



**GENERAL TERMS AND CONDITIONS**  
**Offshore Rental Cranes & Lifting Services**

<b>Company</b>	Thunder Cranes Sdn. Bhd.
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# GENERAL TERMS AND CONDITIONS

## Offshore Rental Cranes & Lifting Services

### 1. Definitions and Interpretation

1.1. The following general definitions shall apply to this Agreement

**“Agreement”** The following documents shall form the “Agreement”:

- (a) these General Terms and Conditions of Services
- (b) the Order; and
- (c) any other document(s) expressly incorporated either by reference in or as attached to the Order.

**“Applicable Laws”** means all laws, statutes, ordinances, rules, regulations, by-laws, decrees, orders and the like, and any industrial instruments and any binding determination of a Competent Authority, having jurisdiction over the Parties or any of them, the Services, or the Worksite and which are or may become applicable;

**“Claim(s)”** shall mean any claim, demand, action or proceeding of any kind for any cost, expense, damage, loss, liability, fine, penalty or other amount arising under, out of or in connection with this Agreement, whether arising in contract, tort, equity, under statute or on any other legal basis.

**“Company”** shall mean the legal entity stipulated upon the Order for whom Contractor is performing Services pursuant to an Order, and its successors and assignees.

**“Company Group”** shall mean Company, its Co-Ventures, its and their contractors of every tier (including any Company Subcontractors), its clients of every tier, its and their respective Affiliates, and its and their respective directors, officers, employees, agency personnel, agents, representatives, servants, invitees, and secondees, but shall not include any member of Contractor Group.

**“Company Representative”** shall mean that person referred to in Clause 2.1 of these general terms and conditions

**“Company Subcontractor”** shall mean any contractor or person to whom Company has engaged as an independent contractor for the provision of goods and/or Services to Company, and includes and is not limited to: a trade contractor, consultant, supplier, vendor or a subcontractor, in each case of any tier, but shall not include Contractor.

**“Competent Authority”** shall mean (i) any person having legal, executive and/or regulatory authority and/or enforcement powers (including any public body or authority responsible for the investigation and/or prosecution of criminal offences) over either or both of the Parties or any of their Affiliates providing services in connection with this Agreement or any Order; and/or (ii) any court of law or tribunal with jurisdiction over either or both of the Parties or any of their respective Affiliates providing services in connection with this Agreement or any Order.

**“Confidential Information”** shall mean all data, information (including business, technical and other information), knowledge, ideas and services that is provided or made available from one Party to the other in any tangible or intangible form, whether directly or indirectly for the purpose of this Agreement.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this Agreement.

Confidential Information does not include information that the receiving Party establishes by documentary evidence to the disclosing Party’s satisfaction that:

- (a) is in or enters the public domain other than through a breach of an obligation of confidence owed to the disclosing Party;
- (b) is or was made available to the receiving Party by a person (other than the disclosing Party) who is not or was not then under an obligation of confidence to the disclosing Party in relation to that information;



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(c) is or was developed by the receiving Party without the receiving Party relying on, referring to or incorporating any of the Confidential Information; or

(d) is required to be disclosed pursuant to any order of a court of competent jurisdiction but only for the purpose of such disclosure and to the extent required so to be disclosed;

(e) is required to be disclosed pursuant to any a statute, law, regulation or ordinance but only for the purpose of such disclosure and to the extent required so to be disclosed;

(f) was (at the time the Party received such information from the other Party) already in the possession of the receiving Party free from any obligation of confidentiality and has not been acquired by the receiving Party in breach of any obligation of confidentiality; or

(g) has been disclosed to the Party under an express written statement from the providing Party that it is not confidential.

**“Contractor”** shall mean the legal entity stipulated upon the Order that is performing Services for Company pursuant to an Order, and its successors and assignees.

**“Contractor Group”** shall mean the Contractor, its Affiliates, and its and their respective officers, directors and employees, but shall not include any member of the Company Group.

**“Contractor Representative”** shall mean that person referred to in Clause 2.1 of these terms and conditions

**“Contractor Background Technology”** shall mean technical information and know-how which includes, but is not limited to, any designs, models, data, documents, patents, copyrights, discoveries, inventions, native files, or improvements, whether or not patentable, that is conceived, owned or controlled by Contractor Group prior to the date of this Agreement, or that is generated or created independently of this Agreement during or after the term of this Agreement, or any improvement, modification, supplementation, adaption or enhancement to Contractor’s technical information and know-how that is conceived during the performance of this Agreement, including any patent rights which claim such technical information, know-how or both.

**“Co-Venturer”** shall mean any other entity with whom the Company is or may be from time to time a party to a joint operating agreement or unitisation agreement or similar agreement relating to the operations for which the Services is being performed and the successors in interest of such Co-Venturer or the assignees of any interest of such Co-Venturer.

**“Defect(s)”** shall mean Services and/or Equipment not meeting the standards or specifications expressly detailed in this Agreement.

**“Documents”** shall mean all documentation produced by the Contractor pursuant to this Agreement including any reports, drawings, plans, specifications, calculations, models and records which, for the avoidance of doubt, does not include Contractor Background Technology.

**“Equipment”** shall mean the equipment used by the Contractor for the performance of Services under this Agreement.

**“Equipment Warranty Period”** shall have the same meaning as the Offshore Services Warranty Period.

**“Estimated Mobilisation Date”** shall mean the approximate Mobilisation Date(s) detailed in the applicable Order;

**“Force Majeure”** shall mean:

(a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;



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- (b) Ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
- (e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected Party its subcontractors or its suppliers and which affect a substantial or essential portion of the Services;
- (f) Maritime or aviation disasters;
- (g) Changes to any general or local statute, ordinance, decree, or other law, or any regulation or by-law of any local or other duly constituted authority or the introduction of any such statute, ordinance, decree, law, regulation or bye-law;
- (h) Any government-imposed sanction effecting the performance of the Services;
- (i) Epidemic or pandemic, and
- (j) Any other cause whatsoever beyond the control of Contractor.

**“Mobilization Date(s)”** shall mean the date(s) that Equipment and/or Personnel are made available to the Company and the date the applicable rates commence.

**“Offshore Services Warranty Period”** shall mean the date of commencement of Services until the date Contractor commences activity to demobilise Contractor’s Equipment or Personnel, whichever is the earliest, from the Worksite upon completion of Services;

**“Onshore Services Warranty Period”** shall mean six (6) months from the date Contractor believes it has completed Services.

**“Order”** shall mean the specific formal written agreement between the Parties, which may be known as a “purchase order”, “services order”, “call off order” or similar, issued by Company to Contractor on a case by case basis detailing the specific Services, to be performed by Contractor under the Order in accordance with this Agreement, and shall be similar to the form under Appendix 1 – Form of Services Order.

**“Person”** shall mean a natural person or a legal entity, including any partnership, limited partnership, limited liability company, corporation, firm, trust, body corporate, government, governmental body or agency, or unincorporated venture

**“Personnel”** shall mean employees of Contractor and other persons (whether contractors or otherwise) supplied by Contractor under this Agreement to perform Services.

**“Price”** shall mean the amount to be paid by Company to Contractor for performance of Services under the Order as stipulated upon such Order and based upon the rates and lump sums identified upon such Order, and may also be known as “Order Price”

**“Services”** shall mean the operative, consultancy, engineering and/or technical Services to be performed by Contractor, including the provision of all Documents, Services and Equipment and/or Personnel necessary to carry out Services, in accordance with this Agreement and further described and set out in upon the Order.

**“Technical Information”** shall mean all information provided by or caused to be provided by Company pursuant to this Agreement.

**“Variation”** shall mean both:



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- (a) an instruction to the Contractor in accordance with Clause 6; and
- (b) an adjustment to the any schedule and/or the Price to which the Contractor is entitled under any Clause of the Agreement.

**“Worksite”** shall mean the lands, waters, seabed, subsoil, buildings, facilities, assets and other places on, under, in or through which Services will be provided including any onshore and offshore installations, floating construction equipment, vessels (including the area covered by approved anchor patterns or within a distance of 500 metres from any part of Services, whatever is the greater), design offices, workshops and places where any equipment, materials or supplies are being obtained, stored or used for the purposes of this Agreement.

