



# **NORWEGIAN SUBSEA CONTRACT**

**NSC 05**

**CONDITIONS OF CONTRACT**

## **Introduction to NSC 05**

The Norwegian Subsea Contract 05 (NSC 05) is a set of standard conditions developed for contracting within the subsea segment, on the Norwegian continental shelf. The preparation of the standard was initiated by OLF. Participants in the negotiation of this OLF model contract have been Statoil, Stolt Offshore, Subsea 7 and Technip Offshore Norge.

The intended application of the NSC 05 is contracts for marine operations such as installation of pipelines, cables, umbilicals and other subsea structures and related subsea construction work where the use of vessels is involved. This standard captures both “installation only” contracts as well as full EPCI type contracts and addresses specific risks in connection with subsea work and the operation of vessels.

There is no commitment to use NSC 05 for any OLF member. It is, however, recommended that when this model contract is used as a basis for an invitation to tender, then any changes made in order to reflect project specific circumstances should be identified.

April 2005

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This Contract is entered into between ..... on behalf of the participants in the Owner Group (Company) having an address at .....on the one part and .....(Contractor) having an address at ..... on the other part.

The parties hereto agree as follows:

## **PART I GENERAL PROVISIONS**

### **ART. 1 DEFINITIONS**

- a) **Acceptance Certificate** means the certificate to be issued by Company in accordance with Art. 23.5, when the Work, including guarantee work, is complete.
- b) **Affiliated Company** means the parent company of one of the parties to the Contract, together with any company which, according to the Norwegian Joint Stock Company Act (Aksjeloven/Allmennaksjeloven) Section 1-3, shall be regarded as a subsidiary company of the parent company or a party to the Contract.
- c) **Company** means.....on behalf of the Owner Group.
- d) **Company Group** means the Owner Group, each of the participants therein, their Affiliated Companies, Company's other contractors and their subcontractors and the employees and directors of the aforementioned companies and others whose services are used by Company.
- e) **Company Provided Items** means items provided by Company for the performance of the Work.
- f) **Company's Representative** means the person who at any time is appointed in accordance with Art. 3 to act on behalf of Company.
- g) **Completion Certificate** means the certificate to be issued by Company in accordance with Art. 19.5 when the Work, with the exception of guarantee work, is completed.
- h) **Contract** means these Conditions of Contract and the Exhibits as stated in Art. 2.1.
- i) **Contract Object** means any item which Contractor according to the Contract shall deliver, except for Company Provided Items before their incorporation into the Contract Object.

- j) **Contract Price** means the total sum payable to Contractor in accordance with Exhibit B, as that sum is increased or decreased in accordance with the provisions of the Contract.
- k) **Contractor** means .....
- l) **Contractor Group** means Contractor, its Affiliated Companies participating in the Work, its Subcontractors and their contractors and subcontractors, participating companies in an enterprise established for the performance of the Work, and the employees and directors of the aforementioned companies.
- m) **Day** means a consecutive calendar day unless otherwise stated.
- n) **Delivery Date** means the date of delivery as set out in Exhibit C, or as varied in accordance with the provisions of Art. 12 to 16.
- o) **Delivery Protocol** means the document to be concluded by both parties in accordance with Art. 19 upon the delivery of the Contract Object and/or completion of the Offshore Work.
- p) **Disputed Variation Order** means a Variation Order issued in accordance with Art. 16.2.
- q) **Force Majeure** means an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome it or its consequences.
- r) **Guarantee Period** means the period stated in Art. 23.2.
- s) **Interim Delivery Protocol** means the protocol issued by Company in accordance with Art. 19.4.
- t) **Materials** means all items required for the Work, other than Company Provided Items, Spread and other equipment and tools provided by Contractor in its performance of the Work.
- u) **Mobilisation** means, and shall be deemed to have taken place, when Contractor has provided the Spread at the relevant offshore Site, all required tests performed, the Spread fully equipped and manned in accordance with the Contract and provided with all necessary supplies, certification and documentation and ready to commence the Offshore Work.
- v) **Offshore Work** means the part of the Work performed by Contractor at an offshore and/or inshore Site.

w) **Owner Group** means the owners (at any time) of the .....  
field covered by Production Licence No. .... on the Norwegian part of the  
continental shelf and at the commencement of the Contract consisting of:

.....	.....%
.....	.....%
.....	.....%
.....	.....%
	100.00%

- x) **Site** means a place where Work is performed.
  
- y) **Spread** means all vessels and barges provided by Contractor for the performance of the Work together with all necessary personnel, equipment and consumables.
  
- z) **Subcontract** means an agreement entered into between Contractor and a Subcontractor for the supply of goods or services in connection with the Work.
  
- aa) **Subcontractor** means a Third Party who has entered into an agreement with Contractor for the supply of goods or services in connection with the Work.
  
- bb) **Third Party** means any party other than Company and Contractor.
  
- cc) **Variation Order** means an instruction of Variation to the Work issued in accordance with Art. 14.
  
- dd) **Variation Order Request** means a request submitted by Contractor in accordance with Art. 16.1.
  
- ee) **Variation to the Work** means a variation to the Work, Scope of Work, Contract Schedule, Specifications, Drawings and Company Provided Items and Services made in accordance with the provisions of Art. 12 to 16.
  
- ff) **Weather Downtime** means a period of time when the progress of the Work is prevented solely due to adverse weather conditions in excess of the capabilities of the Spread.
  
- gg) **Work** means all work which Contractor shall perform or cause to be performed in accordance with the Contract.
  
- hh) **Work Package** means a part of the Work identified as such in the Contract.

**ART. 2 CONTRACT DOCUMENTS - INTERPRETATION**

2.1 The Contract consists of these Conditions of Contract and the following Exhibits:

Exhibit A: Scope of Work

Exhibit B: Compensation

Exhibit C: Contract Schedule

Exhibit D: Administration Requirements

Exhibit E: Specifications

Exhibit F: Drawings

Exhibit G: Company Provided Items and Services.

Exhibit H: Subcontractors

Exhibit I: Company's Insurances

Exhibit J: Standard Bank Guarantee

Exhibit K: Contractor's Proprietary Information

Exhibit L: Parent Company Guarantee

2.2 References made in the Contract to the expressions stated in Art. 2.1 are references to the content of the specific Exhibit referred to, including such variations as may have been made in accordance with the provisions of Art. 12 to 16.

2.3 In the event of any conflict between the provisions of the Contract documents, they shall be given priority in the following order:

- a) these Conditions of Contract,
- b) all Exhibits, except Exhibit D, in the order as listed in Art. 2.1,
- c) Exhibit D.

**ART. 3 REPRESENTATIVES OF THE PARTIES**

3.1 Prior to commencement of the Work each party shall appoint a representative with authority to act on its behalf in all matters concerning the Contract, and appoint a deputy to act on his behalf. Without prejudice to Art. 8.1 first paragraph each party may, by giving 14 Days notice to the other party, substitute a representative or deputy.



3.2 A representative or his deputy may delegate specific tasks to one or more persons appointed by him. In such case the other party's representative shall be notified of the authority given to such appointed person or persons.

3.3 Contractor shall afford Company's Representative access to the Spread, the Site and the Work during working hours, where working hours shall mean 24 hours per Day during Offshore Work. The same access shall be afforded persons authorised by Company's Representative, provided that notification of such authorisation has been given in reasonable time.

If the progress of the Work is unduly impeded by the presence of Company's Representative or person authorised by him, Contractor shall without undue delay submit a request in accordance with Art. 16.1.

## **PART II PERFORMANCE OF THE WORK**

### **ART. 4 OBLIGATIONS OF CONTRACTOR AND COMPANY - MAIN RULES**

4.1 Contractor shall perform the Work in a professional and careful manner in accordance with the Contract. As part of such performance Contractor shall

- a) give priority to safety in order to protect life, health, property and environment, and
- b) cooperate with Company's Representative and persons appointed by him in accordance with Art. 3.

4.2 Contractor shall take good care of the Contract Object, Company Provided Items and Materials. Unless specifically agreed to by Company, Contractor shall not have the right to make temporary use of Company Provided Items or Materials to be incorporated into the Contract Object, other than for the purpose of fulfilling the Contract.

4.3 Contractor shall, within the framework established by Exhibits A and C, cooperate with Company and other contractors and organise its operations to ensure that all activities on a Site are carried out efficiently and without delay.

Except for the defined periods specified in Exhibit C, Company shall provide Contractor free and unrestricted access to the Sites where Work is to be performed.

4.4 To the extent stated in Exhibits A or C, Company is entitled to perform work or let other contractors perform work on the Contract Object. If Company desires such work to be performed which is not contained in Exhibits A or C, the provisions of Art. 12 to 16 apply accordingly.

