

SECTION 3

**GENERAL CONDITIONS OF CONTRACT
FOR
CONSTRUCTION**

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

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1. DEFINITIONS

- (1) (a) "ASSOCIATES" means Brunei Shell Marketing Company Sendirian Berhad, Brunei LNG Sendirian Berhad and Brunei Shell Tankers Sendirian Berhad.
- (b) "COMPLETION DATE" means the date on which the WORK is required to have been completed in accordance with the CONTRACT, and in relation to a term contract means the expiry of that contract.
- (c) "CONTRACT" means the FORM OF AGREEMENT and the several documents listed therein.
- (d) "CONTRACT PRICE" means the sum or sums or unit prices to be ascertained and paid in accordance with the provisions of the CONTRACT.
- (e) "CONTRACT HOLDER" means the person appointed as such by the COMPANY and named as such in the CONTRACT, having the authorities set forth in the Clause headed REPRESENTATIVES OF THE COMPANY.
- (f) "COMPANY REPRESENTATIVE and/or COMPANY SITE REPRESENTATIVE(S)" means the person(s) appointed as such in writing by the CONTRACT HOLDER having the authorities set forth in the Clause headed REPRESENTATIVES OF THE COMPANY.
- (g) "CONTRACT MANAGER" means the person appointed as such by the CONTRACTOR and named as such in the CONTRACT, having the authorities set forth in the Clause headed REPRESENTATIVES OF THE CONTRACTOR.
- (h) "CONTRACTOR REPRESENTATIVE and/or CONTRACTOR SITE REPRESENTATIVE" means the person(s) appointed as such in writing by the CONTRACT MANAGER having the responsibilities and authorities set forth in the Clause headed REPRESENTATIVES OF THE CONTRACTOR.
- (i) "EQUIPMENT" means any consumables, equipment, facilities, implements, plant, sanitary facilities, supplies, temporary buildings or structures, tools, transport, utilities, watercrafts or other items required or necessary for the satisfactory performance of the WORK but excludes MATERIALS.
- (j) "HSE" means Health, Safety and Environment.
- (k) "HSE STANDARDS" means any safety laws, rules, regulations and any COMPANY HSE STANDARDS, industry standards, codes of practice and equipment manufacturers specifications applicable to the WORK and any revision thereof.
- (l) "COMPANY HSE STANDARDS" means those documented HSE Standards referred to in the current COMPANY HSE STANDARDS Master Index (Document Reference TMS0434) and detailed both in that Master Index and the associated modules.
- (m) "MATERIALS" means any goods, machinery, materials, consumables and other items to be incorporated or intended to be incorporated into the WORK.
- (n) "PERSONNEL" means the person or persons provided by the CONTRACTOR under the CONTRACT.
- (o) "SUBCONTRACT" means any contract between the CONTRACTOR and any party (other than the COMPANY or the CONTRACTOR'S employees) for the performance of any part of the WORK.
- (p) "SUBCONTRACTOR" means any party (other than the CONTRACTOR) to a SUBCONTRACT approved by the COMPANY.
- (q) "VEHICLE" means the unit of transportation provided by the CONTRACTOR in accordance with the requirements of the CONTRACT as more specifically described in Section 5 hereto.
- (r) "VARIATION" means any alteration to the WORK of a type specified in Clause headed VARIATION in the CONTRACT.

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- (s) "WORK" means all work or services to be performed by the CONTRACTOR in accordance with the CONTRACT.
- (t) "WORKSITE" means all places whatsoever on, under, in or through which the WORK is to be performed in accordance with the CONTRACT or which are provided to facilitate the performance of the WORK.

2. INTERPRETATION OF THE CONTRACT

- (1) No heading, index, title, subtitle or subheading of the CONTRACT shall limit, alter or affect the meaning or operation of the CONTRACT.
- (2) All correspondence, documentation and discussion with respect to the CONTRACT and the WORK shall be in the English language.
- (3) All instructions, notifications, agreements, authorisations, approvals and acknowledgments shall be in writing, which may be by telex or facsimile transfer. Any facsimile transfer shall be confirmed forthwith by despatch of the original correspondence in letter form.
- (4) No review, approval or acknowledgment by the COMPANY shall relieve the CONTRACTOR from any liability or obligation under the CONTRACT.
- (5) Words importing the singular only also include the plural and vice versa where the context so requires.

3. REPRESENTATIVES OF THE COMPANY

- (1) The CONTRACT HOLDER shall have the authority to supervise the management and execution of the CONTRACT by the CONTRACTOR, to supervise the CONTRACTOR on WORKSITE, to issue instructions, drawings, Variations to Contract and certificates within the terms of the CONTRACT, to appoint a COMPANY REPRESENTATIVE and/or COMPANY SITE REPRESENTATIVE(S) and to generally represent the COMPANY in respect of the CONTRACT. All such instructions, decisions and other communications given by the CONTRACT HOLDER shall bind the COMPANY.
- (2) The CONTRACT HOLDER shall periodically, and at such other times as the CONTRACT MANAGER may request, review the management and execution of the CONTRACT with the CONTRACT MANAGER.
- (3) The CONTRACT HOLDER may appoint a COMPANY REPRESENTATIVE who shall have the delegated authority to supervise the CONTRACTOR on WORKSITE and to issue instructions, drawings, Variations to Contract and certificates related to the WORK on WORKSITE. The CONTRACT HOLDER shall notify the CONTRACT MANAGER in writing of the appointment of the COMPANY REPRESENTATIVE.
- (4) The CONTRACT HOLDER may, in addition to or instead of appointing a COMPANY REPRESENTATIVE, appoint a COMPANY SITE REPRESENTATIVE who shall have the day-to-day supervision of the CONTRACTOR on WORKSITE or if the WORK is carried out in more than one area or place, the day-to-day supervision of the CONTRACTOR in any such area or place. The CONTRACT HOLDER shall notify the CONTRACT MANAGER in writing of the appointment of the COMPANY SITE REPRESENTATIVE(S) and, where applicable, of the designated area or place. The COMPANY SITE REPRESENTATIVE(S) shall have the authority to issue instruction to the CONTRACTOR but not the authority to issue drawings, Variations to Contract, certificates or to commit the COMPANY in any other way to anything involving extra payment to the CONTRACTOR.
- (5) The CONTRACT HOLDER, the COMPANY REPRESENTATIVE and the COMPANY SITE REPRESENTATIVE(S) shall at all times have access to the WORKSITE and all other places in and outside Brunei where activities related to the CONTRACT are or will be undertaken and the CONTRACTOR shall afford every facility and assistance in gaining such access.

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- (6) The COMPANY shall have the right to replace the CONTRACT HOLDER and the CONTRACT HOLDER shall have the right to replace the COMPANY REPRESENTATIVE and the COMPANY SITE REPRESENTATIVE(S) at any time at their sole discretion and they shall notify the CONTRACT MANAGER accordingly, in writing.
- (7) The supervision, inspections, acts or omissions of the CONTRACT HOLDER, the COMPANY REPRESENTATIVE, the COMPANY SITE REPRESENTATIVE(S) shall not in any manner relieve the CONTRACTOR from his duties, obligations and liabilities under the CONTRACT.
- (8) Only the CONTRACT HOLDER and the COMPANY REPRESENTATIVE are authorised to receive on behalf of the COMPANY, notifications, information and decisions of the CONTRACTOR under the CONTRACT.
- (9) Instructions, information and decisions from anyone other than the CONTRACT HOLDER, the COMPANY REPRESENTATIVE or COMPANY SITE REPRESENTATIVE(S) acting within the terms of their respective delegated authority shall have no contractual force or validity even if they are written on COMPANY headed note paper.

4. REPRESENTATIVES OF THE CONTRACTOR

- (1) The CONTRACT MANAGER shall manage the execution of the CONTRACT, supervise the WORK on WORKSITE and have the authority to commit the CONTRACTOR to any course of action within the rights and obligations of the CONTRACTOR under the CONTRACT and to generally represent the CONTRACTOR in respect of the CONTRACT.
- (2) The CONTRACT MANAGER shall notify the COMPANY of all decisions of the CONTRACTOR under the CONTRACT. All decisions notified by the CONTRACT MANAGER to the COMPANY shall for the purpose of the CONTRACT constitute acts of the CONTRACTOR and shall bind the CONTRACTOR.
- (3) The CONTRACT MANAGER shall periodically, and at such other times as the CONTRACT HOLDER may request, review the management and execution of the CONTRACT with the CONTRACT HOLDER.
- (4) The CONTRACT MANAGER may delegate to a CONTRACTOR REPRESENTATIVE the supervision of the WORK on the WORKSITE. The CONTRACTOR REPRESENTATIVE shall have the authority to commit the CONTRACTOR to any course within the rights and obligations of the CONTRACTOR related to the WORK carried out under his supervision.
- (5) The CONTRACT MANAGER may, in addition or instead of appointing a CONTRACTOR REPRESENTATIVE, delegate to a CONTRACTOR SITE REPRESENTATIVE the day-to-day supervision of the WORK on WORKSITE or, if the WORK is carried out in more than one area or place, the day-to-day supervision of the WORK in any such area or place. The CONTRACTOR SITE REPRESENTATIVE(S) shall have the authority to commit the CONTRACTOR to any course of action within the rights and obligations of the CONTRACTOR related to the WORK carried out under their supervision.
- (6) The CONTRACTOR REPRESENTATIVE and CONTRACTOR SITE REPRESENTATIVE(S) shall not be appointed and neither they nor the CONTRACT MANAGER shall be replaced without the prior written agreement of the CONTRACT HOLDER, which shall not be unreasonably withheld.
- (7) The CONTRACT MANAGER, the CONTRACTOR REPRESENTATIVE or the CONTRACTOR SITE REPRESENTATIVE(S) may be replaced at COMPANY'S sole reasonable discretion and at CONTRACTOR'S cost.
- (8) The CONTRACT MANAGER or the CONTRACTOR REPRESENTATIVE may receive, on behalf of the CONTRACTOR, notifications, information and decisions of the COMPANY made under the CONTRACT and notification to the CONTRACT MANAGER or the CONTRACTOR REPRESENTATIVE shall be deemed to be notification to the CONTRACTOR.

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- (9) The CONTRACT MANAGER, the CONTRACTOR REPRESENTATIVE and the CONTRACTOR SITE REPRESENTATIVE(S) shall have such knowledge of the English, Malay and such other language as may be required for the fulfillment of their duties.

5. THE WORK

- (1) The CONTRACTOR shall comply with all instructions with regard to the WORK that the COMPANY in its absolute discretion may from time to time issue. The CONTRACTOR shall perform the WORK in accordance with the requirements of the CONTRACT, in accordance with the best industry standards, in compliance with all relevant laws and regulations, and in such a manner as will always safeguard and protect the COMPANY'S interests.
- (2) The CONTRACTOR shall provide all MATERIALS, EQUIPMENT, PERSONNEL, supervision, engineering and other services and all other things required or necessary for the satisfactory performance and completion of the WORK except those items specified in SECTION 6 – PROVISIONS BY COMPANY AND CONTRACTOR as items to be provided by the COMPANY.
- (3) The CONTRACTOR shall be responsible for the timely provision of all matters referred to in sub-clause (2) herein including the timely ordering and delivery of all MATERIALS and EQUIPMENT to be provided by the CONTRACTOR and for the timely call off of the COMPANY supplied MATERIALS and EQUIPMENT (in accordance with procedures set out in the CONTRACT) in order to ensure that performance of the WORK is not delayed or impeded.
- (4) If by reason of any accident or failure or other event occurring to or in connection with the WORK or any part thereof any emergency remedial or other work or repair is in the opinion of the COMPANY urgently necessary for security, safety or for any other purpose which justifies immediate action, then as soon as may be reasonably practicable after such occurrence the COMPANY shall notify the CONTRACTOR to that effect. Where practicable the CONTRACTOR shall be given an opportunity to perform such work but where the CONTRACTOR is unable or is unwilling to perform that work forthwith then the COMPANY may carry out all work or repair by itself or allocate to other Contractors with or without existing Contract with the COMPANY as the COMPANY considers necessary. The COMPANY shall be entitled to recover from the CONTRACTOR all costs incurred by the COMPANY in so doing and shall adjust the CONTRACT PRICE and/or the COMPLETION DATE at COMPANY'S sole reasonable discretion.
- (5) Without prejudice to the CONTRACTOR'S other obligations with respect to MATERIALS under the CONTRACT, the CONTRACTOR shall ensure that all MATERIALS shall, when installed, be new and unused, of correct design and workmanship, within the specifications, or if no such specifications exist, fully suitable for the use intended and the CONTRACTOR shall obtain in the name of the COMPANY the best obtainable suitable guarantees and warranties for MATERIALS provided by the CONTRACTOR in this respect from their suppliers, valid for a period which shall at least be compatible with the requirements of Clause headed RESPONSIBILITY FOR THE WORK.

The foregoing does not relieve the CONTRACTOR of any of its obligations under Clause headed RESPONSIBILITY FOR THE WORK.

- (6) The CONTRACTOR shall use and shall cause any SUBCONTRACTOR to use such EQUIPMENT as will be adequate, in quality and number, to carry out the WORK in accordance with the CONTRACT. The CONTRACTOR shall maintain and operate all EQUIPMENT strictly in accordance with the manufacturer's printed instructions. The COMPANY shall have the right to inspect all EQUIPMENT records.

If, in the opinion of the COMPANY any item of EQUIPMENT is not or is no longer suitable for the purpose intended, then the CONTRACTOR shall at no additional cost to the COMPANY and at the option of the COMPANY, either make adequate repairs or arrange for immediate replacement.

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If, in the opinion of the COMPANY the number of items of EQUIPMENT is inadequate, then the CONTRACTOR shall provide the necessary additional EQUIPMENT at no cost to the COMPANY to ensure timely completion of the WORK.

(7) **Non-Exclusivity**

- (a) The CONTRACT shall not confer on the CONTRACTOR an exclusive right to provide any or all of the WORK described in SECTION 4 – SCOPE OF WORK.
- (b) The COMPANY shall have the right at its sole discretion to award contracts to others for the provision of the WORK described in SECTION 4 – SCOPE OF WORK, or to perform the WORK itself.

- (8) Save as provided elsewhere in the CONTRACT, in the event that the rate of progress of the WORK or any part of it is at any time, in the opinion of the COMPANY, too slow to ensure completion by the COMPLETION DATE then (without prejudice to any other rights and remedies of the COMPANY), the COMPANY may require the CONTRACTOR, and the CONTRACTOR shall take immediate steps at its own cost, to expedite progress of the WORK (including without limitation working overtime or using additional personnel or additional or better EQUIPMENT on the WORK) so as to ensure completion of the WORK by the COMPLETION DATE.

6. THE RESPONSIBILITY OF THE CONTRACTOR TO INFORM ITSELF

- (1) The CONTRACTOR warrants that it has satisfied itself as to the nature of the WORK, including but not limited to the supervision, services and all labour, MATERIALS and EQUIPMENT required for the performance of the WORK, the correctness and sufficiency of the rates and prices stated in SECTION 8 – SCHEDULE OF PRICES, general and local conditions especially ground, climatic, sea, other water and weather conditions and all other matters which could affect the progress or performance of the WORK. Any failure by the CONTRACTOR to take account of matters which affect the WORK shall not relieve the CONTRACTOR from its obligations under the CONTRACT, nor entitle it to claim against the COMPANY.
- (2) The COMPANY shall not be liable for any inaccuracy or insufficiency in the information available or used by the CONTRACTOR which directly affects the performance of the WORK save for any confidential information that is supplied by the COMPANY under the CONTRACT and it is impracticable for the CONTRACTOR to check such information and which the CONTRACTOR is not required under SECTION 4 – SCOPE OF WORK to check.
- (3) The CONTRACTOR assumes all responsibility for WORK performed by the CONTRACTOR including WORK based upon data and information not contained in the CONTRACT.