#### **1.2. In the Agreement, unless the context otherwise requires:**

a reference to a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

a document (including the Agreement) or agreement, or a provision of a document (including the Agreement) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

a Party includes a successor in title, permitted substitute or a permitted assign of that Party;

"person" includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

"including", "included", "include", "such as", "comprising", "comprise" and other similar words are deemed to be completed by the expression "but not limited to";

"require", "request", "submit", "answer", "notify", "instruct", "direct", "state", "inform", "agree", "approve" and other similar words are deemed to be completed by the expression "in writing" unless expressly stated otherwise;

"instruct", "direct" and other similar words include any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, consent, failure to consent, rejection, request or requirement, but does not include meeting notes or minutes;

"days" or "months" mean "consecutive calendar days" or "consecutive calendar months", it being understood that all dates and time periods referred to in the Agreement relate to the Gregorian calendar;

words indicating the singular also include the plural and vice-versa and words indicating one gender include all genders; and

if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

#### **1.3. Where the Agreement, expressly or impliedly:**

allows the Contractor a discretion as to whether or not to do or not to do any act, matter or thing of any kind, or as to how it may be done; or confers on the Contractor a power of determination or a right or obligation to form an opinion or the like, the Contractor may exercise or perform that discretion, power, right or obligation in its sole discretion and it is not required to give reasons when giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy under or in connection with the Agreement, unless expressly stated otherwise.

**1.4.** In the interpretation of a provision of the Agreement, a construction that would promote the purpose or object underlying the provision (whether that purpose or object is stated in the provision or not) is to be preferred to a construction that would not promote that purpose or object.



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**1.5.** In the interpretation of a provision of the Agreement, a construction adverse to a Party must not be preferred solely on the ground that:

- (a) the Party was responsible for the preparation of the Agreement or that provision; or
- (b) the Agreement or that provision favours the Party relying upon that provision.

**1.6.** Headings are included in these terms and conditions for ease of reference only and shall not affect the interpretation or construction of any of the terms and conditions herein.

**1.7.** A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order regulation or instrument as it is in force for the time being taking account of any amendment, extension, application, consolidation or re-enactment and includes any subordinate legislation for the time being in force under it.

**1.8.** (a) The various parts of the Agreement (as defined) shall be read as one document, the contents of which, in the event of conflict, ambiguity or inconsistency, shall be given precedence in the following order listed in declining weight: (i) the Order, (ii) any Special Conditions expressly stipulated upon the Order, (iii) these Conditions, and (iv) any other document(s) expressly incorporated either by reference in or as attached to the Order in declining precedence as stipulated upon the Order. In case of conflict or inconsistency between the provisions of the Conditions (or those referred to in the Conditions) and any applicable laws or regulations, the provisions of the Conditions (or those referred to in the Conditions) shall, to the extent legally possible, prevail (and to the extent legally impossible, be amended accordingly), notwithstanding anything herein to the contrary.

(b) This Agreement applies in lieu of any terms or conditions (i) provided by Company during the performance of the Agreement, or (ii) contained or referred to in any form generally used by Company, or any correspondence, other contracts performed by the Parties, or elsewhere, which may have been applicable to the subject matter hereof, or (iii) implied by trade, custom, practice or course of dealing. Any of said terms and conditions are void and unenforceable, and any purported provisions to the contrary are hereby excluded or extinguished.

#### **1.9 Orders**

a) At the request of Company, and the written acceptance of the Contractor, the Contractor shall provide Services for Company as specified in the Order.

b) In accordance with the terms and conditions of the Agreement, the Contractor shall perform and complete the Services and the Company shall pay the relevant Price

c) These general terms and conditions shall apply from the date of express written acceptance by the Contractor of the Order.

d) Orders shall be administered as follows:

i. Each Order shall be subject to these Conditions, which shall control and govern all transactions between the Parties with respect to the Services provided by the Contractor, whether or not these Conditions are referred to in the Order;

ii. No other, additional or different terms and conditions in any written or oral communication with respect to a transaction for the Services (including the terms and conditions in any Company request for proposal, request for quote, request for bid, purchase order, or similar document) shall vary or amend these Conditions; and

iii. Orders submitted by the Company orally or via email shall be followed by a purchase order or other written confirmation of the Order within two (2) working days from the date of the oral or email order, failing which the Contractor shall have no obligation to perform the Services thereunder. In the event of a conflict between Conditions and the terms in any Order, these Conditions shall control.



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e) Orders accepted by the Contractor may not be cancelled by the Company without the Contractor's written consent.

f) The Company shall be liable for cancellation, restocking, demobilisation and other fees, costs and charges incurred by the Contractor with respect to any cancelled Order.

g) Company's submission of an Order to Contractor for provision of Services pursuant to any Order, is deemed to reiterate Company's acceptance of all terms and conditions contained or referred to in this Agreement. The terms and conditions contained or referred to in this Agreement shall apply, regardless of whether said terms and conditions are referenced in the Order.

## **2. Company and Contractor Representatives**

### **2.1. General**

(a) Company Representative and Contractor Representative are the persons named in the Order.

(b) Such representatives, or delegates appointed in accordance with the provisions of this Clause 2, shall be readily available to enable both Parties to discharge their obligations under this Agreement.

(c) Company Representative and any person authorized by him shall have access at all reasonable times to the Worksite and Contractor shall afford every facility for and every assistance in obtaining the right of access.

### **2.2. Company Representative**

(a) Company Representative has the authority to commit Company in all matters under this Agreement and, subject to any delegation of such authority which shall be notified to Contractor in writing, shall be responsible for issuing to and receiving from Contractor all notices, information, instructions and decisions.

(b) By notice to Contractor, Company Representative may at any time delegate any of his authority to any nominated deputy. Such notice shall specify the precise authority of any such deputy and shall be sent to Contractor Representative.

(c) Company may change Company Representative at any time and shall notify Contractor of any change.

(d) Except as expressly stated in this Agreement, Company Representative has no powers to amend this Agreement or to relieve Contractor from any of its obligations under this Agreement.

### **2.3. Contractor Representative**

(a) Contractor Representative has the authority to commit Contractor to any course of action

within the rights and obligations of Contractor under this Agreement and, subject to any delegation of such authority, shall be responsible for issuing to and receiving from Company all notices, information, instructions and decisions.

(b) By notice to Company, Contractor Representative may delegate at any time any of his authority to any nominated deputy. Such notice shall specify the precise authority of any such deputy and shall be sent to Company Representative.

(c) Contractor may change Contractor Representative or any nominated deputy at any time and shall notify Company of any change.

(d) Contractor Representative has no powers to amend this Agreement.

## **3. Provision of Services**

**3.1.** Contractor undertakes to make available to Company sufficient Personnel to ensure performance and completion of Services in accordance with the provisions of this Agreement.



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**3.2.** Company shall obtain and pay for all and any permits, licences, temporary permits, authorisations and other consents and permissions required by the Applicable Laws, rules and regulations to enable the Contractor and its Personnel to perform Services required by Company and the Company shall indemnify, save, defend and hold harmless Contractor Group and the Personnel from and against any Claims (including, without limitation, all mobilisation and other Contractor costs) suffered by them arising from Company's failure to obtain the same.

**3.3.** Mobilization and demobilization expenses including the Personnel air fares and other travel costs, subsistence and hotel charges, freight charges and all other reasonable expenses associated with the mobilization and demobilization of the Personnel and Equipment required to undertake the Services will be recharged to Company at cost plus an administration charge of fifteen per cent (10%).

**3.4.** The Price specified in the Order for Services will be payable by Company to Contractor. Subject to the provisions of Clause 7, invoices for the Price will be issued by Contractor to Company at the end of each calendar month, unless otherwise specified in the Order.