4.5 Company shall provide such deliverables and decisions as it is obliged to under the Contract within the time-limits set out in the Contract and otherwise within reasonable time if no such time-limits have been provided.

4.6 After the occurrence of a serious incident or near miss, Contractor shall without delay, upon Company's request, provide access for a Company established investigation team. Contractor shall make available to such investigation team the necessary resources, personnel and information relevant to the incident or near miss and shall contribute in every way possible in order to clarify the course of events that led to the incident or near miss. Reports from any flag state authority's investigations relating to the incident or near miss during the Work shall be made available to Company without undue delay.

If the progress of the Work is unduly impeded by the presence of the Company established investigation team, Contractor shall without undue delay submit a request in accordance with Art. 16.1.

4.7 In the event the Work is prevented as a consequence of Weather Downtime, then Contractor is entitled to be paid during the period of delay in accordance with the rates set out in Exhibit B - Compensation.

In addition, Contractor may be entitled to an adjustment of the Contract Schedule in accordance with the provisions of Art. 12 to 16. Such adjustment shall reflect the consequences of the delay caused to Contractor by such Weather Downtime.

## **ART. 5 AUTHORITY REQUIREMENTS - PERMITS**

5.1 Contractor shall keep itself informed of and comply with

- a) applicable laws and regulations,
- b) requirements and orders of classification societies, certifying agencies, certifying authorities and public authorities having jurisdiction, and
- c) applicable trade union and wage agreements.

If laws and regulations as stated in a) above have been adopted and requirements and orders as stated in b) above have been issued after Contract award and necessitate Variations to the Work or its execution, and this affects Contractor's costs or progress, either party may demand a change in the Contract Price or Contract Schedule reflecting the effect of such decisions or variations, unless Company can demonstrate that Contractor could reasonably have foreseen such changes at Contract award.

Changes in the way in which public authorities apply such laws or regulations mentioned in a) above shall be dealt with in the same way. The provisions of Art. 12 to 16 apply accordingly. The time-limit for presenting a Variation Order Request commences at the time the circumstances on which the request is based became or ought to have become known to Contractor.

Company shall have the right to apply for an exemption from the relevant authorities to any changes in laws and regulations after Contract award.

5.2 Contractor shall, in due time, obtain and maintain such approvals and permits as are necessary for the performance of the Work and which must or can be obtained in the name of Contractor. Company shall provide any necessary assistance in this connection.

Company shall, in due time, obtain and maintain all other approvals and permits.

When so requested by Company, Contractor shall assist in obtaining approvals and permits concerning the Work which can only be obtained in the name of Company.

5.3 Company may require that Contractor submits to Company such information about the performance of the Work and about Contractor Group as Company is obliged to submit to public authorities.

## **ART. 6 DRAWINGS AND SPECIFICATIONS - COMPANY PROVIDED ITEMS**

6.1 Contractor shall search for defects, discrepancies and inconsistencies in Drawings and Specifications.

Contractor shall without undue delay notify Company of any defects, discrepancies and inconsistencies discovered.

Company is responsible for defects, discrepancies and inconsistencies which are discovered in Drawings and Specifications unless otherwise stated in Art. 6.3.

Contractor is entitled to an adjustment of the Contract Schedule and the Contract Price to compensate for delays or costs incurred as a result of soil and seabed conditions, unless Contractor has failed to take due account of the information about soil and seabed set out in Specifications.

6.2 Upon receipt of Company Provided Items, Contractor shall make an immediate visual inspection and within 48 hours of their receipt give notice to Company of any damages or defects discovered by such inspection.

Within a reasonable time thereafter, Contractor shall carry out such examinations as are described in Exhibit G – Company Provided Items and Services.

Contractor shall notify Company promptly of any damages or defects discovered.

6.3 If Contractor has not notified Company in accordance with Art. 6.1 or 6.2 of any damages, defects, discrepancies and inconsistencies discovered, and as a result, Company incurs direct extra costs in connection with the Work which are not covered by insurance, or loses rights or guarantees, then all such costs incurred shall be borne by Contractor. The same shall apply if such damages, defects, discrepancies and inconsistencies ought to have been discovered.

- 6.4 Upon receipt of notice from Contractor in accordance with Art. 6.1 or 6.2, Company shall, without undue delay, either have the necessary corrections made or give Contractor instructions on how to proceed. The provisions of Art. 12 to 16 shall apply accordingly.

## **ART. 7 SUBCONTRACTS**

- 7.1 Contractor shall not enter into any Subcontract concerning parts of the Work without the prior consent of Company. Company shall notify Contractor of its decision within 7 Days after having been asked by Contractor. However, such consent is not required for deliveries of work by Subcontractors listed in Exhibit H - Subcontractors, nor for minor purchases or limited use of hired labour.

- 7.2 Contractor is responsible according to the Contract for the fulfilment of Subcontracts.

- 7.3 If, after Contract award, Company assigns a contract as a Subcontract to Contractor and the Subcontract conditions were unknown to Contractor at Contract award, Contractor's liability for defects and delays which are solely due to circumstances under the Subcontractor's control is limited to Subcontractor's liability according to the contract assigned to Contractor.

Furthermore, Company shall bear Contractor's direct extra expenses resulting from delay or defects related to the assigned contract to the extent that Contractor can prove that its expenses are caused by such delay or defect and that it has used its best endeavours to prevent the delay or defect. Company shall issue a Variation Order pursuant to Art. 12 to 16, provided that Contractor submits a Variation Order Request without undue delay after having discovered such circumstances.

If such Subcontractor goes bankrupt and the Subcontract in question is therefore annulled, Contractor is entitled to an adjustment in the Contract Schedule and Contract Price, pursuant to the provisions of Art. 12 to 16.

These provisions apply accordingly if Company appoints a Subcontractor after Contract award.

- 7.4 Subcontracts shall state that
- a) the Subcontract may be assigned to Company,
  - b) Subcontractor is included in Contractor Group with regard to the provisions of Art. 30,
  - c) Art. 22 concerning title shall apply in the relationship between Contractor and the Subcontractor, and
  - d) Company shall have the rights to documents, computer programs and inventions stated in Art. 32.

Such Subcontracts shall also contain those provisions of the Contract which are necessary to enable Contractor to fulfil its obligations in accordance with the Contract.

When requested by Company, Contractor shall provide copies of all Subcontract documents prior to entering into a Subcontract, provided that the Subcontract concerns an important part of Contractor's delivery. However, Company is only entitled to request copies showing provisions of price and payment, when Company shall compensate the Work performed under the Subcontract on a reimbursable basis.

#### **ART. 8 CONTRACTOR'S PERSONNEL**

8.1 Appointment, transfer or replacement of personnel described as key personnel in Exhibit D – Administration Requirements shall be approved by Company. Such approval shall not be unreasonably withheld.

Contractor shall at its own cost replace personnel who conduct themselves in an improper manner or are unsuitable to perform their tasks.

8.2 Contractor shall at its own cost ensure that personnel performing Offshore Work have passed safety courses and medical examinations, in accordance with the applicable laws and regulations, unless the relevant public authorities have granted a dispensation.

8.3 For Work performed in Norway or on the Norwegian continental shelf, Contractor shall ensure that opportunities exist for trade union activity in accordance with Norwegian practice.

8.4 Contractor shall ensure that all key personnel described in Exhibit D – Administration Requirements as managerial and supervisory personnel in Contractor's offshore organisation and marine crew onboard the Spread, down to and including the level of supervisor/foreman, and personnel on all levels in Contractor's emergency organisation onboard the Spread, have a good working knowledge of the English language, including understanding of safety instructions and commands, and that they are, prior to being mobilised, familiar with the relevant parts of the Work as well as the procedures and the Spread to be used.

#### **ART. 9 THE SPREAD**

9.1 Contractor shall provide the Spread as required by the Contract and maintain it in good working order, all equipment certified and fully operational, and in a seaworthy condition.

9.2 Contractor shall ensure there are sufficient spare parts for the Spread to ensure that prolonged breakdown does not occur and, if requested by Company, demonstrate or produce evidence of spare parts and their locations.

9.3 Prior to each Mobilisation/remobilisation Contractor shall, if requested by Company with reasonable notice, give Company and its surveyor access to the Spread at a place which shall be mutually agreed, to ascertain that the Spread meets the requirements of the Contract.

In the event that the Spread does not meet the requirements of the Contract, Contractor shall without undue delay take the necessary measures to rectify any deficiencies. Thereafter, a new survey shall be carried out.

The costs of any initial survey shall be for Company's account. The cost of any further surveys, including Company's direct costs in connection with such survey, due to lack of compliance, shall be borne by Contractor.

Any survey or inspection of the Spread by Company or its surveyor shall not relieve Contractor from any of its obligations under the Contract.

