



Council of Energy Resource Tribes  
**TERMS FOR INDIAN RESOURCE AGREEMENTS**

- 1) **Limited time period:** An agreement should be for a fixed time period, preferably 20-25 years, not for “so long as minerals can be profitably produced.”
- 2) **Exploration work program:** a work program should be agreed, detailing what is to be done and when, including drilling, and requiring the expenditure of a specified minimum amount.
- 3) **Delivery of all data:** A Tribe should obtain all information resulting from exploration, including interpretation. A Tribe should have the property rights to that information, subject to confidentiality—for a limited period—and subject to the operator’s right to use the information for purposes of carrying out the Agreement.
- 4) **Prospect size and relinquishment provisions:** Current federal leases limit the size of one prospect area to 2,560 acres; upon justification, larger areas could be considered. If a comparatively large area is to be subject to the agreement, a relinquishment provision should be included requiring the operator to give up percentages of the exploration area over a period of time. This should not preclude dividing the area into a number of blocks and reserving certain blocks (traditionally in a checkerboard pattern) for future development.
- 5) **Sharing of real profits:** The fiscal regime should be based on a Tribe’s sharing in the true profits, including tax credits and allowances and other direct or indirect subsidies, preferably on a sliding scale increasing progressively with revenues or profitability, or after the operator has recovered its original costs. A Tribe should be assured that an operator will not over-price or under-price affiliated company transactions so as to siphon off profits.
- 6) **Limitation of recovery rates:** Where a Tribe shares in profits, the operator’s recovery of its original costs in computing profits could be spread out over a specified percentage of the value of production.
- 7) **Royalty:** A Tribe should be assured of royalty equal to a percentage of the fair-market value of production each year, regardless of profitability, preferably on a sliding scale increasing progressively with price or revenue.
- 8) **Minimum cash payment:** A Tribe should also be assured of a minimum annual revenue, as a rental or royalty.
- 9) **Payments for surface and water rights:** Fair market charges should be made for water and for the use of surface rights. Where a fixed annual charge is agreed, provision should be made for automatic adjustments by a price index for changes in the cost of living



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- 10) **Bonuses:** Cash bonuses should be considered on signature, on discovery, and perhaps at different production levels, keyed to the value rather than the quantity or production. A Tribe should not, however, trade off a share of the profits or a higher royalty for immediate cash payments (“front end” money) if this is not to its long-term economic advantage.
- 11) **Employment preferences:** Tribal members should be assured of genuine employment and promotion preferences in all employment categories (including supervisory, administrative, technical and managerial), coupled with commitments to provide educational opportunities and on-the-job training for Tribal members to qualify for employment and promotion.
- 12) **Preference for Tribal enterprises:** Enterprises owned by a Tribe and Tribal members should obtain preferences in providing goods and services through prequalification, advance notice, and an edge of 15% in competitive bidding.
- 13) **Tribal concurrence in basic decisions affecting the reservation and its resources:** A Tribe should be assured that it will take part in the basic decisions that determine how the land will be used and the value of its resources realized. These should include concurrence in decisions on:
  - a. The location of drill holes or wells, plant, equipment, infrastructure, and access routes;
  - b. The size, method, and rate of operations;
  - c. The impact of operations on air, surface, and sub-surface water, and on community facilities;
  - d. Conservation, reclamation, restoration programs;
  - e. Marketing arrangements; and
  - f. Annual operating budgets, where the Tribe shares profits.
- 14) **Indemnification:** A Tribe, its members, officers, employees, and agents, should be fully indemnified against all liabilities arising out of operations.
- 15) **Effective record keeping and reporting:** All pertinent information should be recorded on a regular basis, with financial information recorded in accordance with agreed-upon accounting principles (not just those “generally accepted”), and reports rendered at least quarterly.
- 16) **Inspection and monitoring procedures:** Tribal officials and their advisers should be assured the right to inspect all operations and books and records at all times.
- 17) **Assignment:** Tribal consent should be necessary for any assignment of any interest in the agreement.
- 18) **Insurance, guarantees, and performance bonds:** Operators should be required to carry appropriate insurance in adequate amounts for all operations.



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Performance bonds should also be required unless the operator's performance is guaranteed by parent corporations with adequate assets, including cash reserves.