



## Ministry of Mines and Energy

### Legal Advice

#### ORDINANCE No. 265, DATED JUNE 21, 2019.

Rules the Co-Participation Agreement between the Assignee of the Transfer of Rights Agreement and the Contractor of the Surplus Transfer of Rights Volumes Production Sharing Agreement related to the Development Areas of Atapu, Búzios, Itapu and Sépia, in the Santos Basin.

**THE MINISTER OF STATE OF MINES AND ENERGY**, under the authority conferred on him by Article 87, sole paragraph, items II and IV of the Constitution, in view of the provisions of Article 10 of Law No. 12351, dated December 22, 2010, of Article 2, paragraph 1 of CNPE Resolution No. 2, dated February 28, 2019, of MME Ordinance no. 213, dated April 23, 2019, and that contained in Process No. 48380.000197/2018-13, decides:

#### CHAPTER I

##### GENERAL DEFINITIONS

Article 1. For the purposes provided in this Ordinance, in addition to the definitions contained in Law No. 9478, dated August 6, 1997, in Law No. 12351, dated December 22, 2010, in ANP Resolution No. 25, dated July 8, 2013, in the Transfer of Rights Agreement and in the **Surplus Transfer of Rights Volumes Production Sharing Agreement**, the following definition shall be considered:

I - Co-Participation Agreement: agreement executed between the Contractor of the **Surplus Transfer of Rights Volumes Production Sharing Agreement**, the Assignee of the Transfer of Rights Agreement and Empresa Brasileira de Administração de Petróleo e Gás Natural S.A. - Pré-Sal Petróleo S.A. - PPSA, in the capacity of Consenting Party, for unified Development and Production in the Co-Participation Area;

II - Co-Participation Area: area of the Transfer of Rights Agreement coinciding with the area of the **Surplus Transfer of Rights Volumes Production Sharing Agreement**;

III - Compensation: amount owed by the Contractor under the Production Sharing regime to the Assignee, pursuant to CNPE Resolution No. 2, dated February 28, 2019, and MME Ordinance No. 213, dated April 23, 2019;

IV - Effective Date: the first day of the month following the month of notification to the Co-Participation Area Operator of the approval by the Brazilian Agency of Petroleum, Natural Gas and Biofuels - ANP, of the Co-Participation Agreement or respective Addendum;

V - Consenting Party: Empresa Brasileira de Administração de Petróleo e Gás Natural S.A. - Pré-Sal Petróleo S.A. - PPSA, as Manager of the **Surplus Transfer of Rights Volumes Production Sharing Agreement**;

VI – Technical Appraisal: opinion that, in the absence of a Co-Participation Agreement voluntarily executed between the Parties, will serve as a basis to determine the allocation of rights and obligations related to the Co-Participation Area;

VII- Co-Participation Area Operator: the company responsible for the direct and indirect management of the Co-Participation Area Development and Production activities;

VIII - Party: the Assignee or the Contractor, as the case may be, as a participant in the Co-Participation Agreement;

IX - Participation: the share of the Assignee and the Contractor in the undivided rights and obligations arising from the Co-Participation Agreement, calculated based on the percentage of the volume of recoverable Oil equivalent of the Co-Participation Area under each Agreement; and

X - Redetermination: change in the Participation provided in the Co-Participation Agreement.

## CHAPTER II CO-PARTICIPATION AGREEMENT

Article 2. The Contractors and the Assignee shall execute Co-Participation Agreements for the Development and Production of Oil and Natural Gas in the Co-Participation Areas corresponding to the Development Areas of Atapu, Búzios, Itapu and Sépia, in the Santos Basin, as set forth herein.

Paragraph 1. The Manager shall be a signatory to the Co-Participation Agreements as Consenting Party.

Paragraph 2. The Exploration and Production regime to be adopted in the Co-Participation Area is independent of the regime prevailing in the contracted area under the Transfer of Rights regime and in the area contracted under the Production Sharing regime.