7. THE RESPONSIBILITY OF THE CONTRACTOR TO INFORM THE COMPANY

- (1) The CONTRACTOR shall notify the COMPANY as soon as possible of all things in the CONTRACT which in the opinion of the CONTRACTOR appear to be deficiencies or omissions or contradictions or ambiguities or conflicts with applicable law. The COMPANY shall review and issue instructions, if any, before the CONTRACTOR proceeds with any part of the WORK affected.
- (2) The CONTRACTOR shall notify the COMPANY immediately whenever accidents, incidents or near miss incidents occur. The CONTRACTOR shall also notify the COMPANY of any other incidents arising out of the performance of the CONTRACT which may affect the interests or other operations of the COMPANY, its ASSOCIATES or third parties.
- (3) The CONTRACTOR shall notify the COMPANY immediately of any impending or actual stoppages of WORK, industrial disputes or other matters affecting or likely to affect the performance of the CONTRACT or lead to a delay in the time schedule referred to in Clause headed SCHEDULING.

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- (4) The CONTRACTOR shall keep the COMPANY fully informed of the progress of the WORK and shall comply with the reporting requirements set out in the CONTRACT.

8. USE OF SHELL PRODUCTS

- (1) The CONTRACTOR shall use or cause to be used only "Shell" fuels and lubricants and other "Shell" products in connection with the performance of the WORK to the extent that these are readily available and at prices and conditions generally competitive with other brands. The CONTRACTOR shall notify and seek COMPANY approval prior to purchasing other brands.
- (2) The CONTRACTOR may use other lubricants where these are specified by particular equipment and machinery manufacturers.

9. SUBCONTRACTS

- (1) The CONTRACTOR shall ensure that the rights of the COMPANY and the requirements in the CONTRACT regarding SUBCONTRACTORS are effectively provided for in any SUBCONTRACT.
- (2) The CONTRACTOR shall not subcontract the whole or the majority of the WORK but where a SUBCONTRACT is provided for in the CONTRACT or where the CONTRACTOR wishes to enter into a SUBCONTRACT, then before the CONTRACTOR enters into any SUBCONTRACT, the COMPANY shall be given an adequate opportunity to review the form of the SUBCONTRACT, the choice of the SUBCONTRACTOR, the part of the WORK which shall be covered under the SUBCONTRACT, and any other details the COMPANY shall request or specify. The CONTRACTOR shall not enter into the proposed SUBCONTRACT until the requirements of this Clause have been met and until the COMPANY has given its written consent to the proposed SUBCONTRACT.
- (3) No SUBCONTRACT shall bind or purport to bind the COMPANY and each SUBCONTRACT shall provide for its immediate termination in the event of termination of the CONTRACT or suspension in the event of suspension of the WORK. Each SUBCONTRACT shall provide that it shall be assigned to the COMPANY or its nominee if the COMPANY gives written notice to the SUBCONTRACTOR that it requires such an assignment if the COMPANY terminates the CONTRACT. Unless such an assignment takes place the SUBCONTRACTOR shall only be responsible to the CONTRACTOR, who shall in turn be responsible to the COMPANY.
- (4) The CONTRACTOR shall be responsible for all work, acts, defaults and breaches of duty of any SUBCONTRACTOR or its employees or agents as fully as if they were the work, acts, defaults or breaches of duty of the CONTRACTOR.
- (5) Where applicable the CONTRACTOR shall ensure that appropriate Brunei organisations and suppliers are given full and fair opportunity to tender for the supply of goods and services.
- (6) The CONTRACTOR agrees that it shall furnish to the COMPANY, if requested, satisfactory evidence that all SUBCONTRACTORS (including suppliers to the CONTRACTOR) have been paid on time and in full for work done or goods supplied in connection with the performance of the WORK. If such satisfactory evidence is not supplied then the COMPANY shall not be bound to make any further payment to the CONTRACTOR for that part of the WORK until it is supplied.
- (7) Furthermore the COMPANY may deduct from payments due to CONTRACTOR the amount not paid to such SUBCONTRACTORS, and may then make such payment directly to such SUBCONTRACTORS. Such direct payment to SUBCONTRACTORS shall be deemed to be payment under the CONTRACT and the CONTRACTOR shall have no further entitlement to such amount.
- (8) Nominated Subcontractor

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- (a) The COMPANY may request the CONTRACTOR to enter into SUBCONTRACTS with SUBCONTRACTORS nominated by the COMPANY. The CONTRACTOR shall not be bound to enter into a SUBCONTRACT with such a nominated SUBCONTRACTOR if the CONTRACTOR has reasonable objection to the nomination. The COMPANY shall in that event provide another nominated SUBCONTRACTOR and the CONTRACTOR shall have the same right to raise reasonable objection or the CONTRACTOR may nominate a subcontractor acceptable to the COMPANY.
- (b) The CONTRACTOR shall be responsible for finding another SUBCONTRACTOR that is acceptable to the COMPANY if any nominated SUBCONTRACTOR fails either totally or partially to perform any SUBCONTRACT. The COMPANY shall only pay to the CONTRACTOR what it would have been bound to pay had such nominated SUBCONTRACTOR correctly performed the SUBCONTRACT in question. Any additional costs incurred by the CONTRACTOR arising from the removal or replacement of any nominated SUBCONTRACTOR and/or in having the relevant activities performed by another shall be for the account of the CONTRACTOR.

10. PERSONNEL OF THE CONTRACTOR AND SUBCONTRACTORS

- (1) The CONTRACTOR warrants that it has and shall throughout the CONTRACT have the experience and capability including sufficient and competent supervisors and other PERSONNEL to efficiently and expeditiously perform the WORK. If in the opinion of the COMPANY there is any inadequacy in the number or competence of persons engaged in performing the WORK, then the CONTRACTOR shall on request, at no extra cost to the COMPANY, provide additional or alternative competent persons.
- (2) The CONTRACTOR further warrants that it shall ensure that any persons designated as "Key Personnel" in the CONTRACT shall not be replaced without the prior written approval of the COMPANY. In order to ensure that the continuity of the WORK is maintained, the approved successor shall work alongside the replaced Key Personnel for a reasonable handover period, at no cost to the COMPANY.
- (3) All supervisory PERSONNEL of the CONTRACTOR and any SUBCONTRACTOR shall be able to read, write and communicate in English and shall be able to directly communicate fluently in the language of the PERSONNEL they are supervising. Where all supervised PERSONNEL do not speak a common language there shall be sufficient supervisory PERSONNEL at all WORKSITES at all times to be able to communicate directly with all supervised PERSONNEL.
- (4) The CONTRACTOR shall comply with all applicable laws, rules and regulations relating to the engagement of PERSONNEL, local or otherwise, for their transport, housing, maintenance, payment of wages, board and lodging.
- (5) The CONTRACTOR shall at its own cost forthwith replace any of its PERSONNEL or agents or any SUBCONTRACTOR or procure the replacement of any person employed by any SUBCONTRACTOR if the aforesaid person failed to comply with the COMPANY'S safety or other rules or regulations or if the COMPANY in its sole discretion considers it to be in its best interests to do so.
- (6) The CONTRACTOR shall ensure that all PERSONNEL of the CONTRACTOR and any SUBCONTRACTOR engaged on the CONTRACT comply with all relevant labour and immigration laws, rules and regulations and where required are in possession of a valid work permit and appropriate vaccination certificates for the duration of the CONTRACT. Details of such work permits shall, if the COMPANY so requests, be submitted to the COMPANY prior to the person being engaged on the WORK.
- (7) The CONTRACTOR shall ensure that all its PERSONNEL or agents (including those of its SUBCONTRACTORS) have successfully completed a medical examination before they shall be employed under the CONTRACT. In addition, particular screening shall be conducted on those employees or agents (including those of its SUBCONTRACTORS) who shall be involved in specific occupational health hazards. The COMPANY shall have

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the right during the course of the CONTRACT to require the removal of any CONTRACTOR PERSONNEL who is diagnosed to be suffering from any communicable and/or contagious diseases and the CONTRACTOR shall provide suitable replacement PERSONNEL (such PERSONNEL shall be required to undergo and pass a similar medical examination) at the CONTRACTOR'S expense.

The CONTRACTOR shall forthwith, upon written request by COMPANY, deliver to COMPANY'S Chief Medical Officer results of such medical examination of any of the CONTRACTOR's PERSONNEL or agents (including those of its SUBCONTRACTORS).

- (8) The CONTRACTOR warrants that any major new work, whether said work is related to a new or an existing contract, will not adversely affect the CONTRACTOR'S allocation of its own fully qualified and experienced personnel and other resources necessary to carry out the WORK in accordance with the requirements of the CONTRACT.
- (9) The COMPANY shall have the right to require the CONTRACTOR in writing to remove any PERSONNEL or agent of either the CONTRACTOR or its SUBCONTRACTOR from any location of the COMPANY or from any site where WORK are being performed without the COMPANY offering any reason for the request providing that such right is not exercised frivolously or vexatiously. The PERSONNEL or agent shall be removed forthwith and shall not be employed on any other contract between the CONTRACTOR and the COMPANY or sited in any location or premises of the COMPANY without the prior written approval of the COMPANY. The COMPANY shall give the CONTRACTOR the opportunity to make representations to cancel the removal but only after such removal has been effected. A request by the COMPANY for the removal of PERSONNEL or agents of either the CONTRACTOR or its SUBCONTRACTOR shall not itself give rise to disciplinary action against such persons. Within 24 (twenty four) hours or such longer time as agreed between the COMPANY and CONTRACTOR to be practical, those persons who have been removed from the WORK shall be replaced, if the COMPANY so requires, by other similar and suitably qualified persons acceptable to the COMPANY. All costs incurred in the removal of any person shall be for the sole account of the CONTRACTOR.
- (10) The CONTRACTOR agrees that upon request it shall furnish to the COMPANY as soon as possible, satisfactory evidence that the CONTRACTOR'S PERSONNEL who are engaged in the WORK have been paid on time and in full for their wages and for any other payments required by law to be paid to them. In the event that the CONTRACTOR does not provide such evidence, the COMPANY may make such payments directly to such PERSONNEL or to any persons on their behalf or withhold such amounts that COMPANY deems appropriate until COMPANY receives evidence that payment of wages has been made to the CONTRACTOR's PERSONNEL. Any such payments made by the COMPANY shall be deemed to be payments to the CONTRACTOR under the CONTRACT and the CONTRACTOR shall have no further entitlement to any amounts so paid.
- (11) In the event the CONTRACTOR fails/had failed to pay its employees for their wages in full or for any other payments required by law to be paid to them, the COMPANY at its sole discretion shall have the right to terminate the CONTRACT.
- (12) Unprofessional Conduct
 - (a) Notwithstanding any other provisions in the CONTRACT, CONTRACTOR warrants that any personnel employed or engaged otherwise by the CONTRACTOR to perform any task in connection with the WORK shall carry out their duties in accordance with good and generally acceptable practices and procedures of their trade or profession and in accordance with the professional and ethical standards of that trade or profession.
 - (b) In the event that the CONTRACTOR or its personnel or any other person engaged by the CONTRACTOR to perform tasks in connection with the WORK, in the reasonable opinion of the COMPANY act in contravention of sub-clause (12) herein, such act(s) shall constitute breach of CONTRACT by the CONTRACTOR, and without prejudice to any other remedies which COMPANY may have under the provisions of the CONTRACT, COMPANY shall be entitled to terminate the CONTRACT summarily without notice or compensation to CONTRACTOR.

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11. COOPERATION WITH OTHERS

- (1) The CONTRACTOR shall co-operate fully with the COMPANY and other contractors of the COMPANY and shall afford them reasonable access to the WORKSITE in order to perform work under other contracts with the COMPANY.

12. VARIATION

- (1) The COMPANY shall issue a VARIATION whenever it is required to do so by any other clause in SECTION 3 – GENERAL CONDITIONS OF CONTRACT.

In addition the COMPANY may by issuing a VARIATION at any time during the period of the CONTRACT order any change in the form, quality or quantity of the WORK which the COMPANY wishes to make.

- (2) The following shall not be VARIATIONS:-

Instructions, interpretations or decisions or acts of the COMPANY which are:

- (a) to achieve compliance with the CONTRACT by the CONTRACTOR, or
 - (b) to require the CONTRACTOR to correct errors, omissions, poor engineering, defective workmanship or any other failure of the CONTRACTOR to comply with the CONTRACT, or
 - (c) to avoid failure by the CONTRACTOR to achieve compliance with the CONTRACT.
- (3) The COMPLETION DATE shall be subject to adjustment only as a result of a VARIATION.
 - (4) A VARIATION shall in no way affect the rights or obligations of the parties except as expressly provided for in that VARIATION. Any VARIATION shall be governed by all the provisions of the CONTRACT.
 - (5) If the CONTRACTOR considers that an occurrence has taken place that should give rise to a VARIATION or considers that any instruction, interpretation, decision or act of the COMPANY should give rise to a VARIATION, then the CONTRACTOR shall request immediately in writing that the COMPANY shall issue a VARIATION in respect of such claim. If the CONTRACTOR does not request a VARIATION within 28 (twenty eight) days of the said occurrence, instruction, interpretation, decision or act then the COMPANY shall be released and discharged from all liability arising from or in connection with the said occurrence, instruction, interpretation, decision or act and the claim in question shall be deemed to be time barred. The CONTRACTOR shall make such a request at the earliest practicable time before proceeding with any WORK affected. The COMPANY shall then notify the CONTRACTOR within 14 (fourteen) days of receipt of such a request whether he thinks the said occurrence, instruction, interpretation, decision or act does or does not justify a VARIATION.

The CONTRACTOR shall keep and maintain and cause any SUBCONTRACTOR to keep and maintain full records relating to any such claim and necessary to support such claim, and shall keep the COMPANY informed of outstanding claims on a monthly basis.

- (6) The cost of any VARIATION issued by the COMPANY under Clause 12(1) herein shall be valued at the rates set out in Section 8 SCHEDULE OF PRICES; or in accordance with the star rates clause as applicable or in the absence of any applicable rates or star rate clause, at such rates as may be agreed in writing between the COMPANY and the CONTRACTOR; or failing such an agreement, at such rates as may be provisionally determined by the COMPANY pending the appointment and decision of a mutually acceptable expert.

13. INSPECTION AND TESTING

- (1) The provisions of this Clause are in addition to and without prejudice to any more detailed provisions for inspection and/or testing contained or referred to in the CONTRACT.

