



Polish Geological Institute
National Research Institute

polish geological survey
polish hydrogeological survey

Proposal of provisions of the Contract between the Ordering Party and the Contractor within the scope of execution of the Service entitled:

Scientific and research service aiming at exploration and identification of areas of occurrence of massive polymetallic sulfides deposits on the Mid-Atlantic Ridge,

prepared for the purpose of public inquiry procedure aimed at selection of the Contractor.

The proposed contract provisions are based on the Standard Contracts for the UK Offshore Oil and Gas Industry (Edition 4 February 2019) with further modifications.

STANDARD CONTRACTS FOR THE UK OFFSHORE OIL AND GAS INDUSTRY



**EDITION 4
FEBRUARY 2019**

**GENERAL CONDITIONS OF CONTRACT
(INCLUDING GUIDANCE NOTES) FOR
SERVICES ON-AND OFF-SHORE**

LOGIC
part of
OIL & GAS UK

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. This evolved into the 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.

Leading Oil and Gas Industry Competitiveness (LOGIC) was incorporated in 1999 by the UK Oil & Gas Industry Task Force (OGITF, now PILOT) to lead a competitiveness initiative for the UK offshore oil and gas industry. LOGIC was established as a not-for-profit organisation with a Board of Directors from the founding trade organisations UKOOA (the predecessor of Oil & Gas UK (OGUK)), Offshore Contractors Association (OCA), International Association of Drilling Contractors (IADC), Energy Industries Council (EIC) and International Marine Contractors Association (IMCA) and it worked with the DTI to identify, promote and manage collaborative industry-wide tools.

LOGIC has a separate and independent Board of Directors that is accountable to Oil & Gas UK and the owners/users of the tools.

In this way LOGIC is still delivering its initial core objectives:

‘to promote competitiveness and commerce by implementing supply chain management practice and promoting collaboration, benefits and cost savings, in relation to the means by which organisations (comprising operators, contractors and suppliers) operate in the UK oil and gas sector to achieve ‘real’ business results’.

CRINE (Cost Reduction in the New Era) established in the early 1990s was incorporated into LOGIC upon its foundation in 1999 and remains as a dormant subsidiary.

Further information on LOGIC can be obtained on the website www.logic-oil.com which also provides a link to this model contract.

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

**General Conditions of Contract (including Guidance Notes)
for Services (On- and Off-shore)**

**General Conditions of Contract
for Services (On- and Off-shore)**

Part 1 - General Conditions of Contract

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1. DEFINITIONS

The following definitions shall be used for the purpose of interpreting the CONTRACT. Further definitions not contained in this Clause 1 shall apply to the Section in which they are stated and subsequent Sections.

- 1.1 "ABC PROGRAMME" means an anti-bribery and corruption policy and any related procedures as amended, varied or supplemented from time to time, which (without limitation) may include policies, procedures and controls relating to recording of financial transactions; anti-bribery and corruption risk assessment and mitigation; training of personnel; whistle blowing facilities; due diligence on third party engagements/contracts; gifts and hospitality, promotional expenditures, sponsorship and charitable donations; and promoting and monitoring compliance.
- 1.2 "AFFILIATE" means any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company.
- 1.3 "APPLICABLE ANTI-BRIBERY LAWS" means any laws, regulations and other legally binding measures relating to bribery, corruption or similar activities of (i) the United Kingdom, including without limitation the Bribery Act 2010; (ii) the United States of America including, to the extent applicable to either PARTY, the Foreign Corrupt Practices Act 1977; and (iii) any country or countries in which any of the obligations of the CONTRACT are to be or are performed.
- 1.4 "COMPANY GROUP" means 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.
- 1.5 "COMPANY REPRESENTATIVE" means that person referred to in Clause 3.
- 1.6 "COMPETENT AUTHORITY" means (i) any person having legal, executive and/or regulatory authority and/or enforcement powers (including any public body or authority responsible for the investigation and/or prosecution of criminal offences) over either or both of the PARTIES or any of their AFFILIATES providing services in connection with this CONTRACT; and/or (ii) any court of law or tribunal with jurisdiction over either or both of the PARTIES or any of their AFFILIATES providing services in connection with the CONTRACT.
- 1.7 "CONTRACT" shall have the meaning described in Section I - Form of Agreement.
- 1.8 "CONTRACT PRICE" means the price for the WORK calculated in accordance with Section III - Remuneration, exclusive of Value Added Tax.
- 1.9 "CONTRACTOR GROUP" means 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 wellsite, their AFFILIATES, their directors, officers and employees (including agency personnel).
- 1.10 "CONTRACTOR REPRESENTATIVE" means that person referred to in Clause 3.
- 1.11 "CO-VENTURER" means any other entity with whom the COMPANY is or may be from time to time a party to a joint operating agreement or unitisation agreement or similar agreement relating to the operations for which the WORK is being performed and the successors in interest of such CO-VENTURER or the assignees of any interest of such CO-VENTURER.
- 1.12 "INTELLECTUAL PROPERTY" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade-marks and service marks, business names and domain names, rights in get-up

and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including KNOW-HOW) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 1.13 “KNOW-HOW” means techniques, methods, skills comprised within technical information, data, notes, reports, specifications, formulae, drawings, manuals, component lists, instructions, descriptions, and other knowledge of a secret and confidential nature.
- 1.14 “SUBCONTRACT” means 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.
- 1.15 “SUBCONTRACTOR” means any party (other than the CONTRACTOR) to a SUBCONTRACT.
- 1.16 “TECHNICAL INFORMATION” means all such information provided by or caused to be provided by the COMPANY pursuant to the CONTRACT.
- 1.17 “VARIATION” means such instructions or adjustments as set out in Clause 11.
- 1.18 “WORK” means all the 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.
- 1.19 “WORKSITE” means the lands, waters and other places on, under, in or through which the WORK is to be performed including offshore installations, floating construction equipment, vessels (including the area covered by approved anchor patterns), design offices, workshops and places where equipment, materials or supplies are being obtained, stored or used for the purposes of the CONTRACT.

2. INTERPRETATION

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

Nevertheless, if for any reason it is considered necessary by the COMPANY to give an instruction to the CONTRACTOR orally in the first instance, the CONTRACTOR shall comply with such instruction. Any such oral instruction shall be confirmed in writing as soon as is possible under the circumstances, provided that, if the CONTRACTOR confirms in writing any such oral instruction which is not contradicted in writing by the COMPANY without undue delay, it shall be deemed to be an instruction in writing by the COMPANY.

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

3. COMPANY AND CONTRACTOR REPRESENTATIVES

- 3.1 General

- (a) The COMPANY REPRESENTATIVE and the CONTRACTOR REPRESENTATIVE are the persons named as such in

Appendix 1 to Section I - Form of Agreement.

- (b) Such representatives, or delegates appointed in accordance with the provisions of this Clause 3, shall be readily available to enable both PARTIES 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.
- (b) The CONTRACTOR REPRESENTATIVE may delegate any of his authority to any nominated deputy, the terms of such delegation being subject to the prior approval of the COMPANY which shall not be unreasonably withheld or delayed.
- (c) The CONTRACTOR shall not change the CONTRACTOR REPRESENTATIVE or any nominated deputy without cause without the prior approval of the COMPANY which shall not unreasonably be withheld or delayed.
- (d) The CONTRACTOR REPRESENTATIVE has no powers to amend the CONTRACT.

4. CONTRACTOR'S GENERAL OBLIGATIONS

- 4.1 The CONTRACTOR shall provide all management, supervision, personnel, materials and equipment (except materials and equipment specified to be provided by the COMPANY), plant, consumables, facilities and all other things whether of a temporary or permanent nature, so far as the necessity for providing the same is specified in or reasonably to be inferred from the CONTRACT.
- 4.2 The CONTRACTOR shall carry out all of its obligations under the CONTRACT and shall execute the WORK with all due care and diligence and with the skill to be expected of a reputable contractor experienced in the types of work to be carried out under the CONTRACT.
- 4.3 Except to the extent that it may be legally or physically impossible or create a hazard to safety the CONTRACTOR shall comply with and strictly adhere to the COMPANY's instructions and directions on all matters relating to the

WORK.

