

***THE AGREEMENT ON FRIENDLY RELATIONS  
& COOPERATION (AFRC)***

***between***

***THE REPUBLIC OF SOUTH SUDAN***

***and***

***THE REPUBLIC OF SUDAN***

***ADDIS ABABA, ETHIOPIA***

***(July 2012)***

***A Republic of South Sudan Proposal***

**AGREEMENT ON FRIENDLY RELATIONS & COOPERATION BETWEEN  
THE REPUBLIC OF SOUTH SUDAN AND THE REPUBLIC OF SUDAN (AFRC)  
(July 2012)**

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## CHAPEAU

**WHEREAS** the Comprehensive Peace Agreement was concluded on 9 January 2005 ("CPA") which ended the civil war between the Government of Sudan and the Sudan People's Liberation Movement/Army and laid the foundation for a new relationship of peace and cooperation between Northern Sudan and Southern Sudan;

**WHEREAS** the Parties are encouraged by the progress made by them in the implementation of the CPA;

**WHEREAS** the people of Southern Sudan exercised their right to self-determination and voted for secession in the referendum held in January 2011, and leading to the emergence of the Republic of South Sudan as an independent sovereign state on 9 July 2011;

**WHEREAS** the Republic of Sudan was the first to recognize the new State of the Republic of South Sudan and the other nations of the world followed by recognizing and welcoming South Sudan into the community of nations;

**WHEREAS** the Parties are desirous to open a new page in their relations and create and sustain an atmosphere where the two nations can peacefully co-exist and benefit from one another in a manner that honours the shared history of their people, and their common aspirations for peace and development;

**WHEREAS** the two Parties have met in continuous negotiations between June 2010 and July 2012, in Juba, South Sudan, Khartoum, Sudan, and in various locations throughout the Federal Democratic Republic of Ethiopia under the auspices of the African Union High Level Implementation Panel, and with the objective of concluding an agreement on post-2011 referendum issues, security arrangements, and other related matters such as their common border, various economic issues, the final status of the Abyei Area, and the protection of nationals of one State resident in the other.

**RECALLING AND REAFFIRMING** that in pursuance of this commitment the Parties already have duly reached a number of agreements including the 20 June 2011 Agreement on the Temporary Arrangement for the Administration and Security of the Abyei Area; the 29 June 2011 Agreement on Border Security and the Joint Political and Security Mechanism; the 30 July, 2011 Agreement on the Border Monitoring Support Mission; the 8 August 2011 Agreement on the Border Monitoring Support Mission; the 10 February 2012 Memorandum of Understanding on Non-aggression and Cooperation; the initialled 13 March 2012 Agreement on the Demarcation of the Boundary; the initialled 13 March 2012 Framework Agreement on the Status of Nationals of the Other State and Related Matters; and the 23 June 2012 Agreement on the Definition of Cessation of Hostilities.

**EXPRESSING GRATITUDE** for the dedicated efforts of all the Facilitators, especially the African Union High Level Implementation Panel, their Host, the Federal Democratic Republic of Ethiopia, Intergovernmental Authority on Development ("IGAD"), the African Union Peace and Security Council and the AU Commission and Member States, and the International Community in accompanying and aiding the two nations in their path to peace, in particular, IGAD, the African Union, the United Nations, the European Union, and the Governments of Norway, the United States, and the United Kingdom.

**THE PARTIES HEREBY** conclude this *"Agreement on Friendly Relations & Cooperation between the Republic of South Sudan and the Republic of Sudan"* (hereinafter "AFRC" or "Agreement on Friendly Relations & Cooperation") addressing post 2011 arrangements, security, and other related matters aimed at securing a permanent peace between their two nations marked by mutual viability, respect for each other's territorial integrity and sovereignty, and a renewed commitment to partnership, cooperation, and friendly relations;

**THE PARTIES JOINTLY APPEAL** to the regional and international community and call on organizations and States witness to the signing of this Agreement on Friendly Relations & Cooperation to provide their unwavering support to the full implementation of this agreement, and further appeal to them to avail resources

and political support to the Parties to ensure the fulfilment of the objectives of this agreement;

**THE PARTIES ARE EVER MINDFUL** that war is to be assigned to their past and peace is to be their future; and

**THE PARTIES ARE CONFIDENT** that while challenges still lay ahead, their future also holds great opportunities for peaceful development and prosperity, and that this agreement express their united will to achieve these objectives in a spirit of partnership, cooperation and friendly relations.

**CONSISTENT WITH THIS SPIRIT AND THROUGH THE SIGNING BELOW AND BEFORE THE WITNESSES HERE PRESENT, THE PARTIES COMMIT THEMSELVES TO JOINTLY AND FULLY IMPLEMENT IN GOOD FAITH THIS AGREEMENT ON FRIENDLY RELATIONS & COOPERATION WITH ALL OF ITS PARTS AND ASSOCIATED ANNEXES.**

\* \* \*

## DEFINITIONS

"*African Union Peace and Security Council Communiqué*" means the communiqué issued on 24 April 2012 during the 319th session, or "*AUPSC Communiqué*";

"*Agreement on Friendly Relations & Cooperation*" or "*AFRC*" means this entire agreement and all of its Parts and associated Annexes, known as: the "*Agreement on Friendly Relations & Cooperation between the Republic of South Sudan and the Republic of Sudan, dated July 2012*".

"*Comprehensive Peace Agreement*" means the agreements signed by the Government of Sudan and the Sudan People's Liberation Movement/Army on January 9, 2005.

"*Government of Southern Sudan*" means the government recognized in the Interim National Constitution of the Republic of Sudan, 2005.

"*Government of the Republic of South Sudan*" or "*RSS Government*" means the government of the Republic of South Sudan resulting from the secession of Southern Sudan.

"*Government of Sudan*" or "*GoS*" means the government in existence prior to secession and the continuing State resulting from the secession, whichever the context requires.

"*Interim National Constitution*" means the Interim National Constitution of the Republic of Sudan, 2005.

"*Interim Constitution of Southern Sudan*" means the Interim Constitution of Southern Sudan, 2005.

"*Interim Period*" means the six-year period from July 9, 2005 to July 9, 2011 provided for in Article 2.2 of the Comprehensive Peace Agreement's Machakos Protocol.

"*Parties*" means the Republic of South Sudan and the Republic of Sudan.

*“Republic of Sudan”* means the continuing State resulting from the secession of Southern Sudan (*“Sudan”*).

*“Republic of South Sudan”* means the successor State resulting from the secession of Southern Sudan (*“RSS”* or *“South Sudan”*).

*“Predecessor State”* means the sovereign State that existed in Sudan up and until the point of secession.

*“Transboundary Water Resources”* means a transboundary watercourse, which is any system of surface waters and ground waters, parts of which are situated in Sudan and South Sudan, constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus.

*“United Nations Security Council Resolution 2046”* means the resolution adopted on 2 May 2012 concerning Sudan and South Sudan (*“UNSC Res. 2046”*).

## PART I: SECURITY AND BORDERS

**Recalling** the agreed principle of promoting the mutual viability and peaceful co-existence of the Republic of South Sudan and the Republic of Sudan;

**Acknowledging** the commitment of the two States to respect the territorial integrity and sovereignty of the other;

**Recognizing** the commitment of the Parties to promote a stable South Sudan and Sudan;

**Resolving** to resort only to peaceful means for settlement of their differences;

**Affirming** the commitment of the two States to implementing the African Union Constitutive Act, and the United Nations Charter, and relevant principles of International Law, including the Vienna Convention on the Succession of States in Respect of Treaties of 1978, and International Humanitarian Law;

**Respecting** their shared commitment to expeditiously complete the demarcation of the international boundary between the two States as called upon by the AUPSC Communiqué and UNSC Res. 2046;

**Appreciating** the necessity of reaching a final agreement on all border disputes and related issues in order to provide a framework for managing their common border and improving the lives of their citizens living along the border;

**The Parties do hereby agree to the following:**

## **CHAPTER I: SECURITY**

### **Article 1: Respect for Prior Security Agreements**

- a. The Parties reaffirm their commitment to fully implement in good faith all security agreements previously concluded, including the June 29, 2011 Agreement on Border Security and the Joint Political and Security Mechanism, the July 30, 2011 Agreement on the Border Monitoring Support Mission, the 8 August 2011 Agreement on the Border Monitoring Support Mission, the 10 February 2012 Memorandum of Understanding on Non-aggression and Cooperation, and the 23 June 2012 Agreement on the Definition of Cessation of Hostilities.
- b. These concluded security agreements shall remain in force with their terms incorporated by reference herein, unless otherwise expressly modified by this Part.

### **Article 2: Cessation of Hostilities**

- a. The Parties shall cease all hostilities, including aerial bombardments against each other and renounce the use of violence to resolve their differences.
- b. The Joint Political and Security Mechanism ("JPSM") shall oversee compliance with the cessation of hostilities as per the 23 June 2012 Agreement on the Definition of Cessation of Hostilities and oversee compliance with the 10 February 2012 Memorandum of Understanding on Non-aggression and Cooperation.

### **Article 3: Establishment of the Safe Demilitarized Border Zone (SDBZ)**

- a. The Parties unconditionally accept the administrative and security map presented to them by the African Union High Level Implementation Panel ("AUHIP") in November 2011 ("AUHIP 2011 Map") as endorsed by the AUPSC Communiqué and UNSC Res. 2046.
- b. The Parties reaffirm that use of the AUHIP 2011 Map to establish the SDBZ and to implement the associated security agreements in no way prejudices the final settlement of any outstanding disputed and claimed areas or the demarcation of the boundary.

c. The Parties shall immediately establish the SDBZ where the forces of the two Parties shall redeploy ten (10) kilometres to the North and South of the centre line established by the AUHIP 2011 Map.

d. The Parties shall unconditionally withdraw all their armed forces to their respective sides of the centre line as provided for by the AUHIP 2011 Map and in accordance with this Part, and previously adopted security agreements.

#### **Article 4: Administration of SDBZ**

Each state shall exercise administrative control over the SDBZ area that rests within its sovereign territory as per the centre line established by the AUHIP 2011 Map.

#### **Article 5: Activation of Joint Border Verification and Monitoring Mechanism (JBVMM)**

a. The Parties shall immediately deploy and operationalize the JBVMM.

b. The headquarters of the JBVMM shall be located at Asosa in Ethiopia, as proposed by the United Nations Interim Security Forces for Abyei (UNISFA).

c. The Parties shall assemble their JBVMM monitors and immediately deploy upon instructions by the JPSM and the UNISFA Force Commander.

d. The four (4) JBVMM sectors shall be divided equally with two (2) located in South Sudan (Aweil and Renk) and two (2) located in Sudan (Kosti and Kadugli).

e. The ten (10) JBVMM Team Site headquarters shall be divided equally between South Sudan and Sudan as follows: two (2) in the area of Aweil, and three (3) in the area of Renk; and two (2) in the area of Kosti, and three (3) in the area of Kadugli.

f. The JBVMM shall determine the exact locations of the Team Sites within the ten (10) areas listed above in consultation with the JPSM and the UNISFA Force Commander.