**3.5.** Where Contractor supplies Services, Company:

(a) shall provide at its own cost all necessary power sources and other support equipment necessary to enable Services to be performed in a safe and satisfactory manner and for Services to be carried out in accordance with this Agreement;

(b) acknowledges that any work intended to be carried out by Company Group in support of the Services shall remain the sole responsibility of Company;

(c) shall provide at its own cost reasonable sleeping and living accommodation and food for the Personnel; and

(d) shall provide at its own cost: (i) an appropriate operating environment for Services and relevant equipment in accordance with the manufacturer's recommendations and any applicable laws or regulations; and (ii) a safe operating environment to allow the Personnel to provide Services in accordance with any applicable laws or regulations.

**3.6.** Contractor shall have the right at its sole discretion from time to time to substitute the Personnel upon giving reasonable notice to Company and Company shall co-operate with and assist Contractor in effecting such substitutions.

**3.7.** Company shall ensure that the Personnel remain at the Worksite for a period not longer than is considered to be appropriate in terms of best industry practice, applicable health and safety legislation and any applicable limits set by the operator of the Worksite. Company shall pay for the cost of replacing the Personnel in accordance with these standards together with an administration charge of fifteen percent (15%) of the costs of doing the same ("the Substitution Costs"). The Substitution Costs shall without limitation include airfares and other travel costs to and from Contractor's offices together with subsistence and all other reasonable expenses. Contractor will use reasonable endeavours to ensure that the Personnel (and any substitute Personnel) are available to be replaced (or substituted) in line with Company's normal working patterns and personnel rotations.

**3.8.** In so far as practicable, the Personnel will use reasonable endeavours to service and repair any Equipment required to perform Services at the Worksite. However, both Parties acknowledge that due to the complex technical nature of the Equipment and the fact that the Personnel may not have the competency to carry out repairs to the Equipment, it may not be practicable to repair the Equipment at the Worksite. Any servicing or repair of the Equipment requiring return of any vessel to port or return of any Equipment to Company's premises or Contractor's premises will be made known as soon as is reasonably practicable to Company Representative. Any and all costs of returning the Equipment will be borne by Company who shall save, defend, indemnify and hold harmless Contractor Group from any Claims arising therefrom.

**3.9.** Where it is agreed between the Parties that Personnel designated by Contractor should visit Company's site or the Worksite (as applicable) to attempt to repair the Equipment, Company shall be





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responsible for, and as such shall reimburse Contractor on a full indemnity basis for, payment of the Personnel's charges together with all travel costs, subsistence and related expenses.

**3.10.** Any Claims of any nature suffered by Company associated with transit time including without limitation any delays to and from port or to and from Contractor's premises after discovery of a Defect in the Services will be classed as Consequential Loss (as defined under Clause 14) and Company shall not be entitled to reduce any payments to Contractor due to such instance.

**3.11.** All Services undertaken by Contractor shall be under the direction and supervision of Company, but the actual operation of the Equipment and the manner of performance of Services in connection therewith and as described in the Order shall be under the direction and control of Contractor. Contractor is an independent contractor and is not for the purposes of this Agreement acting as an agent of Company. The Personnel will co-operate with Company's personnel with a view to performing the Services in accordance with their reasonable requirements and properly performing the Services. Employees of Company shall not be under the direction and control of the Contractor or its Personnel.

**3.12.** Contractor shall not be liable in any way, whether under this Agreement, contract, tort or at law, for any periods of delay, due to errors, omissions or Defects in Services, or the Equipment being repaired, inspected or maintained, and such will not constitute an entitlement or right for Company to reduce or retain payments to Contractor. This Clause 3.12 shall also apply in the instance where Contractor is unable to perform the service due to access to the Equipment not being made available to Contractor by Company; or due to hazardous site conditions and hazardous environmental conditions; or due to structural condition and integrity of the company asset being deemed to be unsafe prior to work commencement. Contractor shall not be liable for and Company shall indemnify, save, defend and hold harmless Contractor Group from any Claims incurred by Company Group as a result of delay under this Clause 3.12.

**3.13.** If Company or any third party omits or commits anything which prevents or delays Contractor from undertaking or complying with any of its obligations under this Agreement:

- (a) Contractor shall have no liability in respect of any delay to the completion of Services;
- (b) Services' schedule will be modified accordingly by Company issuing a Variation under Clause 6; and
- (c) Contractor shall be entitled to claim for all additional costs and the Order Price shall be increased accordingly by way of a Variation.

**3.14.** Contractor shall not be liable for any loss, damage, injury, or death arising from or relating to the performance of Services, except to the extent caused by Contractor's gross negligence or willful misconduct. In no event shall Contractor's aggregate liability under this Agreement exceed the total amount paid by Company to Contractor under this Agreement. Contractor shall not be liable for any indirect, consequential, incidental, punitive, or exemplary damages, including but not limited to loss of profits, revenue, or business opportunity, even if Contractor has been advised of the possibility of such damages.

**3.15** Company will provide, at no cost to Contractor, except as otherwise set in this Agreement, transportation for Contractor Personnel, and transportation for Contractor Equipment and material in support of Services which are capable of transportation by helicopter or supply boat, between the designated heliport and the Worksite.

**3.16** Company shall without delay, provide to Contractor all information, including Technical Information, affecting Services which Contractor reasonably requires from Company in order to properly perform Services in accordance with this Agreement



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**3.17** All Services performed offshore are offered by Contractor subject to availability of Equipment and Personnel at the date of the Order. To reserve Equipment and/or Personnel, Company shall provide Contractor with the Mobilization Date in accordance with a reducing window based on:

- 30 day Mobilization Date window to be provided 100 days prior to the Estimated Mobilization Date.
- 15 day Mobilization Date window to be provided 45 days prior to the start of the previous 30 day Mobilization Date window.
- 10 day Mobilization Date window to be provided 30 days prior to the start of the previous 15 day Mobilization Date window.
- 5 day Mobilization Date window to be provided 15 days prior to the start of the previous 10 day Mobilization Date window.
- 7 days' notice of the actual Mobilization Date within the previous 5 day mobilization date window.

For the avoidance of doubt, each subsequent window shall be within the dates provided for in the preceding window. In the event that Company fails to provide notification in accordance with this Clause 3.17, the rates referred to in the Order shall apply from the start of the latest Mobilization Date window provided by Company.

In the event that Company fails to request mobilization of the Equipment and/or Personnel by the Mobilization Date in accordance with this Clause 3.17, the rates referred to in the Order will apply from the Estimated Mobilization Date

#### **4. Offshore Transportation and Accommodation**

**4.1.** Where Services is to be performed offshore, Company shall provide, at no cost to Contractor, all routine and medi-vac transportation for Contractor Personnel, and transportation for Contractor Equipment and material which are capable of transportation by helicopter or supply boat between the Company-designated heliport and supply base and the offshore part of the Worksite.

#### **5. Defects in Services**

**5.1.(a)** For Services performed offshore: Contractor warrants that for the duration of the Offshore Services Warranty Period the Services shall be free from Defects.

If during the Offshore Warranty Period there is a Defect in the offshore Services caused by the Contractor and notified in writing by the Company to the Contractor within the Offshore Services Warranty Period as soon as Company knew or ought to have known of the Defect, whichever is the earlier, the Company's sole and exclusive remedy, and the Contractor's sole and exclusive liability, regarding such Defect, shall be for the Contractor to carry out remedial action necessary to remedy the notified Defect. Such remedied Defect shall be warranted from the date of remedying the Defect for the remainder of the original Offshore Services Warranty Period. This limited warranty and Contractor's obligations hereunder shall apply during the Offshore Services Warranty Period only.

(b) For Services performed onshore: Contractor warrants that for the duration of the Onshore Services Warranty Period the onshore Services shall be free from Defects.

If during the Onshore Warranty Period there is a Defect in the onshore Services caused by the Contractor and notified in writing by the Company within the Onshore Services Warranty Period to Contractor as soon as Company knew, or ought to have known, of the Defect, whichever is the earlier, the Company's sole and exclusive remedy, and the Contractor's sole and exclusive liability, regarding such Defect, shall be for the Contractor to carry out remedial action necessary to remedy the notified Defect. Such remedied Defect shall be warranted for a further six (6) months from the date of remedying the Defect, provided that the overall warranty period shall not exceed twelve (12) months from the original date of commencement of the Onshore Services Warranty Period.



