

*Kontakke 2012*  
*Lizalor Engen*

MEMORANDUM OF AGREEMENT

concluded between

ENGEN PETROLEUM LIMITED

and

LIZALOR INVESTMENTS CC

1. INTERPRETATION

1.1 In this agreement, except to the extent to which the context may indicate a contrary intention, each of the following words and phrases, which are defined in the Notarial Lease shall have the same meaning as ascribed thereto in the Notarial Lease, and for ease of reference such meanings are repeated here:

- (a) "Bakwena" means the Bakwena Platinum Corridor Concessionaire (Pty) Ltd, Company Registration Number 1998/004523/07, a Company duly Incorporated according to the Laws of South Africa; and the duly appointed Concessionaire of the Board in terms of Concession Contract No: SAPR X0010401/1 (with Annexure's);
- (b) "Facility" means the Double Petrol Filling Station with Vehicle Service and Repair Facilities, Access Roads, Parking Facilities, Restaurants and/ or any other Related Improvements to be Constructed on the Property as will more fully appear from the Detailed Design (and Facilities shall mean all such Facilities);
- (c) "Detailed Design" means Descriptions, Schedules or Requirements as to the Materials, Workmanship, Equipment, the Design and Specifications in respect of the Facility, Ramps and/or any Related Works, including Drainage Facilities and Services and Structures, Foundations, Piers and Abutments on the Property, prepared by a Qualified Registered Engineer and Approved in writing by SANRAL;
- (d) "Interchange" means the N4/ Dr Swanepoel Interchange consisting of the Cross Over Bridge over National Road 4: Section 9 connecting the National Road with Dr. Swanepoel Road;
- (e) "National Road" means that part of the National Road 4: Section 9 and the N4/ Dr Swanepoel Interchange, proclaimed as National Road in terms of the SANRAL Act but which part of the Proclaimed National Road, for the purposes of this Agreement, excludes the Property situated within the National Road Reserve;

*[Handwritten initials/signatures]*

which Property is more fully described by means of the Surveyed Diagrams attached to the Notarial Lease as Annexure B thereto;

- (f) "National Road Reserve" means that part of the land Utilized for the Roadway for part of the National Road 4: Section 9 and the N4/ Dr. Swanepoel Interchange and which includes the verges on either side of the National Road extending to the National Road Boundary Fence and which part of the National Road Reserve further includes any part of the proclaimed National Road not utilized as part of the Property; more fully described by means of the Surveyed Diagrams attached to the Notarial Lease as *Annexure B* thereto;
- (g) "Property" means Demarcated Portions of the Proclaimed National Road: 4: Section 9 and the N4/ Dr. Swanepoel Interchange and more fully described as portions of Portion No's: 150 and 151 (a portion of Portion No: 134); all portions of the Farm Doornpoort No: 295- J.R. and as depicted on the Surveyed Property Diagrams attached to the Notarial Lease as Annexure B thereto;
- (h) "Ramps" means the Access and Egress Ramps onto and from the National Road to or from the Property together with all structures and improvements thereon;
- (i) "Registered Engineer" means an Engineer registered as a Professional Engineer in terms of the Engineering Profession of South Africa Act, 1990 (Act No: 114 of 1990);
- (j) "SARTSM" means the latest edition of the South African Road Traffic Signs Manual;

1.2 In this agreement, except to the extent to which the context may indicate a contrary intention, each of the following words and phrases shall have the meaning ascribed thereto as follows:

- (a) "Bakwena Agreement" shall mean the memorandum of Understanding and Agreement which has been concluded between Lizalor and Bakwena in the form of *Annexure A* (without annexures) and shall include all attachments to the Bakwena Agreement such as the "works agreement", the maintenance schedules and the insurance schedules;
- (b) "Bakwena Effective Date" shall mean the "Effective Date" under the Bakwena Agreement which in terms of clause 12 thereof is the date upon which the last duly authorized signatory to the Bakwena Agreement duly signs that agreement;
- (c) "Business" shall mean the automotive fuel filling station, convenience store, bakery, "fast food" facility, restaurant, truck park and related activities, conducted, or to be conducted, on the Property, as contemplated by this agreement;



- (d) "Commencement Date" shall mean the date upon which the Notarial Lease commences;
- (e) "the Development" shall mean the Facility, Ramps, Bulk Services and all other related improvements, structures, services and installations which are to be constructed or provided by Lizalor in terms of clause 9 of the Notarial Lease;
- (f) "Engen" shall mean Engen Petroleum Limited, registration number 1989/003754/06;
- (g) "Finance Facility" shall mean collectively, the development loan and the term loan, to be provided by RMB to Lizalor in terms of the Loan Agreement;
- (h) "Franchisee" shall mean Jollify Trading (Pty) Ltd registration no2011/147162/07;
- (i) "Lizalor" shall mean Lizalor Investments CC, Registration No: 2009/194815/23;
- (j) "the Development Loan Agreement" shall mean the Development Loan Agreement to be concluded between Lizalor and RMB providing *inter alia* for a loan to Lizalor of a maximum R70 000 000 (Seventy Million Rand) to finance the construction of the Facility on a cost to complete basis;
- (k) "Month" shall mean a calendar month, which is one of the twelve portions into which the conventional year is divided;
- (l) "Notarial Lease" shall mean the notarial deed of lease substantially in the form of *Annexure B* (without annexures) which is about to be concluded between SANRAL and Lizalor, together with all Annexure's thereto, providing for the letting of the Property to Lizalor under the provisions of Sections: 44, 48 and 52 of the SANRAL Act providing authorisation to Lizalor for :
  - (i) Obtain Access to and Egress from the National Road;
  - (ii) the Construction of Structures and Other Works on, over or below the National Road and the National Road Reserve; and
  - (iii) Trading on the National Road and within the National Road Reserve;
- (m) "the Offer Letter" shall mean Engen's letter to Lizalor dated 15<sup>th</sup> April 2011 and accepted by Lizalor on 26<sup>th</sup> April 2011;
- (n) "PP Act" shall mean the Petroleum Products Act, No 120 of 1977 (as amended) inclusive of regulations promulgated there under, as in force from time to time;
- (o) "Retail Licence" shall mean the licence defined in the PP Act as such;

Handwritten signatures and initials in blue ink, including a large stylized signature, a smaller signature, and the initials 'GSA'.

- (p) "RMB" shall mean FirstRand Bank Limited (acting through its Rand Merchant Bank division), a limited liability public company and registered bank incorporated in accordance with the laws of the Republic of South Africa with registration number 1929//001225/06;
- (q) "SANRAL" means The South African National Roads Agency Limited, Company Registration No: 1998/009584/06, a public company duly registered according to the Laws of South Africa;
- (r) "SANRAL Act" means The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);
- (s) "Site Licence" shall mean the licence defined in the PP Act as such;
- (t) "the Term Loan Agreement" shall mean, the Term Loan Agreement for the financing of the amount required to settle the loan which is the subject of the Development Loan Agreement, over a period of 12 years;
- (u) "the Tripartite Agreement" shall mean the memorandum of agreement to be concluded between RMB, Engen and Lizalor in the form of the draft attached to this agreement and marked "*Annexure C*".

