

Ashtead Technology – Americas Terms and Conditions

Date: March 2024



RECITALS

Under these TERMS AND CONDITIONS, COMPANY shall provide the SERVICES as detailed in the ORDER ACCEPTANCE.

SERVICE PERSONNEL shall be provided by COMPANY to carry out the WORK on the TERMS AND CONDITIONS set out in SECTION I - COMMON TERMS and SECTION II - TERMS AND CONDITIONS OF EQUIPMENT RENTAL AND PROVISION OF SERVICE PERSONNEL only.

COMPANY shall rent or lease EQUIPMENT, to the CLIENT on the TERMS AND CONDITIONS set out in SECTION I - COMMON TERMS and SECTION II - TERMS AND CONDITIONS OF EQUIPMENT RENTAL AND PROVISION OF SERVICE PERSONNEL only.

COMPANY shall sell, and the CLIENT shall purchase EQUIPMENT ordered by the CLIENT on the TERMS AND CONDITIONS set out in SECTION I - COMMON TERMS and SECTION III - TERMS AND CONDITIONS OF SALE only.

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PART I – COMMON TERMS

1. DEFINITIONS AND INTERPRETATION

All capitalized terms in these TERMS AND CONDITIONS shall have the definitions given in this ARTICLE 1, the RECITALS or in the ARTICLE in which they are stated. References to ARTICLES used in these TERMS AND CONDITIONS are to ARTICLES of these TERMS AND CONDITIONS unless otherwise specified. Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa. Any reference to statutory provision or statutory instrument shall include any re-

enactment or amendment thereof for the time being in force. The ARTICLE headings and sub-headings in these TERMS AND CONDITIONS are intended for convenience only and are not in any way to be taken into account when construing the meaning of any part of these TERMS AND CONDITIONS.

- 1.1 “**AFFILIATE**” means a subsidiary or holding company of any company or any other subsidiary of such a holding company (including only entities that are managed by a PARTY’s managers/directors and entities that are majority-owned by such PARTY).
- 1.2 “**APPROVAL / APPROVED / APPROVES / APPROVING**” means the authorized acceptance of COMPANY which shall be provided in writing by the COMPANY to the CLIENT.
- 1.3 “**BUSINESS DAYS**” means any day other than bank holidays, Saturdays and Sundays.
- 1.4 “**CLAIMS**” means claims, liens, judgments, fines, penalties, awards, remedies, debts, liabilities, damages, demands, costs, losses, expenses (including attorney’s fees and expenses) or causes of action, of whatever nature.
- 1.5 “**CLIENT**” means any individual or other entity (legal or otherwise), including a Corporation, Joint Stock Company, Limited Liability Company, Partnership or Joint Venture, which has requisitioned the SERVICES and whose ORDER for such SERVICES has been APPROVED by COMPANY by the issue of an ORDER ACCEPTANCE.
- 1.6 “**CLIENT GROUP**” means: (a) the CLIENT and any co-venturer of the CLIENT in any license block or concession area in which the SERVICES are being provided and their AFFILIATES; (b) the CLIENT’S other contractors and subcontractors (of any tier) performing work at the WORKSITE; and (c) the respective agents, directors, officers, employees, consultants and agency personnel of the persons included in SUB-ARTICLES (a) and (b) of this definition, but shall not include any member of COMPANY GROUP.
- 1.7 “**COMPANY**” means the Ashtead Technology Holdings plc group entity named as such in the ORDER ACCEPTANCE.
- 1.8 “**COMPANY GROUP**” means: (a) COMPANY and its AFFILIATES; (b) the SUBCONTRACTORS and their AFFILIATES; and (c) the respective agents, directors, officers, employees, consultants and agency personnel of the persons included in SUB-ARTICLES (a) and (b) of this definition but shall not include any member of the CLIENT GROUP.
- 1.9 “**CONFIDENTIAL INFORMATION**” means all business, financial, technical, non-public, confidential, proprietary, or other information, among which, without limitation, information in tangible or intangible form relating to and/or including methods, contract terms, customer relationships, pricing, procedures, facts, processes, techniques, ideas, discoveries, inventions, developments, records, product designs, product planning, trade secrets, know-how or tools, which were or will be provided by COMPANY orally, in writing, by way of presentations or in any other way to CLIENT GROUP in connection with the CONTRACT, irrespective of the nature of the information (including, but not limited to drawings, films, paper documents, electronic storage media, electronically readable data). CONFIDENTIAL INFORMATION does not include any information that: (a) is or becomes generally available to the public other than as a result of CLIENT GROUP’s act or omission; (b) is obtained by CLIENT GROUP on a non-confidential basis from a THIRD PARTY that was not legally or contractually restricted from disclosing such information; or (c) was or is independently developed by CLIENT GROUP, as established by documentary evidence, without using any CONFIDENTIAL INFORMATION.
- 1.10 “**CONSEQUENTIAL LOSS**” means a) indirect special, indirect, incidental, consequential or punitive damages under law; and b) loss and/or deferral of production, rig or vessel time, standby time, loss of product, loss of use, loss of earnings, loss of revenue, loss of profit or anticipated profit (if any), loss of or interruption to business, facilities downtime, loss of use of property or wasted overheads, and in any event whether direct or indirect and to the extent that such losses are not included within definition a) of this ARTICLE 1.10; and in the case of both a) and b) whether or not foreseeable at the date of execution of the CONTRACT.
- 1.11 “**CONTRACT**” means the concluded contract between the PARTIES, all as more particularly described in ARTICLE 2 of these TERMS AND CONDITIONS.
- 1.12 “**DATA PROTECTION LEGISLATION**” means all applicable data protection and privacy legislation in force from time to time in the United States of America