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- (2) 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 to inspect and test all EQUIPMENT, MATERIALS and VEHICLES provided and all WORK or services or documentation relating thereto performed by the CONTRACTOR or any SUBCONTRACTOR.
- (3) The CONTRACTOR, at its cost, shall carry out such inspection or tests on any EQUIPMENT, MATERIALS or VEHICLES provided by the CONTRACTOR or on any part of the WORK as the COMPANY may from time to time require and the COMPANY shall have the right to witness and verify any such inspection and/or tests. The CONTRACTOR shall give the COMPANY such period of prior notice of any such inspections and/or tests as is specified in the CONTRACT and in the event that no period is specified not less than forty eight (48) hours notice shall be given.
- (4) No part of the WORK shall be covered up or put out of view without the written approval of the COMPANY. If any part of the WORK is covered before the required inspection or witnessing of testing without the written consent of the COMPANY then, if required by the COMPANY, the part of the WORK shall be opened or uncovered for inspection or witnessing of testing and re-covered by the CONTRACTOR.
- (5)
 - (a) If the COMPANY becomes aware of any matters indicating that any workmanship, services, EQUIPMENT, MATERIALS, VEHICLES and/or any part of the WORK may not comply with the CONTRACT, then the COMPANY may order the CONTRACTOR to cease the WORK in order to allow such matters to be investigated. The COMPANY may conduct such investigations by itself and/or by a third party, and the COMPANY may also instruct the CONTRACTOR to carry out such investigations either concurrently or independently. In all cases the CONTRACTOR shall cooperate with the utmost diligence with such investigations. Such investigations may include tests and opening up.
 - (b) If such investigations under sub-clauses (2), (3) or (5) (a) herein do reveal non compliance with the CONTRACT, then the COMPANY may order further investigation and/or further opening up of the WORK to determine the full extent of such non-compliance.
 - (c) As an alternative to the COMPANY's right in sub-clause (6) herein the COMPANY may by issue of a VARIATION make any changes to SECTION 4 – SCOPE OF WORK and/or SECTION 5 – SPECIFICATION AND DRAWINGS and to WORK already completed that are in his opinion necessary or expedient to cure or mitigate the effects of the non-compliance in question. Notwithstanding the provisions of Clause headed RESPONSIBILITY OF CONTRACTOR TO INFORM ITSELF, any VARIATION ordered under this sub-clause (5) (c) herein shall neither entitle the CONTRACTOR to claim any extra cost nor an extension to the COMPLETION DATE.
 - (d) If the initial investigations show in the COMPANY'S opinion that there was compliance with the CONTRACT, then the COMPANY shall issue a VARIATION in respect of the unavoidable cost incurred as a result of stoppage of the work and initial investigations.
- (6) The COMPANY shall have the right to reject any workmanship, services, EQUIPMENT, MATERIALS, VEHICLES and any part of the WORK which does not conform with the CONTRACT. The CONTRACTOR shall remove promptly any items so rejected and shall immediately repair or replace the same and shall carry out such further inspections or tests on other parts of the WORK as the COMPANY may require to ensure that there are no similar parts of the WORK that fail to conform with the CONTRACT.
- (7) The CONTRACTOR shall be responsible for all costs of repair or replacement and for costs of uncovering, reinstating, testing and inspection except as provided under this Clause.

Subject to sub-clause (5) herein where the COMPANY require any tests or inspections or requires the CONTRACTOR to uncover or open up any part of the WORK for any inspection or testing that is additional to the requirements of the CONTRACT and is not required as a result of a failure to conform with the CONTRACT on some other similar part

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of the WORK, and in either case where the inspection or test shows that the part of the WORK concerned is in accordance with the CONTRACT, then the COMPANY shall authorise a VARIATION for such testing and inspection and for uncovering and reinstating such WORK.

- (8) No failure on the part of the COMPANY to inspect, witness or test the WORK nor failure 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.

14. SCHEDULING

- (1) The CONTRACTOR shall be responsible at all times for scheduling, progress reporting, forecasting and independently controlling progress to achieve the expeditious and efficient performance of the WORK in accordance with the CONTRACT.
- (2) Not later than 1 (one) week (unless the CONTRACT otherwise provides) before the date for commencement of the WORK the CONTRACTOR shall, after close consultation with the COMPANY, produce a programme for the WORK. This programme shall be revised by the CONTRACTOR from time to time at the COMPANY'S request, or as may be necessary to take account of any VARIATIONS.
- (3) The CONTRACTOR shall obtain prior approval from the COMPANY on the current programme prepared by the CONTRACTOR for the WORK before it is implemented.
- (4) Where applicable, the COMPANY shall, in consultation with the CONTRACTOR, produce a programme for the WORK and shall revise it from time to time as circumstances require or as may be necessary to take account of any VARIATIONS.

15. FORCE MAJEURE

- (1) Neither party shall be liable for any failure to perform any obligation under the CONTRACT to the extent to which performance is prevented, hindered or delayed by a force majeure occurrence. A force majeure occurrence shall mean an occurrence beyond the control and without the aid or fault or negligence, or dilatory action, or inaction of the party affected and which by the exercise of reasonable diligence the said party is unable to prevent or provide against, including without limiting the generality of the foregoing, war (declared or undeclared), insurrection, acts of terrorism, acts or orders of governments or governmental bodies (including legislative bodies, Local and Port Authorities) subsequent to the commencement date, maritime disasters, boycotts or strikes other than strikes limited to the workforce of, or provided by, the CONTRACTOR and/or SUBCONTRACTORS.

A force majeure occurrence shall not include the following:-

- (a) breakdown of any item of EQUIPMENT used by the CONTRACTOR or any SUBCONTRACTOR;
 - (b) contractual commitment made by the CONTRACTOR or any SUBCONTRACTOR to third parties which limits the ability of the CONTRACTOR or any SUBCONTRACTOR to perform the WORK;
 - (c) inclement weather typical of the operating area, excluding extra ordinary bad weather;
 - (d) inability to hire or utilise staff or personnel due to difficulties in obtaining or withdrawal of governmental quotas, licences or permits.
 - (e) acts or orders of governments or governmental bodies (including legislative bodies, local and Port Authorities) prior to the commencement date.
- (2) Should either party be delayed in performing the CONTRACT by a force majeure occurrence, that party shall give written notice to the other party forthwith giving the full particulars including the date of commencement of such force majeure occurrence, shall

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use its best efforts to remedy the situation forthwith and shall notify the other party of the steps being taken to remedy the situation.

- (3) Should the CONTRACTOR be delayed in the performance of the WORK by an occurrence which the CONTRACTOR considers is a force majeure occurrence and the CONTRACTOR is unable to avoid or prevent such delay by any reasonable effort, within 7 (seven) days of such occurrence the CONTRACTOR shall request in writing that the COMPANY initiate the procedure for a VARIATION. If the COMPANY at its sole discretion agrees that the occurrence is a force majeure occurrence, then, as soon as practicable the COMPANY shall authorise a VARIATION making any required adjustment to the COMPLETION DATE to allow for the extent to which the delay is due to a force majeure occurrence and cannot be reduced by the CONTRACTOR carrying out its obligations to reschedule under the CONTRACT. No amounts shall be payable by the COMPANY to the CONTRACTOR in respect of any such periods of delay except as provided in sub-clause (5) herein.
- (4) Where the CONTRACTOR is delayed in the performance of the WORK by a force majeure occurrence for a period less than 30 (thirty) consecutive days, the COMPANY, when authorising any VARIATION in accordance with sub-clause (3) herein shall make no adjustment to the CONTRACT PRICE for such delay.
- (5) Where the CONTRACTOR is delayed in the performance of the WORK by a force majeure occurrence for a period of 30 (thirty) or more consecutive days, the COMPANY, when authorising any VARIATION in accordance with sub-clause (3) herein, shall make an adjustment to the CONTRACT PRICE only for such extra costs as the CONTRACTOR unavoidably incurs by reason of such force majeure occurrence to the extent that the CONTRACTOR cannot reduce or mitigate them by exercising best endeavours to do so or the COMPANY may terminate the CONTRACT and the COMPANY shall pay the CONTRACTOR any sum due prior to the date of commencement of such force majeure occurrence.
- (6) If any period of the force majeure occurrence exceeds 90 (ninety) consecutive days either party may request to terminate the CONTRACT in accordance with the Clause headed TERMINATION, DISCONTINUANCE OF THE WORK AND DEFAULT.

16. SUSPENSION

- (1) The COMPANY may, by notice instruct the CONTRACTOR to suspend the WORK or any part of the WORK. The CONTRACTOR shall cease work on such suspended part of the WORK on the date specified in the notice, but shall continue to perform any unsuspended part of the WORK. During the suspension, the CONTRACTOR shall properly protect and secure the suspended part of the WORK so far as is necessary in the opinion of the COMPANY.
- (2) If the COMPANY suspends all or any part of the WORK other than:
 - (a) for the proper execution of the WORK, or any part thereof, or
 - (b) because of some mistake, error or default on the part of the CONTRACTOR, or
 - (c) for non-compliance to the Health, Safety and Environment requirements of the CONTRACT, for the protection of the environment, or
 - (d) for non-compliance with Milestone Zero, or
 - (e) otherwise provided for in the CONTRACT;

then for the part of the WORK suspended, the COMPANY shall for items (a) to (e) below reimburse the CONTRACTOR only for such extra costs as the CONTRACTOR unavoidably incurs by reason of such suspension to the extent that the CONTRACTOR cannot reduce or mitigate them by exercising best endeavours to do so:-

- (a) the CONTRACTOR'S personnel designated as "Key Personnel" in the CONTRACT;
- (b) the CONTRACTOR'S facilities dedicated to the WORK, to the extent that the CONTRACTOR is unable to otherwise use said facilities during the period of

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suspension and provided that such circumstances have been acknowledged in advance by the COMPANY;

- (c) the CONTRACTOR'S EQUIPMENT dedicated to the WORK, provided that their retention on the WORK has been authorised in advance by the COMPANY;
- (d) the protection, preservation and storage of the WORK during the period of suspension, provided the protection, preservation and storage have been authorised in advance by the COMPANY; and
- (e) other items directly related to the suspended part of the WORK, if authorised in advance by the COMPANY.

Any other costs, loss or damage sustained by the CONTRACTOR from suspension of any part of the WORK shall be for the account of the CONTRACTOR.

- (3) The COMPANY shall after withdrawal of the suspension determine the effects of the suspension by making any adjustments to the CONTRACT PRICE and/or the COMPLETION DATE for such suspension in accordance with the provisions of Clause headed VARIATION.
- (4) The COMPANY may, at any time, authorise resumption of the suspended part of the WORK by notifying the CONTRACTOR of the part of the WORK to be resumed and the effective date of withdrawal of the suspension. WORK shall be resumed as promptly as possible by the CONTRACTOR after receipt of such notification.
- (5) If any period of suspension exceeds 90 (ninety) consecutive days the CONTRACTOR may request the COMPANY either to terminate the CONTRACT or to discontinue the suspended part of the WORK in accordance with Clause headed DISCONTINUANCE AND TERMINATION hereof or to notify the CONTRACTOR of the date when the suspension shall be lifted. If the COMPANY does not within 7 (seven) days of receipt of the CONTRACTOR'S request either terminate the CONTRACT or discontinue the suspended part of the WORK or give a firm date for resumption of the suspended part of the WORK, then the CONTRACTOR may terminate the CONTRACT (provided the COMPANY has suspended the whole CONTRACT) or terminate its obligations with respect to the suspended part of the WORK as the case may be by written notice to the COMPANY.

17. TERMINATION, DISCONTINUANCE OF THE WORK AND DEFAULT

- (1) In the event that the CONTRACTOR does not perform any part of the WORK in a manner that is satisfactory to the COMPANY or in the event that the CONTRACTOR does not progress with the WORK in a manner that is satisfactory to the COMPANY or in the event the COMPANY considers that the CONTRACTOR has failed, refused or is unable to comply with any of the requirements of the CONTRACT the COMPANY may;
 - (a) terminate the CONTRACT or
 - (b)
 - (i) give notice of discontinuance to the CONTRACTOR in respect of part of the WORK and/or
 - (ii) give notice to the CONTRACTOR specifying the matter considered to be unsatisfactory or otherwise a breach of terms of the CONTRACT and requiring the CONTRACTOR immediately to take such remedial action as shall be required by the COMPANY.

in the event that the CONTRACTOR does not forthwith carry out remedial action in accordance with the notice served under (b) (ii) herein in a manner that is satisfactory to the COMPANY or in the event that the CONTRACTOR does not make progress with such remedial action that is satisfactory to the COMPANY or the COMPANY considers that the CONTRACTOR has failed, refused or is unable to carry out such remedial action in accordance with its requirements then the COMPANY shall have the right to either give notice of discontinuance to the CONTRACTOR in respect of part of the WORK or terminate the CONTRACT.

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The rights of the COMPANY under this provision are in addition to any other rights which the COMPANY may have under the CONTRACT or at law.

- (2) In the event of Garnishee proceedings being served on the COMPANY in respect of a judgment against the CONTRACTOR or the CONTRACTOR becoming bankrupt or making a composition or arrangement with its creditors or having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional Liquidator, Receiver or Manager or Administrator of its business or undertaking appointed, or having possession taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, the COMPANY shall have the right to terminate the CONTRACT by giving the CONTRACTOR notice of termination.
- (3) In addition to the COMPANY'S rights under sub-clause (1) and (2) herein the COMPANY shall also have the right at any time and at its absolute discretion to either discontinue part of the WORK by giving the CONTRACTOR notice of discontinuance or to terminate the CONTRACT by giving the CONTRACTOR notice of termination.
- (4) In the event of the COMPANY giving the CONTRACTOR notice of termination of the CONTRACT or of discontinuance of part of the WORK such notice shall become effective immediately upon delivery of the notification to the CONTRACTOR or on such later date as specified in the notification, whereupon the CONTRACTOR at such date shall immediately:
 - (a) discontinue the WORK or part of the WORK specified in the notice;
 - (b) allow the COMPANY or its nominee full right of access to the WORKSITE so as to remove and/or take over the WORK or the relevant part of the WORK so far completed and to remove and/or to take over possession of all EQUIPMENT and MATERIALS in connection with all or part of the WORK and to allow the COMPANY to obtain completion by another contractor;
 - (c) assign to the COMPANY, or its nominee, to the extent desired by the COMPANY, all or the relevant part of the rights, titles and liabilities relating to the WORK which the CONTRACTOR may have acquired;
 - (d) remove all the EQUIPMENT and MATERIALS (other than that required under sub-clause (4)(b) herein) of the CONTRACTOR from the WORKSITE unless the parties agree otherwise;
 - (e) within 30 (thirty) days of the effective date of discontinuance or termination return to the COMPANY all documents, data or other information provided by the COMPANY and all originals, copies and reproductions of all drawings, specifications, requisitions, calculations, programme listings, plans, schedules, documents and all other data in whatever format prepared by the CONTRACTOR or any SUBCONTRACTOR.
 - (f) take all such further steps as are necessary to enable the COMPANY or its nominee to take over the CONTRACTOR'S position in the performance of the WORK with the least possible disruption, all in accordance with the COMPANY REPRESENTATIVE'S instructions.
- (5) In the event of discontinuance of part of the WORK or termination of the CONTRACT by the COMPANY under sub-clause (3) herein or by the CONTRACTOR under Clause headed SUSPENSION hereof, the COMPANY shall authorise a VARIATION to cover:
 - (a) the actual costs incurred by the CONTRACTOR in the performance of the part of the WORK completed in accordance with the CONTRACT up to the effective date of discontinuance or termination, broken down according to the following categories:
 - (i) the man-hour costs of the CONTRACTOR'S home office personnel and the CONTRACTOR'S customary overhead thereon;
 - (ii) the man-hour costs of the CONTRACTOR'S personnel at the WORKSITE and the CONTRACTOR'S customary overhead thereon;

