of water and other impurities and the initial separation of the constituents of Petroleum, compression of Petroleum and other processing of Petroleum by any means, excluding refining or fractionation of Petroleum or any other activity that occurs after refining or fractionation of Petroleum;

(t) “Tariff Amount” has the meaning set forth in Section 68.

#### Allowed Capital Costs

59 (1) The Allowed Capital Costs of an Interest Holder for a Field as at a particular time shall be, subject to Sections 22, 23 and 44 to 55, the share of the Interest Holder of costs, expenses or other amounts, that are not Disallowed Costs, incurred by or on behalf of the Interest Holder on or after the Field Commencement Date, that are reasonably attributable to the Field or the Field Area or in furtherance of activities within the Field or Field Area and that are

(a) for drilling, deepening, recompleting that is considered to be a betterment under GAAP, initial testing, evaluating, completing, converting or equipping

(i) a successful exploration well drilled at a location that is within the Field as determined at that time or as subsequently determined,

Subclause 59(1)(a)(i) amended: O.I.C. 2007-89, N.S. Reg. 55/2007.

(ii) a delineation well drilled for the purpose of delineating or further delineating the Field, whether successful or not, or

(iii) a development well for the Field;

(b) for the collection, processing and interpretation of geological, geophysical and geochemical information relating to or for the purpose of identifying, establishing and delineating the Pools in the Field;

(c) for geological, geophysical or geochemical work in respect of logging, coring or testing conducted incidental to and in the course of the drilling of a well referred to in clause (a) or (d);

(d) for drilling, deepening, recompleting that is considered to be a betterment under GAAP, initial testing, evaluating, completing, converting or equipping a well within the Field Area as determined at the time of drilling for the purpose of

(i) the disposal of waste liquids or cuttings from a well,

(ii) the injection of water, or any other substance to assist in the production of Petroleum from another well, or

(iii) monitoring fluid levels, pressure changes or other phenomena in an accumulation of Petroleum;

(e) for designing, engineering, purchasing (other than under an acquisition of a working interest in the Field from an Other Interest Holder), replacing, assembling, commissioning, constructing, mating or installing wellheads, production, metering, Processing, storage, loading facilities constructed for the purpose of loading production from the Field (other than loading facilities on tankers used to transport Petroleum Produced), pipeline, gathering or transportation within the Field Area, Support Facilities or ancillary assets or facilities, where the costs, expenses or other amounts incurred in respect of the assets or facilities are capital in nature under GAAP and all or substantially all of the use of the assets or facilities is within the Field Area or is for the purpose of furthering the activities carried on within the Field Area or support services in respect thereof, including capital costs incurred in connection with governmental inspections of the assets or facilities, other than an Incremental Cost;

(f) for purchasing or licensing technology, including computer software, where the cost, expense or other amount is capital in nature

(i) under GAAP, and

(ii) under the relevant accounting policies of the Interest Holder in respect of the Field Area or relevant part of the Field Area provided that those policies are in accordance with GAAP,

and all or substantially all of the use of the technology occurs within the Field Area or is for the purpose of furthering activities carried on within the Field Area, other than an Incremental Cost;

(g) for acquiring under capital leases of production, metering, Processing, storage, loading facilities constructed for the purpose of production from the Field (other than loading facilities on tankers used to transport Petroleum Produced), pipeline, gathering or transportation facilities, Support Facilities or ancillary assets or facilities where all or substantially all of the use of the assets or facilities is within the Field Area or is for the purpose of furthering the activities carried on within the Field Area or support services in respect thereof, excluding the financing component of the capital leases determined in accordance with GAAP, other than an Incremental Cost;

(h) for repairing Field Assets where the cost, expense or other amount of the repair is considered to be a betterment under GAAP other than an Incremental Cost;

(i) for research and development (whether capital or operating in nature under GAAP) other than an Incremental Cost;

(j) for any amount incurred before the Production Startup Date, other than any cost, expense or other amount incurred before 1995 or any Allowed Predevelopment Cost, that would have been an Allowed Operating Cost if it had been incurred on or after the Production Startup Date;

(k) for an Abandonment Cost;

(l) for any other cost, expense or other amount that the Minister agrees to treat as an Allowed Capital Cost and that meets the following criteria:

(i) is capital in nature under GAAP,

(ii) is reasonably attributable to the Field, the Field Area or the Field Assets or any part thereof,

(iii) is incurred by or on behalf of the Interest Holder,

(iv) is incurred on or after the Field Commencement Date,

(v) is incurred for the purpose of finding, recovering, Processing, gathering, transporting or storing, within the Field Area, Petroleum Produced or to further activities carried on within the Field Area, such as services directly related to the development of the Field Area, safety or environmental protection or the obtaining of any necessary regulatory approvals and consultation in respect thereof,

(vi) is not an Allowed Operating Cost, an Allowed Netback Cost or an Incremental Cost, and

(vii) is chargeable to the applicable joint account for the Field, the Field Area, the Field Assets or any part thereof, or where there is no such joint account, of a nature that would normally be charged to such a joint account;

(m) required to be added to Allowed Capital Costs under subsection 27(3) or 27(4), to the extent and for the purposes described in those subsections; or

(n) any other amount that the Minister agrees to treat as an Allowed Capital Cost; and

(o) 1% of the costs, expenses and other amounts described in clauses (a) to (l), and if and to the extent agreed by the Minister clause (n), other than a cost, expense or other amount described in clause (j) that would not be included in the definition of Allowed Capital Costs if the definition were read without reference to clause (j) and in respect of which there would be no Overhead Uplift if that cost, expense or other amount had been incurred after the Production Startup Date.

