

Standard Contracts for the

UK Offshore Oil & Gas Industry



General Conditions of Contract
(including Guidance Notes) for
Construction



LOGIC

Edition 2 - October 2003

Background

This contract is part of a series of different models – “Standard Contracts for the UK Offshore Oil and Gas Industry”. The first editions of these model contracts were published in 1997, as “CRINE” contracts.

CRINE was founded in 1992 as a cost reduction initiative to reduce the capital costs of developing oil and gas fields by some 30% in the face of low oil prices. This evolved into CRINE Network which was supported by the UK oil and gas exploration and production industry with the added objective of increasing the global competitiveness of its participants. In the course of this a number of initiatives were established, one of which was to introduce model contract documents for use in the industry.

In 1999, the UK Oil and Gas Industry Task Force (OGITF) proposed a number of new initiatives, one of which was LOGIC (Leading Oil and Gas Industry Competitiveness). The prime task of LOGIC is to lead the improvement of competitiveness of the UK oil and gas industry. LOGIC is a separate company with its own Board of Directors consisting of representatives from the founding industry organisations, such as the DTI, UKOOA and five leading trade organisations (UKOOA, OCA, IADC, EIC and IMCA). LOGIC became fully operational during 2000 and its strategic objectives are to:

- Sustain UKCS activity: to enable
 - discoveries to become economic and thus developed
 - prospects to become economic and thus drilled
 - field lives to be extended
 - the maximisation of economic recovery of reserves
- Increase export potential and international competitiveness by helping the industry to embrace new ways of working and contracting, supply chain improvements, utilisation of innovative technology and industry-wide co-operation.

LOGIC currently has two main activities, namely providing Supply Chain consultancy and advice and stimulating and leading greater industry collaboration.

CRINE is a wholly owned subsidiary of LOGIC.

Further information about LOGIC can be obtained on the website www.logic-oil.com where these model contracts are also available.

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Standard Contract for the U.K. Offshore Oil and Gas Industry

General Conditions of Contract (including Guidance Notes)
for Construction

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General Conditions of Contract
for Construction

Part 1 - General Conditions of Contract

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1. DEFINITIONS

The following definitions shall be used for the purpose of interpreting the CONTRACT. Further definitions not contained in this Clause shall apply to the Section in which they are stated and subsequent Sections.

- 1.1 "AFFILIATE" shall mean any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition, "subsidiary" and "holding company" shall have the meanings assigned to them under Section 736, Companies Act, 1985, as amended by Section 144, Companies Act 1989.
- 1.2 "COMPANY GROUP" shall mean the COMPANY, its CO-VENTURERS, its and their respective AFFILIATES and its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the CONTRACTOR GROUP.
- 1.3 "COMPANY REPRESENTATIVE" shall mean that person referred to in Clause 3.
- 1.4 "COMPLETION" shall mean completion of the whole of the WORK in accordance with Clause 28.
- 1.5 "COMPLETION CERTIFICATE" shall mean the certificate issued pursuant to Clause 28.4 in respect of the whole or the relevant part of the WORK.
- 1.6 "COMPLETION DATE" shall mean the date shown on the COMPLETION CERTIFICATE on which the whole or the relevant part of the WORK was actually completed.
- 1.7 "CONTRACT" shall have the meaning described in Section I - Form of Agreement.
- 1.8 "CONTRACT PRICE" shall mean the price for the WORK calculated in accordance with Section III - Remuneration, exclusive of Value Added Tax.
- 1.9 "CONTRACTOR GROUP" shall mean the CONTRACTOR, its SUBCONTRACTORS, its and their AFFILIATES, its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the COMPANY GROUP. "CONTRACTOR GROUP" shall also mean subcontractors (of any tier) of a SUBCONTRACTOR which are performing WORK offshore or at any fabrication yard or construction site, their AFFILIATES, their directors, officers and employees (including agency personnel).
- 1.10 "CONTRACTOR REPRESENTATIVE" shall mean that person referred to in Clause 3.
- 1.11 "CO-VENTURER" shall mean any other entity with whom the COMPANY is or may be from time to time a party to a joint operating agreement or unitisation agreement or similar agreement relating to the operations for which the WORK is being performed and the successors in interest of such CO-VENTURER or the assignees of any interest of such CO-VENTURER.
- 1.12 "HANDOVER CERTIFICATE" shall mean the certificate which is issued by the COMPANY pursuant to Clause 28.2 in respect of the handover of all or the relevant part of the PERMANENT WORK by the CONTRACTOR to the care, custody and control of the COMPANY.
- 1.13 "JOB SPECIFICATION" shall mean Sections IV, V, VII, VIII and IX of the CONTRACT.

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- 1.14 "KEY PERSONNEL" shall mean those personnel named as such in the CONTRACT.
- 1.15 "PERMANENT WORK" shall mean the property of the COMPANY arising from the WORK.
- 1.16 "PROGRAMME" shall mean the detailed work plan for carrying out the WORK which shall be prepared by the CONTRACTOR and which the COMPANY has approved as the current detailed work plan that the CONTRACTOR shall utilise in the performance of the WORK in accordance with Clause 11.
- 1.17 "SCHEDULED COMPLETION DATE" shall mean the date by which the CONTRACTOR is required to achieve COMPLETION, which at the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT shall be the date as stated in Appendix 1 to Section I - Form of Agreement.
- 1.18 "SCHEDULE OF KEY DATES" shall mean the schedule of events and associated dates set out in Section II b) - Special Conditions of Contract, together with amendments to any or all of such dates as may be made from time to time in accordance with Clause 14.
- 1.19 "SUBCONTRACT" shall mean any contract between the CONTRACTOR and any party (other than the COMPANY or any employees of the CONTRACTOR) for the performance of any part of the WORK.
- 1.20 "SUBCONTRACTOR" shall mean any party (other than the CONTRACTOR) to a SUBCONTRACT.
- 1.21 "TECHNICAL INFORMATION" shall mean all such information provided by or caused to be provided by the COMPANY pursuant to the CONTRACT.
- 1.22 "VARIATION" shall mean both:
- (a) an instruction to the CONTRACTOR in accordance with Clause 14.1; and
 - (b) an adjustment to the SCHEDULE OF KEY DATES and/or CONTRACT PRICE to which the CONTRACTOR is entitled under any Clause of this Section II - Conditions of Contract.
- 1.23 "WORK" shall mean all work that the CONTRACTOR is required to carry out in accordance with the provisions of the CONTRACT, including the provision of all materials, services and equipment to be rendered in accordance with the CONTRACT.
- 1.24 "WORKSITE" shall mean the lands, waters and other places on, under, in or through which the WORK is to be performed including offshore installations, floating construction equipment, vessels (including the area covered by approved anchor patterns), design offices, workshops and places where equipment, materials or supplies are being obtained, stored or used for the purposes of the CONTRACT.

2. INTERPRETATION

- 2.1 All instructions, notices, agreements, authorisations, approvals and acknowledgements shall be in writing. All such documentation together with all correspondence and other documents shall be in the English language.

Nevertheless, if for any reason it is considered necessary by the COMPANY to give an instruction to the CONTRACTOR orally in the first instance, the CONTRACTOR shall comply with such instruction. Any such oral instruction shall be confirmed in

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writing as soon as is possible under the circumstances, provided that, if the CONTRACTOR confirms in writing any such oral instruction which is not contradicted in writing by the COMPANY without undue delay, it shall be deemed to be an instruction in writing by the COMPANY.

- 2.2 Any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.
- 2.3 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa.

3. COMPANY AND CONTRACTOR REPRESENTATIVES

3.1 General

- (a) The COMPANY REPRESENTATIVE and the CONTRACTOR REPRESENTATIVE are the persons named as such in Appendix 1 to Section I - Form of Agreement.
- (b) Such representatives, or delegates appointed in accordance with the provisions of this Clause 3, shall be readily available to enable both the COMPANY and the CONTRACTOR to discharge their obligations under the CONTRACT.
- (c) The COMPANY REPRESENTATIVE and any person authorised by him shall have access at all reasonable times to the WORKSITE and the CONTRACTOR shall afford every facility for and every assistance in obtaining the right of access.

3.2 COMPANY REPRESENTATIVE

- (a) The COMPANY REPRESENTATIVE has the authority to commit the COMPANY in all matters under the CONTRACT and, subject to any delegation of such authority which shall be notified to the CONTRACTOR in writing, shall be responsible for issuing to and receiving from the CONTRACTOR all notices, information, instructions and decisions.
- (b) By notice to the CONTRACTOR, the COMPANY REPRESENTATIVE may at any time delegate any of his authority to any nominated deputy. Such notice shall specify the precise authority of any such deputy and shall be sent to the CONTRACTOR REPRESENTATIVE.
- (c) The COMPANY may change the COMPANY REPRESENTATIVE at any time and shall notify the CONTRACTOR of any change.
- (d) Except as expressly stated in the CONTRACT, the COMPANY REPRESENTATIVE has no powers to amend the CONTRACT or to relieve the CONTRACTOR from any of its obligations under the CONTRACT.

3.3 CONTRACTOR REPRESENTATIVE

- (a) The CONTRACTOR REPRESENTATIVE has the authority to commit the CONTRACTOR to any course of action within the rights and obligations of the CONTRACTOR under the CONTRACT and, subject to any delegation of such authority, shall be responsible for issuing to and receiving from the COMPANY all notices, information, instructions and decisions.

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- (b) The CONTRACTOR REPRESENTATIVE may delegate any of his authority to any nominated deputy, the terms of such delegation being subject to the prior approval of the COMPANY which shall not be unreasonably withheld or delayed.
- (c) The CONTRACTOR shall not change the CONTRACTOR REPRESENTATIVE or any nominated deputy without cause without the prior approval of the COMPANY which shall not unreasonably be withheld or delayed.
- (d) The CONTRACTOR REPRESENTATIVE has no powers to amend the CONTRACT.

4. CONTRACTOR'S GENERAL OBLIGATIONS

4.1 The CONTRACTOR shall provide all management, supervision, personnel, materials and equipment, (except materials and equipment specified to be provided by the COMPANY), plant, consumables, facilities and all other things whether of a temporary or permanent nature, so far as the necessity for providing the same is specified in or reasonably to be inferred from the CONTRACT.

4.2 The CONTRACTOR shall carry out all of its obligations under the CONTRACT and shall execute the WORK with all due care and diligence and with the skill to be expected of a reputable contractor experienced in the types of work to be carried out under the CONTRACT. The WORK shall be fit for the purposes specified in the CONTRACT or, where no such purpose is specified, fit for its ordinary purpose.

4.3 Except as expressly specified in the CONTRACT the CONTRACTOR shall not be responsible for the design of any part of the PERMANENT WORK.

However, for the avoidance of doubt, where the CONTRACTOR is so responsible all such WORK undertaken shall be in accordance with Clause 4.2.

4.4 Except to the extent that it may be legally or physically impossible or create a hazard to safety the CONTRACTOR shall comply with the COMPANY's instructions and directions on all matters relating to the WORK.

Subject to Clause 14, the COMPANY shall issue a VARIATION if the CONTRACTOR can show that it has suffered delay and/or incurred additional cost as a result of any instruction or direction issued under this Clause.

4.5 Materials and equipment or parts thereof provided by the CONTRACTOR for which there is no detailed specification included in the CONTRACT shall be new or, subject to the COMPANY's approval, as new, of good quality and workmanship and fit for the intended purpose where a purpose is defined in the CONTRACT or, where no such purpose is defined, fit for its ordinary purpose.

4.6 In order to ensure that performance and completion of the WORK are not delayed or impeded the CONTRACTOR shall be responsible for the timely provision of all matters referred to in Clauses 4.1, 4.3 and 4.5 and, where provided for elsewhere in the CONTRACT, for the timely request of COMPANY-provided materials and equipment.

5. RESPONSIBILITY FOR COMPANY-PROVIDED ITEMS

5.1 The COMPANY shall provide the materials and equipment as specified in Section X - Materials, Services and Facilities to be provided by the COMPANY. Dates of delivery and methods of delivery shall be as specified in that Section.

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- 5.2 Notwithstanding the provisions of Clause 22.2, the CONTRACTOR shall be responsible for receiving, unloading and handling such items when delivered to the CONTRACTOR. The CONTRACTOR shall visually inspect all such items and check all supporting documentation and shall notify the COMPANY of any discrepancy or damage within three (3) working days of receipt or such other period as may from time to time be agreed. Receipt of all such items shall be recorded in writing. In the absence of any notification of discrepancy or damage such items shall be deemed to have been delivered in a complete and undamaged state to the extent that any discrepancy or damage could have been discovered by a visual inspection. The CONTRACTOR shall not however be liable for any latent defects in any such items.
- 5.3 The CONTRACTOR shall carry out all special tests and inspections on materials and equipment supplied by the COMPANY which are specified in the JOB SPECIFICATION and shall notify the COMPANY of the results of such tests and inspections.
- 5.4 The CONTRACTOR shall maintain in a form agreed by the COMPANY and the CONTRACTOR adequate records of materials and equipment provided by the COMPANY and provide a regular monthly inventory to show the use of all materials and equipment received and the balance of materials and equipment unused at all times, in accordance with any relevant provisions of the CONTRACT.
- 5.5 The CONTRACTOR shall be responsible for providing suitable and safe storage for materials and equipment provided by the COMPANY to the CONTRACTOR for the WORK and shall comply with any particular storage requirements set out in the JOB SPECIFICATION. Notwithstanding the provisions of Clause 22.2 but subject to the provisions of Clause 24.2, the CONTRACTOR shall make good any loss or damage to such materials and equipment which may occur whilst in the possession or control of the CONTRACTOR and, to the extent that it results from any non-compliance with the JOB SPECIFICATION, any deterioration that may occur.
- 5.6 The CONTRACTOR shall notify the COMPANY of all unused or surplus materials or equipment provided by the COMPANY in accordance with any relevant provisions of the CONTRACT. The COMPANY shall authorise a VARIATION in accordance with Clause 14, in relation to the disposal of any such surplus.

6. CONTRACTOR TO INFORM ITSELF

- 6.1 The CONTRACTOR shall be deemed to have satisfied itself, before entering into the CONTRACT, as to the extent and nature of the WORK including but not limited to the services, personnel, materials and equipment, plant, consumables and facilities required for the WORK, the correctness and sufficiency of the rates and prices stated in Section III - Remuneration, general and local conditions including seabed and subsoil conditions (so far as practicable and having taken into account any information in connection therewith which may have been provided by the COMPANY), climatic, sea, other water and weather conditions, and all other matters which could affect progress or performance of the WORK.
- 6.2 If during the execution of the WORK the CONTRACTOR encounters seabed and/or subsoil conditions, which conditions could not reasonably have been foreseen by a contractor experienced in the types of work to be carried out under the CONTRACT, subject to the provisions of Clause 14 the COMPANY shall issue a VARIATION if the CONTRACTOR can show that it has suffered delay and/or incurred additional cost as a direct result of encountering such seabed and/or subsoil conditions.

Such VARIATION shall be evaluated using the rates and prices included in the CONTRACT or, in the absence of suitable rates and prices, on the basis of actual

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additional costs incurred by the CONTRACTOR as a result of encountering such conditions.

- 6.3 Any failure by the CONTRACTOR to take account of matters which affect the WORK will not relieve the CONTRACTOR from its obligations under the CONTRACT.

7. CONTRACTOR TO INFORM COMPANY/ COMPANY TO INFORM CONTRACTOR

- 7.1 The CONTRACTOR shall notify the COMPANY without undue delay of all things which in the opinion of the CONTRACTOR appear to be deficiencies, omissions, contradictions or ambiguities in the CONTRACT or conflicts with applicable law. The COMPANY shall review these items and issue the necessary instructions before the CONTRACTOR proceeds with any part of the WORK affected. Subject to the provisions of Clause 14, the COMPANY shall issue a VARIATION if the CONTRACTOR can show that it has suffered delay and/or incurred additional cost as a result of any such instruction.

- 7.2 In addition to the requirements of Section VI - Health, Safety and Environment and the provisions of Clause 39, the CONTRACTOR shall notify the COMPANY without delay of any accidents which occur in connection with the carrying out of the WORK. The CONTRACTOR shall also notify the COMPANY of any other incidents which occur which might affect the carrying out of the WORK or the CONTRACT.

- 7.3 The CONTRACTOR shall notify the COMPANY immediately of any proposed or actual stoppages of work, industrial disputes or other matters affecting or likely to affect the carrying out or completion of the WORK.