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- (including without limitation (i) California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020 (Cal. Civ. Code §§ 1798.100 to 1798.199.95), the corresponding regulations (Cal. Code Regs. tit. 11, §§ 7000 to 7102), and any related regulations or guidance provided by the California Attorney General; (ii) Colorado Privacy Act; (iii) Connecticut's Data Privacy Act "Act Concerning Personal Data Privacy and Online Monitoring"; (iv) Utah Consumer Privacy Act; (v) Virginia Consumer Data Protection Act) and the United Kingdom including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.13 **"DELIVERY"** means delivery of the EQUIPMENT to the place specified in the ORDER APPROVED by COMPANY, unless otherwise agreed by the PARTIES. DELIVER and DELIVERED shall be construed accordingly.
- 1.14 **"EFFECTIVE DATE"** means the date on which the CONTRACT becomes effective which shall be deemed to be the date of the ORDER ACCEPTANCE.
- 1.15 **"END USER"** means any company to which the CLIENT has undertaken to provide services to and in conjunction with which the SERVICES are being provided.
- 1.16 **"END USER GROUP"** means and includes the END USER, any co-venturer of the END USER in any license block or concession area in which the SERVICES are being provided and its and their contractors or subcontractors, its and their respective AFFILIATES, and each of their respective officers, directors, employees, agents, servants and insurers, but shall not include any member of CLIENT GROUP or COMPANY GROUP.
- 1.17 **"EQUIPMENT"** means the various items of equipment offered for rental or sale which are subject to the CONTRACT.
- 1.18 **"INTELLECTUAL PROPERTY"** means patents and rights in inventions, trademarks, service marks, logos, get up, trade names, rights to prevent passing off or unfair competition, rights in internet domain names and website addresses, rights in designs, copyright (including rights in computer software and moral rights), database rights, semi-conductor topography rights, utility models, rights in confidential information including know-how and all other intellectual property rights, in each case whether registered or unregistered and including applications (and the right to apply) for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world.
- 1.19 **"ORDER"** means the instruction issued by the CLIENT for COMPANY'S APPROVAL to perform the SERVICES under these TERMS AND CONDITIONS, pursuant to ARTICLE 3. Such ORDER may take the form of the CLIENT'S work order, service order, purchase order or email provided always that such ORDER shall be subject, or deemed subject to, to the provisions of these TERMS AND CONDITIONS.
- 1.20 **"ORDER ACCEPTANCE"** means the written documentation electronically submitted by COMPANY signifying its APPROVAL and acceptance of the CLIENT'S ORDER subject always to the CONTRACT.
- 1.21 **"PARTY"** or **"PARTIES"** means either COMPANY or the CLIENT, as the context so requires and PARTIES shall be construed accordingly.
- 1.22 **"PROPOSAL"** means any commercial proposal or commercial quote for the SERVICES which incorporates COMPANY'S charges and is issued to the CLIENT by COMPANY. Where applicable, COMPANY'S PROPOSAL may take the form of an email or quotation form when COMPANY has issued charges for the SERVICES required by CLIENT via an email or quotation form. In such an event the aforementioned email or quotation form shall be deemed to be the PROPOSAL for the purpose of interpreting these TERMS AND CONDITIONS.
- 1.23 **"PUBLIC OFFICIAL"** means any (a) appointed official or any director, officer or other person employed in any capacity (i) at any level of Government, (ii) in a labor union controlled by any Government or political party, or (iii) in any public international organization, such as the United Nations or the European Union, including any department, agency or other instrumentality thereof, (b) any candidate or officer or other person employed by a political party, or (c) any person acting in any official capacity for or on behalf of any person or organization listed in (a) or (b).
- 1.24 **"PURCHASE CHARGES"** means the charges to be paid by the CLIENT for EQUIPMENT purchased by the CLIENT as set out in the CONTRACT.
- 1.25 **"RENTAL CHARGES"** means the charges payable by the CLIENT in connection with rental EQUIPMENT as set out in the CONTRACT.
- 1.26 **"RENTAL PERIOD"** means the period defined in ARTICLE 20.1 hereof.
- 1.27 **"REPLACEMENT VALUE"** means the manufacturer's list charge for the time being applicable (including the costs of any modifications), or if none such exists, the list charge of that piece of equipment which most closely matches, together with all associated costs including but not limited to the costs of administration, transportation, tax and licenses.
- 1.28 **"SERVICE PERSONNEL"** means an employee or SUBCONTRACTOR of COMPANY supplied to either commission, maintain, operate or otherwise interact with the EQUIPMENT on behalf of the CLIENT, to train the CLIENT'S personnel (including agency personnel) in the use of the EQUIPMENT or otherwise perform WORK under the CONTRACT.
- 1.29 **"SERVICE PERSONNEL CHARGES"** means the charges payable by the CLIENT for the provision of SERVICE PERSONNEL as set out in the CONTRACT.
- 1.30 **"SERVICE PERSONNEL PERIOD"** means the period defined in ARTICLE 25.1.
- 1.31 **"SERVICES"** means all services to be performed by COMPANY and its SUBCONTRACTORS (including but not limited to the provision of EQUIPMENT for rental or sale and the provision of SERVICE PERSONNEL) pursuant to the CONTRACT.
- 1.32 **"SUBCONTRACT"** means any contract between COMPANY and any other party (other than the CLIENT or any employees of COMPANY) for the performance of any part of the SERVICES.
- 1.33 **"SUBCONTRACTOR"** means any party (other than COMPANY) to a SUBCONTRACT.
- 1.34 **"TERM"** means the duration of any committed RENTAL PERIOD and/or SERVICE PERSONNEL PERIOD. The TERM shall be requisitioned by CLIENT in its ORDER subject to COMPANY'S APPROVAL.
- 1.35 **"TERMS AND CONDITIONS"** means these unqualified terms and conditions including which are deemed to apply to any written arrangement with the CLIENT, including but not limited to any PROPOSAL issued to the CLIENT, any ORDER issued by the CLIENT or any ORDER ACCEPTANCE issued to the CLIENT. PART I – COMMON TERMS, PART II – TERMS AND CONDITIONS OF SALE AND REPAIR and PART III - TERMS AND CONDITIONS OF RENTAL AND PROVISION OF SERVICE PERSONNEL are herein individually and collectively referred to as the TERMS AND CONDITIONS.
- 1.36 **"THIRD PARTY"** means any party who is not a member of the COMPANY GROUP, CLIENT GROUP or END USER GROUP. THIRD PARTIES shall be construed accordingly.
- 1.37 **"TRADE LAWS"** means laws and regulations in relation to the trade, import or export of goods and/or services, including without limitation UNITED KINGDOM/EUROPEAN UNION TRADE LAWS and UNITED STATES OF AMERICA TRADE LAWS.
- 1.38 **"UNITED KINGDOM /EUROPEAN UNION TRADE LAWS"** means: (i) the Export Control Act 2002 and any secondary legislation made under the powers thereof including, but not limited to, the Export Control Order 2008; (ii) Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items; and (iii) any United Kingdom or European Union embargoes and economic or financial sanctions of certain countries, persons and entities or bodies.
- 1.39 **"UNITED STATES OF AMERICA TRADE LAWS"** means (i) the Export Administration Regulations and the International Traffic in Arms Regulations administered by the United States of America Department of the Treasury (Bureau of Industry and Security) and the United States of America Department of State (Directorate of Defense and Trade Controls); (ii) the customs regulations of the Department of Homeland Security; (iii) regulations of the Department of Commerce Bureau of industry and security and Bureau of Census; (iv) regulations of the Bureau of alcohol, tobacco, firearms and explosives, (v) the harmonized tariff schedule of the International Trade Commission and (vi) any United States of America embargoes and economic or financial sanctions of certain countries, persons and entities or bodies administered and implemented by the United States of America Department of the Treasury (Office of Foreign Assets Control).

- 1.40 "WORK" means all the work SERVICE PERSONNEL are required to carry out in accordance with the provisions of the CONTRACT.
- 1.41 "WORKSITE" means the lands, waters and other places on, under, in or through which the SERVICES are to be performed including offshore installations, floating construction equipment, vessels (including the area covered by approved anchor patterns), design offices, workshops and places where equipment, materials or supplies are being obtained, stored or used for the purposes of the CONTRACT.

2. DOCUMENT PRECEDENCE

- 2.1 The following documents shall be deemed to form and be read and construed as part of the CONTRACT:
- (a) these TERMS AND CONDITIONS;
 - (b) COMPANY'S ORDER ACCEPTANCE;
 - (c) COMPANY'S PROPOSAL;
 - (d) any ORDER APPROVED by COMPANY in accordance with ARTICLE 3.
- The above documents shall be read as one document, the contents of which, in the event of ambiguity or contradiction shall be given the precedence in the order listed.

3. PLACING ORDERS AND ACCEPTANCE OF SAME

- 3.1 Following receipt of COMPANY'S PROPOSAL, the CLIENT shall requisition any SERVICES by completing and issuing an ORDER.
- 3.2 Where the CLIENT wishes to issue an ORDER for the SERVICES, CLIENT'S ORDER shall specify: -
- (a) the SERVICES for which the CLIENT requires to requisition;
 - (b) whether utilization of the SERVICES relates to the EQUIPMENT purchased, rented, leased or otherwise provided and/or provision of SERVICE PERSONNEL;
 - (c) the preferred TERM applicable to the rental EQUIPMENT and the provision of SERVICE PERSONNEL; and
 - (d) these TERMS AND CONDITIONS as being applicable to same.
- 3.3 COMPANY reserves the right to reject any ORDER where COMPANY cannot meet any requirement stipulated within same. In such an event, COMPANY shall advise the CLIENT accordingly. COMPANY may request that the CLIENT modifies its ORDER and thereafter submits a new ORDER for COMPANY'S APPROVAL. COMPANY shall not be bound by the content of any ORDER issued by the CLIENT, until COMPANY has intimated its APPROVAL of CLIENT'S ORDER by issuing an ORDER ACCEPTANCE. Where COMPANY intimates its APPROVAL, such APPROVAL shall be subject only to these TERMS AND CONDITIONS. Where any ORDER makes reference to any other terms and conditions, such terms and conditions shall be rendered null and void in accordance with ARTICLE 3.6.
- 3.4 Where applicable, COMPANY'S ORDER ACCEPTANCE will be conditional on and subject to CLIENT obtaining required export licenses and/or changes to sanctions or embargoes prior to the time of shipment.
- 3.5 The legally binding relationship between the PARTIES shall be formed upon the EFFECTIVE DATE and the CONTRACT shall thereafter subsist for the entire applicable TERM.
- 3.6 The PARTIES agree that the CLIENT'S ORDER is subject always to these TERMS AND CONDITIONS. These TERMS AND CONDITIONS are automatically deemed to be incorporated within any and all ORDERS issued by the CLIENT to COMPANY. The CLIENT agrees that any of the CLIENT GROUP'S terms and conditions, which may be referenced within or attached to its ORDER, shall be rendered null and void and that only these TERMS AND CONDITIONS shall be applicable to CLIENT'S ORDER.

