

# PURCHASE ORDER TERMS FOR GOODS AND SERVICES

These terms and conditions apply to the CONTRACT between COMPANY and CONTRACTOR, which may be in the form of a purchase order or a work statement (the "CONTRACT"). These terms and conditions are binding between COMPANY and CONTRACTOR and supersede and replace any CONTRACTOR terms and conditions or previous contracts for SCOPE. In the event any special terms are agreed between the parties, the special terms will prevail over terms contained in these terms and conditions. Where these terms and conditions are attached to or incorporated in a CONTRACT issued under an existing contract, the terms and conditions of that existing contract will prevail.

## PART A

### 1. DEFINITIONS

Capitalised words and expressions have the following meanings when interpreting the CONTRACT:

**ACCEPTANCE:** COMPANY accepts SCOPE in writing or is deemed to have accepted SCOPE in the manner specified by the CONTRACT.

**AFFILIATE:** in reference to a PERSON, any other PERSON that: (a) directly or indirectly controls or is controlled by the first PERSON; or (b) is directly or indirectly controlled by a PERSON that also directly or indirectly controls the first PERSON. A PERSON controls another PERSON if that first PERSON has the power to direct or cause the direction of the management of the other PERSON, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by ownership of shares or other equity interests, the holding of voting rights or contractual rights, by being the general partner of a limited partnership, or otherwise. Any AFFILIATE of Royal Dutch Shell, plc is an AFFILIATE of COMPANY.

**AGENCY PERSONNEL:** those CONTRACTOR PERSONNEL who are not direct employees, but are working under the direct control and supervision of CONTRACTOR GROUP.

**ANTI-CORRUPTION LAWS:** the United States Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act 2010, and all other APPLICABLE LAWS that prohibit tax evasion, money laundering or otherwise dealing in the proceeds of crime or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any GOVERNMENT OFFICIAL or any other PERSON.

**APPLICABLE DATA PROTECTION LAW:** all laws, rules, regulations, governmental requirements, codes as well as international, federal, state, provincial laws applicable to COMPANY when acting as a controller or processor of PERSONAL DATA, in particular REGULATION (EU) 2016/679 (GDPR).

**APPLICABLE LAWS:** where applicable to a PERSON, property, or circumstance, and as amended from time to time: (a) statutes (including regulations enacted under those statutes); (b) national, regional, provincial, state, municipal, or local laws; (c) judgments and orders of courts of competent jurisdiction; (d) rules, regulations, and orders issued by AUTHORITIES; and (e) regulatory approvals, permits, licences, approvals, and authorisations.

**AUTHORITIES:** the government and any county, municipality, local government, or other political subdivision, instrumentality, ministry, or department which has jurisdiction over any part of SCOPE, or any county, municipality, local government or other political subdivision thereof.

**BOOKS AND RECORDS:** books, accounts, contracts, records, and documentation, in electronic format or otherwise, in respect of the CONTRACT and performance of SCOPE.

**COMPANY GROUP:** COMPANY and (a) its CO-VENTURERS and JOINT VENTURES; (b) any AFFILIATE of COMPANY, its JOINT VENTURES, or its CO-VENTURERS; and (c) any director, officer, employee, or other individual working under the direct control and supervision of COMPANY, its JOINT VENTURES, or CO-VENTURERS, or the AFFILIATES of COMPANY, its JOINT VENTURES, or CO-VENTURERS. A reference to COMPANY GROUP includes a reference to each of its members severally.

**COMPANY PROVIDED ITEMS:** items of materials, equipment, services, or facilities, provided by COMPANY to CONTRACTOR to perform SCOPE.