## **Article 6: Activation of the Ad hoc Committee**

- a. Having already named their respective members, the JPSM shall immediately establish the Ad hoc Committee.
- b. The Ad hoc Committee shall immediately convene its first meeting and commence its work as shall be directed by the co-chairs of the JPSM.
- c. The Ad hoc Committee shall perform its functions in accordance with the 23 June 2012 Terms of Reference adopted by the Parties.

## **Article 7: Harboursing or Support of Armed Groups**

Neither State shall harbour or provide any form of support to armed groups, mercenaries, terrorist organizations, or other organized national criminal groups, which may carry out hostile acts against the other State.

## **Article 8: Hostile Propaganda**

The Parties shall immediately cease hostile propaganda and inflammatory statements in the media against each other.

## **Article 9: Demilitarization and Joint Administration of Unresolved Disputed and Claimed Areas**

### *a. Demilitarization*

- i. Without prejudice to Article 3 above, in the event that there remain unresolved disputed or claimed areas along the border as of 2 August 2012, such areas shall be immediately and fully demilitarized.
- ii. In implementation of sub-article 9(a)(i) above, the centreline established by the AUHIP 2011 Map shall not apply where such unresolved area(s) exist, but rather the two states shall redeploy their forces 10 kilometres outside of the Northern and Southern most borders asserted and claimed by each Party in these unresolved areas.

iii. The Parties shall agree to the coordinates (longitude/latitude) of these unresolved areas for the purpose of the demilitarization provided for in this article.

*b. Joint Administration*

Without prejudice to Article 4 above, in the event that there remain unresolved disputed or claimed areas along the border as of 2 August 2012, such areas shall be jointly administered by the two States, with assistance of a third party, pending final and binding settlement of their final status.

*c. For purposes of this article, the disputed and claimed areas are as listed at Chapter III, Article 1 of this Part (see below).*

**Article 10: UNISFA**

a. The Parties shall cooperate fully with UNISFA so that it may carry out its mandated activities under this Agreement on Friendly Relations & Cooperation, the prior concluded security agreements, as well as the security provisions of the 20 June 2011 Agreement on Temporary Security and Administrative Arrangements for the Abyei Area.

b. The Parties jointly request the United Nations Security Council, in consultation with the two States, to periodically review the activities and mandate of UNISFA and ensure that it is adequately resourced to perform its functions.

**CHAPTER II: BORDER DEMARCATION**

**Article 1: Demarcation of Agreed Border Areas**

a. This article shall be implemented in accordance with the initialled Agreement on the Demarcation of the Boundary made in Addis Ababa on the 13th of March 2012 (the "Demarcation Agreement"). That Demarcation Agreement shall be deemed final and binding upon signature of the AFRC, and shall be read together with this Chapter.

b. The demarcation of the agreed boundary defined in the Demarcation Agreement shall commence immediately and in accordance with the terms of said agreement and this Chapter.

c. The Parties agree to immediately appoint the members of the Joint Boundary Commission ("JBC"), the Joint Demarcation Committee ("JDC"), and the Joint Technical Team ("JTT"), in accordance with the Demarcation Agreement.

d. Without prejudice to the provisions of Article 6(5) of the Demarcation Agreement, the Parties agree that the JDC's first order of business shall be to define (plot) on a map the agreed boundary. The JDC shall utilize the physical descriptions of the areas already agreed upon by the Ad Hoc Technical Boundary Committee, and the longitude/latitudes previously agreed to by the Ad Hoc Boundary Technical Committee, if any.

e. If, during the demarcation exercise on the ground, any issue or difference arises in relation to the demarcation of the boundary, the two States shall address the matter in good faith, and shall endeavour to settle the issue within forty-five (45) days first at the level of the JTT, then in the JDC, and if necessary, then to the JBC.

i. In the event that an issue or difference arises as specified in sub-article 1(e) above, the JTT shall record the matter, and shall refer it to the JDC within seven (7) days.

ii. The JDC shall review the matter and shall seek to settle the issue within two (2) weeks of receiving the referral. If the JDC settles the matter successfully, it shall instruct the JTT to implement its decision.

iii. If the JDC fails to settle the matter, it shall refer the issue to the JBC for resolution within three (3) weeks therefrom.

## **Article 2: Demarcation of Settled Disputed and Claimed Areas**

The JDC and JTT shall immediately commence the demarcation process for the areas settled as per Chapter III below, in accordance with the terms of the AFRC and the Demarcation Agreement.

## **CHAPTER III: PEACEFUL SETTLEMENT OF DISPUTED AND CLAIMED AREAS**

### **Article 1: Disputed and Claimed Areas**

For purposes of this Agreement on Friendly Relations & Cooperation, the disputed and claimed areas are as follows:

*a. The disputed areas are:*

- i. Kafia Kingi/Hofrat el Nahas (between Western Bahr el Ghazal and Southern Darfur states);
- ii. Kiir/Bahr al Arab (between Northern Bahr el Ghazal and Southern Darfur states);
- iii. Kaka Town (in Upper Nile state);
- iv. Megenis (between Upper Nile and White Nile states -Western bank); and
- v. Joda/Wanthou (between Upper Nile and White Nile states -Eastern bank).

*b. The claimed areas are:*

- i. Panthou/Heglig area including Amoyak and Ban (Kurundi) (the area between Unity and Southern Kordofan states);
- ii. 80km of border in Kaka area (between Upper Nile and Southern Kordofan states);
- iii. Bowth/Babanis (area East of Renk County in Upper Nile state and extending to the Blue Nile and Sinnar states); and the
- iv. Area North of River Kiir including Majak (Meiram) (area between Northern Bahre el Ghazal, Southern Darfur, and Southern Kordofan states).

### **Article 2: Peaceful Negotiations of Disputed and Claimed Areas prior to 2 August 2012**

a. The Parties shall agree, prior to 2 August 2012, to settle through peaceful negotiations the final status of the disputed and claimed areas as listed directly above.

### **Article 3: Arbitration of Outstanding Disputed and Claimed Areas as of 2 August 2012**

- a. As of 2 August 2012, if any disputed and claimed areas remain unresolved, to avoid a return to conflict the Parties agree to refer those areas to final and binding international arbitration, whose process shall take no more than (1) year from the signing of an Arbitration Agreement.
  
- b. The Parties shall sign an Arbitration Agreement within forty-five (45) days from 2 August 2012 setting forth the terms of reference for the arbitration including nomination of a professional arbitral tribunal, process for selecting arbitrators, identification of a secretariat, definition of the tribunal's mandate, procedures for the arbitration, decision-making process, and the enforcement of the final and binding award.
  
- c. If the Parties fail to sign an Arbitration Agreement within 45 days, the Permanent Court of Arbitration shall be the secretariat for the arbitration and shall, thereafter, within fifteen (15) days conclude an Arbitration Agreement for the Parties.
  
- d. While final settlement is pending under this article, any unresolved areas along the border shall be fully demilitarized and jointly administered by both Parties as provided for in Part I, Chapter I, Article 9.

## **CHAPTER IV: BORDER CROSSINGS**

### **Article 1: Establishment of Safe Corridors of Movement**

- a. The Parties agree to establish specific safe corridors of movement allowing for the resumption of bilateral trade and movement of civilians across the border. Immediately upon the establishment and operationalization of the Safe Demilitarized Border Zone and the activation of the security mechanisms, the following ten (10) corridors of movements shall be established as per the routes listed below as previously accepted by the Parties in the first meeting of the JPSM on 18 September 2011 in Khartoum, Sudan:

<b>AREAS OF CORRIDORS OF MOVEMENT</b>	<b>ROUTE DESCRIPTIONS</b>
1. Upper Nile-South Blue Nile	Kurmuk - Bonj (by road)
2. White Nile - Upper Nile	Jubeleen - Juoda (Wanthou) - El Rank (by road) Kosti - Wadakona (by road)
3. White Nile - Upper Nile	Kosti - El Renk (by river)
4. Southern Kordofan - Upper Nile	Talodi - Tonja (by road)
5. Southern Kordofan - Unity	Kadugli - Rub Kotneh (by road)
6. Southern Kordofan - Warrap	Eldalany - Diffra - Mayen Abun (by road)
7. Southern Kordofan - Northern Bahr el Ghazal	Muglad - Aweil (by road & railway)
8. Southern Kordofan - Northern Bahr el Ghazal	Babanusa - Aweil (by road & railway)
9. Southern Darfur - Western Bahr el Ghazal	Nyala - Timsah - Raja (by road)
10. Southern Darfur- Western Bahr el Ghazal	Buram - Kafia Kingi - Raja (by road)

b. The exact location of the border crossing points along these corridors of movements shall be recommended by the JBVM. These recommendations shall be forwarded to the JPSM for their consideration and approval.

c. Any additional corridors and crossing movements to be added in the future shall be done in accordance with this Article.

## **Article 2: Implementing Safe Corridors of Movement**

Once the crossing points are established, the two States shall coordinate through the JPSM and through the relevant ministries to operationalize these crossing points to effectively address all security, trade, customs and immigration, and other relevant matters.

**PART II: NATIONALITY AND PROTECTION OF THE STATUS OF  
NATIONALS OF THE OTHER STATE**

***Affirming*** that every person has a right to a nationality/citizenship;

***Determined*** to avoid hardship for individuals as a result of the secession of Southern Sudan;

***Recognising*** that strong ties of history, culture, economy and geography will continue to connect the peoples of South Sudan and Sudan;

***Convinced*** that for the social and economic viability of both States, it is important that the peoples of Sudan and South Sudan continue to enjoy the freedom to move, reside, undertake economic activities and own property within the territories of the two States;

***Acknowledging*** that woman and children were abducted by third parties from Southern Sudan to Northern Sudan during the North/South conflict; and

***Committed*** to protect the rights and freedoms of the citizens of the two States as embodied in this Part, and enshrined in international law, and the respective constitutions and laws of the two States;

***The Parties do hereby agree to the following:***

## **CHAPTER I: RESPECT FOR RIGHTS AND DIGNITY**

### **Article 1: Sovereign Right**

Each State has the sovereign right to adopt its own nationality/citizenship laws in conformity with its international obligations, its national constitution and laws.

### **Article 2: Legal Duties and Obligations**

Notwithstanding the affirmation in Article 1, the decisions each State makes relating to nationality/citizenship, or to the freedoms of nationals of the other State, shall respect the rights and dignity of all persons and, in accordance with their laws and consistent with international law, further respect its legal duties and obligations relating to nationality/citizenship and human rights, including the following:

- i. To uphold the right of every individual to have a nationality/citizenship;
- ii. Not to deprive any person arbitrarily of his or her nationality/citizenship;
- iii. To prevent statelessness as a consequence of secession; and
- iv. Not to discriminate against any person, or class of persons, with respect to the criteria and processes for the acquisition or retention of nationality/citizenship.

## **CHAPTER II: FOUR FREEDOMS**

### **Article 1: Commitment to Four Freedoms**

Each State reaffirms its commitment to ensure that the nationals of the other State shall enjoy the following four freedoms subject to the laws and regulations of that State:

- i. freedom of residence;
- ii. freedom of movement;
- iii. freedom to undertake economic activity; and
- iv. freedom to acquire and dispose of property.