## 2. PREAMBLE

### 2.1 The parties record and agree that;

- (a) Lizalor has concluded the Bakwena Agreement and is about to conclude the Notarial Lease;
- (b) in very broad terms, the Notarial Lease and the Bakwena Agreement make provision, for certain Compensation Amounts, Concession Fees and other Costs payable to SANRAL, for Lizalor to construct and to operate the Facility (a service station complex) within two of the "clover leaves" of the interchange connecting the N4 national road with Dr. Swanepoel Road, for a period of 30 years, renewable at the instance of Lizalor for a further period of thirty years;
- (c) Lizalor and Engen seek to contract with each other, as provided more fully herein, for Lizalor to construct the Facility to Engen's specifications, with the Finance Facility provided by RMB and for certain rentals payable to Lizalor, to assign to Engen Lizalor's rights and obligations (save for obligations relating to the construction of the Facility) under the Notarial Lease and Bakwena Agreement for a period of 30 years, which assignment will be terminable by Engen after the 15<sup>th</sup>, 20<sup>th</sup> and 25<sup>th</sup> years and subject to Lizalor nominating and Engen appointing the Franchisee to operate the Facility;

Handwritten signature and initials in blue ink, appearing to be 'W GSA'.

- (d) Lizalor will procure the registration in the deeds registry of the Notarial Lease, and the rights of Engen, under the assignment contemplated in paragraph 2.1(c) above; and
  - (e) as the Finance Facility contemplated in paragraph 2.1(c) above, is essential to Lizalor to perform its obligations under that paragraph, to construct the service station complex, this agreement will further be subject to the suspensive condition that RMB approves the Finance Facility contemplated by this agreement.
- 2.2 Save for approval of the Finance Facility by RMB and approval by SANRAL and Bakwena, as provided above, the parties confirm that the conditions contemplated by paragraph 2.1 of the Offer Letter have been fulfilled.
- 2.3 In the event of there being any conflict between this agreement and the Tripartite Agreement, the Tripartite Agreement shall prevail.
3. CONSTRUCTION OF THE FACILITY, RAMPS, BULK SERVICES AND ANY OTHER RELATED IMPROVEMENTS
- 3.1 Without unreasonable delay after this agreement has become unconditional, and the registration of rights under clause 4 has taken place, Lizalor will, at its cost, and in compliance with clause 9 of the Notarial Lease, save to the extent that any costs or features are specifically for the account of or to be provided by Engen, undertake the entire construction of the Facility, Ramps, bulk services and any other related improvements as contemplated by the Detailed Design, which will include the building, canopies, including the feeder section, paving and concrete slabs on the forecourt, electrical work, air conditioning, professional fees, landscaping, and all internal road works associated with the accesses to the Property.
- 3.2 The work will be done by Engen approved contractors and sub-contractors, in accordance with, Engen and Lizalor's approved development agreement which incorporates the JBCC standard building contract. With respect to the fast food restaurant area Lizalor will undertake at its cost the construction of a "white shell" which will include all external walls with a final coat of external paint and an undercoat of internal paint, separate grease traps, all shop fronts, concrete floors, roofing, air conditioning, electrical supply to a separate DB Board and water supply to an agreed point, all to Engen's specifications. The construction of roadways, ramps bulk earth works and other civil work, will be performed by contractors appointed by Lizalor under an appropriate standard contract.
- 3.3 Engen will, at its cost, appoint a consultant to monitor compliance with its standards and specifications with respect to the work. Lizalor undertakes to conclude with Engen and a contractor approved in writing by Engen a development agreement on the terms contained in the draft annexed to this agreement and marked Annexure D. The scope of



work for which Lizalor will be so responsible will be more clearly set out in a responsibility matrix which will be prepared by Engen and will be attached to the development agreement. Lizalor shall not unreasonably withhold agreement thereto. Without limiting the generality hereof, all work, fittings, equipment and materials which are not specifically stated as being for the account of Engen, or provided by it on loan shall be for the account of Lizalor or Engen's Franchisee, provided that specific provision is made for the payment thereof by the Franchisee.

- 3.4 The design, layout and specifications for the convenience store and fast food restaurant forming part of the Facility shall be in accordance with Engen and the various franchisors then current standards and specifications.
- 3.5 The positioning of the buildings, canopies, pump islands, driveways will be in accordance with the direction of Engen. Engen will approve the final layout of the service station development within 30 days after receipt of such plans.
- 3.6 The cost of the external road works to obtain access to the Property, the supply and installation of the necessary service connection points to the boundary of the Property and the necessary bulk earthworks in order to create a final platform at a level acceptable to Engen and SANRAL will be borne by the Lizalor, save to the extent that same is the responsibility of SANRAL under the Notarial Lease.
- 3.7 At its cost, Engen will supply, install and maintain the pumps, tanks, signage relating to the Engen image and brand and all shop fittings and equipment, forecourt computers, forecourt electrics related to the pumps, tanks, and signage and forecourt computer connections. All equipment and signage shall remain the property of Engen.
- 3.8 The actual fitting out of the Fast Food facilities and Bakery, as well as the associated equipment, will be provided for under the various Franchise Agreements which the Operator of the Facility will be required to enter into with the agreed Franchisor, and the funds for this work will be for the Operator's (i.e. the Franchisee's) account. The operator will also be responsible for the supply and installation of the compressors, airlines, generators, CCTV systems, data and telecom facilities and safes.
- 3.9 Lizalor acknowledges and agrees that, in accordance with the provisions of Engen's standard agreement of lease and operation of service station, which the operator of the service station will be required to sign (with amendments to provide for the fact that Engen cannot let the property to the Operator) provision is made for certain features of the business activities to be conducted on the Property as part of the Business, such as the Bakery, Fast Food and restaurant, to be conducted strictly in accordance with a third party franchisor nominated by Engen. The actual fitting out of the relevant facilities to conduct such franchise business such as the Bakery, Fast Food and Bakery, as well as the associated equipment will be provided for under the various Franchise Agreements which the operator of the service station will be required to conclude. The costs of such fittings, equipment, professional fees, installation costs and related work, as well as all



franchise fees and levies, will be for the account of the said operator.

- 3.10 Lizalor shall be obliged to ensure that the Development Agreement (*Annexure D*), the building contract referred to therein and all relevant contractual documentation inclusive of bills of quantities and other relevant material are fully and correctly completed and signed on behalf of relevant parties. Lizalor shall furthermore be obliged to ensure that all relevant appointments are made, inclusive of a Principal Agent and an agent tasked with the necessity of compliance with Engen's standards and specifications.
- 3.11 Engen and Lizalor shall each inform the other of the identity of suppliers and contractors who are not sub-contractors to the principal contractor and who will be responsible for specific aspects of the Development. Contracts concluded between Lizalor and such suppliers and contractors shall be subject to Engen's written approval. If so required by Engen, a development agreement substantially in the form of Annexure D together with an approved building contract shall be concluded with such contractors and suppliers. Lizalor shall ensure that such suppliers and contractors perform their work or render their supplies in accordance with the building program adopted by the Principal Agent responsible for the construction of the Facility which program shall be approved at site meetings.
- 3.12 Lizalor shall be obliged to ensure that Lizalor is represented personally, or by a person with the status of senior manager or director, at a pre-construction meeting and at the final site meeting.
- 3.13 To the extent that there may be any conflicts amongst the various parties engaged in the construction of the Facility, such as the contractor, the Principal Agents, an agent appointed by Engen or other parties, Engen and Lizalor shall endeavour to resolve such conflicts by agreement, mediation or arbitration, as expeditiously as possible. Where appropriate the arbitrator shall be a person with experience in the construction industry.
- 3.14 Lizalor shall be obliged in relation to Engen to ensure that the Facility is completed as expeditiously as possible. The timeframe shall be that specified in the Provisional Construction Programme being Appendix 1 to the Works Agreement (which is Annexure D to the Bakwena Agreement) which shall not exceed a period of 30 weeks. Engen shall not unreasonably withhold agreement to an extension of such period where Lizalor is unable to make the Facility available within such period. Engen may not cancel this agreement if the Facility is not made available to Engen timeously.
- 3.15 In the event that Lizalor fails to notify Engen of the identity of a contractor within 30 days of receipt of written notice by Engen calling upon Lizalor to appoint a contractor, or in the event of default on the part of the Contractor necessitating the appointment of an alternative contractor, or in the event that work is performed or fittings installed, not in accordance with Engen's specifications and building standards, Engen shall be entitled;
  - (a) to appoint a contractor of its choice substantially in accordance with the Principal

Handwritten initials and signature in blue ink, including a circled 'R', a signature, and the letters 'W GSA'.