(2) Despite subsection (1), Allowed Capital Costs shall not include costs, expenses or other amounts in respect of any pipelines or other equipment used to handle, store, process, refine and transport Petroleum downstream of the Royalty Valuation Point.

#### Allowed Netback Costs

60 The Allowed Netback Costs of an Interest Holder in respect of any Petroleum Produced of a particular type from a Field shall be costs, expenses or other amounts that have been incurred by or on

behalf of the Interest Holder relating to handling, storage, processing, but only to the extent expressly provided in subclause (c)(iii) or (vi), and transportation of Petroleum Produced, occurring downstream of the relevant Royalty Valuation Point to the point at which the Petroleum Produced is valued under the relevant sale contract, determined in accordance with the following principles:

- (a) there shall be excluded any cost, expense or other amount that is
  - (i) reasonably attributable to the marketing or insurance of Petroleum Produced,
  - (ii) interest, compound interest, costs of raising capital and any standby credit or other financial charges in respect of indebtedness, payable by or on behalf of the Interest Holder, including costs, expenses or other amounts relating to financial guarantees (unless such financial guarantees are required by a government or government agency in Canada, the Board or other Canadian federal or provincial regulatory authority),
  - (iii) resulting from any act that is attributable to gross negligence, wilful misconduct or wilful failure to act of any Person and is a breach of any laws or regulations or other applicable directives of any government or government agency, except to the extent, if any, that the amount would have had to be incurred in the absence of such gross negligence, wilful misconduct or wilful failure to act and breach,
  - (iv) any cost, expense or other amount, to the extent of any Assistance in respect of the cost, expense or other amount that the Interest Holder or any other Person that is Related to, or claiming by, through or under, the Interest Holder has received, is entitled to receive, or may reasonably be expected to receive,
  - (v) in respect of cleaning up of, or liabilities in respect of, environmental damages or repair of damages to any assets where, in either case, the damages were caused by a spill, leakage or escape of Petroleum outside the Field Area that is attributable to gross negligence, wilful misconduct or wilful failure to act on the part of any Person,
  - (vi) a Royalty, income tax, capital tax or interest on any such amount,
  - (vii) a fine or penalty imposed under any Canadian federal or provincial enactment or foreign enactment (other than a foreign enactment that applies by virtue of the fact that the Field or a Field Asset is located or activities are conducted in the Nova Scotia Area) as a result of any act or omission that is a breach of any laws, rules, regulations, permits, licences, orders or other directives of a government, governmental department or agency, the Board or any court, or

(viii) subject to clauses (d) and (e) respecting Allowed Netback Costs and any agreement in writing between the Minister and the Interest Holder, any cost, expense or other amount that is capital in nature under GAAP;

(b) where a cost, expense or other amount is paid or payable by the Interest Holder to any Person who deals at Arm's Length with the Interest Holder for any products or services, clause (a) shall not be interpreted so as to exclude any portion of the cost, expense or other amount paid or payable by the Interest Holder on the basis that it indirectly relates to a matter in subclauses (a)(ii) to (viii);

(c) subject to subclauses (a)(vi) and (vii),

(i) freight, port, docking, terminalling and lightering costs, charges, expenses and other amounts,

(ii) rail car or vessel leasing, maintenance, demurrage, inspection, surveying, switching or short term storage,

(iii) butane splitting, de-ethanizing or fractionation costs, charges or other amounts, to the extent that the Interest Holder is able to establish that value is added to the Petroleum Produced, or similar costs, charges or other amounts that are required pursuant to an agreement in writing between the Minister and the Interest Holder to be incurred,

(iv) product metering, quality and quantity analysis,

(v) government or government agency fees (including Oil Pollution Act (United States) fees) but not other fees that are fines or penalties,

(vi) other costs, charges and other amounts to the extent that the Interest Holder is able to establish that value is added to the Petroleum Produced or that are costs, charges or other amounts incurred directly for the purpose of transporting Petroleum Produced to the first point of sale, or

(vii) other costs, charges and other amounts as agreed to by the Minister,

shall be Allowed Netback Costs but only to the extent that they are reasonably attributable to the handling, storage, processing and transportation, but not marketing, of that Petroleum Produced that occurs downstream of the relevant Royalty Valuation Point to the point at which the Petroleum Produced is valued under the relevant sales contract;

(d) where the Petroleum Produced is transported using a tanker vessel,

(i) if the tanker is leased or chartered from a Person that deals at Arm's Length with the Interest Holder, the cost, expense or other amount incurred by the Interest Holder for leasing and operating or chartering such tanker shall be an Allowed Netback Cost, but only to the extent that such cost, expense or other amount is reasonably attributable to Petroleum Produced and is in respect of transporting Petroleum Produced downstream of the relevant Royalty Valuation Point to the point at which the Petroleum Produced is valued under the relevant sales contract or is being mobilized or demobilized for that purpose,

(ii) if

(A) the tanker is owned by the Interest Holder or is leased or chartered from a Person that does not deal at Arm's Length with the Interest Holder,

(B) the tanker is concurrently used for transporting other Petroleum owned by one or more Other Interest Holders or any assignees who have purchased the Petroleum from Other Interest Holders (provided that such assignees deal at Arm's Length with the Interest Holder), and

