



## **Eden Geothermal Project**

### **Contract: EGL-ITT-C086 Tubular Running (Casing) Services for a Geothermal Well**



## SECTION I

### 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 General Conditions of Contract;
  3. Section III Remuneration;
  4. Section IV Scope of Work;
  5. Section V Health, Safety and Environment;
  6. Section VII Performance Security
  7. 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.



- 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:	For:
(CONTRACTOR)	(COMPANY)
Name:	Name:
Title:	Title:
Date:	Date:



**APPENDIX 1 TO SECTION I - FORM OF AGREEMENT**

**[DN: Blank entries in this Appendix to be confirmed in due course]**

**Reference**

**Section I**

Clause 4 The EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT is \_\_\_\_\_

**Section II**

Clause 1.12B The KEY PERSONNEL are as follows

Name\_\_\_\_\_ Role \_\_\_\_\_

Name\_\_\_\_\_ Role \_\_\_\_\_

Name\_\_\_\_\_ Role \_\_\_\_\_

Clause 3.1(a) The COMPANY REPRESENTATIVE is \_\_\_\_\_

The CONTRACTOR REPRESENTATIVE is \_\_\_\_\_

Clause 5.1 The BOND amount is \_\_\_\_\_

The expiry trigger for the BOND is \_\_\_\_\_

Clause 5.2 The guarantor under the PARENT COMPANY GUARANTEE is \_\_\_\_\_

Clause 10.2(b) The Defects Correction Period is **12 months** 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 **30 days following completion of the WORK**

Clause 19.2(d) Permanent third party geothermal 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 (minimum £5m cover)

Public Liability (minimum £5m cover)

Further insurances \_\_\_\_\_

Clause 29.6 The addresses for the service of notices are:



COMPANY \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Clause 30.1 The sum is \_\_\_\_\_

Clause 30.2 The Limitation Period is 6 years from the date of completion of the WORK



## SECTION II

### 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 Not used.
- 1.2 "AFFILIATE" means any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition, "subsidiary" and "holding company" shall have the meanings assigned to them under Section 1159 and Schedule 6 of the Companies Act 2006, and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
- 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.
- 1.3 A "BOND" means an on demand performance bond, in the form set out in Part A of Section VII – Performance Security.
- 1.4 "COMPANY GROUP" means the COMPANY, its CO-VENTURERS, its FUNDERS, 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 (which shall include the performance of the CONTRACTOR'S obligations pursuant to the CONTRACT) calculated in accordance with Section III - Remuneration, which shall be exclusive of Value Added Tax but, unless otherwise expressly stated in these General Conditions of Contract or Schedule III - Remuneration, be inclusive of all other taxes, duties or other charges as applicable.
- 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 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.

- 1.10A “CONTRACTOR’S DOCUMENTS” means the calculations, computer programs and other software, drawings, manuals, models, progress reports and other documents, including those of a technical nature, made by or on behalf of the CONTRACTOR under the CONTRACT.
- 1.10B “CONTRACTOR’S EQUIPMENT” all apparatus, machinery, vehicles and other things required for the execution and completion of the WORK and the remedying of any defects (save where the same is supplied by the COMPANY).
- 1.10 C “CORONAVIRUS PANDEMIC” means the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) pandemic designated as such by the World Health Organisation on 11 March 2020 and which causes the disease known as “COVID-19”.
- 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.
- 1.11 A “COVID-19 EVENT” means:
- any shortage of labour;
  - restricted access to WORKSITE and/or facilities;
  - shortages of equipment, plant and/or materials; and/or
  - any regulatory delays directly caused by the imposition of any mandatory requirements of the United Kingdom and/or Scottish governments,
- in each case resulting from the CORONAVIRUS PANDEMIC.
- 1.11B “DEFECTS NOTICE” has the meaning given in Clause 10.2(b).
- 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.
- 1.12A “FUNDER” means any person providing finance for or in connection with the PROJECT, including any agent or trustee acting on behalf of such a person.
- 1.12 B “KEY PERSONNEL” means such persons as may be specified in Appendix 1 to the Form of Agreement.
- 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.
- 1.13A “NOTIFIED SUM” has the meaning given in Clause 14.6.
- 1.13B “PARENT COMPANY GUARANTEE” means a parent company guarantee in the form set out in Part B of Section VII

– Performance Security.

1.13C “PAY LESS NOTICE” have the meaning given in Clause 14.7.

1.13D “PRESCRIBED PERIOD” has the meaning given in Clause 14.7.