## **Article 2: Bilateral Agreement on the Four Freedoms**

The two States reaffirm their commitment to elaborate and adopt a bilateral agreement to further address these four freedoms.

### **CHAPTER III: PRIOR AGREEMENT ON THE STATUS OF NATIONALS OF THE OTHER STATE**

#### **Article 1: Framework Agreement**

The Parties reaffirm their commitment to implementing in good faith the initialled Framework Agreement on the Status of Nationals of the Other State and Related Matters made in Addis Ababa on the 13th of March 2012 (the "Framework Agreement"). That Framework Agreement shall be deemed final and binding upon signature of this Agreement on Friendly Relations & Cooperation, and shall be read together with this Part.

#### **Article 2: Joint High Level Committee**

The Parties shall immediately appoint the members of the Joint High level Committee on the Status of Nationals and, consistent with the Framework Agreement, convene the first meeting of the Committee within two (2) weeks of signing the AFRC and adopt its programme of work and consider for adoption the draft internal rules of procedure submitted by RSS to the AUHIP on 28 March 2012 for transmission to the Government of Sudan.

### **CHAPTER IV: HOSTILE PROPOGANDA AND ACTS**

a. Consistent with the requests made by the AUPSC Communiqué and the UNSC Res. 2046, both States agree to immediately cease hostile propaganda and inflammatory statements in the media, as well as any attacks against the property, religious and cultural symbols belonging to the nationals of the other State, with the two governments assuming full responsibility for the protection of each other's nationals in line with international principles, consistent with the Framework Agreement on the Status of Nationals of the Other State and Related Matters initialled in March 2012;

b. To achieve this end, each State shall take affirmative measures to make the duties and obligations of the Framework Agreement and this Part of the AFRC known to all officials of the government at the national, state and local levels.

## **CHAPTER V: RETURN OF ABDUCTEES**

### **Article 1: Sudan's Commitment to Return Abductees**

a. The Government of the Republic of Sudan commits itself to return to South Sudan all Southern Sudanese women and children who were abducted and enslaved by Northern Sudanese during the civil war and who are (i) now living with individuals and families in Sudan against their will, and (ii) desiring voluntarily return.

b. Within two (2) weeks of signing the AFRC, Sudan shall establish a committee to comply with the commitment articulated above. The Committee's mandate shall be to secure, within three (3) months of signing the AFRC, the voluntary, safe and dignified return of all abductees identified previously by Committee for the Eradication of the Abduction of Women and Children ("CEAWC") and to work directly with the Government of the Republic of South Sudan to coordinate such returns.

c. Together with authorities from RSS and with the cooperation and assistance as needed from the Joint High level Committee on the Status of Nationals, this Committee shall:

- i. make contact with those who are holding the abductees;
- ii. seek the cooperation of all relevant authorities in Sudan; and
- iii. make the appropriate administrative and logistical arrangements, together with the RSS, to commence and confirm the voluntary return with safety and dignity.

d. The Government of Sudan shall take all legal and administrative measures to ensure the cooperation and compliance of the individuals and families holding the abductees.

e. The former members of CEAWC, relevant ministries and institutions of the two States shall cooperate with the Committee and facilitate the implementation of its work.

## **Article 2: South Sudan's Reserved Rights**

Nothing in this Part shall waive or relinquish any rights of the Republic of South Sudan and its respective institutions and citizens to utilize all peaceful and legal means to procure the return of these abductees on their own.

## **CHAPTER VI: OTHER VULNERABLE POPULATIONS**

### **Article 1: Prisoners**

a. The Republic of South Sudan and the Republic of Sudan shall ensure the orderly transfer of all South Sudanese prisoners and detainees to South Sudan prisons and facilities and Sudanese prisoners and detainees to Sudanese prisons and facilities in order to serve the remaining terms of their imprisonment, await their trial, or maintain their psychiatric treatment where applicable.

b. Within sixty (60) days of signing the AFRC each Party shall provide a full accounting to the other of the nationals of the other State who are imprisoned or otherwise detained in their respective prisons and facilities. The two States shall then cooperate to secure the orderly transfers contemplated by this Article.

### **Article 2: Students**

Students who are nationals of one State and who were attending educational institutions of the other at the time of secession, shall be protected and permitted to continue their residence in that other State at least until they finish their full courses of study.

### **Article 3: Transboundary Populations**

a. The nationality/citizenship status of members of transboundary populations shall not adversely affect their continuing traditional rights to seasonally move

across the border between the Republic of South Sudan and the Republic of Sudan to access water and pasture.

b. The two States commit to reaching a separate agreement on a legal framework to regulate the movement and traditional rights of transboundary populations who have historically traversed the North-South border, without prejudice to the interests and rights of the neighbouring host states and local communities.

## **CHAPTER VII: INTERNATIONAL ASSISTANCE**

The Parties request that the international community avail technical and financial resources to assist in the implementation of this Part and the Framework Agreement, and especially with respect to the voluntary, safe and dignified return of the abductees and other nationals living in the other State and seeking to return to their homelands.

### PART III: ECONOMIC RELATIONS

**Affirming** their commitment to the mutual viability of both the Republic of South Sudan and the Republic of Sudan;

**Resolving** to promote socio-economic interactions and cooperation between the two States and their peoples;

**Mindful** of the need to maintain a mutually beneficial environment for the economies of the two States and promotion of peace and stability in the region;

**Desiring** to achieve a win-win situation in reaching an agreement on the economic issues and to pursue common economic and strategic cooperation to maximize, rather than prejudice, the growth and potential of each State;

**Affirming** a shared recognition that it is in the mutual best interest of the two States to reach agreements that will provide for the continued, uninterrupted and sustainable exploitation of petroleum resources in both nations in accordance with international law and states' best practices;

**Affirming** a mutual interest of the two States to cooperate between themselves and with their neighbours – on the basis of respect for each other's sovereignty, territorial integrity, and common pursuit of sustainable development and mutual benefit;

**The Parties do hereby agree to the following** Part and its associated annex with the aim of promoting friendly relations and cooperation between the two States in pursuit of their stability, prosperity and mutual viability:

## **CHAPTER I: DEBTS AND ASSETS**

### **Article 1: Zero Option Agreement**

- a. The Parties agree that the Republic of Sudan as the Continuing State of the former Sudan shall retain all the national assets and external liabilities of the Predecessor State existing as of July 8, 2011.
- b. Each State shall retain all territorial assets located within their territory without further consideration due from the other State, its agents or institutions, and free from any encumbrances (including their uses as collateral in any existing arrangements concluded between either of the States and a third party).
- c. The Republic of South Sudan shall obtain ownership of and control over all Cultural Property<sup>1</sup> that is of significance to the cultural heritage of the peoples of South Sudan and/or originates from the territory of the Republic of South Sudan. Artefacts of cultural significance to South Sudan are, amongst other places, located in the National Museum in Khartoum and the archived items in the National Archives.
- d. The Parties shall continue to hold meetings of the joint cultural subcommittee of the two negotiation teams to identify such cultural property located in the Republic of Sudan and make suitable arrangement for the repatriation of the said assets to South Sudan on or before January 1, 2013 or if the Parties deem that this is not possible, arrange for some other adequate compensation with the consent of South Sudan.

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<sup>1</sup> For the purposes of this Part, the term '*cultural property*' shall cover, irrespective of origin or ownership: Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centres containing monuments'. (Source: *Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague Convention, adopted by UNESCO at The Hague, 14 May, 1954 (§ 1)*).

## **Article 2: Debt relief effort**

- a. The Republic of South Sudan shall join the Republic of Sudan to engage in a Joint Creditor Outreach Strategy aimed at seeking direct debt relief from creditors for Sudan's external debt and especially to achieve the Highly Indebted Poor Countries ("HIPC") decision point for Sudan within the next two years.
- b. The Republic of Sudan shall ensure that it satisfies all conditions for HIPC debt relief, to arrive at the final HIPC decision point.
- c. The Parties shall call upon international community to take all steps necessary to address all technical issues and any other matters required for the Republic of Sudan to reach the HIPC decision point and subsequently obtaining comprehensive debt relief.

## **CHAPTER II: PENSIONS**

### **Article 1: Payments of Eligible Pensioners**

The Government of the Republic of Sudan shall assume liability for the Post-Service Benefits (as defined in Annex A), including pensions and gratuities and any other payments, of eligible current and former Public Servants of the Predecessor State at the national- and State-levels who become citizens of the Republic of South Sudan or whose employment is terminated as a consequence of secession ("Eligible Pensioners").

### **Article 2: Joint Technical Committee**

- a. The Government of the Republic of Sudan and the Government of the Republic of South Sudan shall establish a Joint Technical Committee, the mandate of which shall be to ensure the calculation of the Post-Service Benefits, including gratuities and pensions, for each person eligible for payment under this Agreement on Friendly Relations & Cooperation. This Joint Technical Committee shall be made up of equal numbers of officials from the Government of the Republic of South Sudan and the Government of the Republic of Sudan.

b. The Government of the Republic of South Sudan and the Government of the Republic of Sudan shall provide, in a timely manner, any information, which the Committee deems necessary to facilitate the calculation of the Post-Service Benefits. Calculation of Post-Service Benefits for Eligible Pensioners for payment under this Agreement on Friendly Relations & Cooperation shall be carried out in accordance with the Republic of Sudan Public Service Pensions Act, 1992, as amended 2004, and the Republic of Sudan National Civil Service Regulations, 2007 and any other relevant Sudanese laws or regulations.

c. Within sixty (60) days of the signature of this Agreement on Friendly Relations & Cooperation, both Parties shall jointly engage an independent third party (International Labour Organisation) to determine modality for the resumption and future payment to the Eligible Pensioners. The Government of the Republic of South Sudan, the Government of the Republic of Sudan and the Joint Technical Committee, shall make available to the designated third-party all records and documents requested by the Joint Technical Committee, as well as other documents deemed necessary and requested by either of the governments or the independent third party.

d. The Joint Technical Committee, assisted by the independent party (such as ILO), shall complete the calculation of the Post-Service Benefits within a reasonable period of time but not exceeding eight (8) months of its establishment. The Joint Technical Committee shall make such results available to the National Pension Fund and to the South Sudan Pensions Fund.

e. The Government of the Republic of South Sudan and the Government of the Republic of Sudan shall avail the necessary financial, logistical and administrative support to the Joint Technical Committee and the independent third party to ensure the completion of its work in the timeframe established in sub-Article 1(e) above. All of the costs of the Joint Technical Committee and the independent third party shall be paid by both Governments in equal measure. The Government of the Republic of South Sudan and the Government of the Republic of Sudan may also seek assistance from the international community to facilitate the work of the Joint Technical Committee.

f. In case of a dispute between the Parties the opinion of the independent party shall be final and binding.

### **Article 3: Pension Arrears**

The Parties agree that the payment of pensions to Eligible Pensioners - who have received pensions already – shall be resumed immediately upon conclusion of this Part, but no later than November 1, 2012. The first payment shall include the payment of arrears accrued as a result of the suspension of the payments since June 2011.