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- (iii) the cost of such items of EQUIPMENT as are owned by the CONTRACTOR, during the period they were at the WORKSITE for purposes required under the CONTRACT (calculated at the CONTRACTOR'S normal rental rates or comparable compensation, including a reasonable depreciation);
 - (iv) any direct costs and expenses not covered by (i), (ii) and (iii) above including but not limited to financing costs, and mobilisation costs of the CONTRACTOR'S personnel under (ii) above and EQUIPMENT under (iii) above and costs of demobilisation thereof to their next destination or to the CONTRACTOR'S base works, whichever are the lower;
 - (v) any amounts properly paid or to be paid by the CONTRACTOR to any SUBCONTRACTOR.
- (b) subject to sub-clause (4) (b) herein, the actual costs (if any) in as far as not already covered under sub-clause (8) herein, incurred by the CONTRACTOR as a result of termination of the SUBCONTRACTS and other obligations not assigned to the COMPANY pursuant to sub-clause (4) (c) herein;
- (c) an amount to cover the CONTRACTOR'S profit for the part of the WORK performed up to the date of discontinuance or termination, which amount shall be the sum of the following:
 - (i) an amount equal to 10% of the total of the nominal salary and legal social burden components of the man-hour costs referred to under sub-clause (5) (a) (i) herein plus the CONTRACTOR'S customary overhead thereon; (i.e. 10% of the said total plus overhead on the said 10%)
 - (ii) an amount equal to 10% of the total of the nominal salary and legal social burden components of the man-hour costs referred to under sub-clause (5) (a) (ii) herein plus the CONTRACTOR'S customary overhead thereon. (i.e. 10% of the said total plus overhead on the said 10%)
- (6) The amounts established in accordance with sub-clause (5) herein shall be expressed in the currencies in which the expenditure has been or will be made.
- (7) The actual costs referred to under sub-clause (5) (a) and (5) (b) herein shall, if the COMPANY so wishes, be established as sound by external auditors to be appointed by the COMPANY. All costs involved therein shall be for the COMPANY'S account. The CONTRACTOR shall keep appropriate accounting records in order to enable such audit to be carried out without difficulty or delay, as and when required.
- (8) As soon as the parties have reached agreement on the total sum of money to which the CONTRACTOR is entitled pursuant to sub-clause (5) herein, they shall establish the difference expressed in the currencies in question between that sum and the total of the amounts already paid to the CONTRACTOR by the COMPANY in those currencies under the CONTRACT. The amount of the difference so established shall be settled in the currencies concerned between the parties within 45 (forty-five) days of the date of receipt by the debtor of a debit note submitted by the creditor to the debtor.
- (9)
 - (a) In the event of the COMPANY giving the CONTRACTOR a notice of discontinuance in respect of part of the WORK under the clause headed COMPLETION hereof or termination under sub-clause (2) herein or after the COMPANY has issued notice of discontinuance or termination under sub-clause (1) herein, the CONTRACTOR shall be entitled to payment only as set out below for the part of the WORK completed in accordance with the CONTRACT up to the date of termination or discontinuance, which payment shall be reduced by any additional costs incurred by the COMPANY as a result of the default of the CONTRACTOR. These additional costs, as defined in sub-clause (9) (c) herein, may be offset by the COMPANY against any moneys due or which may become due to the CONTRACTOR from the COMPANY.
 - (b) In the event of such discontinuation or termination as referred to in sub-clause (9) (a) herein, the CONTRACTOR shall, subject to sub-clause (9) (g) herein, in the first instance only be entitled to the actual cost, including the CONTRACTOR'S customary overheads, incurred by the CONTRACTOR in the performance of the

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part of the WORK completed in accordance with the CONTRACT up to the date of discontinuation or termination referred to in sub-clause (9) (a) herein.

Any costs incurred by the CONTRACTOR in taking the steps such as indicated in sub-clause (4) herein shall be for the CONTRACTOR'S account.

The actual costs referred to under sub-clause (9) (b) herein shall be examined and certified as sound by external auditors appointed by the COMPANY. All costs involved therein shall be for the CONTRACTOR'S account. The CONTRACTOR shall keep appropriate accounting records in order to enable such audit to be carried out without difficulty or delay, as and when required.

- (c) The additional costs referred to in sub-clause (9) (a) herein shall be calculated as follows:

$$\text{Additional Costs} = \text{Ultimate Cost for the part of the WORK in question} - \text{CONTRACT PRICE for the part of the WORK in question}$$

Where the 'ultimate cost' shall be an amount consisting of:

- (i) the sum of money to which the CONTRACTOR is entitled pursuant to sub-clause (9) (b) herein;
plus
 - (ii) the cost actually and necessarily incurred by the COMPANY for completion of the part of the WORK not performed by the CONTRACTOR;
plus
 - (iii) cancellation charges, if any, incurred by the COMPANY in terminating SUBCONTRACTS originally placed by the CONTRACTOR but in the COMPANY'S opinion unacceptable for the further performance of the WORK.
- (d) The COMPANY undertakes, at the CONTRACTOR'S specific request to that effect, to supply the CONTRACTOR, at the CONTRACTOR'S expense, with a certificate of independent auditors, certifying the total "ultimate cost" referred to in sub-clause (9) (c) herein as sound.
- (e) To the extent that the COMPANY is unable to offset such additional costs against sums due to the CONTRACTOR under herein, then the CONTRACTOR shall pay such additional costs to the COMPANY failing which the COMPANY shall have the power to sell in such a manner and for such a price as it may think fit any or all of the surplus MATERIALS and to recover the said additional cost out of the proceeds of such sales.
- (f) Upon completion of the WORK by the COMPANY or at such earlier date as the COMPANY thinks appropriate, the COMPANY shall inform the CONTRACTOR that the EQUIPMENT referred to in sub-clause (4) (b) herein is held available for the CONTRACTOR at such place at or near the WORKSITE as the COMPANY will indicate.

The CONTRACTOR shall thereafter without delay remove or arrange for the removal of such EQUIPMENT from such place. Subject to sub-clause (9) (g) herein the cost of removal and further cost of demobilisation of such EQUIPMENT shall be for the CONTRACTOR'S account.

- (g) Should it appear that the aforesaid "ultimate cost" is lower than the CONTRACT PRICE, the COMPANY shall pay the CONTRACTOR:
- (i) a reasonable amount for profit on the part of the WORK performed by the CONTRACTOR,
 - (ii) a reasonable depreciation for the use of the CONTRACTOR'S EQUIPMENT referred to in sub-clause (4) (b) herein,
 - (iii) the reasonable cost of removal and further cost of demobilisation of the EQUIPMENT, as referred to in sub-clause (9) (f) herein.

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on the understanding that the aggregate amount of any or all payments under (i) through (iii) above shall under no circumstances exceed the amount by which the "ultimate cost" underruns the CONTRACT PRICE.

- (h) In the event of discontinuance of part of the WORK under sub-clause (9) herein then the provisions of sub-clause (9) herein shall apply mutatis mutandis.
- (10) Discontinuance of part of the WORK or termination of the CONTRACT, shall not relieve the CONTRACTOR of any continuing obligations or liabilities under the provisions of the CONTRACT nor shall it affect any statutory or common law rights of the COMPANY or the CONTRACTOR.
- (11) Except as provided in this Clause, any costs, loss or damage sustained by the CONTRACTOR from discontinuance of part of the WORK, or from termination of the CONTRACT shall be for the account of the CONTRACTOR.

18. COMPLETION

- (1) When the CONTRACTOR considers that the WORK has been completed, the CONTRACTOR shall notify the COMPANY accordingly.
- (2) Upon the receipt of such notification from the CONTRACTOR, the COMPANY shall proceed forthwith to determine whether the WORK has been performed and completed in accordance with the CONTRACT. Within 14 (fourteen) days of receipt of the above notification from the CONTRACTOR or within a reasonable period if the WORK is to be performed outside Negara Brunei Darussalam, the COMPANY shall either:-
 - (a) issue to the CONTRACTOR a Certificate of Completion that the WORK appears to have been completed and stating the date of completion; or
 - (b) notify the CONTRACTOR that the COMPANY has found the WORK or part thereof not to have been performed in accordance with the CONTRACT. The COMPANY shall detail in writing the specific nature of the defect in performance and the Clause, part or Section of the CONTRACT which contains the obligation of the CONTRACTOR, which the CONTRACTOR has failed to meet. The CONTRACTOR shall take immediately all action necessary to remedy the defect, so as to enable the COMPANY to issue to the CONTRACTOR a Certificate of Completion; or
 - (c) notify the CONTRACTOR that the COMPANY has found the WORK or part thereof not to have been performed in accordance with the CONTRACT and that the COMPANY requires the CONTRACTOR not to remedy the defect in performance. The COMPANY shall, in respect of such WORK, issue a notice of discontinuance in accordance with Clause headed TERMINATION, DISCONTINUANCE OF THE WORK AND DEFAULT hereof and the COMPANY shall be entitled to the rights and remedies set out in that Clause. In respect of the remainder of the WORK, the COMPANY shall also either notify the CONTRACTOR under sub-clause (2)(b) herein or shall issue a Certificate of Completion.
- (3) The issue of a Certificate of Completion by the COMPANY or the expiry of the guarantee period or periods referred to in Clause headed RESPONSIBILITY FOR THE WORK hereof shall not relieve the CONTRACTOR from any continuing obligations or liabilities under the provisions of the CONTRACT including but not limited to the Clauses headed RESPONSIBILITY FOR THE WORK, AUDIT RIGHTS OF THE COMPANY, INTELLECTUAL PROPERTY RIGHTS, RESPONSIBILITIES AND INDEMNITIES and INSURANCE, nor shall it affect any statutory or common law rights held by the COMPANY or the CONTRACTOR.
- (4) The provisions of this Clause may, at the COMPANY'S discretion, be applied to separate parts of the WORK and shall be applied for any milestones identified in the CONTRACT.

19. RESPONSIBILITY FOR THE WORK

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- (1) The CONTRACTOR shall perform the WORK with all proper skill and care and shall ensure that the WORK and facilities, services, MATERIALS and EQUIPMENT used to produce or incorporated into the WORK shall be fit for their intended purpose and of good quality and workmanship.
- (2) In addition to the obligations under sub-clause (1) herein, the CONTRACTOR shall ensure that the WORK and all services, MATERIALS and workmanship used for or incorporated into the WORK shall all be free from errors, defects, shrinkages and failures for the relevant guarantee periods which shall expire at the later date of either:
 - (a) the end of the guarantee period specified for the WORK or for the particular part of the WORK, services, MATERIALS or workmanship in SECTION 4 – SCOPE OF WORK; or
 - (b) where no period has been specified pursuant to sub-clause (2)(a) herein, the end of the period of one year from the date of completion stated on the relevant Certificate of Completion; and
 - (c) in respect of any services, MATERIALS or workmanship repaired or replaced by the CONTRACTOR under the provisions of sub-clause (4) herein, until the date that the repair or replacement has been completed to the satisfaction of the COMPANY and has been free from errors, defects and failures for the period specified in sub-clause (2) (a) or (b) herein as appropriate.
- (3) The CONTRACTOR shall not be liable for any breach of sub-clauses (1) or (2) herein to the extent that:
 - (a) the errors, defects or failures are due to negligent operation by the COMPANY; or
 - (b) the CONTRACTOR acted reasonably in relying on the technical, design, fabrication or procedural requirements of the COMPANY specified in the CONTRACT; or
 - (c) the COMPANY has specified in the CONTRACT the environment for the performance of the WORK or part thereof in respect of which the breach has occurred and the actual environment for the performance of the WORK were more severe than those specified by the COMPANY elsewhere in the CONTRACT and caused the breach; or
 - (d) the breach is due to a defect or failure in MATERIALS supplied by the COMPANY which could not reasonably have been discovered by the CONTRACTOR complying with the CONTRACTOR'S obligations under SECTION 6 – PROVISIONS BY COMPANY AND CONTRACTOR.
- (4) In the event of any breach of sub-clauses (1) or (2) herein (other than a breach set out in sub-clause (3) herein) the CONTRACTOR shall be responsible at its cost for:
 - (a) the repair or correction, or at the option of the COMPANY, the replacement of any defective services, MATERIALS or workmanship; and
 - (b) the carrying out of all work of uncovering, removal, procurement and reinstallation as may be necessary; and
 - (c) any other resulting loss or damage incurred by the COMPANY that is not allocated as the responsibility or liability of the CONTRACTOR or the COMPANY under Clause headed RESPONSIBILITIES INDEMNITIES & INSURANCE.
- (5) In the event of a breach of sub-clause (2) herein (other than a breach as set out in sub-clause (3) herein) the COMPANY shall notify the CONTRACTOR of the breach. Upon receipt of such notification from the COMPANY the CONTRACTOR shall immediately carry out the CONTRACTOR'S obligations under sub-clause (4) herein. Alternatively the COMPANY may undertake at its option any of the CONTRACTOR'S obligations under this Clause in which case the COMPANY shall notify the CONTRACTOR of its intention and shall be entitled to recover from the CONTRACTOR all costs incurred by the COMPANY in carrying out such obligations.
- (6) The rights and remedies of the COMPANY provided in sub-clause (5) herein are in addition to those available in respect of sub-clause (1) herein and without prejudice to the

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COMPANY'S other remedies at law. The provisions of this Clause 20 shall not affect the obligations of the COMPANY or the CONTRACTOR under the Clauses headed TERMS OF PAYMENT, RESPONSIBILITIES AND INDEMNITIES AND INSURANCE.

20. CONTRACT PRICE

- (1) For the performance and completion of the WORK, the COMPANY shall pay or cause to be paid to the CONTRACTOR, at the times and in the manner specified in the CONTRACT.
- (2) Except where it is expressly provided that the COMPANY shall carry out an obligation under the CONTRACT at its own cost, all things required to be supplied or performed by the CONTRACTOR under the CONTRACT shall be at the CONTRACTOR'S cost and deemed to be included in the CONTRACT PRICE.

21. TAXES

- (1) The CONTRACTOR shall assume full and exclusive liability for payment of all taxes, duties, levies, charges and contributions of any nature whatsoever that are from time to time imposed by either:
 - (a) the Government of Negara Brunei Darussalam; or
 - (b) any other country in which the WORK is being performed; or
 - (c) any other fiscal or other authority whatsoever,in respect of:
 - (i) employees or agents of the CONTRACTOR and its SUBCONTRACTORS (whether or not such taxes, duties, levies, charges and contributions are measured by wages, salaries and/or other remuneration); and
 - (ii) the gains of the CONTRACTOR and its SUBCONTRACTORS arising directly or indirectly out of the performance of the WORK.
- (2) The CONTRACTOR shall, and shall cause its SUBCONTRACTORS to report and pay all such taxes, duties, levies, charges and contributions directly to the appropriate authorities and otherwise comply with any applicable laws and regulations.
- (3) The CONTRACTOR hereby covenants and undertakes to defend, indemnify and hold harmless the COMPANY from any and all claims, suits, costs, liabilities, judgments, fines, penalties, demands, loss or damage including any and all expenses, disbursements, costs, legal fees, sums and amounts which the COMPANY suffers, incurs or is put to resulting from, or in any way connected with, any assessment or imposition, for which by the terms of this Clause the CONTRACTOR is liable.