4. INVOICING, PAYMENT TERMS AND TAXES

- 4.1 Invoices for RENTAL CHARGES, SERVICE PERSONNEL CHARGES and any other charges stated in the ORDER ACCEPTANCE will be issued to the CLIENT by COMPANY at the end of each calendar month or at the expiration of the RENTAL PERIOD or SERVICE PERSONNEL PERIOD where earlier. Notwithstanding the foregoing, where it is expressed in the ORDER ACCEPTANCE that the CLIENT will pay a lump sum figure, the CLIENT shall be invoiced for the RENTAL CHARGES, SERVICE PERSONNEL CHARGES and other charges stated in the ORDER ACCEPTANCE at the start of the RENTAL PERIOD and/or SERVICE PERSONNEL PERIOD. In respect of EQUIPMENT purchased by the CLIENT, COMPANY shall upon issuance of an ORDER ACCEPTANCE irrespective of the DELIVERY date, submit an invoice for the PURCHASE CHARGES plus any associated charges detailed in the ORDER ACCEPTANCE.
- 4.2 All RENTAL CHARGES, SERVICE PERSONNEL CHARGES and PURCHASE CHARGES and/or other charges are as quoted in the ORDER ACCEPTANCE and are exclusive of VAT and any other applicable taxes and duties or similar charges.
- 4.3 Where the CLIENT undertakes payment via credit card, payment will be charged in full or in part prior to commencement of TERM and (if charged in part) invoices for RENTAL CHARGES, PURCHASE CHARGES, SERVICE PERSONNEL CHARGES and/or other charges stated in the PROPOSAL will then be issued and charged to the credit card at the end of each week thereafter.
- 4.4 Save for as stated in ARTICLE 4.5 invoices are payable by the CLIENT in full within thirty (30) days of the invoice date. Where bank charges occur as a result of any payment transfer from CLIENT to COMPANY, said bank charges will be for the CLIENT'S account and COMPANY shall be entitled to invoice CLIENT for such amounts.
- 4.5 Where rental EQUIPMENT is lost, stolen, seized or confiscated during the RENTAL PERIOD the CLIENT shall notify COMPANY immediately after such event occurs and as soon as possible thereafter complete and provide COMPANY with a detailed report on the circumstances surrounding such loss, theft or seizure. In addition, CLIENT shall pay to COMPANY on demand the REPLACEMENT VALUE. In respect of damage, CLIENT shall pay for the repair within seven (7) BUSINESS DAYS of date of invoice. If it is found that the rental EQUIPMENT cannot be repaired, the CLIENT shall pay the REPLACEMENT VALUE within seven (7) BUSINESS DAYS of the date of invoice. All repair and replacement charges under this ARTICLE 4.5 are subject to an additional charge of cost +15% and any administrative costs associated with the repair or replacement.
- 4.6 The CLIENT shall make all payments due under the CONTRACT in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 4.7 If the CLIENT fails to pay to COMPANY or any of the COMPANY GROUP any sum due pursuant to the CONTRACT, the CLIENT shall be liable to pay interest on such sum from the due date for payment at the annual rate of five percent (5%) above the Bank of England base rate, accruing on a daily basis and compounded every three (3) months until payment is made.
- 4.8 If the CLIENT fails to pay to COMPANY or any of the COMPANY GROUP any sum due pursuant to the CONTRACT, COMPANY shall be entitled to but not be bound (in addition and without prejudice to all other CLAIMS, rights or remedies which COMPANY may have against the CLIENT) to withhold performance of its obligations under the CONTRACT, without liability to the CLIENT, pending such payment.
- 4.9 No payment shall be deemed to have been received by COMPANY until COMPANY has received cleared funds.
- 4.10 CLIENT shall reimburse COMPANY for any local taxes incurred including but not limited to taxes assessed or levied by reference to turnover, profit, deemed income, wages, salaries or other emoluments paid to individuals engaged by COMPANY. For the purposes of this ARTICLE 4.10, "local" shall mean pertaining to the country having jurisdiction over the waters or territory in which SERVICES are being performed and/or the country of domicile of the CLIENT or of the entity responsible for payment of COMPANY invoices.
- 4.11 Should CLIENT be required by law to make any deduction or withholding from payments due to COMPANY under these TERMS AND CONDITIONS, the sum due from CLIENT shall be increased to the extent necessary to ensure that after the making of any such deduction or withholding, COMPANY receives (free of any liability in respect of any such deduction or withholding) a net sum equal to the sum it would have received had no such deduction or withholding been

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required to be made. CLIENT shall indemnify COMPANY against any fines, penalties or the like levied against COMPANY as a result of CLIENT'S failure to comply with any such law. CLIENT shall pay to COMPANY, in addition to and together with the consideration due under these TERMS AND CONDITIONS, any Value Added Tax, or similar tax howsoever described, levied by any competent taxing authority, chargeable in respect of SERVICES supplied by COMPANY under these TERMS AND CONDITIONS. All charges are exclusive of import/export taxes, customs duties and the like whether local or otherwise and CLIENT shall reimburse any such charges levied against COMPANY in connection with the provision of SERVICES. Any reimbursement of taxes, duties and the like under this ARTICLE 4 shall be made at net documented cost.

4.12 Any increase in price due to changes in applicable laws shall be borne by the CLIENT.

4.13 Time shall be of the essence in respect of payments required to be made by the CLIENT to the COMPANY under the CONTRACT.

5. INDEMNITIES

5.1 The indemnities provided in this ARTICLE 5 (and elsewhere in these TERMS AND CONDITIONS) shall be full and primary in all respects. The PARTIES' reciprocal indemnity obligations shall be supported liability insurance coverage to be furnished by the indemnitor and shall be limited to the extent of the coverage and dollar limits of insurance or qualified self-insurance that each PARTY (as the indemnifying PARTY) has agreed to obtain for the benefit of the other PARTY (as the indemnified PARTY).

5.2 All exclusions and indemnities contained in this ARTICLE 5 and ARTICLES 4.11, 6, 7.2, 18, 25.5 and 27 of this CONTRACT together with any indemnities contained within special conditions which may be agreed between the PARTIES shall apply

- 5.2.1 irrespective of cause,
- 5.2.2 notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified PARTY or any other entity or party,
- 5.2.3 irrespective of the indemnifying PARTY's fault or lack of fault, and
- 5.2.4 irrespective of any CLAIMS in tort, under strict liability, under contract or otherwise at law.

THIS SECTION REQUIRES THE INDEMNIFYING PARTY TO INDEMNIFY THE INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN NEGLIGENCE.