### **Article 4: Other**

a. A detailed agreement for implementation of these commitments can be found in Annex A.

b. The methodology agreed for the redemption of Post-Service Benefits by Public Servants, including pensions and gratuities and any other payments, as set forth in this Chapter and Annex A, shall also be applicable to, and enforceable by, *mutatis mutandis*, citizens of South Sudan who have duly accumulated pension rights by virtue of their former or current employment in the private sector.

## **CHAPTER III: BANKING ARRANGEMENTS**

### **Article 1: Co-operation between the Central Banks**

a. The Central Bank of South Sudan and the Central Bank of Sudan shall form a Joint Committee within thirty (30) days of signing this Agreement on Friendly Relations & Cooperation, with equal members from each State, to take all measures to ensure the cooperation and coordination necessary to facilitate bilateral trade between the two nations in an effective manner aimed at promoting economic growth and mutual benefit. The Central Bank of Sudan and the Central Bank of South Sudan will encourage the promotion of trade between the two States and promote cooperation between the two institutions in various banking areas, which may include, monetary policy, foreign correspondence relations, commercial and technical assistance.

b. The Central Bank of Sudan and the Central Bank of South Sudan will also aim to promote cooperation between commercial banks operating within the Republic of South Sudan and the Republic of Sudan in various banking areas, which may

include, opening branches in either of the two States, correspondence accounts, and technical cooperation.

## **Article 2: Protection of the Rights of Commercial Banks and Enforcement of their Duties and Obligations**

a. The Republic of South Sudan and the Republic of Sudan shall each guarantee the rights of commercial banks headquartered in the other State to continue to operate within their respective territories as branches of foreign banks.

b. Foreign commercial banks operating within the territories of either of the two States shall be required to comply with the relevant national laws and regulations of the host State, and the State shall duly enforce those laws and regulation without discrimination.

c. Any bank or financial institution having its headquarters in either State shall be guaranteed a right to seek judicial and other redress within the other State with respect to any claims or grievances.

## **CHAPTER IV: BORDER TRADE**

### **Article 1: Promotion of bilateral trade and cross border movement of people**

a. The Parties agree to lift any border blockade to allow the resumption of bilateral trade and movement of civilians across the border.

b. The Republic of South Sudan and the Republic of Sudan shall strive to establish a Permanent Trade Forum, the mandate of which will be to conclude trade agreements between the two States that provide for preferential treatment as between the two States, establish a trade dispute resolution mechanism, and address any issues arising between the two States related to trade.

c. The Republic of Sudan and the Republic of South Sudan shall strive to conclude an agreement on customs cooperation no more than ninety (90) days from the conclusion of this Agreement on Friendly Relations & Cooperation. The agreement shall establish mechanisms of cooperation on customs issues, import export, and other areas as agreed to by the two States, and provide terms no less

favourable than those among the member states of the Common Market for Eastern and Southern Africa (COMESA).

d. The two States shall enter into agreements to facilitate the movement of personnel and equipment across the South Sudan/Sudan border in order to maximize cost effective petroleum operations within each State. The Parties shall cooperate to resolve the outstanding challenges of the cross border oil operations, and immediately establish a Joint Cross Border Cooperation Committee with participation from the relevant oil companies.

## **Article 2: Future Cross Border Petroleum Reservoirs**

a. As of the Effective Date of the AFRC, neither Party, after due inquiry, is aware of any cross-border petroleum reservoirs.

b. In the event that a cross-border petroleum reservoir is discovered, the State in which such discovery is identified shall immediately notify the other State in writing.

c. Upon receipt of such notification, both States shall in good faith negotiate an agreement for the joint investigation and appraisal of the discovery.

d. In the event that reserves are proven to justify commercial development, the two States shall in good faith seek to agree upon a mechanism to jointly develop and exploit the petroleum resources pursuant to a joint development agreement to be entered into for the mutual benefit of the peoples of both States. In the event that the two States fail to reach an agreement with respect to such mechanism, such matter shall be resolved pursuant to the dispute resolution provisions in Part V, Chapter II of the AFRC.

e. In light of the good faith of the intentions of the Parties to address cross border reserves pursuant to this article, it shall further be prohibited for either State or those it authorizes to operate within its oil sector, to horizontally drill to directly or indirectly extract reserves located within the territory of the other State.

## **CHAPTER V: WATER**

### *Transboundary Water Resources*

- a. The two States shall commit themselves to the principle of equitable and reasonable utilization.
  
- b. The two States shall, in their respective territories, utilize all Transboundary Water Resources in an equitable and reasonable manner. In particular, those water resources shall be used and developed by the two States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, consistent with adequate protection of those water resources. Both States are entitled to an equitable and reasonable share in the beneficial uses of Transboundary Water Resources.

## **CHAPTER VI: SANCTIONS**

The Republic of South Sudan will work together with the Republic of Sudan to seek the removal of U.S. economic sanctions on Sudan.

## **CHAPTER VII: FORGIVENESS OF GOVERNMENT TO GOVERNMENT ARREARS AND CLAIMS**

- a. Without prejudice to Article 5 of Chapter VIII below, the Government of South Sudan shall forgive all arrears and claims against the Government of Sudan – that are asserted between RSS, its agencies and instrumentalities, and GoS and its agencies and instrumentalities - as submitted in writing within the context of the arrears and claims negotiations conducted under the auspices of the AUHIP (**US \$4.968 billion**).
  
- b. The Government of Sudan shall forgive all arrears and claims against the Government of South Sudan – that are between GoS, its agencies and instrumentalities, and RSS, and its agencies and instrumentalities - as also submitted in writing within the context of these arrears and claims negotiations as well as transit fees for the RSS entitlement shipped since 9 July 2011.

## CHAPTER VIII: OIL SECTOR

### **Article 1: Transportation Fees**

- a. The Parties mutually commit to a fair commercial oil agreement based on international practice and standards. All fees and charges shall be fair, reasonable, cost-based, and consistent with international law and state practice including with respect to the rights of land locked states.
- b. RSS shall pay a pipeline tariff (which includes the marine terminal fee), central processing fees, and a transit fee (for purposes of the AFRC, collectively referred to as the "*Transportation Fees*").
- c. RSS shall pay **pipeline tariffs** as calculated under the existing Crude Oil Transportation Agreements/Crude Oil Pipeline Agreements ("COTAs"/"COPAs") (as a third party-excess shipper on the Greater Nile Petroleum Operating Company ("GNPOC") pipeline -- amounting to **\$7.40** per barrel; and at the ceiling level for shippers on the Petrodar pipeline -- amounting to **\$5.50** per barrel). Nilepet and future producers of crude oil in the territory of RSS shall receive comparable terms.
- d. As per the existing pipeline agreements and practice, payment shall be made to the operator of the respective pipeline. The operator will allocate tariff receipts as between the pipeline owners and GoS per agreement between those parties. Payment by RSS to the operator is good discharge of RSS' payment obligation.
- e. GoS acknowledges that tariff amounts paid by RSS or already taken by the pipeline operators in kind in accordance with the relevant COTAs count as good discharge for RSS's tariff obligations since July 9, 2011. GoS acknowledges that any shares it is due from the operators in accordance with the transportation agreements is a matter between GoS and the operators.
- f. RSS shall pay a **processing fee** to the operator of the CPFs calculated on the same basis as the cost recovery calculations under the relevant EPSA (approx. **\$1.00** per barrel). The fee shall include an opex component and a capex component as determined pursuant to the EPSA for opex and capex components that are directly related to the construction, operation and maintenance of the

facility. In addition it shall include a return on capital component equivalent to 15% of the depreciated capital base.<sup>2</sup> This CPF Profit Component (approx. **\$0.07** per barrel) shall be paid directly to the government of Sudan irrespective of whether the title of the asset has been transferred to the GoS. The Profit Component shall be paid upon confirmation of delivery of RSS entitlements to vessel at port. The payment for the CPF Profit Component shall be made directly to GoS, and not to the operator of the pipeline. The GoS and the RSS shall work out the payment arrangements, including the exchange of bank details to facilitate these payments. Nilepet and future producers of crude oil in the territory of RSS shall receive comparable terms.

g. GoS and RSS agree that processing fee amounts paid by RSS through cost oil taken by the foreign operators as of July 9, 2011 serves as good discharge of RSS payment obligations for the CPFs. GoS acknowledges that any shares it is due from the operators in accordance with the relevant EPSAs is a matter between GoS and the operators.

h. The Parties and the operators in Sudan and RSS shall need to enter into a facilities sharing agreement consistent with these terms for the joint operation by each State's operators of the CPFs.

i. RSS to pay **transit fees** amounting to **\$0.63/\$0.69** per barrel for each of the GNPOC and Petrodar pipelines, and levied only on RSS crude oil entitlements that are exported from Port Sudan into international waters. Transit fees shall be paid upon confirmation of delivery of RSS entitlements to vessel at port. The transit fee shall not be levied on RSS crude oil entitlements delivered within Sudan. The transit fee is paid directly to GoS, and not to the operator of the pipeline. The GoS and the RSS shall work out the payment arrangements, including the exchange of bank details to facilitate these payments.

j. No other charges, taxes, imposts or duties of whatever description shall be levied on RSS crude oil entitlements.

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<sup>2</sup> If for example the cost of constructing a CPF was \$100mn, and \$60mn has been depreciated, then the remaining capital base would be \$40mn. Then  $15\% \times 40 = \$6\text{mn}$  which would be profit on the facility. This would be divided by the total number of barrels processed and multiplied by the RSS number of barrels processes. If say 100mn barrels are processed – the charge would be \$0.06 per barrel. If out of the 100mn barrels 25mn was RSS entitlement, RSS then would pay \$1.5mn.

k. **Summary of the Transportation Fees agreed to above:**

	<b>GNPOC</b>	<b>PETRODAR</b>
Tariff (including Marine Terminal Fees)	\$7.40	\$5.50
CPF Fee (capex/opex (\$1.00) + Profit Component estimated \$0.07)	\$1.07	\$1.07
Transit fee	\$0.63	\$0.69
<b>TOTALS</b>	<b>\$9.10</b>	<b>\$7.26</b>

**Article 2: South Sudan Reserved Right**

Notwithstanding this Part and any other terms of the AFRC, South Sudan reserves the right to construct and utilize alternative processing and transportation infrastructure.

**Article 3: Refinery and Refined Products**

a. RSS and the GoS may further engage in commercial negotiations to contract for the purchase by the GoS from RSS of crude oil produced in the territory of South Sudan at current market price subject to the delivery by GoS of a confirmed irrevocable letter of credit. The Parties may also contract for the purchase by the RSS of refined products from the GoS. These contracts shall not be subject to transit fees.

b. The Parties may also conclude agreements to facilitate the import and export of each other's crude oil and/or refined products on a most favoured nation basis.

**Article 4. Sovereignty and the Territorial Principle**

a. Each State has sovereignty over the natural resources located or found within its territory.

b. The Parties agree to the application of the territorial principle to petroleum assets (fixed, movable, shares and instruments). As such, the oil assets located in the territory of South Sudan belong to South Sudan and the oil assets located in the territory of Sudan belong to Sudan.