Building Agreement of the Joint Building Contracts Committee inc;

- (b) to complete the "Design Documentation" as contemplated by Annexure D for the Facility; and
  - (c) to cause the "Facility" as determined in Annexure D to be constructed on the Property substantially in accordance with the Principal Building Agreement and the Design Documentation as defined in that agreement.
- 3.16 In the event of default on the part of Lizalor's contractor, as a result of which work is performed or fittings installed, not in accordance with Engen's specifications and building standards, Engen shall be entitled to cause the Facility to be rectified through contractors, suppliers and workmen of its choice.
- 3.17 In the event that Engen exercises its rights under sub-clause 3.15 or 3.16;
- (a) Lizalor shall indemnify and hold Engen harmless in respect of all costs of whatsoever nature reasonably incurred by Engen in the implementation of sub-clause 3.15 or 3.16, that is to say, in the design and construction (or remedial work carried out) of the Facility, except to the extent where this agreement or *Annexure D* hereto makes provision for such costs to be for the account of Engen; and
  - (b) Engen, the contractor appointed by Engen and all subcontractors, vendors, professionals and workmen shall be entitled to have unrestricted access to the Property for the purposes of the construction of the Facility contemplated by *Annexure D*.

#### 4. CESSION, DELEGATION AND REGISTRATION

- 4.1 Lizalor hereby assigns, cedes and delegates to Engen its rights and, subject to sub-clause 4.2, its obligations under the Notarial Lease with effect from the Commencement Date, for a period of 30 years, subject to
- (a) registration of such assignment; and
  - (b) the right in favour of Engen to terminate such assignment with effect from the days immediately preceding the 15<sup>th</sup> (fifteenth), 20<sup>th</sup> (twentieth) and 25<sup>th</sup> (twenty fifth) anniversaries of the Commencement Date, on written notice of 6 months prior to the intended date of termination; and
  - (c) payment of the rentals provided for in clause 7 of this agreement in consideration of the rights of use and occupation of the property so acquired.





- 4.2 In order to give proper effect to such assignment, and the registration thereof, Lizalor and Engen undertake to execute a cession and assignment in notarial form, substantially in the form of *Annexure E* to this agreement. Lizalor shall be obliged, without delay, upon written request by Engen, to cause to be executed
- (a) such powers of attorney, and other documents, or to adopt such resolution(s), as may be reasonably necessary to authorize the execution (or notarial execution) of every deed necessary to give effect to the registration of rights contemplated in this clause 4.2; and
  - (b) declarations and other documents required for the purposes of transfer duty, value-added tax or any other form of taxation relating to the granting or cancellation of any of the deeds referred to in this clause.
- 4.3 As the assignment and delegation of obligations expressed in clauses 4.1 and 4.2 takes effect on the Commencement Date, it excludes all obligations of Lizalor which are to be performed prior to the Commencement Date and in particular, those obligations relating to the construction of the Facility expressed in clause 9 of the Notarial Lease and the obligations which are to be performed during the construction period. Once the assignment has taken effect, Engen shall perform the obligations expressed in clause 9, to the extent that they fall due for performance after the Commencement Date. Lizalor shall be responsible for the indemnification obligations expressed in favour of SANRAL under clause 12 of the Notarial Lease in respect of all claims arising prior to the Commencement Date and Engen shall be responsible for the indemnification obligations expressed in favour of SANRAL under that clause in respect of all claims arising as from the Commencement Date and for the duration of the assignment expressed in clauses 4.1 and 4.2. Engen and Lizalor shall enjoy in the same manner the benefits of the indemnity by SANRAL in favour of Lizalor expressed in clause 12 of the Notarial Lease.
- 4.4 Lizalor hereby assigns, cedes and delegates to Engen its rights and, subject to sub-clause 4.3, its obligations and responsibilities under the Bakwena Agreement with effect from the Commencement Date, for a period of 30 years, or such shorter period as that for which the Bakwena Agreement may endure after the Commencement Date, subject to the right in favour of Engen to terminate such assignment on written notice of 6 months with effect from the days immediately preceding the 15<sup>th</sup> (fifteenth), 20<sup>th</sup> (twentieth) and 25<sup>th</sup> (twenty fifth) anniversaries of the Commencement Date. In order to give proper effect to such assignment Lizalor and Engen undertake to execute a formal cession and assignment document, in form and substance to the reasonable satisfaction of Engen's attorneys.
- 4.5 Lizalor shall take such steps as may be reasonably required after this agreement becomes unconditional to procure registration of the Notarial Lease. To the extent that this may require the execution of the Notarial Lease in a different format, such as notarial format, the document giving expression thereto shall be subject to Engen's written approval which shall not be unreasonably withheld.



- 4.6 Prior to the registrations contemplated in sub-clauses 4.1 and 4.5 being effected, the assignment of the Notarial Lease as expressed in sub-clauses 4.1 and 4.2 shall nevertheless be effective, notwithstanding the fact that such registration may not have taken place.
- 4.7 Nothing in this agreement, or in any other contract between Engen and Lizalor, or any correspondence or other writing or communication, addressed by Engen to Lizalor, shall be construed so as to oblige Engen to install any equipment or signage on the Property until registration of the cession contemplated in sub-clause 4.1 has taken place.
- 4.8 Engen and Lizalor undertake to offer to conclude with RMB the Tripartite Agreement. Pursuant thereto Engen will cede to RMB its rights under the Notarial Lease as security for Engen's obligations to effect payment of the rentals referred to in paragraphs 7.1(a)(less compensation payments to SANRAL) and (c), which are to be ceded by Lizalor to RMB. Upon full and final settlement of the Finance Facility, Engen will procure that rights so ceded will be re-ceded to Lizalor, provided that Lizalor is willing and able to accept such reversion.

5. COMPENSATION AND MONTHLY CONCESSION FEE

- 5.1 In consequence of the delegation of obligations of Lizalor under the Notarial Lease, provided for in sub-clauses 4.1 and 4.2 above, Engen records and agrees that with effect from the Commencement Date, and for the duration of this agreement, it will be obliged to, and will pay SANRAL, the compensation provided for under clause 5 of the Notarial Lease, provided that, for the period that compensation is payable under clause 8.1 of the Bakwena Agreement, Lizalor warrants that compensation under clause 5 of the Notarial Lease shall not be payable.
- 5.2 Engen furthermore agrees that it will comply with the terms of clause 5 of the Notarial Lease in relation to the reporting and audits of volumes and turnovers.

6. COMPENSATION UNDER CLAUSE 8.1 OF THE BAKWENA AGREEMENT

In consequence of the delegation of obligations of Lizalor under the Bakwena Agreement, provided for in clause 4.3 above, Engen records and agrees that with effect from the Commencement Date, it will pay Bakwena the monthly compensation provided for in clause 8.1 of the Bakwena Agreement, for the duration of this agreement, or the duration of the Bakwena Agreement, whichever is the shorter, and will comply with clause 8.1 of the Bakwena Agreement in relation to the reporting and audits of volumes and turnovers.

7. RENTALS PAYABLE TO LIZALOR, INSURANCE AND PROPERTY TAXES

Handwritten initials and signatures in the bottom right corner of the page. The initials appear to be 'R', 'L', 'W', and 'GJP'.