1.13E “PROHIBITED MATERIALS” shall mean any materials which (a) pose hazard to the health of any animal, plant/vegetation and/or person who may come into contact with the WORK (whether during construction or after their completion) or (b) either by themselves or as a result of their use in a particular situation or in combination with other materials, equipment, works or structures, would or are likely to have the effect of reducing the normal life expectancy of the materials themselves or any other materials, equipment, work or structures in which the materials are incorporated or to which they are affixed.

1.13 F “PROJECT” means the drilling, completion and ongoing operation of a deep geothermal well at The Eden Project, Bodelva, St Austell, Cornwall and associated infrastructure.

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 and such obligations as are set out in Section IV – Scope of Work.

1.19 “WORKSITE” means the lands, waters and other places on, under, in or through which the WORK is to be performed 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 (which shall include email but not fax). 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 and all subordinate legislation made from time to time under the same.

- 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.
- 2.4 This CONTRACT shall be binding on, and enure to the benefit of, the PARTIES and their respective personal representatives, successors and permitted assigns, and references to any PARTY shall include that PARTY's personal representatives, successors and permitted assigns.
- 2.5 Any obligation on a PARTY not to do something includes an obligation not to allow that thing to be done.
- 2.6 A reference to this CONTRACT or to any other agreement or document referred to in this CONTRACT is a reference to this CONTRACT or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Contract) from time to time.
- 2.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### **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 in this CONTRACT 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 and/or is required for the full and proper performance of the WORK and/or the CONTRACTOR's obligations under the CONTRACT.
- 4.2 The CONTRACTOR warrants that it shall, at its cost:
  - (a) carry out all of its obligations under the CONTRACT and execute the WORK in a timely manner, 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 and shall ensure that the WORK shall be fit for the purposes specified in the CONTRACT;
  - (b) comply with all reasonable instructions issued by the COMPANY in respect of the coordination, integration and interface of the WORK and the CONTRACTOR's performance of its obligations under this CONTRACT with any other goods, works and/or services relating to the PROJECT;
  - (c) use all reasonable endeavours to ensure that no delay, interruption or interference is caused by the CONTRACTOR to the COMPANY, the COMPANY's other contractors, consultants, advisors and/or any other person or party that the COMPANY may identify to the CONTRACTOR from time to time in relation to the WORK and performance of the CONTRACTOR's obligations under this CONTRACT; and
  - (d) report to the COMPANY at monthly or such other intervals as the COMPANY may reasonably require in relation to the WORK and the CONTRACTOR's performance of its obligations under this CONTRACT (which shall include providing the COMPANY with any calculations, details, drawings, manuals, specifications, layouts and other documents and information relating to the WORK and performance of the CONTRACTOR's obligations under this CONTRACT as the COMPANY may reasonably require).
- 4.2 A The CONTRACTOR shall ensure that the WORK is carried out in accordance with all applicable laws, permissions, consents, conditions and licences relevant to the WORK and with all British and European Standards and codes (including any approved codes of practice and/or guidance of any COMPETENT AUTHORITY) from time to time in force.
- 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.

- 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 reserve
- 4.7
- 4.8 s the right to let other contracts associated with the WORK. The CONTRACTOR shall afford the COMPANY and other contractors of the COMPANY all reasonable facilities and access and opportunity for the performance of their work or contracts and shall co-operate fully with such parties. The CONTRACTOR acknowledges that it has non-exclusive access to the WORKSITE.
- 4.9 The CONTRACTOR shall be responsible for the programming of the WORK.
- 4.10 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.
- 4.11 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.
- 4.12 The CONTRACTOR warrants that in carrying out the WORK and performing its obligations under this CONTRACT, the CONTRACTOR has not, and shall not, specify for use, use or permit to be used any materials which at the time the WORK is being carried out are generally accepted or reasonably suspected of being PROHIBITED MATERIALS.