- 4.4 Materials and equipment or parts thereof provided by the CONTRACTOR for which there is no detailed specification included in the CONTRACT shall be new or, subject to the COMPANY's approval, as new, of good quality and workmanship and fit for the intended purpose where a purpose is defined in the CONTRACT or, where no such purpose is defined, fit for its ordinary purpose, unless the Section IV - Scope of Work of the CONTRACT provides otherwise.
- 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 4.4 and, where provided for elsewhere in the CONTRACT, for the timely request of COMPANY-provided materials, services and facilities.
- 4.6 The COMPANY reserves the right to let other contracts associated with the WORK. The CONTRACTOR shall afford the COMPANY and other contractors of the COMPANY reasonable access and opportunity for the performance of their work or contracts and shall co-operate fully with such parties.
- 4.7 The CONTRACTOR shall be responsible for the programming of the WORK.
- 4.8 On completion of the WORK or any portion thereof, the CONTRACTOR shall without delay clear and remove all equipment and materials provided by the CONTRACTOR including debris, thereby leaving the WORKSITE in a clean, tidy and safe condition.
- 4.9 Surplus COMPANY material in the possession of the CONTRACTOR on completion of the WORK shall be disposed of by the CONTRACTOR in accordance with the instructions of the COMPANY REPRESENTATIVE.

5. OFFSHORE TRANSPORTATION – [DELETED]

6. CONTRACTOR TO INFORM ITSELF

- 6.1 The CONTRACTOR shall be deemed to have satisfied itself, before entering into the CONTRACT, as to the extent and nature of the WORK including but not limited to the services, personnel, materials and equipment, plant, consumables and facilities required for the WORK, the correctness and sufficiency of the rates and prices entered in Section III - Remuneration, general and local conditions, and all other matters which could affect progress or performance of the WORK.
- 6.2 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.

7. CONTRACTOR TO INFORM COMPANY / COMPANY TO INFORM CONTRACTOR

- 7.1 The CONTRACTOR shall notify the COMPANY without undue delay of all things which in the opinion of the CONTRACTOR appear to be deficiencies, omissions, contradictions or ambiguities in the CONTRACT or conflicts with applicable law. The COMPANY shall review these items and issue the necessary instructions before the CONTRACTOR proceeds with any part of the WORK affected.
- 7.2 In addition to the requirements of Section V - Health, Safety and Environment and the provisions of Clause 33, the CONTRACTOR shall notify the COMPANY without delay of any accidents which occur in connection with the carrying out of the WORK.

The CONTRACTOR shall also notify the COMPANY of any other incidents which occur which might affect the carrying out of the WORK or the CONTRACT.

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

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

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

8. ASSIGNMENT AND SUBCONTRACTING

8.1 Assignment

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

8.2 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 be in the COMPANY's absolute discretion.
- (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 the relevant aspects of the SUBCONTRACT.

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

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

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

9. CONTRACTOR PERSONNEL

- 9.1 The CONTRACTOR undertakes to provide sufficient personnel at all times to ensure performance and completion of the WORK in accordance with the provisions of the CONTRACT.
- 9.2 All personnel employed on the WORK shall, for the work which they are required to perform, be competent, properly qualified, skilled and experienced in accordance with the best available industry practice. The CONTRACTOR shall verify all relevant qualifications of such personnel.
- 9.3 Where key personnel of the CONTRACTOR are specified in the CONTRACT they shall not be replaced without the prior approval of the COMPANY. Any replacement shall work with the person to be replaced for a reasonable handover period.
- 9.4 The CONTRACTOR shall ensure that such key personnel and supervisory personnel of the CONTRACTOR and SUBCONTRACTORS shall read, write and speak fluent English.
- 9.5 The CONTRACTOR shall make its own arrangements for the engagement of personnel, local or otherwise, and, save in so far as the CONTRACT otherwise provides, for their payment and onshore transport, housing, maintenance and board and lodging.
- 9.6 The CONTRACTOR shall be as responsible for any WORK performed by any agency personnel and by any other person provided by the CONTRACTOR in connection with the WORK as if the WORK was performed by the employees of the CONTRACTOR.
- 9.7 The CONTRACTOR shall ensure that all employees of the CONTRACTOR and any SUBCONTRACTOR engaged in the performance of the WORK comply with applicable laws including immigration laws and where required are in possession of a valid work permit for the duration of the CONTRACT. When requested details of such work permits shall be submitted to the COMPANY prior to the employee being engaged in the WORK.
- 9.8 The COMPANY may instruct the CONTRACTOR to remove from the WORKSITE any person engaged in any part of the WORK who in the reasonable opinion of the COMPANY is either:
- (a) incompetent or negligent in the performance of his duties; or
 - (b) engaged in activities which are contrary or detrimental to the interests of the COMPANY; or
 - (c) not conforming with relevant safety procedures described in Section V - Health, Safety and Environment or persists in any conduct likely to be prejudicial to safety, health or the environment.

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

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

10. EXAMINATION AND DEFECTS CORRECTION

10.1 Examination

In order to confirm that the requirements of the CONTRACT are met the COMPANY shall have the right, but not the obligation, at all times during the performance of the WORK to examine the WORK, and all documentation relating thereto, and to reject any item which does not comply with all the requirements of the CONTRACT.

Neither failure on the part of the COMPANY or others to inspect the WORK or witness or test or to discover defects nor failure to reject work performed by the CONTRACTOR which is not in accordance with the CONTRACT shall relieve the CONTRACTOR from any liability or obligation under the CONTRACT.

10.2 Defects Correction

- (a) 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.
- (b) If the COMPANY notifies the CONTRACTOR of any defects in the WORK prior to the commencement of or within the Defects Correction Period specified in Appendix 1 to Section I – Form of Agreement, the CONTRACTOR shall, subject to the operational requirements of the COMPANY and the provisions of Clause 10.2(c), carry out all works necessary to correct any defects in the WORK arising from any default of the CONTRACTOR.

If any of the WORK is reperfomed, rectified or replaced by the CONTRACTOR under the provisions of this Clause 10.2, this Clause 10.2 shall apply to the portion so reperfomed, 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 reperformance, rectification or replacement was completed in accordance with the CONTRACT.

- (c) 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 appoint other contractors to undertake the CONTRACTOR's responsibilities described in Clause 10.2(b). 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 by other contractors.
- (d) [DELETED]

11. VARIATIONS

- 11.1 The COMPANY has the right to issue instructions to the CONTRACTOR at any time to make any variations to the WORK which are within the capability and resources of the CONTRACTOR. The CONTRACTOR shall proceed immediately as instructed.
- 11.2 Any adjustment to the CONTRACT PRICE resulting from any variation shall be valued at the appropriate rates and prices included in the CONTRACT or, in the absence of any appropriate rates and prices, a fair valuation shall be made (as agreed between the PARTIES).

12. FORCE MAJEURE

- 12.1 Neither PARTY 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 Clause 12.3 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.

12.2 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 radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, 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; and
- (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.

12.3 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.

12.4 Save as otherwise expressly provided in the CONTRACT, no payments of whatever nature shall be made in respect of a force majeure occurrence.

12.5 Following notification of a force majeure occurrence in accordance with Clause 12.3, the PARTIES shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

13. SUSPENSION

13.1 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 13.3, in the event of some default on the part of the CONTRACTOR; or
- (b) if suspension is necessary for the proper execution or safety of the WORK, or persons; or
- (c) to suit the convenience of the COMPANY.

13.2 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.

- 13.3 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 13.1.
- 13.4 Unless the suspension arises as a result of default on the part of the CONTRACTOR, the CONTRACTOR shall be reimbursed in accordance with the relevant provisions of Section III - Remuneration or, in the absence of such provisions, in accordance with Clause 11.
- 13.5 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.
- 13.6 The COMPANY may, by further notice, instruct the CONTRACTOR to resume the WORK to the extent specified.
- 13.7 In the event of any suspension, the PARTIES shall meet at not more than seven (7) day intervals with a view to agreeing a mutually acceptable course of action during the suspension.
- 13.8 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 11; or
 - (b) where it affects the whole of the WORK, termination in accordance with Clause 24.1(a).