9.4 Subject to Company's prior written approval, which shall not be unreasonably withheld, Contractor shall have the right to substitute the Spread or any part thereof with vessels and/or equipment having similar or better specifications and capabilities.

Contractor shall carry all costs incurred in connection with such substitution.

9.5 Contractor shall promptly buoy, light, raise and remove the Spread, Materials, working equipment, vessel or craft that may be sunk or lost in the course of the performance of the Work, to comply with governmental regulations, to avoid any hazard to navigation and any delay in the completion of the Work, and if they obstruct Company's operations at Site. Subject to the provisions of Art. 30.3, all costs relating thereto shall be borne by Contractor.

## **ART. 10 QUALITY ASSURANCE AND HEALTH, SAFETY AND ENVIRONMENT**

10.1 Contractor shall have an implemented and documented system for quality assurance in accordance with the requirements stated in Exhibit D – Administration Requirements.

10.2 Contractor shall place the highest importance and priority on health, safety and environment (HSE) during performance of the Work, and shall have an implemented and documented HSE system in accordance with the requirements of the Contract.

10.3 Contractor shall comply with and be responsible for its Subcontractors complying with the HSE requirements specified in the Contract. Contractor shall take all necessary safety precautions related to the performance of the Work in order to protect life, property and environment.

If Contractor, after having received notification from Company of any major and/or repeated deviations from the HSE requirements specified in the Contract or

from the relevant HSE laws and regulations, fails to take the required immediate actions such failure shall be considered a substantial breach of Contract.

- 10.4 Company's Representative and personnel authorised by him shall have the right to undertake audits and verification of Contractor's and Subcontractor's quality assurance system and system for HSE.

### **PART III PROGRESS OF THE WORK**

#### **ART. 11 CONTRACT SCHEDULE – DELAYED PROGRESS**

- 11.1 Contractor shall perform the Work in accordance with Exhibit C - Contract Schedule.

If Contractor should have cause to believe that the Work cannot be carried out in accordance with the milestones set out in the Exhibit C – Contract Schedule, it shall promptly notify Company accordingly.

- 11.2 If in Contractor's opinion the Work cannot be performed according to the Exhibit C – Contract Schedule owing to circumstances for which Company is to indemnify Contractor, the provisions of Art. 16 apply accordingly.

- 11.3 If in Contractor's opinion the Work cannot be performed according to Exhibit C – Contract Schedule, for reasons for which Contractor is responsible, it shall within 14 Days after notification according to Art. 11.1 communicate

- a) the cause of delay,
- b) its estimated effect on the Contract Schedule and other parts of the Work, and
- c) the measures which Contractor considers appropriate to avoid, recover or limit the delay.

Company shall without undue delay notify Contractor of its view of the information provided by Contractor in accordance with Art. 11.3 a), b) and c). Such notification shall not release Contractor from any of its obligations under Art. 11.1.

- 11.4 If the measures proposed or implemented by Contractor are insufficient to avoid or recover the delay, then Company may require Contractor to take measures considered necessary. If Contractor maintains that it has no obligation to implement the measures required by Company, the provisions of Art. 12 to 16 apply accordingly.

## **PART IV VARIATIONS AND CANCELLATION**

### **ART. 12 RIGHT TO VARY THE WORK**

12.1 Company has the right to order such Variations to the Work as in Company's opinion are desirable by means of a Variation Order or a "drawing revision", ref. Art. 14.1.

Variations may include an increase or decrease in the quantity, character, quality, kind or execution of the Work or any part thereof, as well as changes to the Contract Schedule.

Nevertheless, Company has no right to order variation work which cumulatively exceeds that which the parties could reasonably have expected when the Contract was entered into.

12.2 When Company orders a variation to the Work to be performed, Contractor shall without undue delay submit an estimate to Company, unless the parties agree that it is unnecessary.

The estimate shall contain

- a) a description of the variation work in question,
- b) a detailed schedule for the execution of the variation work showing the required resources and significant milestones,
- c) the effect on the Contract Price, showing the rates used when preparing the estimate, and
- d) the effect on the Contract Schedule, with documentation demonstrating such effect.

Company may require the submission of such estimate prior to ordering variation work to be performed. Company shall pay Contractor's necessary and documented costs for preparing the estimates required by Company. The provisions of Art. 12 to 15 apply accordingly.

12.3 Contractor may propose a Variation to the Work.

### **ART. 13 EFFECTS OF A VARIATION TO THE WORK**

13.1 All obligations under the Contract apply to Variations to the Work, unless otherwise agreed.

13.2 Unless otherwise agreed between the parties, the price for Variations to the Work shall be determined according to the following provisions:

- a) If specific rates are included in Exhibit B - Compensation, such rates shall be used.



- b) If specific rates are not included in Exhibit B – Compensation, any appropriate or comparable rates included therein shall be used.
- c) In the absence of specific, appropriate or comparable rates a fair valuation shall be made.

13.3 The effects of a Variation to the Work on the Contract Schedule shall be agreed upon in the Variation Order for such work, on the basis of the accumulated net effect of the individual variation, and with due consideration to, inter alia,

- a) the effect on Contractor's float,
- b) Contractor's commitments under other contracts, and
- c) the accumulated delaying effects of previous variation work.

Subject to the limitations which follow from Art. 12.1, Company may require Contractor to undertake special measures to avoid Variations to the Work having an effect on the Contract Schedule, or to limit delays as much as possible. The provisions of Art. 12 to 16 apply accordingly.

13.4 A Variation to the Work caused by circumstances for which Contractor is responsible shall not entail any variations to the Contract Price or the Contract Schedule in favour of Contractor.

#### **ART. 14 ISSUE OF VARIATION ORDERS**

14.1 All Variations to the Work required in accordance with the provisions of Art. 12 and 13 shall be made by means of a Variation Order issued by Company in accordance with the provisions of this Article.

Company may also order Variations to the Work by means of a "drawing revision". "Drawing revision" means any change to Drawings or Specifications where the change is clearly identified and has been submitted to Contractor in accordance with such special procedures as are set forth in Exhibit D – Administration Requirements.

14.2 A Variation Order shall be expressly identified as such and be issued on a prescribed form.

The initial Variation Order shall at least contain a description of the variation work and the preliminary schedule for its execution and, to the extent practicable, the effects on the Contract Price, the Contract Schedule and, if any, on the other provisions of the Contract.

Effects that are not recorded on the initial Variation Order shall be formalised by issuing numbered revisions.

**ART. 15 CONSEQUENCES OF VARIATION ORDERS - DISPUTES ABOUT CONSEQUENCES**

- 15.1 On receipt of a Variation Order or a “drawing revision”, Contractor shall implement it without undue delay, even if the effect of the Variation Order or “drawing revision” on the Contract Price, the Contract Schedule and other provisions of the Contract has not yet been agreed.
- 15.2 If the parties agree that there is a variation, but disagree as to the variation’s effect on the Contract Price, then Company shall pay Contractor provisional compensation calculated in accordance with Art. 13.2. Payment shall be made in accordance with the provisions of Art. 20. The amount falls due for payment 30 Days after Company has received the invoice.

Compensation paid for the Variation to the Work shall be considered final unless, within 6 months of the issue of the Variation Order by Company, court proceedings have been instituted or the parties have agreed to initiate arbitration concerning the payment.

If the price for the Variation to the Work which is finally decided differs from the compensation paid in accordance with the first paragraph, interest shall be paid on the difference between the compensation paid and the final price, in accordance with “Forsinkelsesrenteloven” (Interest on overdue payment).

If Contractor has presented a Variation Order Request, interest shall be charged as from the date when the Work would have been paid for if it originally had been part of the Work, but no earlier than 30 Days after the presentation of the Variation Order Request. Interest shall similarly accrue on amounts which are not disputed between the parties. If Company issues a Variation Order without any previous request having been presented for the variation work, interest shall begin to accrue from the due date according to the first paragraph.

- 15.3 If the parties disagree as to the effect on the Contract Schedule, then the views of both parties shall be recorded on the Variation Order.

If Company requires implementation of the measures stated in Art. 13.3, to avoid or limit the delay which, in the opinion of Contractor, will be the effect of the Variation Order to the Contract Schedule, then the provisions of Art. 15.2 shall apply accordingly. Company shall in this case require such measures to be taken in accordance with the provisions of Art. 16.2 regarding Disputed Variation Orders.

- 15.4 Neither Company’s payment nor Contractor’s implementation of a Variation Order or a “drawing revision” shall affect the parties’ possible claims for variations to the Contract Price or the Contract Schedule.

**ART. 16 DISPUTE AS TO WHETHER A VARIATION TO THE WORK EXISTS -  
DISPUTED VARIATION ORDER**

16.1 Company may, by written instruction, require the performance of specific work. If the work so required in the opinion of Contractor is not part of its obligations under the Contract, then Contractor shall submit a Variation Order Request and as soon as possible thereafter prepare an estimate in accordance with Art. 12.2.