22. TERMS OF PAYMENT

- (1) On or before the end of the second week of the month during the progress of the WORK, the CONTRACTOR shall invoice the COMPANY for WORK completed during the preceding month and not included on previous invoices. Such invoice shall be submitted in the currency in which the CONTRACTOR states its rates and prices in Section 8 SCHEDULE OF PRICES. The invoice shall be in such detail as may be requested by the COMPANY and shall, in all applicable cases, show separately the individual amounts in respect of each of the categories contained within the SCHEDULE OF PRICES.

Any invoice submitted by the CONTRACTOR in respect of a milestone shall be supported by a copy of the Certificate of Completion which has been issued by the COMPANY in respect of that milestone in accordance with the provisions of Clause headed COMPLETION hereof.

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

- (2) Each invoice shall include the CONTRACT reference number and title and shall be forwarded together with full documentary evidence including, where appropriate, originals of certified time sheets and full details of expenses claimed to:

Brunei Shell Petroleum Company Sendirian Berhad,
FAC/212,
Seria KB3534,
BRUNEI DARUSSALAM.

Brunei LNG Sendirian Berhad,
FFC,
Belait KC2935,
BRUNEI DARUSSALAM.

Brunei Shell Marketing Sendirian Berhad,
BMF,
Bandar Seri Begawan BS8811,
BRUNEI DARUSSALAM.

The CONTRACT reference number of this CONTRACT is shown in the FORM OF AGREEMENT. If the CONTRACT reference number is not shown on any invoice then the COMPANY shall not be bound to pay such invoice and may return it to the CONTRACTOR unpaid.

Only original invoices will be accepted for payment. If the original invoice is lost in transit or mislaid, a certified true copy of such invoice signed by the CONTRACTOR shall be submitted.

Eraser or white ink shall not be used for alteration, and invoices amended in this way shall be rejected.

- (3) If the COMPANY finds the invoice so submitted to be correctly prepared, adequately supported and in conformity with the requirements of the CONTRACT, then the COMPANY shall within 30 (thirty) days of receipt of the invoice in question remit the invoiced amount into the bank account nominated by the CONTRACTOR.
- (4) In the event of the COMPANY disputing any item of any invoice submitted by the CONTRACTOR, the COMPANY shall within 30 (thirty) days notify to the CONTRACTOR the item in dispute and shall specify its reasons for dispute. Payment in respect of such item in dispute shall be withheld until settlement of the dispute but all undisputed items of such invoice shall be paid in accordance with sub-clause (3) herein.
- (5) The CONTRACTOR shall be responsible, at its own cost, for foreign exchange approval, foreign exchange clearance, transfers into other currencies, or bank accounts.
- (6) Following CONTRACT completion and after fulfillment by CONTRACTOR of all its duties and obligations under this CONTRACT, the CONTRACTOR shall render to the COMPANY the final invoice stating that all charges relating to the WORK have been included therein and that there are no outstanding charges or claims.
- (7) From any sum due to the CONTRACTOR under the CONTRACT, the COMPANY may deduct the amount of any sum which it in good faith regards as being owed by the CONTRACTOR to the COMPANY or its ASSOCIATES whether under the CONTRACT or otherwise.
- (8) Insofar as the CONTRACT or any part thereof is cost reimbursable the CONTRACT PRICE shall constitute the only income of the CONTRACTOR in connection with the CONTRACT which inter alia implies that it shall not accept any trade commission, discount allowance or indirect payment or other consideration in connection with the CONTRACT, without notifying and accounting for same to the COMPANY. Failure to notify and account the above mentioned to the COMPANY shall be a breach of the CONTRACT and the COMPANY may at its sole discretion terminate the CONTRACT under Clause headed DISCONTINUANCE AND TERMINATION and recover such cost for any trade commission, discount allowance or indirect payment or other consideration in connection with the CONTRACT.

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

- (9) The CONTRACTOR may nominate a different or new bank account for payment due herein, in which case such nomination shall be communicated in writing.

23. AUDIT RIGHTS OF THE COMPANY

- (1) The COMPANY or its duly authorised representative shall at any time up to a limit of 6 (six) years after the completion or termination of or final payment under this CONTRACT, whichever is the latest, have the right to carry out audits of all the records and related documents, procedures and controls of the CONTRACTOR insofar as they relate to this CONTRACT. The CONTRACTOR shall grant COMPANY access to any or all of the CONTRACTOR'S premises to enable the COMPANY to exercise it's rights herein.
- (2) The CONTRACTOR shall maintain or cause to have maintained its books and records, insofar as they relate to this CONTRACT, in accordance with generally accepted accounting principles and practices and shall preserve or cause to have preserved these books and records and all documents related thereto for a period of 6 (six) years following the completion or termination of or final payment under this CONTRACT, whichever is the latest. The COMPANY or its authorised representative shall have the right to reproduce any of the aforementioned records and documents.
- (3) In the event that the CONTRACTOR'S books, records and documents are in the control of or held by a third party, CONTRACTOR shall forthwith obtain the release of such books, records and documents for the use of the COMPANY.
- (4) The CONTRACTOR shall ensure that the provisions of sub-clauses (1) and (2) above are included in any SUBCONTRACT thereby providing the COMPANY with the same rights to carry out audits of any SUBCONTRACTOR as it has in respect of this CONTRACT.

24. LIENS

- (1) The CONTRACTOR agrees that it shall not claim any lien or charge on the WORK or on any property of the COMPANY in the possession of the CONTRACTOR or at the WORKSITE.
- (2) If at any time there shall be evidence of any lien, attachment, charge or claim to which, if established, the COMPANY or its property might be subjected and which is made against the CONTRACTOR, the COMPANY shall have the right to retain out of any payment to be made under the CONTRACT an amount sufficient to indemnify the COMPANY completely against such lien, attachment, charge or claim. Should there prove to be any lien, attachment, charge or claim upon the property of the COMPANY after all payments hereunder have been made the CONTRACTOR agrees to refund to the COMPANY the costs incurred by the COMPANY in discharging any such lien, attachment, charge or claim imposed on the property of the COMPANY in consequence of the default of the CONTRACTOR. The CONTRACTOR shall notify immediately the COMPANY of any possible lien, attachment, charge or claim which may affect the WORK or any part thereof.
- (3) Without prejudice to the provisions of this Clause 25 the CONTRACTOR shall hold harmless and indemnify the COMPANY from and against all liens, attachments, charges or claims by any SUBCONTRACTOR or persons alleging to be a SUBCONTRACTOR in connection with or arising out of the CONTRACT. The COMPANY shall have the right to withhold the amount of any such lien, attachment, charge or claim from any payment to the CONTRACTOR under the CONTRACT until removal of such claim by any SUBCONTRACTOR. If such liens, attachments, charges or claims fall within the scope of the insurances of the CONTRACTOR, it shall remain the responsibility of the CONTRACTOR to furnish the COMPANY with satisfactory written certification from the insurer of the CONTRACTOR that any such lien, attachment, charge or claim is covered by the insurance of the CONTRACTOR before the COMPANY shall release any money withheld hereunder.
- (4) For the purpose of this Clause reference to the COMPANY shall include its ASSOCIATES.

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

25. OWNERSHIP

- (1) All MATERIALS provided by the CONTRACTOR or any SUBCONTRACTOR shall become the property of the COMPANY upon delivery to the WORKSITE or appropriation to the CONTRACT or payment by the COMPANY whichever is the earliest. The property in any MATERIALS provided by the CONTRACTOR or any SUBCONTRACTOR which are not in accordance with the CONTRACT and which are rejected by the COMPANY shall revert immediately in the CONTRACTOR or SUBCONTRACTOR as applicable. All MATERIALS provided by the CONTRACTOR or SUBCONTRACTOR and not incorporated into the WORK shall become the property of the CONTRACTOR or the SUBCONTRACTOR at the completion of the WORK or such earlier date as may be approved by the COMPANY.
- (2) Unless otherwise agreed title to, access to, copyright in, the right to, possession of and the free right of use of all things created under or arising out of the WORK shall vest in the COMPANY immediately upon the date of commencement of the WORK or creation of the article or document or item as applicable.
- (3) The CONTRACTOR shall grant and procure that the SUBCONTRACTORS grant the COMPANY a full free and unrestricted licence for the use of all MATERIALS and EQUIPMENT provided by the CONTRACTOR or the SUBCONTRACTORS for the performance of the WORK. The licence shall not terminate upon the suspension, discontinuance or termination of all or part of the WORK and shall continue until the WORK has been completed.
- (5) The WORK shall be and remain the sole property of the COMPANY.
- (4) The CONTRACTOR warrants that there are no retention of title clauses in force and applying to any MATERIALS provided by the CONTRACTOR and shall indemnify the COMPANY against all costs arising from each and every breach of the aforesaid warranty.
- (6) Notwithstanding the foregoing, risk in and the care and custody of any part of the WORK and all MATERIALS and EQUIPMENT shall remain with CONTRACTOR until the WORK is certified complete under Clause headed COMPLETION hereof or until its removal from the WORKSITE, whichever is the later.

26. RESPONSIBILITIES AND INDEMNITIES

(1) General

For the purpose of Clauses headed RESPONSIBILITIES AND INDEMNITIES AND INSURANCE herein,

- a) The benefit of any indemnity given in favour of COMPANY or CONTRACTOR herein shall include their respective indemnitees and visitors;
 - b) Company Indemnitees shall mean the COMPANY's Associates, its co-Venturers, its agents and all of their respective personnel;
 - c) Contractor Indemnitees shall mean the CONTRACTOR's agents, its sub-contractors and all of their respective personnel;
 - d) Co-Venturers shall mean the COMPANY's or its Associates' commercial partners in any venture and all of their respective personnel.
 - e) In entering into the agreement contained in this Clause and solely for that purpose only the COMPANY and the CONTRACTOR contract both on their own behalf and as agent and/or trustee on behalf of and/or for the benefit of their respective indemnitees.
- (2) The CONTRACTOR shall until the COMPANY has issued a Certificate of completion of the WORK be absolutely liable (save as mentioned below) for any and all loss or damage to:-

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

- (a) the WORK or any part thereof;
 - (b) the MATERIALS for incorporation into the WORK in its supply or in its safe-keeping;
- and shall make good and/or replace any item so lost or damaged. The CONTRACTOR's obligation in this sub-clause (2) shall not apply where any such loss or damaged was caused by war risks, civil war risks and nuclear risks to the extent that such risks are not normally insurable on the insurance market and are excluded from the relevant insurance policy taken out pursuant to Clause headed INSURANCE, but it shall apply in all other cases no matter who caused the loss or damage and including but not limited to those cases in which any loss or damage was caused by or contributed to or was partly attributable to the negligence of the COMPANY or any of its ASSOCIATES or any of their respective employees or agents, and the CONTRACTOR shall not seek contribution from such person or persons for such reason.

(3) Property and Personnel of CONTRACTOR

- (a) The CONTRACTOR shall be liable for and shall hold harmless, defend and indemnify the COMPANY against any and all:
 - i) loss or damage to the property of, and/or
 - ii) personal injury, including fatal injury and disease to, and/or
 - iii) consequential loss or damage including but not limited to indirect losses and loss of revenue, profit or anticipated profits of

the CONTRACTOR, however caused that arises out of or in connection with the CONTRACT. This indemnity shall apply in full even though the cause of the injuries (including death), loss or damage was the negligence of the COMPANY and the CONTRACTOR shall not seek contribution from such person or persons for such reason SAVE THAT the indemnity granted herein for personal injury including fatal injury and disease to CONTRACTOR shall be limited only to all such periods when the CONTRACTOR is performing the WORK under the CONTRACT.

(4) Property and Personnel of COMPANY

- (a) The COMPANY shall be liable for and shall hold harmless, defend and indemnify the CONTRACTOR against any and all:
 - i) loss or damage to the property of, and/or
 - ii) personal injury, including fatal injury and disease to
 - iii) consequential loss or damage including but not limited to indirect losses and loss of revenue, profit or anticipated profits of

the COMPANY, however caused that arises out of or in connection with the CONTRACTOR performing the WORK under the CONTRACT. This indemnity shall apply in full even though the cause of the injuries (including death), loss or damage was the negligence of the CONTRACTOR and the COMPANY shall not seek contribution from such person or persons for such reason SAVE THAT the indemnity granted herein for personal injury including fatal injury and disease to COMPANY shall be limited only to all such periods when the CONTRACTOR is working for the COMPANY.

(5) Third Party Liabilities

The CONTRACTOR shall indemnify and hold harmless the COMPANY against all claims, demands, loss, costs (including costs as between attorney or solicitor and own client) damages, liabilities and expenses which they or any of them suffer, incur or are put to resulting from:-

- (a) personal injury, including fatal injury and or disease to and/or
- (b) loss or damage to property of

third parties arising out of or in connection with the performance of the CONTRACT, whether or not the negligence or breach of duty of the COMPANY caused or contributed

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to such personal injury, loss or damage, and the CONTRACTOR shall not seek contribution from such person or persons for such reason.

The indemnity and hold harmless in this sub-clause (5) shall be limited to US\$5,000,000 or equivalent and in excess of such level liability shall be governed by applicable law.

(6) Consequential Losses

Subject to any express provisions in this CONTRACT, COMPANY and CONTRACTOR agree that they shall in no event be liable one to the other for their respective consequential damage not limited to but including indirect losses and loss of revenue, profit or anticipated profits whether or not due in whole or in part to the negligence of either party except to the extent of any liquidated damages provided for in the CONTRACT.

27. INSURANCE

(1) Without limitation of its obligations and responsibilities the CONTRACTOR shall maintain for the duration of the CONTRACT the following insurances in the joint names of the CONTRACTOR, the COMPANY and its ASSOCIATES with a cross liability provision where appropriate and with insurers acceptable to the COMPANY:-

(a) Employer's Liability and/or Workmen's Compensation Insurance with a minimum limit of B\$5,000,000 for any one accident or series of accidents arising out of one occurrence, unlimited in the aggregate and as may be required by statute or similar regulations in countries where the WORK is being performed in respect of the CONTRACTOR's personnel in connection with the CONTRACT.

(b) adequate waterborne craft and motor vehicle insurance for owned, non-owned or hired craft and motor vehicles, covering liabilities arising from the use and/or operation of the waterborne craft and motor vehicles including liability contractually assumed to third parties under this CONTRACT, liability to passengers and liability for damage due to collision.

The CONTRACTOR shall ensure that its SUBCONTRACTORS maintain such insurances where applicable similar insurances as referred to above in respect of their personnel, waterborne craft and motor vehicles (whether owned, non-owned or hired).

(2) Approval by the COMPANY of any insurer or terms of insurance proposed by the CONTRACTOR shall not relieve the CONTRACTOR of any obligation or liability under or arising from the CONTRACT or generally at law.

(3) Without limitation of the CONTRACTOR's obligation and responsibilities under Clause headed RESPONSIBILITIES AND INDEMNITIES, the COMPANY shall provide at its expense for the benefit of the COMPANY the CONTRACTOR and SUBCONTRACTORS, the following insurances.

(a) Construction All Risk insurance to cover the WORK and the Materials at the WORKSITE.

(b) Insurance in the sum of US\$5,000,000 or equivalent for any one accident or series of accidents arising from one event in respect of the CONTRACTOR's liabilities under sub-clause (5) headed RESPONSIBILITIES AND INDEMNITIES including the contractual liability thereby assumed by the CONTRACTOR to third parties.