When requested by the COMPANY the CONTRACTOR shall also supply to the COMPANY other information in connection with the WORK relating to industrial relations including but not limited to minimum rates of pay, allowances, amenities, working hours, periods of unpaid leave and overtime.

- 7.4 The COMPANY shall without delay provide to the CONTRACTOR all information affecting the WORK which the CONTRACTOR reasonably requires and requests from the COMPANY in order to properly perform the WORK in accordance with the CONTRACT.

8. ASSIGNMENT AND SUBCONTRACTING

8.1 Assignment

- (a) The COMPANY is entitled to assign the CONTRACT or any part of it or any benefit or interest in or under it to any CO-VENTURER or AFFILIATE of the COMPANY. In addition the COMPANY may make any such assignment to any other third party but only with the prior agreement of the CONTRACTOR which shall not unreasonably be withheld or delayed.
- (b) The CONTRACTOR undertakes that, in the event of any assignment described above, it will execute without delay a formal assignment of interest in the CONTRACT to the relevant party, to be effective upon the written assumption by the assignee of all obligations of the COMPANY under the CONTRACT.
- (c) The CONTRACTOR shall assign neither the CONTRACT nor any part of it nor any benefit or interest in or under it without the prior approval of the COMPANY which shall not unreasonably be withheld or delayed.

8.2 Subcontracting

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- (a) The CONTRACTOR shall not subcontract the whole of the WORK. The CONTRACTOR shall not subcontract any part of the WORK without the prior approval of the COMPANY which approval shall not unreasonably be withheld or delayed.
- (b) Before entering into any SUBCONTRACT, whether provided for in the CONTRACT or not, the COMPANY shall be given an adequate opportunity to review the form of SUBCONTRACT, the choice of SUBCONTRACTOR, the part of the WORK included in the SUBCONTRACT and any other relevant details requested by the COMPANY.

Where the COMPANY will be required to reimburse to the CONTRACTOR the sum paid to the SUBCONTRACTOR, any procedure for award of such SUBCONTRACTS included in the CONTRACT shall be followed and the COMPANY shall be entitled to review all relevant aspects of the SUBCONTRACT.

- (c) No SUBCONTRACT shall bind or purport to bind the COMPANY or the CO-VENTURERS. Nevertheless the CONTRACTOR shall ensure that any SUBCONTRACTOR shall be bound by and observe the provisions of the CONTRACT in so far as they apply to the SUBCONTRACT.

Each SUBCONTRACT shall expressly provide for the CONTRACTOR's unconditional right of assignment of the SUBCONTRACT to the COMPANY in the event that the COMPANY terminates the CONTRACT or the WORK.

- (d) The CONTRACTOR shall be responsible for all work, acts, omissions and defaults of any SUBCONTRACTOR as fully as if they were work, acts, omissions or defaults of the CONTRACTOR.

9. CONTRACTOR PERSONNEL

- 9.1 The CONTRACTOR undertakes to provide sufficient personnel at all times to ensure performance and completion of the WORK in accordance with the provisions of the CONTRACT.
- 9.2 All personnel employed on the WORK shall, for the work which they are required to perform, be competent, properly qualified, skilled and experienced in accordance with good industry practice. The CONTRACTOR shall verify all relevant qualifications of such personnel.
- 9.3 The KEY PERSONNEL shall be provided by the CONTRACTOR and shall not be replaced without the prior approval of the COMPANY. Any replacement shall work with the person to be replaced for a reasonable handover period.
- 9.4 The CONTRACTOR shall ensure that the KEY PERSONNEL and supervisory personnel of the CONTRACTOR and SUBCONTRACTORS shall read, write and speak fluent English.
- 9.5 The CONTRACTOR shall make its own arrangements for the engagement of personnel, local or otherwise, and, save in so far as the CONTRACT otherwise provides, for their payment and onshore transport, housing, maintenance and board and lodging.
- 9.6 The CONTRACTOR shall be as responsible for any WORK performed by any agency personnel and by any other person provided by the CONTRACTOR in connection with the WORK as if the WORK was performed by the employees of the CONTRACTOR.

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- 9.7 The CONTRACTOR shall ensure that all employees of the CONTRACTOR and any SUBCONTRACTOR engaged in the performance of the WORK comply with applicable laws including immigration laws and where required are in possession of a valid work permit for the duration of the CONTRACT. When requested details of such work permits shall be submitted to the COMPANY prior to the employee being engaged in the WORK.
- 9.8 The COMPANY may instruct the CONTRACTOR to remove from the WORKSITE any person engaged in any part of the WORK who in the reasonable opinion of the COMPANY is either:
- (a) incompetent or negligent in the performance of his duties; or
 - (b) engaged in activities which are contrary or detrimental to the interests of the COMPANY; or
 - (c) not conforming with relevant safety procedures described in Section VI - Health, Safety and Environment or persists in any conduct likely to be prejudicial to safety, health or the environment.

Any such person shall be removed forthwith from the WORKSITE. Any person removed for any of the above reasons shall not be engaged again in the WORK or on any other work of the COMPANY without the prior approval of the COMPANY.

The CONTRACTOR shall provide a suitable replacement for any such person within twenty four (24) hours or such longer time as may be agreed by the COMPANY.

10. CO-OPERATION WITH OTHERS

- 10.1 During the carrying out of the WORK the COMPANY may employ other contractors in connection with its operations at the WORKSITE. The CONTRACTOR shall permit free access to the WORKSITE to such other contractors and shall co-operate with them and afford all reasonable facilities to them.
- 10.2 Subject to Clause 14, the COMPANY shall issue a VARIATION if the CONTRACTOR can show that in compliance with Clause 10.1 the CONTRACTOR has suffered delay and/or incurred cost that could not reasonably have been foreseen by an experienced contractor.

11. PROGRAMME

- 11.1 The CONTRACTOR shall be responsible for the programming of the WORK and for independently controlling its progress.
- The CONTRACTOR shall produce a detailed work plan, which complies with any requirements set out in the CONTRACT, providing for performance and completion of the WORK in accordance with the SCHEDULE OF KEY DATES.
- 11.2 The CONTRACTOR shall submit the detailed work plan referred to in Clause 11.1, together with full supporting details to the COMPANY for review. When approved by the COMPANY such work plan shall become the PROGRAMME.
- 11.3 The CONTRACTOR shall use the PROGRAMME as the basis for progress reporting, scheduling, forecasting and controlling performance of the WORK.
- 11.4 In order to take account of VARIATIONS and actual progress of the WORK, the CONTRACTOR shall continually update its detailed work plan and supporting details and regularly submit them to the COMPANY for review. Once a revised work

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plan has been approved by the COMPANY it shall become the PROGRAMME, there being only one PROGRAMME at any particular time.

- 11.5 If for any reason which does not entitle the CONTRACTOR to a VARIATION the rate of progress of the WORK is at any time in the opinion of the COMPANY too slow to ensure performance and completion in accordance with the SCHEDULE OF KEY DATES, the COMPANY shall notify the CONTRACTOR and the CONTRACTOR shall thereupon inform the COMPANY of its proposals and take such steps as are necessary to expedite progress so as to complete the WORK or such part of the WORK in accordance with the SCHEDULE OF KEY DATES.

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12. TECHNICAL INFORMATION

- 12.1 The COMPANY shall provide TECHNICAL INFORMATION in accordance with Section IX - Documents and Drawings or as provided elsewhere in the CONTRACT and may during the progress of the WORK issue to the CONTRACTOR such modified or additional TECHNICAL INFORMATION as may be necessary for the proper carrying out and completion of the WORK and the CONTRACTOR shall comply with the same.
- 12.2 The CONTRACTOR shall give adequate notice of any further TECHNICAL INFORMATION that may be required for the proper carrying out and completion of the WORK in accordance with the SCHEDULE OF KEY DATES.
- 12.3 Where the CONTRACTOR is required to produce sketches, drawings, calculations, reports, recommendations and the like, or the preparation of such is necessary for the proper carrying out and completion of the WORK, the CONTRACTOR shall submit all such documents to the COMPANY as may be requested by the COMPANY, for review and comment. The COMPANY shall be afforded the time specified in the CONTRACT (or if no time is specified a reasonable time) to carry out such review so that progress of the WORK is not delayed.
- 12.4 The CONTRACTOR shall maintain at the WORKSITE a complete set of all relevant TECHNICAL INFORMATION together with all relevant documents and drawings provided by the CONTRACTOR for the purposes of the WORK. Such information shall be made available to the COMPANY REPRESENTATIVE or any other person authorised by him at all reasonable times.
- 12.5 The CONTRACTOR shall carry out such checks on TECHNICAL INFORMATION as are specified in the JOB SPECIFICATION. The COMPANY shall not be responsible for any additional cost and/or delay that results from the CONTRACTOR's omission to complete such checks promptly and properly.
- 12.6 When requested by the COMPANY the CONTRACTOR shall, following COMPLETION or termination of all of the WORK or the CONTRACT, return all copies of TECHNICAL INFORMATION to the COMPANY. Notwithstanding the above, the CONTRACTOR may retain one copy of such documents while admitting that the COMPANY has title to all such documents.

13. INSPECTION AND TESTING

- 13.1 The CONTRACTOR shall provide samples of materials before such materials are incorporated into the WORK where the provision of such samples is provided for in the CONTRACT.

Similarly the CONTRACTOR shall also provide samples not specified in the CONTRACT but requested by the COMPANY, and in such case such samples shall be at the expense of the COMPANY unless the requirement for such samples arises as a result of default on the part of the CONTRACTOR.

- 13.2 The CONTRACTOR shall carry out all tests and inspections detailed in the CONTRACT. If the COMPANY so requires, the CONTRACTOR shall inspect, test or retest any materials or equipment provided by the CONTRACTOR in order to confirm that the requirements of the CONTRACT are met. The CONTRACTOR shall supply the COMPANY with certified copies of all test records and inspection reports as soon as they become available.

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The COMPANY has the right, but not the obligation, to witness any test or inspection carried out by the CONTRACTOR. The CONTRACTOR shall notify the COMPANY in adequate time in order that the COMPANY may exercise this right.

The COMPANY has the right, but not the obligation, to inspect, test and examine all things provided by the CONTRACTOR for the purposes of the WORK, including but not limited to materials and equipment, together with all documentation relating thereto.

- 13.3 No part of the WORK shall be put out of view or covered up without the consent of the COMPANY. The CONTRACTOR shall provide reasonable notice to the COMPANY in order to permit the inspection of any part of the WORK which is about to be put out of view or covered up. The COMPANY shall give its consent without undue delay.

Notwithstanding the foregoing, the COMPANY shall have the right at any time to require the CONTRACTOR to uncover or open up any part of the WORK and to reinstate such uncovered or open part following inspection and testing by the COMPANY.

- 13.4 The COMPANY shall have the right to reject any part of the WORK or rework which does not comply with any requirement or requirements of the CONTRACT, including, but not limited to, faulty workmanship, services, materials or equipment. Upon receiving notice of rejection the CONTRACTOR shall immediately commence to reperform, repair or replace the defective part of the WORK and shall carry out such inspections and/or tests on other parts of the WORK as the COMPANY may require to ensure that there are no similar parts of the WORK that fail to comply with the requirements of the CONTRACT.
- 13.5 Where reperformance, repair, replacement, uncovering, reinstating, testing and inspection are additional to the requirements of the CONTRACT and are not the result of failure by the CONTRACTOR to conform with the CONTRACT on some other similar part of the WORK and do not reveal failure to comply with the CONTRACT, such WORK shall be at the expense of the COMPANY.
- 13.6 Neither failure on the part of the COMPANY to inspect the WORK or witness or test or to discover defects nor failure to reject work performed by the CONTRACTOR which is not in accordance with the CONTRACT shall relieve the CONTRACTOR from any liability or obligation under the CONTRACT.
- 13.7 In case of default on the part of the CONTRACTOR in carrying out its obligations under Clause 13.4, the COMPANY, having given prior notice to the CONTRACTOR, shall be entitled to undertake the CONTRACTOR's responsibilities in this respect. The COMPANY shall be entitled to recover from the CONTRACTOR all costs reasonably incurred by the COMPANY in carrying out such responsibilities.

14. VARIATIONS

- 14.1 Right of the COMPANY to issue instructions
- (a) The COMPANY has the right to issue instructions to the CONTRACTOR at any time to do any of the following:
- (i) make any revision to the WORK which may include additions, omissions, substitutions and changes in quality, form, character, kind, position, dimension, level or line and changes in any method of construction specified by the COMPANY;

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- (ii) revise elements of the WORK already completed in accordance with the CONTRACT;

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- (iii) accelerate the WORK within limits of practicality in order to recover all or part of any delay in respect of which the CONTRACTOR would otherwise have been entitled to a revision to the SCHEDULE OF KEY DATES in accordance with Clause 14.5;
 - (iv) reprogramme the WORK and reschedule its resource within the limits of practicality in order to complete the WORK or any part thereof in accordance with any amendment to the SCHEDULE OF KEY DATES the COMPANY may require.
- (b) An instruction under Clause 14.1(a) will constitute a VARIATION. When required by the COMPANY, on receipt of any such VARIATION, the CONTRACTOR shall proceed immediately as instructed even though the amount of any adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES may not have been determined.

14.2 VARIATIONS Generally

- (a) Prior to instructing or authorising any VARIATION, the COMPANY may require the CONTRACTOR to submit estimates as described in Clause 14.4.
- (b) The CONTRACT PRICE and/or SCHEDULE OF KEY DATES shall be subject to adjustment only as a result of a VARIATION.
- (c) The CONTRACTOR shall not be entitled to receive a VARIATION to cover any instruction, decision or act of the COMPANY which may be made or given in order to ensure that the CONTRACTOR complies with any of its obligations under the CONTRACT.
- (d) A VARIATION shall in no way affect the rights or obligations of the parties except as expressly provided in that VARIATION. Any VARIATION shall be governed by all the provisions of the CONTRACT.

14.3 CONTRACTOR'S Right to Request a VARIATION

- (a) If the CONTRACTOR considers that an occurrence has taken place for which it is entitled to receive a VARIATION, the CONTRACTOR, before proceeding with any work affected by such occurrence, shall request without delay in writing that the COMPANY issue a VARIATION. Any such request shall include details of the occurrence including any relevant dates and the Clause or Clauses of the CONTRACT under which the CONTRACTOR considers itself to be entitled to a VARIATION. Such occurrences shall include but not be limited to the following:
 - (i) an instruction from the COMPANY, whether contained in drawings or specifications issued by the COMPANY or not, which in the opinion of the CONTRACTOR constitutes a revision to the WORK;
 - (ii) matters arising under any Clause of the CONTRACT including Clause 14.6 in respect of which it is specifically stated that a VARIATION will be authorised by the COMPANY.
- (b) If the CONTRACTOR fails to submit requests for VARIATIONS in accordance with Clause 14.3 (a) when it considers or should reasonably have considered that an occurrence has taken place for which it is entitled to receive a VARIATION and/or fails to provide supporting estimates in accordance with Clause 14.4, the CONTRACTOR shall, at the sole discretion of the COMPANY,

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forfeit any right to receive such VARIATIONS and any rights concerning adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES.

- (c) The COMPANY shall within a reasonable time of having received a request for a VARIATION and the supporting estimates give notice to the CONTRACTOR stating either:
- (i) that the proposed VARIATION or part thereof is accepted in principle in which case the COMPANY will issue such VARIATION; and/or
 - (ii) that what is requested or part thereof is included in the obligations undertaken by the CONTRACTOR under the terms of the CONTRACT and that the request is accordingly rejected; and/or
 - (iii) that the request or part thereof is rejected for other stated reasons.

Should the CONTRACTOR wish to pursue any request for a VARIATION or part thereof which has been rejected by the COMPANY it shall proceed in accordance with the provisions of Clause 14.7.

14.4 CONTRACTOR'S Estimates

Within seven (7) days of having been requested by the COMPANY in accordance with Clause 14.2 (a) or the CONTRACTOR having requested a VARIATION in accordance with Clause 14.3 (a) or such longer time as the COMPANY shall agree where reasonable for any specific VARIATION the CONTRACTOR shall submit to the COMPANY fully detailed estimates prepared on a basis as directed by the COMPANY.

Such estimates shall include:

- (i) a description of the work to be varied under the VARIATION;
- (ii) a detailed schedule for the execution of the VARIATION showing the resources to be employed;
- (iii) the effect (if any) on the CONTRACT PRICE;
- (iv) the effect (if any) on the PROGRAMME and SCHEDULE OF KEY DATES.