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(c) Equipment: Contractor warrants that for the duration of the Offshore Services Warranty Period the Equipment shall be free from Defects. If during the Offshore Services Warranty Period any material Defect in the Equipment is caused by the Contractor and notified in writing by Company within the Equipment Warranty Period to Contractor as soon as Company knew or ought to have known of the Defect, whichever is the earlier, then Company's sole and exclusive remedy, and the Contractor's sole and exclusive liability, regarding such Defect shall be for Contractor, at Contractor's sole option, to rectify the Defect either at the Worksite, Contractor's chosen site, Company's site or on a return-to-manufacturer basis at Company's cost or provide a replacement item EXW (Incoterms) 2020 Contractor's premises. Contractor reserves the right to require prepaid return of the allegedly defective Equipment to establish a claim. Contractor shall not be responsible for retrieving or removing defective Equipment (whether manufactured by Contractor or not) or any part thereof, or for reinstalling the same when repaired or replaced, or for any cost incurred in connection with such retrieval, removal or reinstallation. Replacements, repairs and corrective work shall not extend the warranty but shall be warranted for the Offshore Services Warranty Period remaining at the time of the replacement, repair or corrective work. This warranty shall not apply to:

(i) Equipment that has been modified by Company Group or any third party;

(ii) Defects caused by Company Group or any third party.

(iii) The Equipment is subjected to improper handling, storage, installation, operation or maintenance by the Company Group or third parties, including use of unauthorized replacement parts or operation under more severe conditions than those for which the Equipment are manufactured to be used under; or

(iv) Equipment requiring replacement because of natural wear and tear;

**5.2.** Company will provide Contractor, at Company's costs, with all required transportation to and from the relevant Worksite, and all facilities and support in order to undertake remedial work in relation to Defects.

**5.3.** The remedial obligations under this Clause 5 shall constitute Contractor's sole and exclusive liability and Company's sole and exclusive remedy with respect to errors, omissions or Defects in Services, irrespective of Contractor's fault or negligence. The warranties expressed in this Agreement are in lieu of any other warranties or conditions or terms, expressed or implied by statute or common law, including in respect of design, materials or workmanship and all such warranties, including of merchantability, fitness for purpose or workmanlike performance, and such are excluded from this Agreement to the fullest extent permitted by law. Contractor's liability to the Company Group under this Agreement, in contract, under statute, in tort (including negligence), at law or otherwise for all errors, omissions or Defects in Services and for the consequences of such Defects shall be subject to the to the remedial obligations and limitations under this Clause 5.

**5.4.** For the avoidance of doubt, in no circumstance shall Contractor be responsible for costs which are incidental or ancillary to rectification of Defects in Services. Such costs shall include but not be limited to heavy lifting, rig/vessel stand by time, searching for Defects, uncovering or removal of Services, re-installation and, where applicable, work at or below the waterline, diving support.

## **6. Variations**

### **6.1. Variations to Services**

(a) Company may issue to Contractor at any time a Variation to Services.

(b) Contractor must not vary Services except as directed by Company in writing under a Variation.

(c) Contractor is bound only to execute a Variation which is within the capabilities and expertise of Contractor and is within the general scope of Services under the Agreement.



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(d) Contractor is entitled to request a Variation where an occurrence has taken place, or an instruction has been received from Company which impacts upon the Price or the schedule for Services. The Variation request shall include the information prescribed under Clause 6.2(a) below. Within seven (7) days of Contractor's request hereunder, Company shall issue a notice to Contractor whether the request is accepted or rejected with full particulars and substantiation of its decision. If no such notice is received within the time stipulated the Variation request shall be deemed accepted. If accepted, Company shall issue to Contractor a Variation in accordance with the relevant Variation request. If the Company rejects the Variation request, the Variation shall be treated as disputed and the Parties shall resolve such disputed variation under Clause 24.2.

#### **6.2. Proposed Variations**

(a) Upon receipt of a notice in writing from Company advising Contractor of a proposed Variation under this Clause 6, Contractor must advise Company whether the proposed Variation can be affected. If the Variation can be affected, Contractor must:

(i) advise Company of the effect which Contractor anticipates that the Variation will have on the date for completion of Services; and

(ii) provide an estimate of the cost (including delay costs, if any) of the proposed Variation.

(b) If a Variation is executed by both Parties, Company must reimburse Contractor for all costs of complying with the requirements of this Clause 6.2 and for all increases to the Price.

#### **6.3. Pricing the Variation**

(a) The Parties must negotiate in good faith to agree on the price for a Variation based on the prices listed upon the Order (and where no such prices are listed using reasonable market rate prices at the time of the Variation). If Contractor and Company do not agree on the price for a Variation, Contractor has the right to impose on Company a fair and reasonable price for that Variation.

(b) If Company disputes the price imposed by Contractor in Clause 6.3 (a) or Contractor and Company do not agree on the price for a Variation, then the price will be decided in accordance with Clause 24.2.

(c) Company may direct the Contractor to provide a detailed quotation for Services of a Variation supported by measurements or other evidence of costs that Company may reasonably require.

#### **6.4. Valuation**

(a) Contractor must not commence to carry out any Variation unless the value of the Variation has been first agreed with Company or determined pursuant to Clause 24.2.

(b) Notwithstanding the fact that the value of the Variation has not been agreed or determined, Company may instruct Contractor to proceed with the Variation on the condition that Contractor subsequently supply, as soon as reasonably practicable, a detailed quotation for Services of the Variation supported by measurements or other evidence of costs that the Company may reasonably require. Any dispute in relation to such detailed quotation will be resolved in accordance with Clause 24.2.

### **7. Payment Terms**

**7.1.** Company shall pay Contractor the Price as specified in the Order.

**7.2.** Invoices are payable by Company to Contractor within thirty (30) days of the invoice date. Payment in accordance with this Clause 7 is a material condition, and shall be of the essence, of this Agreement.

**7.3.** Notwithstanding any other provision, all payments to Contractor under this Agreement which have not been previously paid shall become due immediately on termination of this Agreement.



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**7.4.** Company shall make all payments due under this Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless Company has a valid court order requiring an amount equal to such deduction to be paid by Contractor to Company. Company has no right to withhold any payments from Contractor.

**7.5.** If Company fails to pay Contractor or any member of the Contractor Group any sum due pursuant to this Agreement, Company shall be liable to pay interest on such sum from the due date for payment at the annual rate of eight percent (8%), accruing on a daily basis and compounded every three (3) months until payment is made, all whether before or after any judgment. No payment shall be deemed to have been received by Contractor until Contractor has received cleared funds in its appointed bank account.

**7.6.** In respect of any and all payments due by Company under this Agreement, time shall be of the essence.

**7.7.** In the event the Company fails to make payment to the Contractor in accordance with Clause 7.2, the Contractor shall be entitled to suspend the Services by providing the Company with written notice until such payment is made in full.

**7.8.** In the event the Company fails to make payment following suspension under Clause 7.7 for a period of seven (7) days, the Contractor shall be entitled to terminate the Agreement with immediate effect.

#### **8. Tax and Duties**

**8.1.** Contractor is responsible for payment of all taxes and contributions, for which Contractor is liable as imposed by a government authority in the Malaysia or elsewhere which are properly chargeable upon Contractor or its employees relating to this Agreement.

**8.2.** Company is responsible for payment of all taxes and contributions, for which Company is liable as imposed by a government authority in the Malaysia or elsewhere, which are properly chargeable upon Company or its employees relating to this Agreement.

**8.3.** Except where otherwise provided for in this Agreement:

(a) Company shall be responsible for and agrees to pay all costs (including export and import costs), taxes (including withholding tax), levies, and duties assessed by any foreign government or body against Services and associated apparatus in connection with importation and/or exportation of the same and Company shall indemnify, save, defend and hold harmless the Contractor Group from and against any such costs, taxes, levies and duties; and

(b) Company agrees to pay all costs, taxes, levies, or duties assessed by any foreign government in respect of the salary and other payments made by the Company Group to its own employees and Company shall indemnify, save, defend and hold harmless the Contractor Group from and against any such costs, taxes, levies, or duties.