14. TERMS OF PAYMENT

- 14.1 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 14.
- 14.2 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.
- 14.3 The CONTRACTOR shall submit to the COMPANY an invoice within thirty (30) days after the end of each calendar month.
- 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.
- 14.4 All payments contemplated under the CONTRACT are exclusive of Value Added Tax (“VAT”), which shall be charged by and accounted to the relevant tax authority by the relevant PARTY as is required under prevailing VAT legislation. Furthermore, the CONTRACTOR will comply with all applicable invoicing requirements regarding the charging and accounting of VAT.

14.5 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.

14.6 Within thirty (30) days from receipt of a correctly prepared and adequately supported invoice by the COMPANY at the address specified in Clause 14.5, the COMPANY shall make payment in respect of such invoices 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.

14.7 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 14.6 and Clause 14.9 where applicable.

14.8 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.

14.9 Interest shall be payable for late payment of correctly prepared and adequately supported invoices. The amount of interest payable shall be based on the then current Polish National Bank reference 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 shall be based on the then current Polish National Bank reference 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 14.6 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 the interest shall be in accordance with the provisions of Clause 14.6 hereof.

14.10 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.

- 14.11 For the purposes of Clause 14.10 and elsewhere in the CONTRACT, wherever a PARTY is entitled to recover from the other 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.

15. TAXES AND TAX EXEMPTION CERTIFICATES

15.1 The CONTRACTOR shall, in accordance with the provisions of Clause 18, 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 governmental 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 governmental 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 tax and remit the required amounts to any appropriate governmental 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 15.

15.2 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 governmental authority whether of the United Kingdom or elsewhere.

15.3 [DELETED]

15.4 [DELETED]

15.5 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 15 and any interest or penalty thereon which may be assessed by any appropriate governmental 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.

- 15.6 If the COMPANY receives a notice requiring it to pay any levies, charges, contributions or taxes of the types referred to in this Clause 15 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. If 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.
- 15.7 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 15 and any interest or penalty thereon which may be assessed by any appropriate governmental 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 15 allow the COMPANY to recover from the CONTRACTOR.
- 15.8 The CONTRACTOR shall provide on demand of the COMPANY in original an up-to-date certificate of tax residence of the CONTRACTOR issued by the relevant tax authority and a duly executed declaration of beneficial ownership of the CONTRACTOR. Failure to provide these documents may result in the Polish withholding tax being charged and deducted from the CONTRACTOR's Remuneration.

16. OWNERSHIP

- 16.1 The COMPANY shall retain title to COMPANY-provided items and information, including but not limited to, TECHNICAL INFORMATION and materials and equipment.
- 16.2 Subject to the provisions of Clause 17, all equipment, materials and supplies provided by the CONTRACTOR for incorporation into the WORK shall become and be clearly identified as the property of the COMPANY upon delivery to the WORKSITE or payment by the COMPANY whichever is the earlier.
- The CONTRACTOR shall ensure that all CONTRACTOR-provided items are free from all liens and/or retention of title claims from any third party.
- 16.3 Title to any equipment, materials and supplies provided by the CONTRACTOR which do not comply with the requirements of the CONTRACT and which are rejected by the COMPANY, shall re-vest immediately in the CONTRACTOR.
- Title to such items provided by the CONTRACTOR for which no payment has been made by the COMPANY and which are no longer required for the purposes of the CONTRACT, shall re-vest in the CONTRACTOR.
- 16.4 Subject to the provisions of Clause 17, the data and research material collected during the WORK shall become the property of the COMPANY the moment they are collected.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 Neither PARTY shall have the right of use, other than for the purposes of the CONTRACT, whether directly or indirectly, of any INTELLECTUAL PROPERTY provided by the other PARTY and rights in such INTELLECTUAL PROPERTY shall remain with the PARTY providing it.
- 17.2 Where any registrable INTELLECTUAL PROPERTY 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 the CONTRACT; or
 - (a) enhancements of or in the existing INTELLECTUAL PROPERTY of the CONTRACTOR GROUP,
- such rights shall vest in the CONTRACTOR or another company within the CONTRACTOR GROUP as the case may be.
- 17.3 Where any registrable INTELLECTUAL PROPERTY 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 of the COMPANY GROUP,
- such rights shall vest in the COMPANY and its AFFILIATES or CO-VENTURERS as the case may be.
- 17.4 Except as provided in Clause 17.1, Clause 17.2 and Clause 17.3, where any registrable INTELLECTUAL PROPERTY 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.
- 17.5 Where under Clause 17.4 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.
- 17.6 Where under Clause 17.4 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.
- 17.7 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 INTELLECTUAL PROPERTY 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 the COMPANY's instructions of any INTELLECTUAL PROPERTY right, and should the CONTRACTOR become aware of such infringement or possible infringement then the CONTRACTOR shall inform the COMPANY immediately.
- 17.8 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 INTELLECTUAL PROPERTY 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.

18. LAWS AND REGULATIONS

- 18.1 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.
- 18.2 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.

- 18.3 Should changes in any applicable laws, rules and regulations, including any change in interpretation of the same by a COMPETENT AUTHORITY, 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.

19. INDEMNITIES

- 19.1 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 personnel of the CONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT; and
- (c) subject to any other express provisions of the CONTRACT, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the CONTRACTOR GROUP. For the purposes of this Clause 19.1(c) "third party" shall mean any party which is not a member of the COMPANY GROUP or CONTRACTOR GROUP; and
- (d) loss of or damage to the data and research material collected during the WORK.

- 19.2 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, except for the data and research material collected during the WORK, or
 - (ii) leased or otherwise obtained under arrangements with financial institutions by the COMPANY GROUP

which is located at the WORKSITE 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 personnel of 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 19.2(c) "third party" shall mean any party which is not a member of the CONTRACTOR GROUP or COMPANY GROUP.
- (d) [DELETED]

- 19.3 [DELETED]
- 19.4 Except as provided by Clause 19.2(a) and Clause 19.2(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 originating from the property and equipment of the CONTRACTOR GROUP (including but not limited to marine vessels) arising from, relating to or in connection with the performance or non-performance of the CONTRACT.
- 19.5 All exclusions and indemnities given under this Clause 19 (save for those under Clauses 19.1(c) and 19.2(c)) 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.
- 19.6 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.
- 19.7 The indemnities given by the parties under this CONTRACT are full and primary, and shall apply irrespective of whether the indemnified party has, or has not, insurance in place relating to any claims, losses, damages or costs in respect of the subject matter of any indemnity given under this CONTRACT.
- 19.8 Each PARTY expressly agrees that the indemnities set out in this Clause 19 do not extend to criminal sanctions imposed upon it, arising from, relating to or in connection with the performance or non-performance of the CONTRACT.

20. INSURANCE BY CONTRACTOR

- 20.1 The CONTRACTOR shall arrange as a minimum the insurances set out in this Clause 20 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 20 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 20 shall in no way limit the liability of the CONTRACTOR under the CONTRACT.
- 20.2 The insurances required to be effected under Clause 20.1 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, covering also personal injury to or death of the Ordering Party's Cruise Participants as defined in Section IV – Scope of Work of the CONTRACT;
- (d) such further insurances (if any) as set out in Appendix 1 to Section I - Form of Agreement.

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

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

21. CONSEQUENTIAL LOSS

For the purposes of this Clause 21 the expression "Consequential Loss" shall mean:

- (a) [DELETED]
- (b) 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 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.

All exclusions and indemnities given under this Clause 21 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

22. CONFIDENTIALITY

22.1 The CONTRACTOR shall at no time without the prior written 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) vests in the COMPANY in accordance with the CONTRACT; or
 - (iii) the CONTRACTOR prepares in connection with the WORK.

