

Standard Contracts for the

UK Offshore Oil & Gas Industry

General Conditions of Contract
(including Guidance Notes) for
Design



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.

DESIGN

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

General Conditions of Contract (including Guidance Notes)
for Design

DESIGN

General Conditions of Contract
for Design

Part 1 – General Conditions of Contract

DESIGN

CONTENTS

1.	DEFINITIONS	1
2.	INTERPRETATION	2
3.	COMPANY AND CONTRACTOR REPRESENTATIVES	3
	3.1 General	3
	3.2 COMPANY REPRESENTATIVE	3
	3.3 CONTRACTOR REPRESENTATIVE	3
4.	CONTRACTOR'S GENERAL OBLIGATIONS	4
5.	CONTRACTOR TO INFORM ITSELF	4
6.	CONTRACTOR TO INFORM COMPANY/COMPANY TO INFORM CONTRACTOR	5
7.	ASSIGNMENT AND SUBCONTRACTING	5
	7.1 Assignment	5
	7.2 Subcontracting	6
8.	CONTRACTOR PERSONNEL	6
9.	CO-OPERATION WITH OTHERS	7
10.	PROGRAMME	7
11.	EXAMINATION	8
12.	VARIATIONS	8
	12.1 Right of the COMPANY to issue instructions	8
	12.2 VARIATIONS Generally	9
	12.3 CONTRACTOR'S Right to Request a VARIATION	9
	12.4 CONTRACTOR'S Estimates	10
	12.5 Adjustments to CONTRACT PRICE and SCHEDULE OF KEY DATES	10
	12.6 VARIATIONS in respect of delay and/or additional cost	11
	12.7 Disputed VARIATIONS	11
	12.8 Discretionary Provision	12
13.	FORCE MAJEURE	12
14.	SUSPENSION	13
15.	TERMS OF PAYMENT	14
16.	TAXES AND TAX EXEMPTION CERTIFICATES	16
17.	OWNERSHIP	19
18.	PATENTS AND OTHER PROPRIETARY RIGHTS	20
19.	LAWS AND REGULATIONS	21
20.	INDEMNITIES	21
21.	INSURANCE BY CONTRACTOR	23
22.	CONSEQUENTIAL LOSS	23

DESIGN

23.	CONFIDENTIALITY	24
24.	COMPLETION	25
25.	DEFECTS CORRECTION	26
26.	TERMINATION	26
27.	AUDIT AND STORAGE OF DOCUMENTS	29
28.	LIENS	29
29.	BUSINESS ETHICS	30
30.	GENERAL LEGAL PROVISIONS	30
	30.1 Waiver	30
	30.2 Retention of Rights	30
	30.3 CONTRACTOR'S AFFILIATES	30
	30.4 Independence of the CONTRACTOR	30
	30.5 Proper Law and Language	31
	30.6 Notices	31
	30.7 Status of COMPANY	31
	30.8 Entire Agreement	32
	30.9 Mitigation of Loss	32
	30.10 Invalidity and Severability	32
31.	LIQUIDATED DAMAGES	32
32.	LIMITATIONS OF LIABILITY	32
	32.1 Limitation of Liability	32
	32.2 Limitation Period	33
	32.3 Extent of exclusion or limitation of liability	33
	32.4 Precedence	33
33.	RESOLUTION OF DISPUTES	33
34.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT	34
35.	HEALTH SAFETY AND ENVIRONMENT	35
	SAMPLE FORM OF AGREEMENT	36
	APPENDIX 1 TO SECTION I - FORM OF AGREEMENT	38

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 24.
- 1.5 "COMPLETION CERTIFICATE" shall mean the certificate issued pursuant to Clause 24.2 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.
- 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 of 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 "JOB SPECIFICATION" shall mean Sections IV, V, VII, VIII and IX of the CONTRACT.
- 1.13 "KEY PERSONNEL" shall mean those personnel named as such in the CONTRACT.