(C) the other Petroleum constitutes at least 14% of the Petroleum Produced so transported,

an amount determined in respect of the transportation of the Petroleum Produced using the tanker, occurring downstream of the relevant Royalty Valuation Point to the point at which the Petroleum Produced is valued under the relevant sales contract, as being equivalent to the average costs, expenses or other amounts incurred by the Other Interest Holders or any assignees of the Other Interest Holders and that are Allowed Netback Costs of the Other Interest Holders or would have been Allowed Netback Costs of the Other Interest Holders but for the prior sale of the Petroleum to the assignees for the same period, with appropriate adjustments to take into account differences in destination or quantities of Petroleum transported on behalf of the various parties shall be an Allowed Netback Cost, or

(iii) other than as described in subclause (i) or (ii), an amount agreed to in writing by the Interest Holder and the Minister, or failing an agreement an amount determined by the Minister to be a reasonable appropriate cost recovery or charge in the circumstances in respect of the transportation of the Petroleum Produced using the tanker, occurring downstream of the relevant Royalty Valuation Point to the point at which the Petroleum Produced is valued under the relevant sales contract, shall be an Allowed Netback Cost;

(e) in the event that the Interest Holder owns an interest in assets or acquires an interest by capital lease in assets used for handling, storage, processing and transportation of Petroleum Produced that occurs downstream of the relevant Royalty Valuation Point to the point at which the Petroleum Produced is valued under the relevant sales contract and incurs material depreciation or amortization costs in respect to those assets, the Minister and the Interest Holder will negotiate in good faith with a view to agreeing to the inclusion of reasonable depreciation or amortization costs for the assets, to the extent the asset is used for Petroleum Produced, in the Allowed Netback Costs of the Interest Holder; provided, however, that this clause shall not apply to a tanker for which any cost, expense or other amount has been allowed for the Interest Holder under clause (d); and

(f) any amount deemed to be an Allowed Netback Cost of the Interest Holder under subsection 68(9) shall be an Allowed Netback Cost.

#### Allowed Operating Costs

61 (1) The Allowed Operating Costs of an Interest Holder for a Field as at a particular time that is at or before the end of the Month of Cessation shall be, subject to Sections 22, 23 and Sections 44 to 55, the share of the Interest Holder of costs, expenses or other amounts incurred by or on behalf of the Interest Holder on or after the Production Startup Date, other than amounts expressly provided for in clauses 59(1)(i) and (k) respecting Allowed Capital Costs, and other than Disallowed Costs, and that are reasonably attributable to the Field Area or the Field Assets, or in furtherance of activities within the Field Area, and that are

(a) incurred within the Nova Scotia Area, other than insurance costs;

(b) insurance costs, expenses or other amounts, wherever incurred, paid in respect of Included Risks under a policy of insurance, including related Third Party Costs that are risk management charges or claim investigation and adjustment charges,

(i) where the policy was issued in an Arm's-Length Transaction and not reinsured in whole or in part as part of the same Series of Transactions with a Person who does not deal at Arm's Length with the Interest Holder,

(ii) where the policy was in respect of insurance required by statute, regulation, rule or binding order of a Canadian federal or provincial government or government agency, or

(iii) where

(A) the insurance was in accordance with normal industry practices (whether or not issued under an Arm's-Length Transaction),

(B) the insurance was desirable and prudent for the purposes of activities carried out in the Field Area or in furtherance of activities regarding the Field or any Field Assets, and

(C) none of the primary purposes for incurring the insurance was to reduce Royalty;

(c) Technical Costs incurred outside the Nova Scotia Area that are Third Party Costs, other than costs, expenses or other amounts in respect of travel provided for in clause (j);

(d) Technical Costs incurred outside the Nova Scotia Area that meet both of the following criteria:

(i) they are incurred during the 24 Months following the Production Startup Date (other than Third Party Costs), and

(ii) they are Technical Costs pursuant to subclause 2(1)(ck)(i) or 2(1)(ck)(iii),

to the extent that

(iii) they are direct salary costs (or, if agreed to by the Minister, approved day rates) of personnel, and

(iv) the costs are approved by the Minister, at the discretion of the Minister, taking into account all relevant circumstances including whether, and the extent to which, similar costs have

been approved on behalf of the Interest Holder or any other Person Related to the Interest Holder in connection with any Other Field;

(e) Technical Costs incurred outside the Nova Scotia Area that are incurred more than 24 Months after the Production Startup Date, other than Third Party Costs, and that are incurred as a result of

(i) costs, expenses or other amounts that are non-recurring or otherwise occur on an infrequent or sporadic basis, such as costs, expenses or other amounts resulting from a facility turnaround, and

(ii) the requisite expertise not being readily available in the Nova Scotia Area at comparable rates, and because of the nature of the work, its frequency and its duration, it would not be cost-effective to transfer to the Nova Scotia Area personnel having that expertise;

(f) Technical Costs, other than Third Party Costs, incurred outside the Nova Scotia Area, excluding Technical Costs meeting the criteria set out in both subclauses (d)(ii) and (iii), that are allowed by the Minister on a case-by-case basis and that are in relation to the operation of the Field or any Field Assets, provided that the Minister may reasonably allow such Technical Costs where they are

(i) charged to the applicable joint account maintained for the Field or any Field Asset or, if there is no joint account, are of a nature that would reasonably be expected to be so charged if a joint account existed,