## 5. PERFORMANCE SECURITY

**[DN: Performance security to be discussed]**

- 5.1 Bond
- (a) The CONTRACTOR shall obtain (at his cost) a BOND for proper performance of its obligations under this CONTRACT, in the amount and currencies stated in Appendix 1 to Section I – Form of Agreement.
- (b) The CONTRACTOR shall ensure that the BOND is valid and enforceable from the date of this CONTRACT until the expiry trigger specified in Appendix 1 to Section I – Form of Agreement. Each BOND shall be duly executed by a bank or financial institution approved by (and located in a jurisdiction approved by) the COMPANY, and whose long-term unsecured debt has credit ratings of not less than the following minima from the following listed agencies:
- (i) **S&P – A -**
- (ii) **Moody's – A - ] [Credit ratings to be confirmed]**
- (c) If the terms of the BOND specify its expiry date, and the expiry trigger specified in Appendix 1 to Section I – Form of Agreement has not occurred by the date 28 Days prior to the expiry date, the CONTRACTOR shall extend the validity of the BOND until the expiry trigger specified in Appendix 1 to Section I – Form of Agreement has occurred. If the CONTRACTOR does not replace a BOND in accordance with this Clause 5.1 or the credit rating of the relevant bond provider falls below the minima specified in this CONTRACT, the COMPANY shall be entitled to draw down and hold as security for any liabilities of the CONTRACTOR under the CONTRACT, pending such replacement, the total amount then available under such BOND.



5.2 Parent Company Guarantee

Upon execution of this CONTRACT, the CONTRACTOR shall deliver to the COMPANY a PARENT COMPANY



GUARANTEE from the company named in Appendix 1 to Section I – Form of Agreement for proper performance of its obligations under this Contract. The CONTRACTOR shall maintain in force the PARENT COMPANY GUARANTEE for the duration of its liability under this CONTRACT.

## **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 and the CONTRACTOR shall not be entitled to any extension of time and/or any increase in the CONTRACT PRICE unless expressly set out in the CONTRACT.
- 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. The CONTRACTOR shall not be entitled to any revision of the CONTRACT PRICE in respect of any such differences, omissions, contradictions, ambiguities and/or conflicts.
- 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 and/or the PROJECT.

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 Subject to Clause 22, 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, SUBCONTRACTING AND FINANCING**

### **8.1 Assignment**

- (a) The COMPANY may twice without the consent of the CONTRACTOR assign the benefit of all or any of the CONTRACTOR's obligations under the CONTRACT and/or benefit arising under or out of the CONTRACT; otherwise the COMPANY may not without the consent of the CONTRACTOR assign charge, transfer, delegate, novate or otherwise dispose of, in whole or in part, any of its rights or obligations under the CONTRACT (such consent not to be unreasonably withheld or delayed);



- (b) Notwithstanding Clause 8.1(a), the CONTRACTOR may, as security in favour of a FUNDER assign its right to any monies due or to become due under the CONTRACT but otherwise shall not without the consent of the COMPANY assign the benefit of all or any of the COMPANY's obligations under the CONTRACT under or any benefit arising and/or out of the CONTRACT;
- (c) The CONTRACTOR shall not be entitled to assign, charge, transfer, delegate or otherwise dispose of, in whole or in part any of its rights or obligations under the CONTRACT without the prior written consent of the COMPANY.

## 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 written approval of the COMPANY (not to be unreasonably withheld or delayed).
- (b) Before entering into any SUBCONTRACT, whether provided for in the CONTRACT or not, the COMPANY shall be given an adequate opportunity to review the form of SUBCONTRACT, the choice of SUBCONTRACTOR, the part of the WORK included in the SUBCONTRACT and any other relevant details requested by the COMPANY.
- (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 and the CONTRACTOR shall remain wholly responsible for carrying out and completing the WORK and its obligations in all respects and in accordance with the CONTRACT.

## 8.3 Financing

- (a) Within (10) ten days of receiving a written request by the COMPANY, the CONTRACTOR appending a form of direct agreement in favour of a FUNDER identified by the COMPANY in its request, the CONTRACTOR shall execute such direct agreement as a deed in triplicate and return the fully executed direct agreement to the COMPANY.

## 9. CONTRACTOR PERSONNEL

- 9.1 The CONTRACTOR undertakes to provide sufficient personnel at all times to ensure performance and completion of the WORK in accordance with the provisions of the CONTRACT.
- 9.2 All personnel employed on the WORK shall, for the work which they are required to perform, be competent, properly qualified, skilled and experienced in accordance with good industry practice. The CONTRACTOR shall verify all relevant qualifications of such personnel.
- 9.3 The KEY PERSONNEL shall be engaged by the CONTRACTOR for the role specified in the CONTRACT for the purpose of the WORK and such KEY PERSONNEL shall not be replaced without the prior written approval of the COMPANY. Any replacement shall work with the person to be replaced for a reasonable handover period.

- 9.4 Not used.
- 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 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; or
  - (d) in breach of or not complying with the provisions of the CONTRACT.

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) Without prejudice to any other obligations of the CONTRACTOR under the CONTRACT, 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 identifies any defects in the WORK or the COMPANY notifies the CONTRACTOR of any defects in the WORK (such notice being a DEFECTS NOTICE), in either case 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 at its sole cost and expense.