- 7.1 In consideration of the rights of use and occupation of the Property consequent upon the assignment to Engen of the rights and obligations enjoyed by Lizalor under the Notarial Lease, Lizalor will be entitled to the following rentals payable by Engen, all of which exclude value added tax, which will be payable in addition to the rentals stated or calculated;
- (a) a fixed rent of R40,000-00 (forty thousand rand) per month, as from the Commencement Date, escalating at 7% per annum compounded, payable monthly in advance, provided that, Engen is entitled to deduct from this amount compensation payable to SANRAL under clause 6 of the Notarial Lease, unless Lizalor effects those payments directly to SANRAL;
  - (b) subject to the terms of clauses 7.5 to 7.11, a volumetric rent of 18,484% of the average Wholesale Margin on the various petrol and diesel grades applicable throughout South Africa per litre of the volume of petrol and diesel combined supplied to the Property by Engen for resale there from; and
  - (c) subject to the terms of clause 22.7, a rent of R590,000.00 (five hundred and ninety thousand rand), escalating at 7% per annum compounded as from the Commencement Date for a period of 15 (fifteen) years only. On the day immediately preceding the 15<sup>th</sup> (fifteenth) anniversary of the Commencement Date, liability for this rent will cease, save for any arrears which may be payable.
- 7.2 Should the Commencement Date not be the 1<sup>st</sup> day of a calendar month, Engen shall nevertheless pay these rentals and the value added tax thereon, in the case of paragraphs 7.1(a) and (c) at the commencement of each calendar month, and in the case of the rent stated in paragraph 7.1(b) at the end of each calendar month, as soon as the relevant volumes have been processed through Engen's accounting system. In respect of those portions of a calendar month in respect of which rentals may be payable, the payments shall, in the case of paragraphs 7.1(a) and (c), be *pro rata* proportions of the amounts stated, having regard to the number of days in respect of which they are payable compared to the number of days of the full calendar month concerned.
- 7.3 Engen and Lizalor shall be liable for such property rates and taxes as may be payable on the Property on the basis that Lizalor bears the amount payable as at the date of registration of the Notarial Lease and Engen bears increases which take place thereafter. The parties shall refund such amounts to SANRAL, or to each other, or pay such amounts to the local authority so as to ensure that each of them bears that portion of the overall amounts of rates and taxes as may be payable from time to time in the manner stated in this clause.
- 7.4 By virtue of the assignment of the rights and obligations of Lizalor to Engen, under the Notarial Lease and the Bakwena Agreement, as provided for in clauses 4.1 and 4.4 respectively, Engen shall, at its cost, with effect from the Commencement Date (as



defined in this agreement and the Notarial Lease, carry out the obligations to maintain in good order and condition, fair wear and tear excepted, the Facilities and to insure the Facilities, as required by the Notarial Lease and/or Bakwena Agreement. Engen also assumes these obligations in relation to Lizalor. Insurance shall be effected by Engen for the replacement value of the Facility, in accordance with its normal policy, that is to include the Facility in its insurance portfolio of all properties which it either owns in South Africa, or leases and has the obligation to insure. A letter by its brokers shall be provided on written request confirming the nature and extent of such insurance. Such insurance shall be effected by Engen with effect from the date of practical completion of the Facility, as certified by the project manager appointed by Lizalor to supervise the construction of the Facility.

- 7.5 The volumetric rent of 18,484% of the average Wholesale Margin as stipulated in paragraph 7.1(b) is intended to equate to a sum of 10c (ten cents per litre) as at 26<sup>th</sup> April 2011 and is intended to vary in line with variations in the Wholesale Margin going forward. However, with the introduction of the Regulatory Accounts System for the pricing of automotive fuels in December 2011, radical variations are due to take place in the Wholesale Margin. With effect from December 2011 it fell from approximately 54 cents per litre to 52.5 cents per litre. As from December 2013 it is due to fall to 25.8cents per litre, according to disclosures of the Department of Energy. However, according to the same disclosures, under the RAS Pricing System, Engen will be entitled to recover from the Dealer a portion of the Retail Margin representing the permissible revenue for Engen's investment in the Benchmark Service Station model. It is anticipated (based on figures available in November 2011 but subject to adjustment with variations in these amounts) that the net amounts recoverable by Engen will comprise;
- (a) the "CAPEX" element (presently 55.7 cents per litre) less the Entrepreneurial Compensation (presently 18 cents per litre ) leaving a net figure of 37.7 recoverable by Engen, according to figures presently disclosed; plus
  - (b) the "Oilco" elements of the "OPEX" element (presently 6.35 cents per litre) which elements represent Repairs and Maintenance (presently 2.652 cents per litre) and Rates and Taxes (presently 0.523 cents per litre) leaving a net figure of 3.175 cents per litre recoverable by Engen.
- 7.6 According to the same disclosures, under the RAS Pricing System, Engen will forfeit the right to recover rent from the Dealer for the forecourt and part of the building, equivalent to that dedicated to the forecourt business, the sum at the present time being 10 cents per litre.
- 7.7 It is anticipated therefore that under the RAS Pricing System, Engen's effective recovery will be the Wholesale Margin (25.8 cpl) plus the CAPEX element (37.7cpl) plus its OPEX element (3.175cpl), less the rent element (10cpl), thus equating to 56.675 cents per litre. These figures are based on the wholesale and retail margins as presently disclosed.

Handwritten signature and initials in blue ink, appearing to be 'B P' followed by 'GDP'.

- 7.8 The parties intend that the volumetric rent of 18,484% will, as from the complete introduction of the RAS Pricing System, be calculated on Engen's effective recovery in cents per litre as contemplated in clause 7.7 above. On the figures concerned it will thus be 18,484% of 56.675 cents per litre being 10.476 cents per litre.
- 7.9 For convenience the parties will from time to time fix the said sum in cents per litre, based on Engen's net recovery calculated in terms of clauses 7.5 to 7.8 above, allowing for variations and any changes in the system. The amount in cents per litre will be fixed annually, or more frequently, if an annual figure is not fair and realistic.
- 7.10 Should changes of any nature in the pricing system take place, either party may under the terms of clause 22 seek redress.
- 7.11 For the purposes of this clause 7.11 to and including clause 7.13,
- (a) "Franchisee Default" shall mean any act or omission on the part of the Franchisee which results in the quantities of petrol and diesel fuel supplied by Engen to the Business in any Month being less than Engen's Projected Sales of such products for such Month, such as;
- (i) the failure of the Franchisee to timeously place orders for stocks of such products;
  - (ii) the failure of the Franchisee to timeously make payment for stocks ordered;
  - (iii) the failure of the Franchisee to place orders in compliance with Engen's prescribed criteria for the ordering of, and payment for, stocks;
  - (iv) the unavailability to the Franchisee of adequate working capital to make provision for the payment for stocks;
  - (v) the winding up of the Franchisee; or
  - (vi) the procurement by the Franchisee of stocks from sources other than Engen, contrary to the terms of the Franchisee's contract with Engen;
- but not, for example, the opening of a competitive outlet, shortages of supplies available to Engen for supply to the Franchisee, circumstances beyond the control of Engen, or other matters which are not the fault of the Franchisee.
- (b) "Base Date" shall mean the first day of the Month immediately following the Commencement Date, and if the Commencement Date is the first day of a Month, the Base Date shall be that day;
- (c) "Engen's Projected Volumes" for any Month shall mean;



- (i) for any Month during the first 12 Month period as from the Base Date, the following quantities of petrol and diesel fuel combined, supplied by Engen to the Business: 1 248kls
- (ii) for any Month during the second 12 Month period as from the Base Date, the following quantities of petrol and diesel fuel combined, supplied by Engen to the Business: 1 404kls
- (iii) for any Month during the third 12 Month period as from the Base Date, the following quantities of petrol and diesel fuel combined, supplied by Engen to the Business: 1560kls
- (iv) for any Month during the fourth 12 Month period as from the Base Date, the following quantities of petrol and diesel fuel combined, supplied by Engen to the Business: 1568kls
- (v) for any Month during the fifth 12 Month period as from the Base Date, the following quantities of petrol and diesel fuel combined, supplied by Engen to the Business: 1577kls
- (vi) for any Month during the period of 5 years as from the 5<sup>th</sup> anniversary of the Base Date such combined quantities of petrol and diesel fuel as Engen may project per Month for such period in accordance with Engen's normal methods for projecting sales of petrol and diesel fuel to filling stations located on freeways.