DESIGN

- 1.14 "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 10.
- 1.15 "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 Section I - Form of Agreement.
- 1.16 "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 12.
- 1.17 "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.
- 1.18 "SUBCONTRACTOR" shall mean any party (other than the CONTRACTOR) to a SUBCONTRACT.
- 1.19 "TECHNICAL INFORMATION" shall mean all such information provided by or caused to be provided by the COMPANY pursuant to the CONTRACT.
- 1.20 "VARIATION" shall mean both:
- (a) an instruction to the CONTRACTOR in accordance with Clause 12.1; 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.
- 1.21 "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.
- 1.22 "WORKSITE" shall mean the lands, waters and other places on, under, in or through which the WORK is to be performed including offshore installations or places of any kind, including all design offices, workshops and places where the WORK is being performed or 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 writing as soon as is possible under the circumstances, provided that, if the CONTRACTOR confirms in writing any such oral instruction which is not

DESIGN

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 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.

DESIGN

- (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 without cause or any nominated deputy 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, engineering and other services, 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.
- 4.3 All design calculations, drawings, specifications and other documents relating to design work and to the procurement of materials to be prepared and/or supplied by the CONTRACTOR for the purposes of the CONTRACT shall be fit for their intended purpose.

The COMPANY shall supply to the CONTRACTOR such conceptual and detailed design calculations, drawings, specifications and other information as are specified in the CONTRACT. Except as specifically stated to the contrary in the CONTRACT, the CONTRACTOR shall be responsible for checking all such documents and information and for preparing such modifications to the same as the CONTRACTOR may consider desirable and/or necessary. Thereafter such documents and information shall be deemed to have been supplied by the CONTRACTOR for the purposes of the CONTRACT.

- 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 12, 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 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 and 4.3.

5. CONTRACTOR TO INFORM ITSELF

- 5.1 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 supervision, engineering services and all other necessary services, personnel,

DESIGN

materials, equipment, 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, and all other matters which could affect progress or performance of the WORK.

- 5.2 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.

6. CONTRACTOR TO INFORM COMPANY / COMPANY TO INFORM CONTRACTOR

- 6.1 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 12, 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.
- 6.2 In addition to the requirements of Section VI - Health, Safety and Environment and the provisions of Clause 35, 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.
- 6.3 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.

- 6.4 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.

7. ASSIGNMENT AND SUBCONTRACTING

7.1 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.

7.2 Subcontracting

- (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.

8. CONTRACTOR PERSONNEL

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 The CONTRACTOR shall ensure that the KEY PERSONNEL and supervisory personnel of the CONTRACTOR and SUBCONTRACTORS shall read, write and speak fluent English.
- 8.5 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.

DESIGN

- 8.6 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.
- 8.7 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.
- 8.8 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.

9. CO-OPERATION WITH OTHERS

- 9.1 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.
- 9.2 Subject to Clause 12, the COMPANY shall issue a VARIATION if the CONTRACTOR can show that in compliance with Clause 9.1 the CONTRACTOR has suffered delay and/or incurred cost that could not reasonably have been foreseen by an experienced contractor.

10. PROGRAMME

- 10.1 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.

- 10.2 The CONTRACTOR shall submit the detailed work plan referred to in Clause 10.1, together with full supporting details to the COMPANY for review. When approved by the COMPANY such work plan shall become the PROGRAMME.

DESIGN

- 10.3 The CONTRACTOR shall use the PROGRAMME as the basis for progress reporting, scheduling, forecasting and controlling performance of the WORK.
- 10.4 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 plan has been approved by the COMPANY it shall become the PROGRAMME, there being only one PROGRAMME at any particular time.
- 10.5 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.

11. EXAMINATION

- 11.1 The CONTRACTOR shall keep the COMPANY informed of the progress of the WORK and shall, subject to any other relevant requirement of the CONTRACT, submit to the COMPANY for review and comment all relevant documents including but not limited to calculations, sketches, drawings, reports and recommendations. All such documents shall be submitted in sufficient time to allow the COMPANY the time specified in the CONTRACT (or if no such time is specified a reasonable time) to review and comment on them without delaying the performance of the WORK by the CONTRACTOR.
- 11.2 The COMPANY shall have the right to examine the WORK during its performance and to reject any item which is not in accordance with the CONTRACT. No such examination or lack of examination or rejection shall relieve the CONTRACTOR of any of its obligations or liabilities under the CONTRACT.