14.5 Adjustments to CONTRACT PRICE and SCHEDULE OF KEY DATES

Adjustments to the CONTRACT PRICE and SCHEDULE OF KEY DATES relating to any VARIATION shall be made as follows:

Wherever possible the effect (if any) of a VARIATION on CONTRACT PRICE and SCHEDULE OF KEY DATES shall be agreed before the instruction is issued or before work starts, using the estimates prepared by the CONTRACTOR in accordance with Clause 14.4.

Failing agreement on the basis of the CONTRACTOR's estimate, the COMPANY shall determine the effects of VARIATIONS in accordance with the following principles:

- (a) where work is of a similar nature and carried out under similar conditions to work priced in the CONTRACT it shall be valued at the appropriate rates and prices included in the CONTRACT.

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In the event that rates and prices for delay and/or adjustments to the SCHEDULE OF KEY DATES are included in Section III - Remuneration; then such rates and prices shall be used where appropriate;

- (b) where work is not of a similar nature or is not carried out under similar conditions to work priced in the CONTRACT or there are no appropriate rates or prices in the CONTRACT then a fair valuation shall be made;
- (c) with respect to effect on the SCHEDULE OF KEY DATES a fair and reasonable adjustment shall be made taking into account all relevant factors including any acceleration instructed under Clause 14.1(a).

Except insofar as the CONTRACTOR can demonstrate that adjustments (including nil adjustments) to the CONTRACT PRICE and /or SCHEDULE OF KEY DATES determined for a VARIATION are incorrect due to factors which could not have been foreseen by the CONTRACTOR at the time of such determination, any such adjustments shall not be subject to renegotiation and shall be deemed to include any cumulative effect of the VARIATION and the determined effect of any and all other previously authorised VARIATIONS on the CONTRACT PRICE and the SCHEDULE OF KEY DATES.

Should factors arise which could not have been foreseen as described, no alteration shall be made to any agreed VARIATION but a new VARIATION shall be issued to deal with any additional effects of such factors.

14.6 VARIATIONS in respect of delay and/or additional cost

The COMPANY shall authorise a VARIATION if the CONTRACTOR can show that it has suffered delay and/or incurred cost as a direct result of any of the following:

- (a) failure of the COMPANY to comply with relevant CONTRACT provisions in respect of drawings and/or specifications and/or other information;
- (b) failure of the COMPANY to comply with relevant CONTRACT provisions in respect of Section X - Materials, Services and Facilities to be provided by the COMPANY;
- (c) information supplied by the COMPANY for which the COMPANY is liable under the terms of the CONTRACT and which is incorrect, provided the CONTRACTOR has complied with its obligations under Clause 7.1.

Under any such VARIATION and notwithstanding the provisions of Clause 14.5 (a), the CONTRACTOR will be entitled to such adjustments to the CONTRACT PRICE and SCHEDULE OF KEY DATES as are fair and reasonable taking into account all relevant factors including the following:

- (i) any acceleration ordered by the COMPANY to overcome all or part of any delay in accordance with Clause 14.1(a);
- (ii) that the CONTRACTOR is entitled to recover necessary direct additional cost which includes any necessary additional overheads but not profit.

In the event that specific rates and prices for delay and/or extension to the SCHEDULE OF KEY DATES are included in Section III - Remuneration, then such rates and prices shall be used where appropriate to evaluate any adjustment to the CONTRACT PRICE under the provisions of this Clause and shall be deemed to represent direct additional cost to the CONTRACTOR as defined herein.

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14.7 Disputed VARIATIONS

- (a) If at any time the CONTRACTOR intends to claim any adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES additional to that previously determined by the COMPANY for a VARIATION issued by the COMPANY or requested by the CONTRACTOR, the CONTRACTOR shall give notice in writing of such intention without delay after the happening of the events giving rise to such claim.

Such events shall include but not be limited to the following:

- (i) rejection by the COMPANY of a request for a VARIATION made by the CONTRACTOR;
- (ii) any VARIATION where effect on CONTRACT PRICE and/or SCHEDULE OF KEY DATES cannot be determined at the time.

Upon the happening of such events the CONTRACTOR shall keep such contemporary records as may reasonably be necessary to support any claim it may subsequently wish to make.

- (b) Upon receipt by the COMPANY of any such notice of claim, and without necessarily admitting any liability, the COMPANY may instruct the CONTRACTOR to keep such contemporary records or further contemporary records as the case may be as are reasonable and may be material to the claim of which notice has been received and the CONTRACTOR shall keep such records, copies of which shall be supplied to the COMPANY as and when the COMPANY may direct.
- (c) The CONTRACTOR shall send to the COMPANY at the end of every month an account giving particulars, as full and detailed as possible, of all such claims.
- (d) If the CONTRACTOR does not give notices and/or does not submit records and accounts in accordance with the provisions of Clauses 14.7(a), 14.7(b) and 14.7(c) the CONTRACTOR shall, at the sole discretion of the COMPANY, forfeit any right to receive any adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES in respect of any such claims.
- (e) Where any matter in respect to adjustments to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES has not been finalised and without prejudice to the rights of either the COMPANY or the CONTRACTOR, the COMPANY having taken into account the relevant provisions of the CONTRACT and all other relevant factors, will make such adjustments as it considers to be fair and reasonable. The COMPANY will inform the CONTRACTOR of decisions reached in this respect and will make appropriate payments in accordance with such decisions.

14.8 Discretionary Provision

If the CONTRACTOR has forfeited the right to receive any VARIATION under the provisions of Clause 14.3 (b) and/or 14.7 (d) in respect of any occurrence which it considers would otherwise have entitled it to receive a VARIATION, the CONTRACTOR shall nevertheless have the option at any time to discuss such matters with the COMPANY. The COMPANY shall, at its sole discretion, decide whether to issue a VARIATION in respect of any such matters.

15. FORCE MAJEURE

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- 15.1 Neither the COMPANY nor the CONTRACTOR shall be responsible for any failure to fulfil any term or condition of the CONTRACT if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause 15 and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against.
- 15.2 For the purposes of this CONTRACT only the following occurrences shall be force majeure.
- (a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
 - (b) Ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - (d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
 - (e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party its subcontractors or its suppliers and which affect a substantial or essential portion of the WORK;
 - (f) Maritime or aviation disasters;
 - (g) Changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.
- 15.3 In the event of a force majeure occurrence, the party that is or may be delayed in performing the CONTRACT shall notify the other party without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.
- 15.4 If either party is delayed in performing the CONTRACT by a force majeure occurrence, the SCHEDULE OF KEY DATES but not the CONTRACT PRICE, except as otherwise expressly provided in the CONTRACT, shall be adjusted in accordance with Clause 14 and Clause 15.5.
- 15.5 Upon cessation of any force majeure occurrence the CONTRACTOR shall prepare a revised PROGRAMME to include for rescheduling of the WORK so as to minimise the effects of the delay and having made due allowance for any instruction to accelerate the WORK given in accordance with Clause 14, the COMPANY shall authorise a VARIATION to adjust the SCHEDULE OF KEY DATES in order to take into account any remaining effects of such delay.
- 15.6 Following notification of a force majeure occurrence in accordance with Clause 15.3, the COMPANY and the CONTRACTOR shall meet without delay with a view to

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agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

16. SUSPENSION

- 16.1 The COMPANY shall have the right, by notice to the CONTRACTOR, to suspend the WORK or any part thereof to the extent detailed in the notice, for any of the following reasons:
- (a) subject only to Clause 16.3, in the event of some default on the part of the CONTRACTOR; or
 - (b) in the event that suspension is necessary for the proper execution or safety of the WORK, or persons; or
 - (c) to suit the convenience of the COMPANY.
- 16.2 Upon receipt of any such notice, the CONTRACTOR shall, unless instructed otherwise:
- (a) discontinue the WORK or the part of the WORK detailed in the notice, on the date and to the extent specified; and
 - (b) properly protect and secure the WORK as required by the COMPANY.
- 16.3 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of a notice to suspend the WORK or any part thereof the COMPANY shall give notice of default to the CONTRACTOR giving details of such default. If the CONTRACTOR, upon receipt of such notice, does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of suspension in accordance with the provisions of Clause 16.1.
- 16.4 Unless the suspension arises as a result of default on the part of the CONTRACTOR, the CONTRACT PRICE and SCHEDULE OF KEY DATES shall be adjusted in accordance with the relevant provisions of Section III - Remuneration or, in the absence of such provisions, in accordance with Clause 14.
- 16.5 If suspension results from default on the part of the CONTRACTOR, any additional costs reasonably incurred by the COMPANY as a direct result shall be recoverable by the COMPANY from the CONTRACTOR.
- 16.6 The COMPANY may, by further notice, instruct the CONTRACTOR to resume the WORK to the extent specified.
- 16.7 In the event of any suspension, the COMPANY and the CONTRACTOR shall meet at not more than seven (7) day intervals with a view to agreeing a mutually acceptable course of action during the suspension.
- 16.8 If the period of any suspension not arising as a result of default on the part of the CONTRACTOR exceeds the period stated in Appendix 1 to Section I - Form of Agreement the CONTRACTOR may serve a notice on the COMPANY requiring permission within fourteen (14) days from the receipt of such notice to proceed with the WORK or that part thereof subject to suspension. If within the said fourteen (14) days the COMPANY does not grant such permission the CONTRACTOR, by a further notice, may (but is not bound to) elect to treat the suspension as either:
- (a) where it affects part only of the WORK, an omission of such part under Clause 14; or
 - (b) where it affects the whole of the WORK, termination in accordance with Clause 30.1(a).

17. TERMS OF PAYMENT

- 17.1 For the performance and completion of the WORK, the COMPANY shall pay or cause to be paid to the CONTRACTOR the amounts provided in Section III - Remuneration at the times and in the manner specified in Section III and in this Clause.
- 17.2 Except where it is expressly provided that the COMPANY shall carry out an obligation under the CONTRACT at its own cost, all things to be supplied or performed by the CONTRACTOR under the CONTRACT shall be deemed to be included in the rates and prices included in Section III - Remuneration.
- 17.3 The CONTRACTOR shall submit to the COMPANY an invoice within thirty (30) days after the end of such stages as are specified in and showing the amount calculated in accordance with Section III - Remuneration.
- 17.4 To the extent that payments to be made under the CONTRACT attract Value Added Tax, the CONTRACTOR shall issue to the COMPANY a proper Value Added Tax invoice, which shall detail separately the proper amount of such Value Added Tax payable. Value Added Tax shall be added to the CONTRACT PRICE as appropriate.
- 17.5 Accompanying any invoice submitted by the CONTRACTOR after the COMPLETION DATE in respect of the whole of the WORK shall be a schedule of all items for which, in the opinion of the CONTRACTOR, payment is due under the CONTRACT but for which, at the date of issue of the said invoice, payment in part or in full has not been received. Such items shall be limited to those for which previous notification has been given by the CONTRACTOR to the COMPANY pursuant to Clauses 14.3 and 14.7. The schedule shall include estimates of cost against each item fully supported by necessary documentation as described in Clauses 14.4 and 14.7.

Following completion of the whole of the WORK, the CONTRACTOR shall not be entitled to receive any payment on any invoice received by the COMPANY after the time specified in Appendix 1 to Section I - Form of Agreement as the latest time for receipt of invoices. Nevertheless the COMPANY may, at its sole discretion, make payment against any such invoice.

- 17.6 Each invoice shall show separately the individual amounts under each of the headings in Section III - Remuneration, and shall quote the COMPANY Contract Reference Number, Title and such other details as may be specified in the CONTRACT.

Each invoice shall be forwarded to the address specified in the CONTRACT.

- 17.7 Within thirty (30) days from receipt of a correctly prepared and adequately supported invoice by the COMPANY at the address specified in Clause 17.6, the COMPANY shall make payment in respect of such invoices as follows:
- (a) for payments in Sterling the COMPANY shall make payment of the due amount into the bank account of the CONTRACTOR specified in the CONTRACT or otherwise notified by the CONTRACTOR, using the Banker's Automated Clearing System; and
 - (b) for payments in foreign currencies the COMPANY shall make payment of the due amount in the appropriate currency into the bank account of the CONTRACTOR specified in the CONTRACT or otherwise notified by the CONTRACTOR.

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- 17.8 If the COMPANY disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, the COMPANY shall notify the CONTRACTOR of the reasons and request the CONTRACTOR to issue a credit note for the unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note the COMPANY shall be obliged to pay the undisputed part of a disputed invoice.

If any other dispute connected with the CONTRACT exists between the parties the COMPANY may withhold from any money which becomes payable under the CONTRACT the amount which is the subject of the dispute. The COMPANY shall not be entitled to withhold monies due to the CONTRACTOR under any other contracts with the COMPANY as set off against disputes under the CONTRACT, nor shall it be entitled to withhold monies due under the CONTRACT as set off against disputes under any other contract.

On settlement of any dispute the CONTRACTOR shall submit an invoice for sums due and the COMPANY shall make the appropriate payment in accordance with the provisions of Clause 17.7 and Clause 17.10 where applicable.

- 17.9 Neither the presentation nor payment or non-payment of an individual invoice shall constitute a settlement of a dispute, an accord and satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder.

In particular the COMPANY may correct or modify any sum previously paid in any or all of the following circumstances:

- (a) any such sum was incorrect;
 - (b) any such sum was not properly payable to the CONTRACTOR;
 - (c) any work in respect of which payment has been made and which does not comply with the terms of the CONTRACT.
- 17.10 Interest shall be payable for late payment of correctly prepared and supported invoices. The amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus the annual percentage stated in Appendix 1 to Section I - Form of Agreement and shall be calculated pro rata on a daily basis. In the absence of such percentage, the amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus three percent (3%) per annum and shall be calculated pro rata on a daily basis. Interest shall run from the date on which the sum in question becomes due for payment in accordance with the provisions of Clause 17.7 until the date on which actual payment is made. Any such interest to be claimed by the CONTRACTOR shall be invoiced separately and within ten (10) working days of payment of the invoice to which the interest relates. Payment of the invoice claiming interest shall be in accordance with the provisions of Clause 17.7 hereof.
- 17.11 If the COMPANY at any time incurs costs which, under the provisions of the CONTRACT, the COMPANY is entitled to recover from the CONTRACTOR, the COMPANY may invoice the CONTRACTOR for such costs, provided always that the COMPANY may deduct the amount of such costs from any amount due, or that may become due to the CONTRACTOR under the CONTRACT.

The CONTRACTOR shall pay the COMPANY within thirty (30) days of receipt of invoice any sums outstanding after such deduction.

- 17.12 For the purposes of Clause 17.11 and elsewhere in the CONTRACT, wherever a party to the CONTRACT is entitled to recover from another party any costs incurred,

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then the amount of such costs shall be the amount of all claims, losses, damages, charges, disbursements, costs (including amounts paid to third parties), overheads and expenses directly resulting from the matter in question, but no element of profit.

18. TAXES AND TAX EXEMPTION CERTIFICATES

- 18.1 The CONTRACTOR shall in accordance with the provisions of Clause 21, except as may otherwise be provided in Section III - Remuneration, be responsible for:
- (a) the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) for which the CONTRACTOR is liable as imposed by any appropriate government authority whether of the United Kingdom or elsewhere, whether or not they are calculated by reference to the wages, salaries, benefits or expenses and other remuneration paid directly or indirectly to persons engaged or employed by the CONTRACTOR; and
 - (b) the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) including but not limited to income, profits, corporation taxes and taxes on capital gains, turnover and added value taxes for which the CONTRACTOR is liable, whether arising in the United Kingdom, its territorial waters, its continental shelf or elsewhere, now or hereafter levied or imposed by any appropriate government authority whether of the United Kingdom or elsewhere, arising from this CONTRACT; and
 - (c) compliance with all statutory obligations to make deductions on account of and to remit the required amounts to any appropriate government authority whether of the United Kingdom or elsewhere, including, but not limited to income tax, PAYE, national insurance, employee taxes, charges, social security costs, levies and contributions whether or not they are measured by the wages, salaries or other remuneration or benefits paid to persons employed by the CONTRACTOR, or persons providing services in connection with the CONTRACT to the CONTRACTOR, and the imposition of a similar obligation upon all SUBCONTRACTORS or any other persons employed by them or providing services to them in connection with the CONTRACT; and
 - (d) ensuring that any SUBCONTRACTOR or any other person employed, or providing services on or in connection with the CONTRACT shall comply with this Clause 18.
- 18.2 The CONTRACTOR shall supply to the COMPANY all such information, in connection with activities under the CONTRACT, as is necessary to enable the COMPANY to comply with the lawful demands for such information by any appropriate government authority whether of the United Kingdom or elsewhere.
- 18.3 Where the CONTRACTOR, any SUBCONTRACTOR or any other person employed by them, or providing services to them on or in connection with the CONTRACT, is or may become liable for tax as a result of the operation of Section 38 Finance Act 1973 and/or Section 830 of the Income and Corporation Taxes Act 1988 (hereinafter in this Clause 18 the "ICTA") and/or Section 276 Taxation of Chargeable Gains Act 1992, and if such a person, within forty five (45) days of the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT, is not able to exhibit to the reasonable satisfaction of the COMPANY that the person is "resident" for tax purposes within the United Kingdom, the CONTRACTOR shall, where the WORK or any part thereof is to be performed within the United Kingdom and/or within a "designated area", obtain for itself and procure that any such SUBCONTRACTOR or other person employed by them, or providing services to them on or in connection with the CONTRACT, obtains a United Kingdom Inland Revenue Certificate of

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Exemption in favour of the COMPANY in accordance with the provisions of paragraph 7 of Schedule 15 Finance Act 1973 and any statutory amendment thereto. The CONTRACTOR shall immediately upon receipt thereof, forward such certificate to the COMPANY or where such certificate is refused, the CONTRACTOR shall upon being so informed, immediately notify the COMPANY of such refusal. In the event that the person ceases to be so resident or such Certificate of Exemption is cancelled the CONTRACTOR shall immediately advise the COMPANY of such event.