7.12 On written request by Lizalor, made at any time after the date six months prior to the fifth anniversary of the Base Date, Engen shall provide Lizalor in writing with the projections contemplated by paragraph 7.11(c)(vi). Such projections shall be applicable for the purposes of this clause 7, unless set aside or modified by an award of an arbitration tribunal under clause 11.

7.13 During a 10 year period calculated as from the Base Date, if as a result of Franchisee Default, the combined quantity of petrol and diesel supplied to the Business for resale in any successive period of 3 Months is more than 10% less than Engen's Projected Volumes for such Months, combined, Engen shall make the payment provided for in paragraph (b) of sub-clause 7.1 on the average volume of petrol and diesel combined, supplied to the Business for resale over the last six full calendar months prior to the month in which the Franchisee Default occurs. Engen shall effect the payment on such average volume until the combined volume in any Month exceeds such average. Where the Business has not been operational for a period sufficient to make such average calculation, the average volume shall be deemed to conform to Engen's Projected Volumes.



8. OPERATION OF THE FACILITY

- 8.1 Engen will offer to contract with the Franchisee to operate the Facility for a period of 10 (ten years) in accordance with its standard agreement of lease and operation of service station (in franchise format) modified by Engen's attorneys so as to comply with the terms of the SANRAL and Bakwena Agreements and the terms of this agreement. This agreement shall be subject to amendment in accordance with all standard amendments applied to Engen standard franchise agreements throughout the period of its duration.
- 8.2 A pre-condition to the appointment of the Franchisee shall be the execution by the Franchisee of all sub-franchise agreements, the payment of all franchise fees there under and the compliance by Franchisee with all terms thereof, with respect to the provision and installation of shop fittings, furnishings, equipment and fittings as may be required by the sub-franchise agreements.
- 8.3 The Franchisee will be liable for payment of the following franchise and sub-franchise fees, as a pre-condition to appointment;
- (a) a sum of R4 000 000 (four million Rand), together with value added tax thereon which shall be added, to Engen
  - (a) a sum of R1 800 000 (one million eight hundred thousand Rand), together with value added tax thereon which shall be added, to Retsol bakeries; and
  - (b) a sum of R5 000 000 (five million Rand), together with value added tax thereon which shall be added, to Wimpy.
- 8.4 A further pre-condition to the appointment of the Franchisee will be the perusal by the Franchisee of the SANRAL and Bakwena Agreements and execution by the Franchisee of a written declaration to the effect that the Franchisee has read and understands the said agreements and that the Franchisee and all managers and employees will conduct themselves in full compliance therewith. Engen and Lizalor agree that a breach by the Franchisee of the Notarial Lease or the Bakwena Agreement will represent a material breach of the franchise agreement. Engen will indemnify Lizalor against any claim from SANRAL and/or Bakwena in this regard. Should the franchise or sub-franchise agreements contemplated in clause 8.1 be terminated by Engen or a sub-franchisor as a result of the breach of such agreement by the Franchisee, Engen shall be entitled to appoint a replacement franchisee of its choice.
- 8.5 Notwithstanding anything to the contrary, Lizalor shall be entitled to contract with third parties for the installation of automatic tellers provided that the number of facilities shall not exceed four (ie two on either side or one on one side and three on the other) and the space occupied does not occupy more space than such facilities occupy as at the commencement of this agreement, without the written approval of Engen which shall not

be unreasonably withheld. Automatic tellers shall be installed at locations approved by Engen in writing. Lizalor shall be entitled to contract with SANRAL for the dispensing of E-tags from the Property. This shall be handled in a manner and through such facilities as Engen may approve in writing, provided that its approval may not be unreasonably withheld. Any income to be generated from either the ATM's or E-tag facilities will accrue to Lizalor.

9. COMPENSATION UNDER NOTARIAL LEASE

9.1 Notwithstanding the assignment of rights and obligations expressed in clause 4.1, any compensation paid by SANRAL under clause 7 of the Notarial Lease shall be apportioned between Engen, Lizalor and the Franchisee on the following basis:

- (a) Compensation under clause 7.1.1 shall first be applied in settlement of the Finance Facility and any balance shall be payable into Lizalor's Lawyers trust account;
- (b) Compensation under clause 7.1.2 shall be allocated amongst Engen, Lizalor, the Franchisee and any other contracted parties to the extent that each suffers a loss of revenue streams as contemplated in that clause; and
- (c) Compensation under clause 7.1.3 shall be allocated between Engen or Lizalor for payment to the claimants, to the extent that each claimant makes up the compensation contemplated in that clause. Although reference is not made to the Oil Company in that clause Engen and Lizalor shall apply it in relation to the compensation of claims against both Engen and Lizalor.

9.2 Any dispute with respect to compensation shall be settled by arbitration.

10. RIGHTS OF SANRAL UNDER CLAUSE 10

10.1 Should SANRAL give notice of its intention to exercise rights under clause 10, Engen and Lizalor shall consult with each other as to the best possible method of handling the situation so as to ensure that the exercise of the rights of SANRAL has the least possible prejudice to their respective interests and those of the Franchisee. The parties shall in this respect consult with the Franchisee and as far as reasonably practicable give effect to the requirements of the Franchisee. Any claim for compensation against SANRAL shall however be the responsibility of each individual party and save for the apportionment of compensation under clause 9 above, no party shall have any claim against the other by virtue of SANRAL exercising its rights.

10.2 Should either Lizalor or Engen receive notice from SANRAL under clause 10, the party receiving notice shall provide the other with a copy and invite discussions as to how best to deal with SANRAL in connection therewith. Should the parties be unable to reach





agreement, the opinion of Engen as cessionary of rights, shall prevail. Both Engen and Lizalor shall furnish a copy of the notice to RMB.

## 11. DISPUTE RESOLUTION

- 11.1 The provisions of this clause 11 are intended to mirror those of the Notarial Lease so as to ensure as far as may be reasonably practicable a dispute which affects SANRAL in addition to the two parties to this agreement is settled in the same manner and by the same arbitrator in order to achieve a situation where there are not separate and conflicting arbitration awards relative to essentially the same dispute. For the same reason, both Engen and Lizalor agree to request SANRAL in the event of any dispute amongst all three to have a joint arbitration or joint negotiations for the resolution of such dispute. In the event that a Dispute arises as to the Interpretation, Breach, Termination or Validity of this Agreement (a "Dispute"), then either Party may give written Notice to the other party of such Dispute and may initiate the Dispute Resolution Procedure as set out in this Clause 11.
- 11.2 The Parties shall endeavour to settle the Dispute through Negotiation and if the Dispute cannot be settled through Negotiation, the Parties may agree to refer the Dispute to an Agreed Mediator who shall endeavour to assist the Parties to Settle the Dispute by Agreement.
- 11.3 If the Dispute is not Settled by Negotiation or Mediation within 15 (Fifteen) Business Days of the Notice in terms of clause 11.1, or such Longer Period of Time as the Parties may agreed in writing, then the Dispute shall be determined by Final and Binding Arbitration as set out below.
- 11.4 A Single Arbitrator shall be agreed upon by the Parties and, failing Agreement, shall be appointed in Accordance with the Procedure in clause 11.13.
- 11.5 The Arbitrator shall be an Attorney or Advocate who is Admitted to Practice as such in the Republic of South Africa and who has had at least 10 (ten) years' experience as an Admitted Attorney or Advocate in the Republic of South Africa.
- 11.6 The Parties may Agree on the Procedure to be followed prior to- and during the Arbitration; as well as the Time and Place of the Arbitration Hearing. Failing such Agreement, the Arbitrator shall Determine the Procedure to be followed and shall fix the Time and Place for the Arbitration Hearing.
- 11.7 The Arbitrator shall Determine the Dispute in Accordance with the Law of the Republic of South Africa and shall have the same remedial powers as a Court of Law would have were it is Adjudicating the Dispute.