22.2 The provisions of Clause 22.1 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

22.3 The CONTRACTOR shall ensure that the provisions of this Clause 22 are incorporated in any SUBCONTRACT and that the officers, employees and agents of the CONTRACTOR and of the SUBCONTRACTORS comply with the same.

22.4 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 as well as by the relevant Minister and Ministry of the government of the Republic of Poland ; 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 and/or structure and/or facility 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 22.4 shall not apply to information which vests in the COMPANY in accordance with the CONTRACT.

23. CUSTOMS PROCEDURES

23.1 When applicable the PARTIES shall each apply to the respective customs authorities for their respective import, export and re-import of materials, goods, tools, equipment and supplies required for the CONTRACT.

23.2 The CONTRACTOR undertakes to import, export and re-import any items for the WORK which are subject to customs control in such a way as to enable maximum advantage to be taken of customs procedures.

23.3 [DELETED]

23.4 The PARTIES shall each respectively be accountable and liable for compliance with customs procedures based on each PARTY being a customs authorised trader and who is in possession (not ownership) of the items subject to customs control at any given time.

23.5 [DELETED]

23.6 The CONTRACTOR shall pay and make payment at such times when due and payable, all import/export taxes and duties on materials, goods, tools, equipment and supplies required for the CONTRACT and imported or exported

by the CONTRACTOR. The CONTRACTOR will be responsible for ensuring that it holds the necessary import/export licences issued by the relevant authorities prior to the commencement of the WORK.

23.7 Where equipment and materials are sold to the COMPANY under the CONTRACT the CONTRACTOR shall:

- (a) prepare and provide to the COMPANY full documentation to show and certify all information regarding items subject to customs control, including the origin, customs status and customs commodity code number as may be necessary for the COMPANY to minimise or nullify the effect of customs duty on such items; and
- (b) make available on a confidential basis to HM Revenue and Customs all data reasonably necessary to enable the CONTRACTOR to obtain the maximum benefits in terms of reliefs and shall pass all such benefits in full to the COMPANY; and
- (c) inform the COMPANY without delay in the event that the CONTRACTOR is unsuccessful in any application for reliefs. In such event, the COMPANY shall have the option to import or export or re-import any items affected under its own authorised procedure.

24. TERMINATION

24.1 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 24.2 in the event of any default on the part of the CONTRACTOR; or
- (c) in respect of the CONTRACTOR, in the event:
 - (i) an order is made, or a meeting is called to pass a resolution, for the winding up (except for the purposes of amalgamation or reconstruction), administration, appointment of a receiver or similar procedure;
 - (ii) a receiver, administrative receiver, administrator, provisional liquidator, liquidator or similar official is appointed or notice of the proposed appointment of any of the foregoing is given to any party;
 - (iii) a voluntary arrangement or scheme of arrangement is proposed, or negotiations are commenced, or a composition, compromise, assignment or arrangement, is entered into with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties); or
 - (iv) any equivalent act or thing is done or suffered under any applicable or analogous law in any jurisdiction.

24.2 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 24.1.

24.3 If the COMPANY gives 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 take over the WORK or the relevant part of the WORK;
- (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.

In the event of termination under Clause 24.1(b) or 24.1(c) the COMPANY shall have the right to obtain completion of the WORK or the relevant part of the WORK by other contractors.

24.4 In the event of termination under Clause 24.1(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.

24.5 In the event of termination of part of the WORK in accordance with Clause 24.1(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.

24.6 In the event of termination of all of the WORK or the CONTRACT in accordance with Clause 24.1(b) or Clause 24.1(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 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.

24.7 (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 - CONDITIONS OF CONTRACT Clauses 4, 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32 and 33.
- (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 following will apply:

- (i) the whole of the CONTRACT shall remain in full force and effect in connection with the performance of the part of the WORK which has not been terminated.
- (ii) the provisions of Clause 24.7(a) shall apply to confirm the Sections and Clauses which will remain in full force and effect in connection with the part of the WORK which has been terminated.

25. AUDIT AND STORAGE OF DOCUMENTS

- 25.1 During the course of the WORK and for a period ending two (2) years thereafter, 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 (howsoever stored), 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.

- 25.2 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.
- 25.3 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.
- 25.4 The PARTIES shall keep all documents and data (howsoever stored) related to this CONTRACT for a period of six (6) years after the date of completion of the WORK.

26. LIENS

- 26.1 The CONTRACTOR shall not claim any lien or attachment on the WORK, any data and research material collected during the WORK or on any property of the COMPANY in the possession of the CONTRACTOR or at the WORKSITE.
- 26.2 Without prejudice to any other provisions of this Clause 26, 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.
- 26.3 The CONTRACTOR shall immediately notify the COMPANY of any possible lien or attachment which may affect the WORK or any part thereof.
- 26.4 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.
- 26.5 Before withholding any payment due to the CONTRACTOR in accordance with Clause 26.4, 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.
- 26.6 For the purpose of this Clause 26 reference to the COMPANY shall include the CO-VENTURERS and its and their AFFILIATES and references to the CONTRACTOR shall include its AFFILIATES.

27. BUSINESS ETHICS

- 27.1 Both PARTIES 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.
- 27.2 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.

28. ANTI-BRIBERY AND CORRUPTION

- 28.1 Each PARTY warrants and represents that in negotiating and concluding the CONTRACT it has complied, and in performing its obligations under the CONTRACT it has complied and shall comply, with all APPLICABLE ANTI-BRIBERY LAWS.
- 28.2 The CONTRACTOR warrants that it has an ABC PROGRAMME setting out adequate procedures to comply with APPLICABLE ANTI-BRIBERY LAWS and that it will comply with such ABC PROGRAMME in respect of the CONTRACT.
- 28.3 In addition and subject to Clause 25, on provision of no less than thirty (30) days' formal notice, the COMPANY or its duly authorised representatives shall have the right to audit, at its own cost, the existence, content and implementation of the CONTRACTOR's ABC PROGRAMME, but such right shall not include access to documents that are legally privileged or were created for the purpose of an on-going internal investigation.
- 28.4 Where it is legally able to do so, and subject to a request by a COMPETENT AUTHORITY not to notify, each PARTY shall notify the other in writing immediately upon whichever is the earlier of:
- (a) becoming aware of any investigation or proceedings initiated by a COMPETENT AUTHORITY relating to an alleged breach of APPLICABLE ANTI-BRIBERY LAWS by either PARTY or any member of its GROUP in connection with the CONTRACT; or
 - (b) having a reasonable belief that either PARTY or any member of its GROUP may have breached APPLICABLE ANTI-BRIBERY LAWS in connection with the CONTRACT.

The affected PARTY shall use reasonable efforts to keep the other PARTY informed as to the progress and findings of such investigation or proceedings, the details of any measures being undertaken by the affected PARTY to respond to the alleged or potential breach and the remedial measures that are being or will be implemented to prevent such conduct in the future.

- 28.5 (a) Subject to the remaining provisions of this Clause 28.5, if the COMPANY has a reasonable belief that the CONTRACTOR has breached Clause 28.1, the COMPANY may give formal notice of its intention to suspend payments under the CONTRACT to the CONTRACTOR giving the basis of such reasonable belief. If within seven (7) days of receipt of such formal notice the CONTRACTOR neither responds with information reasonably satisfactory to the COMPANY to refute such belief nor commences and continues with action reasonably satisfactory to the COMPANY to remedy such suspected breach of Clause 28.1, the COMPANY may, by the provision of formal notice, suspend with immediate effect any payments due under Section III - Remuneration without liability.

- (b) The COMPANY shall not be entitled to suspend payment for sums due under Section III – Remuneration for any part of the WORK performed in accordance with the CONTRACT that the CONTRACTOR can reasonably substantiate as not being connected with the suspected breach.
- (c) In the event of any such suspension, the COMPANY and the CONTRACTOR shall meet at not more than seven (7) day intervals with a view to agreeing an appropriate course of action during the period of suspension.
- (d) On expiration of the period stated in Appendix 1 to Section I – Form of Agreement, the COMPANY shall, unless otherwise agreed, either:
 - (i) within thirty (30) days make full payment of any sums retained pursuant to this Clause 28.5 which are otherwise due; or
 - (ii) if its reasonable belief remains, within thirty (30) days serve formal notice that the CONTRACT is terminated pursuant to this provision.