If such Certificate of Exemption is not obtained within forty five (45) days of the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT, or having been obtained is subsequently withdrawn, the COMPANY shall have the right to make deductions from any amounts due to the CONTRACTOR up to the maximum estimated potential tax liability arising to the person or persons whose Certificate of Exemption has not been obtained or has been withdrawn, as reasonably computed by the COMPANY, arising out of the CONTRACT.

In the event that any such deductions are made by the COMPANY, these shall be paid to the CONTRACTOR on the receipt by the COMPANY of satisfactory evidence that the CONTRACTOR, SUBCONTRACTOR or other person employed by them or providing services to them on or in connection with the CONTRACT has paid all taxes arising out of the CONTRACT and the Board of Inland Revenue will not be serving a notice on the COMPANY under paragraph 4 of Schedule 15 Finance Act 1973.

“designated area” shall for the purpose of this Clause 18.3 bear the same meaning as that given in Section 38 Finance Act 1973 and/or Section 830 of the ICTA and/or Section 276 Taxation of Chargeable Gains Act 1992.

“resident” shall for the purpose of this Clause 18.3 mean that the company or person is regarded by the Inland Revenue as United Kingdom resident.

- 18.4 Where any of the WORK involves the performance of construction activities specified in Section 567 (2) of the ICTA, the CONTRACTOR shall obtain for itself a United Kingdom Inland Revenue Certificate of Exemption or Registration Card in accordance with part XIII Chapter IV of the ICTA. The CONTRACTOR shall immediately upon receipt thereof forward such Certificate of Exemption or Registration Card to the COMPANY or shall notify the COMPANY that such Certificate of Exemption or Registration Card has been refused or cancelled.

Where at the due date for payment, the COMPANY has received such Certificate of Exemption, the COMPANY shall pay any invoiced amounts due to the CONTRACTOR without deduction.

Where at the due date for payment, the COMPANY has received such Registration Card, the COMPANY will deduct tax at the rate applicable from the full payment due to the CONTRACTOR in respect of such construction activities, except for elements which are exempt from deduction under the terms of the ICTA.

Where at the due date for payment, the COMPANY has not received such Certificate of Exemption or Registration Card or where the CONTRACTOR has notified the COMPANY of cancellation of said Certificate of Exemption or Registration Card, the COMPANY, under prevailing legislation, is unable to make payment of any amounts which would otherwise be due to the CONTRACTOR in respect of such construction activities except for elements which are exempt from deduction under the terms of the ICTA.

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The CONTRACTOR shall notify the COMPANY immediately of any change to, or cancellation or renewal of any such Certificate of Exemption or Registration Card. In the event of the failure of the CONTRACTOR to so notify the COMPANY, the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY from any costs or penalties which may be imposed by any government authority in respect thereof.

- 18.5 The CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY against all levies, charges, contributions and taxes of the type referred to in this Clause and any interest or penalty thereon which may be assessed, by any appropriate government authority whether of the United Kingdom or elsewhere, on the CONTRACTOR GROUP in connection with the CONTRACT and from all costs reasonably incurred in connection therewith.
- 18.6 If the COMPANY receives a notice requiring it to pay any levies, charges, contributions or taxes of the types referred to in this Clause and/or any interest or penalty thereon whether with respect to the CONTRACTOR, any SUBCONTRACTOR, their respective AFFILIATES or any other person employed by the CONTRACTOR or any SUBCONTRACTOR or providing any services to the CONTRACTOR or any SUBCONTRACTOR on or in connection with the CONTRACT, the COMPANY shall forthwith notify the CONTRACTOR who shall work with the COMPANY to make all reasonable endeavours to make any valid appeal against such payment. In the event that the COMPANY is ultimately required to make such payment, the COMPANY may recover from the CONTRACTOR any such sums and all costs reasonably incurred in connection therewith and the CONTRACTOR shall within fourteen (14) days of receiving written notice from the COMPANY pay to the COMPANY any such sum or the COMPANY shall be entitled to deduct such sums from any monies due, or which may become due, to the CONTRACTOR.
- 18.7 The COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR against all levies, charges, contributions and taxes of the type referred to in this Clause and any interest or penalty thereon which may be assessed, by any appropriate government authority whether of the United Kingdom or elsewhere, on the COMPANY in connection with the CONTRACT and from all costs incurred in connection therewith, other than those taxes and other matters referred to above which the provisions of this Clause allow the COMPANY to recover from the CONTRACTOR.

19. OWNERSHIP

- 19.1 Subject to Clauses 19.2 and 19.3, title to, copyright in, the right to possession of and free right of use of all things created under or arising out of the CONTRACT, including but not limited to, drawings, specifications, calculations, other documents, computer tapes, discs and other essential recording matter, materials and work shall vest in the COMPANY as soon as the preparation, production or creation thereof commences.
- 19.2 All rights of title to, copyright in and ownership of any such items developed by the CONTRACTOR outside the CONTRACT shall remain with the CONTRACTOR.
- 19.3 Except as provided in Clause 19.6, all rights of title to, copyright in and ownership of any such items which the CONTRACTOR provides in relation to the WORK and which is merely supplemented, enhanced, modified or adapted in the course of the WORK shall remain with the CONTRACTOR.
- 19.4 Notwithstanding Clauses 19.2 and 19.3 the CONTRACTOR, from the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT, grants the COMPANY the non-exclusive and irrevocable right to use any technical information, including software,

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provided by the CONTRACTOR, for the life of the PERMANENT WORK for the purposes of its operation and maintenance and for no other purpose. Such right shall be non-transferable with the exception that the COMPANY may transfer such right to any successor licence operator.

- 19.5 The COMPANY shall retain title to COMPANY-provided items and information, including but not limited to, TECHNICAL INFORMATION and materials and equipment.

The PERMANENT WORK shall be and remain the property of the COMPANY.

- 19.6 All equipment, materials and supplies provided by the CONTRACTOR for incorporation into the PERMANENT WORK shall become the property of the COMPANY upon delivery to the WORKSITE or payment by the COMPANY whichever is the earlier.

The CONTRACTOR shall ensure that all CONTRACTOR-provided items are free from all liens and/or retention of title claims from any third party.

- 19.7 Title to any equipment, materials and supplies provided by the CONTRACTOR which do not comply with the requirements of the CONTRACT and which are rejected by the COMPANY, shall re-vest immediately in the CONTRACTOR.

Title to such items provided by the CONTRACTOR for which no payment has been made by the COMPANY and which are no longer required for the purposes of the CONTRACT, shall re-vest in the CONTRACTOR.

- 19.8 All items of COMPANY property in the possession of the CONTRACTOR shall be suitably marked or clearly identified as the property of the COMPANY. As far as possible all such items shall be segregated from other property.

20. PATENTS AND OTHER PROPRIETARY RIGHTS

- 20.1 Neither the COMPANY nor the CONTRACTOR shall have the right of use, other than for the purposes of the CONTRACT, whether directly or indirectly, of any patent, copyright, proprietary right or confidential know how, trademark or process provided by the other party and the intellectual property rights in such shall remain with the party providing such patent, copyright, proprietary right or confidential know how, trademark or process.

- 20.2 Where any potential patent or registrable right in any country in the world results from :

(a) developments by the CONTRACTOR GROUP which are based wholly on data, equipment, processes, substances and the like in the possession of the CONTRACTOR GROUP at the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT or otherwise produced outside of the CONTRACT; or

(b) enhancements of or in the existing intellectual property rights of the CONTRACTOR GROUP,

such rights shall vest in the CONTRACTOR or another company within the CONTRACTOR GROUP as the case may be.

- 20.3 Where any potential patent or registrable right in any country in the world results from :

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- (a) developments by the COMPANY GROUP which are based wholly on data, equipment, processes, substances and the like in the possession of the COMPANY GROUP at the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT or otherwise produced outside of the CONTRACT; or
- (b) enhancements of or in the existing intellectual property rights of the COMPANY GROUP,

such rights shall vest in the COMPANY and its AFFILIATES or CO-VENTURERS as the case may be.

- 20.4 Except as provided in Clause 20.1, Clause 20.2 and Clause 20.3, where any potential patent or registrable right in any country in the world arises out of the WORK and is invented during the term of the CONTRACT, such rights shall vest in the party or parties as specified in Appendix 1 to Section I – Form of Agreement.
- 20.5 Where under Clause 20.4 a right vests in one of the parties absolutely, such party may at its sole discretion give the other party and its AFFILIATES and its CO-VENTURERS a royalty free, irrevocable, non-exclusive, non-transferable, world-wide licence to use such right which shall not be sub-licensed.
- 20.6 Where under Clause 20.4 a right vests in the parties jointly, then the parties shall unless otherwise agreed in writing jointly file a patent or other registration application in that joint right.
- 20.7 The CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the CONTRACTOR under the CONTRACT except where such infringement necessarily arises from the TECHNICAL INFORMATION and/or the COMPANY's instructions. However, the CONTRACTOR shall use its reasonable endeavours to identify any infringement in the TECHNICAL INFORMATION and/or in the COMPANY's instructions of any patent or proprietary or protected right, and should the CONTRACTOR become aware of such infringement or possible infringement then the CONTRACTOR shall inform the COMPANY immediately.
- 20.8 The COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the COMPANY under the CONTRACT or the use by the CONTRACTOR of TECHNICAL INFORMATION or materials or equipment supplied by the COMPANY.

21. LAWS AND REGULATIONS

- 21.1 The CONTRACTOR shall comply with all applicable laws, rules and regulations of any governmental or regulatory body having jurisdiction over the WORK and/or the WORKSITE.
- 21.2 The CONTRACTOR shall obtain all licences, permits, temporary permits and authorisations required by the applicable laws, rules and regulations for the performance of the WORK, save to the extent that the same can only be legally obtained by the COMPANY.

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- 21.3 Should changes in any applicable laws, rules and regulations, made after the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT, result in increases or decreases in the cost to the CONTRACTOR of performing the WORK, the CONTRACT PRICE shall be adjusted to the extent described in Section III - Remuneration, or as otherwise may be agreed between the parties.

22. INDEMNITIES

- 22.1 The CONTRACTOR shall be responsible for and shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- (a) loss of or damage to property of the CONTRACTOR GROUP whether owned, hired, leased or otherwise provided by the CONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT; and
 - (b) personal injury including death or disease to any person employed by the CONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT; and
 - (c) subject to any other express provisions of the CONTRACT, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the CONTRACTOR GROUP. For the purposes of this Clause 22.1(c) "third party" shall mean any party which is not a member of the COMPANY GROUP or CONTRACTOR GROUP.
- 22.2 The COMPANY shall be responsible for and shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- (a) loss of or damage to property of the COMPANY GROUP whether
 - (i) owned by the COMPANY GROUP, or
 - (ii) leased or otherwise obtained under arrangements with financial institutions by the COMPANY GROUPwhich is located at the WORKSITE arising from, relating to or in connection with the performance or non-performance of the CONTRACT, but excluding the PERMANENT WORK; and
 - (b) personal injury including death or disease to any person employed by the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT; and
 - (c) subject to any other express provisions of the CONTRACT, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the COMPANY GROUP. For the purposes of this Clause 22.2(c) "third party" shall mean any party which is not a member of the CONTRACTOR GROUP or COMPANY GROUP.
 - (d) loss of or damage to such permanent third party oil and gas production facilities and pipelines and consequential losses arising therefrom, as specified

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in and defined in and in accordance with Appendix 1 to Section I – Form of Agreement where such loss or damage is arising from, relating to or in connection with the performance or non-performance of the CONTRACT. The provisions of this Clause 22.2(d) shall apply notwithstanding the provisions of Clause 22.1(c).

- 22.3 Except as provided by Clause 22.1(a), Clause 22.1(b) and Clause 22.4, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from and against any claim of whatsoever nature arising from pollution emanating from the reservoir or from the property of the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT.
- 22.4 Except as provided by Clause 22.2(a) and Clause 22.2(b), the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against any claim of whatsoever nature arising from pollution occurring on the premises of the CONTRACTOR GROUP or emanating from the property and equipment of the CONTRACTOR GROUP (including but not limited to marine vessels) arising from, relating to or in connection with the performance or non-performance of the CONTRACT.
- 22.5(a) Subject to Clause 22.5(b) below, the CONTRACTOR shall be responsible for the recovery or removal and when appropriate the marking or lighting of any wreck or debris arising from or relating to the performance of the WORK or the property, equipment, vessels or any part thereof provided by the CONTRACTOR GROUP in relation to the CONTRACT, when required by law, or governmental authority, or where such wreck or debris is interfering with COMPANY operations or is a hazard to fishing or navigation and shall, except as provided for in Clause 22.2 and Clause 22.3, save, indemnify, defend and hold harmless the COMPANY GROUP in respect of all claims, liabilities, costs (including legal costs), damages or expenses arising out of such wreck or debris, whether or not the negligence or breach of duty (whether statutory or otherwise) of the COMPANY GROUP caused or contributed to such wreck or debris.
- 22.5(b) Notwithstanding the provisions of Clause 22.1, where the COMPANY provides transportation for the property of the CONTRACTOR GROUP to the offshore WORKSITE, and the COMPANY elects to, or is required by law or governmental authority to recover or remove or mark or light any wreck or debris of such property, the COMPANY shall, except as hereinafter provided, save, defend, indemnify and hold harmless the CONTRACTOR GROUP from and against any claim of whatever nature relating to the costs of such recovery, removal, marking or lighting. Provided, however, that the foregoing indemnity and hold harmless shall not apply to the extent that the recovery, removal, marking or lighting arises as a result of the negligence or breach of duty (statutory or otherwise) of the CONTRACTOR GROUP.
- 22.6 All exclusions and indemnities given under this Clause 22 (save for those under Clauses 22.1(c), 22.2(c) and 22.5(b)) and Clause 25 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.
- 22.7 If either party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other and both parties shall co-operate fully in investigating the incident.

23. INSURANCE BY CONTRACTOR

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- 23.1 The CONTRACTOR shall arrange as a minimum the insurances set out in this Clause 23 and ensure that they are in full force and effect throughout the life of the CONTRACT. All such insurances shall be placed with reputable and substantial insurers, satisfactory to the COMPANY, and shall for all insurances (including insurances provided by SUBCONTRACTORS) other than Employers' Liability Insurance/Workmen's Compensation to the extent of the liabilities assumed by the CONTRACTOR under the CONTRACT, include the COMPANY, CO-VENTURERS and its and their respective AFFILIATES as additional assureds. All insurances required under this Clause 23 shall be endorsed to provide that underwriters waive any rights of recourse, including in particular subrogation rights against the COMPANY, CO-VENTURERS and its and their respective AFFILIATES in relation to the CONTRACT to the extent of the liabilities assumed by the CONTRACTOR under the CONTRACT. Such insurances shall also where possible, provide that the COMPANY shall be given not less than thirty (30) days notice of cancellation of or material change to cover. The provisions of this Clause 23 shall in no way limit the liability of the CONTRACTOR under the CONTRACT.