12. VARIATIONS

- 12.1 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;
 - (ii) revise elements of the WORK already completed in accordance with the CONTRACT;
 - (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 12.5;
 - (iv) reprogramme the WORK and reschedule its resource within the limits of practicality in order to complete the WORK or any part thereof in

DESIGN

accordance with any amendment to the SCHEDULE OF KEY DATES the COMPANY may require.

DESIGN

- (b) An instruction under Clause 12.1(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.

12.2 VARIATIONS Generally

- (a) Prior to instructing or authorising any VARIATION, the COMPANY may require the CONTRACTOR to submit estimates as described in Clause 12.4.
- (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.

12.3 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 12.6 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 12.3(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 12.4, the CONTRACTOR shall, at the sole discretion of the COMPANY, 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

DESIGN

- (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 12.7.

12.4 CONTRACTOR'S Estimates

Within seven (7) days of having been requested by the COMPANY in accordance with Clause 12.2(a) or the CONTRACTOR having requested a VARIATION in accordance with Clause 12.3(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.

12.5 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 12.4.

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.

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;

DESIGN

- (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 12.1(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.

12.6 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) 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 6.1.

Under any such VARIATION and notwithstanding the provisions of Clause 12.5(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 12.1(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.

12.7 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:

DESIGN

- (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 12.7(a), 12.7(b) and 12.7(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.

12.8 Discretionary Provision

If the CONTRACTOR has forfeited the right to receive any VARIATION under the provisions of Clause 12.3(b) and/or 12.7(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.

13. FORCE MAJEURE

- 13.1 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 13 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.

DESIGN

- 13.2 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.
- 13.3 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.
- 13.4 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 12 and Clause 13.5.
- 13.5 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 12, 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.
- 13.6 Following notification of a force majeure occurrence in accordance with Clause 13.3, the COMPANY and the CONTRACTOR shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

14 SUSPENSION

DESIGN

- 14.1 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 14.3, 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.
- 14.2 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.
- 14.3 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 14.1.
- 14.4 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 12.
- 14.5 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.
- 14.6 The COMPANY may, by further notice, instruct the CONTRACTOR to resume the WORK to the extent specified.
- 14.7 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.
- 14.8 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 12; or
 - (b) where it affects the whole of the WORK, termination in accordance with Clause 26.1(a).

15. TERMS OF PAYMENT

- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 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.
- 15.5 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 12.3 and 12.7. The schedule shall include estimates of cost against each item fully supported by necessary documentation as described in Clauses 12.4 and 12.7.

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.

- 15.6 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.

- 15.7 Within thirty (30) days from receipt of a correctly prepared and adequately supported invoice by the COMPANY at the address specified in Clause 15.6, 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.

DESIGN

- 15.8 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 15.7 and Clause 15.10 where applicable.

- 15.9 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.
- 15.10 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 15.7 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 15.7 hereof.
- 15.11 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.

15.12 For the purposes of Clause 15.11 and elsewhere in the CONTRACT, wherever a party to the CONTRACT is entitled to recover from another party any costs incurred, then the amount of such costs shall be the amount of all claims, loss, 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.

16. TAXES AND TAX EXEMPTION CERTIFICATES

16.1 The CONTRACTOR shall in accordance with the provisions of Clause 19, 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 16.

16.2 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.

16.3 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 16 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

DESIGN

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 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 16.3 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 16.3 mean that the company or person is regarded by the Inland Revenue as United Kingdom resident.

- 16.4 Where any 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

DESIGN

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.

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.

- 16.5 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.
- 16.6 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.
- 16.7 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.

17. OWNERSHIP

- 17.1 Subject to Clauses 17.2 and 17.3, 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 all data (including that stored on computers and computer aided design models), 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.
- 17.2 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.