28.6 In the event of termination in accordance with Clause 28.5(d)(ii) the following conditions shall apply:

- (a) subject to the remaining provisions of this Clause 28.6, the CONTRACT is deemed to have been terminated in accordance with Clause 24.1(b), but Clause 24.2 is not applicable;
- (b) subject to paragraph (c), the CONTRACTOR shall be entitled to payment only as set out in Section III – Remuneration for WORK completed in accordance with the CONTRACT up to the date of termination;
- (c) the CONTRACTOR shall not be entitled to payment for any sums connected with the possible breach of APPLICABLE ANTI-BRIBERY LAWS (including those retained under Clause 28.5(a));
- (d) subject to the COMPANY being able to evidence that a breach of Clause 28.1 has occurred, the COMPANY shall be entitled to receive from CONTRACTOR any additional costs reasonably incurred by the COMPANY as a result of a breach by the CONTRACTOR;
- (e) payment shall be made to the CONTRACTOR within thirty (30) days of the date of termination of the CONTRACT;
- (f) provided that the COMPANY had a reasonable belief at the time of issuing the termination notice that the CONTRACTOR breached APPLICABLE ANTI-BRIBERY LAWS, the COMPANY shall not be in breach of the CONTRACT in issuing a termination notice even if it transpires that the CONTRACTOR is not in breach of APPLICABLE ANTI-BRIBERY LAWS; and
- (g) notwithstanding any other provision of the CONTRACT, if at a subsequent date it is determined or agreed that the CONTRACTOR did not breach Clause 28.1, the CONTRACTOR shall be entitled to payment for all sums retained under Clause 28.6(c) (including those retained under Clause 28.5(a)).

29. GENERAL LEGAL PROVISIONS

29.1 Waiver

None of the terms and conditions of the CONTRACT shall be considered to be waived by either PARTY 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.

29.2 Retention of Rights

Subject to the provisions of Clauses 19 and 30, unless otherwise specifically stated in the CONTRACT, both PARTIES 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.

29.3 CONTRACTOR'S AFFILIATES

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

29.4 Independence of the CONTRACTOR

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

29.5 Proper Law, Arbitration and Language

The CONTRACT, and any non-contractual rights and obligations arising out of or in connection with it and its subject matter, shall be governed and construed in accordance with Polish law and, subject to the provisions of Clause 31, shall be subject to arbitration in Poland under the Arbitration Rules of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw in force on the date of commencement of the proceeding by an arbitrator or arbitrators appointed in accordance with the said Rules.

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

29.6 Notices

All formal notices in respect of the CONTRACT shall be given in writing and delivered by hand (including delivery via a courier), by fax 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 fax, on the first working day at the recipient address following the date of sending;
- (c) if sent by first class post, forty eight (48) hours after the time of service or the expiry of the time for collection of the letter containing the notice from the post office.

Subject to any specific administrative instructions agreed between the PARTIES, any standard business correspondence associated with the CONTRACT and/or the WORK may be sent by either e-mail, fax or letter.

29.7 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 32 and notwithstanding the above:

- (a) the CONTRACTOR agrees to look only to the COMPANY for the due performance of the CONTRACT and nothing contained in the CONTRACT will impose any liability upon, or entitle the CONTRACTOR to commence any proceedings against any CO-VENTURER other than the COMPANY; and

- (b) the COMPANY is entitled to enforce the CONTRACT on behalf of all CO-VENTURERS as well as for itself. For that purpose the COMPANY may commence proceedings in its own name to enforce all obligations and liabilities of the CONTRACTOR and to make any claim which any CO-VENTURER may have against the CONTRACTOR; and
- (c) All losses, damages, costs (including legal costs) and expenses recoverable by the COMPANY pursuant to the CONTRACT or otherwise shall include the losses, damages, costs (including legal costs) and expenses of the COMPANY's CO-VENTURERS and its and their respective AFFILIATES except that such losses, damages, costs (including legal costs) and expenses shall be subject to the same limitations or exclusions of liability as are applicable to either PARTY 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.

29.8 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.

29.9 Mitigation of Loss

Both PARTIES shall take all reasonable steps to mitigate any loss resulting from any breach of CONTRACT by the other PARTY.

29.10 Invalidity and Severability

If any provision of this CONTRACT shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this CONTRACT and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The PARTIES 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.

30. LIMITATIONS OF LIABILITY

30.1 Limitations of Liability

- (a) Limitation of Liability before the date of completion of the WORK

Subject to the CONTRACTOR having used all reasonable endeavours to complete the WORK and to comply with its obligations under the CONTRACT, the CONTRACTOR's total cumulative liability to the COMPANY, including any liability arising as a result of suspension under Clause 13 and/or termination under Clause 24 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 absence of such sum, the CONTRACT PRICE.

- (b) Limitation of Liability after the date of completion of the WORK

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

Provided, however, that the above limitations under Clause 30.1(a) and Clause 30.1(b) shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 15, 17, 20, 23 and 26, or to any indemnity given by the CONTRACTOR under Clause 19 and the limitation under Clause 30.1(b) shall not apply to any costs arising from any cause of action of the COMPANY notified to the CONTRACTOR before the date of completion of the WORK.

30.2 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 30.2 shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 15, 17, 20, 23 and 26, or to any indemnity given by the CONTRACTOR under Clause 19.

30.3 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.

30.4 Precedence

Subject to the provisions of Clause 21, this Clause 30 shall apply notwithstanding any provisions to the contrary elsewhere in the CONTRACT.

31. RESOLUTION OF DISPUTES

31.1 Any dispute between the PARTIES 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, by means of a formal notice containing the information set out in Clause 31.5 and served in accordance with Clause 29.6, 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 31.1(a) above within forty (40) days of the service of such formal notice, the dispute shall be referred to the two (2) persons named in Appendix 1 to Section I - Form of Agreement. Such persons are nominated one (1) 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 31.1(b) above within twenty (20) days of expiry of the period referred to in Clause 31.1(b) (that is, within sixty (60) days of the service of the formal notice referred to at Clause 31.1(a)), the dispute shall be referred to an appropriate Senior Executive of each of the PARTIES who shall meet to discuss the matter in dispute within twenty (20) days of expiry of the period referred to in this Clause 31.1(c) (that is, within eighty (80) days of the service of the formal notice referred to at Clause 31.1(a)).

31.2 If no agreement is reached within twenty (20) days of expiry of the period referred to in Clause 31.1(c) (that is, within eighty (80) days of the service of the formal notice referred to at Clause 31.1(a)), the PARTIES may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the PARTIES.

31.3 In the absence of any agreement being reached on a particular dispute within twenty (20) days of expiry of the period referred to in Clause 31.1(c) (that is, within eighty (80) days of the service of the formal notice referred to at Clause 31.1(a)), either PARTY may, subject to Clause 31.4, take appropriate action in arbitration as provided in Clause 29.5. to resolve the dispute at any time.

31.4 It shall be a condition precedent to the referral of a dispute to arbitration under Clause 31.3 that the PARTY which intends to commence proceedings in relation to the dispute has used its reasonable endeavours to follow and complete the procedures set out in Clauses 31.1(a), (b) and (c).

31.5 Where any claim or counter claim in connection with or arising out of the CONTRACT is made, the PARTY making

the claim or counter claim shall ensure that such claim or counter claim contains, without limitation, the following information:

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

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

32. RIGHTS OF THIRD PARTIES

32.1 Subject to Clause 32.3, the PARTIES intend that no provision of the CONTRACT shall confer any benefit on, nor be enforceable by any person who is not a PARTY to the CONTRACT, except for the insurers of the COMPANY.