- 11.8 Unless otherwise agreed in writing by the Parties, the Arbitration shall be held in SANDTON, in the Gauteng Province, Republic of South Africa.
- 11.9 The Arbitrator shall Render his or her Award together with Written Reasons therefore within a Period of 30 (Thirty) Business Days from the Date upon which the Arbitration ends.
- 11.10 The Award of the Single Arbitrator shall be Final and Binding on the Parties.
- 11.11 Subject to the other Provisions of this clause 11, the Arbitration shall be held in Accordance with the Provisions of the Arbitration Act, 1965, as Amended or Replaced (the "Act").
- 11.12 Nothing in this clause 11 shall preclude any Party from seeking any Urgent Interim Relief from any Court of Competent Jurisdiction.
- 11.13 Mechanism for Appointment of the Arbitrator
- (a) If for any Reason the Arbitrator agreed upon by the Parties Cannot / or Does Not Accept an Invitation to Arbitrate, then the Parties may Agree on another Arbitrator.
  - (b) If the Arbitrator does Not Accept an Invitation to Arbitrate, or if the Parties have failed to agree on the Arbitrator, then any Party may ask the Director of the Arbitration Foundation of Southern Africa (the "Director") to Submit to each Party an Identical List of Names of Potential Arbitrators. Each of the Potential Arbitrators suggested by the Director shall be an Attorney or Advocate who is admitted to practice as such in the Republic of South Africa and who has had at least 10 (Ten) years' Experience as an Admitted Attorney or Advocate in the Republic of South Africa.
  - (c) Each Party shall have 5 (Five) Business Days from the Date upon which that Party receives the List Called for in paragraph 11.13(b) to Cross Off that List any Names to which that Party Objects, Number the Remaining Names in Order of Preference and Return the List to the Director. If a Party does not return the List within the time specified, all of the persons named therein shall be deemed Acceptable as Potential Arbitrators.
  - (d) The Director shall then suggest to the Parties in writing the Name of the Arbitrator from among the Potential Arbitrators who have been Approved on both lists and having regard to the Designated Order of Preference.
  - (e) If the Parties Fail To Agree on the Director's written Suggestion referred to in paragraph 11.13(d); or if the suggested Arbitrator is Unable to Act; or if for any reason an Appointment cannot be made from the Submitted Lists, the Director



shall Appoint the Arbitrator, without the Submission of any further Lists but with regard to the Lists submitted in terms of paragraph 11.13(c).

- (f) Notwithstanding any other provision of this clause 11, should the Director Fail or Refuse to Implement the Provisions of clause 11.13, then any Party may apply to Court for the Appointment of an Arbitrator in terms of the Stipulations of the Act.

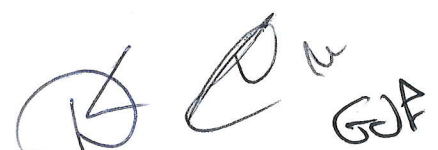
## 12. ALLEGED BREACH OF NOTARIAL LEASE

- 12.1 Should either party receive a notice of breach from SANRAL under the terms of clause 15 of the Notarial Lease, it shall provide the other with a copy thereof as soon as reasonable practicable and invite the other to discuss the most practical way of dealing with the allegation of breach. In this respect, each party shall co-operate with the other so as to deal with the allegation in the interests of both parties. Both Engen and Lizalor shall furnish a copy of the notice of breach from SANRAL to RMB.
- 12.2 Engen and Lizalor agree that the continued existence of the Notarial Lease is fundamental to their relationship and each will to the extent liable for any breach of that agreement remedy same as expeditiously as possible and at own cost.
- 12.3 Each party shall be entitled to remedy a breach on behalf of the other and in such event, may recover the cost of so doing should the other in fact be in breach of Notarial Lease.
- 12.4 Each party shall ensure that no "action for its Dissolution and/ or Liquidation" as contemplated in clause 16 of the Notarial Lease as would entitle SANRAL to cancel the Notarial Lease is commenced.
- 12.5 The provisions of this clause 12 shall apply mutatis mutandis to notices of breach received by either party from Bakwena. Both Engen and Lizalor shall furnish a copy of any notice of breach from Bakwena to RMB.

## 13. FORCE MAJEURE

The provisions of clause 17 of the Notarial Lease which provides for a party being excused from or being entitled to delay the performance of obligations shall apply equally as between the parties to this agreement, as if such clause were repeated herein. To the extent that either party gives notification to SANRAL of force majeure under clause 17.2, it shall also immediately notify the other of the circumstances and the extent to which the relevant circumstances will impact upon obligations under this agreement. Both Engen and Lizalor shall furnish to RMB a copy of the notice given to SANRAL.

## 14. COMPLIANCE WITH BAKWENA AGREEMENT



- 14.1 Subject to those terms of this agreement which more specifically deal with the responsibility of each of the parties to this agreement to comply with the various obligations under the Bakwena agreement,
- (a) responsibility for those obligations is allocated to Lizalor to the extent that those obligations fall due for performance prior to the Commencement Date under the Notarial Lease; and
  - (b) responsibility for those obligations is allocated to Engen to the extent that those obligations fall due for performance after the Commencement Date under the Notarial Lease.
- 14.2 The provisions of clauses 11.1, 12 and 13 of this agreement shall apply, with the necessary adjustments, in relation to the contractual relationship with Bakwena, just as they apply in relation to the relationship with SANRAL.

## 15. DOCUMENTATION AND LEGAL COSTS

- 15.1 All deeds, instruments and other contracts to be concluded between the parties in the form of the Annexure's to this agreement shall be binding upon the parties hereto upon this agreement becoming unconditional, unless specific provision is made to the contrary, even if the draft of any such contract attached to this document is not itself executed, or registered, if registration is required. In order to facilitate subsequent references to any such deeds, instrument or other contract, Lizalor shall, at the request of Engen, execute and deliver to Engen a separate document substantially in the form of the draft of that deed, instrument or other contract. Pending execution of any such separate document, the document attached hereto shall be of full force and effect, as from the time this agreement becomes unconditional, and shall serve as the record of the relevant deed, instrument or other contract.
- 15.2 The drafting of the relevant agreements (but exclusive of the SANRAL and Bakwena Agreements) and all registrations contemplated above as well as all other legal work incidental thereto shall be affected by Engens' attorneys (or SANRAL's attorneys, as SANRAL may decide with respect to the notarial deed of assignment of lease) and the associated costs shall be shared in equal amounts between Engen and Lizalor, however it is agreed that Lizalor's contribution to Engen's legal costs will not exceed R75,000-00 exclusive of value added tax. Upon execution of this agreement, Lizalor shall contribute the sum of R75,000-00 (hereinafter referred to as "the Contribution") towards the expenses, liabilities and duties incurred by Engen as legal costs in connection with the preparation, execution and implementation of this agreement (including but not limited to the preparation, execution and, if applicable, registration of every deed, bond and other document contemplated by the provisions of this agreement and all stamp duty thereon)



as between attorney and own client. All legal costs are those charged by Engen's attorneys in the ordinary course of business and by arrangement with it.