DESIGN

- 17.3 All rights of title to, copyright in and ownership of any such items which the CONTRACTOR provides in relation to the WORK and which are merely supplemented, enhanced, modified or adapted in the course of the WORK shall remain with the CONTRACTOR.
- 17.4 Notwithstanding Clauses 17.2 and 17.3 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, provided by the CONTRACTOR, for the purposes of the operation and maintenance of the property created by the application of the design and/or other deliverables produced by the CONTRACTOR under the CONTRACT 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.
- 17.5 The COMPANY shall retain title to COMPANY-provided items and information, including but not limited to TECHNICAL INFORMATION.
- 17.6 All items of COMPANY property in the possession of the CONTRACTOR including but not limited to documents, drawings and TECHNICAL INFORMATION shall be suitably marked or clearly identified as the property of the COMPANY.

18. PATENTS AND OTHER PROPRIETARY RIGHTS

- 18.1 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.
- 18.2 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.
- 18.3 Where any potential patent or registrable right in any country in the world results from:
- (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,

DESIGN

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

- 18.4 Except as provided in Clause 18.1, Clause 18.2 and Clause 18.3, 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.
- 18.5 Where under Clause 18.4 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.
- 18.6 Where under Clause 18.4 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.

DESIGN

- 18.7 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.
- 18.8 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.

19. LAWS AND REGULATIONS

- 19.1 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.
- 19.2 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.
- 19.3 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.

20. INDEMNITIES

- 20.1 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

DESIGN

- (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 20.1(c) "third party" shall mean any party which is not a member of the COMPANY GROUP or CONTRACTOR GROUP.
- 20.2 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 GROUParising from, relating to or in connection with the performance or non-performance of the CONTRACT, other than any such property created by the application of the design and/or other deliverables produced by the CONTRACTOR under the CONTRACT; 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 20.2(c) "third party" shall mean any party which is not a member of the CONTRACTOR GROUP or COMPANY GROUP.
- 20.3 Except as provided by Clause 20.1(a), Clause 20.1(b) and Clause 20.4, 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.
- 20.4 Except as provided in Clause 20.2(a) and Clause 20.2(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 arising from, relating to or in connection with the performance or non-performance of the CONTRACT.
- 20.5 All exclusions and indemnities given under this Clause 20 (save for those under Clauses 20.1(c) and 20.2(c)) and Clause 22 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.

- 20.6 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.

21. INSURANCE BY CONTRACTOR

21.1 The CONTRACTOR shall arrange as a minimum the insurances set out in this Clause 21 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 21 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 21 shall in no way limit the liability of the CONTRACTOR under the CONTRACT.

21.2 The insurances required to be effected under Clause 21.1 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) such further insurances (if any) as set out in Appendix 1 to Section I - Form of Agreement.

21.3 The CONTRACTOR shall supply the COMPANY with evidence of such insurances on demand.

21.4 The CONTRACTOR shall procure that SUBCONTRACTORS are insured to appropriate levels as may be relevant to their work.

22. CONSEQUENTIAL LOSS

For the purposes of this Clause 22 the expression "Consequential Loss" shall mean:

- (i) consequential or indirect loss under English law; and

DESIGN

- (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.

23. CONFIDENTIALITY

23.1 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.

23.2 The provisions of Clause 23.1 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.

DESIGN

23.3 The CONTRACTOR shall ensure that the provisions of this Clause 23 are incorporated in any SUBCONTRACT and that the officers, employees and agents of the CONTRACTOR and of the SUBCONTRACTORS comply with the same.

DESIGN

- 23.4 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
 - (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 23.4 shall not apply to information which vests in the COMPANY in accordance with the CONTRACT.

24. COMPLETION

24.1 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 26.1(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, the CONTRACTOR shall so notify the COMPANY and request the issue of a COMPLETION CERTIFICATE.

24.2 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.

24.3 Any notice issued under Clause 24.2(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

DESIGN

correct. When it has completed such correction it shall notify the COMPANY in accordance with Clause 24.1.

- 24.4 In the event that any notice issued under Clause 24.2(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 26, except that Clause 26.2 shall not apply.

25. DEFECTS CORRECTION

- 25.1 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 WORK will be free from defects.
- 25.2 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 24 hereof or subsequent to the issue of a COMPLETION CERTIFICATE in accordance with Clause 24 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 provisions of Clause 25.3, 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 25, this Clause 25 shall apply to the portion so reformed, rectified or replaced. The Defects Correction Period 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.