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- 23.2 The insurances required to be effected under Clause 23.1 shall be as follows (to the extent that they are relevant to the WORK):
- (a) Employers' Liability and/or (where the jurisdiction of where the WORK is to be performed or under which the employees employed requires the same) Workmen's Compensation insurance covering personal injury to or death of the employees of the CONTRACTOR engaged in the performance of the WORK to the minimum value required by any applicable legislation including extended cover (where required) for working offshore or such greater sum as is set out in Appendix 1 to Section I - Form of Agreement;
 - (b) General Third Party Liability insurance for any incident or series of incidents covering the operations of the CONTRACTOR in the performance of the CONTRACT, in an amount not less than that set out in Appendix 1 to Section I - Form of Agreement;
 - (c) Third Party and Passenger Liability insurance and other motor insurance as required by applicable jurisdiction;
 - (d) Marine Hull and Machinery insurance including war risk coverage and, to the extent not provided in (e) below, collision liability in respect of all vessels used by CONTRACTOR GROUP in the performance of the WORK in an amount not less than that set out in Appendix 1 to Section I - Form of Agreement;
 - (e) Protection and Indemnity Insurance including wreck and debris removal and oil pollution liability in respect of all vessels, craft or floating equipment owned, leased or hired by the CONTRACTOR GROUP in the performance of the WORK in amounts not less than those set out in Appendix 1 to Section I - Form of Agreement;
 - (f) such further insurances (if any) as set out in Appendix 1 to Section I - Form of Agreement.
- 23.3 The CONTRACTOR shall supply the COMPANY with evidence of such insurances on demand.
- 23.4 The CONTRACTOR shall procure that SUBCONTRACTORS are insured to appropriate levels as may be relevant to their work.

24. CARE OF THE PERMANENT WORK AND INSURANCE

- 24.1 Subject to the provisions of Clause 24.2, but without prejudice to the CONTRACTOR's other obligations under the CONTRACT and at law, the CONTRACTOR shall be responsible for the PERMANENT WORK from the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT until the date of the HANDOVER CERTIFICATE or the COMPLETION CERTIFICATE, whichever is the earlier, in respect of the whole or the relevant part of the PERMANENT WORK, at which date or dates responsibility shall pass to the COMPANY. Before the date of any such HANDOVER CERTIFICATE or COMPLETION CERTIFICATE as applicable, in the event of loss or damage to the PERMANENT WORK, the CONTRACTOR shall, if instructed by the COMPANY, reconstruct, repair or replace the same.
- 24.2 Notwithstanding Clause 24.1, the CONTRACTOR shall not be liable for loss or damage to the PERMANENT WORK which is occasioned :-
- (a) by War Risks as defined in the London Market Standard Fire Policy, or Nuclear Risks as defined in the London Market Standard Nuclear Exclusion Clause, and/or

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- (b) by any negligent act or omission of the COMPANY GROUP, and/or
- (c) by a force majeure occurrence as defined in Clause 15 hereof.

Before the issue of the HANDOVER CERTIFICATE or the COMPLETION CERTIFICATE as applicable, in the event of loss or damage to the PERMANENT WORK being occasioned by any of the foregoing, the CONTRACTOR shall, if instructed by the COMPANY, reconstruct, repair or replace the same, and the COMPANY shall issue a VARIATION in accordance with Clause 14 in respect of such reconstruction, repair or replacement.

- 24.3 The COMPANY shall arrange Construction All Risks insurance, a summary of which (including deductibles) is set out in Appendix 1 to Section I - Form of Agreement. Liability for deductibles payable under such insurance relative to the WORK shall be for the account of the CONTRACTOR but the size of such deductibles shall not be increased without the prior consent of the CONTRACTOR. The COMPANY agrees that the insurance shall be properly placed and be maintained on the same terms for the benefit of all parties mentioned as assureds for the period set out in Appendix 1 to Section I - Form of Agreement. The provisions of this Clause 24 shall in no way limit the liability of the CONTRACTOR under the CONTRACT.
- 24.4 The insurances arranged under Clause 24.3 shall include the CONTRACTOR, SUBCONTRACTORS and its and their respective AFFILIATES as additional assureds and shall be endorsed to require the underwriters to waive any rights of recourse including in particular subrogation rights against the CONTRACTOR, SUBCONTRACTORS and its and their respective AFFILIATES. Such insurance shall provide that the CONTRACTOR shall be given not less than thirty (30) days notice of cancellation of or material change to cover.
- 24.5 Notwithstanding Clause 24.3, the COMPANY may decide, at its discretion, not to arrange Construction All Risks insurance under Clause 24.3, in which case the COMPANY shall advise the CONTRACTOR accordingly and shall provide an indemnity to the CONTRACTOR, its SUBCONTRACTORS and its and their respective AFFILIATES in lieu of such insurance, always provided that such indemnity shall be expressed in full in Appendix 1 to Section I - Form of Agreement, and such indemnity shall apply in excess of the amount(s) set out in Appendix 1 to Section I - Form of Agreement.

25. CONSEQUENTIAL LOSS

For the purposes of this Clause 25 the expression "Consequential Loss" shall mean:

- (i) consequential or indirect loss under English law; and
- (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT.

Notwithstanding any provision to the contrary elsewhere in the CONTRACT and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the CONTRACT, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from the COMPANY GROUP's own Consequential Loss and the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from the CONTRACTOR GROUP's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the CONTRACT.

26. CONFIDENTIALITY

- 26.1 The CONTRACTOR shall at no time without the prior agreement of the COMPANY either:
- (a) make any publicity releases or announcements concerning the subject matter of the CONTRACT, or
 - (b) except as may be necessary to enable the CONTRACTOR to perform its obligations under the CONTRACT, use, reproduce, copy, disclose to, place at the disposal of or use on behalf of any third party or enable any third party to use, peruse or copy any information including but not limited to drawings, data, and computer software which:
 - (i) is provided to the CONTRACTOR by or on behalf of the COMPANY, the CO-VENTURERS or its or their AFFILIATES in or in relation to the CONTRACT; or
 - (ii) vest in the COMPANY in accordance with the CONTRACT; or
 - (iii) the CONTRACTOR prepares in connection with the WORK.
- 26.2 The provisions of Clause 26.1 shall not apply to information which:
- (a) is part of the public domain; or
 - (b) was in the possession of the CONTRACTOR prior to award of the CONTRACT and which was not subject to any obligation of confidentiality owed to the COMPANY; or
 - (c) was received from a third party whose possession is lawful and who is under no obligation not to disclose; or
 - (d) is required to be disclosed in order to comply with the requirements of any law, rule or regulation of any governmental or regulatory body having jurisdiction over the WORK or the CONTRACTOR, or of any relevant stock exchange; or
 - (e) is used or disclosed by the CONTRACTOR five (5) years or more after the COMPLETION DATE in respect of the whole of the WORK.
- 26.3 The CONTRACTOR shall ensure that the provisions of this Clause 26 are incorporated in any SUBCONTRACT and that the officers, employees and agents of the CONTRACTOR and of the SUBCONTRACTORS comply with the same.
- 26.4 All information provided by the CONTRACTOR which the CONTRACTOR wishes to remain confidential shall be clearly marked as confidential provided, however, that any such information relating to the CONTRACTOR's pricing and trade secrets shall always be treated as confidential by the COMPANY without the necessity on the part of the CONTRACTOR to clearly mark as such. In respect of such confidential information, the COMPANY shall be entitled to :
- (a) disclose to and authorise use by the COMPANY GROUP; and
 - (b) disclose pursuant to any statutory or other legal requirement; and

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- (c) subject to the CONTRACTOR's prior consent, which shall not be unreasonably withheld or delayed, disclose to and authorise use by third parties to the extent necessary for the execution and maintenance of the project in connection with which the WORK is to be performed.

Notwithstanding the above, the COMPANY shall, and shall ensure that its officers, employees and agents take all reasonable measures to protect confidential information of the CONTRACTOR concerning or arising from the CONTRACT for a period of five (5) years from the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT. For the avoidance of doubt, the provisions of this Clause 26.4 shall not apply to information which vests in the COMPANY in accordance with the CONTRACT.

27. CUSTOMS PROCEDURES

- 27.1 When applicable the COMPANY and the CONTRACTOR shall each apply to HM Customs and Excise for Shipwork End Use (SEU) and shall also where appropriate apply for Inward Processing Relief (IPR), Outward Processing Relief (OPR) and Returned Goods Relief (RGR) for their respective import, export and re-import of materials, goods, tools, equipment and supplies required for the CONTRACT.
- 27.2 The CONTRACTOR undertakes to import, export and re-import any items for the WORK which are subject to customs control in such a way as to enable maximum advantage to be taken of HM Customs and Excise procedures.
- 27.3 The COMPANY and the CONTRACTOR shall each develop with government authorities, customs procedures for their respective export to the WORKPOINT and re-import from the WORKPOINT of all materials, goods, tools, equipment and supplies to be provided under the CONTRACT.
- 27.4 The COMPANY and the CONTRACTOR shall each respectively be accountable and liable for compliance with customs procedures based on each party being a customs authorised trader and who is in possession (not ownership) of the items subject to customs control at any given time.
- 27.5 For the purpose of this Clause 27, "WORKPOINT" shall mean an offshore location or vessel from which exploration or exploitation of oil and/or gas is carried out.
- 27.6 The CONTRACTOR shall pay and make payment at such times when due and payable, all import/export taxes and duties on materials, goods, tools, equipment and supplies required for the CONTRACT and imported or exported by the CONTRACTOR. The CONTRACTOR will be responsible for ensuring that it holds the necessary import/export licences issued by the relevant authorities prior to the commencement of the WORK.
- 27.7 Where equipment and materials are sold to the COMPANY under the CONTRACT the CONTRACTOR shall :
- (a) prepare and provide to the COMPANY full documentation to show and certify all information regarding items subject to customs control, including the origin, customs status and customs commodity code number as may be necessary for the COMPANY to minimise or nullify the effect of customs duty on such items; and
 - (b) make available on a confidential basis to HM Customs and Excise all data reasonably necessary to enable the CONTRACTOR to obtain the maximum benefits in terms of reliefs and shall pass all such benefits in full to the COMPANY; and

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- (c) inform the COMPANY without delay in the event that the CONTRACTOR is unsuccessful in any application for reliefs. In such event, the COMPANY shall have the option to import or export or re-import any items affected under its own authorised procedure.

28. HANDOVER AND COMPLETION

28.1 When the CONTRACTOR considers the whole or the relevant part of the PERMANENT WORK to be in a condition for handover to the care, custody and control of the COMPANY, the CONTRACTOR shall so notify the COMPANY and shall request the issue of a HANDOVER CERTIFICATE.

28.2 If the COMPANY is satisfied that the whole or the relevant part of the PERMANENT WORK is to be handed over by the CONTRACTOR to the care, custody and control of the COMPANY then the COMPANY shall issue a HANDOVER CERTIFICATE in respect of the whole or the relevant part of the PERMANENT WORK, and the whole or the relevant part of the PERMANENT WORK shall be handed over by the CONTRACTOR to the COMPANY as of the date specified in the HANDOVER CERTIFICATE.

28.3 When the CONTRACTOR considers that:

- (a) the whole of the WORK (including where the COMPANY has terminated the whole of the WORK or the CONTRACT under Clause 30.1(a)); or
- (b) any part of the WORK for which a separate time for completion is included in the SCHEDULE OF KEY DATES;

has been completed and has satisfactorily passed any final test that may be prescribed in the CONTRACT, the CONTRACTOR shall so notify the COMPANY and request the issue of a COMPLETION CERTIFICATE.

28.4 The COMPANY shall, as soon as reasonably practicable and in any case within thirty (30) days of receipt of such notice either:

- (a) issue to the CONTRACTOR a COMPLETION CERTIFICATE in respect of the whole or the relevant part of the WORK; or
- (b) notify the CONTRACTOR of any defects in the WORK or the relevant part of the WORK, arising from any default of the CONTRACTOR.

28.5 Any notice issued under Clause 28.4(b) shall include details of the specific nature of each defect and shall specify the part or parts of the CONTRACT containing the obligations which the CONTRACTOR has failed to meet.

Such notice shall also specify any defects which the COMPANY does not require the CONTRACTOR to correct.

The CONTRACTOR shall on receipt of any such notice, promptly correct all defects other than those which the COMPANY does not require the CONTRACTOR to correct. When it has completed such correction it shall notify the COMPANY in accordance with Clause 28.3.

28.6 In the event that any notice issued under Clause 28.4(b) identifies defects which the COMPANY does not require the CONTRACTOR to correct, the COMPANY shall, in respect of those defects, issue a notice of termination in accordance with Clause 30, except that Clause 30.2 shall not apply.

29. DEFECTS CORRECTION

- 29.1 The CONTRACTOR warrants and guarantees that it has performed and shall perform the WORK in accordance with the provisions of the CONTRACT, and that the PERMANENT WORK will be free from defects.
- 29.2 In the event that the COMPANY notifies the CONTRACTOR of any defects in the WORK prior to the issue of a COMPLETION CERTIFICATE in accordance with Clause 28 hereof or subsequent to the issue of a COMPLETION CERTIFICATE in accordance with Clause 28 hereof and within the relevant Defects Correction Period or Periods specified in Appendix 1 to Section I - Form of Agreement, the CONTRACTOR shall, subject to the operational requirements of the COMPANY and to the provisions of Clause 29.3, carry out all works necessary to correct any defects in the WORK arising from any default of the CONTRACTOR GROUP.

In the event that any of the WORK is reformed, rectified or replaced by the CONTRACTOR under the provisions of this Clause 29, this Clause 29 shall apply to the portion so reformed, rectified or replaced. The Defects Correction Period or Periods specified in Appendix 1 to Section I - Form of Agreement in respect of such work, shall commence on the date upon which such reformation, rectification or replacement was completed in accordance with the CONTRACT.

- 29.3 The COMPANY may decide that the carrying out by the CONTRACTOR of work necessary to correct defects will be prejudicial to its interests. In such cases the COMPANY may undertake the CONTRACTOR's responsibilities described in Clause 29.2. The COMPANY shall notify the CONTRACTOR in such cases and shall be entitled to recover from the CONTRACTOR all additional costs reasonably incurred by the COMPANY as a direct result of carrying out such responsibilities.
- 29.4 For the purpose of Clauses 29.2 and 29.3 the CONTRACTOR shall not be liable to the COMPANY for the costs of helicopter transport of personnel between the shore-based heliport and offshore or for the costs of offshore accommodation and messing.
- 29.5 Notwithstanding the provisions of Clauses 29.2 and 29.3 the CONTRACTOR shall be responsible for correcting any defect in the PERMANENT WORK prior to the issue of a COMPLETION CERTIFICATE in accordance with Clause 28 hereof or subsequent to the issue of a COMPLETION CERTIFICATE in accordance with Clause 28 hereof and within the relevant Defects Correction Period when so instructed by the COMPANY. However the CONTRACTOR shall not be liable for:
- (a) the costs of routine maintenance of the PERMANENT WORK; or
 - (b) the costs of correcting any such defects which result from the following:
 - (i) incorrect operation by the COMPANY;
 - (ii) the reasonable actions of the CONTRACTOR in relying on TECHNICAL INFORMATION;
 - (iii) actual operating conditions being different from those specified in the CONTRACT or in any VARIATIONS;
 - (iv) defects in materials or equipment supplied by the COMPANY which could not reasonably have been discovered by the CONTRACTOR.

30. TERMINATION

- 30.1 The COMPANY shall have the right by giving notice to terminate all or any part of the WORK or the CONTRACT at such time or times as the COMPANY may consider necessary for any or all of the following reasons:

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- (a) to suit the convenience of the COMPANY; or
 - (b) subject only to Clause 30.2 in the event of any default on the part of the CONTRACTOR; or
 - (c) in the event of the CONTRACTOR becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order of the CONTRACTOR being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law.
- 30.2 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of an order of termination of all or any part of the WORK or the CONTRACT, the COMPANY shall give notice of default to the CONTRACTOR giving the details of such default. If the CONTRACTOR upon receipt of such notice does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of termination in accordance with the provisions of Clause 30.1.
- 30.3 In the event of the COMPANY giving the CONTRACTOR notice of termination of all or any part of the WORK or the CONTRACT, such notice shall become effective on the date specified therein (or in the absence of any specified date at the date of receipt of the notice) whereupon the CONTRACTOR shall immediately:
- (a) cease performance of the WORK or such part thereof as may be specified in the notice;
 - (b) allow the COMPANY or its nominee full right of access to the WORKSITE to remove and/or take over the WORK or the relevant part of the WORK so far completed together with all materials and equipment which are the property of the COMPANY;
 - (c) assign to the COMPANY, or its nominee, to the extent desired by the COMPANY all or the relevant parts of the rights, titles, liabilities and SUBCONTRACTS relating to the WORK which the CONTRACTOR may have acquired or entered into;
 - (d) except as required under Clause 30.3(b), remove all the equipment or materials, of the CONTRACTOR from the immediate area in which the WORK or the relevant part thereof is being performed unless otherwise instructed by the COMPANY.