5.3 THE CLIENT SHALL BE RESPONSIBLE FOR AND SHALL SAVE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE COMPANY GROUP FROM AND AGAINST ALL CLAIMS IN RESPECT OF: -

- (a) LOSS OF OR DAMAGE TO THE EQUIPMENT AFTER DELIVERY AND THE PROPERTY OF CLIENT GROUP AND END USER GROUP WHETHER OWNED, HIRED, LEASED OR OTHERWISE PROVIDED BY THE CLIENT GROUP OR END USER GROUP;
- (b) PERSONAL INJURY, INCLUDING DEATH OR DISEASE, AFFECTING ANY PERSON WHO IS A MEMBER OF THE CLIENT GROUP OR END USER GROUP;
- (c) PERSONAL INJURY INCLUDING DEATH OR DISEASE OR LOSS OF OR DAMAGE TO THE PROPERTY OF ANY THIRD PARTY; AND
- (d) LOSS OF OR DAMAGE TO THIRD PARTY INFRASTRUCTURE, INCLUDING BUT NOT LIMITED TO PIPELINES, WELLHEADS, PRODUCTION TREES, CABLES ETC.;

ARISING FROM, RELATING TO, OR IN CONNECTION WITH THE CONTRACT

5.4 THE COMPANY SHALL BE RESPONSIBLE FOR AND SHALL SAVE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CLIENT GROUP FROM AND AGAINST ALL CLAIMS IN RESPECT OF: -

- (a) LOSS OF OR DAMAGE TO PROPERTY OF COMPANY GROUP (EXCLUDING THE EQUIPMENT AFTER DELIVERY), WHETHER OWNED, HIRED, LEASED OR OTHERWISE PROVIDED BY THE COMPANY GROUP; AND

(b) PERSONAL INJURY INCLUDING DEATH OR DISEASE TO ANY PERSON WHO IS A MEMBER OF THE COMPANY GROUP,

ARISING FROM, RELATING TO OR IN CONNECTION WITH THE CONTRACT

5.5 Notwithstanding any other provisions of the CONTRACT, the CLIENT shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against any CLAIMS arising in respect of pollution emanating or originating from any well or reservoir, from the property of the CLIENT GROUP and/or END USER GROUP and/or any other pollution arising from, relating to or in connection with the CONTRACT.

6. CONSEQUENTIAL LOSS

6.1 Notwithstanding any other provisions of the CONTRACT, COMPANY shall save, indemnify CLIENT GROUP from COMPANY GROUP'S own CONSEQUENTIAL LOSS and the CLIENT shall indemnify COMPANY GROUP from the CLIENT GROUP'S and END USER GROUP'S CONSEQUENTIAL LOSS, arising from, relating to or in connection with the performance or non-performance of the CONTRACT.

7. LIMITATION OF LIABILITY

7.1 Notwithstanding any other provision of the CONTRACT, the cumulative and maximum aggregate liability of COMPANY to the CLIENT under an APPROVED ORDER for any reason and upon any CLAIMS whatsoever arising out of, related to or connected with the CONTRACT (whether arising from COMPANY'S termination, breach of duty (statutory or otherwise), negligence of any degree or character, breach of contract, or otherwise at law) shall be limited to twenty five per cent (25%) of the value of the applicable ORDER ACCEPTANCE.

7.2 The CLIENT shall be responsible for, and undertakes to save, defend, indemnify and hold harmless COMPANY from and against all CLAIMS in the event and to the extent they exceed the maximum aggregate cap of COMPANY'S liability set forth in this ARTICLE 7.

8. WARRANTIES AND DEFECTS

8.1 Any description, illustration, specification, export classification numbers and restrictions, drawing and material contained in any catalogue, price list, brochures, leaflets and other descriptive matters of COMPANY represent the general nature of the EQUIPMENT described therein but are indicative only and do not constitute a warranty or otherwise form part of the CONTRACT.

8.2 The CLIENT warrants that the DELIVERY of the EQUIPMENT is conclusive proof that the EQUIPMENT has been examined by the CLIENT and found it to be in good condition and in accordance with the manufacturer's specification and in every way satisfactory for the CLIENT'S purposes.

8.3 Where COMPANY is the manufacturer of EQUIPMENT that it agrees to sell to and is purchased by the CLIENT under the CONTRACT, COMPANY warrants that on DELIVERY and for a period of twelve (12) months from DELIVERY (the "WARRANTY PERIOD"), or otherwise agreed such EQUIPMENT shall:

8.3.1 conform in all material respects with its description contained in the relevant PROPOSAL and/or ORDER ACCEPTANCE and any applicable specification requested by the CLIENT and agreed to in writing prior to receipt of the applicable ORDER ACCEPTANCE by the CLIENT;

8.3.2 be free from material defects in design, material and workmanship; and

8.3.3 be fit for the purposes specified in the PROPOSAL and/or ORDER ACCEPTANCE.

8.4 Subject to ARTICLE 8.5, if: -

8.4.1 the CLIENT gives notice in writing to COMPANY in accordance with ARTICLE 19.3 during the WARRANTY PERIOD within a reasonable time of discovery that the EQUIPMENT does not comply with the warranty set out in ARTICLE 8.3;

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- 8.4.2 COMPANY is given a reasonable opportunity of examining such EQUIPMENT (with any cost incurred in undertaking such examination at the expense of the CLIENT); and
- 8.4.3 the CLIENT (if asked to do so by COMPANY) returns such EQUIPMENT at the CLIENT'S own cost to such a location as COMPANY may direct in order to examine the EQUIPMENT;
- then COMPANY shall, at its option, repair or replace the defective EQUIPMENT.
- 8.5 COMPANY shall not be liable for failure of the EQUIPMENT to comply with the warranty set out in ARTICLE 8.3 if: -
- 8.5.1 the CLIENT makes any further use of such EQUIPMENT after giving notice in accordance with ARTICLE 8.4.1; or
- 8.5.2 the defect arises because the CLIENT failed to follow the COMPANY'S oral or written instructions as to the storage, commissioning, installation, use and maintenance of the EQUIPMENT or (if there are none) good trade practice; or
- 8.5.3 the defect arises as a result of COMPANY following any drawing, design or specification supplied by the CLIENT;
- 8.5.4 the CLIENT alters or repairs such EQUIPMENT without the written consent of COMPANY; or
- 8.5.5 the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions.
- 8.6 The conditions set out in ARTICLE 8.5 shall apply to any repaired or replacement EQUIPMENT supplied by COMPANY, however, nothing in the CONTRACT shall serve to extend the warranty period beyond the date of expiry of the original WARRANTY PERIOD.
- 8.7 Where COMPANY is not the manufacturer of the EQUIPMENT to be sold to CLIENT, COMPANY will endeavor to transfer to the CLIENT the benefit of any warranty or guarantee that has been given to the COMPANY by such manufacturer. For the avoidance of doubt, COMPANY will not be responsible for any warranty on any CLIENT supplied equipment, unless specifically agreed to in writing.
- 8.8 Where COMPANY provides EQUIPMENT on a rental basis, no specific warranty is provided. However, if a defect in the EQUIPMENT arises during the RENTAL PERIOD, COMPANY shall, at its option, use reasonable endeavors to repair or replace such EQUIPMENT, subject to availability and both the notification, examination and other requirements in ARTICLE 8.4 and the exclusions in ARTICLE 8.5. Such repair or replacement represents CLIENT'S sole remedy in respect of defects in the EQUIPMENT during the RENTAL PERIOD.
- 8.9 Under no circumstances shall COMPANY be liable for any costs relating to (a) any transport of the EQUIPMENT, (b) dismantling of equipment other than the EQUIPMENT or other measures taken to provide access to the EQUIPMENT or reinstallation of such, (c) reconnection, recalibration or rectification of any equipment other than the EQUIPMENT, (d) board and lodging offshore, (e) rig or vessel costs, (f) offshore lifting operations, (g) work performed below the water line, or (h) CLIENT'S personnel costs.
- 8.10 The warranties given in this ARTICLE 8 are not offered and shall not be effective in the event any sums due to COMPANY under the CONTRACT are not fully paid by the CLIENT.
- 8.11 The warranties given in this ARTICLE 8 are the sole and exclusive warranties provided by the COMPANY and no other warranties are given with respect to any SERVICES provided by COMPANY. All warranties, conditions and other terms implied by statute or common law, including without limitation any warranty of workmanlike performance, merchantability, or suitability for a specific purpose are, to the fullest extent permitted by law, excluded from the CONTRACT. The foregoing constitutes CLIENT'S sole remedies and COMPANY'S sole liabilities with respect to defects.