32.2 For the purposes of this Clause 32, "Third Party" means any member of the COMPANY GROUP (other than the COMPANY) or CONTRACTOR GROUP (other than the CONTRACTOR).

32.3 Subject to the remaining provisions of the CONTRACT,

- (a) Clause 17.7, Clause 17.8, Clause 19, Clause 20 and Clause 21 are intended to be enforceable by a Third Party; and
- (b) Clause 29.3 is intended to be enforceable by the AFFILIATES of the CONTRACTOR.

32.4 Notwithstanding Clause 32.3, 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.

32.5 The rights of any Third Party under Clause 32.3 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 19.6 and Clause 29.6 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 31 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 31; and
- (c) the Third Party's written agreement to submit irrevocably to arbitration in Poland under the Arbitration

Rules of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw in force on the date of commencement of the proceeding by an arbitrator or arbitrators appointed in accordance with the said Rules in respect of all matters relating to such rights.

- 32.6 In enforcing any right to which it is entitled by virtue of the provisions of this CONTRACT, the remedies of a Third Party shall be limited to damages.
- 32.7 A Third Party shall not be entitled to assign any benefit or right conferred on it under this CONTRACT.

33. HEALTH, SAFETY AND ENVIRONMENT

- 33.1 The COMPANY places prime importance on health, safety and environment (hereinafter "HS&E") issues and requires that the CONTRACTOR GROUP subscribes to and actively pursues the highest standards of HS&E performance.
- 33.2 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 V – 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.
- 33.3 Failure to meet the requirements of Section V – 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 24.1(b).
- 33.4 The CONTRACTOR shall provide 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.

34. INDUSTRY MUTUAL HOLD HARMLESS – [DELETED]

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, (together referred to as the "PARTIES" and individually as a "PARTY").

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 Services (On- and Off-shore) - Edition 4 - [date];
b) Special Conditions of Contract;
 3. Section III Remuneration;
 4. Section IV Scope of Work;
 5. Section V Health, Safety and Environment;
 6. Section VI Company's General Obligations.

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 and the Scope of Work shall take precedence over the General Conditions of Contract.

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

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

For:

(CONTRACTOR)

Name:

Title:

Date:

For:

(COMPANY)

Name:

Title:

Date:

APPENDIX 1 TO SECTION I - FORM OF AGREEMENT

Reference

Section I

Clause 4 The EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT is _____

Clause 5 The duration of the CONTRACT is _____

Section II

Clause 3.1(a) The COMPANY REPRESENTATIVE is _____

The CONTRACTOR REPRESENTATIVE is _____

Clause 5.1 The COMPANY designated heliport is _____

The COMPANY designated supply base is _____

Clause 10.2(b) The Defects Correction Period is _____ commencing at the agreed date at which the WORK or the relevant part of the WORK was completed

Clause 13.8 The period of suspension is _____

Clause 14.3 Latest time for receipt of invoices _____

Clause 14.9 Interest rate per annum – Base Rate plus ____ percent p.a.

Clause 17.4 Rights shall vest in _____

Clause 19.2(d) Permanent third party oil and gas production facilities and pipelines as follows:

For the purposes of Clause 19.2(d) only, consequential losses shall mean

Clause 20.2 Insurance by the CONTRACTOR, the amounts are

Employers' Liability _____

General Third Party _____

Clause 24.7(a) (iii) Special Conditions remaining in full force and effect shall be

Clause 28.5(d) The period of suspension is _____

Clause 29.6 The addresses for the service of notices are:

COMPANY _____

CONTRACTOR _____

Clause 30.1(a) Limitation of Liability before the date of completion of the WORK
The sum is _____

Clause 30.1(b) Limitation of Liability after the date of completion of the WORK
The sum is _____

Clause 30.2 The Limitation Period is three (3) years calculated in accordance with Polish law.

Clause 31.1(b) Resolution of Disputes. The nominees are:

COMPANY _____

CONTRACTOR _____

Section II b) - Special Conditions of Contract

1. General

- 1.1. This Section II b) - Special Conditions of Contract shall be deemed to form and be read and construed as part of the CONTRACT between the CONTRACTOR and the COMPANY, as described in Section I – FORM OF AGREEMENT.
- 1.2. In this Section II b) - Special Conditions of Contract all capitalised words and expressions shall have the meanings assigned to them in the FORM OF AGREEMENT or elsewhere in the CONTRACT.

2. CONTRACTOR's strict liability

Without prejudice to clause 12 of the General Conditions of Contract for Services (On- and Off-shore) - Edition 4, which constitutes Section II a) of this CONTRACT, the CONTRACTOR shall be liable for non-performance and improper performance of this CONTRACT irrespective of fault, unless the CONTRACT specifically states to the contrary.

3. Liquidated damages

- 3.1. The CONTRACTOR shall pay the COMPANY liquidated damages in the event of:
- (a) any default of the CONTRACTOR which the CONTRACTOR fails to remedy within 7 days upon receipt of the COMPANY's notice of default to the CONTRACTOR giving details of such default, or
- (b) any defects in the WORK arising from any default of the CONTRACTOR which the CONTRACTOR fails to correct, reperform, rectify or replace within 7 days upon receipt of the COMPANY's notice of defects to the CONTRACTOR giving details of such defects,

at the rate of 1% (say: one percent) of the total CONTRACT PRICE per each defect or default.

- 3.2. The liquidated damages may be set-off with the CONTRACT PRICE and RENUMERATION.
- 3.3. Total sum of liquidated damages paid by the CONTRACTOR shall not exceed 15% of the total CONTRACT PRICE.

4. Arbitration

- 4.1. Any disputes arising out of or related to the CONTRACT shall be finally settled under the Arbitration Rules of the Court of Arbitration at the Polish Chamber of Commerce in Warsaw in force on the date of commencement of the proceeding by an arbitrator or arbitrators appointed in accordance with the said Rules.
- 4.2. The seat of the arbitration shall be Poland even where the hearing takes place outside Poland.
- 4.2. The language of arbitration shall be English.

For:

(CONTRACTOR)

Name:

Title:

For:

(COMPANY)

Name:

Title:

Date:

Date:

General Conditions of Contract for Services (On- and Off-shore)

Part 2 - Guidance Notes

GUIDANCE NOTES Services (On- and Off-shore)

General Conditions of Contract

Introduction

The model contract for which these guidance notes are written is the General Conditions of Contract for Services (On- and Off-shore), Edition 4, February 2019.

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

The Case for a Standard Approach

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

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

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

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

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

Purpose of Model Contract

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

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

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

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

Purpose of Guidance Notes

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

Intended Applications

The General Conditions of Contract for Services (On- and Off-shore) have been prepared to serve the scopes of work for a range of onshore and offshore services.

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,
- suggested modifications or additions to the guidance notes.

All feedback should be sent in the first instance:

By Email to: logic@oilandgasuk.co.uk

By Post to: Contracts for the Offshore Oil and Gas Industry: Comments
LOGIC
3rd Floor, The Exchange 2
62 Market Street Aberdeen
AB11 5PJ

Acknowledgements

LOGIC wishes to acknowledge the work of the Oil & Gas UK Legal Issues Forum - LOGIC Standard Contract Task Finish Group in reviewing and updating this Standard Contract for Services (On- and Off-shore).

Acknowledgements are extended also to all past members of the LOGIC Standards Contracts Committee and the LOGIC Standard Contracts Work Group and the Legal Issues Forum for their contributions to this and previous editions of the Standard Contract for Services (On- and Off-shore).

Other Relevant Models

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

- Marine Construction
- Construction
- Well Services
- Design
- Mobile Drilling Rig
- Supply of Major Items of Plant and Equipment
- Purchase of Goods
- Small/Medium Enterprises (SME) Services
- Subcontract Small / Medium Enterprises (SME) Services
- Offshore Decommissioning

Copies of these documents can be obtained from:

LOGIC
3rd Floor, The Exchange 2
62 Market Street
Aberdeen
AB11 5PJ

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

Explanatory Notes

1. Structure of the Contract

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

Users may add any additional important dates for a particular contract in Section II(b) - Special Conditions of Contract.