Contractor is not obligated to implement the instruction after having submitted a Variation Order Request. However, instructions made by Company related to Offshore Work shall be implemented even if Contractor has submitted a Variation Order Request.

If Contractor has not presented a Variation Order Request without undue delay after Company has required such work to be performed in the manner prescribed in the first paragraph, then it loses the right to claim that the work is a Variation to the Work.

A Variation Order Request shall be expressly identified as such and be presented on a prescribed form. It shall contain a specified description of the work the request concerns and the justification for requesting a Variation Order.

16.2 If Contractor within the prescribed time-limit has made a request as stated in Art. 16.1, Company shall, within a reasonable time, either issue a Variation Order in accordance with the provisions of Art. 14 or a Disputed Variation Order. A Disputed Variation Order shall be expressly identified as such and shall be presented on a prescribed form, which shall identify the work in dispute between the parties and state Company's reason for regarding this as a part of the Work. If Company will claim that Contractor's request is submitted too late, this must be stated in the Disputed Variation Order.

If Company has not issued a Variation Order or a Disputed Variation Order within 21 Days after receipt of a Variation Order Request presented on the basis of instructions made by Company related to Offshore Work, then a Disputed Variation Order shall be deemed to have been issued.

Upon receipt of a Disputed Variation Order, Contractor shall implement it without undue delay.

16.3 Contractor may, within 30 Days after issue of the Disputed Variation Order, request that the question as to whether the work covered by a Disputed Variation Order is a part of the Work, shall be provisionally decided by an expert. At Company's request the expert shall also decide whether a Variation Order Request was submitted within the deadline in Art. 16.1. Such requests by Company must be presented within 7 Days of receipt of Contractor's request. Unless the parties have agreed upon an expert within 14 Days of such request, the expert shall be appointed in accordance with Exhibit D – Administration Requirements.

Each of the parties shall, within 7 Days after the appointment, submit to the expert, with a copy to the other party, the relevant documentation together with a written argument. The parties have the right to submit one further written presentation to the expert with a copy to the other party within 7 Days following the deadline for the first submission. The expert's decision and reasons for reaching it shall be made known within 30 Days of his appointment.

The cost of the expert shall be irrevocably borne by the party whose view was not accepted. Each party shall bear irrevocably its own expenses connected with the provisional decision.

- 16.4 If Contractor's views are accepted in a provisional decision made in accordance with Art. 16.3, the Disputed Variation Order shall be treated as an ordinary Variation Order in accordance with Art. 14 and 15 until the dispute has been resolved by agreement, arbitration, court proceedings or in accordance with the provisions of the third paragraph of Art. 16.4. If hereunder a preliminary payment is made in accordance with Art. 15.2, it shall not under any circumstance be considered as final until three months after the dispute was finally solved.

If Company's views are accepted in the provisional decision made in accordance with Art. 16.3, the work described in the Disputed Variation Order shall be treated as part of the Work until the dispute has been resolved by agreement, arbitration, court proceedings, or in accordance with the provisions of Art. 16.4, third paragraph.

If no court proceedings have been instituted or agreement made to submit the decision to arbitration within 6 months after the provisional decision, then that decision shall become final.

- 16.5 If Contractor has not requested a decision under Art. 16.3, nor instituted court proceedings, nor agreed to submit the decision to arbitration within 8 months after the issue of the Disputed Variation Order, it shall be recorded on the Disputed Variation Order that it is deemed to be a part of the Work.

## **ART. 17 CANCELLATION**

- 17.1 Company may by notice to Contractor cancel the Contract, or parts thereof, with the consequence that the performance of the Work, or the relevant parts of the Work, ceases.
- 17.2 Following such cancellation, Company shall pay
- a) the unpaid balance due to Contractor for that part of the Work already performed,
  - b) all costs incurred by Contractor and its Subcontractors in connection with Materials ordered prior to receipt of the notice of cancellation by Contractor, and compensation for work performed on such Materials prior to the said date, provided that such costs are not covered by payment under Art. 17.2 a),

- c) Contractor's costs related to the copying of documents and preparation of an "as-built" status in accordance with Art. 17.5,
- d) all necessary cancellation charges and administration costs incurred by Contractor in connection with the cancellation, and
- e) Contractor's and Subcontractor's other expenses directly attributable to an orderly close-out of the Contract, calculated as far as possible in accordance with the provisions of Art. 13.2.

Payment shall be made in accordance with the provisions of Art. 20.

17.3 In addition to the amounts stated in Art. 17.2, Company shall pay, within 30 Days after receipt of an invoice,

- a) a cancellation fee equal to the lesser of
  - i) 4% of the Contract Price or relevant part thereof, or
  - ii) 6% of that part of the Contract Price which is not paid on the date of cancellation and which shall not be paid pursuant to Art. 17.2 a),

or,

- b) if the cancellation date occurs within 180 Days prior to planned Mobilisation, then Contractor may instead of the cancellation fee stated in a) above request that Company pays a cancellation fee calculated as a percentage of the unearned portion of the Contract Price which is directly related to the Offshore Work affected. The principle for calculation of the percentage cancellation fee is:
  - i) For cancellation after Mobilisation or on or after 30 Days prior to planned Mobilisation: 60%.
  - ii) For cancellation on or after 60 Days but more than 30 Days prior to Mobilisation: 50%.
  - iii) For cancellation on or after 90 Days but more than 60 Days prior to Mobilisation: 40%.
  - iv) For cancellation on or after 120 Days but more than 90 Days prior to Mobilisation: 30%.
  - v) For cancellation on or after 150 Days but more than 120 Days prior to Mobilisation: 20%.
  - vi) For cancellation on or after 180 Days but more than 150 Days prior to Mobilisation: 10%.
  - vii) For cancellation more than 180 Days prior to Mobilisation: 0%.

Company shall only be entitled to deduct from the cancellation fee such claims as have been presented to Contractor prior to the date of cancellation and have been accepted by Contractor.

17.4 Contractor shall, in accordance with Company's instructions, make its best efforts to cancel Subcontracts on terms acceptable to Company. If Company cannot accept the cancellation terms, then Contractor shall assign such Subcontracts to Company.

17.5 The parties shall conclude a Delivery Protocol stating each party's view of the percentage of the Contract Object and the Work delivered and completed, calculated in accordance with the principles of progress measurement stated in the Contract. Company shall also issue a Completion Certificate which reflects the Delivery Protocol. The provisions of Art. 19 apply accordingly. Contractor shall deliver copies of all design and procurement documentation prepared up to the cancellation, including such documents as are not yet completed. Contractor shall also deliver one set of drawings of the Contract Object reflecting "as-built" status on the cancellation date.

Contractor shall deliver copies of all plans, drawings, specifications and other documents which Company is entitled to use in accordance with Art. 32.

17.6 Company shall, at its own cost, remove the Contract Object, Materials and Company Provided Items from Contractor's Site and/or the Spread.

If such removal is not done within a reasonable time, then Contractor may, having first given notice to Company, remove them to a suitable location for storage at Company's cost and risk. Contractor shall, until the Contract Object, Materials and Company Provided Items have been removed, keep them in a safe manner at Company's cost and risk.

## **ART. 18 COMPANY'S RIGHT TO TEMPORARILY SUSPEND THE WORK**

18.1 Company may temporarily suspend the performance of the Work, or parts thereof, by giving notice to Contractor.

The notice shall specify which part of the Work shall be suspended, the effective date of the suspension and the expected date for resumption of the Work. Furthermore, it shall state the mobilisation plan and any support functions which shall be maintained while the Work is suspended.

If the period of suspension exceeds 10 Days, or it is evident that this will be the case, Contractor has the right to demobilise the Spread if necessary in order to fulfil other commitments.

Contractor shall resume the Work after notification by Company. The date of resumption of the Work shall be determined with due consideration to the Contract Schedule, Contractor's other commitments and the support functions that have been maintained during the suspension.

18.2 Company shall pay Contractor the applicable daily rate as set out in Exhibit B for the Spread during the period of suspension.

In addition, Company shall, to the extent not covered by the daily rate, compensate Contractor for all necessary expenses arising from

- a) any demobilisation and subsequent remobilisation of personnel, Spread and working equipment,
- b) safeguarding the Contract Object, Company Provided Items and related Materials and working equipment,
- c) personnel, Subcontractors and working equipment which must be kept available during the period of suspension,
- d) moving the Contract Object and Company Provided Items, if necessary, so that they do not interfere with Contractor's other activities, and
- e) other necessary expenses incurred by Contractor as a result of suspension of the Work.

Contractor's claim for work performed shall be calculated as far as possible in accordance with the principles of Art. 13.2.