9. DELIVERY AND RISK

- 9.1 COMPANY will DELIVER the EQUIPMENT in accordance with the CONTRACT. The EQUIPMENT is at the risk of the CLIENT from the time of DELIVERY.

- 9.2 Any dates specified by COMPANY for DELIVERY of the EQUIPMENT are intended to be an estimate and time for DELIVERY shall not be made of the essence by notice. If no dates are so specified, DELIVERY will be within a reasonable time.
- 9.3 COMPANY will not be liable for any loss (including CONSEQUENTIAL LOSS), costs, damages, charges or expenses caused directly or indirectly by any delay in DELIVERY of EQUIPMENT, nor will any delay entitle the CLIENT to terminate or rescind the CONTRACT.
- 9.4 If for any reason the CLIENT will not accept DELIVERY of the EQUIPMENT, or COMPANY is unable to DELIVER the EQUIPMENT because the CLIENT has not provided appropriate instructions, documents, licenses or authorizations: -
- 9.4.1 risk in the EQUIPMENT will pass to the CLIENT;
- 9.4.2 the EQUIPMENT will be deemed to have been DELIVERED; and
- 9.4.3 COMPANY may store the EQUIPMENT until DELIVERY whereupon the CLIENT will be liable for all related costs and expenses (including, without limitation, storage and insurance).

10. NON-DELIVERY

- 10.1 The quantity of any consignment of EQUIPMENT as recorded by COMPANY upon dispatch from COMPANY'S place of business shall be conclusive evidence of the quantity received by the CLIENT on DELIVERY unless the CLIENT can provide conclusive evidence proving the contrary.
- 10.2 COMPANY shall not be liable for any non-DELIVERY of EQUIPMENT unless written notice is given to COMPANY within three (3) days of the date when the EQUIPMENT would in the ordinary course of events have been DELIVERED.
- 10.3 Any liability of COMPANY for non-DELIVERY of the EQUIPMENT shall be limited to replacing the EQUIPMENT within a reasonable time or issuing a credit note at the CONTRACT rates on a pro rata basis against any invoice raised for such EQUIPMENT.

11. CANCELLATION

- 11.1 COMPANY reserves the right to accept or reject any request for cancellation from the CLIENT. In the event of such a request being acceptable to COMPANY, the CLIENT shall pay to COMPANY such amounts to compensate COMPANY for work completed in pursuance of the provision of the SERVICES up to the date of cancellation, any agreed termination fees (including minimum hire period) and any other documented costs incurred and committed as a result of such cancellation including, but not limited to, any DELIVERY costs, payments for demobilized resources and payments to suppliers/SUBCONTRACTORS. COMPANY shall have no liability to CLIENT for any costs in connection with any cancellation of CONTRACT.

12. TERMINATION

- 12.1 Upon the termination of the CONTRACT, (unless such EQUIPMENT has been sold to the CLIENT and has been fully paid for by the CLIENT) the EQUIPMENT must be immediately returned to COMPANY. If such return is delayed, COMPANY shall have the right to enter any premises to take immediate possession of the EQUIPMENT without further notice or demand and the CLIENT shall immediately inform COMPANY of the location of the EQUIPMENT.
- 12.2 If the CLIENT (i) fails to make any payment due by it to COMPANY on its due date or breaches any of the provisions of the CONTRACT; or (ii) becomes insolvent, takes steps to enter into administration, files for bankruptcy, makes an arrangement with its creditors, commences proceedings for winding up or otherwise becomes unable to pay its debts as they fall due, COMPANY shall be entitled to terminate the CONTRACT with immediate effect and without liability to the CLIENT by giving written notice to that effect to the CLIENT. Such termination shall be in addition to and without prejudice to other CLAIMS, rights and remedies which COMPANY may have against the CLIENT in relation to the CONTRACT or for any breach of contract.

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12.3 CLIENT shall not be permitted to terminate any element of the SERVICES which is the subject of an advance commitment made by the CLIENT. Save where otherwise agreed in writing, COMPANY reserves the right to continue charges until the expiry of any TERM as specified in the APPROVED ORDER, in the event that any of the SERVICES are demobilized by the CLIENT prior to the expiry of such TERM. COMPANY also reserves the right to retain in their entirety all payments made by the CLIENT to COMPANY with respect to any advance commitment.

12.4 In the event of termination of the CONTRACT in accordance with ARTICLE 12.2 the CLIENT warrants that it shall make full payment to COMPANY, on COMPANY'S demand, of all amounts outstanding and due under the CONTRACT and these TERMS AND CONDITIONS. Such payment shall be made to COMPANY, within ten (10) BUSINESS DAYS of the date of COMPANY'S demand. RENTAL CHARGES AND SERVICE PERSONNEL CHARGES shall continue to accrue until the return by CLIENT of rental EQUIPMENT and/or SERVICE PERSONNEL to COMPANY'S premises or such other premises as specified by COMPANY.

12.5 The rights and obligations contained in ARTICLES 4, 5, 6, 7, 8, 12,14,15,16,18, 19 and 23 shall remain in full force and effect notwithstanding the expiry or earlier termination of the CONTRACT.

13. FORCE MAJEURE

13.1 Neither PARTY shall be responsible for any failure to fulfil any term or condition of the CONTRACT if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined and which is beyond the control and without the fault or negligence of the PARTY affected and which, by the exercise of reasonable diligence, the said PARTY is unable to provide against.

13.2 For the purposes of this CONTRACT, force majeure may include, without limitation: - riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power; Ionizing radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity; epidemics, pandemics and the like; strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labor not employed by the affected PARTY its subcontractors/SUBCONTRACTORS or its suppliers and which affect a substantial or essential portion of the WORK; Maritime or aviation disasters; changes to any general or local statute, ordinance, decree, or other law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such statute, ordinance, decree, law, regulation or bye-law and any other situations meeting the requirements of force majeure under ARTICLE 13.1.

13.3 In the event of a force majeure occurrence, the PARTY that is or may be delayed in performing the CONTRACT shall notify the other PARTY without delay in accordance with ARTICLE 19.3, giving full particulars thereof and shall use all reasonable endeavors to remedy the situation without delay.

13.4 Delay resulting from a force majeure situation shall entitle COMPANY to a corresponding prolongation of an agreed CONTRACT schedule and DELIVERY dates. Each PARTY shall cover its own costs associated with force majeure, except that where force majeure requires COMPANY to quarantine or standby SERVICE PERSONNEL, CLIENT shall cover such costs.

13.5 Where the force majeure continues for more than seven (7) BUSINESS DAYS, the PARTIES will meet and mutually agree a course of action to mitigate the effects of the force majeure.

13.6 Notwithstanding the foregoing provisions of this ARTICLE 13, a force majeure occurrence shall not excuse CLIENT from making payments for sums due under the CONTRACT. Furthermore, a force majeure occurrence shall not constitute cause for cessation or reduction of RENTAL CHARGES which remain payable in full during the continuance of such force majeure occurrence.

14. CONFIDENTIALITY

14.1 The CLIENT shall ensure the CLIENT GROUP preserves secrecy concerning the CONTRACT and COMPANY GROUP and their respective activities and will not publish or disclose any CONFIDENTIAL INFORMATION relating hereto without COMPANY'S prior written consent.

15. INTELLECTUAL PROPERTY

15.1 All INTELLECTUAL PROPERTY rights created or arising in connection with the SERVICES shall vest in COMPANY.

15.2 All INTELLECTUAL PROPERTY rights owned by COMPANY prior to the SERVICES being performed shall remain the property of COMPANY at all times.

16. DATA PROTECTION

16.1 Both PARTIES undertake to comply with all applicable requirements of the DATA PROTECTION LEGISLATION. This ARTICLE 16.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the DATA PROTECTION LEGISLATION. The PARTIES acknowledge that for the purposes of the DATA PROTECTION LEGISLATION, the CLIENT is the controller and COMPANY is the processor.