Within thirty (30) days of the effective date of termination the CONTRACTOR shall deliver to the COMPANY all the relevant parts respectively of the TECHNICAL INFORMATION and originals, copies and reproductions of all drawings, specifications, requisitions, calculations, programme listings, erection plans, schedules, computer tapes, discs and other essential recording matter and all other data and documents prepared by the CONTRACTOR or any SUBCONTRACTOR.

Notwithstanding the above the CONTRACTOR may retain one copy of any such documents while admitting that the COMPANY has title to all such documents.

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In the event of termination under Clause 30.1(b) or 30.1(c) the COMPANY shall have the right to obtain completion of the WORK or the relevant part of the WORK by other contractors.

- 30.4 In the event of termination under Clause 30.1(a) the CONTRACTOR shall be entitled to payment as set out in Section III - Remuneration for the part of the WORK performed in accordance with the CONTRACT together with such other payments and fees as may be set out in that Section or, in the absence of such provisions, such reasonable costs as agreed between the parties at the time of termination.
- 30.5 In the event of termination of part of the WORK in accordance with Clause 28.6 or Clause 30.1(b) the CONTRACTOR shall be entitled to payment only as set out in Section III - Remuneration for the part of the WORK performed in accordance with the CONTRACT. Any additional costs reasonably incurred by the COMPANY as a direct result of such termination shall be recoverable from the CONTRACTOR.
- 30.6 In the event of termination of all of the WORK or the CONTRACT in accordance with Clause 30.1(b) or Clause 30.1(c) the following conditions shall apply:
- (a) the CONTRACTOR shall cease to be entitled to receive any money or monies on account of the CONTRACT until the expiration of the Defects Correction Period specified in Clause 29 (assuming that the COMPLETION DATE in respect of the whole of the WORK would have been the date specified in the SCHEDULE OF KEY DATES) and thereafter until the costs of COMPLETION and all other costs arising as a result of the CONTRACTOR's default or other events giving rise to the termination have been finally ascertained;
 - (b) thereafter and subject to any deductions that may be made under the provisions of the CONTRACT the CONTRACTOR shall be entitled to payment only as set out in Section III - Remuneration for the part of the WORK completed in accordance with the CONTRACT up to the date of termination; and
 - (c) any additional costs reasonably incurred by the COMPANY as a direct result of the CONTRACTOR's default or other events giving rise to termination shall be recoverable from the CONTRACTOR.
- 30.7 (a) In the event of termination of the CONTRACT the rights and obligations of the parties included in the following Sections and Clauses shall remain in full force and effect:
- (i) Section I - Form of Agreement;
 - (ii) Section II a) - Conditions of Contract Clauses 4, 5, 8, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 34, 36, 37 and 38;
 - (iii) Such additional Clauses and Special Conditions of Contract (if any) as are set out in Appendix 1 to Section I - Form of Agreement.
- (b) In the event of termination of all or any part of the WORK the whole of the CONTRACT shall remain in full force and effect.

31. AUDIT AND STORAGE OF DOCUMENTS

- 31.1 During the course of the WORK and for a period ending two (2) years after the SCHEDULED COMPLETION DATE included in the SCHEDULE OF KEY DATES, the COMPANY or its duly authorised representative shall have the right to audit at all reasonable times and, upon request, take copies of all of the CONTRACTOR's

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records (including data stored on computers), books, personnel records, accounts, correspondence, memoranda, receipts, vouchers and other papers of every kind relating to;

- (a) all invoiced charges made by the CONTRACTOR on the COMPANY; and
- (b) any provision of this CONTRACT under which the CONTRACTOR has obligations the performance of which is capable of being verified by audit.

In this respect the COMPANY shall not be entitled to investigate the make up of rates and lump sums included in the CONTRACT except to the extent necessary for the proper evaluation of any VARIATIONS.

- 31.2 The CONTRACTOR shall co-operate fully with the COMPANY and/or its representatives in the carrying out of any audit required by the COMPANY. The COMPANY will conduct any audit in a manner which will keep to a reasonable minimum any inconvenience to the CONTRACTOR.
- 31.3 The CONTRACTOR shall obtain equivalent rights of audit to those specified above from all SUBCONTRACTORS and will cause such rights to extend to the COMPANY.
- 31.4 The COMPANY and the CONTRACTOR shall keep all documents and data, including that which is stored on computers, related to this CONTRACT for a period of six (6) years after the SCHEDULED COMPLETION DATE included in the SCHEDULE OF KEY DATES.

32. LIENS

- 32.1 The CONTRACTOR shall not claim any lien or attachment on the WORK or on any property of the COMPANY in the possession of the CONTRACTOR or at the WORKSITE.
- 32.2 Without prejudice to any other provisions of this Clause 32, the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY from and against all liens or attachments by any SUBCONTRACTORS in connection with or arising out of the CONTRACT.
- 32.3 The CONTRACTOR shall immediately notify the COMPANY of any possible lien or attachment which may affect the WORK or any part thereof.
- 32.4 If at any time there is evidence of any lien or attachment to which, if established, the COMPANY or its property might be subjected, whether made by any persons against the CONTRACTOR or made by any SUBCONTRACTOR against the COMPANY, then the COMPANY shall have the right to withhold and/or set off or otherwise recover from the CONTRACTOR such sum of money as will fully indemnify the COMPANY against any such lien or attachment.
- 32.5 Before withholding any payment due to the CONTRACTOR in accordance with Clause 32.4, the COMPANY shall give to the CONTRACTOR a reasonable opportunity to demonstrate that the purported lien or attachment is either unenforceable or is covered by the provisions of a security to the reasonable satisfaction of the COMPANY.
- 32.6 For the purpose of this Clause 32 reference to the COMPANY shall include the CO-VENTURERS and its and their AFFILIATES and references to the CONTRACTOR shall include its AFFILIATES.

33. BUSINESS ETHICS

CONSTRUCTION

- 33.1 Both the CONTRACTOR and the COMPANY shall uphold the highest standards of business ethics in the performance of the CONTRACT. Honesty, fairness and integrity shall be paramount principles in the dealings between the parties.
- 33.2 Neither party shall knowingly involve itself in any business in connection with, or use information arising from, the CONTRACT, in any manner which conflicts with the interests of the other party.
- 33.3 Both the CONTRACTOR and the COMPANY agree that they will not, directly or indirectly, receive from, or give or offer to give to any member of the COMPANY GROUP or CONTRACTOR GROUP, or to other contractors or suppliers, or to government officials or any other persons anything of material value which would be regarded as an improper inducement to any party. Any breach of this obligation shall constitute a material breach of the CONTRACT.

34. GENERAL LEGAL PROVISIONS

34.1 Waiver

None of the terms and conditions of the CONTRACT shall be considered to be waived by either the COMPANY or the CONTRACTOR unless a waiver is given in writing by one party to the other. No failure on the part of either party to enforce any of the terms and conditions of the CONTRACT shall constitute a waiver of such terms.

34.2 Retention of Rights

Subject to the provisions of Clauses 22 and 36, unless otherwise specifically stated in the CONTRACT, both the COMPANY and the CONTRACTOR shall retain all rights and remedies, both under the CONTRACT and at law, which either may have against the other.

The CONTRACTOR shall not be relieved from any liability or obligation under the CONTRACT by any review, approval, authorisation, acknowledgement or the like, by the COMPANY.

34.3 CONTRACTOR'S AFFILIATES

Any limitation of liability given by the COMPANY to the CONTRACTOR under the CONTRACT shall include the AFFILIATES of the CONTRACTOR.

34.4 Independence of the CONTRACTOR

The CONTRACTOR shall act as an independent contractor with respect to the WORK and shall exercise control, supervision, management and direction as to the method and manner of obtaining the results required by the COMPANY.

34.5 Proper Law and Language

The CONTRACT shall be construed and take effect in accordance with English Law excluding those conflict of law rules and choice of law principles which would deem otherwise and, subject to the provisions of Clause 37, shall be subject to the exclusive jurisdiction of the English Courts.

The ruling language of the CONTRACT shall be the English Language.

34.6 Notices

CONSTRUCTION

All notices in respect of the CONTRACT shall be given in writing and delivered by hand, by telefax or by first class post to the relevant address specified in Appendix 1 to Section I - Form of Agreement and copied to such other office or offices of the parties as shall from time to time be nominated by them in writing to the other.

Such notices shall be effective:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by telefax, on the first working day at the recipient address following the date of sending;
- (c) if sent by first class post, 48 hours after the time of posting.

34.7 Status of COMPANY

The COMPANY enters into the CONTRACT for itself and as agent for and on behalf of the other CO-VENTURERS. Without prejudice to the provisions of Clause 38 and notwithstanding the above:

- (a) the CONTRACTOR agrees to look only to the COMPANY for the due performance of the CONTRACT and nothing contained in the CONTRACT will impose any liability upon, or entitle the CONTRACTOR to commence any proceedings against any CO-VENTURER other than the COMPANY; and
- (b) the COMPANY is entitled to enforce the CONTRACT on behalf of all CO-VENTURERS as well as for itself. For that purpose the COMPANY may commence proceedings in its own name to enforce all obligations and liabilities of the CONTRACTOR and to make any claim which any CO-VENTURER may have against the CONTRACTOR; and
- (c) All losses, damages, costs (including legal costs) and expenses recoverable by the COMPANY pursuant to the CONTRACT or otherwise shall include the losses, damages, costs (including legal costs) and expenses of the COMPANY's CO-VENTURERS and its and their respective AFFILIATES except that such losses, damages, costs (including legal costs) and expenses shall be subject to the same limitations or exclusions of liability as are applicable to the COMPANY or the CONTRACTOR under the CONTRACT. For the avoidance of doubt any and all limitations of the CONTRACTOR's liability set out in the CONTRACT shall represent the aggregate cumulative limitation of the liability of the CONTRACTOR to the COMPANY, its CO-VENTURERS and its and their respective AFFILIATES.

34.8 Entire Agreement

The CONTRACT constitutes the entire agreement between the parties hereto with respect to the WORK and supersedes all prior negotiations, representations or agreements related to the CONTRACT, either written or oral. No amendments to the CONTRACT shall be effective unless evidenced in writing and signed by the parties to the CONTRACT.

34.9 Mitigation of Loss

Both the COMPANY and the CONTRACTOR shall take all reasonable steps to mitigate any losses resulting from any breach of CONTRACT by the other party.

34.10 Invalidity and Severability

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If any provision of this CONTRACT shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this CONTRACT and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The COMPANY and the CONTRACTOR agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

35. LIQUIDATED DAMAGES

- 35.1 If the CONTRACTOR fails to complete any of the items listed in Appendix 1 to Section I - Form of Agreement in accordance with the relevant date included in the SCHEDULE OF KEY DATES and/or fails to achieve the requirements of the CONTRACT in respect of any other items listed under the heading Clause 35.1 - Liquidated Damages in the said Appendix 1, the CONTRACTOR shall be liable to the COMPANY for Liquidated Damages. The amounts of such Liquidated Damages shall be as specified in the said Appendix 1.
- 35.2 All amounts of such Liquidated Damages for which the CONTRACTOR may become liable are agreed as a genuine pre-estimate of the losses which may be sustained by the COMPANY in the event that the CONTRACTOR fails in its respective obligations under the CONTRACT and not a penalty. Such Liquidated Damages shall be the sole and exclusive financial remedy of the COMPANY in respect of such failure.

36. LIMITATIONS OF LIABILITY

36.1 Limitation of Liability

- (a) Limitation of Liability before the COMPLETION DATE in respect of the whole of the WORK

Before the COMPLETION DATE in respect of the whole of the WORK, the CONTRACTOR's total cumulative liability to the COMPANY arising out of or related to the performance of the CONTRACT shall be limited to the sum specified in Appendix 1 to Section I - Form of Agreement or, in the absence of such sum the CONTRACT PRICE.

- (b) Limitation of Liability after the COMPLETION DATE in respect of the whole of the WORK

After the COMPLETION DATE in respect of the whole of the WORK, the CONTRACTOR's total cumulative liability to the COMPANY arising out of or related to the performance of the CONTRACT shall be limited to the sum specified in Appendix 1 to Section I - Form of Agreement or, in the absence of such sum the CONTRACT PRICE.

Provided however, that :

- (i) the above limitation under Clause 36.1(a) shall not apply to any liabilities assumed by the CONTRACTOR under Clause 29;
- (ii) the above limitations under Clause 36.1(a) and Clause 36.1(b) shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 18, 20, 23, 24, 27 and 32, or to any indemnity given by the CONTRACTOR under Clause 22; and
- (iii) the above limitation under Clause 36.1(b) shall not apply to any costs arising from any cause of action of the COMPANY notified to the CONTRACTOR before the COMPLETION DATE in respect of the whole of the WORK.

36.2 Limitation Period

The CONTRACTOR's liability under the CONTRACT shall cease at the end of the period described in Appendix 1 to Section I - Form of Agreement, provided, however,

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that the provisions of this Clause 36.2 shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 18, 20, 23, 24, 27 and 32, or to any indemnity given by the CONTRACTOR under Clause 22.

36.3 Extent of exclusion or limitation of liability

Any exclusion or limitation of liability under the CONTRACT shall exclude or limit such liability not only in contract but also in tort or otherwise at law.

36.4 Precedence

Subject to the provisions of Clause 25, this Clause 36 shall apply notwithstanding any provisions to the contrary elsewhere in the CONTRACT.

37. RESOLUTION OF DISPUTES

37.1 Any dispute between the COMPANY and the CONTRACTOR in connection with or arising out of the CONTRACT or the WORK shall be resolved by means of the following procedure:

- (a) the dispute shall initially be referred to the COMPANY REPRESENTATIVE and CONTRACTOR REPRESENTATIVE who shall discuss the matter in dispute and make all reasonable efforts to reach an agreement;
- (b) if no agreement is reached under Clause 37.1(a) the dispute shall be referred to the two persons named in Appendix 1 to Section I - Form of Agreement. Such persons are nominated one by the COMPANY and one by the CONTRACTOR. Such persons may be replaced by the party which nominated them by notice to the other party;
- (c) if no agreement is reached under Clause 37.1(b) the dispute shall be referred to the Managing Directors of the COMPANY and the CONTRACTOR.

37.2 If no agreement is reached under Clause 37.1(c) above, the parties may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the parties.

37.3 In the absence of any agreement being reached on a particular dispute either party may, subject to Clause 37.4, take appropriate action in the Courts to resolve the dispute at any time.

37.4 It shall be a condition precedent to the referral of a dispute to the Courts under Clause 37.3 that the party which intends to commence proceedings in relation to the dispute first uses its reasonable endeavours to follow and complete the procedures set out in Clauses 37.1(a), (b) and (c).

37.5 Where any claim or counter claim in connection with or arising out of the CONTRACT is made, the party making the claim or counter claim shall ensure that such claim or counter claim contains, without limitation, the following information:

- (a) a clear summary of the facts on which the claim or counter claim is based; and
- (b) the basis on which the claim or counter claim is made, including the principal contractual terms and/or statutory terms relied on; and
- (c) the nature of the relief claimed; and

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- (d) where a claim or counter claim has been made previously and rejected by the other party, and the party making the claim or counter claim is able to identify the reason(s) for such rejection, the grounds of belief as to why the claim or counter claim was wrongly rejected.

37.6 Whilst any matter or matters are in dispute, the CONTRACTOR shall proceed with the execution and completion of the WORK and both the CONTRACTOR and the COMPANY shall comply with all the provisions of the CONTRACT.

38. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

38.1 Subject to Clause 38.3, the parties intend that no provision of the CONTRACT shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 ("the Act") confer any benefit on, nor be enforceable by any person who is not a party to the CONTRACT.

38.2 For the purposes of this Clause 38, "Third Party" shall mean any member of the COMPANY GROUP (other than the COMPANY) or CONTRACTOR GROUP (other than the CONTRACTOR), or, in respect of the provisions of Clause 24 hereof, the CONTRACTOR's SUBCONTRACTORS and AFFILIATES and the AFFILIATES of such SUBCONTRACTORS.

38.3 Subject to the remaining provisions of the CONTRACT,

- (a) Clause 20.7, Clause 20.8, Clause 22, Clause 23, Clause 24 and Clause 25 are intended to be enforceable by a Third Party; and

- (b) Clause 34.3 is intended to be enforceable by the AFFILIATES of the CONTRACTOR,

by virtue of the Act.