## **Article 5: Restoration of Normalcy**

- a. In lieu of direct cash payments, Sudan shall forthwith release to RSS or to RSS' order (i.e. to its designated purchaser) all cargoes of confiscated crude oil that have not been delivered to consumers (the cargoes contained in the *Al Nouf*, the *Sea Sky* and the *Isis* vessels), and shall also pay all demurrages and other charges arising from delay in delivery caused by Sudan's actions.
- b. Sudan shall direct funds deposited into the High Court in London related to the RSS entitlements originally discharged to the vessel *Ratna Shrahda* to be released to RSS.
- c. RSS shall not bring any other claims related to the prior confiscation and diversion of RSS entitlements, including for RSS entitlements previously diverted to Sudan's refineries, maintained in domestic reserves, or otherwise sold.

## **Article 6: Guarantees required for Resumption of Oil Production within the RSS Territory**

- a. Sudan shall immediately repeal the Act entitled "Amendment to the Petroleum Transit and Services Fees Act 2011", which authorize GoS to confiscate, re-direct or divert without consent any oil produced in the territory of RSS for payment of any unpaid tariffs, fees or charges imposed by or on behalf of GoS.
- b. Sudan declares that it shall never again, without the prior consent of the RSS, order or require directly or indirectly the Pipeline Operators or the Foreign Oil Companies or anyone acting or purporting to act on the behalf of any of them, to aid in any way whatsoever the confiscation or diversion of (or to change any production or delivery entitlement nomination schedules for the purpose or with the effect of diverting or confiscating) any crude oil produced in the RSS and transported, refined, handled, delivered or exported in or through Sudan or its port(s) and hereby irrevocably and unconditionally releases each of them from any and all liability or claims (whether civil or criminal) or prejudice (howsoever arising) for refusing or failing to participate in any activities that may lead to or facilitate such confiscation, diversion or change in nomination.

c. Sudan unconditionally and irrevocably waives and covenants not to assert in any forum or proceeding any doctrines of Act of State or immunity from suit or enforcement (or any legal doctrine with similar effect) in relation to any claims of breach of the undertaking above.

d. The Republic of South Sudan, the Republic of Sudan, the Pipeline Operators and the Foreign Oil Companies shall conclude the agreement attached to this Part as Annex C.

e. The two States shall establish a Monitoring Team comprised of representatives from Sudan and RSS and independent representation from the international community to monitor all metering stations and the loading of crude oil onto vessels at Port Sudan.

f. Sudan shall immediately disconnect and seal the Petrodar pipeline tie-in used to divert RSS crude oil to refinery delivery points without RSS consent and covenants not to re-establish any of those tie-ins without RSS' express consent, in each case to be verified by a Monitoring Team comprised of representatives from Sudan and RSS and independent representation from the international community. The same Monitoring Team shall also monitor these former tie-in connector sites going forward, including checking that the disconnection seals have not been broken.

g. The Parties agree there shall be an independent systems audit of the infrastructure from the point of entry into the Central Processing Facilities to the point of delivery of crude oil onto the vessels at the Marine Terminal.

h. The RSS shall have a representative at the Marine Terminal who shall have sufficient access to documents and activities to confirm proper handling and delivery of RSS entitlements to the vessels taking possession of crude oil purchased from RSS.

i. The RSS shall require a commitment by the international community that it will prohibit the handling and purchases of any oil produced in the RSS that is confiscated or diverted by the Sudan without consent; and take the necessary measures bilaterally and multilaterally to sanction those who do.

## **Article 7: Resumption of Oil Production in the territory of RSS**

a. The RSS undertakes that it shall, within fourteen (14) days of the date of the signing of the AFRC, issue an instruction to the Foreign Oil Companies and Pipeline Operators (see entities listed in the Appendix to Annex C), to recommence and re-establish the production of crude oil in the territory of the RSS.

b. In each case South Sudan shall instruct the companies and operators to recommence and re-establish the production acting as reasonable and prudent operators, having regard to the best practices of the international oil industry, including with respect to the protection of the environment and the interests of local communities, and the laws and regulations of the RSS.

c. The recommencement and reestablishment shall be conducted under and subject to the terms of this Agreement on Friendly Relations & Cooperation and the agreement attached hereto as Annex C among the RSS, Sudan, and Foreign Oil Companies and Pipeline Operators, and without prejudice to any right of RSS from time to time in the future to suspend or terminate (or cause, order or direct the suspension or termination) in whole or in part of the production of crude oil in the RSS for breach by the Government of Sudan of the AFRC or breach by the GoS and any party to the annexed agreement, or as otherwise contemplated or permitted by the terms of any agreement to which RSS is a party.

## **CHAPTER IX: SUDAN'S FINANCIAL GAP & SOUTH SUDAN'S DEVELOPMENT CHALLENGES**

### **Article 1: Recognition of Sudan's financial gap and South Sudan development challenges**

- a. The Parties recognize the development challenges of South Sudan.
- b. The Parties further recognize the specific financial difficulties that the Republic of Sudan faces which were created in part by the loss of oil wealth resulting from the secession. The Parties agree that this can be mitigated by applying the 1/3 principle as follows:

- i. 1/3 shall be contributed by *Budgetary Measure* enacted by Sudan,
- ii. 1/3 through a *Direct Financial Contribution* from the Government of South Sudan, and
- iii. The Parties will embark on a joint outreach, together with the AUHIP, to persuade members of the *international community* to:
  - 1. contribute funds to address the remaining third;
  - 2. contribute funds to support RSS to respond to the many developmental challenges facing the Republic of South Sudan;
  - 3. work actively to forgive Sudan’s external debts; and
  - 4. work actively to lift all economic sanctions against Sudan.

**Article 2: South Sudan's Direct Financial Contribution to Sudan (DFC)**

a. Over a period of 3 1/2 years starting on the date of signature of the AFRC, South Sudan shall provide a ***Direct Financial Contribution (DFC)*** of **US\$3.028 billion**. This is equivalent to 1/3 of the weighted average of the IMF calculated gap (\$7.8bn) and the gap first calculated by the Government of Sudan during negotiations in November of 2011 (\$10.4bn). The Direct Financial Contribution shall be paid directly to the Government of Sudan through the Escrow Account established as per this Chapter.

b. The RSS shall provide this Direct Financial Contribution of **\$3.028 bn** as per the following payment schedule:

	2012	2013	2014	2015
USD mn	478	1000	850	700

c. The RSS's Direct Financial Contribution to the Government of Sudan shall be tied to the resumption and continued production and export of oil from the territory of South Sudan. Funds can only be disbursed to the Escrow Account after receipt of the funds from the sale of oil by the Republic of South Sudan (see Article 3 below).

d. Notwithstanding Chapter XIII, Article 5 (above), this Direct Financial Contribution shall require ***no prior offsets or upfront payments by Sudan*** of

arrears or claim South Sudan had previously asserted against the Government of Sudan its agencies and instrumentalities.

**Article 3. South Sudan’s Total Transfers to Sudan**

a. Over a period of 3 ½ years commencing upon the signing of the AFRC, Sudan shall receive a **Total Net Cash Transfer** from South Sudan amounting to approximately **\$3.245 billion** comprising of a Direct Financial Contribution, Transit Fees and a CPF Profit Component.

b. Together with the arrears and claims forgiveness affirmed in Chapter VII above, Sudan shall therefore receive a **Total Wealth Transfer** from South Sudan of **\$8.213 billion**.

ITEM	AMOUNT
<b>Direct Financial Contribution</b> over 3 ½ yrs	<b>\$ 3,028 mn</b>
<i>Transit fees</i> over 3 ½ yrs	\$ 196 mn
<i>CPF Profit Component</i> over 3 ½ yrs	\$ 21 mn
<b>Total Net Cash Transfer</b>	<b>\$ 3,245 mn</b>
<i>Arrears forgiveness</i>	\$ 4,968 mn
<b>Total Wealth Transfer</b>	<b>\$ 8,213 mn</b>

**Article 4: Payment and Release Schedule, Escrow Account, and Dispute Resolution**

*Schedules and Escrow Account*

a. The RSS Direct Financial Contribution payment schedule ("Payment Schedule") and the schedule and terms for the release of these payments to GoS ("Release Schedule") shall be delinked one from the other. The Payment Schedule shall be guided by the following:

- i. Commencement of Direct Financial Contribution payments under the final AFRC shall be tied to resumption of production to 75% of pre-shutdown levels.
- ii. Commencement of the DFC payment shall be preceded by RSS actually receiving oil payments.
- iii. Payment in any month shall not exceed 20% of RSS oil income – with any balance carried over to the following month respecting the same threshold.
- iv. Consistent with sub-article below, RSS payment performance shall continue even when Parties are in dispute about compliance with any other terms of the AFRC.

b. RSS shall make its DFC payments into an escrow account established by both Parties. The escrow account shall be an interest bearing account in a bank that is agreed by GoS and RSS. The escrow account shall be administered by a mutually trusted party that is agreed by RSS and GoS, such as the World Bank (the "Administrator").

c. GoS shall receive the RSS payments from the escrow account two weeks after deposited by RSS .

d. With assistance from the AUHIP and Government of the RSS, GoS may obtain a bridge loan from a third party, expected to be from the international community, to bridge the delay between the time when the AFRA is signed and the time that the DFC payment shall be made and released by the Administrator to the GoS. Recognizing the intent of the RSS contribution and the urgency and spirit of this Agreement on Friendly Relations & Cooperation, this bridging financing is intended to provide immediate liquidity to GoS during the unavoidable delay resulting from the realities of restarting production and the industry delay in receiving payments for sold RSS crude oil entitlements.

#### *Blocking Notices*

e. Understanding that the Direct Financial Contribution is agreed to in the context of mutual viability, if RSS has a bona fide belief that Sudan has materially breached any of its duties or obligations found within this final AFRC, it shall have the right to seek to block releases of the payments from the escrow account by

submitting a blocking notice to the Administrator, the Government of Sudan, and the escrow bank.

f. To ensure against arbitrary blocks, the Administrator shall make a preliminary non-binding determination of whether or not /RSS's blocking notice which alleges a violation of the AFRC is *prima facie* justified. Prior to making his/her decision the Administrator shall confer with each of the Parties and the Monitoring Committee (provided for in Article 5 below).

g. If the Administrator finds that the blocking notice is not *prima facie* justified, it shall continue to release the amounts to GoS according to the Payment Release Schedule, but RSS shall still be able to bring its claim under the dispute resolution procedures provided for in Part VI(II) of the AFRC, and the Administrator's decision shall be without prejudice to the merits of the case advanced in that process.

h. If the Administrator finds that RSS' blocking notice is *prima facie* justified, then the amounts not yet released and going forward shall remain in escrow until the dispute is settled by the Parties in accordance with the dispute resolution mechanisms of Part VI(II) of the AFRC and until the Administrator receives a formal written notice from the Parties, or a formal notice from the Experts Mechanism or arbitral tribunal provided for in the Part VI(II) authorizing release of all or part of the funds to the GoS (either through an interim or final order) or, as compensation, to RSS.

i. If the alleged breach is not of a material nature and therefore going to the core of fundamental duties and obligations assumed in the AFRC by the Government of Sudan, based on the materiality of the breach considered in the larger context of the AFRC, the Administrator may decide to withhold only a portion of the DFC payment. This decision can be contested by RSS and superseded later by an interim decision of the Expert Mechanism or arbitral body utilized as provided for in Part VI(II).

j. If it is ultimately found that the GoS breached this Agreement on Friendly Relations & Cooperation (in whole or part) as per the mechanisms detailed in Part VI(II), then an amount of funds from the escrow to compensate RSS (or otherwise agreed to by the Parties) shall be released by the Administrator to RSS and/or the

escrow payments to Sudan shall cease until the breach is cured. Releases of any compensation or blocked payments shall only be made by the Administrator upon receipt of a formal written notice jointly submitted by the Parties, or a formal notice from the Expert Mechanism or arbitral tribunal provided for in Part VI(II).

k. Any third party loans previously extended to the GoS on the basis of the escrow, shall not affect the release of compensatory funds to RSS.

l. This article makes clear the RSS' duty to continue to make payment regardless of an alleged breached and presence of a blocking notice. Without prejudice to this obligation, RSS shall no longer be required to continue to make payments under the Payment Release Schedule if there is an order to this effect by the Expert Mechanism or the arbitral tribunal referred to in Part VI(II), or if any act or omission on the part of Sudan results in the substantial interruption or interference with the South Sudan's oil production and export which serves as the very financial basis for making the Direct Financial Contribution (DFC) possible.