(ii) in respect of a Person who is not dealing at Arm's Length with the Interest Holder or any of the Other Interest Holders in the Field, but the costs are not greater than the amount that would have been incurred had the costs been incurred with a Person dealing at Arm's Length with the Interest Holder and each of the Other Interest Holders,

(iii) not in the nature of overhead,

(iv) desirable or prudent, and

(v) costs, expenses or other amounts that would have been Allowed Operating Costs under this Section or Allowed Capital Costs under clause 59(1)(i) had they been paid to a Person dealing at Arm's Length with the Interest Holder and each of the Other Interest Holders;

(g) costs, expenses or other amounts in respect of Canada-Nova Scotia Benefits, that are not reasonably attributable to the Field, the Field Area or the Field Assets or in furtherance of activities within the Field Area;

(h) costs of expenses directly incurred in respect of letters of credit, guarantees or other security required by a government or government agency in Canada, the Board or other Canadian federal or provincial regulatory authority in relation to activities which are reasonably attributable to the Field, the Field Area or the Field Assets or in furtherance of activities within the Field Area, excluding, subject to clause (o), contributions to any fund in respect of future Abandonment Costs and, where any amount is drawn on or taken pursuant to letters of credit, guarantee or other security provided for in this clause, the amount drawn or taken to the extent that amount is applied to costs or expenses which would otherwise be Allowed Operating Costs pursuant to this clause or Allowed Capital Costs under clause 59(1)(j);

(i) costs, expenses or other amounts in respect of setting up and operating an office, weather station or other Support Facility within the Nova Scotia Area;

(j) costs, expenses or other amounts in respect of travel for an individual whose associated remuneration is an Allowed Capital Cost or an Allowed Operating Cost, including travel both inside and outside the Nova Scotia Area;

(k) costs, expenses or other amounts of auditing the information required to prepare, or contained in, a Royalty Return of the Interest Holder, to the extent that the costs, expenses or other amounts are incurred in order to obtain the Independent Auditors' Report, and costs, expenses or other amounts charged to a joint account for the Field or the Field Assets or part thereof of auditing the information required to prepare, or contained in, a Royalty Return of the Interest Holder other than costs, expenses or other amounts incurred in respect of a challenge to the accounting for the costs, expenses or other amounts charged to the joint account;

(l) costs, expenses or other amounts of the auditors of the Minister that are required to be paid by the Interest Holders;

(m) costs, expenses or other amounts incurred in a successful or unsuccessful attempt to claim or collect insurance proceeds where the related insurance costs have been included as Allowed Operating Costs, Allowed Capital Costs or Allowed Predevelopment Costs, except to the extent that such costs, expenses or other amounts are applied to reduce insurance proceeds under subclause 18(1)(b)(i) respecting Net Revenue;

(n) any amount deemed to be an Allowed Operating Cost of the Interest Holder pursuant to Section 55, or pursuant to Section 68 respecting Tariff Amounts; or

(o) any other amount that the Minister agrees to treat as an Allowed Operating Cost; and

(p) 10% of the costs, expenses and other amounts referred to in clauses

(i) (a), (c), (g), (i), (k), (m) and (h) but only to the extent that the amount drawn on or taken pursuant to the letters of credit, guarantees or other security pursuant to that clause is applied to an Allowed Operating Cost for which an Overhead Uplift is otherwise allowed pursuant to this subsection,

(ii) (j) but only to the extent the travel occurs wholly within the Nova Scotia Area,

(iii) (n) but only to the extent that Overhead Uplift is applicable in accordance with subsection 68(7), and

(iv) to the extent the Minister so allows, (f) and (o), other than costs, expenses or other amounts of terminating employees of the Interest Holder, an Other Interest Holder or the operator of the Field or any Field Asset.

(2) For the purposes of subsection (1), costs, expenses or other amounts in respect of services provided by individuals, whether Third Party Costs or not Third Party Costs, shall be deemed to be incurred within the Nova Scotia Area only if performed by an individual who

(a) owns or rents a place of personal residence in the Nova Scotia Area, other than an individual present in the Province on a short term basis, such as a week-to-week basis; or

(b) is employed or engaged to provide services primarily within the Field Area.

#### Allowed Predevelopment Costs

62 The Allowed Predevelopment Costs of an Interest Holder for a Field shall be the aggregate, net of any amounts earned by the Interest Holder prior to the Field Commencement Date as a result of incurring Allowed Predevelopment Costs, of

(a) where the Field is the subject of a Significant Discovery area declaration by the Board before 1998, the share of the Interest Holder of \$11,000,000.00 per exploration well or delineation well drilled within the Field before 1998 as determined at the time or as subsequently determined, in respect of costs incurred before 1998, and the share of the Interest Holder of that amount shall be agreed on by all Interest Holders of the Field or, failing an agreement by the time that the Interest Holder is first required to submit a Royalty Return in respect of the Field, as determined by the Minister;

(b) costs, expenses or other amounts other than Disallowed Costs of preparing or pursuing an application for a development plan approval in respect of the Field which are chargeable to the applicable joint account for the Field, the Field Area, the Field Assets or any part thereof, or where there is no joint account, of a nature that would normally be charged to a joint account;

(c) costs, expenses or other amounts incurred after 1994 and before the Field Commencement Date that would be Allowed Capital Costs for the Field if they had been incurred on or after the Field Commencement Date; and

(d) any other amount that the Minister agrees to treat as an Allowed Predevelopment Cost, including unsuccessful exploration costs in relation to an area that is designated as a high risk exploration area or that relate to a Field that is designated by the Minister as a small reserve oil project.