**CONFIDENTIAL INFORMATION:** all technical, commercial, photographic or other information, and all documents and other tangible items that record information, whether on paper, in machine readable format, by sound or video, by way of samples or otherwise, relating to a PERSON's business, including WORK PRODUCT, PERSONAL DATA and SCOPE provided to that PERSON, business plans, property, way of doing business, business results or prospects, the terms, negotiations, and existence of the CONTRACT, proprietary software, IP RIGHTS, and business records. A reference to COMPANY GROUP'S CONFIDENTIAL INFORMATION includes WORK PRODUCT and the terms, negotiations, and existence of the CONTRACT.

**CONSEQUENTIAL LOSS:** (a) indirect or consequential losses; and (b) loss of production, loss of product, loss of use, and loss of revenue, profit, or anticipated profit, whether direct, indirect, or consequential, and whether or not the losses were foreseeable at the time of entering into the CONTRACT.

**CONTRACT PRICE:** the total amount payable by COMPANY to CONTRACTOR in accordance with the CONTRACT.

**CONTRACTOR EQUIPMENT:** any machinery, plant, tools, equipment, goods, materials, supplies, and other items (including all appropriate associated spare parts, storage containers, packing, and securing) owned or contracted for by CONTRACTOR GROUP, provided title has not passed and will not pass to COMPANY under the CONTRACT.

**CONTRACTOR GROUP:** CONTRACTOR and: (a) its SUBCONTRACTORS, (b) any AFFILIATE of CONTRACTOR or its SUBCONTRACTORS; and (c) any director, officer, employee, other PERSON or AGENCY PERSONNEL employed by or acting for and on behalf of CONTRACTOR, its SUBCONTRACTORS, or the AFFILIATES of CONTRACTOR and its SUBCONTRACTORS. A reference to CONTRACTOR GROUP includes a reference to each of its members severally.

**CONTRACTOR PERSONNEL:** any individual provided by CONTRACTOR GROUP, whether directly or indirectly, and assigned to work in connection with the performance of SCOPE, whether or not an employee of CONTRACTOR GROUP.

**CO-VENTURER:** any PERSON who is a party to a joint operating agreement, unitisation agreement, including a JOINT VENTURE, or similar agreement: (a) with COMPANY or any of its AFFILIATES; and (b) which agreement is related to SCOPE performed under the CONTRACT. A reference to CO-VENTURERS includes a reference to each CO-VENTURER severally and to its respective successors and permitted assigns.

**FORCE MAJEURE EVENT:** the events qualifying as a force majeure event as expressly set out in the CONTRACT.

**GOODS:** goods, materials, products, and equipment to be supplied by CONTRACTOR under the CONTRACT.

**GOVERNMENT OFFICIAL:** (a) any official or employee of any government, or any agency, ministry, or department of a government (at any level); (b) anyone acting in an official capacity for a government regardless of rank or position; (c) any official or employee of a company wholly or partially controlled by a government (e.g. a state-owned oil company), political party, or any official of a political party; (d) any candidate for political office, or any officer or employee of a public international organisation (e.g. the United Nations or the World Bank); and (e) any immediate family member (meaning a spouse, dependent child, or household member) of any of the foregoing.

**HSSE STANDARDS:** (a) all HSSE policies, manuals, standards, rules, and procedures, as communicated to CONTRACTOR, by or on behalf of COMPANY, designed to manage HSSE risks during performance of SCOPE under the CONTRACT; (b) all APPLICABLE LAWS relating to HSSE; and (c) any other rules and procedures (whether issued by COMPANY GROUP or otherwise) in force at a relevant COMPANY GROUP WORKSITE at the time of performance of SCOPE.

**INDEMNIFY:** release, save, indemnify, defend, and hold harmless.

**INDIRECT TAXES:** any of the following: (a) value added tax; (b) goods and services tax; or (c) sales tax or similar levy.