38.4 Notwithstanding Clause 38.3, the CONTRACT may be rescinded, amended or varied by the parties to the CONTRACT without notice to or the consent of any Third Party even if, as a result, that Third Party's right to enforce a term of this CONTRACT may be varied or extinguished.

38.5 The rights of any Third Party under Clause 38.3 shall be subject to the following :-

- (a) any claim, or reliance on any term of the CONTRACT by a Third Party shall be notified in writing in accordance with the requirements of Clause 22.7 and Clause 34.6 by such Third Party as soon as such Third Party becomes aware that an event is likely to give rise to such a claim and such notification shall contain the following information as a minimum:

- (i) details of the occurrence giving rise to the claim; and

- (ii) the right relied upon by the Third Party under the CONTRACT,

- (b) the provisions of Clause 37 shall apply in respect of any claim by a Third Party in that the relevant parties agree to resolve any dispute between them in a prompt and amicable manner by adopting the provisions of Clause 37,

- (c) the Third Party's written agreement to submit irrevocably to the jurisdiction of the English Courts in respect of all matters relating to such rights.

38.6 In enforcing any right to which it is entitled by virtue of the Act and the provisions of this CONTRACT, the remedies of a Third Party shall be limited to damages.

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38.7 A Third Party shall not be entitled to assign any benefit or right conferred on it under this CONTRACT by virtue of the Act.

39. HEALTH, SAFETY AND ENVIRONMENT

39.1 The COMPANY places prime importance on health, safety and environment (hereinafter "HS&E") issues and requires that the CONTRACTOR GROUP subscribes to and actively pursues the highest standards of HS&E performance.

39.2 The CONTRACTOR shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the performance of the WORK and shall keep strictly to the provisions of Section VI - Health, Safety and Environment. The CONTRACTOR shall collaborate with the COMPANY in establishing HS&E interface arrangements and the production of a HS&E interface document.

39.3 Failure to meet the requirements of Section VI - Health, Safety and Environment or to satisfy the COMPANY's reasonable requirements with regard to the control of HS&E risks in any material respect will be regarded as due cause for the COMPANY giving notice to terminate all or any part of the WORK or the CONTRACT in accordance with Clause 30.1(b).

39.4 The CONTRACTOR shall co-operate with the COMPANY in providing an appropriate response to any emergency occurring at the WORKSITE and shall immediately take such action as may be necessary to protect life and make safe property where such is in imminent peril.

SAMPLE FORM OF AGREEMENT

This CONTRACT is made between the following parties:

----- a company having its registered office at -----

hereinafter called the COMPANY

and

----- having its main or registered office at -----

hereinafter called the CONTRACTOR.

WHEREAS:

- 1) the COMPANY wishes that certain WORK shall be carried out, all as described in the CONTRACT; and
- 2) the CONTRACTOR wishes to carry out the WORK in accordance with the terms of this CONTRACT.

NOW:

The parties hereby agree as follows:

- 1) In this CONTRACT all capitalised words and expressions shall have the meanings assigned to them in this FORM OF AGREEMENT or elsewhere in the CONTRACT.
- 2) The following Sections shall be deemed to form and be read and construed as part of the CONTRACT:
 - 1. Section I Form of Agreement including Appendix 1;
 - 2. Section II a) General Conditions of Contract for Construction - Edition 2 - October 2003;
b) Special Conditions of Contract;
 - 3. Section III Remuneration;
 - 4. Section IV Scope of Work;
 - 5. Section V Administration Instructions;
 - 6. Section VI Health, Safety and Environment;
 - 7. Section VII Quality Management;
 - 8. Section VIII Training;
 - 9. Section IX Documents and Drawings;
 - 10. Section X Materials, Services and Facilities to be provided by the COMPANY;
 - 11. Section XI CONTRACTOR's Plans.

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The Sections shall be read as one document the contents of which, in the event of ambiguity or contradiction between Sections, shall be given precedence in the order listed, with the exception that the Special Conditions of Contract shall take precedence over the General Conditions of Contract.

- 3) In accordance with the terms and conditions of the CONTRACT, the CONTRACTOR shall perform and complete the WORK and the COMPANY shall pay the CONTRACT PRICE.
- 4) The terms and conditions of the CONTRACT shall apply from the date specified in Appendix 1 to this Section I - Form of Agreement, which date shall be the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT.
- 5) The CONTRACTOR shall perform the WORK in conformity with the SCHEDULE OF KEY DATES and achieve COMPLETION by the SCHEDULED COMPLETION DATE as specified in Appendix 1 to this Section I - Form of Agreement.

The authorised representatives of the parties have executed the CONTRACT in duplicate upon the dates indicated below:

For:

For:

(CONTRACTOR)

(COMPANY)

Name:

Name:

Title:

Title:

Date:

Date:

APPENDIX 1 TO SECTION I - FORM OF AGREEMENT

Reference

Section I

Clause 4 The EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT is

Clause 5 The SCHEDULED COMPLETION DATE is

Section II

Clause 3.1(a) The COMPANY REPRESENTATIVE is

The CONTRACTOR REPRESENTATIVE is

Clause 16.8 The period of suspension is

Clause 17.5 Latest time for receipt of invoices after completion of the whole of the WORK.....

Clause 17.10 Interest rate per annum – Base Rate plus.....percent p.a.

Clause 20.4 Rights shall vest in.....

Clause 22.2(d) This indemnity is given in respect of the following property and is subject to any exclusions or limitations specified below :

- (i) Property directly affected by the WORK.....
- (ii) Other property.....
- (iii) For the purposes of Clause 22.2(d) only, consequential losses shall mean.....

Clause 23.2 Insurance by the CONTRACTOR, the amounts are:
Employers' Liability
General Third Party
Marine Hull and Machinery
Protection and Indemnity:
 General
 Oil Pollution
 Wreck Removal

Clause 24 Construction All Risks Insurance to be arranged by COMPANY – YES / NO (delete as applicable)

If "YES", then

Clause 24.3 Summary of Construction All Risks Insurance

If "NO", then

Clause 24.5 Insert indemnity referred to in Clause 24.5

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Clause 29.2 The Defects Correction Period or Periods are as follows, commencing at the date on which the relevant part of the WORK was actually completed.

- (i) For the whole of the WORK
- (ii) For
- (iii) For

Clause 30.7(a) (iii) Special Conditions remaining in full force and effect shall be

Clause 34.6 The addresses for the service of notices are:

- (i) COMPANY
- (ii) CONTRACTOR

Clause 35.1 Liquidated Damages

.....

Clause 36.1(a) Limitation of Liability before the COMPLETION DATE in respect of the whole of the WORK. The sum is

Clause 36.1(b) Limitation of Liability after the COMPLETION DATE in respect of the whole of the WORK. The sum is

Clause 36.2 The Limitation Period isfrom

Clause 37.1(b) Resolution of Disputes. The nominees are:

- (i) COMPANY
- (ii) CONTRACTOR

CONSTRUCTION

General Conditions of Contract
for Construction

Part 2 – Guidance Notes

GUIDANCE NOTES

Construction

General Conditions of Contract

Introduction

The model contract for which these guidance notes are written is the General Conditions of Contract for Construction, Edition 2, October 2003.

For guidance on the use of this model, see “Intended Applications”, below.

The Case For a Standard Approach

By common consent the UKCS is in its maturity, resulting in increased unit costs and competition for investment from other prospective oil provinces across the world. These circumstances make the need for efficiency in support of operations, while always necessary, even more important. Consider therefore how we have traditionally managed contracting for goods and services.

Invitations to Tender issued by UKCS operators in the past typically contained individual specific contract terms and conditions. More often than not these terms would differ from the form previously seen by contractors thus necessitating a fresh review on each and every occasion. A variety of contracts, legal and project/operational personnel will typically be involved in this process. The contract form issued by the operator would normally be drafted in the operator's favour, anticipating, and receiving, lengthy qualifications by tenderers. Tenderers in turn would demand more concessions than they would expect the operator to agree to as “negotiation” was expected. Often lengthy discussion followed, involving many individuals, before an agreed position was reached.

The above process, on an industry wide basis, taking into account the number of operators, contractors and suppliers involved and the whole range of exploration, development and production activities covered, has a very significant resource and cost impact.

What did or does this process achieve? For many who have worked with this arrangement over many years the belief is that it achieves very little. Risk is not managed or allocated where it can most appropriately be borne, rather it is pushed from one party to another depending on prevailing market conditions. Additional insurance costs can result and contract costs may be increased due to uncertainties and/or contingencies being added. Ultimately, however, the contracts that are signed by different operators and contractors often end up being remarkably alike.

So there is a compelling case for standard contracts, not, it should be said, in the case of scopes of work, company health, safety and environment matters, technical specifications, or in the area of true commercial and pricing issues, where of course it is normal and necessary to encourage competition, innovation and a vigorous relationship between the parties. Standardisation in this context deals only with the general terms and conditions, the “boiler plate”, where little value, but significant cost, attaches to a repetitive adversarial approach.

Purpose of Model Contract

The purpose of the model General Conditions of Contract is to provide a commonly known and understood foundation around which the Company and the Contractor can build their particular requirements.

This eliminates much of the effort historically spent reviewing, qualifying and reviewing qualifications to the many different sets of general conditions offered by the industry. That time is now available to focus on developing specific terms directly beneficial to the work to be done.

The model General Conditions are supported by a model Form of Agreement which includes a schedule of other sections to the contract. These facilities allow the Company to shape the total contract to match the Scope of Work.

Provision is made in the model Form of Agreement for Special Conditions of Contract. This enables the Company, in negotiation with the Contractor, to adapt the General Conditions as necessary to suit their specific requirements and purpose.

Purpose of Guidance Notes

During the development of the General Conditions it was apparent that the meanings and intentions behind certain parts of the General Conditions might usefully be explained for the benefit of users. These guidance notes make those explanations. They are intended for use by practitioners in industry as practical support in getting best value from using the Model Contracts. **These guidance notes do not form part of the General Conditions of Contract and are not to be taken as a legal interpretation of the General Conditions.**

Intended Applications

The General Conditions of Contract for Construction have been prepared to serve the following scopes of work:

- major fabrication;
- topsides installation and hook up;
- significant topsides modifications;
- construction services contracts for topsides works.

This can also be used as the basis, with appropriate amendments, for other contracting arrangements (e.g. EPIC/EPFI).

Feedback

It is intended that these model contracts should be documents that evolve to meet the changing needs of the industry. To this end it is important that the industry provides feedback on its experience with the use of the model contracts.

LOGIC requests specifically:

- details of common areas of concern which give rise to consistent modifications to material terms of the Contract through custom and usage,
- case histories of the model contracts being either helpful or unhelpful with specific detail of why that was so,

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- recommendations to develop the scope of existing model contracts or additional models which would serve the industry well,
- suggested modifications or additions to the guidance notes.

All feedback should be sent in the first instance to:

Contracts for the Offshore Oil and Gas Industry: Comments

LOGIC
Exploration House
Offshore Technology Park
ABERDEEN
AB23 8GX

Acknowledgements

LOGIC wishes acknowledge the contributions made by UKOOA, IMCA, OCA, WSCA, members of the specialist sub committees, and the work of the Standard Contracts Committee in preparing the model contracts.

The members of the Standard Contracts Committee are:

David Odling - UKOOA (Chairman)

Roger Reynolds - Contracts Consultant (Secretary)

Mike Boyd - Marathon Oil U.K. Ltd.

Denise Greenhalgh - Technip Offshore UK Limited

Barry Coulson - Alstom Power UK Limited

Mark Watson - AMEC Group Limited

Jacquelynn Craw - Talisman Energy (UK) Limited

Jane Blair - Talisman Energy (UK) Limited

Richard Horne - BP Exploration Operating Company Limited

Stuart MacBride - Trinity International Services Limited

Nick Brown - Wood Group Engineering (North Sea) Limited

Jack Meredith - BJ Services Company

Harry Diack - Amerada Hess Limited

Ryan Bond - The Expro Group

Charles Miskin - Project Resources

Jim Mackenzie - Shell UK Limited

David Inglis - LOGIC

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Pia Mandler - LOGIC

Andy Powell - Total E&P UK PLC

Acknowledgements are extended also to all past members of the Standard Contracts Committee for their contributions.

Other Relevant Models

Model General Conditions of Contract (with supporting guidance notes):

- Marine Construction
- Services
- Well Services
- Design
- Mobile Drilling Rig
- Supply of Major Items of Plant and Equipment
- Purchase Order Terms and Conditions (Short Form).
- Small/Medium Enterprises (SME) Services
- Subcontract Small / Medium Enterprises (SME) Services

Copies of these documents can be obtained from:

LOGIC
Exploration House
Offshore Technology Park
ABERDEEN
AB23 8GX

The Model General Conditions of Contract are also available on the LOGIC website (www.logic-oil.com).

Explanatory notes

1. Structure of the Contract

- 1.1 The structure of the Contract that has been assumed is set out in the Sample Form of Agreement attached to the General Conditions of Contract. There, a number of Sections are listed which, in some cases, are referred to in the General Conditions of Contract. The document has been drafted in this way in an attempt to make the use and understanding of Contracts as easy as possible. It is however recognised that some Companies may not wish to set out their Contracts in this way. If certain of the Sections listed are not required, this can easily be taken into account in the Special Conditions of Contract (Section II b) by including a Clause which details where the relevant information can be found and changes all references to discarded Sections.
- 1.2 A Form of Agreement must of course be drafted taking into account the specific Contract to which it relates. The Sample Form should not however require much if any alteration. The Appendix 1 attached to the Form of Agreement must however be completed for each Contract as discussed overleaf.

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- 1.3 Attached to the Sample Form of Agreement is an Appendix - numbered 1 - which refers to various Clauses included in the General Conditions of Contract. Such Clauses are drafted in such a manner that each individual Company can include its own requirements for matters such as insurances, liquidated damages, limitations of liability, etc, in the Appendix.

It is clearly essential that as far as possible, the information listed in Appendix 1 is supplied to tenderers as part of the invitation to tender documents, in order that tenderers may price the requirements of the Company.

All outstanding information, including the names of the Contractor Representative, the Contractor's address to which notices are to be sent, etc, must be completed and included in any signed Contract.

- 1.4 The General Conditions of Contract may be supplemented by Special Conditions as provided for in the Sample Form of Agreement. Such Special Conditions should include any additional matters for a specific contract which are not dealt with in the General Conditions. In addition the Special Conditions may modify or delete certain Clauses included in the General Conditions, but it is hoped that Companies will only modify the General Conditions when such modifications are considered to be essential.
- 1.5 Included in Appendix 1 are two important dates namely, the Effective Date of Commencement of the Contract and the Scheduled Completion Date. Provision is included in the General Conditions of Contract for additional requirements in relation to programme to be included in the Special Conditions of Contract in the form of a Schedule of Key Dates.

As a minimum such schedule should include the two dates included in Appendix 1.

- 1.6 The whole of the contract document has been drafted with the aim of keeping the wording as simple and short as reasonably possible.
- 1.7 In the preparation of the General Conditions of Contract no attempt has been made to comply fully with the relevant provisions of the Housing Grants, Construction and Regeneration Act 1996 since it appears that such provisions do not apply to the types of work which it is anticipated will be carried out under the various Model Contracts.

If however any such Contracts are to be used for types of work which are covered by the Act, either modifications will be necessary by the way of Special Conditions in order to meet the relevant requirements of the Act, failing which the "Scheme for Construction Contracts" published in relation to the Act will apply to any such Contracts.

- 1.8 When issuing invitation to tender documents it is anticipated that the General Conditions of Contract will not be included in such documents but will be incorporated by reference in resulting contracts and simply referred to in tender documents.

2. Comments on Specific Clauses included in the General Conditions of Contract

2.1 Clause 1 - Definitions

Clause 1.1 - 'Affiliate'

A general definition is included in Clause 1.1 but users should review this Clause and amend as necessary in the Special Conditions to take into account their own particular corporate structure, should the general definition be unsuitable.

In addition to changes required in relation to the corporate structure of the Company, an additional definition may be required for the Contractor. For example, in the case of a Joint Venture Company which may well have no Affiliates, the Joint Venture Partners and their Affiliates may have to be taken into account.

Clause 1.9 - 'Contractor Group'

Clause 1.9 defines the 'Contractor Group' as including not only the first tier sub-contractors but also those sub-contractors of any tier who are performing the Work offshore or at any fabrication yard or construction site.