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 1.2 - 'Affiliate'

A general definition is included in Clause 1.2 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 subcontractors but also those subcontractors of any tier who are performing Work offshore or at any wellsite.

2.2 Clause 6 - Contractor to Inform Itself

This Clause provides that generally the Contractor has satisfied itself concerning all of its obligations and the conditions under which the work is to be performed.

2.3 Clause 8 – Assignment and Subcontracting

Clause 8.1 – Assignment

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

The Clause does not cover novation of the Contract as it is considered that an unconditional right of novation is unlikely to be enforceable, as it effectively creates a new contract and will require the consent of the three parties to such Novation.

Clause 8.2 - Subcontracting.

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

2.4 Clause 11 - Variations

Clause 11.1 gives the Company wide powers to vary the work as long as the change is 'within the capability and resources of the Contractor'. Clearly anything else would be unreasonable in a service contract.

Clause 11.2 provides for valuation of varied work either at appropriate rates included in the Contractor, in the absence of any such rates, a fair valuation is to be made.

2.5 Clause 12 - Force Majeure

Clause 12.2 defines Force Majeure for the purposes of the Contract in order to ensure a proper understanding of the term.

2.6 Clause 13 - Suspension

Clause 13.4 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 11.2.

2.7 Clause 14 - Terms of Payment

Clause 14.2 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 his own cost are not included elsewhere in the General Conditions since that is the normal position.

Clause 14.4 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 14.9 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 14.11 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 15 – Taxes and Tax Exemption Certificates

Clause 15 has been updated to include reference to legislation and practices current as at January 2014.

However, under the impending Offshore Employment Intermediaries (OEI) legislation, licence holders can be held responsible/liable for PAYE/NIC liabilities and reporting obligations in respect of UK employees supplied by an OEI, where the OEI (which does not have a UK associated entity) fails to meet its UK PAYE/NIC obligations in respect of those employees. To mitigate the risk of liabilities being transferred to licence holders, the government agreed to introduce an exemption scheme similar to that in place in respect of non-resident contractors.

This has been discussed in the UKOITC and there may in future be some standard drafting to address the impact of the FSJO legislation (e.g. warranty regarding the use of offshore employers, an obligation to provide an exemption certificate if such a warranty cannot be given, and the right to withhold amounts if an exemption certificate cannot be provided or is withdrawn). However, no wording has yet been agreed. In the meanwhile all parties are advised to consider this issue closely, and if necessary seek their own advice.

2.9 Clause 18 - Laws and Regulations

Clause 18.2 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 18.3 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 19 - 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 19.1(c)). There are however exceptions in relation to property of the Company Group in that the indemnity included in Clause 19.2(a) is limited to property at the 'Worksite'.

'Worksite' is as defined in Clause 1.14 and includes the area within the approved anchor pattern of any vessels used by the Contractor for the work. Any restrictions on such anchor patterns for third party or Company Group property should be included in the Contract.

In cases where the Company Group does not own all property at the Worksite, likely to be affected by the Contractor, the Company should be prepared to inform the Contractor of exact details of ownership together with indemnities given in respect of third party property. By agreement between the parties, Clause 19.2(d) is intended to establish indemnities in favour of the Contractor in the event of damage to such property. A risk to be considered will be consequential losses arising from damage to third party property. Care must be taken in defining the categories of loss included within Appendix 1 to Section I.

As discussed above, the indemnity in Clause 19.2(a) is in respect of Company Group property. Some Company Joint Operating Agreements may not allow the Company to give such indemnities in respect of Co-Venturer's property. It is suggested that, in such cases, separate agreements should be obtained from the Co-Venturers to the use of that Clause since it is considered to be unreasonable to give anything less in the way of indemnity.

The reciprocal indemnities between Company and Contractor relate only to the parties included in the Company

and Contractor Groups as defined in Clauses 1.2 and 1.6.

For the purposes of Clauses 19.1 (c) and 19.2 (c), Third Parties are defined as any party who is not a member of the Company or Contractor Groups.

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

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

For the purpose of Clause 19.4, the Contractor's pollution indemnity covers pollution "originating" from "Contractor's property and equipment" rather than the "emanating" used in the Company's indemnity in Clause 19.3. This is to recognise that Contractor is only liable for pollution which originates from its property and equipment and not reservoir or other Company Group pollution which may be present in and emanates from Contractor's property and equipment.

2.11 Clause 20 - 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 20.2. The exact values of insurances required by the Company must be specified in Appendix 1 as discussed above.

Clause 20.4 requires that Subcontractors carry appropriate amounts of insurance as may be relevant to their work.

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

2.12 Clause 21 - Consequential Loss

There are two parts to the "Consequential Loss" definition under Clause 24. Part (a) refers to consequential or indirect loss under English law, whilst part (b) refers to specific heads of loss regardless of whether they are direct or indirect loss. English law (in the case *Hadley v Baxendale* [1854] 9 Exch. 341) recognises two types of loss as being recoverable for breach of contract: (1) those "*fairly and reasonably considered either as arising naturally, i.e. according to the usual course of things, from the breach itself*" (often referred to as the first limb of the remoteness test in *Hadley v Baxendale* and "direct" losses); and (2) those "*as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it*" (often referred to as the second limb of the remoteness test and "indirect" or "consequential" losses). At the time of writing, recent cases (e.g. *Transocean Drilling UK Ltd v Providence Resources plc* [2016] EWCA Civ 372 at paragraph 15 and *Star Polaris LLC v HHIC-Phil Inc* [2016] EWHC 2941 (Comm)) have cast doubt on whether the Courts will continue to interpret the expressions "consequential loss" and "indirect loss" as meaning losses recoverable under the second limb of the test in *Hadley v Baxendale*. Nevertheless and in the interests of certainty: part (a) of Clause 21 is intended to refer only to losses recoverable under the second limb of the test in *Hadley v Baxendale*; and part (b) refers to the specific types of loss listed, irrespective of whether the loss is recoverable under the first and / or the second limb in *Hadley v Baxendale*.

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

As with the indemnities under Clause 19, 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 23 – Customs Procedures

The UKCS is, for the purpose of legislation, outside the customs territory of the UK and the EU. As such, a definition of “workpoint” has been included that mirrors the definition provided by Her Majesty’s Revenue and Customs to apply reliefs to the offshore industry.

Please note that the clause does not make provision for export requirements. Companies using this contract should consider whether items being taken offshore under a contract may have restrictions on them, such as items made from exotic materials, IT equipment with encryption or radioactive materials. If so, export licences will be required and the clause should be amended to consider the Parties responsibilities.

2.14 Clause 24 - 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 24.4.

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 24 includes for both termination of part or all of the work or termination of the Contract. Accordingly a 'continuing obligations' Clause - Clause 24.7 - 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 24.7(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 24.7(a)(iii).

2.15 Clause 28 – Anti-bribery and Corruption

In drafting Clause 28 consideration was given to approaches throughout the industry to date and in the updated version of Oil & Gas UK’s Joint Operating Agreement (updated March 2013). In addition, the Ministry of Justice’s publication entitled “Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing” was also considered when developing rights such as audit, suspension and termination.

The Clause has been drafted to enhance communication and co-operation between the Parties. As such, it was determined that it may not be for the Company to determine whether or not the Contractor’s procedures are adequate. Instead, reliance is placed upon the Contractor warranting that they have procedures and that they will comply with such procedures, which is further strengthened by the Company’s right to audit compliance.

Where a reasonable suspicion of bribery arises, requirements to notify one another become effective. In the event that the Company is concerned that an incident of bribery may have occurred then the Company is entitled to suspend payment for the Work, subject to the Contractor being able to demonstrate that part(s) of the invoice are legitimate.

During such suspension, the Parties will work together to agree an appropriate way forward, however, where the Company continue to reasonably believe that there has been an incident of bribery then the Company may terminate the contract for cause but subject to the conditions contained in Clause 28.6.