If any of the WORK is reperformed, rectified or replaced by the CONTRACTOR under the provisions of this Clause 10.2, this Clause 10.2 shall apply to the portion so reperformed, 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 or where the CONTRACTOR has failed to correct the relevant defect within a reasonable period (in any case no later than 14 days from the date of identification / the date of the DEFECTS NOTICE, as relevant), the COMPANY may 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 costs, expenses, losses and damages reasonably incurred and/or suffered by the COMPANY as a direct result of carrying out such responsibilities.

## **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 may include additions, omissions, substitutions and changes in quality, form, character, kind, position, dimension, level or line and changes in any method specified by the COMPANY and/or accelerations to the WORK) (each a VARIATION). The CONTRACTOR shall proceed immediately as instructed and be bound by each VARIATION, unless the CONTRACTOR promptly gives notice to the COMPANY stating (with supporting particulars) that (i) the VARIATION will reduce the safety or suitability of the Works, or (iii) it will have an adverse impact on PROJECT. Upon receiving such a notice, the Employer shall cancel, confirm or vary the instruction.

11.1 A Upon instructing a VARIATION, the COMPANY shall determine any reasonable adjustments to the CONTRACT PRICE. These adjustments shall take account of the principles set out in Clause 11.2 and any estimates provided by the CONTRACTOR.

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.

## **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 listed in Clause 12.2, which has been notified in accordance with Clause 12.3 and which is exceptional, beyond the control and without the fault or negligence of either PARTY 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 (provided in each case the conditions set out in Clause 12.1 have been met).

- (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; and
- (f) Maritime or aviation disasters.

However, the CORONAVIRUS PANDEMIC shall not be treated as force majeure for the purpose of this Clause 12, other than as provided for in Clause 12.2A.

12.2 A Notwithstanding the foregoing provisions of this Clause 12, a COVID-19 EVENT shall constitute force majeure. The CONTRACTOR shall notify the COMPANY on a weekly basis of the potential impact of any COVID-19 EVENT on the performance of the CONTRACTOR'S obligations under the CONTRACT and of the steps that the CONTRACTOR is taking and proposes to take in order to mitigate and/or avoid the impact of any such COVID-19 EVENT in relation to the performance of such obligations. Notwithstanding any other provisions in the CONTRACT, the provisions set out in this Clause 12.2A shall be the only contractual provisions relating to the CORONAVIRUS PANDEMIC and shall be the CONTRACTOR'S sole relief and remedy in respect thereof under the CONTRACT.

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.

12.6 If the execution of substantially all the WORK is prevented for a continuous period of 84 (eighty four) days by reason of force majeure occurrence of which notice has been properly given under Clause 12.1, or for multiple periods which total more than 140 (one hundred and forty) days due to the same notified force majeure occurrence, then either PARTY may give to the other PARTY a notice of termination of the CONTRACT. In this event, the termination shall take effect 7 (seven) days after the notice is given, and the Contractor shall proceed in accordance with Clause 24.3.

Upon such termination, the COMPANY shall pay to the CONTRACTOR:

- (a) the amounts payable for any work carried out for which a price is stated in the CONTRACT;
- (b) any cost or liability which in the circumstances was reasonably incurred by the CONTRACTOR in the expectation of completing the WORK;

### 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 paid in accordance with the relevant provisions of Section III - Remuneration or, in the absence of such provisions, the instruction to suspend the WORK shall be treated as a VARIATION 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 and the CONTRACT PRICE shall not be adjusted.

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. Where an invoice includes an amount on account of VAT, the CONTRACTOR shall issue to the COMPANY a proper VAT invoice, which shall detail separately the proper amount of such VAT payable. 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 The due date for payment of each invoice shall be the date of receipt by the COMPANY of a correct VAT invoice properly addressed to the COMPANY and submitted in accordance with clauses 14.3, 14.4 and 14.5 in respect of the relevant WORK performed and/or goods supplied by the CONTRACTOR to the COMPANY. No later than five days after payment becomes due, the COMPANY shall notify the CONTRACTOR of the sum that the COMPANY considers to have been due at the due date in respect of the payment and the basis on which that sum is calculated. The final date for payment of each invoice shall be thirty (30) days following the due date. Subject to clause 14.7, and unless the COMPANY has served a notice under this clause 14.6 it shall pay the CONTRACTOR the sum referred to in the COMPANY's notice under this clause 14.6 (or, if the COMPANY has not served notice under this clause 14.6, the sum referred to in the CONTRACTOR's invoice) (the NOTIFIED SUM) on or before the final date for payment of each invoice. The COMPANY shall make payment in respect of such invoices as follows:

- (a) for payments in Sterling the COMPANY shall make payment of the due amount into the bank account of the CONTRACTOR specified in the CONTRACT or otherwise notified by the CONTRACTOR, using the Banker's Automated Clearing System; and
- (b) for payments in foreign currencies the COMPANY shall make payment of the due amount in the appropriate currency into the bank account of the CONTRACTOR specified in the CONTRACT or otherwise notified by the CONTRACTOR.