Paragraph 3. The Agreement referred to in the **head paragraph** shall be submitted for approval by the ANP.

Article 3. The Co-Participation Agreement shall contain at least the following information:

- I – identification and definition of the Co-Participation Area;
- II - definition of the Co-Participation Area Operator;
- III - the division of rights and obligations of the Parties that involve or impact the Federal Government and the public interest;
- IV – the Participations of the Parties;
- V - the possibility of changing the Participations set forth in the Co-Participation Agreement, with their criteria, conditions, terms, limits and amount;
- VI - the obligations of the Parties regarding payment of Government Take;
- VII – the obligations of the Parties, percentages and rules of Local Content;
- VIII – the Co-Participation Area Development Plan;
- IX – the term of the Co-Participação Agreement, under the provisions of Paragraph 3;
- X - the possibility of adopting a procedure to propose Operations with Exclusive Risks;
- XI - the amount and method of payment of Compensation to the Assignee provided in MME Ordinance No. 213, dated April 23, 2019; and
- XII – the dispute settlement mechanisms.

Paragraph 1. The Participations shall be defined based on the percentage of the volume of recoverable Oil equivalent of the Co-Participation Area.

Paragraph 2. The ratio of “1 m<sup>3</sup> of Oil = 1,000 m<sup>3</sup> of Natural Gas,” measured under the reference conditions of 20°C of temperature and 0.101325 MPa of pressure, shall be used if the Parties do not submit a report accompanied by an appraisal attesting to the energy equivalence between the volumes of Oil and Natural Gas for evaluation and approval by the ANP.

Paragraph 3. The Co-Participation Agreement shall be terminated upon the termination of one of the Agreements that granted to the Parties the rights of Exploration and Production of Oil and Natural Gas in the Co-Participation Area.

Paragraph 4. For the preparation of the Co-Participation Agreement, the Divisible Obligations shall be complied with according to the rules of each Agreement and the Indivisible Obligations according to ANP regulations.

### CHAPTER III ANP APPROVAL

Article 4. No later than 18 (eighteen) months from the date of execution of the **Surplus Transfer of Rights Volumes Production Sharing Agreement**, the Parties shall submit the Co-Participation Agreement to prior approval by the ANP.

Paragraph 1. The amount and method of payment of the Compensation shall not be approved by the ANP.

Paragraph 2. The ANP, within the scope of its regulatory powers, shall manifest itself within 60 (sixty) days from the receipt of the Co-Participation Agreement executed between the Parties and the Consenting Party.

Paragraph 3. The ANP may request changes or additional information to the Co-Participation Agreement, which must be complied with within 60 (sixty) days.

Paragraph 4. The term referred to in paragraph 2 shall be interrupted whenever the ANP requests additional information and shall be resumed upon receipt of such information.

Article 5. The Co-Participation Agreement shall take effect as of the Effective Date, provided that, on that date, the Contractor is compliant with the method of payment of the Compensation agreed between the Parties.

Sole paragraph. If the Contractor is not compliant on the Effective Date, the Co-Participation Agreement shall be resubmitted for approval by the ANP.

Article 6. While the approval of the Co-Participation Agreement is pending, the Assignee may proceed with the activities set forth in the Development Plan of the volumes contracted under the Transfer of Rights regime, unless the ANP, within the scope of its regulatory power, determines the suspension of Development and Production or imposes conditions for their continuation.

Article 7. The Parties and the Consenting Party shall inform the ANP on a quarterly basis of the progress of negotiations for the execution of the Co-Participation Agreement, presenting the following information, among other:

- I – schedule of activities;
- II - division of rights and obligations of the Parties that involve or impact the Federal Government and the public interest; and
- III – studies performed.

### CHAPTER IV ACCESS TO DATA AND INFORMATION

Article 8. For the negotiation of the Co-Participation Agreement and its Redeterminations, the Parties shall guarantee to the Consenting Party, free of charge, access to data and information

available and required for the definition of their Participations, including the static and dynamic Reservoir models, subject to the confidentiality of said data, information, interpretations and models.