Clause 1.13 - 'Job Specification'

The sections referred to in this definition are the sections listed in the Sample Form of Agreement discussed above.

Clause 1.22 - 'Variation'

The word 'Variation' may mean one of the two things described in this Clause:

- (a) is an instruction to modify the work given in accordance with Clause 14.1,
- (b) refers to other matters which may give an entitlement to the Contractor to additional payment and/or changes to the Schedule of Key Dates (defined in Clause 1.18).

Various Clauses in the contract refer to the issue of a Variation in certain circumstances. These Clauses include 4.4, 5.6, 7.1, 14.3 and 14.6.

2.2 Clause 5 - Responsibility for Company-Provided Items

Various possibilities exist for the provision of materials and equipment for the Work. This Clause deals only with items which the Company is to provide under the terms of the Contract.

2.3 Clause 6 - Contractor to Inform Itself

This Clause provides that generally the Contractor has satisfied itself concerning all of its obligations and the conditions under which the work is to be performed. There is however one very important exception to the above, namely 'seabed and subsoil conditions'. Generally the Contractor will be unable to investigate fully such conditions and must rely to a large extent on information provided by the Company, as taken into account in Clause 6.1.

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Clause 6.2 provides that the Contractor shall be reimbursed for necessary additional cost and entitled to additional time in respect of delay resulting from seabed and/or subsoil conditions being encountered 'which could not reasonably have been foreseen by an experienced Contractor'. Clearly the more detailed information that can be provided by the Company, the less the risk of encountering such conditions.

2.4 Clause 8 - Assignment and Subcontracting

Clause 8.1 - Assignment

Although this Clause gives the Company wide powers to assign the Contract, it is possible that some Company Joint Operating Agreements will require even wider powers in which case this Clause should be amended in the Special Conditions.

Clause 8.2 - Subcontracting

It is considered that generally, if substantial parts of the work are to be subcontracted, such arrangements should be discussed before signature of the Contract and, wherever possible named subcontractors should be listed in the Contract itself. If that is not done however, Clause 8.2 will still provide reasonable powers for the Company in relation to the award of such subcontracts.

2.5 Clause 12 - Technical Information

Clause 12.3 provides that all documents of the types listed shall be provided, if requested by the Company, for its review and comment.

This Clause is drafted in this way partly with the objective of reducing cost and partly from a consideration of the practical aspects of the review of documents.

When contracts are drafted however, the Company should give consideration to which classes of documents it will require to see in any event (if any). Any specific requirements should be included in the Special Conditions of Contract.

Clause 12.5 contemplates that the Company may require the Contractor to carry out checks on specific items of Technical Information. Where such is a requirement, each item to be checked should be clearly identified and, where appropriate the nature of the check should be specified.

2.6 Clause 14 - Variations

Clause 14.1 gives the Company wide powers to issue instructions to the Contractor not only to change the work but also to accelerate and reprogramme the Work within the limits of practicality. In accordance with Clause 2.1 all such instructions shall be in writing or, if given orally in the first instance, confirmed in writing.

In addition, any such instruction should be given or confirmed by the Company Representative or a nominated deputy who has written authority to give and/or confirm such instruction (please see Clause 3.2).

Clause 14.5 provides that, wherever possible, the effect of a Variation shall be agreed before the instruction is issued. Clearly such a procedure will eliminate many future potential disputes. It is however recognised that such a procedure cannot always be followed so an alternative is included in this Clause for cases where no such agreement is reached. Work may in any case proceed in accordance with the provisions of Clause 14.1(b).

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Clause 14.6 deals with situations where the Company has been unable to comply with its contractual obligations in certain respects and gives the Contractor an entitlement to receive a Variation in such cases. In terms of payment the Clause specifies that the Contractor shall receive necessary direct additional cost plus overheads but not profit (see Clause numbered (ii)). This is specified since the Clause in effect deals with breaches of Contract of the Company and the payment due is accordingly linked to damages for breach of Contract for which profit would not normally be recoverable for the matters listed in the Clause.

Clause 14.7 deals with disputed Variations, i.e. cases where no agreement can be reached, and the procedure for dealing with such. In particular Clause 14.7(e) provides that the Company shall pay to the Contractor the amount which the Company considers to be due. This is included to ensure that some payment is made in such cases in order to maintain the Contractor's cashflow.

This Clause is complementary to Clause 14.5 which describes how payment should be calculated.

2.7 Clause 15 - Force Majeure

Clause 15.2 defines Force Majeure for the purposes of the Contract in order to ensure a proper understanding of the term. It should be noted that weather conditions as such, regardless of severity are not Force Majeure. It must however be remembered in this context that, where, for example, heavy lift vessels are to be used, the method of payment for such will either be on the basis that the Contractor accepts weather risk or on the basis that standby time will be reimbursed should wind and/or sea conditions exceed certain specified parameters. It is essential that Section III - Remuneration should deal fully with such matters and that Sections II and III are consistent.

2.8 Clause 16 - Suspension

Clause 16.4 provides that unless a suspension results from some default on the part of the Contractor, the Contract Price shall be adjusted in accordance with the relevant provisions of Section III - Remuneration. It is therefore necessary that such payment section includes appropriate rates for suspension. This must be decided specifically for each Contract. If no provision is made in this respect a 'fair valuation' would be due under Clause 14.5.

2.9 Clause 17 - Terms of Payment

Clause 17.2 emphasises the normal position that the rates and prices in the Contract are deemed to include for everything that the Contractor must supply or do, unless the Contract specifically states to the contrary. Accordingly statements to the effect that the Contractor shall carry out a particular operation at its own cost are not included elsewhere in the General Conditions since that is the normal position.

Clause 17.4 deals with Value Added Tax and states that VAT should be added to the Contract Price as appropriate. Accordingly all rates and prices included in the Contract should be quoted without any inclusion for VAT and the Invitation to Tender documents and Section III - Remuneration should make this clear.

Clause 17.10 provides for interest to be paid for late payment of invoices. The Late Payment of Commercial Debts (Interest) Act came into effect on 1 November 1998 and gives the statutory right to claim interest for late payment of invoices at bank base rate plus an additional percentage. Appendix 1 allows for the percentage over the base rate to be specified in each contract to cater, for instance, for flexible

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arrangements in terms of delivery on the part of the Contractor which might be offset against a beneficial credit period/interest rate on the part of the Company. The contract default position is 3% over the base rate. However, it is important to ensure that the amount of interest remains 'substantial' in the eyes of the Court which at a later date may consider it insufficient to reflect the intent of the legislation.

Clause 17.12 includes, for the purposes of the Contract, a definition of the word 'costs' in respect of Clauses which provide for the recovery of 'costs'.

2.10 Clause 18 - Taxes and Tax Exemption Certificates

Clause 18.4 deals with 'Construction Activities' as specified in Section 567(2) Income and Corporation Taxes Act 1988. The standard reflects the legislation which came into effect on 1st August 1999.

2.11 Clause 21 - Laws and Regulations

Clause 21.2 provides that the Contractor shall obtain all licences, etc required for the performance of the work other than those which can only be obtained legally by the Company.

In any particular case it may be necessary to specify in the Special Conditions of Contract, precisely what licences etc. will be obtained by the Company.

Clause 21.3 deals with changes in laws etc. and specifies that the Contractor's entitlement to reimbursement for any additional cost, which may result from such changes, is as set out in Section III - Remuneration. Accordingly Section III should address any specific areas, such as changes in safety legislation requiring changes to vessels, etc., where some specified payment is to be made.

2.12 Clause 22 - Indemnities

Generally this Clause includes reciprocal indemnities in respect of property and personnel of the Company Group and Contractor Group, and third parties (as defined in Clause 22.1(c)). There are however exceptions in relation to property of the Company Group in that the indemnity included in Clause 22.2(a) is limited to property at the 'Worksite' and excludes the 'Permanent Work'. The indemnity given by the Company in Clause 22.2(a) applies both to property which is owned by the Company Group and to property which is leased or otherwise obtained under arrangements with financial institutions by the Company Group.

'Worksite' is as defined in Clause 1.24 and includes the area within the approved anchor pattern of any vessels used by the Contractor for the work. Any restrictions on such anchor patterns for third party or Company Group property should be included in the Contract. Clause 24.1 places responsibility for the 'Permanent Work' on the Contractor.

In cases where the Company Group does not own all property at the Worksite likely to be affected by the Contractor, the Company should be prepared to inform the Contractor of exact details of ownership together with indemnities given in respect of third party property. By agreement between the parties, Clause 22.2(d) is intended to establish indemnities in favour of the Contractor in the event of damage to such property. A risk to be considered will be consequential losses arising from damage to third party property. Care must be taken in defining the categories of loss included.

As discussed above, the indemnity in Clause 22.2(a) is in respect of Company Group property. Some Company Joint Operating Agreements may not allow the Company to give such indemnities in respect of Co-Venturer's property. It is suggested that, in

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such cases, separate agreements should be obtained from the Co-Venturers to the use of that Clause, since it is considered to be unreasonable to give anything less in the way of indemnity.

The reciprocal indemnities between Company and Contractor relate only to the parties included in the Company and Contractor Groups as defined in Clauses 1.2 and 1.9.

For the purposes of Clauses 22.1 (c) and 22.2 (c), Third Parties are defined as any party who is not a member of the Company or Contractor Groups.

The result of the above is that certain parties, who in many cases will be present at some parts of the Worksite, are Third Parties for the purposes of the Indemnity Clauses. These include in particular other contractors of the Company.

It should be noted, therefore, that the Company's other contractors (and the sub-contractors of such other contractors) are not included in the "Company Group" definition. In this regard, the Standard Contracts Committee supports the Industry Mutual Hold Harmless ("IMHH") as the most appropriate means of dealing with the allocation of liability for injury to persons, damage to property and consequential loss between the Company's contractors and strongly encourages all contractors to join the IMHH scheme. Details of the IMHH are available on the LOGIC website (www.logic-oil.com).

2.13 Clause 23 - Insurance by Contractor

The insurances required under the provisions of this Clause will vary depending on the workscope of each particular contract and this is recognised by the opening paragraph of Clause 23.2. The exact values of insurances required by the Company must be specified in Appendix 1 as discussed above.

Clause 23.4 requires that Subcontractors carry appropriate amounts of insurance as may be relevant to their work.

Although not provided in the standard wording, the Contractor is recommended to consider the need for a reciprocal commitment from the Company to insure also. In this respect the main criteria will of course be the size and financial stability of the Company in each case.

2.14 Clause 24 - Care of the Permanent Work and Insurance

Under Clause 24.1, the Contractor is responsible for the Permanent Work until the issue of a Handover Certificate or Completion Certificate as applicable. Clause 24.2 lists certain causes of loss or damage to the Permanent Work for which the Contractor would not, however, be responsible. These causes include the negligence of the Company Group and also risks which would generally be considered uninsurable.

Whilst Clause 24.3 deals with the arrangement of a Construction All Risks insurance policy by the Company, Clause 24.5 provides that the Company may, at its discretion elect to provide an indemnity to the Contractor in lieu. Any such indemnity must be expressed in full in Appendix 1 to the Form of Agreement.

2.15 Clause 25 - Consequential Loss

There are two parts to the "Consequential Loss" definition under Clause 25. Part (i) deals with consequential or indirect loss under English law, whilst part (ii) lists specific heads of loss which are also covered by the definition.

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The second paragraph is drafted in the form of an indemnity since the exclusions of liability in respect of Consequential Loss apply between the Company Group and the Contractor Group and not simply between the Company and the Contractor.

As with the indemnities under Clause 22, some Joint Operating Agreements may not permit the Company to give the indemnities included in this Clause on behalf of their Co-venturers. It is suggested in any such cases that separate agreements should be obtained from Co-venturers to the use of this Clause since it is considered to be unreasonable to give anything less in the way of an indemnity.

2.16 Clause 28 - Completion

It should be noted that in Clause 28.4 the Company is required to act 'as soon as reasonably practicable', in order to avoid unnecessary delay and expense for the Contractor.

2.17 Clause 29 - Defects Correction

Clause 29.2 provides that the Contractor will remedy any defects discovered in the Work within the period specified. It also specifies that the defects correction period in respect of any rectified work recommences at the date of completion of such rectification. Any such liability is subject eventually to the provisions of Clause 36.2 which specifies the time at which the Contractor's obligations will cease.

Clause 29.5 has been included in order to clarify responsibility for defects and to avoid, as far as possible, unnecessary disputes.

Generally the Company will be responsible for its own actions in this respect. This will include the content of Technical Information (defined in Clause 1.21), the specification of operating conditions for the Permanent Work (which the Contractor will probably be unable to check) and defects in Company provided materials. With respect to the latter, the Contractor's obligations are described in Clause 5.

2.18 Clause 30 - Termination

Section III - Remuneration should include full details of any termination fees to be paid in the event of termination to suit the convenience of the Company, as described in Clause 30.4.

The Clause does allow the alternative of agreeing such fees at the time of termination, but it is strongly recommended that any such fees should be included in the Contract. Clause 30 includes for both termination of part or all of the work or termination of the Contract. Accordingly a 'continuing obligations' Clause - Clause 30.7 - is included to cover all possibilities. In the event of termination of all or part of the work the whole Contract remains in full force and effect. In the event of termination of the Contract however only certain obligations are specified to remain (please see Clause 30.7(a)). If important Clauses are included in any Special Conditions of Contract, it may be a requirement that such Clauses remain in being after termination of the Contract and these must be listed in Appendix 1 as provided for in Clause 30.7(a)(iii).

2.19 Clause 35 - Liquidated Damages

This is a very general Clause leaving users of the document to specify in Appendix 1 those events to which liquidated damages are to apply. Any such damages so specified are the sole financial remedy of the Company in respect of any failure of the Contractor to comply with its obligations in respect of such events. Other remedies of the Company remain in full force and effect in accordance with Clause 34.2.

2.20 Clause 36 - Limitations of Liability

Clause 36.1(a) contains provision for a limitation of the liability of the Contractor before the Completion Date in respect of the whole of the Work, whilst Clause 36.1(b) provides for a limitation of liability thereafter. It is relevant to note that the limitation under Clause 36.1(a) does not apply to any liabilities assumed by the Contractor under Clause 29 (Defects Correction) and that neither the limitation under Clause 36.1(a) nor Clause 36.1(b) will apply to any liabilities assumed by the Contractor under the following Clauses:

- Taxes and Tax Exemption Certificates
- Patents and Other Proprietary Rights
- Insurance by Contractor
- Care of the Permanent Work and Insurance
- Customs Procedures
- Liens

Additionally, the limitations do not apply to any indemnity given by the Contractor under the Indemnities Clause.

In addition to provision for a financial limitation, Clause 36.2 makes provision for a limitation period. Such a limitation period would similarly not apply in respect of the above mentioned Clauses.

It is important that an appropriate sum is included in Appendix 1 in respect of Clauses 36.1(a) and (b) and that an appropriate period of time is included in respect of Clause 36.2. What is considered fair and reasonable in this regard will depend on various factors, including the Contract Price and the assessed risk.

2.21 Clause 37 - Resolution of Disputes

This Clause assumes that, in the event that the parties cannot settle any disputes that may arise, their final recourse is to the Courts.

It is recognised however that other methods of finally resolving disputes may be appropriate in certain cases. In particular arbitration may be considered to be appropriate where an international marine element forms the greater part of the Work.

2.22 Clause 38 - Contracts (Rights of Third Parties) Act

The Contracts (Rights of Third Parties) Act provides for the creation of third party rights under all contracts with an effective date of commencement of 11 May 2000 or later unless its application is excluded. This Clause provides that only those rights of third parties referred to under the following Clauses shall be enforceable under the Act:

- Clauses 20.7 and 20.8 – Patents and Other Proprietary Rights
- Clause 22 – Indemnities
- Clause 23 – Insurance By Contractor
- Clause 24 – Care of the Permanent Work and Insurance
- Clause 25 – Consequential Loss
- Clause 34.3 – Contractor's Affiliates

3. Section V - Administration Instructions

3.1 Indicative List of Items to be included in Section V - Administration Instructions:

- Organisation Charts for Company and Contractor;
- Communications;
- Programming;
- Reporting;
- Variations;
- Transport Offshore - Personnel;
- Transport Offshore - Materials and Equipment;
- Query System;
- Invoicing;
- Reimbursable Personnel;
- Measurement of Work;
- Subcontracts;
- Call off for Company Provided Items;
- Drawings and Documents;
- Permit to Work system;
- Incident Reporting;
- Certificates of Ownership;
- Completion and Closeout.

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