#### **Article 5: Monitoring Committee**

a. An independent Monitoring Committee ("Committee") shall be established with five (5) individuals with relevant expertise. Each shall be appointed by the African Union, United Nations, Troika, Arab League, and European Union respectively.

b. The Committee shall be responsible for monitoring the implementation of the final AFRC, producing regular reports to the Parties with recommendations, and communicating as necessary with the Administrator of the escrow account referred to above.

c. The Parties shall facilitate access to all relevant documents, infrastructure and personnel such that the Committee can discharge its obligations under this Chapter.

d. The Committee shall submit regular written reports to the AU Peace and Security Council and the United Nations Security Council, no less than on a quarterly basis. These reports shall be made available to the public.

## PART IV: ABYEI

**Acknowledging** that the Comprehensive Peace Agreement --through its Protocol on the Resolution of the Abyei Conflict ("Abyei Protocol")-- recognized that the Abyei Area is the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905, and that the Abyei Arbitration Tribunal ("Tribunal") issued a binding decision on July 22, 2009 defining this area as comprised of the traditional lands of the Ngok Dinka people.

**Mindful** that the Abyei Protocol affirms that the Misseriya and other nomadic peoples retain their traditional rights to graze cattle and move across the territory of Abyei and that the Tribunal affirmed that these rights should not be affected by the definition of the Area's borders.

**Affirming** the importance the Parties place on the implementation of the interim administrative mechanisms established by the 20 June 2011 Agreement on Temporary Security and Administrative Arrangements for the Abyei Area pending the determination of the final status of Abyei;

**Understanding** the unique historic and contemporary relations and interactions that have developed over time among the nomads (including the Misseriya), other migratory peoples and the Ngok Dinka, arising from their customary laws and traditions as well as the circumstances of war; and

**Recognizing** the overriding need to finally bring a permanent peace and prosperity to the Abyei Area;

**The Parties do hereby agree to the following:**

## **CHAPTER I: SECURITY IN THE ABYEI AREA**

- a. The Parties reaffirm their commitment to implement the security aspects of the 20 June 2011 Agreement on Temporary Security and Administrative Arrangements for the Abyei Area, in particular the redeployment of all South Sudanese and Sudanese forces out of the Abyei Area, including police forces.
- b. Within thirty (30) days of signing the AFRC, the Parties agree to establish the Abyei Police Service whose size and composition shall be determined by the Abyei Joint Oversight Committee ("AJOC").
- c. The Parties shall support and facilitate the decisions of the AJOC to immediately establishment and operationalize the Abyei Military Oversight Committee.

## **CHAPTER II: TEMPORARY POLITICAL ARRANGEMENTS**

### **Article 1: Prior Agreements**

- a. The Parties reaffirm their commitment to fully implement in good faith the June 2011 Temporary Arrangement for the Administration and Security of the Abyei Area ("Temporary Agreement for Abyei"), the Abyei Protocol, and the 8 June 2008 Road Map for Return of IDPS and Implementation of Abyei Protocol (except to the extent modified by the Temporary Agreement for Abyei).
- b. These previously concluded agreements related to the Abyei Area shall remain in force with their terms incorporated by referenced herein, unless otherwise expressly modified by the AFRC.

### **Article 2: Temporary Administrative Arrangements**

- a. The Parties shall immediately establishment the Abyei Area Administration.
- b. If the Parties have no agreement on the establishment of the Abyei Area Council, the Abyei Area Executive Council shall be established and the Abyei Joint Oversight Committee ("AJOC") shall exercise the powers of Abyei Area Council pending its establishment.

### **CHAPTER III: THE FINAL STATUS OF ABYEI**

#### **Article 1: Agreement to Hold a Referendum**

a. The African Union/United Nations ("AU/UN") shall organize, with the joint support of the two States, an Abyei Referendum to be held no later than 30 November, 2012.

b. The results of the referendum shall be final and binding and both States shall fully respect the decision of the people, and work in good faith, to implement the same.

#### **Article 2: The New Referendum Agreement (Treaty)**

a. Within (30) days of signing this Agreement on Friendly Relations & Cooperation the two States shall conclude a new referendum agreement (a treaty) to determine their respective duties and obligations related to the conduct of the referendum.

b. The spirit and terms of the Abyei Area Referendum Act, 2009 shall be reflected in the new referendum agreement, but shall be modified accordingly to respect that there now exists two sovereign States which currently administer the Area, and that the referendum shall now occur post secession.

c. The new referendum agreement shall further provide for, among other things:

i. an Abyei Referendum Commission composed of equal members from each State and have as its chair, a non-Sudanese/South Sudanese individual who is appointed by the AU/UN, mutually accepted by the Parties, and familiar with the situation of the Abyei Area and the conduct of referenda.

ii. a choice for voters between two options:

A. That the Abyei Area shall be part of the sovereign territory of the Republic of South Sudan; or

B. That the Abyei Area shall be part of the sovereign territory of the Republic of Sudan.

iii. eligible voters to be defined as:

*A. Ngok Dinka:*

All members of the nine (9) Ngok Dinka Chiefdoms who register in the Abyei Area to participate in the referendum as they are the 'targeted community' for the referendum as intended by the Abyei Protocol and affirmed by the Abyei Arbitration Tribunal; and

*B. Other residents of the Abyei Area:*

Any individual who is not a member of the (9) Ngok Dinka Chiefdoms and who has had a continuous and uninterrupted residence and domicile within the Abyei Area (as defined by the 22 July 2009 decision of the Abyei Arbitration Tribunal) for no less than three (3) consecutive years immediately prior to 9 January 2005.

d. Should the Parties fail to reach agreement within the thirty (30) days provided for above, the AU/UN shall draft within two (2) weeks a referendum agreement consistent with the terms of this Part and immediately commence implementation of the same.

### **Article 3: Migratory Populations**

a. The traditional rights of the Misseriya and other nomads and migratory populations to access water and pasture shall be respected, provided that such populations move through the Abyei Area without arms.

b. The Abyei Area Administration shall provide basic health, education and other social services to Misseriya, other nomads and migratory populations while moving through the Abyei Area.

c. The two States shall cooperate to ensure the uninterrupted migrations.

#### **Article 4: Oil Revenues derived from the Abyei Area**

From the Effective Date of the AFRC until the settlement of the final status of Abyei, the Government of Sudan and Government of South Sudan entitlements to the oil revenues originating from the Abyei Area shall accrue instead to the Abyei Area Administration for the development and reconstruction of the Abyei Area and the conduct of its functions.

#### **Article 5: International Assistance**

The Parties jointly request that, to the extent practical, the international community provide technical and financial support to the UN to guarantee the fair and free conduct of the Abyei Area Referendum by November 1, 2012.

## **PART V: THE TWO AREAS**

### **Article 1: Government of Sudan and SPLM-N Negotiations**

The Government of the Republic of Sudan affirms its commitment to commence negotiations with the Sudan People's Liberation Movement-North ("SPLM-N") starting from the basis of the June 28, 2011 Framework Agreement on Political Partnership between NCP and SPLM-N and Political and Security Arrangements in Blue Nile and Southern Kordofan States as required by the AUPSC Communiqué and the UNSC Res. 2046 and ensuring conclusion of a ceasefire and a comprehensive political settlement.

### **Article 2: South Sudan Support to GoS and SPLM-N Negotiations**

The Republic of South Sudan shall support and encourage these negotiations referenced above and stands ready to assist to bring peace to Sudan.

## **PART VI: GENERAL PROVISIONS**

### **CHAPTER I: ADDITIONAL MODALITIES**

Bilaterally and through inter-ministerial cooperation and continued dialogue, additional agreements and implementation modalities may be negotiated between the two Governments as needed in the future. If international facilitation is needed at that time, the Parties shall jointly make such a request.

### **CHAPTER II: DISPUTE RESOLUTION**

All disputes arising from Agreement on Friendly Relations & Cooperation, its constituent Parts and associated Annexes shall be addressed through the process established in this Chapter unless otherwise provided for in other Parts of the AFRC. An exception to this Chapter, for example, shall be the final and binding international arbitration to be specifically established by the Parties pursuant to an Arbitration Agreement as per Part I, Chapter III, Article 2.

#### **Article 1: General Principles of Dispute Resolution**

- a. In the case of any dispute between the Parties arising from or in relation to the implementation of this Agreement on Friendly Relations & Cooperation, the Parties shall devise simple, amicable, and practical dispute resolution mechanisms guided by the commitment to sustaining peace and good neighbourliness; enhancing the welfare of the peoples of the two States; resolving disputes through peaceful means, and conducting their relations in accordance with the principles of the United Nations Charter and The Constitutive Act of the African Union.
- b. Without prejudice to the provisions of this Chapter, each Party shall have the right to resort to any other international or regional dispute resolution mechanisms.

## **Article 2: Settlement of disputes by the Competent Ministries**

Any issue, dispute, difference or controversy (a “Dispute”) concerning the interpretation or the application of the AFRC shall to the extent possible be settled by good faith consultation or negotiation at the inter-ministerial level.

## **Article 3: Settlement by the Two Presidents**

a. Should the competent Ministries fail to reach agreement within twenty one (21) days, the matter may at the request of either Party be referred to the two Presidents.

b. Should the Presidents fail to reach agreement within twenty one (21) days of the matter being referred to them, they may, with the consensus of both Parties, submit the matter to the Expert Procedure set forth in Article 4 below. If there is no consensus on submitting to the Expert Procedure, the matter may be referred to arbitration by either Party (or both) in accordance with Article 5 below.