14.7 If the COMPANY disputes any items on an invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, or if the COMPANY intends for any reason to withhold any monies for any other reason the COMPANY shall, not less than five days before the final date for payment (the PRESCRIBED PERIOD) give the CONTRACTOR written notice of its intention to pay less than the NOTIFIED SUM (the PAY LESS NOTICE) and request the CONTRACTOR to issue a credit note for the unaccepted part or the whole of the invoice as applicable. The



COMPANY shall be obliged to pay the undisputed part of a disputed invoice in accordance with Clause 14.6. Any PAY LESS NOTICE shall specify the sum that the CONTRACTOR considers to be due on the date the notice is served and the basis on which that sum is calculated.

If any other dispute connected with the CONTRACT exists between the PARTIES the COMPANY may (subject to giving a PAY LESS NOTICE under this Clause 14.7) 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 does not comply with the terms of the CONTRACT.

- 14.9 Interest shall be payable on any payment not made by the final date for payment, provided that no PAY LESS NOTICE has been given under Clause 14.7. The amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus three percent (3%) per annum and shall be calculated pro rata on a daily basis. Interest shall run from the relevant final date 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 fourteen (14) 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.

- 14.12 Notwithstanding clauses 14.6 and 14.7, if the CONTRACTOR becomes insolvent after the PRESCRIBED PERIOD, the COMPANY shall not be required to pay the CONTRACTOR the NOTIFIED SUM on or before the final date for payment.

## 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 Not used.

15.4 Where any of the WORK involves the performance of construction operations as defined for the purposes of Chapter III of Part III of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 (together, the "Construction Industry Scheme") then the PARTIES shall comply with the provisions of the Construction Industry Scheme.

Payments under the CONTRACT by the COMPANY in respect of construction operations shall be made net of any deductions which the COMPANY is required to make by law.

The CONTRACTOR shall provide the COMPANY with such information about the CONTRACTOR as is required by the COMPANY to verify with the Commissioners of HM Revenue and Customs whether the CONTRACTOR is registered for gross payment or for payment under deduction or is not registered for the purposes of the Construction Industry Scheme and shall provide the COMPANY with any such further information to enable the COMPANY to calculate accurately any deduction applicable under the Construction Industry Scheme to any payments under the CONTRACT.

Where at the due date for payment, the COMPANY has not received such information, all payments will be made



subject to maximum deductions as could be required by law.

The COMPANY shall not be liable to reimburse the CONTRACTOR for any over-deduction under this Clause 15.4 or for any tax arising as a result of the CONTRACTOR'S failure to provide such information promptly or to provide sufficient information.

- 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.

## 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.

## 17. INTELLECTUAL PROPERTY RIGHTS

17.1 As between the PARTIES, the CONTRACTOR shall retain the INTELLECTUAL PROPERTY in the CONTRACTOR'S DOCUMENTS. The CONTRACTOR warrants that all INTELLECTUAL PROPERTY which may subsist in the CONTRACTOR'S DOCUMENTS are now (or shall be on their creation) vested in the CONTRACTOR (or that the CONTRACTOR has or shall then have a suitable licence to use the same and to grant the licence referred to in this Clause) and the CONTRACTOR warrants that all INTELLECTUAL PROPERTY which may subsist in the CONTRACTOR'S DOCUMENTS do not infringe the intellectual property rights of any third party.

17.2 The CONTRACTOR shall be deemed (by signing the CONTRACT) to give to or have procured for the COMPANY a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the CONTRACTOR'S DOCUMENTS, including making and using modifications of them with the right to grant sub-licences. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the PROJECT;
- (b) entitle any person in proper possession of the relevant part of the PROJECT to copy, use and communicate the CONTRACTOR'S DOCUMENTS for the purposes of completing, operating, maintaining, altering, adjusting, repairing and decommissioning the PROJECT; and
- (c) in the case of CONTRACTOR'S DOCUMENTS which are in the form of computer programs and other software, permit their use on any computer on the WORKSITE and other places as envisaged by the CONTRACT, including replacements of any computers supplied by the CONTRACTOR.