- 25.3 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 25.2. 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.
- 25.4 The CONTRACTOR shall not be liable for defects in the WORK which are caused by the following:
- (a) the reasonable actions of the CONTRACTOR in relying on TECHNICAL INFORMATION;
 - (b) actual operating conditions being different from those specified in the CONTRACT or any VARIATIONS.

26. TERMINATION

- 26.1 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:
- (a) to suit the convenience of the COMPANY; or
 - (b) subject only to Clause 26.2 in the event of any default on the part of the CONTRACTOR; or

DESIGN

- (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.
- 26.2 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 26.1.
- 26.3 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 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 26.3(b), remove all 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.

In the event of termination under Clause 26.1(b) or 26.1(c) the COMPANY shall have the right to obtain completion of the WORK or the relevant part of the WORK by other contractors.

DESIGN

- 26.4 In the event of termination under Clause 26.1(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.
- 26.5 In the event of termination of part of the WORK in accordance with Clause 24.4 or Clause 26.1(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.
- 26.6 In the event of termination of all of the WORK or the CONTRACT in accordance with Clause 26.1(b) or Clause 26.1(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 25 (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.
- 26.7 (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, 7, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 30, 32, 33 and 34;
 - (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.

27. AUDIT AND STORAGE OF DOCUMENTS

- 27.1 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 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.

- 27.2 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.
- 27.3 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.
- 27.4 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.

28. LIENS

- 28.1 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.
- 28.2 Without prejudice to any other provisions of this Clause 28, 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.
- 28.3 The CONTRACTOR shall immediately notify the COMPANY of any possible lien or attachment which may affect the WORK or any part thereof.
- 28.4 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.

DESIGN

28.5 Before withholding any payment due to the CONTRACTOR in accordance with Clause 28.4, 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.

28.6 For the purpose of this Clause 28 reference to the COMPANY shall include the CO-VENTURERS and its and their AFFILIATES and references to the CONTRACTOR shall include its AFFILIATES.

29. BUSINESS ETHICS

29.1 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.

29.2 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.

29.3 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.

30. GENERAL LEGAL PROVISIONS

30.1 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.

30.2 Retention of Rights

Subject to the provisions of Clauses 20 and 32, 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.

30.3 CONTRACTOR'S AFFILIATES

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

30.4 Independence of the CONTRACTOR

DESIGN

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.

30.5 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 33, shall be subject to the exclusive jurisdiction of the English Courts.

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

30.6 Notices

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.

30.7 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 34 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 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.

30.8 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.

30.9 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.

30.10 Invalidity and Severability

If any provision of the CONTRACT shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the validity 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.

31. LIQUIDATED DAMAGES

31.1 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 31.1 - 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.

31.2 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.

32. LIMITATIONS OF LIABILITY

32.1 Limitation of Liability

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 any such sum the CONTRACT PRICE.

Provided however, that the above limitations shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 16, 18, 21 and 28, or to any indemnity given by the CONTRACTOR under Clause 20.

DESIGN

32.2 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, that the provisions of this Clause 32.2 shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 16, 18, 21 and 28, or to any indemnity given by the CONTRACTOR under Clause 20.

32.3 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.

32.4 Precedence

Subject to the provisions of Clause 22, this Clause 32 shall apply notwithstanding any provisions to the contrary elsewhere in the CONTRACT.

33. RESOLUTION OF DISPUTES

33.1 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 33.1 (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 33.1 (b) the dispute shall be referred to the Managing Directors of the COMPANY and the CONTRACTOR.

33.2 If no agreement is reached under Clause 33.1(c) above, the parties may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the parties.

33.3 In the absence of any agreement being reached on a particular dispute either party may, subject to the provisions of Clause 33.4 take appropriate action in the Courts to resolve the dispute at any time.

33.4 It shall be a condition precedent to the referral of a dispute to the Courts under Clause 33.3 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 33.1(a), (b) and (c).

33.5 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

DESIGN

- (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
- (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.

33.6 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.

34. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

34.1 Subject to Clause 34.3, 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.

34.2 For the purposes of this Clause 34, "Third Party" shall mean any member of the COMPANY GROUP (other than the COMPANY) or CONTRACTOR GROUP (other than the CONTRACTOR).

34.3 Subject to the remaining provisions of the CONTRACT,

- (a) Clause 18.7, Clause 18.8, Clause 20, Clause 21 and Clause 22 are intended to be enforceable by a Third Party; and
- (b) Clause 30.3 is intended to be enforceable by the AFFILIATES of the CONTRACTOR,

by virtue of the Act.

34.4 Notwithstanding Clause 34.3, 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.

34.5 The rights of any Third Party under Clause 34.3 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 20.6 and Clause 30.6 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 33 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 33,

DESIGN

- (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.
- 34.6 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.
- 34.7 A Third Party shall not be entitled to assign any benefit or right conferred on it under this CONTRACT by virtue of the Act.

35. HEALTH, SAFETY AND ENVIRONMENT

- 35.1 The COMPANY places prime importance on health, safety and environment (hereinafter "H&SE") issues and requires that the CONTRACTOR GROUP subscribes to and actively pursues the highest standards of HS&E performance.
- 35.2 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.
- 35.3 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 26.1(b).
- 35.4 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 Design - 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;

DESIGN

11. Section XI CONTRACTOR's Plans.

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 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 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 1 - 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 14.8 The period of suspension is

Clause 15.5 Latest time for receipt of invoices after completion of the whole of the WORK

Clause 15.10 Interest rate per annum – Base Rate plus....percent p.a.

Clause 18.4 Rights shall vest in.....

Clause 21.2 Insurance by the CONTRACTOR, the amounts are:

Employers' Liability
General Third Party

Clause 25.2 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 For
- (iii) For For

Clause 26.7 (a) (iii) Special Conditions remaining in full force and effect shall be

Clause 30.6 The addresses for the service of notices are:

- (i) COMPANY
- (ii) CONTRACTOR

Clause 31.1 Liquidated Damages

Clause 32.1 Limitation of Liability. The sum is

Clause 32.2 The Limitation Period isfrom.....

Clause 33.1(b) Resolution of Disputes. The nominees are:

DESIGN

- (i) COMPANY
- (ii) CONTRACTOR

DESIGN

General Conditions of Contract
for Design

Part 2 – Guidance Notes

GUIDANCE NOTES

Design

General Conditions of Contract

Introduction

The General Conditions of Contract for Design, Edition 2, October 2003 is the subject of these Guidance Notes.

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,

DESIGN

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 Design have been prepared to serve the scopes of work for design contracts (excluding well design).

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,
- recommendations to develop the scope of existing model contracts or additional models which would serve the industry well,

DESIGN

- suggested modifications or additions to the guidance notes.

DESIGN

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 to 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 Crow - 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

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

DESIGN

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

- Construction
- Marine Construction
- Services
- Well Services
- 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 Oil 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 below.
- 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

DESIGN

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 1.12 - 'Job Specification'

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

Clause 1.20 - '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 12.1,
- (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 1.16).

Various Clauses in the Contract refer to the issue of a Variation in certain circumstances. These Clauses include 4.4, 6.1, 12.3 and 12.6.

2.2 Clause 5 - 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.

2.3 Clause 7 - Assignment and Subcontracting

Clause 7.1 - 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 7.2 - 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 7.2 will still provide reasonable powers for the Company in relation to the award of such subcontracts.

2.4 Clause 12 - Variations

Clause 12.1 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 12.5 provides that, wherever possible, the effect of a Variation shall be agreed before the instruction is issued. Clearly such a procedure will eliminate

DESIGN

many future potential disputes. It is however recognised that such a procedure cannot always be followed so that 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 12.1(b).

Clause 12.6 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 12.7 deals with disputed Variations, i.e. cases where no agreement can be reached, and the procedure for dealing with such. In particular Clause 12.7(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 12.5 which describes how payment should be calculated.

2.5 Clause 13 - Force Majeure

Clause 13.2 defines Force Majeure for the purposes of the Contract in order to ensure a proper understanding of the term.

2.6 Clause 14 - Suspension

Clause 14.4 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 12.5.