16. REMEDY OF DEFAULTS

Should Lizalor fail to perform any obligation under this agreement, the Notarial Lease or the Bakwena Agreement, Engen may do so and then Engen may (without prejudice to any other right or remedy which it may have) remedy that default on behalf of Lizalor and shall be entitled to recover from Lizalor the cost of so doing, or incurred by it in connection therewith.

17. BREACH

17.1 A party may cancel this agreement as against another party in either of the following circumstances but not otherwise:

- (a) subject to the provisions of sub-clause 17.2, for the repudiation or breach of this agreement by that other party in circumstances in which cancellation would be justified at common law; or
- (b) the liquidation, winding-up, bankruptcy, receivership, insolvency, judicial management or similar change of status of that other party.

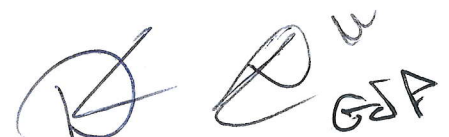
17.2 A party may not cancel this agreement for the repudiation or breach of this agreement by another party unless the party wishing to cancel has given that other party a reasonable opportunity by written notice effectively to retract the repudiation or substantially to remedy the breach, and that other party has failed to do so.

18. DOMICILIA AND NOTICES

18.1 The following addresses shall constitute the *domicilium citandi et executandi* of each of the parties:

- (a) in the case of Engen, the office of Engen's managing director, Engen Court, Thibault Square, Cape Town;
- (b) in the case of Lizalor, Lizalor Investments CC, Unit 4602, Greenways, Strand, 7140 (marked for the attention of the Executive Member).

18.2 Either party (in this clause 18 referred to as "the notifying party") may at any time and from time to time notify the other party of an alternative address which upon expiry of a period of fourteen days after receipt of such notice shall henceforth constitute the



*domicilium citandi et executandi* of the notifying party and be substituted for such party's pre-existing *domicilium citandi et executandi*.

- 18.3 An alternative address contemplated in sub-clause 18.2 shall be a valid physical address in South Africa, sufficiently explicit to enable it to be located without the need for enquiry or unusual effort and shall not be a post office box, *poste restante* or the like. Unless an alternative address complies with the terms of this sub-clause 18.3 the pre-existing *domicilium citandi et executandi* of the notifying party shall continue to exist.
- 18.4 Save to the extent (if any) inconsistent with this agreement, any reference in this agreement to the giving of notice by either party to the other party shall be construed as a reference to the giving of written notice. "Give" in this context includes "serve", "send", "deliver" and similar expressions, and "notice" includes any demand, request or other communication. No inference shall be drawn from the possibility (if the case) that the provisions of this agreement may sometimes expressly require written notice and other times not.
- 18.5 For the purposes of this agreement, sending by registered post, with respect to any notice or other document sent by one party to the other, shall be construed to mean properly addressing to that party, pre-paying and posting a registered envelope containing such notice or other document to the *domicilium citandi et executandi* of that party.
- 18.6 Where the provisions of this agreement permit or require any notice or other document to be served by either party on the other party, whether the expression "serve", or "give", or "send", or any other expression be used, then, unless the contrary intention appears from the relevant provisions of this agreement -
- (a) to the extent that any such requirement may constitute an obligation of the party required to serve that notice or other document, such obligation shall be deemed to have been discharged by sending it by registered post;
  - (b) subject to the provisions of paragraph 18.6(a) and those of sub-clause 18.7, no such notice or other document shall be deemed to have been served unless received by or on behalf of the party to be served: Provided that, unless the contrary be proved -
    - (i) any notice or other document sent by registered post shall be deemed to have been received, by the party to whom addressed, at the time at which the envelope containing it would have been delivered in the ordinary course of post;
    - (ii) delivery in the ordinary course of post shall be deemed not to exceed seven days after the day of posting.

Handwritten signature and initials in black ink, appearing to be 'D E W' and 'GDA'.

18.7 Notwithstanding anything to the contrary above in this clause 18, for purposes of this agreement any notice or other document shall be deemed to have been validly served on, or given or sent to, a party if delivered at the *domicilium citandi et executandi* of that party in a reasonable manner and reasonable efforts are made to obtain an acknowledgement of receipt thereof.

18.8 All references in this clause 18 to the *domicilium citandi et executandi* of a party shall be construed as that party's *domicilium citandi et executandi* at law for all claims of whatsoever nature asserted against that party by the other, in connection with any agreement which is subject to the provisions of this agreement.

19. VALUE ADDED TAX

All payments required to be made by one party to the other in terms of this agreement and any agreement concluded pursuant hereto, as set out in an exhibit, whether the amount of such payment is expressed in this agreement or by separate instrument, is expressed as excluding value added tax. The party to whom such payment may be due shall be entitled, in addition to claiming such payment, to value added tax thereon at the applicable rate, provided that such party is entitled by law in the circumstances to claim value added tax and provided that there is due compliance with all relevant formalities, inclusive of the provision by the payee of a valid tax invoice.

20. EXECUTION, LIZALOR'S DETAILS AND FURNISHING OF DOCUMENTS

Upon or immediately after execution of this agreement Lizalor undertakes to complete and furnish the details required in Annexure F attached hereto headed "OWNER'S DETAILS" and to furnish Engen with the documents referred to therein. The agreement set out herein shall however not be invalid merely by reason of the failure of Lizalor to complete detail set out in Annexure For the incorrectness of information set out therein.

21. SOUTH AFRICAN REVENUE SERVICES STATUS

21.1 Lizalor warrants that

- (a) Lizalor will be registered with the South African Revenue Services as a taxpayer and, if applicable, as a value added tax vendor;
- (b) all income tax and, if applicable, value added tax returns which are due as at the date of execution by Lizalor of this agreement will have been duly submitted the South African Revenue Services; and
- (c) that all income and value added tax which may have become due as at the date of execution by Lizalor of this agreement will be paid.



21.2 Lizalor undertakes to take immediate steps to regularise any breach of the warranties set out in sub-clause 21.1 and shall within 14 days of written request provide reasonable proof of compliance with the said warranties.

## 22. CHANGES IN LEGISLATION AND PRICING AND OPERATIONAL PRACTICES

22.1 The parties acknowledge that this agreement has been concluded in a complex and uncertain environment of;

- (a) officially regulated, or recommended, pricing as well as retail and wholesale margins,
- (b) conditional licensing of wholesalers, property owners and retailers,
- (c) regulated, or *quasi* regulated, matters pertinent to benchmarking of activities, supply, investment and permissible revenues,
- (d) the uncertain nature of the precise terms of implementation of the RAS Pricing System, or any subsequent changes thereto, and
- (e) governmental involvement in the Industry,

which have an impact on the costs, income or economic returns of each of the parties.

22.2 The parties agree that despite changes that might take place in the matters detailed in clause 22.1 each of the parties seeks to maintain, as far as reasonably practicable, the projected economic returns contemplated at 26<sup>th</sup> April 2011 or to suffer equally economic misery which might result from changes in such matters.

22.3 Should either party on reasonable grounds determine that such environment has changed to its detriment, whether it be a change in the elements applicable under the RAS Pricing System, or a change in what may be recovered, or forfeited by Engen, or should the RAS Pricing System itself be replaced, or not introduced in the manner contemplated in clause 7.5, or should there be complete de-regulation, and should these changes affect the economics of either party as contemplated on 26<sup>th</sup> April 2011 by more than 10%, such party may (notwithstanding anything to the contrary herein) in writing propose alterations to this agreement so as to provide redress for the circumstances which result from such change, taking into account the contents of clause 22.2. Should the parties be unable to reach agreement on the matter within a period of 14 days from the time of receipt of such proposed changes, the party concerned may cause the matter to be referred to arbitration by an independent third party, or parties, appointed by written agreement, or failing agreement, by an independent third party, appointed by agreement, or absent agreement, by the law Society of the Northern Provinces. The arbitrator should

Handwritten signatures and initials in black ink, including a large signature on the left and initials 'G+A' on the right.



as far as reasonably practicable be a person with experience of the Industry or an attorney of 20 years standing. More than one arbitrator may be appointed.