The CONTRACTOR hereby undertakes to do all such acts and execute such documents as the COMPANY may reasonably require which the COMPANY in the COMPANY'S reasonable opinion considers necessary to achieve the intent of this Clause 17.2.

17.3 The CONTRACTOR hereby waives, and shall procure that each of its SUBCONTRACTOR waive, any rights it may have under Chapter IV (Moral Rights) of Part I of the Copyright Designs and Patents Act 1988 and any foreign corresponding rights in the CONTRACTOR'S DOCUMENTS.

17.4 The CONTRACTOR'S DOCUMENTS and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

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 and/or the PROJECT.
- 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, save to the extent that the CONTRACT specifies such licences, permits, temporary permits and authorisations shall be obtained by the COMPANY.
- 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 and provided that such change in any applicable law, rules and/or regulation could not reasonably have been foreseen at the date of the CONTRACT by the CONTRACTOR and/or a prudent and competent contractor experienced in carrying out work on projects similar to the PROJECT, then the CONTRACT PRICE shall be adjusted using such appropriate rates and/or prices included in the CONTRACT, or if there are no such appropriate rates and/or prices then by a fair and reasonable amount.

## 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.
- 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, 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) **loss of or damage to such permanent third party geothermal production facilities and pipelines and consequential losses arising therefrom, as specified and defined in and in accordance with Appendix 1 to Section I – Form of Agreement where such loss or damage is arising from, relating to or in connection with the performance or non-performance of the CONTRACT. The provisions of this Clause 19.2(d) shall apply notwithstanding the provisions of Clause 19.1(c). [DN: Subject to confirmation from EGL's insurers]**

19.3 Except as provided by Clause 19.1(a), Clause 19.1(b) and Clause 19.4, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from and against any claim of whatsoever nature arising from pollution emanating from the reservoir or from the property of the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the CONTRACT.

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 procure and maintain 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 or, if greater, the sum as is set out in Appendix 1 to Section I - Form of Agreement;
  - (b) Public Liability insurance for any incident or series of incidents covering the operations of the CONTRACTOR in the performance of the CONTRACT, in an amount not less than that set out in Appendix 1 to Section I - Form of Agreement;
  - (c) Third Party and Passenger Liability insurance and other motor insurance as required by applicable jurisdiction;
  - (d) such further insurances (if any) as set out in Appendix 1 to Section I - Form of Agreement.
- 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) consequential or indirect loss under English law; and
- (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 to the extent that these are not included in (a), 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 otherwise than as a result of a breach of any confidentiality provisions under this CONTRACT; or
- (b) was in the possession of the CONTRACTOR prior to award of the CONTRACT and which was not subject to any obligation of confidentiality owed to the COMPANY; or
- (c) was received from a third party whose possession is lawful and who is under no obligation not to disclose; or
- (d) is required to be disclosed in order to comply with the requirements of any law, rule or regulation of any governmental or regulatory body having jurisdiction over the WORK or the CONTRACTOR, or of any relevant stock exchange; or
- (e) is used or disclosed by the CONTRACTOR five (5) years or more after the completion of the WORK.

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; 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.

22.5 The CONTRACTOR shall also (and shall procure that any third parties it engages in the delivery of the obligations under this CONTRACT shall) at all times comply with:

- (a) Articles 115 and Annex XII of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, as amended; and
- (b) Chapter II and Annex II of Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014.

The obligations of the CONTRACTOR under this clause shall continue after the completion of the PROJECT, notwithstanding the completion or termination of this CONTRACT.

## 23. CUSTOMS PROCEDURES

23.1 When applicable the PARTIES shall each apply to HM Revenue and Customs for Shipwork End Use (SEU) and shall also where appropriate apply for Inward Processing Relief (IPR), Outward Processing Relief (OPR) and Returned Goods Relief (RGR) for their respective import, export and re-import of materials, goods, tools, equipment and supplies required for the CONTRACT.

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 HM Revenue and Customs procedures.

23.3 The CONTRACTOR shall be accountable and liable for compliance with customs procedures.

23.4 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.

23.5 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 and / or the guarantor under the PARENT GUARANTEE, 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);
  - (iv) any equivalent act or thing is done or suffered under any applicable or analogous law in any jurisdiction; or
- (d) the CONTRACTOR is in breach of Clause 5 or Clause 28.

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 and/or if the default is not remedied within 14 days of the COMPANY's notice, the COMPANY may issue a notice of termination in accordance with the provisions of Clause 24.1.