18.3 If Contractor elects to demobilise the Spread in accordance with Art. 18.1, third paragraph, the following shall apply from the time of demobilisation:

- a) Company shall not pay Contractor the applicable daily rate.
- b) Company shall compensate Contractor for all necessary expenses arising from
  - i) any demobilisation and subsequent remobilisation of personnel, Spread and working equipment to the extent not covered by Third Party, and
  - ii) safeguarding the Contract Object, Company Provided Items and related Materials and working equipment.

18.4 If suspension of the Work affects the Contract Schedule or if Contractor claims that it does, then the provisions of Art. 12 to 16 concerning variations to the Contract Schedule and the Contract Price shall apply accordingly.

## **PART V DELIVERY AND PAYMENT**

### **ART. 19 DELIVERY AND COMPLETION OF THE WORK**

19.1 Delivery occurs when the parties jointly, upon Contractor's request, conclude a Delivery Protocol when the Delivery Date has been reached, the Offshore Work and/or the Contract Object has been completed, has passed the tests specified in the Contract and is ready for delivery.

The Delivery Protocol shall be concluded even if minor parts of the Offshore Work and/or the Contract Object remain incomplete, provided that such remaining parts do not have practical significance.

19.2 The Delivery Protocol shall be concluded when the conditions set forth in Art. 19.1 have been met, provided that Contractor has so requested with at least 24 hours notice. Such request cannot be submitted earlier than 48 hours before the Delivery Date.

The Delivery Protocol shall state any outstanding items and contain information about their completion. When the parties disagree, both views shall be recorded in the Delivery Protocol.

The Delivery Protocol shall be dated and signed by both parties.

19.3 When the Work is divided into independent Work Packages without any interface between the Work Packages, then the provisions of Art. 19.1 shall apply for each Work Package.

19.4 When the Work is divided into Work Packages with interface between the Work Packages, then an Interim Delivery Protocol shall be issued for each Work Package.

The Interim Delivery Protocol shall be issued in accordance with the principles of Art. 19.1.

19.5 Company shall issue the Completion Certificate when the Work, with the exception of guarantee work, has been completed in accordance with the Contract.

## **ART. 20 PAYMENT, INVOICING AND AUDIT**

20.1 Company shall pay the Contract Price to Contractor within the time limits and in accordance with the provisions stated in this Article and elsewhere in the Contract.

Company has no obligation to pay until Contractor has submitted a guarantee in accordance with Art. 21.

20.2 Unless otherwise prescribed in Exhibit B - Compensation, the following provisions shall apply to invoicing:

- a) The cut-off date for data collection and invoicing for the Work is the last Sunday in each calendar month.
- b) Within 10 Days of cut-off date, Contractor shall submit to Company invoice(s) for the part of Contract Price payable.
- c) The invoice shall be prepared in accordance with the provisions of Exhibit B - Compensation and Art. 12 to 16. Documentation necessary for control of the invoiced amount shall be appended.

20.3 Company shall, within 30 Days after receipt of an invoice which satisfies the requirements in Art. 20.2, pay the amount due to Contractor according to the invoice. Unless otherwise provided for in the Contract, the following deductions may be made from the payment:



- a) Any previous payments on account to Contractor which relate to, or directly concern, the work covered by the invoice.
- b) Such parts of the invoiced amount as are insufficiently documented or otherwise disputed, provided Company, as soon as possible and no later than at payment, specifies what documentation is considered insufficient and/or what the dispute concerns.
- c) All amounts due to Company from Contractor, provided that Company is entitled to make such deductions according to applicable law.

If it is later established that Company had an obligation to pay the deducted amount, then Company shall pay interest in accordance with “Forsinkelsesrenteloven” calculated from the due date for payment of the invoice.

20.4 Within 60 Days after issue of the Completion Certificate, Contractor shall submit its proposal for the final account. The proposal shall contain a breakdown of the total compensation for the Work, including all claims to be made by Contractor, less any penalties and other amounts due to Company. The proposal shall contain documentation relating to each item included in the breakdown.

Claims not included in the proposed final account cannot be submitted later by Contractor.

Within 90 Days of receiving the proposed final account, Company must notify Contractor of any objections to the proposal. Company must state the grounds for its objections. If Company does not object within the time limit, Contractor’s proposal shall be regarded as accepted.

Within 60 Days after receiving notification of Company’s opinion of the proposed final account, Contractor must notify Company if it intends to initiate court proceedings concerning the final account. Upon expiry of the time limit, Contractor forfeits its rights to institute proceedings.

20.5 Company is entitled to audit at Contractor’s and its Subcontractors’ premises all payments for reimbursable work to Contractor and its Subcontractors. Company’s right to audit does not apply to a Subcontractor where the Subcontract entails minor purchases and/or limited use of hired labour.

Contractor may require the audit to be performed by a neutral auditor where it can show that there is a probability of confidential information, or information which is not relevant for the purposes of the audit, falling into the wrong hands.

Company is entitled to audit during the period of Contract and for up to 2 years after the end of the year of issue of the Completion Certificate.

Payment shall not affect Company’s audit rights. If charges are proven incorrect, then a new account shall be prepared, whether or not this in favour of Contractor.

**ART. 21 SECURITY FOR COMPANY’S CLAIMS**

21.1 Contractor shall, within 30 Days of entering into the Contract and at its own cost, provide a guarantee from a bank or insurance company, or such other guarantee approved by Company, with a content conforming to the text in Exhibit J – Standard Bank Guarantee.

The guarantee shall, in any event, be provided to Company prior to submission of the first invoice in accordance with the provisions of Art. 20.

The guarantee shall amount to 10% of the Contract Price at the time of entering into the Contract. Contractor shall upon Company’s request increase the guarantee sum in accordance with increases in the Contract Price.

21.2 The guarantee shall be valid for its full amount until the Completion Certificate is issued, and thereafter it shall be valid for its half amount. From the expiration of the Guarantee Period the guarantee shall be valid for an amount equal to the cost of any remaining guarantee work. The guarantee shall expire upon issue of the Acceptance Certificate.

If the Completion Certificate or the Acceptance Certificate is not issued within the time limits stated in Contractor’s guarantee and this is not the fault of Company, then Contractor shall ensure the extension of its validity, so that it is always valid for the amount required according to these provisions.

**ART. 22 TITLE - RIGHT TO DEMAND DELIVERY**

22.1 Title to the Contract Object shall pass to Company progressively as the Work is performed. Title to Materials passes to Company on arrival at Site, or when paid for by Company, if this occurs earlier.

As soon as Materials and Company Provided Items arrive at a Site, Contractor shall mark them with an identification number and Company’s name, and as far as possible, shall keep them separate from other items.

22.2 During the performance of the Work and on delivery, the Contract Object and Materials owned by Company shall be free of liens other than those for which Company is responsible.

22.3 If Contractor claims that it is entitled to refuse to deliver the Contract Object, Materials, or other items to which Company is entitled under the Contract, then Company may in all cases demand delivery in return for

- a) payment of the outstanding amount due to Contractor under the Contract, insofar as the amount is not in dispute, and
- b) a guarantee for any further amounts which Contractor maintains are due under the Contract, but which Company considers it has no obligation to pay.

**ART. 23 CONTRACTOR'S GUARANTEE - ACCEPTANCE CERTIFICATE**

23.1 Contractor guarantees

- a) the performance of the Work,
- b) that Contractor's engineering is suitable for the purpose and use for which, according to the Contract, it is intended,

and in addition, if a Contract Object is part of the Scope of Work, that

- c) the Contract Object will conform during the Guarantee Period to Drawings and Specifications,
- d) the Contract Object will conform during the Guarantee Period to the final result of Contractor's engineering, and
- e) that Materials delivered by Contractor for incorporation into the Contract Object are new.

This guarantee does not apply to

- a) Drawings and Specifications and Company Provided Items whether or not incorporated into the Contract Object, unless the contrary follows from Art. 6.3, and
- b) any dredging, trenching, ploughing, span corrections, back-fillings, burial or rock dumping after demobilisation of the relevant Spread or issue of the Delivery Protocol, whichever comes first.

Contractor's liability for breach of the above-mentioned guarantees is regulated by the provisions of Art. 25.

23.2 The Guarantee Period commences when the Delivery Protocol is issued or should have been issued in accordance with Art. 19.1. It expires on the first occurring of the following times:

- a) Two years from the issue of the Delivery Protocol.
- b) Two years from the date Company has taken over the Contract Object in accordance with the Contract, where the conditions for signing the Delivery Protocol in accordance with Art. 19.1 have not been fulfilled.
- c) One year from the first date the Contract Object was taken into use by Company.

Company shall notify Contractor in writing of the actual date(s) when the Contract Object was taken into use.