## **Article 4: Expert Procedure**

a. For any Dispute related to matters of a technical nature requiring expertise in a particular field or area of law, the Parties hereby agree that such determination may be conducted expeditiously by an expert. This expert must be selected unanimously by the Parties to the Dispute. The expert is not an arbitrator of the Dispute and shall not be deemed to be acting in an arbitral capacity.

b. If the Parties to the Dispute are unable to agree upon an expert within seven (7) days after there is an agreement to use such a mechanisms, then, upon the request of any of the Parties to the dispute, the African Union shall appoint such expert and shall administer such expert determination through the International Chamber of Commerce Rules for Expertise.

c. All Parties agree to cooperate fully in the expeditious conduct of such expert determination and to provide the expert with access to all relevant facilities, books, records, documents, information, and personnel necessary to make a fully informed decision in an expeditious manner. Before issuing a final decision, the expert shall issue a draft report and allow the Parties to the Dispute to comment

on it. The expert shall endeavour to resolve the Dispute within thirty (30) days (but not later than sixty (60) days) after his or her appointment, taking into account the circumstances requiring an expeditious resolution of the matter in Dispute.

d. The expert's decision shall be final and binding on the Parties to the Dispute absent fraud or manifest error. In such a process: (i) the expert determination on the specific matter shall be entitled to a rebuttable presumption of correctness; and (ii) the expert shall not (without the written consent of the Parties to the dispute) be appointed to act as an arbitrator or as adviser to the Parties to the Dispute.

e. Any Dispute arising under or in connection with this Agreement on Friendly Relations & Cooperation or the performance or non-performance of the obligations of any Party that the Parties do not agree to resolve by Expert determination, may be referred by any Party to binding arbitration (as described below).

#### **Article 5: International Arbitration**

a. If a Dispute has not been resolved by the Two Presidents in accordance with the procedures set forth in Article 3 above, the Parties may agree to submit the matter to an ad hoc arbitral tribunal under this Article, or if no agreement is possible, either Party may, upon written notice to the other Party to the Dispute (a "Notice of Arbitration"), submit the matter to an ad hoc arbitral tribunal under this Article.

b. The ad hoc arbitral tribunal shall be constituted as follows:

c. The Party instituting the proceedings shall appoint one member of the tribunal and inform the other Party of its appointment within 15 days of receipt of the Notice of Arbitration by the other Party.

d. Within thirty (30) days of the receipt of the Notice of Arbitration, the other Party to the dispute shall appoint a second member of the tribunal. If the appointment is not made within the time limit prescribed, the Party having

instituted the proceedings may request that the appointment be made in accordance with the provision below.

e. A third member, who shall be the President of the tribunal, shall be appointed by agreement of the Parties. That member shall be a citizen, or permanent resident of a third country, which has diplomatic relations with both the Republic of Sudan and the Republic of South Sudan or with neither. If, within sixty (60) days of the receipt of the Notice of Arbitration, the Parties are unable to agree on the appointment of a third member, that appointment shall be made in accordance with the provisions below at the request of either Party.

f. Appointments requested to be made in accordance with sub-article (e) above shall be made by the Secretary-General of the Permanent Court of International Arbitration. If the Secretary-General is prevented from discharging this task, the appointments shall be made by the First Secretary of the Bureau. If the latter, in turn, is prevented from discharging this task, the appointments shall be made by the most senior Deputy.

g. Appointments to the ad hoc arbitral tribunal shall be made with regard to the qualifications and experience, particularly in matters covered by this Agreement on Friendly Relations & Cooperation, of the members to be appointed.

h. In the absence of any written agreement to the contrary between the Parties, the Arbitration Rules of United Nations Commission on International Trade Law (UNCITRAL) shall govern, except to the extent modified by Parties or by the arbitrators. The tribunal shall take its decisions by a majority vote of its members.

i. The language of the arbitration proceedings shall be English.

j. The tribunal shall decide the Dispute in accordance with this Part and applicable rules and principles of international law.

k. The arbitral award shall be final and binding upon the Parties.

l. Unless the Parties agree otherwise, the tribunal shall sit in The Hague and use the premises and facilities of the Permanent Court of Arbitration.

## **CHAPTER III: EFFECTIVE DATE, RATIFICATION, FORCE OF LAW**

### **Article 1: Effective Date**

This Agreement on Friendly Relations & Cooperation shall be effective upon its signature. It shall enter into force on the date of its signature by the Parties (the "Effective Date"). Upon signature, the AFRC shall have legal effect as a treaty under international law and the prevailing legal regime and with respect to the matters addressed herein under its domestic law.

### **Article 2: Depository**

The Secretariat of the African Union shall serve as depository under this Agreement on Friendly Relations & Cooperation and shall receive an original of the agreement upon its execution by each State.

### **Article 3: Official Text**

The official text of this Agreement on Friendly Relations & Cooperation is in the English language.

### **Article 4. Amendment**

From time to time and at their discretion, the Parties may agree to review or amend any terms of this Agreement on Friendly Relations & Cooperation.

## ANNEXES

### ANNEX A

#### DRAFT PENSION AGREEMENT

#### Government of the Republic of South Sudan and the Government of the Republic of Sudan

##### *Pensions and Post-Service Benefits*

The Government of Sudan (GoS) and the Government of South Sudan (RSS Government), hereinafter referred to as the Parties,

***In recognition of*** the service that Southern Sudanese have provided to the national and state-level governments of the Predecessor State;

***Mindful of*** the fact that public servants contributed their own money to the National Pension Fund and made other related contributions, and provided services for which they are entitled to deferred compensation and therefore retain an entitlement to said deferred compensation;

***Committed to*** ensuring that the people of Sudan and South Sudan continue to be provided the post-service benefits to which they have a vested entitlement after July 9, 2011 and the secession of South Sudan from Sudan;

***Have hereby agreed to the following:***

#### CHAPTER I: DEFINITIONS

For the purposes of this agreement, all terms have the meanings found in the AFRC and its constituent Parts, unless otherwise provided herein:

“Pensioners” means a person who has a vested right to a pension on account of previous employment in Pensionable Service and received a pension award in

accordance with the Public Service Pensions Act, 1992 as amended in 2004, no later than in the month prior to independence, or June 2011.

“Survivors” means a person who has a vested right to a survivors pension on account of previous employment by a family member in Pensionable Service and received a pension award in accordance with the Public Service Pensions Act, 1992 as amended in 2004, no later than in the month prior to independence, or June 2011.

“National Pension Fund” means the Public Servants pension fund of the Predecessor State (also referred to as “NPF”).

“South Sudan Pensions Fund” means the Fund administering the Public Servants pensions in the Republic of South Sudan.

“Post-Service Benefits” means pensions, gratuities and any other payments, for which a liability is provided for in Chapter II and assumed by the Republic of Sudan.

“Joint Technical Committee” means the technical committee established in Chapter IV.

## **CHAPTER II: ASSUMPTION OF LIABILITY**

### **Article 1: Pension Liability of the Republic of Sudan**

The Government of the Republic of Sudan shall assume liability for the Post-Service Benefits, including pensions and gratuities and any other payments, of eligible and vested current and former Public Servants of the Predecessor State at the national- and State-levels [who become citizens of the Republic of South Sudan]. It acknowledges the entitlement of such Public Servants to pensions and other benefits as set forth in this agreement.

## **CHAPTER III: ELIGIBILITY**

### **Article 2: Persons Eligible for Payment under this Agreement**

Persons entitled for payment under this Agreement shall be all current and former employees of the public service, including all Organized Forces, of the Predecessor State at the National- and Northern state-levels entitled to post-service benefits under the Public Service Pensions Act, 1992, the Republic of Sudan, as amended 2004, the National Civil Service Regulation, 2007 of the Government of Sudan and any other relevant laws or regulations.

These persons shall include

- a) All civil servants;
- b) Constitutional Executive and Legislative post-holders and members of the Southern Sudan Legislative Assembly and the State Legislative Assemblies respectively;
- c) All Justices and Judges of the Judiciary of Southern Sudan;
- d) All Legal Counsels employed by the Ministry of Legal Affairs and Constitutional Development (now Ministry of Justice); and
- e) Members of the Police, Prisons, Fire Brigades and Wildlife Services (Organized Forces), and other armed forces, including SAF.

## **CHAPTER IV: CALCULATION OF POST-SERVICE BENEFITS**

### **Article 3: Guidelines for Calculating Post-Service Benefits**

#### ***Pension Payments***

- a. Calculation of Post-Service Benefits for persons eligible for payment under this Agreement shall be carried out in accordance with the Public Service Pensions Act, 1992, The Republic of Sudan, as amended 2004, and the National Civil Service Regulation, 2007, The Republic of Sudan, and any other relevant laws or regulations.
- b. For the purpose of this agreement there are two categories of recipients:

Category 1: Pensioners and survivors receiving pensions in the month before the date of independence, and those for whom a pension had been calculated but whose pensions had not yet commenced.

For category 1 recipients the NPF shall resume and continue to pay pensions at levels of June 2011 (converted to SSP as outlined in Article 3(e) and 3(f), plus arrears accrued due to the suspension of pension payment since July 2011. If ad hoc increases are granted to other NPF beneficiaries, the same increases shall also be granted to pensioners in South Sudan (based on the equality of treatment principle).

Category 2: All active employees, including those who are eligible to retire, and all retirees and survivors for whom no pension has been calculated by NPF, who have provided service prior to 2007.

For individuals in category 2, a three-step process will be used:

Step 1: Identification of the individuals with accrued pension rights. The Parties shall employ an independent third party (such as the International Labour Organization (ILO)) to assist Joint Technical Committee (see article 4) in the identification of individuals with accrued pension rights. Where the NPF or the Government of Sudan do not have proper records, a reasonable threshold of evidence shall be developed to identify individuals with an employment record in public service and the duration of this employment record and any other relevant data required to compute a pension entitlement.

Step 2: Calculation of eligible pensions. The Parties will request the assistance of the ILO with the calculation of the accrued pension. The accrued pension as of the date of valuation would be calculated in the manner described as follows:

Annual accrued pension = (Years of service to 2007 \* current salary) /45

If a member has more than the maximum pensionable service (37.5 years) at the date of calculation, the formula is modified as follows:

Annual accrued pension = ((Years of service to 2007)/ (total years of service to date of calculation))\* (5/6) \* current salary

The final salary will be accounted for in the actuarial valuation process.

Step 3: Payment procedure. Once the individuals have been identified and their accrued pension rights calculated the combined monthly sum will be paid to the South Sudan Pensions Fund which will become responsible for the payment to eligible pensioners.

### ***Payment of Gratuities***

c. In addition to pensions, gratuities owed to a person eligible for payment under this Agreement in accordance with the National Civil Service Regulation, 2007 and any other relevant laws or regulations shall be calculated by the Joint Technical Committee. In accordance with Articles 2 to 4, the Government of the Republic of Sudan shall immediately remit the full amount of any gratuities to which that person will be entitled to the designated Bank account of the Government of South Sudan.

d. The determination of the gratuities pursuant to Sub-Article (c) above shall be completed within thirteen (13) weeks of the person's termination of employment or six months of signing this agreement, whichever is earlier.