24.2 A The CONTRACTOR shall have the right by giving notice to terminate all or any part of the WORK or the CONTRACT in the event that:

- (a) fails to pay any sum due and payable under this CONTRACT on or before its final date for payment and, having been given written notice of such failure by the CONTRACTOR, fails to make payment in accordance with this CONTRACT within 30 days of such notice; or
- (b) in respect of the COMPANY:
  - (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.

24.3 If either PARTY gives the other PARTY 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 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) or 24.2A the CONTRACTOR shall be entitled to payment for the part of the WORK performed in accordance with the CONTRACT together with such other payments and fees as may be set out as due to the CONTRACTOR in such circumstances in Section III – Pricing Schedule 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 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), Clause 24.1(c) or Clause 24.1(d) 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 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 - GENERAL 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.

- (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 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.

28.4 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.

28.6 In the event of termination by the COMPANY pursuant to Clause 24.1(d), the CONTRACTOR shall not be entitled to issue any further invoices to the COMPANY and the COMPANY shall (provided it has issued a PAY LESS NOTICE) be under no obligation to make payment for any sums connected with the possible breach of APPLICABLE ANTI-BRIBERY LAWS.

## 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 Not used.

## 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 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 English Law.

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

## 29.6 Notices

All formal notices in respect of the CONTRACT shall be in English and be given in writing and delivered by hand 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 first class post, forty eight (48) hours after the time of posting;
- (c) if sent by email, at the time of transmission.

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.

If deemed receipt under this Clause 29.6 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this Clause 29.6, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

## 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 reasonable steps to mitigate any loss resulting from any breach of CONTRACT by the other PARTY.

Notwithstanding any other provision of this CONTRACT, the CONTRACTOR shall not be entitled to any increase to the CONTRACT PRICE, if the additional costs and/or losses arising from the event giving rise to any right to the increase in the CONTRACT PRICE is due to the CONTRACTOR's own breach and the CONTRACTOR shall be subject to a continuing obligation to make reasonable and proper efforts to mitigate such delay, cost and/or losses.

#### 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

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.

The COMPANY's cumulative liability to the CONTRACTOR, 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 CONTRACT PRICE (provided that such limitation shall not apply to the obligation on the COMPANY to pay the CONTRACT PRICE in accordance with this CONTRACT).

The above limitations 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 either PARTY under Clause 19.

Any sums recovered by either PARTY under an insurance policy taken out pursuant to this CONTRACT shall not be recoverable from the other PARTY.

Any sums recoverable by either PARTY under an insurance policy required to be taken out pursuant to this CONTRACT shall not be taken into account in the calculation of any limitation of liability, irrespective of whether such PARTY has:

- (a) complied with its obligation to take out and maintain such insurance policy; and/or
- (b) recovered sums under such insurance policy .

#### 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 The PARTIES shall try to resolve any dispute between the COMPANY and the CONTRACTOR in connection with or arising out of the CONTRACT or the WORK by means of the following procedure:

- (a) the dispute shall initially be referred to the COMPANY REPRESENTATIVE and CONTRACTOR REPRESENTATIVE who shall discuss the matter in dispute and make all reasonable efforts to reach an agreement;
- (b) if no agreement is reached under Clause 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.

31.2 If no agreement is reached under Clause 31.1, the PARTIES may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the PARTIES.

31.3 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.

31.4 Subject to Clause 31.5, any claim, dispute or difference arising under or in connection with this CONTRACT or its subject matter or formation shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules (current at the date the relevant dispute is referred to arbitration), which are deemed to be incorporated by



reference into this clause.

Unless otherwise agreed between the PARTIES, the number of arbitrators shall be three.

The seat, or legal place, of the arbitration shall be London, England.

The language to be used in the arbitral proceedings shall be English.

This arbitration clause shall be governed by and interpreted in accordance with English law.