**INSOLVENCY EVENT:** if a PERSON: (a) stops or suspends, or threatens to stop or suspend, payment of all or a material part of its debts, or is unable to pay its debts as they fall due; (b) ceases or threatens to cease to carry on all or a substantial part of its business; (c) begins negotiations for, starts any proceedings concerning, proposes or makes any agreement for the reorganisation, compromise, deferral, or general assignment of, all or substantially all of its debts; (d) makes or proposes an arrangement for the benefit of some or all of its creditors of all or substantially all of its debts; (e) takes any step with a view to the administration, winding up, or bankruptcy of that PERSON; (f) is subject to an event in which all or substantially all of its assets are subject to any steps taken to enforce security over those assets or to levy execution or similar process, including the appointment of a receiver, trustee in bankruptcy, or similar officer; or (g) is subject to any event under the law of any relevant jurisdiction that has an analogous or equivalent effect to any of the INSOLVENCY EVENTS listed above.

**IP RIGHTS:** all patents, copyright, database rights, design rights, rights in CONFIDENTIAL INFORMATION, including know-how and trade secrets, inventions, moral rights, trademarks and service marks (all whether registered or not and including all applications for any of them and all equivalent rights in all parts of the world), whenever and however arising for their full term, and including any divisions, re-issues, re-examinations, continuations, continuations-in-part, and renewals.

**JOINT VENTURE:** any entity: (a) which itself is not an AFFILIATE OF COMPANY; (b) in which an AFFILIATE OF COMPANY has a

direct or indirect ownership interest; and (c) the activities of which are related to SCOPE.

**LIABILITIES:** liabilities for all claims, losses, damages, costs (including legal fees), and expenses.

**LIENS:** liens, attachments, charges, claims, or other encumbrances against SCOPE or property of COMPANY GROUP.

**LIQUIDATED DAMAGES:** amounts agreed in the CONTRACT, that CONTRACTOR must pay to COMPANY if certain events or obligations as specified in the CONTRACT are not achieved or not timely achieved.

**OTHER CONTRACTOR:** any other contractor engaged by COMPANY to perform WORK at the WORKSITE.

**OTHER PERMITTED BUYER:** (a) JOINT VENTURES; and (b) SHELL CONTRACTORS.

**PERSON:** 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.

**PERSONAL DATA:** any information relating to an identified or identifiable individual, unless otherwise defined under APPLICABLE LAWS related to the protection of individuals, the processing of such information, and security requirements for and the free movement of such information.

**RESTRICTED JURISDICTION:** countries or states that are subject to comprehensive trade sanctions or embargoes (as may be amended by the relevant AUTHORITIES from time to time).

**RESTRICTED PARTY:** (a) any PERSON targeted by national, regional, or multilateral 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, US Department of the Treasury Office of Foreign Assets Control Lists, US State Department Non-proliferation Sanctions Lists, or US Department of Commerce Denied Persons List, in force from time to time; or (c) any AFFILIATES of such PERSONS; and (d) any PERSON acting on behalf of a PERSON referred to in the foregoing.

**SCOPE:** the GOODS to be delivered or the SERVICES to be performed, as the case may be, by or on behalf of CONTRACTOR under this CONTRACT, and all other activities and obligations to be performed by or on behalf of CONTRACTOR under this CONTRACT. .

**SERVICES:** services to be supplied by CONTRACTOR under the CONTRACT, including the results of those services.

**SHELL CONTRACTOR:** a PERSON acting as a contractor of an AFFILIATE of Royal Dutch Shell plc.

**SOFTWARE:** any software forming part of SCOPE or necessary for the intended use of SCOPE, including, as applicable, the database and all machine codes, binaries, object codes or source codes, whether in a machine or human readable form, and all improvements, modifications, and updates, flow charts, logic diagrams, passwords, and output tapes, and any future updates, releases, and generally available associated software items, together with the licence to use them or ownership rights in them.

**STANDARDS OF PRACTICE:** with reference to SCOPE and the performance of SCOPE, the sound standards, methods, skill, care, techniques, principles, and practices that are recognised and generally accepted in the international oil, gas, and petrochemical industry.