Paragraph 1. The Parties and the Consenting Party shall cooperate to build up and maintain a shared database, containing static and dynamic Reservoir models, as well as the project-oriented economic model, to guide discussions on Development, Redeterminations, estimate of recoverable volumes of the Deposit and Production forecasts.

Paragraph 2. The compulsory disclosure of data and information shall not interfere with the other rights granted to the Parties by applicable law or by the Agreements conferring rights over the Exploration and Production of Oil and Natural Gas in the Co-Participation Area, and one Party shall be reimbursed by the other Party for the costs of data and information contributed to the shared database.

## CHAPTER V REDETERMINATIONS

Article 9. Redeterminations of the Co-Participation Agreement shall take effect as of the first day of the month following the approval by the ANP of the Addendum to the Co-Participation Agreement defining the new Participations.

## CHAPTER VI GOVERNMENT TAKE

Article 10. Changes in the obligations regarding the payment of Government Take arising from the Redetermination of the Co-Participation Agreement shall take effect from the first day of the month following approval by the ANP, with no retroactive effect in relation to payments already made.

## CHAPTER VII ABSENCE OF VOLUNTARY CO-PARTICIPATION AGREEMENT

Article 11. In the event that the Parties and the Consenting Party fail to voluntarily execute the Co-Participation Agreement within the term stipulated in Article 4, the ANP shall determine, in accordance with the Best Practices of the Oil Industry, the mode of allocation of rights and obligations on the Deposit, including the Participations.

Paragraph 1. At any time prior the expiry of the term referred to in Article 4, any one of the Parties or the Consenting Party may inform the ANP of the absence of a Voluntary Agreement.

Paragraph 2. In the absence of a Voluntary Agreement, the Parties and the Consenting Party shall forward to the ANP a clear and detailed description of the reasons that prevented the execution of the Co-Participation Agreement, accompanied by their respective proposals for settlement and all the data, information, interpretations and static and dynamic Reservoir models required for the evaluation and preparation of the Technical Appraisal which will serve as a basis for the ANP to determine how the rights and obligations regarding the Deposit, including the Participations, shall be allocated, subject to the confidentiality of said data, information, interpretations and models.

Paragraph 3. The ANP may request other data deemed necessary for the evaluation and preparation of the Technical Appraisal, and the Parties and the Consenting Party shall submit them within 30 (thirty) days of the request.

Paragraph 4. The ANP may, at its sole discretion, have the Technical Appraisal prepared by a third party appointed by it, but hired and remunerated by the Parties.

Paragraph 5. The Technical Appraisal, with a reasoned approach to all controversial issues, shall be submitted for approval by the Board of Directors of the ANP.

Paragraph 6. The ANP shall have a term of up to 120 (one hundred and twenty) days from the filing of the documentation referred to in paragraph 1 to determine how the rights and obligations on the Deposit will be allocated, pursuant to Article 3.

Paragraph 7. The term set forth in paragraph 6 shall be interrupted whenever the ANP requests information for the evaluation and preparation of the Technical Appraisal and shall be resumed upon receipt of such information.

Paragraph 8. Following the decision by the ANP, the Parties shall be notified to execute the Co-Participation Agreement within 60 (sixty) days, in accordance with the terms established by the ANP.

Article 12. Disputes concerning the amount of the Compensation and its method of payment shall not be settled by the ANP and shall be settled by means of the alternative dispute settlement mechanism, pursuant to the Annex.

Sole paragraph. The Assignee of the Transfer of Rights Agreement, the Contractor of the Surplus Transfer of Rights Volumes Production Sharing Agreement and the PPSA shall sign the "Expertise Commitment" contained in the Annex on the same day as the execution of the Surplus Transfer of Rights Volumes Production Sharing Agreement.