#### Commercial Production

63 (1) Commercial Production from a Field shall be production from the Field for a period of 30 consecutive days at a rate that is at least 50% of the maximum permitted production rate for the Field in accordance with an approved development plan, or, alternatively, production over any period of time that amounts to 1.5 times the maximum monthly production achievable for the Field Area, taking into account in either case the remaining recoverable reserves from the Field and the design capacity of the Field Assets and other assets and facilities that are intended to be used in connection with production from the Field up to the point of valuation with buyers of Petroleum Produced.

(2) Once commenced, Commercial Production shall be deemed to continue until production from the Field ceases in accordance with approval from the Board.

#### Disallowed Costs

64 (1) A Disallowed Cost shall be a cost, expense or other amount, other than an amount that the Minister expressly agrees to treat as an Allowed Capital Cost or an Allowed Operating Cost, to the extent that it is in respect of

(a) interest or other financing charges payable by or on behalf of the Interest Holder including

(i) interest, compound interest, costs of raising capital and any standby credit, or other financial charges in respect of indebtedness payable by or on behalf of the Interest Holder or the financing component of any lease that is a capital lease under

(A) the accounting standards of the Interest Holder or a joint account maintained for the Field Assets or a part thereof, provided that those accounting standards are in accordance with GAAP, or

(B) if those standards are not in accordance with GAAP, then GAAP,

(ii) except to the extent expressly contemplated in the definition of Allowed Operating Costs, Allowed Capital Costs or Abandonment Costs, costs, expenses or other amounts relating to financial guarantees,

(iii) amounts which can reasonably be imputed as interest or other financing charges in respect to credit that is extended by a contractor or service provider to the Interest Holder in connection with the performances of work or services or the delivery of products that but for this paragraph [subclause] would be an Allowed Capital Cost or Allowed Operating Cost, other than terms of payment that are in the ordinary course of business;

(b) the administration, management, or other overhead of the Interest Holder to the extent that it is

(i) a capital cost in accordance with GAAP, including any cost within subclause 59(1)(j) respecting Allowed Capital Costs, other than the share of the Interest Holder of an amount that was chargeable to a joint account for the Field or any Field Asset, or

(ii) an operating cost in accordance with GAAP incurred after the Production Startup Date that is both a Non-Technical Cost and a Third Party Cost, other than the costs, expenses or other amounts described in subclauses 61(1)(i), (j), (k), (l) and (m) respecting Allowed Operating Costs;

(c) a cost of purchasing or licensing technology, including computer software, from

(i) an Other Interest Holder that, either alone or together with Persons that do not deal at Arm's Length with the Other Interest Holder, holds more than an 80% working interest in the Field, or

(ii) a Person who does not deal at Arm's Length with the Interest Holder or with an Other Interest Holder or Person satisfying the criterion described in subclause (i), unless the cost was chargeable to a joint account for any Field Asset;

(d) any payment made to acquire a direct or indirect interest in Petroleum not yet produced including, without limiting the generality of the foregoing, the acquisition from an Other Interest Holder of, or a payment under an interest in the Field that is a working interest, participation interest, overriding royalty interest, carried interest, net profit interest, penalty associated with acquiring a carried working interest or any similar interest, except in the case of an amount paid under such an interest to the extent that the amount can be reasonably regarded as consideration for Field Assets, other than as part of an acquisition of an interest in the Field, or for services in relation to the activities carried on in the Field Area;

(e) anything resulting from any Transaction that arises from Gross Negligence and is a breach of these regulations or any laws, regulations or other applicable binding orders of any government or government agency, except to the extent, if any, that the amount would have had to have been incurred in the absence of such Gross Negligence and breach;

(f) any cost, expense or other amount that the Interest Holder or any other Person Related to, or claiming by, through or under, the Interest Holder has received, is entitled to receive, or may reasonably be expected to receive, to the extent of any Assistance in respect of the cost, expense or other amount;

(g) handling, storing, processing and transportation of Petroleum Produced beyond the Field Area or marketing of Petroleum Produced, except as contemplated by Section 55 or by Section 68 respecting Tariff Amount;

(h) cleaning up of, or liabilities in respect of, environmental damages or repair of damages to Field Assets where, in either case, the damages were caused by a spill, leakage or escape of Petroleum from within the Field Area that is attributable to Gross Negligence;

(i) termination of the employment of an employee unless

(i) the employee was employed in the Nova Scotia Area,

(ii) the amount is chargeable to the applicable joint account for the Field, the Field Assets or any part thereof or, if there is no joint account, is of a nature that would reasonably be expected to be so charged if a joint account existed, and

(iii) in the case of an employee who has been previously employed outside of the Nova Scotia Area by the Interest Holder or an Other Interest Holder or Person Related to the Interest Holder or Other Interest Holder within 12 months of becoming employed in the Nova Scotia Area, the employee has been employed in the Nova Scotia Area for at least 24 consecutive months before the termination;

(j) Royalty, income taxes, capital taxes and interest on any such amount;

(k) fines or penalties imposed under any Canadian federal or provincial enactment or foreign enactment, other than a foreign enactment that applies by virtue of the fact that the Field or a Field Asset is located, or activities are conducted, in the Nova Scotia Area, as a result of any act or omission that is a breach of any laws, rules, regulations, permits, licences, orders or other directives of a government, governmental department or agency, the Board or any court;