(4) The insurances under sub-clause (3)(a) and (b) herein will be to the benefit of the COMPANY, CONTRACTOR, SUBCONTRACTORS and any ASSOCIATE. If the Certificate of Completion of the WORK cannot be issued by the COMPANY, for circumstances due to the CONTRACTOR or any Subcontractor, any additional premium for continuation of the insurance shall be for the account of CONTRACTOR. None of the insurances referred to in sub-clause (3) above shall cover either motor vehicles or waterborne craft liability.

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The insurances under sub-clause (3)(a) and (b) herein includes damage to the WORK and/or liabilities to third parties after issue of the Certificate of Completion, if such damage and/or liabilities:-

- (i) occur during the guarantee period up to a maximum of 12 months from the date of issue of the Certificate of Completion, mentioned in Clause headed RESPONSIBILITY FOR THE WORK from a cause arising before the date of issue of the Certificate of Completion. If the guarantee period is more than 12 months, then the Contractor is responsible at its own cost for purchasing the required insurance coverage for period(s) in excess of the 12 months.
 - (ii) are caused by the CONTRACTOR in the course of fulfilling its obligations under Clause headed RESPONSIBILITY FOR THE WORK within 12 (twelve) months from the date of issue of the Certificate of Completion or within 12 (twelve) months from the date of the start of any period of initial operations that may be provided for in the CONTRACT, whichever is the earlier.
- (5) The insurance policies the CONTRACTOR is required to have and those additional policies which the CONTRACTOR feels desirable to have in connection with the WORK shall, as far as applicable, name the COMPANY and its ASSOCIATES as co-insured, and shall contain a waiver of insurers' subrogation rights against the COMPANY, its ASSOCIATES and their respective employees.

In addition, any reference in any of the CONTRACTOR's insurance policies pertaining to "Avoidance of certain Terms and Rights of Recovery" or similar clause shall be endorsed to the effect that such clause is not applicable to the COMPANY and its Associates and their respective employees by virtue of their inclusion as joint or co-assured.

- (6) The COMPANY shall have the right to inspect all policies of insurances provided for in the CONTRACT and the receipts for the current premiums.
- (7) The CONTRACTOR's liability under the CONTRACT will not be restricted, limited or altered by any stipulation or arrangements in the CONTRACT with regard to insurance policies. The deductibles applying under the insurances arranged by the CONTRACTOR or its Subcontractors shall be for the account of the CONTRACTOR or such Subcontractors.

In respect of the insurance provided by the COMPANY under sub-clause (3) herein there shall be payable by the CONTRACTOR or SUBCONTRACTOR claimant as a deductible in respect of each and every claim the relevant amount shown below:-

- (a) the first B\$50,000 in respect of onshore WORK including third party liability;
(OPTION)
 - (b) the first B\$350,000 in respect of offshore WORK including third party liability;
(for contract with ACV below B\$1.75 Million)
- or
- (b) the first B\$875,000 in respect of offshore WORK including third party liability;
(for contract with ACV of B\$1.75 Million and above)

Any excess deductible above these figures shall be for the COMPANY's account.

- (8) Should the CONTRACTOR fail to procure or maintain any of the aforesaid insurance for which it is responsible or by any act or omission validate or invalidate any of the aforesaid insurances whoever is responsible for them, the CONTRACTOR shall indemnify the COMPANY and the other beneficiaries of said insurance to the extent they or any of them suffers loss or damage liability or expense in consequence of such failure, act or omission.
- (9) Without prejudice to sub-clause (7) herein, if the CONTRACTOR fails to effect or keep in force the insurance provided for in this Clause or any other insurance which it may be required to effect under the terms of the CONTRACT then the COMPANY may effect and keep in force any said insurance and pay the premium or premiums as may be necessary

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for that purpose and from time to time deduct the amount so paid by the COMPANY as aforesaid from any monies due or which may become due to the CONTRACTOR or recover them as a debt due from the CONTRACTOR. If the COMPANY does so act it shall authorise a VARIATION under Clause 8 hereof to reduce the CONTRACT PRICE by an amount equal to the COMPANY's costs in procuring such insurance.

- (10) The CONTRACTOR shall notify the COMPANY of any occurrence likely to give rise to a claim under any insurance policy as soon as possible and in any event within fifteen (15) days of such occurrence. Thereafter the CONTRACTOR shall handle the claim directly with the relevant insurers, and shall act in the best interests of both parties to this CONTRACT.

28. PERMITS, LAWS AND REGULATIONS

- (1) The CONTRACTOR shall abide by and comply, and ensure compliance by its SUBCONTRACTORS, of all applicable law, rules and regulations of any governmental or regulatory body having jurisdiction over the WORK.
- (2) The CONTRACTOR shall obtain all licences and permits to conduct business and employ persons in the country or countries and any political subdivisions thereof wherein any part of the WORK is performed and shall obtain all permits, authorisations and labour quotas required by any applicable law, rules and regulations.
- (3) The CONTRACTOR shall ensure that any of its or its SUBCONTRACTOR's PERSONNEL involved in performing the WORK and any of their respective accompanying dependents hold and maintain valid travel documents and all other documents necessary to entitle them lawfully to be in Negara Brunei Darussalam or other location to which they are assigned.
- (4) All costs of complying with all applicable laws, rules and regulations and obtaining authorities, approvals, licences, permits, for performance of the WORK shall be for the account of the CONTRACTOR.
- (5) All operations necessary for the performance of the CONTRACT shall be conducted so as not to interfere unnecessarily or improperly with the convenience of the public or the access to, use and occupation of, navigable and other waters, waterways, channels, harbours or harbour works, fisheries, natural harbours and anchorages and other places of shelter, by sea or land, public or private roads and footpaths to or of properties whether in the possession of the COMPANY, the CONTRACTOR, SUBCONTRACTORS or any other person. The CONTRACTOR hereby indemnifies the COMPANY against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising in relation to any of the aforesaid matters in so far as the CONTRACTOR is responsible for such interference.
- (6) The CONTRACTOR shall comply with all security requirements at COMPANY WORKSITES where WORK is being performed by the CONTRACTOR. All costs for complying with such requirements shall be for the account of CONTRACTOR.

29. HEALTH, SAFETY AND ENVIRONMENT

- (1) The CONTRACTOR is required to meet the COMPANY'S requirements on all Health, Safety and Environment matters as specified in the CONTRACT or as notified to the CONTRACTOR by the COMPANY from time to time.
- (2) The CONTRACTOR shall perform the WORK with all proper care and diligence in accordance with the HSE STANDARDS and as stated in the CONTRACT. In the event of conflict between any of the HSE STANDARDS the most demanding standard shall apply.
- (3) Protection of the Environment
 - (a) The CONTRACTOR shall comply with national legislation of Negara Brunei Darussalam in so far as it applies to environmental protection. In addition, the CONTRACTOR shall comply with any international conventions or legislation

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

- relating to environmental protection which has been signed or, ratified by Negara Brunei Darussalam or which has been specified in the CONTRACT.
- (b) The CONTRACTOR shall comply with the COMPANY'S policy on protection of the environment.
 - (c) The CONTRACTOR shall only use products which shall not cause any impact on the environment when used in accordance with the instructions of the supplier. Products shall be stored in a manner which shall cause minimum undue impact on the environment.
 - (d) The CONTRACTOR shall take the necessary precautions to prevent damage to the WORKSITE and to property and the environment adjoining the WORKSITE. The CONTRACTOR shall be responsible should there be a claim arising from such damage. In the event of any such damage, the CONTRACTOR, at its own cost, shall take whatever remedial measures are considered necessary by the COMPANY.
 - (e) The disposal of any waste materials from the WORKSITE shall be in accordance with the COMPANY'S procedures. The disposal of waste materials must be agreed with the COMPANY in advance and shall only be to waste disposal sites approved for the purpose.
 - (f) At all times during the CONTRACT the CONTRACTOR shall keep the WORKSITE and its surroundings clean, tidy and in good order. The CONTRACTOR shall remove any waste materials and faulty equipment as soon as reasonably practical.
 - (g) The WORK shall not be deemed to have been completed until the CONTRACTOR has removed from the WORKSITE and its surroundings all waste, debris, scrap, left over materials, and temporary structures and has delivered the WORKSITE to the COMPANY in a state of good order and cleanliness. The degree of rehabilitation of the WORKSITE shall be in accordance with the requirements of the CONTRACT.

30. MILESTONE ZERO

- (1) Milestone Zero is a date nominated by the COMPANY prior to commencement of WORK. On or before Milestone Zero the CONTRACTOR shall show that it has in place all of the resources (PERSONNEL, EQUIPMENT and procedures) necessary to execute the WORK in accordance with all the requirements of the CONTRACT.
- (2) The COMPANY may at its discretion permit in writing the CONTRACTOR to defer compliance with some of the Milestone Zero requirements of the CONTRACT until a later date or dates.
- (3) The CONTRACTOR shall not commence WORK in connection with any aspect of the CONTRACT where the adequacy of resources has not been established or in particular where any COMPANY specified requirements are to be resolved.
- (4) Notwithstanding the above, the COMPANY may:
 - (a) suspend or terminate the CONTRACT if the CONTRACTOR does not fulfill the requirements of Milestone Zero as referred to above. The COMPANY is not liable to the CONTRACTOR for any cost due to non-compliance of Milestone Zero requirement.
 - (b) without prejudice to the COMPANY'S other rights of recourse, withhold from payment to the CONTRACTOR such sums as the COMPANY estimates to be required by the CONTRACTOR to fulfill the obligations of Milestone Zero and where such obligations have been deferred or in respect of which the CONTRACTOR is in default.
- (5) Equipment Integrity

The CONTRACTOR shall ensure that all EQUIPMENT/MATERIALS used in the execution of the WORK or supplied and installed as part of the WORK shall be installed, inspected

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

and properly certified if applicable and maintained all in accordance with the HSE STANDARDS.

31. PUBLIC AND INDUSTRIAL RELATIONS AND PUBLICITY

- (1) The CONTRACTOR shall maintain good relations at all times among the various regulatory bodies and with the general public. The COMPANY shall act as prime initiator in contacts with any Brunei Government departments or agencies on any matters relating to the CONTRACT except for those covered under Clause headed PERMITS, LAWS AND REGULATIONS.
- (2) The CONTRACTOR shall maintain good industrial relations, and shall consult the COMPANY when requested to do so on all matters relating to industrial relations, including but not limited to, minimum rates of payments, allowances, amenities and overtime so that the interests of the COMPANY shall not be prejudiced.
- (3) The CONTRACTOR shall make no publicity releases or announcements concerning the activities of the CONTRACTOR or participation with respect to the CONTRACT without the prior agreement of the COMPANY. The CONTRACTOR shall require all SUBCONTRACTORS and suppliers to comply with this requirement.
- (4) The CONTRACTOR shall, and shall cause its SUBCONTRACTORS to, pay fair wages to their employees in Brunei Darussalam.
- (5) The COMPANY shall have the sole right of advertising upon or adjacent to COMPANY owned WORKSITES in Brunei Darussalam and the CONTRACTOR shall not display or permit the display of any advertisement without the COMPANY'S prior written consent.

32. BUSINESS ETHICS

- (1) The CONTRACTOR acknowledges and understands the COMPANY's "Statement of General Business Principles" (SGBP) [a copy can be obtained by the CONTRACTOR from the COMPANY]. The CONTRACTOR shall ensure that it meets the standards expected of contractors, in particular those dealing with Business Integrity, as detailed in the SGBP.
- (2) The COMPANY shall be entitled to terminate the CONTRACT and to recover from the CONTRACTOR the amount of any loss arising from such termination if:
 - (a) the CONTRACTOR or any SUBCONTRACTOR offers, gives or agrees to give, or receives or agrees to receive, at any time, to or from any person, any gift or favour or releases or agrees to release any obligation to or from any person as an inducement or reward for:
 - (i) doing or forbearing to do (or for having done or forborne to do) any act which relates to the obtaining or execution of the CONTRACT, or
 - (ii) showing or forbearing to show favour to any person in relation to any contract with the COMPANY, OR
 - (b) the gifts or favours referred to in sub-clause (1) above have been offered by any person or persons employed by the CONTRACTOR or SUBCONTRACTOR or acting on their behalf (whether with or without their knowledge), OR
 - (c) the CONTRACTOR, Subcontractor or any person employed by either of them or acting on their behalf has, in relation to any contract with the COMPANY,
 - (i) committed, abetted or attempted to commit any offence, or
 - (ii) given any fee or reward the receipt of which is an offenceunder the Brunei Penal Code or Prevention of Corruption Act 1982 including any amendment or re-enactment (or any similar law or enactment in force at either the CONTRACTOR's place of business or the place for performance of any part of the WORK outside Brunei Darussalam).

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

33. GENERAL LEGAL PROVISIONS

(1) Assignment of the Contract

- (a) The CONTRACTOR shall not assign either the CONTRACT or any part of it or any benefit or interest in or under it (except for an assignment of payments to the CONTRACTOR'S bank) without the COMPANY's prior written consent. The COMPANY shall be entitled to assign the CONTRACT or any part of it or any benefit or interest under it to any of its ASSOCIATES.
- (b) In respect of the WORK executed or of MATERIALS supplied by the SUBCONTRACTOR, if a Subcontractor has undertaken towards the CONTRACTOR any continuing obligation extending for a period exceeding that of the guarantee period under the CONTRACT, the CONTRACTOR shall at the end of the guarantee period notify the COMPANY of the continuing obligation and at the request of the COMPANY, shall assign to the COMPANY the benefit of that obligation for its unexpired duration.

(2) Waiver

Any failure or forbearance or delay or omission on the part of the COMPANY at any time or from time to time to enforce or to require the strict adherence and performance of any of the terms or conditions of the CONTRACT or of any breach arising under this CONTRACT shall not constitute a waiver of such terms or conditions or breaches and/or affect or impair such terms or conditions in any way or the right of the COMPANY at any time to avail itself of such remedies as it may have for each and every breach of such terms or conditions.

(3) Independence of the Contractor

The CONTRACTOR shall act as an independent contractor with respect to the CONTRACT.

(4) Proper Law

The validity, construction and performance of this CONTRACT shall be governed by English law.

(5) Legislation

Unless specified in the CONTRACT, reference to any legislation of Brunei Darussalam shall be construed as reference to that legislation as respectively amended or re-enacted at the commencement of the CONTRACT.

(6) Any dispute between the parties which is not resolved amicably shall be submitted to the jurisdiction of the Courts of Brunei Darussalam.