**8.4.** Company acknowledges that Contractor has made no allowance in its pricing for taxes, duties, levies or assessments (including withholding taxes) imposed by any governmental or other taxing authority other than the country it is registered within. If under the law of any country where Services are performed, Company is required to withhold, or Contractor, after being duly notified, is required to pay, any taxes or levies assessed in that country including, but not limited to, any applicable goods or services tax or similar, then the Order Price shall be paid after withholding by Company or payment by Contractor of these taxes in accordance with the law of such country. In such a case, the amount of compensation due to Contractor under this Agreement and/or Order, shall be increased in such a manner that the net amount received by Contractor after withholding or payment is equal to the Order Price.

#### **9. Timely Performance**



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**9.1.** The Contractor shall use reasonable endeavours to meet any deadlines or milestones for performance of the Services expressly stipulated upon the Order. Any failure to meet any such deadlines or milestones shall not constitute a breach of the Agreement and the Contractor shall not be liable to the Company in any way, whether under this Agreement, in contract, tort or otherwise at law for not such failure.

#### **10. Relied Upon Information**

**10.1.** Contractor and Company recognise that in order to satisfactorily perform Services, Contractor requires to rely upon the completeness and accuracy of all information, including Technical Information, supplied to Contractor by or via Company in relation to Services ("Rely Upon Information").

Notwithstanding anything to the contrary contained in this Agreement, Company warrants the completeness and accuracy of all Rely Upon Information supplied to Contractor by or via Company. Company agrees that Contractor shall not be liable whether under this Agreement, in contract, in tort or otherwise at law for its use or reliance upon any Rely Upon Information.

#### **11. Laws and Regulations**

**11.1.** Contractor shall comply with all Applicable Laws.

**11.2.** Should changes in any Applicable Laws, including any change in interpretation of the same by Competent Authority result in increases in the cost to the Contractor Group of performing Services, the Order Price shall be adjusted accordingly and the Parties shall enter into amendment to that effect.

#### **12. Indemnities**

**12.1.** Contractor shall be responsible for and shall release, save, indemnify, defend and hold harmless the Company Group from and against all Claims in respect of:

(a) except as provided in Clause 12.2(d), loss of or damage to property of any member of the Contractor Group whether owned, rented, leased or otherwise provided by any member of the Contractor Group arising from, relating to or in connection with the performance or non-performance of this Agreement;

(b) personal injury including death or disease to any personnel of any member of the Contractor Group arising from, relating to or in connection with the performance or non-performance of this Agreement; and

(c) personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (statutory or otherwise) of the Contractor Group. For the purposes of this Clause 12.1(c), "third party" shall mean third parties which are not part of the Contractor Group or the Company Group.

**12.2.** Company shall be responsible for and shall release, save, indemnify, defend and hold harmless the Contractor Group from and against all Claims in respect of:

(a) loss of or damage to property of any member of the Company Group, whether owned by any member of the Company Group, or leased or otherwise obtained under arrangements with financial institutions by any member of the Company Group, arising from, relating to or in connection with the performance or non-performance of this Agreement;

(b) personal injury including death or disease to any personnel of any member of the Company Group arising from, relating to or in connection with the performance or non-performance of this Agreement;

(c) personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty



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(statutory or otherwise) of the Company Group. For the purposes of this Clause 12.2(c) "third party" shall mean third parties which are not part of the Contractor Group or the Company Group;

(d) loss of or damage to property of any member of the Contractor Group whether owned, rented, leased or otherwise provided (including Equipment) by any member of the Contractor Group, when such property is in the care, custody or control of any member of the Company Group arising from, relating to or in connection with the performance or non-performance of this Agreement; and

(e) where applicable, loss of or damage to such permanent third party oil and gas productions facilities and pipelines and any other seabed, subsurface or subsea infrastructure which is located within a 500m radius of the Worksite and Consequential Loss (as defined under Clause 14) arising therefrom, where such loss or damage is arising from, relating to or in connection with the performance or non-performance of this Agreement. The provisions of this Clause 12.2(e) shall apply notwithstanding the provisions of Clause 12.1(c).

**12.3.** Except as provided by Clause 12.1(a), Clause 12.1(b) and Clause 12.4, Company shall be responsible for and shall release, save, indemnify, defend and hold harmless the Contractor Group from and against all Claims in respect of pollution howsoever caused emanating from the reservoir, or property, including vessels, (whether owned, leased or otherwise provided) of any member of the Company Group arising from, in connection with or relating to the performance or non-performance of this Agreement.

**12.4.** Except as provided by Clause 12.2(a), Clause 12.2(b) Clause 12.2(d) and Clause 12.2(e), the Contractor shall be responsible for and shall release, save, indemnify, defend and hold harmless the Company Group from and against all Claims in respect of sudden and accidental pollution howsoever caused originating

from the property (whether owned, leased or otherwise provided) of any member of the Contractor Group arising from, in connection with or relating to the performance or non-performance of this Agreement.

**12.5.** Where applicable, the Company shall assume all liability for and shall save, defend, indemnify and hold harmless Contractor Group from and against any Claims of whatsoever nature in respect of:

(i) damage to or loss of or impairment to any well (including the casing therein) or well bore;

(ii) damage to or loss of any reservoir or productive formation, or subsurface minerals;

(iii) blowout, fire, explosion, cratering, subsurface pressure, losing control of the well (including efforts to regain control of the well) or any other uncontrolled well event;

(iv) pollution or contamination of any kind, as well as containing, controlling and cleaning up any such resulting pollution or contamination; and

(v) damage to or loss of the drilling rig, vessel, platform, pipeline or other system forming part of or connected to the platform;

which arises from, relates to or is in connection with the performance or non-performance of this Agreement, regardless of cause and even if caused or contributed to by the negligence, fault, strict liability, strict products liability, or breach of duty, statutory or otherwise, of the Contractor Group.

**12.6.** Notwithstanding the provisions of Clause 12.1 (a) and except to the extent of fair wear and tear, Company shall reimburse Contractor in respect of loss of or damage to property, materials or equipment (including Equipment) of the Contractor Group which occurs whilst in-hole below the rotary including where such damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Contractor Group.

Company's liability for such loss or damage shall be either for the actual repair or replacement cost, at Contractor's option.



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**12.7.** Notwithstanding the provisions of Clause 12.1 (a) and except to the extent of fair wear and tear, if Contractor can demonstrate that the Contractor Group's property or equipment (including Equipment) other than located downhole has been subject to abnormal damage (meaning damage which could not be reasonably expected) which has resulted directly from corrosion, erosion or abrasion caused by the nature of the well effluent, Contractor shall be reimbursed for the costs of repair or replacement resulting from such damage.

Contractor shall notify Company in writing within sixty (60) days of the date of recorded loss or return of the Contractor Group's property or equipment (including Equipment) to Contractor as applicable giving full details of any loss and/or damage to such Equipment and the amount of reimbursement due to Contractor under Clause 12.6 and this Clause 12.7.

**12.8.** Notwithstanding the provisions of Clause 12.1, Company shall save, indemnify, defend and hold harmless the Contractor Group from and against any claim of whatever nature relating to the costs of recovery, removal, marking or lighting of the property (or debris of such property) provided by the Contractor Group lost overboard during transportation by Company to the Worksite or at the Worksite. Such costs shall include but not be limited to heavy lifting, uncovering and removal of the property and (where applicable) work at or below the water line, diving support, transportation to and from the agreed onshore base, together with all costs of a similar nature. Company's liability for wreck or debris removal shall include all direct and indirect costs incurred to comply with any law, rule, regulation, license or directive from a governmental, statutory or regulatory authority or similar authority that may have jurisdiction over the wreck recovery or debris removal.