- 23.3 In case Contractor performs guarantee work during the Guarantee Period, it guarantees those parts of the Work affected by the guarantee work. This guarantee applies for one year after the date of completion of the guarantee work, unless the remaining part of the Guarantee Period is longer. The length of the guarantee for such parts of the Work shall, however, under no circumstances extend beyond two years after the completion of the first guarantee work.
- 23.4 Company shall be entitled to enforce the guarantees given by Subcontractors, where such guarantees are more beneficial to Company than Contractor's guarantee pursuant to this Article.
- 23.5 Company shall issue the Acceptance Certificate when the Work, including guarantee work, has been completed. The Acceptance Certificate shall be deemed to have been issued 30 Days after the latest of the expiry of the Guarantee Period or of the period set out in Art. 23.3.

## **PART VI BREACH OF CONTRACT**

### **ART. 24 CONTRACTOR'S DELAY**

- 24.1 Save what is stated in Art. 11 concerning delayed progress, delay occurs when Work prescribed in Exhibit C - Contract Schedule has not been completed in accordance with the Contract by a penalty milestone.
- In relation to the Delivery Date, delivery shall be deemed to have taken place at the signature of the Delivery Protocol, or at the time it should have been signed in accordance with Art. 19.1 and 19.2.
- 24.2 If the Work is delayed in relation to a penalty milestone set forth in the Exhibit C - Contract Schedule, then Contractor shall pay to Company the relevant liquidated damages in accordance with the provisions of Exhibit C - Contract Schedule.
- If the conditions for delivery according to Art. 19.1 are met on Delivery Date, then Company's right to be paid liquidated damages for such earlier delay ceases, unless and to the extent Company can show that it has suffered losses by such earlier delays.
- Contractor's cumulative liability for liquidated damages under the Contract is limited to 10% of the Contract Price.
- 24.3 If the Contract Object is not ready for delivery on the Delivery Date, then Company is entitled to require the delivery of the Contract Object for completion by another contractor. In conjunction with such delivery the parties shall sign a Delivery Protocol stating
- a) that the Contract Object, in the opinion of Company, was not completed by the Delivery Date,

- b) each party's opinion as to the percentage of the Contract Object that has been completed and contractually performed by the Delivery Date, calculated in accordance with the progress reporting principles set forth in the Contract,
- c) each party's opinion concerning which parts of the Contract Object are incomplete and unsatisfactorily performed, and
- d) the actual date and time of delivery.

If Company has required such delivery, then Company is not obliged to pay that part of the Contract Price which relates to the unfinished part of the Work.

Company is entitled to be paid liquidated damages in accordance with Art. 24.2, calculated on the number of Days by which the Delivery Date would have been exceeded had Contractor completed the Contract Object. Besides this claim, Company shall have no other claims based on delay in respect of Work not performed by Contractor.

Company shall also issue the Completion Certificate reflecting the content of the Delivery Protocol. The provisions of Art. 19 apply accordingly.

- 24.4 Company may terminate the Contract in accordance with Art. 26 due to delay. The provisions stated in Art. 11, 24 and 26 are Company's sole remedies against Contractor's delay.

## **ART. 25 CONTRACTOR'S DEFECTS AND GUARANTEE LIABILITY**

- 25.1 If the Work has a defect when delivered to Company, whether stated in the Delivery Protocol or not, or if a defect arises for which Contractor is liable under its guarantee in accordance with Art. 23, then Contractor is responsible for the defect in accordance with the provision of this Article.

Contractor is, however, liable for the defect only if Company has given notice of the defect, without undue delay after having discovered the defect, or after it ought to have discovered it. Such notice must, in any case, have been given at the latest before the expiry of the Guarantee Period. If the notice concerns defects in guarantee work, then it must have been given before the expiry of the period set forth in Art. 23.3.

The notice to Contractor shall contain a specific description of the defect.

- 25.2 When Contractor is responsible for a defect, it shall rectify it as soon as possible at its own cost.

Contractor shall notify Company of which measures it intends to apply and the time for rectification. Company shall notify Contractor of its views on the rectification plans without undue delay. Company shall not unreasonably prevent Contractor from performing the planned rectification.

25.3 If Contractor is unable to rectify a defect within a reasonable time after Company's notification, then Company shall be entitled to rectify the defect itself or to engage a Third Party to do so. In such case Contractor shall pay the necessary costs of rectification, provided Company acts in a reasonable manner.

If Company refuses to allow Contractor to perform the rectification work, then Contractor shall pay to Company an amount calculated according to the provisions of Art. 13.2 as if Contractor had performed the rectification work.

In addition, Company may claim damages for defects according to law, unless the contrary follows from the Contract (ref. Art. 25.4, 26.3 and 34).

If in accordance with the first and/or second paragraph, the rectification work is performed by parties other than Contractor or if the work is left undone, Contractor is not responsible for the rectification work or for the rectification not performed and the consequences thereof.

25.4 Contractor's liability for rectification work after the issue of the Completion Certificate and for damages under Art. 25.3 is limited to 15% of the Contract Price.

Contractor is under no circumstances liable for costs relating to

- a) dismantling of other objects than the Contract Object and Company Provided Items to provide access to the Contract Object,
- b) board and lodging offshore at Company's installations, and
- c) helicopter transport to and from Company's offshore installations.

25.5 Company is entitled to terminate the Contract because of defects in accordance with the provisions of Art. 26. The remedies set forth in this Art. 25 and in Art. 26 are the sole remedies open to Company against Contractor for defects.

## **ART. 26 TERMINATION DUE TO CONTRACTOR'S BREACH OF CONTRACT**

26.1 Company is entitled to terminate this Contract with immediate effect by notifying Contractor when

- a) Contractor has not delivered the Spread or it is evident that the Spread will not be delivered at the offshore and/or inshore Site within 20 Days after planned Mobilisation set forth in Exhibit C - Contract Schedule or the agreed date for remobilisation as established by a Variation to the Work issued in accordance with Art. 12 to 16, or
- b) the Spread is unable to perform the Work for a period of 20 cumulative Days, due to breakdown/repair/maintenance or other non-compliance with the Contract, or

- c) it is evident that delays in the completion of any activity will delay the planned date for completion of the Work as set forth in Exhibit C - Contract Schedule by more than 20 Days, or
- d) Contractor is in any other substantial breach of the Contract, or
- e) Contractor becomes insolvent or stops its payments.

26.2 Upon termination of the Contract, Company is entitled to take over from Contractor the Contract Object, Company Provided Items, Materials, Subcontracts, documents and other rights necessary to enable Company to complete the Work, by itself or with the help of others, including removal of the Spread, waste, debris, dropped objects or wrecks from any offshore and/or inshore Site. Company shall instruct Contractor how such take-over shall be effected.

The Delivery Protocol shall be signed and the Completion Certificate shall be issued in accordance with Art. 24.3.

Contractor is entitled to be paid for Work actually performed and for items taken over by Company in accordance with Art. 26.2 first paragraph, less any amounts due from Contractor to Company.

26.3 When the Contract is terminated, Company shall also be entitled to enforce one or more of the following claims:

- a) Company may claim damages for delay in the form of liquidated damages in accordance with the provisions of Art. 24.2, calculated on the basis of the number of Days by which the Delivery Date would have been exceeded if Contractor had completed the Contract Object.
- b) Company may claim damages for defects and other breaches of Contract, subject to the limitations which follow from the provisions of Art. 25.4.

26.4 Company is entitled to temporarily stop the Work with immediate effect by notifying Contractor when

- a) the Work is not performed in a safe manner in accordance with Company's requirements for health, safety and working environment as stated in Exhibit D - Administration Requirements, or
- b) the Work is not performed in accordance with laws, rules, regulations and/or procedures applicable to the Work, or
- c) the Spread does not meet the contractual requirements.

Contractor shall not recommence the Work after such stoppage until the non-conformance is corrected. All costs incurred by Contractor in connection with such stoppage shall be borne by Contractor.

**ART. 27 COMPANY'S BREACH OF CONTRACT**

27.1 If Company is late in delivering Company Provided Items, Drawings, Specifications, in making decisions or with respect to any other obligations under the Contract, then Contractor shall be entitled to an adjustment of the Contract Schedule and/or the Contract Price in accordance with the provisions of Art. 12 to 16. Such adjustment shall reflect the consequences of the delay caused to Contractor by Company's breach of Contract.

Contractor has a corresponding right with respect to delay and increased costs caused by defects, discrepancies and inconsistencies in Company Provided Items, Drawings or Specifications or other defective fulfilment of Company's obligations under the Contract. Nevertheless, such adjustment shall not be made insofar as the delay is due to Contractor not fulfilling its obligations in accordance with Art. 6.