17. INFORMATION

17.1 COMPANY is entitled to rely upon all CLIENT GROUP or END USER GROUP provided information and documents as complete and accurate and CLIENT shall be responsible for any errors or omissions in such or arising from such information. CLIENT shall provide COMPANY with any additional information reasonably requested to perform the SERVICES.

17.2 The CLIENT accepts that any assistance provided by COMPANY, by way of technical or engineering support and/or the supply of information or SERVICES is advisory only and COMPANY shall not be liable for any CLAIMS arising from the CLIENT'S use of the same, except as otherwise specifically provided herein.

18. COMPLIANCE

18.1 **Anti-Bribery and Corruption:** Each PARTY shall (i) comply with all applicable anti-corruption laws and regulations, including without limitation the US Foreign Corrupt Practices Act and the UK Bribery Act of 2010 and (ii) undertakes and warrants to the other PARTY that it and its officers, directors, shareholders, employees, agents and other intermediaries, and any other person acting directly or indirectly on its behalf, shall not, directly or through THIRD PARTIES, give, promise or attempt to give, or approve or authorize the giving of, anything of value to any person or any entity for the purpose of (a) securing any improper advantage for COMPANY or the CLIENT, (b) inducing or influencing a PUBLIC OFFICIAL improperly to take action or refrain from taking action in order for either PARTY to obtain or retain business, or to secure the direction of business to either; or (c) inducing or influencing a PUBLIC OFFICIAL to use his/her influence with any Government or public international organization for such purpose. Breach of this ARTICLE 18.1 shall be deemed a material breach of the CONTRACT.

18.2 The CLIENT shall indemnify COMPANY GROUP from and against any and all CLAIMS taxes, levies or duties and any associated fines and penalties incurred by, or awarded against, COMPANY GROUP as a result of any breach of the obligations set out in ARTICLE 18.1 by the CLIENT GROUP OR END USER GROUP.

18.3 **Trade Laws:** The CLIENT acknowledges that COMPANY and the EQUIPMENT and SERVICES are subject to TRADE LAWS and the CLIENT warrants that it shall comply in all respects with all applicable TRADE LAWS and will not cause COMPANY to be subject to punitive measures under any laws. COMPANY shall be under no obligation to supply any EQUIPMENT or SERVICES to the CLIENT under the CONTRACT if COMPANY determines, at its sole discretion, that to do so would breach any TRADE LAWS or cause COMPANY to be subject to punitive measures under any laws.

18.4 COMPANY shall be responsible for obtaining any export license(s) required for the export of the EQUIPMENT by COMPANY to the jurisdiction(s) specified in the CONTRACT as DELIVERY locations, and the CLIENT warrants that it will use the EQUIPMENT only in those jurisdiction(s) and for the purposes specified in the CONTRACT.

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- 18.5 The CLIENT warrants that it shall comply in all respects with the export and re-export restrictions set forth in any export license(s) acquired by COMPANY pursuant to ARTICLE 18.4 and that it shall comply with any end-user undertaking(s) given by the CLIENT and/or END USER in relation to any such export license(s).
- 18.6 In the event that the CLIENT intends to export and/or re-export EQUIPMENT from the jurisdiction(s) to which that EQUIPMENT was DELIVERED by COMPANY to any other jurisdiction, the CLIENT shall be responsible for obtaining any necessary export license(s) from the relevant authorities. The CLIENT agrees to determine whether an export license is required and to obtain any required license(s) prior to export/re-export. CLIENT shall also be responsible for obtaining any local licensing required to ship EQUIPMENT back to the United States (or any location specified by COMPANY) following a project.
- 18.7 COMPANY may, at its sole discretion, withhold any payments which are payable to the CLIENT in terms of the CONTRACT and COMPANY may also, at its sole discretion, suspend performance under the CONTRACT without liability if it believes in good faith that the CLIENT has breached any of its obligations pursuant to ARTICLE 18.
- 18.8 The CLIENT shall indemnify COMPANY GROUP from and against any and all CLAIMS against COMPANY GROUP as a result of any breach of the obligations set out in ARTICLES 18.5, 18.6 and 18.7 by the CLIENT GROUP, END USER GROUP or persons associated with the CLIENT, any person working for the CLIENT or any THIRD PARTY retained by the CLIENT.
- 18.9 **Forced Labor:** Both PARTIES shall comply with all applicable laws, statutes, regulations and codes relating to slavery servitude, forced or compulsory labor and human trafficking including the Modern Slavery Act 2015 and undertake not to purchase any resource, materials or products from producers, suppliers or manufacturers using forced or compulsory labor in its operations of practices.
- 18.10 Each PARTY shall immediately notify the other if it becomes aware of any breach or alleged breach of ARTICLE 18.9 within its supply chain.
- 18.11 The CLIENT shall indemnify COMPANY GROUP from and against any and all CLAIMS taxes, levies or duties and any associated fines and penalties incurred by, or awarded against, COMPANY GROUP as a result of any breach of the obligations set out in ARTICLE 18.9 by the CLIENT GROUP or END USER GROUP.
- 18.12 Breach of ARTICLE 18 shall be deemed a material breach of the CONTRACT.

19. GENERAL PROVISIONS

- 19.1 **Assignment and Subcontracting:** COMPANY may at any time assign, transfer or subcontract any or all of its rights or obligations under the CONTRACT. The CLIENT may not assign, transfer or subcontract any or all of its rights or obligations under the CONTRACT without COMPANY'S prior written consent.
- 19.2 **Independence of COMPANY:** COMPANY shall act as an independent contractor with respect to the CONTRACT. Nothing in this CONTRACT is deemed to, establish any partnership or joint venture between the PARTIES, make any PARTY the agent or employee of the other PARTY, or authorize a PARTY to make or enter into any commitments for or on behalf of the other PARTY.
- 19.3 **Notices:** Any notice given to a PARTY under or in connection with the CONTRACT shall be in writing, addressed to that PARTY at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that PARTY may have specified to the other PARTY in writing, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, or e-mail to PARTY representatives. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the registered office, principal place of business or such other address as that PARTY may have specified to the other PARTY, if sent by pre-paid first class post or recorded delivery, at 10.00 am on the second BUSINESS DAY after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one BUSINESS DAY after transmission. The provisions of this ARTICLE shall not apply to the service of any proceedings or other documents in any legal action.

- 19.4 **Severance:** If any provision of the CONTRACT shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity and unenforceability shall not affect the other provisions of the CONTRACT and all provision not affected by such invalidity or unenforceability shall remain in full force and effect. If any invalid or unenforceable provision would be valid or enforceable if some of part of it was deleted or modified, the provision will apply whatever modification is necessary to give effect to the commercial intentions of the PARTIES.
- 19.5 **Waiver:** A waiver of any right or remedy under the CONTRACT is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the CONTRACT or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 19.6 **Variation:** Except as set out in the CONTRACT, any variation to the CONTRACT, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the both PARTIES.
- 19.7 **Entire Agreement:** The CONTRACT constitutes the complete and exclusive statement of the agreement between the PARTIES as to the subject matter hereof and supersedes all previous agreements with respect thereto. Each PARTY hereby acknowledges that it has not entered into the CONTRACT in reliance upon any representation made by the other PARTY but not embodied in the CONTRACT.
- 19.8 **Rights of Third Parties:** The PARTIES agree that no provision of the CONTRACT will confer any benefit on, nor, confer any benefit on nor be enforceable by any person who is not a PARTY to the CONTRACT, save for any indemnity under ARTICLE 5 which are enforceable by members of COMPANY GROUP and CLIENT GROUP. The indemnity provisions of ARTICLE 5 are intended to be enforceable by any such party.
- 19.9 **Counterparts:** Any element of the CONTRACT and any further instruments in writing applicable to the CONTRACT, may be executed in counterparts, each of which shall be considered an original. Any element of the CONTRACT and any further instruments in writing applicable to the CONTRACT, may be executed by one or more of the PARTIES by electronic transmission using a .pdf format signature and each PARTY agrees that the reproduction of signatures by way of tele-copying device or electronically by .pdf will be treated as though such reproductions were executed originals.
- 19.10 **Governing Law and Jurisdiction:**

The laws of State of Texas shall govern the construction, validity and performance of these TERMS AND CONDITIONS. The PARTIES hereby submit to the exclusive jurisdiction of the Texas state courts for Houston, Texas or the United States District Court for the Southern District of Texas, Houston Division to settle any disputes (contractual and non-contractual) arising out of or in connection with the CONTRACT.