34. SUBSTANCE ABUSE

- (1) Before commencement of the WORK, the CONTRACTOR shall have established a drugs, alcohol and substance abuse policy written in any language which may be appropriate. The CONTRACTOR shall ensure that this policy is understood and observed by all personnel and agents (including those of all SUBCONTRACTORS) engaged on the WORK.
- (2) The CONTRACTOR's drugs, alcohol and substance abuse policy shall as a minimum provide that:
- (a) all PERSONNEL and agents while performing the WORK or at any WORKSITE or on any COMPANY premises shall be free from the influence of any alcohol or illegal drugs or other prohibited substances;
- (b) no PERSONNEL and agents shall use legal drugs illicitly nor shall they use, possess, distribute, buy or sell alcohol or illegal drugs while performing the WORK or at any WORKSITE or on any COMPANY premises;

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

- (c) any PERSONNEL or agents who are suspected of having consumed alcohol or illegal drugs or other prohibited substances while performing the WORK shall be required to undergo tests to detect such;
 - (d) any PERSONNEL and agents who are in breach of the provisions of sub-clauses 2 (a) or 2 (b) above or refuse to be tested in accordance with the provisions of sub-clause 2 (c) above or who have been tested positive shall be subject to disciplinary action which may include instant dismissal without compensation of any kind.
- (3) The CONTRACTOR shall undertake not to provide to the COMPANY any personnel and agents who have violated any of the provisions of sub-clause (2).
 - (4) The CONTRACTOR shall use its best endeavours to ensure that any personnel it recruits would pass a drug test.
 - (5) Notwithstanding the Clause 34 (2), the COMPANY have the right to conduct random testing on any of the PERSONNEL provided by the CONTRACTOR in the execution of the CONTRACT. Any PERSONNEL tested positive for substance abuse shall be removed immediately from the COMPANY's WORKSITE(s) and shall be subject to the CONTRACTOR's disciplinary actions.

35. CUSTOMS CLEARANCE/DUTIES

- (1) The CONTRACTOR shall be responsible for the importation and re-exportation of MATERIALS and EQUIPMENT required for the proper performance of the WORK and for all costs related thereto including customs duties.

36. INTELLECTUAL PROPERTY RIGHTS

- (1) The COMPANY and the CONTRACTOR shall identify any patent or proprietary or protected right which they are providing for the purposes of the CONTRACT at the time that such patent or proprietary or protected right is so provided. Neither the COMPANY nor the CONTRACTOR shall have the right of use other than for the purpose of the WORK, whether directly or indirectly, of any Intellectual Property or process so provided by the other party.

Intellectual Property includes, without prejudice to its generality, patents, designs, trademarks, know-how and copyrights.

- (2) The COMPANY reserves the sole right to seek patents in any country in the world on any item invented during the term of the CONTRACT as a direct result of the WORK. The CONTRACTOR agrees to notify promptly the COMPANY of any potentially patentable ideas conceived during the term of or as a direct result of working under the CONTRACT. The CONTRACTOR agrees to provide co-operation in all efforts by the COMPANY to obtain such patents, and will be reimbursed a reasonable charge for the extra time and expense required. The COMPANY agrees to grant the CONTRACTOR a royalty free licence either to use any patents developed out of the CONTRACT or to permit a SUBCONTRACTOR to manufacture or otherwise use the patents for the ultimate use only of the CONTRACTOR.
- (3) The COMPANY agrees either to promptly patent at the expense of the COMPANY any item arising under the CONTRACT or to give the CONTRACTOR a written release of the item to the CONTRACTOR. The CONTRACTOR agrees to grant the COMPANY and its ASSOCIATES a royalty free irrevocable licence to use any patent obtained by the CONTRACTOR on any item arising under the CONTRACT.
- (4) The CONTRACTOR shall, both during the term of the CONTRACT and after its termination or expiry, hold harmless and indemnify the COMPANY and its ASSOCIATES from and against all loss, damage and expense arising from any claim for infringement of Intellectual Property in existence or to be granted on an application prior to the final Certificate of Completion with respect to the WORK or the date of discontinuation or termination of the CONTRACT as referred to in Clause headed DISCONTINUANCE AND TERMINATION, whichever is the earlier, with respect to or arising out of:

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

- (a) the WORK;
 - (b) the use in the WORK or any part thereof of any process or part thereof chosen by the CONTRACTOR other than at the COMPANY'S specific request;
 - (c) the use in the WORK or any part thereof of any designs, drawings and/or specifications not prepared/supplied by the COMPANY;
 - (d) the incorporation or use in the WORK or any part thereof of any item of MATERIALS or part thereof;
 - (e) the use of drawings, specifications, requisitions, calculations and other documents prepared by the CONTRACTOR and/or any SUBCONTRACTOR under the CONTRACT;
 - (f) the manufacture, sale or use of EQUIPMENT and construction techniques used by the CONTRACTOR.
- (5) In the event of any process or item of MATERIALS or part thereof as referred to in sub-clauses (4) (b) and (c) of this Clause are held to constitute infringement and its use barred or prevented the CONTRACTOR shall at its own expense and after consultation with the COMPANY either procure for the COMPANY the right to continue at no cost to the COMPANY using such process or item of MATERIALS or part thereof, or replace the same with a non-infringing process or item(s) of MATERIALS, or modify it so it becomes non-infringing.

Any such replacement or modification shall not result in a variation in the CONTRACT.

- (6) In the event of any claim or action brought against the COMPANY arising out of the matters referred to in sub-clause (4) herein, the CONTRACTOR shall be promptly notified thereof and shall, at its own expense, conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom. The COMPANY will not, unless and until the CONTRACTOR shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. Notwithstanding the aforesaid conduct by the CONTRACTOR of such negotiations or litigation shall be conditional upon the CONTRACTOR having first given to the COMPANY such reasonable security as shall from time to time be required by the COMPANY to cover the amount ascertained or agreed as estimates, as the case may be, of any compensation, damages, expenses or cost for which the COMPANY may be held liable.

The COMPANY shall, at the request of the CONTRACTOR, afford all available assistance for the purpose of contesting any such claims or actions and shall be repaid by the CONTRACTOR all reasonable expenses incurred in so doing.

37. INFORMATION SECURITY

- (1) Where CONTRACTOR is required in the performance of the CONTRACT access to COMPANY'S Information Assets in the form of electronically stored information, information systems and communication systems, and computing equipment and facilities the CONTRACTOR shall comply with Information Security Procedure of the COMPANY.
- (2) CONTRACTOR shall ensure that its PERSONNEL have the appropriate access authority approved by the COMPANY prior to carrying out the WORK. Access authorisation granted by the COMPANY shall be to individual CONTRACTOR'S PERSONNEL only and may not be transferred to or shared with any person.

38. EMPLOYMENT AND TRAINING

- (1) The CONTRACTOR shall employ, wherever possible, suitably qualified Brunei Citizens to manage and carry out the WORK. The CONTRACTOR shall prepare an organization chart indicating which positions will be filled at the start of the CONTRACT by citizens and permanent residents of Brunei, and which positions are planned to be filled during the term of the CONTRACT by such persons. The CONTRACTOR shall provide details of any

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

training programmes for such persons which are planned to be carried out during the term of the CONTRACT.

- (2) The CONTRACTOR shall provide the COMPANY with all necessary information to enable the COMPANY to monitor the progress of the CONTRACTOR towards implementation of the CONTRACTOR'S employment and training plans for citizens and permanent residents of Brunei.

39. POSSESSION OF WORKSITE

- (1) This Clause applies to WORKSITE occupied by the COMPANY under the provisions of its Petroleum Mining Agreements with the Government of Negara Brunei Darussalam where WORK is to be performed on such WORKSITE.
- (2) If the CONTRACT does not specify the extent of the sections of the WORKSITE and the order in which they are from time to time to be given to the CONTRACTOR, the COMPANY shall, at the effective date of the CONTRACT, grant to the CONTRACTOR possession of so much of the WORKSITE as may be required to enable the CONTRACTOR to commence and proceed with the WORK in accordance with the programme referred to in Clause headed SCHEDULING hereof and will from time to time as the WORK proceeds grant to the CONTRACTOR possession of such further portions of the WORKSITE as may be required to enable the CONTRACTOR to proceed with the WORK with due dispatch in accordance with the said programme.
- (3) If the CONTRACTOR suffers delay or incurs cost from failure on the part of the COMPANY to grant possession in accordance with the terms of sub-clause (2) herein, the CONTRACTOR may request the COMPANY to issue a VARIATION.
- (4) The CONTRACTOR shall bear all expenses and charges for special or temporary wayleaves required by it in connection with access to the WORKSITE.
- (5) The possession of the WORKSITE mentioned in sub-clause (2) herein shall not be exclusive to the CONTRACTOR but only such as will enable it to perform the WORK.

40. USE OF CONTRACTOR'S EQUIPMENT BY OTHERS

- (1) The CONTRACTOR shall, if so requested by the COMPANY REPRESENTATIVE, make available to other contractors, the COMPANY or any other body nominated by the COMPANY any of the CONTRACTOR'S EQUIPMENT used to perform the WORK. The COMPANY REPRESENTATIVE shall authorise a VARIATION for any delay the CONTRACTOR suffers thereby and for a reasonable sum to reimburse any extra cost incurred by the CONTRACTOR.

41. PARENT COMPANY GUARANTEE

- (1) The CONTRACTOR'S ultimate holding company or companies shall provide the COMPANY with a Parent Company Guarantee in the form contained in the Appendix to these GENERAL CONDITIONS OF CONTRACT. Any such guarantee given by more than one ultimate holding company shall be given jointly and severally by such companies. The COMPANY shall not be obliged to make any payments under the CONTRACT to the CONTRACTOR until it has received a Parent Company Guarantee in compliance with this Clause. Any such guarantee shall apply to the CONTRACT and remain valid until the final guarantee period provided for in the Clause headed Responsibility for the Work hereof has expired.

42. SECURITY OF WORK

- (1) The CONTRACTOR shall in connection with the WORK provide and maintain at its own cost all necessary security measures which shall include but are not limited to, lights, guards, fencing, watching and any buoys, navigation lights and marks when and where

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necessary or required by the COMPANY or by any duly constituted authority, for the protection of the WORK, or for the safety and convenience of the public or others. The CONTRACTOR shall thereby ensure that no unauthorised person enters the WORKSITE.

43. DRAWINGS AND DOCUMENTS

- (1) The CONTRACTOR shall submit to the COMPANY for review and comment all relevant documents including but not limited to sketches, drawings, reports, and recommendations. These documents shall be submitted to the COMPANY in sufficient time to allow the COMPANY the time specified in SECTION 7 – JOB INSTRUCTIONS (or if no time is specified, a reasonable time) to review and comment upon them and to allow the CONTRACTOR to comply with such comments, and re-submit the documents as aforesaid without delaying performance of the WORK.
- (2) Upon award of the CONTRACT the COMPANY shall furnish the CONTRACTOR with 1 (one) reproducible copy of the Drawings referred to in SECTION 5 – SPECIFICATION AND DRAWINGS and 2 (two) copies of the CONTRACT Documents free of charge to the CONTRACTOR. The CONTRACTOR shall provide and make at its own expense any further copies required by it and maintain sufficient copies of same in order to fulfill its obligation under the CONTRACT.
- (3) The CONTRACTOR shall furnish the COMPANY with 3 (three) copies of the Drawings and specification prepared by the CONTRACTOR or any SUBCONTRACTOR and 3 (three) copies of any revisions of said drawings from time to time during the progress of the WORK.
- (4) Upon completion of the whole of the WORK or any part thereof the CONTRACTOR shall provide the COMPANY with 1 (one) good quality reproducible copy and 3 (three) COMPANY approved copies of final as-built details of all Drawings in respect of the WORK.
- (5) The CONTRACT HOLDER shall have full power and authority to supply to the CONTRACTOR from time to time during the progress of the WORK such modified or further drawings and instructions as shall in his opinion be necessary for the purpose of the proper and adequate construction, completion and maintenance of the WORK and the CONTRACTOR shall carry out and be bound by same.
- (6) One continuously updated copy of the Drawings and CONTRACT Documents furnished to the CONTRACTOR as aforesaid shall be kept by the CONTRACTOR on the WORKSITE and the same shall at all reasonable times be available for inspection and use by the CONTRACT HOLDER and any other person authorised by him in writing.
- (7) References in this Clause to drawings, documents, etc. shall include those items in whatever format they are produced.

44. SETTING OUT

- (1) The CONTRACTOR shall be responsible for the true and proper setting-out of the WORK in relation to original points, lines and levels of reference given by the COMPANY in writing and for the correctness of the position, levels, dimensions and alignment of all parts of the WORK and for the provision of all necessary instruments, appliances and labour in connection therewith.

If, at any time during the progress of the WORK, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the WORK, the CONTRACTOR shall, at its own expense, rectify such error to the satisfaction of the COMPANY, unless such error is based on incorrect data supplied in writing by the COMPANY, in which case the expense of rectifying the same shall be borne by the COMPANY. The checking of any setting-out or of any line or level by the COMPANY shall not in any way relieve the CONTRACTOR of its responsibility for the correctness thereof and the CONTRACTOR shall protect and preserve all benchmarks, sight-rails, pegs and other things used in setting-out the WORK.

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

45. FOSSILS, ARTICLES DISCOVERED

- (1) All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the WORKSITE shall as between the COMPANY and the CONTRACTOR be deemed to be the absolute property of the COMPANY. The CONTRACTOR shall take all necessary precautions to prevent its workmen or any other persons from removing or damaging any said article or thing and shall immediately on discovery thereof inform the COMPANY of the discovery and carry out, at the expense of the COMPANY, the COMPANY'S instructions regarding disposal of same.
- (2) Any costs of recovery or costs arising from unauthorized removal of fossils, articles etc shall be for the account of the CONTRACTOR.

46. LABOUR ON WORKSITE IN BRUNEI

- (1) The CONTRACTOR shall, so far as is reasonably practicable, having regard to local conditions, provide on the WORKSITE, to the satisfaction of the COMPANY, an adequate supply of drinking water and sanitary facilities for the use of the CONTRACTOR and the COMPANY.
- (2) The CONTRACTOR shall not, otherwise than in accordance with the Statutes, Ordinances and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor, or drugs, or permit to suffer any such importation, sale, gift, barter or disposal by its SUBCONTRACTORS, agents or employees.
- (3) The CONTRACTOR shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.
- (4) The CONTRACTOR shall in all dealings with personnel in its employment have due regard to all recognised festivals, days of rest and religious or other customs.
- (5) In the event of any outbreak of illness of an epidemic nature the CONTRACTOR shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities or the COMPANY'S Chief Medical Officer for the purpose of dealing with and overcoming same.
- (6) The CONTRACTOR shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its employees and for the preservation of peace and protection of persons and property in the neighbourhood of the WORK.
- (7) The CONTRACTOR shall, if required by the COMPANY deliver to the COMPANY a return in detail in such form and at such intervals as the COMPANY may prescribe showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the CONTRACTOR on the WORKSITE and such information in respect of EQUIPMENT as the COMPANY may require.
- (8) The CONTRACTOR shall be responsible for observance by its SUBCONTRACTORS of the foregoing provisions.

47. MARKING OF WORK

- (1) Without prejudice to the provisions of Clause headed OWNERSHIP and any other provision of the CONTRACT in the event that the property in any part of the WORK passes to the COMPANY before delivery, the CONTRACTOR shall so far as is practicable and to the reasonable satisfaction of the COMPANY set that part of the WORK aside and/or distinctly mark it as the property of the COMPANY. The CONTRACTOR shall ensure that any insurances with respect to that part of the WORK shall remain effective until delivery and if the COMPANY so requires, name the COMPANY as co-insured in the aforesaid insurance.