**SUBCONTRACT:** any contract between CONTRACTOR and a SUBCONTRACTOR or between a SUBCONTRACTOR and another SUBCONTRACTOR of any tier for the performance of any part of SCOPE, including any call off under framework agreements of COMPANY or an AFFILIATE of COMPANY and supply agreements for materials.

**SUBCONTRACTOR:** any party to a SUBCONTRACT, other than COMPANY and CONTRACTOR, including any employers of AGENCY PERSONNEL (except as explicitly provided otherwise).

**TAXES:** all taxes, duties, levies, import, export, customs, stamp or excise duties (including clearing and brokerage charges), charges, surcharges, withholdings, deductions, or contributions that are imposed or assessed by any competent authority of the country where SCOPE is performed or any other country in accordance with APPLICABLE LAWS.

**TRADE CONTROL LAWS:** all APPLICABLE LAWS concerning the import, export, or re-export of goods, software, or technology, or their direct product, including: (a) applicable customs regulations, Council Regulation (EC) No. 428/2009; (b) any sanction regulations issued by the Council of the European Union; (c) the International Traffic in Arms Regulations ("ITAR"); (d) the Export Administration Regulations ("EAR"); and (e) the regulations and orders issued or administered by the US Department of the Treasury, Office of Foreign Assets Control in relation to export control, anti-boycott, and trade sanctions matters.

**VARIATION:** a modification or alteration of, addition to, or deletion of, all or part of SCOPE.

**VARIATION ASSESSMENT:** a proposal prepared by CONTRACTOR in respect of a VARIATION in which it provides full detail of the following: (a) the impact of the proposed VARIATION on SCOPE; (b) a detailed schedule for the performance of adjusted SCOPE; (c) the effect on the CONTRACT PRICE (if any), determined in accordance with the CONTRACT; and (d) any other information COMPANY concludes is necessary for its evaluation.

**VARIATION ORDER:** a written order for a VARIATION authorised by COMPANY.

**WORK PRODUCT:** any and all information, reports, data, drawings, computer programs, source and object codes, program documentation, spread sheets, presentations, analyses, results, conclusions, findings, solutions, calculations, studies, concepts, codes, manuals, inventions, business models, designs, prototypes, magnetic data, flow charts, recommendations, working notes, specifications or other information, documents, or materials, which arise out of or are made, created, or generated for COMPANY, as a part of SCOPE, or which are made, created, or generated from or using COMPANY GROUP'S CONFIDENTIAL INFORMATION or COMPANY GROUP'S IP RIGHTS.

**WORKSITE:** lands, waters, and other places on, under, in, or through which SCOPE or activities in connection with SCOPE are to be performed, including manufacturing, fabrication, or storage facilities, offshore installations, floating construction equipment, vessels, offices, workshops, camps, or messing facilities. WORKSITE does not include any lands, waters, or other places used during transportation to and from WORKSITES.

## **2. REQUIREMENTS PERTAINING TO SCOPE**

(a) This CONTRACT is non-exclusive and carries no requirement for COMPANY to place any orders or purchase any minimum quantities. COMPANY may acquire same or similar SCOPE from other suppliers.

(b) Time is of the essence for the performance of SCOPE.

(c) Any information supplied by COMPANY is the property of COMPANY and will not be used by CONTRACTOR for any purpose other than for performance of the CONTRACT.

## **3. REQUIREMENTS PERTAINING TO GOODS**

(a) CONTRACTOR guarantees that GOODS supplied in connection with the performance of SCOPE will be: (i) without fault, defect, or deficiency; (ii) new on delivery, unless otherwise specified in the CONTRACT; (iii) fit for use for any

purpose specified in the CONTRACT; and (iv) in strict conformance with the CONTRACT and any specification, drawing, or other description supplied by COMPANY to CONTRACTOR and agreed to as part of the CONTRACT.

(b) Unless a different period is specified in the SCOPE DESCRIPTION, CONTRACTOR's warranty for GOODS applies to all defects arising within 12 months of COMPANY'S ACCEPTANCE of GOODS.