(l) Non-Technical Costs incurred after Production Startup Date that are not Third Party Costs, and that would otherwise be Allowed Operating Costs but for this clause, and that are incurred outside the Nova Scotia Area;

(m) Non-Technical Costs incurred after Production Startup Date that are Third Party Costs and that are incurred either within the Nova Scotia Area or outside the Nova Scotia Area and that would otherwise be Allowed Operating Costs but for this clause, except as otherwise expressly provided for in clauses 61(1), (b), (g), (h), (i), (j), (k), (l), (m), and (o) respecting Allowed Operating Costs and subsection 59(1) respecting Allowed Capital Costs;

(n) where a Tariff Amount has been deemed to have been paid in respect of a particular transaction, any cost, expense or other amount actually paid as a tariff in that transaction;

(o) a Reservoir Performance Risk Amount, unless the approval of the Minister is obtained to allow the amount, in which case the Minister may allow all or a portion of the amount where the Minister is satisfied that to do so is fair and reasonable and will not result in an undue reduction of Royalty in the circumstances; or

(p) any cost, expense or other amount not provided for in these regulations.

(2) For the purpose of clause (1)(f) and Section 45, an Interest Holder for a Field, Related Person or Person claiming by, through or under the Interest Holder who has transferred or assigned a right to any amount referred to in clause (1)(f), other than under the transfer or assignment of a working interest in the Field that is governed by Section 40, shall be deemed to have received the amount of the reimbursement, compensation or other payment.

(3) Where a cost, expense or other amount otherwise described in clause (1)(e) or (h), referred to in this subsection and in subsection (4) as the “Underlying Cost”, is attributable in part to Gross Negligence and in part to another cause involving other gross negligence, wilful misconduct or wilful failure to act, a determination shall be made, using principles of contributory negligence, as to the relative percentage contribution of the Gross Negligence, referred to in this subsection and in subsection (4) as the “GN Percentage”, and the percentage contribution of the other cause.

(4) The cost, expense or other amount described in clause (1)(e) or (h) shall be deemed to be equal to the GN Percentage of the Underlying Cost.

#### Field

65 (1) A Field shall be a general surface area in the Offshore Area underlain or appearing to be underlain by one or more Pools, together with the subsurface regions vertically beneath the general surface area, as delineated by a declaration of Significant Discovery by the Board or in the absence of such a declaration, a declaration of Commercial Discovery by the Board, or any similar or analogous and subsisting declaration under the Canada Oil and Gas Act, and where there is a declaration of Significant Discovery by the Board and a declaration of Commercial Discovery by the Board that relates to that Significant Discovery and does not relate to any other declaration of Significant Discovery, the Field shall include any area that is, or is beneath, the surface area that is the subject of either declaration.

(2) Where the Interest Holder requests and the Minister agrees, 2 or more areas that would otherwise each be a separate Field may be treated as one Field for the purposes of these regulations.

#### Field Area

66 A Field Area for a Field or an Other Field shall be the Field or Other Field, extended to include the Field Assets.

#### Field Asset

67 (1) A Field Asset of an Interest Holder for a particular Field shall be the interest of the Interest Holder in any of the following assets in the Nova Scotia Area, to the extent that a cost incurred by or on behalf of the Interest Holder to acquire an interest in the asset was an Allowed Capital Cost, Allowed Operating Cost or an Allowed Predevelopment Cost for that Field, ignoring any reduction in the amount so allowed that is attributable to Assistance:

(a) facilities for the drilling, lifting, production, metering or Processing of Petroleum, that were constructed or acquired for the purpose of drilling for, lifting, producing, metering or Processing Petroleum Produced from the Field or Petroleum Produced from the Field and other Petroleum;

(b) gathering lines, pipelines or subsea flow lines that were constructed or acquired for the purpose of gathering or transporting of Petroleum Produced or Petroleum Produced and other Petroleum between different facilities described in this Section, or from those facilities to facilities that are not described in this Section;

(c) offshore facilities for the storage of Petroleum Produced, or Petroleum Produced and other Petroleum (excluding tankers that are or are expected to be used for the transportation of Petroleum) that were acquired for the purpose of storage of the Petroleum;

(d) Support Facilities;

(e) equipment, materials and supplies that are used or intended for use in the facilities described in clauses (a), (b), (c) and (d), the Field, or the Field Area, or for the purpose of furthering the activities carried on within the Field or the Field Area; or

(f) any other assets or facilities that the Minister approves as a Field Asset pursuant to a request by the Interest Holder.

(2) Where a Field Asset or any portion thereof is disposed of or deemed to have been disposed of by an Interest Holder, the asset or portion thereof shall be deemed to have ceased to be a Field Asset of the Interest Holder immediately after the time of the disposition or deemed disposition.

(3) For greater certainty, where a portion of the cost of the Interest Holder of the interest in an asset is an Allowed Capital Cost, Allowed Operating Cost or an Allowed Predevelopment Cost for that Field, ignoring any reduction in the amount so allowed that is attributable to Assistance, the same portion of the interest of the Interest Holder in that asset shall be deemed to be a Field Asset.

## Tariff Amount

68 (1) A Tariff Amount shall be an amount determined in accordance with this Section that is, has been or is deemed to be, receivable or received as a tariff, or any other amount charged by the Interest Holder to another Person in respect of the use or the right to use of Field Assets, including under a “send or pay” tariffing arrangement.