2.7 Clause 15 - Terms of Payment

Clause 15.2 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 15.4 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 15.10 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 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 15.12 includes for the purposes of the Contract, a definition of the word 'costs' in respect of Clauses which provide for the recovery of 'costs'.

2.8 Clause 16 - Taxes and Tax Exemption Certificates

Clause 16.4 deals with 'Construction Activities' as specified in Section 567(2) Income and Corporation Taxes Act 1998. The standard reflects the legislation which came into effect on 1st August 1999.

2.9 Clause 19 - Laws and Regulations

Clause 19.2 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 19.3 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.

2.10 Clause 20 - 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 20.1(c)). There are however exceptions in relation to property of the Company Group since the indemnity does not cover property created by the application of the design, etc. produced by the Contractor. Accordingly the Contractor is liable for loss of or damage to such property if it results from breach of contract etc. on his part. Such liability will however be limited to the sum specified in Appendix 1 or in the absence of any such sum the Contract Price, in accordance with Clause 32.

2.11 Clause 21 - 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 21.2. The exact values of insurances required by the Company must be specified in Appendix 1 as discussed above.

Clause 21.4 requires that Subcontractors carry appropriate levels of insurance as may be relevant to their work.

In the event that the Company arranges CAR or similar insurance, additional provisions are needed to cover Company insurance. Examples may be found in other Model Contracts.

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.

2.12 Clause 22 - Consequential Loss

There are two parts to the "Consequential Loss" definition under Clause 22. 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.

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.

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.

2.13 Clause 24 - Completion

It should be noted that in Clause 24.2 the Company is required to act 'as soon as reasonably practicable', in order to avoid unnecessary delay and expense for the Contractor.

2.14 Clause 25 - Defects Correction

Clause 25.2 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 32.2 which specifies the time at which the Contractor's obligations will cease.

Clause 25.4 has been included in order to clarify responsibility for defects discovered after completion 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 1.19) and the specification of operating conditions for the property arising from the Work (which the Contractor will probably be unable to check).

2.15 Clause 26 - 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 26.4.

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 26 includes for both termination of part or all of the work or termination of the Contract. Accordingly a 'continuing obligations' Clause - Clause 26.7 - 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 26.7(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 26.7(a)(iii).

2.16 Clause 31 - 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 30.2.

2.17 Clause 32 - Limitations of Liability

Clause 32 provides that the Contractor's liability to the Company is limited to the sum specified in Appendix 1. Clearly therefore it is important that an appropriate sum is included in such Appendix. What is considered fair and reasonable in this regard will depend on various factors, including the Contract Price and the assessed risk.

It is relevant to note that the liability limitation under Clause 32.1 does not 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
- Liens

DESIGN

Additionally, the limitation does not apply to any indemnity given by the Contractor under the Indemnities Clause.

In addition to a limitation on financial liability, Clause 32.2 provides the opportunity to decide on a limitation period for the Contract and such period must also be included in Appendix 1. Such a limitation period would similarly not apply in respect of the above mentioned Clauses.

It is recognised that different approaches to this subject are possible. It was decided however that the base case for such a subject should be included in General Conditions of Contract and that the Clause included is such base case for the types of work for which the Contract is likely to be used.

2.18 Clause 33 - 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.

2.19 Clause 34 - 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 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 18.7 and 18.8 – Patents and Other Proprietary Rights
- Clause 20 – Indemnities
- Clause 21 – Insurance By Contractor
- Clause 22 – Consequential Loss
- Clause 30.3 – 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.

DESIGN

© LOGIC

All rights reserved. No part of this document may be reproduced by any means, or transmitted, or translated into a machine language without the written permission of LOGIC.

ISBN No. 0-9546509-2-1

General Conditions of Contract for Design

Leading Oil & Gas Industry Competitiveness (LOGIC) is a company registered under the Companies Act limited by guarantee and registered in Scotland No. 199292.

The information given in this document is given in good faith and belief in its accuracy. However, the individual members of the Standard Contracts Committee and their respective companies, organisations and industry bodies including LOGIC do not accept any responsibility whatsoever for the consequences of its use or misuse in any particular circumstances.