- 19.11 **Exclusivity:** The CONTRACT is a non-exclusive contract.

PART II - TERMS AND CONDITIONS OF EQUIPMENT RENTAL AND PROVISION OF SERVICE PERSONNEL

20. RENTAL PERIOD

- 20.1 The RENTAL PERIOD commences upon the day the rental EQUIPMENT is dispatched by COMPANY or collected by or on behalf of the CLIENT from the COMPANY'S premises or such other premises as specified by COMPANY and shall continue until the rental EQUIPMENT is returned to the premises stipulated by COMPANY during COMPANY'S usual business hours Mondays to Fridays and a receipt is issued by COMPANY or is collected by COMPANY; the foregoing shall apply even if COMPANY has agreed to cease RENTAL CHARGES.

21. RENTAL CHARGES

- 21.1 Unless otherwise agreed in the CONTRACT, RENTAL CHARGES will be calculated daily with part days being charged as full days.

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- 21.2 COMPANY reserves the right to revise RENTAL CHARGES for EQUIPMENT already being rented to the CLIENT by giving one (1) month's written notice to the CLIENT.
- 21.3 RENTAL CHARGES relate solely to the rental of the EQUIPMENT and additional charges will be paid by the CLIENT for other services provided by COMPANY, including but not limited to DELIVERY, transportation, installation, commissioning (or decommissioning) or operation of the EQUIPMENT. Where applicable, these additional charges will be detailed in the CONTRACT.
- 21.4 Where the rental EQUIPMENT is returned or collected and is found not to be in the same condition (fair wear and tear being excluded) that it was at the time of DELIVERY then the CLIENT shall be responsible for the costs that COMPANY incurs in returning the rental EQUIPMENT to such condition, including any necessary cleaning, disinfecting and like charges. Where the rental EQUIPMENT is incapable of being restored to its previous condition, the CLIENT shall be responsible for the REPLACEMENT VALUE.
- 21.5 Where in the reasonable opinion of COMPANY the EQUIPMENT is lost or damaged beyond repair during the RENTAL PERIOD the CLIENT shall pay to COMPANY on demand the REPLACEMENT VALUE of the EQUIPMENT.
- 21.6 In either of the cases referred to in ARTICLES 21.4 and 21.5 and in any other situation where rental EQUIPMENT is seized, the RENTAL CHARGES shall continue until the item is recovered, repaired, replaced or the full REPLACEMENT VALUE is received.
- 21.7 All repair and replacement costs charged to CLIENT are subject to the additional charge of fifteen percent (15%) and any administrative costs associated with the repair or replacement.
- 21.8 The CLIENT agrees to pay all costs (including export and import costs); taxes (including withholding tax, unless otherwise stated on an Invoice or agreed in writing between COMPANY and the CLIENT), levies, duties, expenses or fines assessed by any foreign government or body against the EQUIPMENT in connection with temporary importation and/or exportation of the same.
- 21.9 The CLIENT agrees to pay all charges arising under this ARTICLE 21.
- 22. TITLE**
- 22.1 Nothing in the CONTRACT shall convey to the CLIENT any title to or any right in the EQUIPMENT rented in accordance with PART II of these TERMS AND CONDITIONS, including, but not limited to, all proprietary rights or ownership of any modifications. The CLIENT'S sole right in relation to the EQUIPMENT or any modifications is to use the same for the duration of the RENTAL PERIOD.
- 23. OBLIGATIONS OF THE CLIENT**
- During the continuance of the CONTRACT the CLIENT shall:
- 23.1 obtain and pay for all necessary licenses, certificates, permits, authorizations required for the operation of, or in connection with, the EQUIPMENT and shall maintain the same in full force until the EQUIPMENT is returned to COMPANY;
- 23.2 maintain effective control of the EQUIPMENT and maintain the EQUIPMENT in a secure location when not in use and in any event not allow the EQUIPMENT to be transferred to any country prohibited at the present time by the authorities of the United Kingdom, the United States of America or the authorities of any other countries relevant to the CONTRACT;
- 23.3 not do or fail to do, any act whereby the EQUIPMENT or its use would contravene any statute, rule, regulation, or bylaw or any such license, certificate, permit authorization for the time being in force pertaining to the possession, use, maintenance or safety of the EQUIPMENT;
- 23.4 not subject the EQUIPMENT to any misuse or unfair wear and tear and ensure that the EQUIPMENT is operated in a skillful and proper manner and by persons who are competent and trained to operate the same;
- 23.5 permit an authorized representative of COMPANY at all reasonable times to enter upon premises or any vessel where the EQUIPMENT is located for the purposes of inspection, maintenance, repair or testing;
- 23.6 ensure that the EQUIPMENT will only be operated by trained and competent persons in accordance with COMPANY'S or EQUIPMENT manufacturer's oral or written instructions and where appropriate with valid calibration and/or certification for the duration of the RENTAL PERIOD;
- 23.7 not make any alterations, modifications or technical adjustments or attempt any repairs on the EQUIPMENT without the prior written consent of COMPANY and in the event of authorization arrange that all necessary repairs are in accordance with the manufacturer's specification and/or assessment including making good any loss or damage to the EQUIPMENT due to any occurrence whatsoever (fair wear and tear only excepted);
- 23.8 preserve COMPANY'S (and, if relevant, the owner's and manufacturer's) identification numbers, marks, nameplates and labels present on the EQUIPMENT at DELIVERY;
- 23.9 obtain all prudent insurance cover, including third party liability and cover against loss or damage to the EQUIPMENT for its full REPLACEMENT VALUE; furthermore, the CLIENT shall give COMPANY immediate written notice of any loss or damage to the EQUIPMENT and shall in the event of loss reimburse COMPANY the full REPLACEMENT VALUE in respect thereof within fourteen (14) days of the loss; the CLIENT shall produce on demand to COMPANY a copy of the policy or policies;
- 23.10 hold on trust for COMPANY all policy proceeds in or towards satisfaction of the CLIENT'S obligations hereunder;
- 23.11 ensure that at the CLIENT'S expense, the EQUIPMENT is kept safe and without risk to health;
- 23.12 ensure that its use of the said EQUIPMENT conforms with the terms and conditions laid down in any national and local Health and Safety Regulations which may be applicable, until the EQUIPMENT is returned;
- 23.13 immediately notify COMPANY by telephone and subsequently confirm in writing if the EQUIPMENT is involved in any accident resulting in injury to persons or damage to property; the CLIENT shall not admit liability or compromise any CLAIM relating to the EQUIPMENT without the consent of COMPANY in writing;
- 23.14 not sell, assign, mortgage, pledge, let on hire, sub-hire or rent, part with possession, or otherwise deal with or encumber the EQUIPMENT or transfer the benefit of the rental without specific written consent of COMPANY and not permit the EQUIPMENT to be used by any other party than the CLIENT and its employees;
- 23.15 punctually pay all invoices in accordance with ARTICLE 4 of the CONTRACT; and
- 23.16 upon expiry of the RENTAL PERIOD, return the EQUIPMENT at the CLIENT'S expense to COMPANY in good repair and condition.
- 24. MAINTENANCE**
- 24.1 The CLIENT shall notify COMPANY if any maintenance of the EQUIPMENT is required and adhere to instructions given by COMPANY in connection therewith. COMPANY will either grant permission for the CLIENT to undertake maintenance work or require the maintenance work to be carried out by COMPANY or such other person as may be nominated by COMPANY.
- 24.2 In the event of COMPANY or such other person as may be nominated by COMPANY, carrying out maintenance work on the EQUIPMENT, this will either be carried out by a fully competent SERVICE PERSONNEL on site or (provided that the CLIENT returns the EQUIPMENT at its own expense to COMPANY) at such a location as COMPANY may direct.
- 24.3 Periods during which the EQUIPMENT is being repaired or maintained will not constitute cause for cessation or reduction in RENTAL CHARGES.
- 25. PROVISION OF SERVICE PERSONNEL**
- 25.1 Unless SERVICE PERSONNEL are performing work remotely, in which case, the SERVICE PERSONNEL PERIOD is the period during which such SERVICE PERSONNEL are performing WORK, the SERVICE PERSONNEL PERIOD shall commence on the day the SERVICE PERSONNEL depart from their normal

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COMPANY working premises and continue until their return to same. The SERVICE PERSONNEL CHARGES shall be in line with and charged during the SERVICE PERSONNEL PERIOD.