## Non-Arm’s-Length use of Field Assets

(2) Where in any Month, the Interest Holder uses any Field Asset in connection with Petroleum owned by

(a) the Interest Holder, so long as the Petroleum was not produced, saved and recovered in the Field; or

(b) another Person that does not deal at Arm’s Length with the Interest Holder,

including without limitation metering, processing, fractionating, storing, loading, gathering or transporting the Petroleum, a Tariff Amount shall be deemed to have become receivable by the Interest Holder in the Month, subject to subsection (7), in an amount equal to the proportionate share of the Interest Holder of the Allowed Operating Costs, excluding Overhead Uplift, of the relevant Field Assets that are reasonably attributable to the activity that is the subject of the Tariff Amount on the basis of Field Asset throughput to that use or on some other reasonable basis that is applied consistently, in the case of clause (a), between the Field and the Other Field for which the use occurs and, in the case of clause (b), between the Interest Holder and the Person that does not deal at Arm’s Length with the Interest Holder.

(3) If the Interest Holder is the Person that uses any Field Asset as set forth in subsection (2) and is also an Interest Holder of an Other Field and the Petroleum is produced, saved and recovered from the Other Field, then, for the purpose of computing the Royalty obligations of the Interest Holder with respect to the Other Field, that Interest Holder shall be deemed to have incurred an Allowed Operating Cost, subject to subsection (7), in an amount equal to the amount deemed in subsection (2) to have become receivable.

(4) If the other Person identified in clause 2(b) is an Interest Holder of the Field or an Other Field and the Petroleum is produced, saved and recovered from the Other Field, then, for the purpose of computing the Royalty obligations of the other Person with respect to the Field or the Other Field, the other Person shall be deemed to have incurred an Allowed Operating Cost, subject to subsection (7), in an amount equal to the amount deemed in subsection (2) to have become receivable.

(5) Subject to subsection (6), the Interest Holder may make a one-time election by Notice to the Minister to include in all Tariff Amounts deemed to be receivable by it pursuant to subsection (2) the Overhead Uplift applicable on any amounts deemed to be Allowed Operating Costs pursuant to subsections (3) and (4).

(6) An election under subsection (5) may only be made on or about the occurrence of the first use of the Field Assets in respect to the Petroleum produced, saved and recovered from the Field or Other Field by a Person who is deemed to have incurred an Allowed Operating Cost pursuant to subsections (3) or (4).

(7) Where an election has been made pursuant to subsection (5), any Tariff Amounts deemed to be receivable pursuant to subsection (2) shall be deemed to include the Overhead Uplift applicable on amounts deemed to be Allowed Operating Costs pursuant to subsections (3) and (4) and the Allowed Operating Costs that are deemed to be incurred pursuant to subsections (3) and (4) shall include the foregoing Overhead Uplift.

#### Arm's-Length use of Field Assets

(8) Where in any Month, the Interest Holder uses any Field Asset for the benefit of another Person that deals at Arm's Length with the Interest Holder, including without limitation metering, processing, fractionating, storing, loading, gathering or transporting Petroleum, the amount that has become receivable by the Interest Holder in the Month from the other Person for the use or right to use provided by the Interest Holder during the Month, minus any portion of such amount that may reasonably be considered to be in respect of the use or right to use any assets acquired by the incurrance of Incremental Costs of the Interest Holder or a profit in respect of such Incremental Costs, shall be a Tariff Amount.

(9) Identification in an agreement in writing with the other Person identified in subsection (8) of the separate components of the amount receivable from the other Person will constitute prima facie evidence of the amounts of such components, and for the purpose of computing the Royalty obligations of the other Person with respect to the Field or the Other Field, the amount actually payable by the other Person to the Interest Holder, including the portion, if any, of the amount that is in respect of the use or right to use any assets acquired by the incurrance of Incremental Costs of the Interest Holder or a profit in respect of such Incremental Costs, shall be deemed to be an Allowed Netback Cost of the other Person in respect of the Field or the Other Field.

#### Non-recognition transactions

69 Where an Interest Holder enters into a Transaction that would otherwise result in a disposition of Field Assets that are used for processing, gathering or transportation of Petroleum Produced and under the terms of the disposition, the Interest Holder retains control of the capacity rights in relation to the disposed assets so that the majority of the risks and rewards of the rights are retained by the Interest Holder, then the Minister may ignore the disposition of those Field Assets for Royalty purposes, in which case the Royalty payable by the Interest Holder shall be computed as if that disposition had not occurred, with all necessary consequential adjustments.

## Determining Fair Market Value

70 Where it is necessary for the purposes of these regulations to determine Fair Market Value in accordance with subsection 22(5), the Fair Market Value shall be an amount

- (a) agreed between the Interest Holder and the Minister to be the Fair Market Value;
- (b) failing an agreement under clause (a), where the Minister and the Interest Holder jointly appoint a third party or panel to make the determination and agree to be bound by the determination, determined by the third party or panel; or
- (c) failing an agreement or determination under clause (a) or (b) respectively, and subject to the appeal rights of the Interest Holder under the Act, determined by the Minister and reflected in an Assessment for the relevant Period or Periods.

## Rulings

71 (1) An Interest Holder may seek the written ruling of the Minister at any time in respect of any of the following matters:

- (a) whether a particular cost, expense or other amount would constitute an Allowed Capital Cost, Allowed Operating Cost, Allowed Netback Cost or Disallowed Cost;
- (b) with respect to any sale of Petroleum to a Person who is not, or may not be, dealing with the Interest Holder at Arm's Length, to establish whether the proposed selling price would be accepted for the purpose of calculating the Royalty; or
- (c) with respect to the application of these regulations in respect of a Transaction or Series of Transactions.