It was not agreed whether an indemnity was currently industry standard practice. Due to the number of differences of opinions it was decided not to include an indemnity, however where the parties to the Contract consider it appropriate the following wording could be inserted as an option:

28.7 The CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY against all costs (including legal and investigation costs) and expenses incurred by the COMPANY or arising in respect of any breach of Clause 28.1 by the CONTRACTOR.

28.8 The COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR against all costs (including legal and investigation costs) and expenses incurred by the CONTRACTOR or arising in respect of any breach of Clause 28.1 by the COMPANY except where such breach arises as a result of a breach of the same Clause 28.1 by the CONTRACTOR.

It was decided that the indemnity provision should be mutual, firstly as it was expected that this would be more palatable and secondly as it is unknown, as yet, whether an investigation into a Company may result in an investigation into a Contractor.

Should you decide to include the above indemnity then consideration should be given as to how it interacts with the Limitations of Liability and Consequential Loss clauses.

These comments, including the drafting of optional Clauses 28.7 and 28.8, are for guidance purposes only and are not to be construed or taken as giving legal opinion. Optional Clauses 28.7 and 28.8 are intended to provide parties with an example of how a suitable indemnity could be drafted and to highlight the types of cost or loss in respect of which parties might seek indemnification. Any decision whether or not to make use of optional Clauses 28.7 and/or 28.8, whether in the form given above or in amended form, should be made based on the parties' particular circumstances and no representation is made that these optional clauses are legally valid or effective in achieving a particular result.

2.16 Clause 30 – Limitations of Liability

Clause 30.1(a) contains provision for a limitation of the liability of the Contractor before the date of completion of the Work, whilst Clause 30.1(b) contains provision for a limitation of liability thereafter. It is relevant to note that the limitation under Clause 30.1(b) does not apply to any costs arising from any cause of action notified to the Contractor before the date of completion of the Work and that neither the limitation under Clause 30.1(a) nor Clause 30.1(b) will apply to liabilities assumed by the Contractor under the following Clauses:

Clause 15 – Taxes and Tax Exemption Certificates
Clause 17 – Intellectual Property Rights
Clause 20 – Insurance By Contractor
Clause 23 – Customs Procedures
Clause 26 – Liens

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

In addition to provision for a financial limitation, Clause 30.2 makes provision for a limitation period. Such a limitation period would similarly not apply in respect of the above mentioned Clauses.

It is important that an appropriate sum is included in Appendix 1 in respect of Clauses 30.1(a) and 30.1(b) and that an appropriate period of time is included in respect of Clause 30.2. What is considered fair and reasonable will depend on various factors, including the Contract Price and the assessed risk.

2.17 Clause 31 - Resolution of Disputes

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

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

Recognising that the tiered negotiation provisions under Clause 31.1 did not impose deadlines upon the Parties, this Clause has been updated accordingly.

The position of “Managing Director” under Clause 31.1(c) has been updated to “Senior Executive” in recognition of the non-UK entities who use the suite of LOGIC Standard Contracts.

2.18 Clause 32 – Contracts (Rights of Third Parties) Act

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

Clauses 17.7 and 17.8 – Intellectual Property Rights

Clause 19 – Indemnities

Clause 20 – Insurance By Contractor

Clause 21 – Consequential Loss

Clause 29.3 – Contractor’s Affiliates.

2.27 Clause 34 – Industry Mutual Hold Harmless

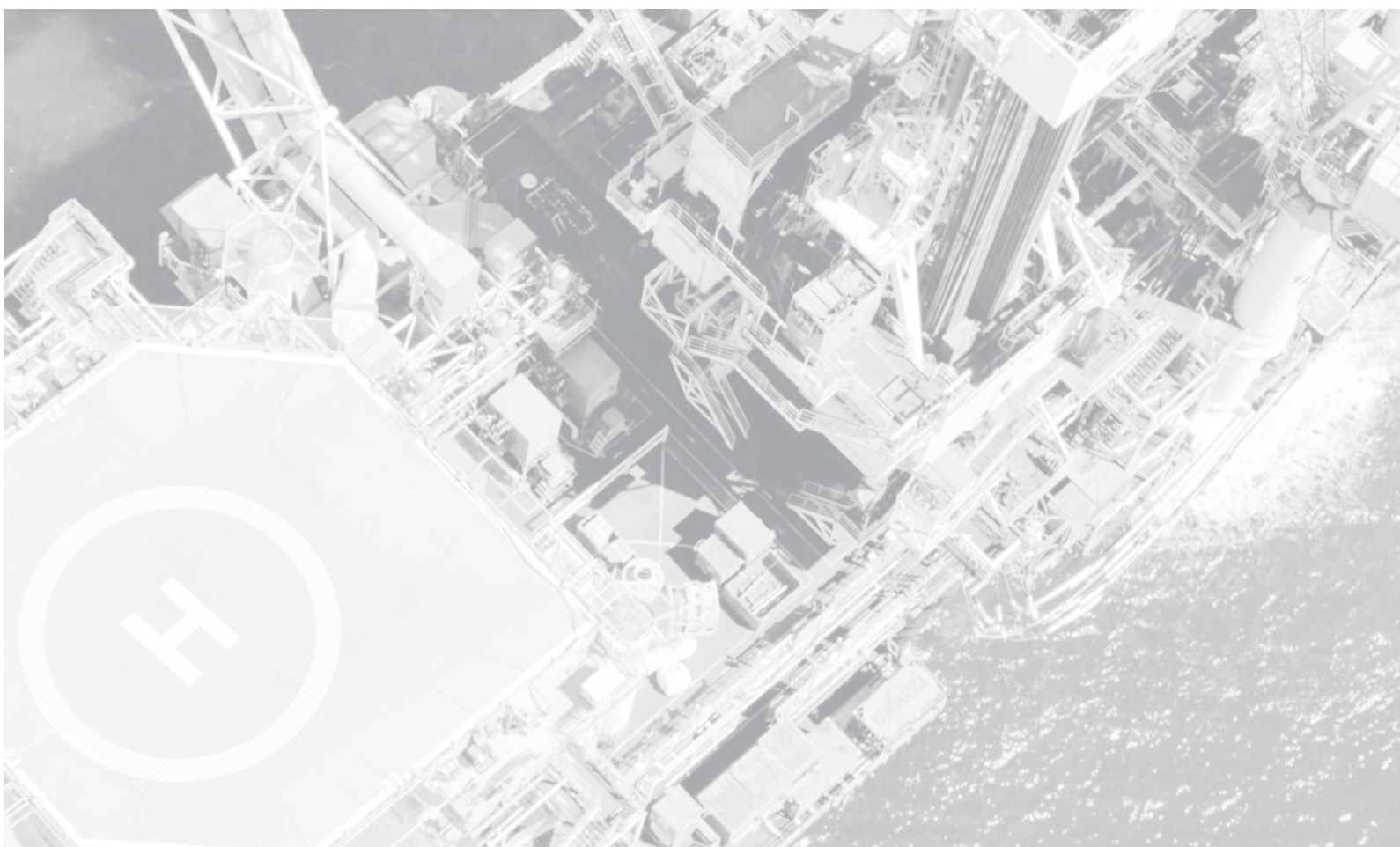
As noted in Comment 2.15, the Company’s other contractors (and the sub-contractors of such other contractors) are not included in the “Company Group” definition. In this regard, the Legal Issues Forum – LOGIC Standard Contracts Workgroup and the LOGIC Board support[s] the Industry Mutual Hold Harmless (“IMHH”) as the most appropriate means of dealing with the allocation of liability for injury to persons, damage to property and consequential loss between the Company’s contractors and strongly encourages all contractors to join the IMHH scheme. Clause 34 has been included to underline this support for the IMHH. Contractors are not expected to compel sub-contractors to participate in the IMHH but they are expected, where appropriate, to check their sub-contractors participate in the IMHH, to encourage non-participating sub-contractors to join the IMHH scheme and to notify the Company of their sub-contractors’ non-participation. Details of the IMHH are available on the LOGIC website (www.logic-oil.com).

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General Conditions of Contract for Construction

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