- 25.2 Where, COMPANY supplies SERVICE PERSONNEL to operate, service or repair EQUIPMENT or otherwise perform WORK, the CLIENT: -
- 25.2.1 shall provide all necessary power sources and other support equipment necessary to enable the EQUIPMENT to be operated satisfactorily;
- 25.2.2 acknowledges that the work intended to be carried out is the sole responsibility of the CLIENT and COMPANY shall not be responsible for the quality of the data obtained or work completed;
- 25.2.3 shall provide transport from COMPANY'S offices to the CLIENT'S WORKSITE (including airfares and other travel costs), reasonable sleeping and living accommodation and food for the SERVICE PERSONNEL;
- 25.2.4 shall provide an appropriate operating environment for the EQUIPMENT in accordance with the manufacturer's recommendations.
- 25.3 COMPANY shall have the right to substitute the SERVICE PERSONNEL (and where appropriate, the EQUIPMENT) upon giving reasonable notice to the CLIENT and the CLIENT shall co-operate with and assist COMPANY in effecting such substitutions.
- 25.4 In the event that the proposed work takes longer than the period as agreed in writing, the CLIENT shall pay for the cost of any required replacement of SERVICE PERSONNEL (decision on such replacement to be in the sole opinion of COMPANY, having regard to its operational requirements) together with an administration charge of fifteen per cent (15%) of such costs (the "SUBSTITUTION COSTS"). The SUBSTITUTION COSTS shall include airfares and other travel costs to and from COMPANY'S offices together with subsistence and all other reasonable expenses.
- 25.5 COMPANY shall be responsible for the payment of the salary and all social security or equivalent and other payments and taxes in respect of the SERVICE PERSONNEL whilst engaged in work under the CONTRACT. The CLIENT agrees to pay all taxes, levies, or duties assessed by any foreign government in respect of the salary and other payments made by COMPANY to any SERVICE PERSONNEL and the CLIENT shall indemnify COMPANY GROUP against any such taxes, levies, or duties.
- 25.6 Insofar as practicable the SERVICE PERSONNEL will service and repair the EQUIPMENT at the CLIENT'S WORKSITE where required. Any servicing or repair of the EQUIPMENT requiring return of any vessel to port or return of any EQUIPMENT to COMPANY'S offices will be made known as soon as possible to the CLIENT'S designated representative. The costs of returning the EQUIPMENT will be borne by the CLIENT. Transit time including any delays to and from port or to and from COMPANY'S offices after discovery of a malfunction will not constitute cause for reduction in payments to COMPANY.
- 25.7 All WORK undertaken shall be under the instruction of the CLIENT but the method of operation of the EQUIPMENT and the manner of performance of WORK in connection therewith shall be under the direction and control of COMPANY and its SERVICE PERSONNEL. The SERVICE PERSONNEL shall not be under the direction or control of the CLIENT, but will nevertheless co-operate with the CLIENT'S personnel with a view to operating the EQUIPMENT in accordance with their reasonable requirements. Employees of the CLIENT shall not be under the direction and control of COMPANY or its SERVICE PERSONNEL.
- 25.8 COMPANY and its SERVICE PERSONNEL shall not be involved in, nor be required nor requested to be, nor become involved in, the operation of any vessel or any other equipment other than the EQUIPMENT supplied under the CONTRACT for any reason whatsoever.
- 25.9 The CLIENT shall obtain and pay for all and any permits, licenses and other consents and permissions required to enable the SERVICE PERSONNEL to perform the work required by the CLIENT. In the event that costs for such permits, licenses and other consents are incurred by COMPANY, the CLIENT shall refund such costs to COMPANY on demand where evidence of such costs is provided by COMPANY to the CLIENT.

PART III – TERMS AND CONDITIONS OF SALE

26. RETENTION OF TITLE AND RETURN

- 26.1 The EQUIPMENT is at the risk of the CLIENT from the time of DELIVERY.
- 26.2 Ownership of the EQUIPMENT shall not pass to the CLIENT unless COMPANY has received in full (in cash or cleared funds) all sums due to it in respect of: -
- 26.2.1 the EQUIPMENT; and
- 26.2.2 all other sums which are, or which become due to COMPANY from the CLIENT on any account.
- 26.3 Until ownership of the EQUIPMENT has passed to the CLIENT, the CLIENT shall maintain the equipment in satisfactory condition, keep it insured on the COMPANY'S behalf and not remove, destroy, deface or obscure any identifying mark or packaging.
- 26.4 The CLIENT may re-sell the EQUIPMENT before ownership has passed to it solely on the following conditions: -
- 26.4.1 any sale shall be effected in the ordinary course of the CLIENT'S business at full market value; and
- 26.4.2 any such sale shall be a sale of the COMPANY'S property on the CLIENT'S own behalf and the CLIENT shall deal as principal in making such a sale.
- 26.5 The CLIENT'S right to possession of the EQUIPMENT shall terminate immediately if: -
- 26.5.1 the CLIENT is the subject of a petition for sequestration or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act or other statutory or regulatory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory, except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamations) or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the CLIENT or for the granting of an administration order in respect of the CLIENT, or any proceedings are commenced relating to the insolvency or possible insolvency of the CLIENT; or
- 26.5.2 the CLIENT suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performance any of his/its obligations under the CONTRACT or any other contract between the COMPANY and the CLIENT or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (as amended) or the CLIENT ceases to trade; or
- 26.5.3 the CLIENT encumbers or in any way changes any of the EQUIPMENT.
- 26.6 COMPANY shall be entitled to recover payment for the EQUIPMENT notwithstanding that ownership of any of the EQUIPMENT has not passed from COMPANY.
- 26.7 The CLIENT grants COMPANY, its agents and employees an irrevocable license at any time to enter any premises where the EQUIPMENT is or may be stored in order to inspect it, or, where the CLIENT'S rights to possession have terminated, to recover it.
- 26.8 Unless otherwise agreed by the parties, EQUIPMENT returned to COMPANY by CLIENT is subject to a restocking charge of 30% of the purchase price related to the Equipment returned. Equipment returned must be returned in as new condition.

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27. CLIENT'S DESIGN, BUILD AND MODIFICATIONS

- 27.1 Where COMPANY builds and/or modifies EQUIPMENT in accordance with the CLIENT'S drawings, plans, specifications or other information, the CLIENT will defend, indemnify, release and hold harmless COMPANY from and against any and all CLAIMS by the CLIENT or any other natural or corporate person, such CLAIMS including but not limited to CLAIMS for direct or indirect, special and/or CONSEQUENTIAL LOSS, loss of or damage to property at surface or sub-surface, destruction or economic loss of any kind including property rights, infringement of any patent, design copyright or trade name or mark, or other intellectual property right, death, injury or incapacitation arising, directly or indirectly, or in any manner connected with such EQUIPMENT.