(2) Upon receipt of a request pursuant to subsection (1), the Minister shall provide a written ruling on the matter with all due dispatch, and in any event within 120 days of all material information being provided by the Interest Holder to the Minister in connection with the request.

(3) Any written ruling provided under subsection (2) by the Minister to the Interest Holder will be final and binding on the Minister if all material facts have been disclosed to the Minister, there are no changes in material facts and the conditions specified by the Minister in the written ruling are fulfilled.

#### Prescribed Royalty

72 (1) The Royalty payable pursuant to Section 24 shall be equal to,

(a) in respect of Petroleum Produced that arises in a particular Month beginning with the Month in which the production first occurs and ending with the Month immediately preceding the Month in which Primary Date of Field Payout occurs, 2% of the Gross Revenue of the Interest Holder for the Field for the Month;

(b) in respect of Petroleum Produced that arises in the Month in which the Primary Date of Field Payout occurs, the aggregate of 50% of the amount that would be determined if clause (a) applied and 50% of the amount that would be determined if clause (c) applied;

(c) in respect of Petroleum Produced that arises in a particular Month beginning with the first Month that commences after the Primary Date of Field Payout and ending with the Month immediately preceding the Month in which the Secondary Date of Field Payout occurs, 5% of the Gross Revenue of the Interest Holder for the Field for that Month;

(d) in respect of Petroleum Produced that arises in the Month in which the Secondary Date of Field Payout occurs, the aggregate of 50% of the amount that would be determined if clause (c) applied and 50% of the amount that would be determined if clause (e) applied;

(e) in respect of Petroleum Produced that arises in a particular Month beginning with the first Month that commences after the Secondary Date of Field Payout and ending with the Month immediately preceding the Month in which the Final Date of Field Payout occurs, the greater of

(i) 20% of the Net Revenue of the Interest Holder for the Field for that Month, or

(ii) 5% of the Gross Revenue of the Interest Holder for the Field for that Month;

(f) in respect of Petroleum Produced that arises in the Month in which the Final Date of Field Payout occurs, the aggregate of 50% of the amount that would be determined if clause (e) applied and 50% of the amount that would be determined if clause (g) applied; and

(g) in respect of Petroleum Produced that arises in a particular Month beginning with the first Month after the Final Date of Field Payout occurs and subsequent Months, the greater of

(i) 35% (or in the case of a Field that is designated by the Minister to be the first to be developed in a high risk area, 20%) of the Net Revenue of the Interest Holder for the Field for that Month, or

(ii) 5% of the Gross Revenue of the Interest Holder for the Field for that Month.

(2) If more than one of the clauses in subsection (1) would otherwise apply in respect of a particular Month, only the clause that produces the greatest Royalty shall apply in respect of the particular Month.

(3) Despite subsections (1) and (2), where the Field is designated by the Minister as a Field with small reserves

(a) the Royalty provided for in clause (1)(a) shall apply for a minimum of 24 Months; and

(b) the Royalty provided for in clause (1)(c) shall apply for a minimum period of 36 Months.

#### Referral of disputes

73 (1) Upon written request by an Interest Holder, the Minister may establish a committee or board to hear a dispute between the Interest Holder and the Minister with respect to a matter under these regulations.

(2) Upon written request by an Interest Holder, the Minister may refer a dispute that is of the kind permitted to be so referred pursuant to subsection (3) to a committee or board established under subsection (1).

(3) Disputes respecting the following matters may be submitted by the Minister to a committee or board pursuant to this Section:

(a) Allowed Operating Costs, Allowed Capital Costs, Allowed Netback Costs, Allowed Predevelopment Costs or Disallowed Costs;

(b) whether an asset that would otherwise be a Field Asset may be treated, at the election of the Interest Holder, as an Incremental Asset on the basis that the election may not reasonably be expected to result in a significant overall reduction in Royalty payable in respect of the Field or any Other Field;

(c) prices for Petroleum Produced and related revenues;

(d) Fair Market Value of any cost, expense, price, proceeds of disposition or other amount receivable or payable that arises in a Transaction that is not an Arm's-Length Transaction or that arises as a result of a deemed disposition of an asset, or any portion of such Fair Market Value;

(e) the location of meters measuring Petroleum Produced;

(f) a similar rate to the rate published by the Bank of Canada for the purposes of the definition of LTBR;

(g) amount in respect of insurance costs and insurance proceeds received under subsection 18(3) that are to be included in Net Revenue that do not meet the criteria in subclauses 61(1)(b)(i) or (ii) respecting Allowed Operating Costs;

(h) whether a Transaction is an Avoidance Transaction or is a misuse of the provisions of these regulations or abuse having regard to the provisions of these regulations;

(i) whether Persons who are not Related Persons are dealing at Arm's Length as a matter of fact;

(j) whether a Transaction is a deliberate attempt to evade or avoid Royalty payable under clause 22(6)(b);

(k) whether a deemed transaction under Sections 40, 41 and 42 gives rise to unreasonable consequences and the nature of the appropriate consequences under Section 43; or

(1) any other matter that the Minister considers to be appropriate.

(4) If the Minister establishes a board or committee pursuant to subsection (1) and if the Minister refers a matter to the board or committee in accordance with subsection (2), the

#### Interpretation and application

Minister shall not make a decision with respect to the matter until the recommendations of the board or committee have been received and considered by the Minister.

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