### ***Currency***

e. The remittance of payment pursuant to sub-Articles (b) and (c) above shall be made in South Sudanese Pounds (SSP).

f. The currency conversion shall be done as follows:

The formula outlined in Article 3(b) and 3(c) produces an amount denominated in Sudanese Pounds (SDG). This amount will be converted into United States Dollars (USD) using the average of the official exchange rates of the Central Bank of Sudan prevailing at the beginning of the first day of each of the seven months from 1 January 2011 to 8 July 2011 (this is 2.65). This gives a figure in USD. This will be converted into SSP at the prevailing official exchange rate at the Bank of South Sudan at the time of the transfer. Therefore payments will be made in South Sudanese Pounds.

#### **Article 4: Joint Technical Committee to oversee the calculation of Post-Service Benefits**

a. The Government of the Republic of Sudan and the Government of the Republic of South Sudan shall establish a Joint Technical Committee, the mandate of which shall be to ensure the calculation of the Post-Service Benefits, including gratuities and pensions, for each person eligible for payment under this agreement in accordance with Articles 2 and 3 above.

b. This Joint Technical Committee shall be made up of equal numbers of officials from the Government of the Republic of Sudan and the Government of the Republic of South Sudan.

c. The Government of the Republic of Sudan and the Government of the Republic of South Sudan shall provide, in a timely manner, any information, which the Committee deems necessary to facilitate the calculation of the Post-Service Benefits.

d. The Joint Technical Committee shall be established by September 1, 2012 pursuant to a Memorandum of Understanding between the Government of the Republic of Sudan and Government of the Republic of South Sudan.

e. The Joint Technical Committee shall engage an independent third party (such as the ILO). The Government of the Republic of Sudan, the Government of the Republic of South Sudan and the Joint Technical Committee, shall make available to the designated third-party all records and documents requested by the Joint Technical Committee, as well as other documents deemed necessary and requested by either the Government of the Republic of Sudan or the Government of the Republic of South Sudan or the independent third party.

f. The Joint Technical Committee, assisted by the independent party (such as ILO), shall complete the calculation of the Post-Service Benefits within a reasonable period of time but not exceeding eight (8) months of its establishment. The Joint Technical Committee shall make such results available to the National Pension Fund and to the South Sudan Pensions Fund.

g. The Government of the Republic of Sudan and the Government of the Republic of South Sudan shall avail the necessary financial, logistical and administrative support to the Joint Technical Committee and the independent third party to ensure the completion of its work in the timeframe established in sub-Articles (d) and (f) above. All of the costs of the Joint Technical Committee and the independent third party will be paid by both Governments in equal measure. The Government of the Republic of Sudan and the Government of the Republic of South Sudan shall also seek assistance, if necessary, from the international community to facilitate the work of the Joint Technical Committee.

h. In case of a dispute between the Parties the opinion of the independent party will be final and binding.

## **CHAPTER V: MECHANISM FOR PAYMENT OF POST-SERVICE BENEFITS**

### **Article 5: Transfer of Payments of Pensions**

a. To fulfil the obligation of the Government of the Republic of Sudan to remit all pensions owed to eligible persons as calculated by the Joint Technical Committee, the National Pension Fund or the Government of the Republic of Sudan shall transfer to the South Sudan Pension Fund.

(1) For category 1 recipients the NPF shall immediately resume and continue to pay pensions at levels of June 2011, in accordance with article 3(b), including the arrears accrued;

(2) For category 2 recipients, upon the determination by the Joint Technical Committee, gratuities and pension arrears accrued (if any) since July 2011; and

(3) On a monthly basis thereafter the combined pension owed to Eligible Pensioners.

## ANNEX B

### **Agreement between The Republic of South Sudan (RSS), The Republic of Sudan (Sudan), the Pipeline Operators in Sudan and Foreign Oil Companies with Producing Blocks within the RSS territory regarding the Unauthorized Confiscation or Diversions of RSS Entitlements**

**Recognizing** that the events that took place from December 2011 to January 2012 in relation to the handling of the crude oil entitlements of the RSS and the production of crude oil in the RSS has had unfortunate adverse impacts on all of the parties to this agreement;

**Affirming** our mutual interest in ensuring that there is no recurrence of such events;

**Acknowledging** a shared interest in the immediate resumption of oil production in the RSS and the commencement of export of oil produced in RSS through the pipelines and associated transportation systems located in Sudan;

**Understanding** that the RSS Government requires guarantees against the recurrence of such events in order to have the confidence to authorize the resumption of the production and export of oil of the RSS;

**Further understanding** that Sudan is willing to provide the guarantees set out in this undertaking as a good faith gesture to facilitate the resumption of crude oil production in the RSS, and

**Having regard for** the resolutions and treaties of the African Union Peace and Security Council, the United Nations Security Council, and governments of various stakeholder nations encouraging Sudan and the RSS to reach an amicable accommodation of the issues between them, including in relation to the movement of oil from the RSS for transport through Sudan, the following is agreed by each of the parties as legally enforceable obligations:

## **Article 1**

The Republic of Sudan undertakes that it shall never again, without the prior consent of the RSS, order or require directly or indirectly the Pipeline Operators or the Foreign Oil Companies (as listed in the attached appendix), or anyone acting or purporting to act on the behalf of any of them, to aid in any way whatsoever the confiscation or diversion of (or to change any production or delivery entitlement nomination schedules for the purpose or with the effect of diverting or confiscating) any crude oil produced in the RSS and transported, refined, handled, delivered or exported in or through Sudan or its port(s) and hereby irrevocably and unconditionally releases each of them from any and all liability or claims (whether civil or criminal) or prejudice (howsoever arising) for refusing or failing to participate in any activities that may lead to or facilitate such confiscation, diversion or change in nomination.

## **Article 2**

The Republic of Sudan hereby agrees that should any of the Foreign Oil Companies enter into agreements with the RSS to purchase RSS crude oil entitlements at the wellhead, processing facilities or other location prior to entering into the Transportation System (as defined by the existing Crude Oil Transportation Agreements), such crude oil will ship through the pipeline at costs and fees that are (or if applicable may be) agreed between the Foreign Oil Companies, the Pipeline Operators and Sudan, but in any event such costs and fees shall be no greater than the transportation tariffs (including marine terminal fees), central processing fees, and transit fees that the Parties agree to apply to RSS entitlements otherwise shipped by the RSS.

## **Article 3**

The Pipeline Operators and Foreign Oil Companies undertake, for the benefit of RSS, not to participate or engage in, or assist, in each case without the consent of the RSS, any activity (including by omitting to take any action) that may lead to or facilitate in any future confiscation or diversion of (or re-nomination of crude oil entitlements having the purpose or effect of diverting or confiscating) any crude oil produced in RSS and transported, refined, handled, delivered or exported in or through Sudan or its port(s), and hereby irrevocably and unconditionally waive

any defence, claim or argument of *force majeure*, act of state, immunity, or duty to comply with Sudanese laws should such activities occur again.

#### **Article 4**

Each of Sudan and the RSS, for the benefit of the other, hereby irrevocably and unconditionally waives and covenants not to assert in any proceeding (arbitral, judicial or otherwise) any claim, defence or argument on the basis of immunity (whether sovereign or otherwise), act of state or any legal theory of similar nature or effect, in each case in relation to any claim or allegation of non-compliance or breach of each of their respective undertakings and obligations set out in this agreement.

#### **Article 5**

Each of the Foreign Oil Companies hereby undertakes to procure that each of their respective home country governments shall use their respective good offices and endeavour to monitor and ensure compliance by each of the parties to this agreement with their respective undertakings and obligations hereunder.

#### **Article 6**

a. This agreement shall be governed by and construed in accordance with generally accepted principles of international law. Any dispute, controversy or claim arising under or in connection with this agreement, including with respect to the existence, validity, breach or termination hereof, shall be referred to and finally resolved by international arbitration in accordance with the UNCITRAL Arbitration Rules in force as at the date of commencement of the arbitration, which Rules are deemed to be incorporated by reference into this clause. The appointing authority shall be the Secretary-General of the Permanent Court of International Arbitration.

b. The arbitral tribunal shall consist of three arbitrators. The arbitral proceedings shall be conducted in London, England, in the English language.

c. At the request of any party, the arbitral tribunal may, within ninety days of its appointment, consolidate any arbitration under this agreement with any other

arbitration or proposed arbitration in which both Sudan and RSS are parties. The arbitral tribunal shall not consolidate such arbitrations unless it first determines that: (i) there are issues of fact or law common to the arbitrations in question and (ii) no party would be prejudiced as a result of such consolidation through undue delay or otherwise.

d. In the event of different rulings on the question of consolidation by the arbitral tribunal constituted hereunder and the arbitral tribunal constituted under the related agreement, the ruling of the tribunal under this agreement shall control, unless the related agreement is the Agreement on Friendly Relations & Cooperation between the Government of the Republic of South Sudan and the Government of the Republic of Sudan (July 2012) ("AFRC") in which case the tribunal constituted under Part V, Chapter II, Article 5 of the AFRC shall control. In the case of the consolidated proceeding, the arbitrators in that proceeding shall be appointed by the Secretary-General of the Permanent Court of International Arbitration.

This agreement is immediately effective, having the force of law, and binding upon the Parties upon signature directly below.

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: Minister Title: \_\_\_\_\_  
**For and on behalf of GOVERNMENT OF THE REPUBLIC OF SUDAN**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title: \_\_\_\_\_  
**For and on behalf of GOVERNMENT OF THE REPUBLIC OF SOUTH SUDAN**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title: \_\_\_\_\_  
**For and on behalf of NILEPET COMPANY LTD**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title: \_\_\_\_\_  
**For and on behalf of CNPC INTERNATIONAL (DAR) LTD**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title: \_\_\_\_\_  
**For and on behalf of CNPC INTERNATIONAL (NILE) LTD**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title: \_\_\_\_\_  
**For and on behalf of PETRONAS CARIGALI NILE LIMITED**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title: \_\_\_\_\_  
**For and on behalf of SINOPEC INTERNATIONAL PETROLEUM EXPLORATION AND  
PRODUCTION CORPORATION**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title: \_\_\_\_\_  
**For and on behalf of TRI OCEAN EXPLORATION & PRODUCTION**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title: \_\_\_\_\_  
**For and on behalf of ONGC NILE CANGA B.V.**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title \_\_\_\_\_  
**For and on behalf of ONGC VIDESH LIMITED**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title \_\_\_\_\_  
**For and on behalf of Greater Nile Petroleum Operating Company**

Signed by: \_\_\_\_\_ Witnessed by: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Designation: \_\_\_\_\_ Title \_\_\_\_\_  
**For and on behalf of Petrodar Operating Company Ltd**

## **Appendix**

*For purpose of this agreement:*

**PIPELINE OPERATORS** shall mean

- Greater Nile Petroleum Operating Company
- Petrodar Operating Company Ltd

**FOREIGN OIL COMPANIES** shall mean

- ONGC VIDESH LIMITED
- ONGC NILE CANGA B.V.
- TRI OCEAN EXPLORATION & PRODUCTION
- SINOPEC INTERNATIONAL PETROLEUM EPLORATION AND PRODUCTION CORPORATION
- PETRONAS CARIGALI NILE LIMITED
- CNPC INTERNATIONAL (NILE) LTD
- CNPC INTERNATIONAL (DAR) LTD