**12.9.** Subject to Clause 12.1 and Clause 12.4, but notwithstanding anything contained elsewhere in the Agreement to the contrary, the Company shall save, indemnify, defend and hold harmless the Contractor Group against all Claims resulting from:

- (a) loss of or damage to any well or hole; and
- (b) blow-out, fire, explosion, cratering or any other uncontrolled well condition (including the costs to control a wild well and the removal of debris; and
- (c) damage to any reservoir, geological formation or underground strata or the loss of oil and gas therefrom.

**12.10.** All exclusions and indemnities given under this Clause 12 (save for those under Clauses 12.1(c) and Clause 12.2(c) and Clause 12.6) and Clause 14 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified Party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

**12.11.** If either Party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other and both Parties shall co-operate fully in investigating the incident.

**12.12.** The indemnities given by the Parties under this Agreement are full and primary and shall apply irrespective of whether the indemnified Party has, or has not, insurance in place relating to any claims, losses, damages or costs in respect of the subject matter of any indemnity given under this Agreement.

**12.13.** If operations are performed in Texas or under Texas law, both Parties. agree that in order to be in compliance with the Texas Oilfield Anti-Indemnity Act regarding indemnification mutually assumed for the other Party's sole or concurrent negligence, each Party agrees to carry supporting insurance in equal amounts of the types and in the minimum amounts as specified in the insurance requirements set in this Agreement. If the monetary limits of insurance required hereunder exceed the monetary limits permitted by law, then the monetary limits of insurance required hereunder shall be deemed automatically reduced to the limits permitted by law.

### **13. Insurance**





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**13.1.** Company shall effect and maintain appropriate insurances and ensure they are in full force and effect throughout the life of this Agreement to cover its liabilities under Clause 12, including All Risk Property Insurance for the Equipment to cover as a minimum its full replacement value. All such insurances shall be placed with reputable and substantial insurers, satisfactory to Contractor. Contractor shall be named as an additional assured and a loss payee under Company's relevant insurance policies in relation to this Clause 13 and the All Risk Property Insurance. All insurance under this Clause 13.2 shall be endorsed to provide the underwriters waive all rights of recourse, including subrogation rights against Contractor and its Affiliates in relation to this Agreement to the extent of the liabilities assumed by Company under this Agreement.

**13.2.** Whereby virtue of Clause 13.1, Company is required to effect and maintain insurance, it shall, if requested by Contractor, promptly provide evidence of that insurance. If Company fails to effect and maintain any insurance it is required to effect and maintain under this Agreement, or fails to provide satisfactory evidence of any insurance without delay following a request for this evidence by Contractor, then Contractor may (at its option and without prejudice to any other right or remedy) effect and maintain insurance for the relevant coverage and pay the premiums due. Company shall then pay the reasonable amount of these premiums plus any extra expense incurred in effecting this insurance to Contractor as an adjustment to the Order Price.

#### **14. Consequential Loss**

**14.1.** For the purposes of these terms and conditions the expression "Consequential Loss" shall mean consequential or indirect losses under applicable law, loss and/or deferral of production, loss of product, loss of use (where loss of use shall mean, without limitation, loss of use or the cost of use of property, equipment or associated equipment, materials, spread and services including without limitation, those provided by contractors or subcontractors of every tier or by third parties), down time costs, loss of or deferral of revenue (which for the avoidance of doubt shall not include payments due to Contractor by way of remuneration under this Agreement), profit or anticipated profit (if any), loss of business or business interruption including wasted overheads and loss of anticipated savings, loss of bargain, contract, expectation or opportunity, any increase in operating or other costs except as specifically provided for elsewhere in this Agreement, loss and/or deferral of drilling rights and/or loss, restriction or forfeiture of licence, concession or field interests, or down time costs, loss of goodwill, the cost of obtaining any new financing or maintaining any existing financing (including the making of any scheduled or other repayment or prepayment of debt and the payment of any interest or other costs, fees or expenses incurred in connection with the obtaining or maintaining of financing), in each case whether direct or indirect, or any other similar direct or indirect loss, and whether or not foreseeable at the effective date of commencement of this Agreement.

**14.2.** Notwithstanding any provision to the contrary elsewhere in this Agreement Contractor shall save, indemnify, defend and hold harmless the Company Group from the Contractor Group's own Consequential Loss and Company shall save, indemnify, defend and hold harmless the Contractor Group from the Company Group's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of this Agreement.

#### **15. Termination**

**15.1.** Contractor may terminate the Agreement in the event Company's fails to pay any sum due to Contractor in accordance with this Agreement.

**15.2.** This Agreement may be terminated as follows:

(a) either Party may terminate this Agreement, in whole or in part, by serving a written notice to the other Party if a Force Majeure event lasts for more than forty-five (45) consecutive days.

(b) Contractor may terminate this Agreement, in whole or in part, effective immediately upon written notice to Company, if:



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(i) Company has a bankruptcy order made against it or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory 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 purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of Company or notice of intention to appoint and administrator is given by Company or its directors, or a resolution is passed or a petition presented to any court for the winding-up or dissolution of Company or for the granting of an administration order in respect of Company, or any proceedings are commenced relating to the insolvency or possible insolvency of Company; or

(ii) Company 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 or perform any of his/its obligations under this Agreement or any other contract between Contractor and Company, or is unable to pay its debts or Company ceases to trade; or (c) Company encumbers or in any way charges any of the Equipment;

Each of the foregoing being an “act of bankruptcy” or “act of administration”.

(c) Contractor may terminate this Agreement, in whole or in part, effective immediately upon written notice to Company, if Company is guilty of a conduct or a course of conduct or is convicted of a criminal offence which may bring Contractor into disrepute.

(d) Contractor may terminate this Agreement, in whole or in part, effective immediately upon written notice to Company, if Company fails to observe the requirements of:

(i) Clause 7 – Payment Terms;

(ii) Clause 18 - Health, Safety and Environment;

(e) Contractor may terminate this Agreement, in whole or in part, at its convenience by serving a sixty (60) day prior written notice to Company.

**15.3.** If Company states an intention to commit an act of bankruptcy or act of administration Contractor may terminate this Agreement by giving written notice to Company declaring this Agreement is terminated.

**15.4.** In the event of termination of this Agreement the following shall apply:

(a) Company shall pay Contractor as set out upon the Order for all Services performed up to and including the date of termination, for any and all costs and expenses incurred by Contractor in relation to this Agreement, for any and all commitments made by Contractor in relation to this Agreement (including, but not limited to, capex commitments) and for all rates, lump sums, costs and expenses that would have been due to Contractor for completing the entire Services; and

(b) When termination of the Agreement occurs prior to the Mobilisation Date:

Company will reimburse Contractor, on the date of cancellation or termination, (i) a sum equal to the total rates set out upon the Order (or in the event of partial cancellation, the rates associated with the cancelled part of Services) which would have been payable had mobilisation occurred and the Service had been performed in accordance with the Contract; and (ii) payments due under Clause 15.4(a). Any remedial, modification or engineering works and any non-cancellable committed costs incurred by Contractor shall be to the account of Company.

**15.5.** The Contractor may immediately suspend the Agreement, or any part of the Work, by giving notice in writing to the Company, as follows:

(a) to suit its convenience;

(b) for the safe and proper execution of the Services;



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(c) in accordance with Clause 7.7;

(d) in accordance with Clause 15.7; or

**15.6.** In the event of suspension under Clause 15.5, the Company shall pay the Contractor for all Services performed up to and including the date of suspension, for all costs and expenses incurred in relation to the suspension, including for demobilization and any remobilization, for all costs incurred in relation to any suppliers and subcontractors of the Contractor, and for any suspension rates and/or fees stipulated upon the Order.

**15.7.** Contractor may suspend or terminate the Agreement, or any part of the Work, where any Person of the Company Group becomes a Restricted Party. For the purposes of this Clause 15.7, a "Restricted Party" shall mean:

(a) any Person targeted by national, regional, or multilateral export, trade or economic sanctions under Applicable Laws;

(b) any Person designated on the United Nations Financial Sanctions Lists, European Union (EU) or EU Member State Consolidated Lists, UK Sanctions or Consolidated List, US Department of the Treasury Office of Foreign Assets Control Specially Designated Nationals list, US State Department Non-proliferation Sanctions Lists, or US Department of Commerce Denied Persons List or Entity List, in force from time to time;

(c) any Affiliates of such Persons; or

(d) any Person acting on behalf of a Person referred to in the foregoing.