(c) Following ACCEPTANCE by COMPANY of the GOODS, the warranties set out in this Article are in lieu of all other warranties expressed or implied by statute, common law, custom, usage, or otherwise.

(d) CONTRACTOR retains risk of loss of and damage to the GOODS until delivery is complete in accordance with the INCOTERMS in any case where INCOTERMS are specified, otherwise when COMPANY takes physical possession of the GOODS.

(e) Title to the GOODS will pass to COMPANY at the earlier of: (i) risk of loss of and damage to the GOODS passing to COMPANY; or (ii) as COMPANY makes payment for the GOODS.

(f) CONTRACTOR will pack the GOODS so that they may be transported and unloaded safely. CONTRACTOR represents that, on delivery, the GOODS will have been accurately described, classified, marked, and labelled, in accordance with the CONTRACT, all APPLICABLE LAWS, and STANDARDS OF PRACTICE.

## **4. REQUIREMENTS PERTAINING TO SERVICES**

### **4.1. SERVICES Warranties**

(a) CONTRACTOR warrants that all SERVICES supplied in connection with the performance of SCOPE will be: (i) performed in accordance with the CONTRACT; (ii) fit for use for any purpose specified in the CONTRACT; and (iii) free from any defect or deficiency.

(b) Unless a different period is specified in the SCOPE description, CONTRACTOR'S warranty for SERVICES applies to all defects arising within 12 months of COMPANY'S ACCEPTANCE of the SERVICES.

(c) Following ACCEPTANCE by COMPANY of the SERVICES, the warranties set out in this Article are in lieu of all other warranties expressed or implied by statute, common law, custom, usage, or otherwise.

(d) CONTRACTOR will supply SERVICES diligently, efficiently, and carefully, in a good and professional manner, and in accordance with the CONTRACT and all STANDARDS OF PRACTICE. CONTRACTOR will furnish all skills, labour, supervision, equipment, goods, materials, supplies, transport, and storage required for SERVICES.

### **4.2. CONTRACTOR PERSONNEL in Connection with SERVICES**

Where required by COMPANY, CONTRACTOR will perform at its own expense security background checks and obtain entry credentials for CONTRACTOR PERSONNEL on COMPANY GROUP WORKSITES.

## **5. COMPENSATION, PAYMENT, AND INVOICING**

(a) COMPANY agrees to pay the CONTRACT PRICE to CONTRACTOR in the currency specified in the Schedule of Prices, and at the times and in the manner specified in this Article. The CONTRACT PRICE is all-inclusive except for value added tax or sales tax.

(b) CONTRACTOR will invoice only after ACCEPTANCE of SCOPE, except as otherwise provided in the CONTRACT.

(c) COMPANY will pay CONTRACTOR any undisputed amount within the time period specified in the CONTRACT after receipt of a correct and adequately supported invoice. An invoice is considered unsupported when COMPANY cannot reasonably verify the legitimacy or accuracy of the invoice using the

information provided by CONTRACTOR or if supporting documentation is missing.

**(d)** Payment of an invoice is not: (i) by itself an accord and satisfaction, or otherwise a limitation of the rights of the parties in connection with the matter; or (ii) evidence SCOPE was performed in accordance with the CONTRACT.

**(e)** If COMPANY disputes an invoice, COMPANY may withhold payment of any disputed part of an invoice and pay only the undisputed part. COMPANY may, on notice to CONTRACTOR, set off any liabilities between CONTRACTOR and COMPANY arising out of the CONTRACT or any other agreement. Any exercise by COMPANY of its rights under this provision will be without prejudice to any other rights or remedies available to COMPANY.

## **6. QUALITY ASSURANCE**

CONTRACTOR must have quality assurance programs in place adequate to support its performance of SCOPE.