#### CHAPTER VIII PREDETERMINATION OPTION

Article 13. The Parties may, by Agreement, establish the terms and conditions that allow the Contractor to obtain access to a percentage of the Co-Participation Area Production in the period between the date of execution of the Surplus Transfer of Rights Volumes Production Sharing Agreement and the Effective Date of the Co-Participation Agreement.

Paragraph 1. The percentage of Production allocated to the Contractor under the **head paragraph** shall be considered as Production volume of the Surplus Transfer of Rights Volumes Production Sharing Agreement, according to the rules set forth in Law no. 12351/2010.

Paragraph 2. The Agreement referred to in the **head paragraph** shall follow the template determined by the ANP.

Paragraph 3. In the event of the option provided in the **head paragraph**, as from the first day of the month following the date of the filing of the agreement with the ANP, the Contractor may be allocated its share of the Production, with the Federal Government, represented by PPSA, being allocated its share of Surplus Oil.

Paragraph 3. The Manager shall be a signatory to the Agreements referred to in the **head paragraph** as Consenting Party.

#### CHAPTER IX PROVISIONAL AND GENERAL PROVISIONS

Article 14. Between the date of the execution of the Surplus Transfer of Rights Volumes Production Sharing Agreement and the Effective Date of the Co-Participation Agreement, the rules of the Transfer of Rights Agreement shall prevail, especially regarding the procurement of goods and services and acquisition of the Production.

Paragraph 1. From the Effective Date of the Co-Participation Agreement, the Consortium Members shall be allocated their share of the Production and bear the costs in accordance with the Participations defined therein, and the Federal Government, represented by PPSA, shall be allocated its share of Surplus Oil.

Paragraph 2. In the event of the Contractor opting for the provisions in Article 12, the rules agreed between the Parties shall prevail provisionally, especially as regards to the procurement of goods and services.

Article 15. Procurement of goods and services under the Transfer of Rights regime shall follow the rules of the Surplus Transfer of Rights Volumes Production Sharing Agreements, price competitiveness being presumed.

Article 16. The ANP shall be responsible for regulating and supervising the activities performed based on this Ordinance, applying, as the case may be, ANP Resolution No. 25, dated July 8, 2013 and CNPE Resolution No. 8, dated December 14, 2016.

Article 17. This Ordinance shall take effect on the date of its publication.

## **BENTO ALBUQUERQUE**

This document does not replace the one published in the Federal Official Gazette of June 26, 2019, and republished in the Federal Official Gazette of June 27, 2019 - Section 1.

### **ANNEX**

#### **Expertise Commitment**

Petróleo Brasileiro S. A. - Petrobras [qualification];

[Contractor of the Surplus Transfer of Rights Volumes Production Sharing Agreement]  
[qualification] and

Pré-Sal Petróleo S.A. - PPSA [qualification], decide:

, by mutual agreement, to execute this Expertise Commitment on issues relating to the Compensation provided in CNPE Resolution No. 2, dated February 28, 2019, with parameters set forth in MME Ordinance No. 213, dated April 23, 2019, as follows:

#### **CLAUSE ONE - OPTION OF FINAL AND BINDING EXPERTISE**

In the event of any dispute or controversy relating solely to the calculation of the Compensation due by the Contractor to the Assignee and to the manner of payment, the Parties agree to submit the matter to a Binding Expertise Procedure in accordance with the rules for expertise of the International Chamber of Commerce. The Expert's decision shall be final and binding for the Parties.

#### **CLAUSE TWO - COSTS**

The costs of the Procedure referred to in Clause One shall be paid in advance equally between the Assignee of the Transfer of Rights Agreement and the Contractor of the Surplus Transfer of Rights Volumes Production Sharing Agreement, even if initiated by PPSA.

**Sole sub-clause** – The costs incurred by Production Sharing Contractors shall be recognized as cost in oil.

The Parties, intending to be legally bound, execute this Commitment in \_\_\_\_ original copies.

[date and signature]