**15.8.** Exercise of the right of termination afforded to either Party shall not prejudice legal rights or remedies either Party may have against the other in respect of any breach of the terms of this Agreement.

**15.9.** The rights and remedies of Contractor under this Clause 15 (and the remainder of this Agreement) are not exclusive and apply in addition to any other rights and remedies available at law, in contract, in equity or otherwise. If either Party exercises its rights under this Clause 15, under no circumstances shall it become liable for the Consequential Loss which may be sustained by the other Party as a result thereof.

## **16. Force Majeure**

**16.1.** Except for Company's obligations to make payment under Clause 7.2, Clause 15.4 or elsewhere in the Agreement, neither Party shall be responsible for any failure to fulfil any obligation under this Agreement if and to the extent that fulfilment has been made impossible, delayed, hindered or temporarily prevented by a Force Majeure occurrence, and shall not be liable for any claim of any nature whatsoever, including for compensation or damages arising from such failure, provided such has been notified in accordance with Clause 16.2 and which is without the fault or negligence of the Party affected.

**16.2.** In the event of a Force Majeure event occurring, the Party's obligations under this Agreement that have been made impossible, delayed, hindered or temporarily prevented by Force Majeure shall notify the other Party within a reasonable period giving the full particulars thereof and shall use reasonable endeavours to mitigate the effects of the Force Majeure event without delay.

**16.3.** If any occurrence referred to above causes a prolonged delay of a period of forty-five (45) consecutive days or more in performing Services, either Party may terminate this Agreement without giving rise to any claim for compensation other than as specified under Clause 15.6 and Clause 16.4.

**16.4.** In the event of Force Majeure, the Company shall:



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(a) be responsible for any demobilization or remobilisation of the Contractor's equipment, material and personnel at the Company's sole cost where any Force Majeure event exceeds, or is likely to exceed, three (3) cumulative days;

(b) pay the Contractor all applicable rates and additional costs incurred by the Contractor if the Company requests the Contractor to remain at the Worksite for a period greater than three (3) consecutive days after the occurrence of any Force Majeure event.

**16.5.** Remobilisation of any of the Contractor's equipment, materials and personnel after a period of suspension due to a Force Majeure event shall be subject to the Contractor's other ongoing commitments to third parties and shall be at a time mutually agreed between the Contractor and the Company.

#### **17. Lien**

**17.1.** Company shall not claim any lien or attachment on Services or on any property or Equipment of Contractor Group in the possession of Company or at the Worksite.

**17.2.** Without prejudice to any other provisions of this Clause 17, Company shall save, indemnify, defend and hold harmless the Contractor Group from and against all liens or attachments by any of Company Group or any third party in connection with or arising out of this Agreement.

**17.3.** Company shall immediately notify Contractor of any possible lien or attachment which may affect Services or property of Contractor.

#### **18. Health, Safety and Environment**

**18.1.** The Parties place prime importance on health, safety and environment ("HS&E") issues and both Parties warrant that they subscribe to and actively pursue the highest standards of HS&E performance.

**18.2.** Each Party shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the performance of Services. Failure of a Party to satisfy the other Party's reasonable requirements with regard to the control of HS&E risks in any material respect will be regarded as due cause for the other Party giving notice to terminate all of any part of Services or this Agreement in accordance with Clause 15.

#### **19. Intellectual Property**

**19.1.** Neither Party shall have the right of use, other than for the purposes of this Agreement, whether directly or indirectly, any patent, copyright, proprietary right or confidential know how, trademark or process provided by the other Party and the intellectual property rights in such shall remain with the Party providing such patent, proprietary right, copyright or confidential know how, trademark or process. For the avoidance of doubt, all Contractor Background Technology and rights thereto shall remain the property of Contractor.

**19.2.** Where any potential patent or registerable right in any country in the world results from:

(a) developments by the Contractor Group which are based wholly on data, equipment, processes, substances and the like in the possession of the Contractor Group at the Effective Date or otherwise produced outside of this Agreement after the Effective Date; or

(b) enhancements of or in the existing intellectual property rights of the Contractor Group, such rights shall vest in the Contractor or another company within the Contractor Group as the case may be.

**19.3.** Except as provided in Clause 19.1 and Clause 19.2, where any potential patent or registerable right in any country in the world arises out of Services and is invented during the term of this Agreement or under any Order, such rights shall vest in Contractor.



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**19.4.** Where under Clause 19.3 rights vest in the Contractor, Contractor may at its sole discretion give Company and its Affiliates and its Co-Venturers a royalty-free, irrevocable, non-exclusive, non-transferable, world-wide licence to use such right which shall not be sub-licensed.

**19.5.** Company shall save, indemnify, defend and hold harmless the Contractor Group from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of Company under this Agreement or the use by Contractor of Technical Information or materials or equipment supplied by Company.

#### **20. Confidentiality**

**20.1.** Both Parties shall treat Confidential Information as valuable, proprietary and confidential information and shall not disclose it to any other third party without the prior written permission of the other Party, except as permitted below.

**20.2.** Contractor may disclose Confidential Information to its employees, consultants, directors, officers and Affiliates and sub-contractors who need to know the Confidential Information for the performance of Services.

**20.3.** Both Parties may disclose Confidential Information to professional advisors, but only to the extent necessary for the provision of professional advice needed by the Party for the performance of the obligations under this Agreement, and such disclosure is subject to confidentiality terms no less stringent than those within this Clause 20.

**20.4.** The obligation on the Parties to maintain confidentiality shall continue beyond the completion or termination of this Agreement for a period of three (3) years.

#### **21. Limitation of Liability**

**21.1.** Notwithstanding anything to the contrary in this Agreement, the Contractor's total cumulative liability to the Company arising out of or in relation to the performance or non-performance of this Agreement including, but not limited to, liability for delay, default, rework or re-performance or replacement and payment of liquidated damages, under any cause of action whether in tort, contract or otherwise at law shall not exceed the lesser of (i) twenty percent (20%) of the Order Price and (ii) the portion of the Order Price paid by Company to Contractor upon the date of the incident that gave rise to the Claim ("maximum liability"). Company shall be responsible for and shall save, indemnify, defend and hold harmless the Contractor Group from and against all Claims of any kind or character (including without limitation, reasonable attorneys' fees and costs of litigation), in excess of the maximum liability, asserted by or in favour of any person, party or entity, regardless of whether caused by the negligence, in any form, or fault, or strict liability of any member of the Contractor Group, or any other person, and whether such Claims arise from tort, contract, quasi-contract, strict product liability or otherwise.

**21.2.** The limitation of liability provided under Clause 21.1 shall not apply to Clause 12, Clause 13 and Clause 14, and in the instance of any liability arising from (i) the fraud by Contractor; or (ii) death or personal injury caused by Contractor's negligence.

**21.3.** All of Contractor's rights and privileges arising from the indemnities contained in Clause 12 and Clause 14 and the limitation of liability under this Clause 21 shall survive the expiration or other termination of this Agreement, and said indemnities are expressly made for the benefit of and shall be enforceable by Contractor Group, its successors and assigns.

**21.4.** Company acknowledges and agrees that the allocation of risk contained in this Agreement is reflected in the Price. The Parties agree that they have considered the allocation of liabilities and risks, including the exclusions and limitations of liability and Force Majeure provisions contained in this Agreement in the context of all the circumstances of the transaction to which this Agreement relates. In considering the allocation of liabilities and risks under this Agreement, the Parties have taken into account such matters as the nature of Services, Price, and the possible availability and cost



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to each Party of putting in place preventative, protective, curative, insurance and other measures to minimise the impact and amount of loss suffered if such risk should materialise. Accordingly, the Parties agree that the exclusions and limitations of liability contained in this Agreement are reasonable as between the Parties in all the circumstances.