- 31.5 Notwithstanding any other provision of this CONTRACT, the PARTIES each have the right to refer a dispute arising under this CONTRACT to adjudication, and either PARTY may at any time give to the other notice in writing of its intention to do so. Any information submitted by the referring PARTY to the adjudicator shall be copied at the same time to the other PARTY. The adjudication shall be conducted under The Technology and Construction Solicitors Association Adjudication Rules current at the date of referral (TECSA ADJUDICATION RULES) thereby incorporating the TECSA ADJUDICATION RULES into this CONTRACT.
- 31.6 Where a dispute between the COMPANY and the CONTRACTOR or any other party engaged on the project is connected to the facts, matters or issues raised in or giving rise to a dispute under this CONTRACT (RELATED DISPUTE) and such dispute under this CONTRACT has been referred to adjudication under Clause 31.5 or to arbitration under Clause 31.4, the PARTIES shall, if the COMPANY so requires by written notice to the CONTRACTOR (copied to the other party) refer the RELATED DISPUTE to the adjudicator or arbitrator (as the case may be) which is hearing the dispute under this CONTRACT.
- 31.7 The CONTRACTOR shall give the COMPANY such reasonable assistance as the COMPANY may require in dealing with any claims made against the COMPANY by any other party engaged in connection with the PROJECT except for any proceedings that are subject to dispute resolution proceedings under this CONTRACT. Such assistance shall include, without limitation, the provision of information and documentation. To the extent that the provision of such assistance requires the CONTRACTOR to provide information or documentation which has not already been generated by the CONTRACTOR in the usual course of business in carrying out the CONTRACT, the COMPANY shall reimburse the CONTRACTOR for any costs reasonably incurred by the CONTRACTOR in providing such assistance. In addition, the CONTRACTOR shall make available its personnel to provide witness evidence and the COMPANY shall reimburse the CONTRACTOR's reasonable costs of so doing.

## **32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

- 32.1 The PARTIES intend that no provision of the CONTRACT shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 ("the Act") confer any benefit on, nor be enforceable by any person who is not a PARTY to the CONTRACT.
- 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).

## **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 of any part of the WORK or the CONTRACT in accordance with Clause 24.1(b).
- 33.4 The CONTRACTOR shall co-operate with the COMPANY in providing an appropriate response to any emergency occurring at the WORKSITE and shall immediately take such action as may be necessary to protect life and make safe property where such is in imminent peril.





## Section III

### Remuneration



## Section IV

### Scope of Work

## Section V

### Health, Safety and Environment

#### 1. Pre-Spud meetings and inspections

##### 1.1 Pre-Spud meeting

Prior to the Spud Date for each well, at a time to be agreed between the PARTIES, the CONTRACTOR'S REPRESENTATIVE shall meet with the COMPANY'S REPRESENTATIVE to:

- (a) review the safety procedures and requirements of the PROJECT and the WORKSITE, the Contractor Site Safety Programme, the Drilling Contractor's well site safety programme and any other safety plan submitted by or to the CONTRACTOR in accordance with this CONTRACT;
- (b) define the authorities and reporting relationships between the COMPANY and the CONTRACTOR (for operating, health and safety issues); and
- (c) outline potential problems and procedures to deal with such problems.

##### 1.2 Pre-Spud inspection

Following each meeting in accordance with paragraph 1.1 and prior to the Spud Date for the relevant well, at a time to be agreed between the PARTIES, the CONTRACTOR shall permit the COMPANY'S REPRESENTATIVE or any other representative of the COMPANY to conduct an inspection to ensure that the following requirements are satisfied:

- (a) the CONTRACTOR has made appropriate inspections and confirmed that all personnel, procedures and the CONTRACTOR'S EQUIPMENT required for the WORK are ready to start carrying out the WORK at the WORKSITE;
- (b) the CONTRACTOR'S EQUIPMENT is in full operating mode to the satisfaction of the COMPANY;
- (c) all necessary materials are on the WORKSITE;
- (d) all safety equipment is on hand; and
- (e) approval is given for work to proceed.

Following any such inspection, the CONTRACTOR will take any action required by the COMPANY to ensure that these are satisfied.

##### 1.3 Other inspections

The CONTRACTOR shall, at any time reasonably required by the COMPANY, permit the conduct of an inspection of any part of the WORKSITE used or occupied by the CONTRACTOR and the operations relating to the WORK:

- (a) by an independent inspector to ensure compliance with any health and safety provisions provided to the CONTRACTOR, the Contractor Site Safety Programme and the Drilling Contractor's well site safety programme;
- (b) by the COMPANY'S REPRESENTATIVE (after the meeting set out in paragraph 1.1 and during the carrying out of the WORK); and
- (c) by other authorities including health, fire, environmental, local and regulatory authorities to ensure compliance with their specific standards or requirements.



Following any such inspection, the CONTRACTOR will take any action required by the COMPANY to ensure compliance with the Contractor Site Safety Programme, the Drilling Contractor's well site safety programme, any health and safety provisions provided to the CONTRACTOR and any applicable law, standards and regulations.



## Section VI

### Company's General Obligations



## **SECTION VII**

### **PERFORMANCE SECURITY**

#### **PART A: BOND**

#### **PART B: PARENT COMPANY GUARANTEE**



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