A Variation Order shall be issued in accordance with Art. 12 to 16 in respect of adjustments in the Contract Schedule and other consequences resulting from Company's breach of Contract. Contractor loses its right to request a Variation Order if it has not made such request without undue delay after discovery of the breach of Contract.

27.2 If Company is late in making payments in accordance with Art. 20, then Company shall pay interest in accordance with "Forsinkelsesrenteloven" unless the delay is caused by lack of invoice documentation from Contractor and Company has notified Contractor of this without undue delay.

In the event Company is in substantial breach of its payment obligations, Contractor has the right to suspend the Work or to terminate the Contract according to law.

**PART VII FORCE MAJEURE**

**ART. 28 EFFECTS OF FORCE MAJEURE**

28.1 Neither of the parties shall be considered in breach of an obligation under the Contract to the extent the party can establish that fulfilment of the obligation has been prevented by Force Majeure.

28.2 The party invoking Force Majeure shall, as soon as possible, notify the other party of the Force Majeure situation.

28.3 Except as set out below, each party shall cover its own costs resulting from the Force Majeure situation.

If Company invokes Force Majeure, Art. 18.1 shall apply and the Contract Price shall be adjusted in accordance with Art. 18.2, first paragraph and second



paragraph item b), c) and d). The same applies after 7 Days when Contractor invokes Force Majeure.

Without undue delay after the Force Majeure situation has ended, Contractor shall present to Company its proposed adjustment of the Contract Price and/or Contract Schedule in accordance with the provisions of Art. 12 to 16. Any adjustment to the Contract Schedule shall be made with due regard to the delay caused to Contractor by the Force Majeure situation.

- 28.4 If a Force Majeure situation lasts without interruption for 60 Days or more, then Company shall have the right to cancel the Contract. If a Force Majeure situation lasts without interruption for 180 Days or more then Contractor shall have the right to cancel the Contract by notice to Company.

The provisions of Art. 17.2, 17.4, 17.5 and 17.6 apply accordingly.

- 28.5 When the Delivery Date which would have applied in the absence of Force Majeure is reached and Force Majeure still continues, Company is entitled to demand delivery of the Contract Object. In such case the parties shall sign a Delivery Protocol and the Completion Certificate shall be issued in accordance with Art. 24.3, first paragraph. Company shall, in addition, issue a Variation Order in accordance with Art. 12 to 16.

## **PART VIII LIABILITY AND INSURANCES**

### **ART. 29 LOSS OR DAMAGE TO THE CONTRACT OBJECT OR COMPANY PROVIDED ITEMS**

- 29.1 If loss of or damage to the Contract Object occurs between the start of the Work until the time when the Delivery Protocol has been signed or should have been signed in accordance with Art. 19.1 and 19.2, Contractor shall carry out necessary measures to ensure that the Work is completed in accordance with the Contract. The same applies if any loss of or damage to Materials or Company Provided Items occurs while they are at Site under Contractor Group's safekeeping and control.

Contractor's obligation to carry out measures stated herein applies regardless of whether negligence in any form has been shown by Company Group.

- 29.2 The costs of carrying out such measures as are stated in Art. 29.1 shall be borne by Contractor, unless the loss or damage is caused by Company Group or the loss or damage is due to war or nuclear damage.

Contractor's liability for such costs for any one occurrence is limited to the deductibles stated in Exhibit I - Company's Insurances, provided that

- a) the loss or damage is covered by Company's insurance policies mentioned in Art. 31.1, or

- b) the loss or damage is not covered by Company's insurance policies as a result of circumstances for which Company carries the risk,  
or
- c) the loss or damage to Company Provided Items, whether or not incorporated into the Contract Object, is not covered by Company's insurance policies and is not caused by Contractor's non-compliance with the requirements of the Contract.

Contractor's liability according to this Art. 29.2 does not apply for loss or damage occurring in the period starting when an Interim Delivery Protocol is issued pursuant to Art. 19.4 and ending upon completion of Mobilisation for the next Work Package.

### **ART. 30 EXCLUSION OF LIABILITY - INDEMNIFICATION**

30.1 Contractor shall indemnify Company Group from and against any claim concerning

- a) personal injury to or loss of life of any employee of Contractor Group,  
and
- b) loss of or damage to any property of Contractor Group,

arising out of or in connection with the Work or caused by the Contract Object in its lifetime. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Company Group.

Contractor shall, as far as practicable, ensure that other companies in Contractor Group waive their right to make any claim against Company Group when such claims are covered by Contractor's obligation to indemnify under the provisions of Art. 30.1.

30.2 Company shall indemnify Contractor Group from and against any claim concerning

- a) personal injury to or loss of life of any employee of Company Group, and
- b) loss of or damage to any property of Company Group, except as stated in Art. 29,

arising out of or in connection with the Work or caused by the Contract Object in its lifetime. This applies regardless of any form of liability whether strict or by negligence, in whatever form, on the part of Contractor Group.

Company shall, as far as practicable, ensure that other companies in Company Group waive their right to make any claim against Contractor Group when such claims are covered by Company's obligation to indemnify under the provisions of this Art. 30.2.

30.3 Until the issue of the Acceptance Certificate, Contractor shall indemnify Company Group from

- a) costs resulting from the requirements of public authorities in connection with the removal of wrecks, debris, dropped objects or pollution from vessels or other floating devices provided by Contractor Group for use in connection with the Work, and removal of such wrecks, debris and dropped objects if they obstruct Company's operation, and
- b) claims arising out of loss or damage suffered by anyone other than Contractor Group and Company Group in connection with the Work, or caused by the Contract Object,

even if the loss or damage is the result of any form of liability, whether strict or by negligence, in whatever form, on the part of Company Group.

Contractor's liability for loss or damage arising out of each accident shall be limited to NOK 5 million. For incidents covered by Art. 30.3 a) this limit does not apply to Contractor's liability for loss or damage for each accident covered by insurances provided in accordance with Art. 31.2. a) and b), where Contractor's liability extends to the sum recovered under the insurance for the loss or damage.

Company shall indemnify Contractor Group from and against claims mentioned in the first paragraph above, to the extent that they exceed the limitations of liability mentioned above, regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Contractor Group.

Company shall indemnify Contractor Group from and against any loss or damage to property of anyone other than Contractor Group and Company Group on which Contractor according to the Contract shall perform part of the Work, including crossing of umbilicals, cables and pipelines, if any.

After issue of the Acceptance Certificate, Company shall indemnify Contractor Group from and against any claims of the kind mentioned in the first paragraph above, regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Contractor Group.

30.4 Contractor shall indemnify Company Group from claims resulting from infringement of patent or other industrial property rights arising out of or in connection with the Work, or Company's use of the Contract Object.

Nevertheless, this does not apply where such an infringement results from the use of Drawings, Specifications, Company Provided Items or process licences nominated by Company from Third Parties or is the result of compliance with an instruction from Company. In such cases Company shall correspondingly indemnify Contractor Group.

Contractor's liability shall be limited to infringements in the country where the Contract Object, in accordance with the Contract, is to be used, and in the countries in which the Sites are located.

30.5 A party shall promptly notify the other party if it receives a claim that the other party is obliged to indemnify. Whenever possible, the other party shall take over treatment of the claim, provided always that Company shall handle all claims which may result in liability under Art. 30.3, third, fourth and fifth paragraph.

The parties shall give each other information and other assistance needed for handling the claim. Neither party shall, without the consent of the other party, approve of a claim which shall be indemnified, in whole or in part, by the other party.

30.6 Company shall indemnify Contractor Group against all claims and losses which arise out of or in any way relate directly and/or indirectly to performance of the Work or is caused by the Contract Object in its lifetime and resulting from one or more of the following:

- a) Reservoir seepage or pollution originating under ground.
- b) Fire, explosion or blow-out of any well or reservoir
- c) Escape of product from any facility, including pipeline or other subsea or surface facility, at any offshore and/or inshore Site.

This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Contractor Group.

## **ART. 31 INSURANCE**

31.1 Company shall provide and maintain the insurances described below and in Exhibit I - Company's Insurances.

- a) Construction all risk insurance, or equivalent insurance, covering the Contract Object, Materials and Company Provided Items against physical loss or damage, in accordance with the insurance conditions.
- b) Transport insurance covering the Contract Object, Materials and Company Provided Items against physical loss or damage during transportation, in accordance with the insurance conditions.
- c) Liability insurance covering Company's liability under Art. 30.3 for a minimum amount of NOK 500 million for claims arising from each accident.

Such insurance cover shall be effective from the start of the Work and shall not expire until issue of the Acceptance Certificate.

To the extent possible, the policies shall state that Company Group and Contractor Group are co-insured, and the insurers shall waive any right of subrogation against Contractor Group.