**21.5.** Contractor's liability under the Agreement shall cease at the end of performance of Services under the Order.

#### **22. Notices**

**22.1.** All formal notices in respect of this Agreement shall be given in writing and delivered by fax, or by first class post to the address specified hereinafter and copied to such other office or offices of the Parties as shall from time to time be nominated by them in writing to the other.

**22.2.** Such notices shall be effective:

- (a) if sent by electronic mail, on the second working day after the receipt of the delivery receipt; or
- (b) if sent by first class post, forty-eight (48) hours after the time of posting.

**22.3.** Subject to any specific administrative instructions agreed between the Parties, any standard business correspondence associated with this Agreement and/or Services may be sent by either e-mail, fax or letter.

**22.4.** The addresses for the service of notices are shall be as stipulated upon the Order, and where no such address is given, shall be to the Party's respective registered address.

#### **23. General**

##### **23.1. Waiver**

None of the terms and conditions of this Agreement shall be considered to be waived by either Party unless a waiver is given in writing by one Party to the other and shall not be deemed a waiver of any subsequent breach or default whether of a similar nature or otherwise and shall in no way affect the other terms of this Agreement. No failure on the part of either Party to enforce any of the terms and conditions of this Agreement shall constitute a waiver of such terms.

##### **23.2. Retention of Rights**

Subject to the limitations and agreements of this Agreement including the provisions of Clause 12 and Clause 21, unless otherwise specifically stated in this Agreement, all Parties shall retain all rights and remedies, both under this Agreement and at law, which either may have against the other.

##### **23.3. Contractor's Affiliates**

Any limitation of liability given by Company to Contractor under this Agreement shall include the Contractor Group.

##### **23.4. Language**

The ruling language of this Agreement shall be the English Language.

##### **23.5. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to Services and supersedes all prior negotiations, representations or agreements related to this Agreement, either written or oral. No amendment to this Agreement shall be effective unless evidenced in writing and signed by a duly authorised signatory the Parties. The Parties acknowledge and agree that this Agreement has not been entered into wholly or partly in reliance on, not has either Party been given, any warranty, statement, promise or representation by the other or on its behalf other than as set out in this Agreement.



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#### **23.6. Invalidity and Severability**

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

#### **23.7. Rights of Third Parties**

This Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby .

#### **23.8. Independence of the Contractor**

Contractor shall act as an independent contractor with respect to Services and shall exercise control, supervision, management and direction as to the method and manner of obtaining the results required by Company, but shall never be deemed a member of Company Group nor act on behalf of Company.

#### **23.9. Status of Company**

Company enters into this Agreement for itself and as agent for and on behalf of the other Co-Venturers.

Without prejudice to the provisions of Clause 23.7 and notwithstanding the above, all losses, damages, costs (including legal costs) and expenses recoverable by Company pursuant to this Agreement or otherwise shall include the losses, damages, costs (including legal costs) and expenses of Company's Co-Venturers and its and their respective Affiliates except that such losses, damages, costs (including legal costs) and expenses shall be subject to the same limitations or exclusions of liability as are applicable to either Party under this Agreement. For the avoidance of doubt any and all limitations of Contractor's liability set out in this Agreement shall represent the aggregate cumulative liability of the liability of the Contractor Group to the Company Group.

#### **23.10. Mitigation of Loss**

Each Party shall take all reasonable steps to mitigate any loss resulting from any breach of contract by the other Party.

#### **23.11. Survival**

In the event of termination of this Agreement, all rights and obligations of the Parties arising during the term of this Agreement shall continue to have full force and effect after the termination of this Agreement, including but not limited to these General Terms and Conditions of Services Clauses 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25.

#### **23.12. Subcontracting**

Contractor reserves the right to sub-contract any or all elements of Services as they deem necessary.

#### **23.13. Independent Contractor**

This Agreement or any Order pursuant to this Agreement, shall not be construed as creating a joint-venture, partnership or the like between the Parties. Neither Party shall act or be deemed to act on behalf of the other Party or have the right to bind the other Party. Each Party shall remain an independent entity, and act as an independent contractor. Each Party shall always during the performance of this Agreement or any Order pursuant to this Agreement be responsible for the payment of wages and benefits to, and as applicable, tax withholding from, its own employees.



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#### 23.14. Assignment

(a) Subject to the further provisions of this Clause 23.14, neither Contractor nor Company shall assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

(b) Contractor may assign or subcontract any or all of its rights and obligations under this Agreement to a member of the Contractor Group for so long as that member remains a member of the Contractor Group.

(c) Contractor may grant security over, or assign by way of security, any or all of its rights under this Agreement for the purposes of, or in connection with, the financing (whether in whole or in part) by Contractor of any of its working capital or other requirements. On the enforcement of any security of a kind referred to in this Clause 23.14, Contractor or any person having the benefit of such security may assign any or all of the relevant rights to any person, but Company's liability to any assignee in respect of those rights shall not be greater than if no assignment had taken place.

**23.15.** To enable Contractor to perform its obligations under this Agreement, Company shall:

(a) co-operate with Contractor (e.g. providing free and uninterrupted access to the Worksite);

(b) provide Contractor with any information reasonably required by Contractor;

(c) obtain all necessary permissions and consents which may be required before the commencement of Services; and

(d) comply with such other requirements as may be set out in this Agreement or otherwise agreed between the Parties.

**23.16.** Contractor shall be entitled to adjustments of Services schedule and Order Price as a result of Company's failure to comply with Clause 23.15.

#### 23.17. Non-Exclusive Relationship Between the Parties

The Parties expressly acknowledge and agree that their relationship under this Contract shall be non-exclusive, and that each of them may, subject to their obligations pertaining to proprietary or confidential information or the like, enter into substantially similar agreements with other parties with respect to (i) services similar (or substantially similar) to the Services contemplated hereunder, or part thereof, or (ii) as applicable, the Services, or part thereof.

### 24. Governing Law and Dispute Resolution

#### 24.1. Governing Law

This Agreement, and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation, including any non-contractual disputes or claims, will be exclusively governed by and construed in accordance with the laws of Malaysia not including, however, any conflict of laws rules that would direct or refer to the laws of another jurisdiction.

#### 24.2. Dispute Resolution

In the event a dispute arises hereunder between the Parties that cannot be promptly and expeditiously resolved by direct good faith negotiations between the Parties, the Parties shall resolve all disputes by litigation in the courts of Malaysia, and each Party hereby consents to the jurisdiction of such courts and waives any objection to venue. Notwithstanding the foregoing, if one or both of the Parties is sued in a forum other than in Malaysia, the Parties may assert Claims in such forum to the extent necessary, but only to the extent, necessary to avoid waivers of such Claims.

**24.3.** Each Party shall bear their own costs in resolving a dispute under this Clause 24 and, unless the Parties otherwise agree, the Parties shall bear equally the costs of any arbitrator engaged.





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**24.4.** The Contractor's liability under the Agreement and Order shall cease at the end of performance of the Services under the relevant Order.

#### **25. Company Provided Items (If Applicable)**

**25.1.** When Company provides materials and equipment which are to be used by Contractor to enable Contractor to proceed with execution and completion of Services ("Company Provided Items") Company shall warrant that these Company Provided Items are at all times free from defects and comply with the applicable specifications in accordance with this Agreement (where specified) and that such Company Provided Items comply with all applicable laws, regulations, rules, standards and codes, whether governmental or industry. Contractor shall at all times be able to rely on such warranty and shall not be liable in any way whether under this Agreement, or in contract, in tort or otherwise at law for any losses or damages of any nature the arise from, relate to or are in connection with Defects in or damage to the Company Provided Items and Company's breach of the warranty within this Clause 28.

**25.2.** Company shall at its expense, secure and maintain insurance coverage for Company Provided Items during the entire duration of the Services.

**25.3.** In the event that Company Provided Items are not in accordance with this Agreement, Contractor shall have the right to raise a variation for all losses, damages, costs and expenses incurred provided that Contractor is in a position to demonstrate to Company that it has incurred such costs.