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48. LIQUIDATED DAMAGES FOR DELAY

- (1) If the CONTRACTOR shall fail to complete the WORK or any specifically identified part of the WORK within the time prescribed by the CONTRACT, the CONTRACTOR shall pay the COMPANY the sum stated in SECTION 8 – SCHEDULE OF PRICES as liquidated damages which are mutually agreed and not as penalty for such default by the CONTRACTOR for every day or part of a day which shall elapse between the time prescribed by the CONTRACT for completion and the date of certified completion of the WORK or any specifically identified part of it as the case may be. The COMPANY may, without prejudice to any other method of recovery, set off the amount of such liquidated damages from any moneys due or which may become due to the CONTRACTOR. The payment or deduction of such damages shall not relieve the CONTRACTOR from its obligations to complete the WORK, or from any other of its obligations and liabilities under the CONTRACT.
- (2) The amount of any liquidated damages payable for delay shall be in addition to any damages, liquidated or otherwise payable by CONTRACTOR because the WORK or any part of it fails to achieve any performance values guaranteed by the CONTRACT.

49. OPERATING AND MAINTENANCE INSTRUCTIONS

- (1) The CONTRACTOR shall furnish to the COMPANY before completion of the WORK full Operating and Maintenance Instructions (including but not limited to Manufacturer's recommendations, details and source of spare parts, Manufacturer's manuals and so forth) which together with the as-built drawings supplied under the Clause headed DRAWINGS AND DOCUMENTS shall be in sufficient detail in the COMPANY'S opinion to enable the COMPANY to maintain, dismantle, reassemble, refurbish and adjust all parts of the WORK. Unless otherwise agreed, a Certificate of Completion shall not be given under Clause headed COMPLETION hereof until such instructions are provided.

50. COMPLETION TESTS

- (1) Without prejudice to Clause headed INSPECTION AND TESTING hereof if the CONTRACT provides that the WORK or any part of it shall undergo completion tests then the CONTRACTOR shall give the COMPANY the period of notice specified in the CONTRACT (or if none is stated not less than fourteen (14) days prior notice) of readiness to commence testing, and shall agree with the COMPANY the times of testing. In all cases the CONTRACTOR shall give the COMPANY three (3) copies of the full test procedures for each test to be carried out not later than six (6) weeks before the start of the test in question.
- (2) 'Completion tests' as used in this Clause shall mean all the performance test runs and trial operation periods that have to be successfully performed under the CONTRACT.
- (3) If the COMPANY does not attend any such test then the test shall proceed in their absence and the certified copies of the test results shall be deemed to be a correct record thereof. In any event the CONTRACTOR shall provide the COMPANY with three (3) certified copies of the test results and all associated test reports.
- (4) The COMPANY shall provide such facilities and utilities as are specified in the CONTRACT to enable Completion Tests to be carried out.
- (5) If in the opinion of the COMPANY the tests are being unduly delayed he may by written notice call upon the CONTRACTOR to carry out such tests within fourteen (14) days of receipt of the said notice, and the CONTRACTOR shall carry out the said tests within the said period and notify the COMPANY the time of testing. If the CONTRACTOR fails to make such tests within the aforesaid period, the COMPANY may proceed to perform them at the risk and expense of the CONTRACTOR unless the CONTRACTOR has given the COMPANY a prior written statement that the aforesaid test will damage all or part of the

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

WORK. In the event that COMPANY carries out such tests in spite of CONTRACTOR'S prior written statement, any damage to the WORK shall be for the COMPANY'S account.

- (6) As and when the WORK or any separate part of it shall have passed all the Completion Tests referred to in this Clause the COMPANY shall notify the CONTRACTOR accordingly.

Notification that the WORK or any part of the WORK has passed Completion Tests shall not relieve the CONTRACTOR from any liability or obligation under the CONTRACT nor shall it constitute a Certificate of Completion under Clause headed COMPLETION.

- (7) If the WORK or any part of it fails the Completion Tests the COMPANY shall so notify the CONTRACTOR and may state reasons for the failure. The CONTRACTOR shall with all speed remedy the defect and/or bring the performance up to such levels as are guaranteed in the CONTRACT. The CONTRACTOR shall then repeat the tests at its own cost under the same terms and conditions.
- (8) If the WORK or any part of it fails the Completion Tests or any repetition thereof under sub-clause (7) herein, the COMPANY may:-
- (a) order a further repetition of the said tests under the terms of sub-clause (7) herein, or
 - (b) reject the WORK or the part thereof if the test results show that the WORK or the part of it in question fails to meet the performance or the agreed tolerances specified in the CONTRACT, or if there are none if the results show that the WORK or the part of it in question is not in accordance with the CONTRACT, or
 - (c) agree to take over the WORK or part of it in question subject to the COMPANY receiving such liquidated damages for diminution of value as may be provided for in the CONTRACT or failing such provision, as may be agreed by the parties or failing agreement, at the sole discretion of the COMPANY.
- (9) No Certificate of Completion shall be given under the Clause headed COMPLETION hereof until the WORK has either passed all the Completion Tests or has been taken over pursuant to sub-clause (8) (c) herein.
- (10) If any repairs, corrections or replacement of WORK during the guarantee period under Clause headed RESPONSIBILITY FOR THE WORK hereof are of such a nature that they may, in the COMPANY'S reasonable opinion, affect the fitness for purpose of the WORK then the COMPANY may require the Completion Tests to be repeated in which case such tests shall be carried out as provided in this Clause and the CONTRACT.
- (11) Any testing, failure to test or repetition of test shall, unless with the prior written consent of the COMPANY not constitute a waiver of the COMPLETION DATE.

51. FACTORY TESTS

- (1) Without prejudice to Clause headed INSPECTION AND TESTING hereof, if the CONTRACT provides that any part of the WORK shall undergo factory tests the CONTRACTOR shall give the COMPANY the period of notice specified in the CONTRACT (or if none is stated not less than fourteen (14) days prior notice) of readiness to test and shall agree with the COMPANY the time and place of the tests. In all cases the CONTRACTOR shall give the COMPANY three copies of the full test procedures to be carried out not later than six weeks before the start of the tests in question.
- (2) The COMPANY shall give reasonable notice of its requirements and the CONTRACTOR shall ensure that the said requirements shall be included in all tests to be carried out at places under CONTRACTOR'S and/or its SUBCONTRACTORS control.
- (3) The CONTRACTOR shall carry out such factory tests in accordance with the test procedures notified to the COMPANY. If the COMPANY does not attend any such test, then the test shall proceed in their absence and the certified copies of the test results shall

SECTION 3 – GENERAL CONDITIONS OF CONTRACT

be deemed to be a correct record thereof. In any event the CONTRACTOR shall provide the three (3) certified copies of the test results and all associated test reports.

- (4) The CONTRACTOR shall provide at its own cost all things necessary to carry out the said tests.
- (5) As and when the part of the WORK in question shall have passed the factory tests referred to in this Clause the COMPANY shall notify the CONTRACTOR accordingly. Notification that a part of the WORK has passed factory tests shall not relieve the CONTRACTOR from any liability or obligation under the CONTRACT nor shall it constitute a Certificate of Completion under Clause headed COMPLETION.
- (6) If the part of the WORK in question fails the said factory tests then the COMPANY shall so notify the CONTRACTOR, and shall state reasons for the failure. The CONTRACTOR shall with all speed make good the defect and (unless the COMPANY dispenses with further tests) repeat the tests at its own cost under the same terms and conditions.
- (7) Unless the COMPANY shall otherwise direct, no part of the WORK that has to undergo factory tests shall be delivered to the COMPANY until it has passed the factory tests in question.
- (8) Any delays as a result of the said factory tests or re-testing required by the COMPANY shall not be regarded as a waiver by the COMPANY of any of its rights under the CONTRACT or at law.

52. EXTRAORDINARY TRAFFIC

- (1) The CONTRACTOR shall use all reasonable means to prevent any of the highways, water ways or bridges, locks, sea walls, harbour works or navigation marks communicating with or on the routes to the WORKSITE from being damaged, or obstructed by any traffic of the CONTRACTOR or any of its SUBCONTRACTORS and in particular shall select routes, choose and use vehicles and vessels and restrict and distribute loads and cargoes so that any such traffic as will inevitably arise from the moving of EQUIPMENT and MATERIALS from and to the WORKSITE shall be limited, as far as reasonably possible, and so that no unnecessary damage or obstructions may be occasioned to such highways and other routes as aforesaid.
- (2) Should it be found necessary for the CONTRACTOR to move any loads of MATERIALS, EQUIPMENT, machinery or pre-constructed units or parts of units of WORK over part of any highway or other routes works as described in sub-clause (1) herein the moving whereof is likely to damage any highway or such other routes unless special protection or strengthening (the "Protection") is carried out, the CONTRACTOR shall before moving the load on to such highway or other routes give notice to the COMPANY REPRESENTATIVE of the weight and other particulars of the load to be moved and its proposals for the Protection. Unless within fourteen (14) days of the receipt of such notice the COMPANY shall by counter-notice direct that such protection or strengthening is unnecessary, then the CONTRACTOR will carry out such proposals or any modifications thereof that the COMPANY shall require and, unless there is an item or are items in SECTION 8 – SCHEDULE OF PRICES for pricing by the CONTRACTOR of the necessary works for the protection or strengthening aforesaid, the proper costs thereof shall be paid by the COMPANY to the CONTRACTOR pursuant to Clause headed VARIATION.
- (3) If during the performance of the WORK or at any time thereafter the CONTRACTOR shall receive any claim arising out of the performance of the WORK in respect of damage or obstruction of the highways or any other routes as described in sub-clause (1) herein, it shall immediately report same to the COMPANY REPRESENTATIVE and thereafter the CONTRACTOR shall negotiate the settlement of and pay all sums due in respect of such claims subject to Clause headed RESPONSIBILITIES AND INDEMNITIES and shall indemnify the COMPANY in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Should however such damage or injury as aforesaid be the direct result of complying with the COMPANY REPRESENTATIVE'S direction pursuant to sub-clause (2) herein that such protection or

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strengthening is unnecessary, then the COMPANY shall negotiate the settlement of and pay all sums due in respect of such claims.

53. COMPUTER SOFTWARE

- (1) Where the CONTRACTOR uses any computer software programme or firmware microcode written or modified by the CONTRACTOR either to perform the WORK or to do any task in connection with the WORK then the CONTRACTOR shall on request at any time during the WORK or up to six (6) years after a Certificate of Completion is given for the whole of the WORK at no cost to the COMPANY make such computer software programme or such firmware microcode together with any necessary source code (in whatever form it is recorded or stored) available to the COMPANY at the COMPANY'S head office in Seria or at any other location agreed to by the COMPANY so that the COMPANY may use such programme to verify the WORK or any task in connection with the WORK. The CONTRACTOR shall give or cause the COMPANY to be given at no cost to the COMPANY any necessary licence for such computer software programme or firmware microcode or source code to enable the COMPANY to perform such verification and the COMPANY shall use such computer software programme or firmware microcode or source code for such verification and no other purpose.

54. COMPUTER VIRUSES

- (1) The CONTRACTOR warrants that:
 - (a) software (including all information supplied in diskette form) supplied to the COMPANY pursuant to this CONTRACT; and
 - (b) software (including information supplied in diskette form) used by the CONTRACTOR on the COMPANY'S Computer Systems;shall be in good working order, free of all viruses and will operated and perform on the COMPANY'S Computer Systems and in accordance with the software documentation.
- (2) Without prejudice to sub-clause (1) herein, the CONTRACTOR hereby undertakes and agrees that it shall scan, verify and check in accordance with sub-clause (3) herein any and all computer software delivered to or obtained from the COMPANY to ensure that it is free from any computer virus.
- (3) Scanning, verification and checking of the software shall be carried out, or procured, by the CONTRACTOR, at the CONTRACTOR'S expense, immediately prior to its delivery to the COMPANY, or as the case may be, immediately after obtaining it from the COMPANY, and in any event, at the last practicable moment before such delivery or first practicable moment after such obtaining.

The CONTRACTOR agrees to supply at its own expense to the COMPANY at the COMPANY'S request and within twenty-four (24) hours of such request the detailed results of such scanning verification and checking together with evidence of the methods used in such scanning, verification and checking.
- (4) The CONTRACTOR'S warranty in sub-clause (1) herein and its obligations in sub-clause (2) and (3) herein shall extend to any subsequent releases of software by the CONTRACTOR and to the supply by the CONTRACTOR of any upgrades.
- (5) In the event that any virus infection is discovered during the scanning, verification and checking carried out pursuant to sub-clause (2) herein, the CONTRACTOR agrees to inform the COMPANY immediately and the CONTRACTOR and the COMPANY shall meet as soon as reasonably practicable thereafter to agree what action to take.
- (6) Sub-clauses (1) to (5) herein shall not absolve the CONTRACTOR from any obligation it has either under the CONTRACT or in law.

PARENT COMPANY GUARANTEE

To: Brunei Shell Petroleum Company Sendirian Berhad,
Seria KB3534,
BRUNEI DARUSSALAM.

Dear Sir,

In consideration of Brunei Shell Petroleum Company Sendirian Berhad ("the COMPANY") granting CONTRACT Number (#CON_NO#) ("the CONTRACT") to (the CONTRACTOR) and in consideration of the sum of \$1 payable by the COMPANY to us on demand, we, (the GUARANTOR) being the ultimate parent company of the CONTRACTOR guarantee unconditionally and irrevocably as a primary obligation to the COMPANY and not as a surety that the CONTRACTOR shall perform all its obligations and liabilities contained in and in accordance with the CONTRACT.

If the CONTRACTOR shall fail to so perform any of its obligations under the CONTRACT, or to fulfil any of its liabilities arising out of or in connection with the same, the GUARANTOR hereby undertakes at the option of the COMPANY:

- 1) upon 14 (fourteen) days' notice in writing from the COMPANY of its intention to make a claim under this Guarantee, forthwith to perform such obligations or liabilities on the same terms and conditions as stated in the CONTRACT mobilising and using for that purpose sufficient personnel and technical skill;
- or 2) to reimburse the COMPANY the costs incurred by the COMPANY in itself performing the said obligations and fulfilling the said liabilities;
- or 3) to reimburse the COMPANY the costs incurred by the COMPANY in having the said obligations performed and liabilities fulfilled by another contractor;
- and 4) to indemnify the COMPANY in respect of any loss, costs and expense incurred as a result of the CONTRACTOR's failure to perform the CONTRACT.

This Guarantee shall apply to the CONTRACT including all indulgences, variations, alterations, incorrect payments, or extensions of time as may be made, given, conceded or agreed under the CONTRACT, or any guarantee period and extension(s) thereto, whether or not the GUARANTOR receives notice of the same and the GUARANTOR hereby waives all need for notice of the same and shall also be valid in respect of any party to which the CONTRACT may be transferred by the COMPANY, in whole or in part, pursuant to the terms thereof.

The giving of time by the COMPANY or the neglect or forbearance by the COMPANY in requiring or enforcing the GUARANTOR's obligations under this Guarantee or the CONTRACTOR's obligations under CONTRACT Number (#CON_NO#) or other indulgence shall not in any way prejudice such obligations.

The GUARANTOR shall be jointly and severally liable to the COMPANY together with any other guarantor who gives a similar parent company guarantee to the COMPANY. Furthermore this guarantee shall be in addition to and shall not be in any way prejudiced or affected by any other form of security that the COMPANY has or may at any future time have for the performance of the CONTRACT.

This Guarantee shall be governed by and construed in accordance with English Law and all parties agree to subject any disputes that may arise under or in connection with this Guarantee to the jurisdiction of the courts of Negara Brunei Darussalam.

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SIGNATURE ON BEHALF :
OF PARENT COMPANY
(the GUARANTOR)

SIGNATORY'S NAME :

TITLE OF SIGNATORY :
DATE :