31.2 Contractor shall provide and maintain the following insurance:

- a) All risks, hull and machinery insurance for each vessel or other floating device provided by Contractor Group in connection with the Work. The insurance policies shall be taken out with Norwegian or comparable insurance conditions and shall cover the total value of the vessel/device.
- b) P&I insurance, including oil pollution insurance for such vessels and devices as mentioned in a). The insurance, which shall be effected with a member of the International Group of P&I Clubs, or comparable insurers, shall have a coverage up to the maximum limit available for the vessel or floating device, including debris and wreck removal and oil pollution. Contractor's insurance shall include coverage for specialist operations or equivalent coverage up to USD 50 million.
- c) Liability insurance covering Contractor's liability for damage to property and personal injury under Art. 30.3, including coverage for collision liability, to the extent such liability has not been covered under a) and b).
- d) Personnel insurance which shall cover losses connected with illness, personal injury or accidental death in Contractor Group, to the extent required by applicable laws.

Such insurance cover shall be effective from the start of the Work and shall be kept in force until issue of the Acceptance Certificate.

The policies shall state that the insurers waive all rights of subrogation against Company Group to the extent of Contractor's indemnities under the Contract.

Contractor shall ensure that Company is named as additional insured under the insurances listed in a), b) and c) in respect of claims which Contractor Group is obliged to indemnify under Art. 30. However, Company can only be named as additional insured under Contractor's P&I insurance in accordance with the applicable P&I club rules.

Contractor shall ensure that all the insurance policies contain a clause requiring the insurer to notify Company in good time before the insurance is cancelled, or expires for any other reason.

31.3 Contractor shall, at the request of Company, produce certified copies of insurance certificates with the necessary information, including the expiry date, relating to all insurances taken out by Contractor Group in accordance with Art. 31.2.

The same obligation applies to Company for the insurances Company shall take out in accordance with the Contract.

The insurance certificates or copies thereof concerning the insurance specified in Art. 31.2 b) and c), shall confirm that Contractor's obligations to insure in accordance with the Contract have been fulfilled.

If one of the parties fails to take out insurance according to its obligations of this Article, then the other party is entitled to take out such insurance and claim a refund of the costs from the party in default.

- 31.4 When any incident occurs for which cover is granted under one of the parties' insurance policies, the other party shall notify that party without undue delay, enclosing a description of the incident that gives rise to the insurance claim. When the party whose insurance policy covers the claim, handles the claim, the other party shall provide it with reasonable assistance, without claiming compensation.

## **PART IX PROPRIETARY RIGHTS, ETC.**

### **ART. 32 RIGHTS TO INFORMATION, TECHNOLOGY AND INVENTIONS**

- 32.1 Commercial and technical information, including drawings, documents and computer programs regardless of method of storage, and copies thereof, provided by Company to Contractor shall be the property of Company. The same applies to information developed by Contractor mainly on the basis of information provided by Company.

Inventions made by Contractor during the performance of the Work mainly based on such information as stated in the first paragraph shall also be the property of Company. This shall, however, not apply, if the rights of a Third Party prevent it and Contractor has made reasonable efforts to obtain the right.

Contractor shall notify Company of such invention which shall be Company's property. Contractor shall provide the necessary assistance to enable Company to acquire the patents to the inventions. Company shall pay Contractor for all reasonable costs in connection with such assistance, including compensation to Contractor's employees or others, in accordance with applicable law or general agreements concerning compensation for inventions.

Such information as stated in the first paragraph and inventions as stated in the second paragraph shall not be used by Contractor other than for the purpose of the Work. All documentation, all computer programs and copies shall be returned to Company at the expiry of the Contract, unless otherwise agreed.

- 32.2 Commercial and technical information, including drawings, documents and computer programs regardless of method of storage, and copies thereof, provided by Contractor to Company shall be the property of Contractor. The same applies to information developed by Contractor mainly on the basis of such information and all other information developed by Contractor Group in connection with the Work and which is not comprised by Art. 32.1.

Inventions made by Contractor during the performance of the Work and which are not covered by Art. 32.1, second paragraph, shall be the property of Contractor.

Contractor shall give Company an irrevocable, royalty-free, non-exclusive right to use information mentioned in the first paragraph and inventions mentioned in the second paragraph to the extent necessary in connection with the operation, repair, modification, extension, rebuilding and maintenance of the Contract Object.

### **ART. 33 CONFIDENTIAL INFORMATION**

33.1 All information exchanged between the parties shall be treated as confidential and shall not be disclosed to a Third Party without the other party's written permission, unless such information

- a) may be disclosed to a Third Party in accordance with Art. 32, or
- b) is already known to the party in question at the time the information was received, or
- c) is or becomes part of the public domain other than through a fault of Company Group or Contractor Group, or
- d) is rightfully received from a Third Party, without an obligation of confidentiality.

Each of the parties may, however, use or disclose confidential information to a Third Party, to the extent necessary for the performance of and control of the Work and use of the Contract Object. In such cases the parties shall ensure that the Third Party signs a written confidentiality agreement in accordance with this Art. 33.

33.2 Contractor shall not publish information concerning the Work or the Contract without Company's written approval, which shall not be unreasonably withheld.

33.3 Nevertheless, the provisions of this Article shall not prevent a party from disclosing confidential information to the Ministry of Oil and Energy.

The same applies in respect of a Third Party, to the extent necessary, according to the applicable law.

## **PART X OTHER PROVISIONS**

### **ART. 34 LIMITATION AND EXCLUSION OF LIABILITY**

34.1 Company shall indemnify Contractor Group from Company Group's own indirect losses, and Contractor shall indemnify Company Group from Contractor Group's own indirect losses. This applies regardless of any liability, whether strict or by negligence, in whatever form, on the part of either group and - except as stated in Art. 17.3 and 24.2 - regardless of any other provisions of the Contract.

Indirect losses according to this provision include but are not limited to loss or earnings, loss of profit, loss due to pollution and loss of production.

34.2 Contractor's total liability for breach of contract, including liability in accordance with Art. 24, 25 and 26, and regardless of whether the Contract is terminated or not, shall be limited to 25% of the Contract Price.

**ART. 35 ASSIGNMENT - MORTGAGE**

35.1 Company may assign its rights and obligations under the Contract to a Third Party, provided that Company can demonstrate that the assignee has the financial strength required to fulfil Company's obligations under the Contract.

At Contractor's request, Company shall provide a satisfactory guarantee of the Third Party's performance.

35.2 Contractor may not assign or mortgage the Contract, a part of or interest in it, to a Third Party without Company's approval. Such approval is not required for an assignment or mortgage to a bank or other financial enterprise.

**ART. 36 NOTICES**

All notices, claims and other notification to be given in accordance with the provisions of the Contract shall be submitted in writing to the relevant party's representative under Art. 3, with such address as given in Exhibit D - Administration Requirements or as changed by notice.

**ART. 37 NORWEGIAN LAW AND DISPUTES**

37.1 This Contract shall be governed by and interpreted in accordance with Norwegian law.

37.2 Disputes arising in connection with or as a result of the Contract, and which are not resolved by mutual agreement, shall be settled by court proceedings unless the parties agree otherwise.

Any court proceeding shall be brought before Stavanger district court. Disputes shall be settled in accordance with Norwegian law.



## **PART OF EXHIBIT D CONTRACT ADMINISTRATION REQUIREMENTS**

1. The following are nominated as experts in accordance with Conditions of Contract, Art. 16.3:

1. Professor Hans Jacob Bull, Nordisk institutt for sjørett UiO
2. Lagdommer Magni Elsheim, Gulating lagmannsrett
3. Lagdommer Gunvald Gussgaard
4. Professor Viggo Hagstrøm, Institutt for privatrett UiO
5. Førstelagmann Nils Erik Lie, Borgarting lagmannsrett
6. Advokat Karl Wahl-Larsen, Bjerknæs Wahl-Larsen ANS

2. The procedure for the appointment of an expert is:

- a) The representatives of the parties, ref. Conditions of Contract, Art. 3, shall meet within 14 Days after a request for an expert decision has been made.
- b) During the meeting each party shall submit in sealed envelope, a list showing:
  - i) two candidates to be excluded; and
  - ii) a preferential score from 6 to 1 allotted each of the remaining candidates.

The sealed envelopes shall be opened in the presence of both parties who shall establish a list of the candidates not excluded together with their aggregate points.

- c) The candidate with the highest points shall be asked first if she/he will accept the work. If she/he is unwilling to accept the work, the candidate with the next highest number of points shall be asked, and so on.

In the event that more than one candidate has the same number of points, the order shall be decided by drawing lots between them.

- d) Appointment of the expert shall be considered to have occurred when both parties have signed and sent a letter to that effect to the expert.
- e) If one of the parties does not attend the meeting or fails to provide a list as required under 2 b) above, the expert shall be appointed on the basis of the other party's list.