22.4 The arbitration shall be held as speedily as reasonably possible and each party shall have the right to address the arbitrator. In his or her award the arbitrator shall seek to uphold the principle of maintenance of economic returns or equality of misery contemplated in clause 22.2.

22.5 Each party shall bear its own legal costs provided that the costs of the arbitrator shall be shared equally. Nothing shall be construed so as to prevent more than one arbitrator from being appointed.

22.6 The rent payable under clauses 7.1(a) may not be changed until the earlier of,

(a) the 15<sup>th</sup> anniversary of the commencement date of this agreement, or

(b) the termination of the cession to RMB of that part of such rent as represents the difference between such rent and the compensation payable to SANRAL under clause 6 of the Notarial Lease.

22.7 The rent payable under paragraph 7.1 (c) may not be changed.

### 23. INTEGRATION, VARIATION AND WAIVER

23.1 This document together with the exhibits hereto is intended to contain the whole, and to constitute the exclusive memorial, of the agreement of the parties with respect to the subject matter hereof. This shall not affect co-ateral agreements.

23.2 This agreement is not subject to any condition, and shall not be affected by any representation, unless it is expressly recorded in this document.

23.3 No waiver asserted against either party shall be effective against that party unless expressed in writing and signed by or on behalf of that party. Without in any way limiting the scope of the foregoing provision of this sub-clause 23.3 it is recorded that mere delay in either party's availing himself or itself of any right, power, benefit or opportunity, shall not in itself be sufficient to constitute a waiver thereof. Each party undertakes to implement this agreement in a reasonable manner and without taking advantage of any oversight on the part of the other, otherwise than with respect to the payment of rentals, or other amounts under this agreement. A party which inadvertently fails to exercise any right within the time specified for the exercise thereof shall be entitled to do so within 30 days of being notified in writing by the other party of the lapse of the time limit concerned, or becoming aware of the failure, provided that this takes place within 6 months of the original time for the exercise thereof.



24. MISCELLANEOUS

- 24.1 Lizalor shall not cede any right under this agreement or which may arise or have arisen pursuant thereto or in connection therewith without the prior written consent of Engen, which consent Engen may withhold in the event of there being any potential prejudice to the interests of Engen. Engen may cede to any person in whole or in part any accrued right under this agreement (inclusive of any lease, deed or agreement concluded pursuant hereto), or may assign to any related Company all its rights and obligations, or all its then future rights and obligations, under this agreement (inclusive of any lease, deed or agreement concluded pursuant hereto), but in the event of such assignment Engen shall remain bound to Lizalor as surety for the assignee.
- 24.2 Engen may exercise any right or perform any obligation in terms of the provisions of this agreement through any contractor or nominee appointed by it for the purpose.
- 24.3 Lizalor records that it has represented to, and hereby warrants to, Engen that in concluding this agreement Lizalor is not acting as agent or trustee for, or nominee of, any other person (disclosed or not), but is acting as principal to secure the benefits of this agreement solely for Lizalor and not for anyone else in whole or part.

25. INTERPRETATION

- 25.1 Except to the extent to which the context may otherwise require, this agreement shall be construed in accordance with the following provisions of this sub-clause:
- (a) any reference to "this agreement" shall be construed as a reference to this document as read together with the *Exhibits* hereto;
  - (b) any word or expression, cognate with respect to a word or expression defined in this agreement, shall bear a corresponding meaning;
  - (c) any word or expression importing the singular number shall include the plural and vice versa;
  - (d) to the extent that the context may so permit -
    - (i) any word or expression importing the masculine gender shall include the feminine;
    - (ii) any reference to a natural person (whether in relation to a party or anyone else) shall include corporations and other juristic persons, and, where the context so permits, shall further include any government or state or any

Handwritten initials and signature in blue ink, including the letters 'B', 'E', 'GDP', and a small 'u' below.

division (including but not limited to any department or ministry) or agency thereof or authority constituted thereunder, and any association of persons (within the foregoing meaning) even if unincorporated;

- (iii) any reference (whether to a party or to anyone else) which is expressed in the neuter gender shall be construed to include natural persons;
- (e) regard shall not be had to the heading of any clause of this agreement in the interpretation of the provisions of this agreement, the headings of the clauses of this agreement having been included solely for ease of reference;
- (f) any reference to the provisions of law and any similar reference of general application shall be construed to include both legislation and the common law, and any reference to "legislation" includes any fixed text enacted by a body with authority to promulgate rules of whatever nature having the force of law and any administrative regulations issued pursuant thereto, and any reference to an identified item of legislation shall be construed as a reference thereto as modified for the time being, including any legislation made in substitution therefor;
- (g) any reference to a business day shall be construed as meaning a day other than a Saturday, a Sunday or a public holiday, and for this purpose "public holiday", in relation to any obligation, shall mean a public holiday for the time being established or proclaimed as such in accordance with the provisions of the relevant legislation applicable at the place for performance of such obligation;
- (h) any reference to a day shall be construed as a period of twenty-four hours from midnight to midnight, and any reference to a period reckoned as a number of days after a particular day shall be calculated by counting that number of days from (as the first of those days) the day immediately following that particular day: Provided that if the last day of such period would not be a business day then such period shall extend to, and shall include, the first business day thereafter;
- (i) any reference to a calendar month shall be construed as meaning one of the twelve months into which the year is divided according to the calendar (that is, January, February, etc);
- (j) any reference to a calendar year shall mean a period of twelve consecutive calendar months commencing with January;
- (k) any reference to a period reckoned as a year (as distinct from a calendar year) after, or as from, or commencing on, a particular day (or a particular time) shall be construed as commencing on and including that day (or as commencing at that time) and as ending on and including the day immediately preceding the first anniversary of that particular day (or of the day in which that particular time occurs); and any reference to a period reckoned as a number of years shall be

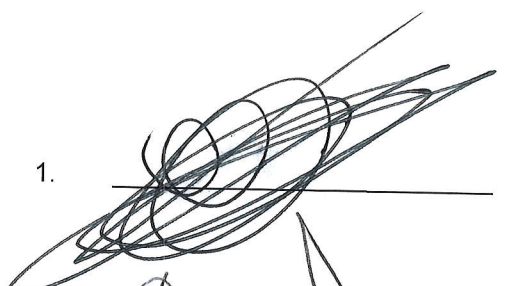

Handwritten initials and signature in blue ink, including the letters 'B', 'GDP', and a signature.

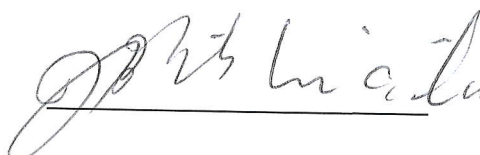
construed accordingly: Provided that the anniversary, in any year which is not a leap year, of 29 February shall be deemed to be 28 February.

SIGNED at Sandton this 29 day of JUNE 2012.

AS WITNESSES:

For and on behalf of  
ENGEN PETROLEUM LIMITED

1.   
2.   
SANDTON

  
JUNE 2012.

SIGNED at this 29 day of JUNE 2012.

AS WITNESSES:

For and on behalf of LIZALOR INVESTMENTS CC

1. \_\_\_\_\_

2. 