## **7. ACCESS TO COMPANY SYSTEMS, INFORMATION, OR INFRASTRUCTURE**

In the event that performance of SCOPE requires CONTRACTOR or CONTRACTOR PERSONNEL to access COMPANY GROUP's technical information, information technology, or resources (including COMPANY's infrastructure), CONTRACTOR will sign and comply with COMPANY's standard terms and conditions for access and security, unless other terms applicable to the CONTRACT were agreed on by the parties in writing.

## **8. VARIATIONS**

COMPANY may request, or CONTRACTOR may initiate, a VARIATION ASSESSMENT for reasons of emergency, safety, or other reasonable necessity. CONTRACTOR is not entitled to a VARIATION for matters that were included in SCOPE, or matters that CONTRACTOR agreed to perform or take into account in connection with the CONTRACT. COMPANY may reject or accept the VARIATION ASSESSMENT by issuing a VARIATION ORDER.

## **9. INSPECTIONS, TESTING, AND ACCEPTANCE OF SCOPE**

**(a)** To confirm SCOPE complies with the CONTRACT, CONTRACTOR will perform all tests and inspections required by the CONTRACT, APPLICABLE LAWS and, unless otherwise specified in the CONTRACT, STANDARDS OF PRACTICE.

**(b)** CONTRACTOR will request ACCEPTANCE from COMPANY: i) of GOODS by completion of delivery; or ii) of SERVICES by writing on completion of SCOPE. Other than to start the period for any warranty of limited duration, ACCEPTANCE does not limit or waive any remedies.

## **10. REMEDIAL ACTIONS**

If defects in SCOPE are discovered, CONTRACTOR will provide a plan to remedy the defects and will remedy the defects in an expeditious manner. Without prejudice to other remedies it may have, COMPANY may perform or have others perform some or all of the remedial actions, and CONTRACTOR will pay or promptly reimburse COMPANY for all costs CONTRACTOR would have been liable for under the CONTRACT where:

(i) emergency situations or other HSSE risks require the immediate performance of remedial actions; (ii) CONTRACTOR presents a plan which does not provide for expeditious completion of warranty work; or (iii) CONTRACTOR does not timely complete the actions according to the agreed schedule. CONTRACTOR's warranties against defects are assignable, and CONTRACTOR will assign to COMPANY all manufacturers' warranties or will pursue for COMPANY or its assignee all warranties that cannot be assigned.

## **PART B**

### **1. PERFORMANCE**

**(a)** CONTRACTOR will participate in business performance reviews to discuss HSSE performance, CONTRACTOR'S financial condition and other key performance indicators (KPIs).

**(b)** The frequency of business performance reviews will be established by the SCOPE description or alternatively, by COMPANY'S representative.

### **2. TAXES**

#### **2.1 CONTRACTOR TAXES**

CONTRACTOR will be responsible for payment of all TAXES, and any interest, fines, or penalties for which CONTRACTOR GROUP is liable for: (a) income, capital gains, and wages; and (b) import or export of CONTRACTOR EQUIPMENT, or the movement of CONTRACTOR PERSONNEL.

#### **2.2 INDIRECT TAXES**

If INDIRECT TAXES apply, CONTRACTOR will add them to the invoice as a separate item, and COMPANY will pay them in addition to the CONTRACT PRICE.

#### **2.3 Withholding**

**(a)** If required under APPLICABLE LAWS, COMPANY will withhold, or deduct and pay over to relevant AUTHORITIES, TAXES from amounts payable to CONTRACTOR. If CONTRACTOR is non-resident in Canada, COMPANY is required by law to collect and remit to the Canada Revenue Agency a 15% withholding tax for CONTRACTOR'S SERVICES to COMPANY rendered in Canada, unless the requirement is waived directly by the Canada Revenue Agency. If the Canada Revenue Agency provides a waiver to CONTRACTOR, CONTRACTOR will forward a copy of the waiver to COMPANY.

**(b)** To facilitate the appropriate level of withholding tax, CONTRACTOR agrees to provide the following additional information on its invoices to COMPANY: (i) the amount chargeable for SERVICES performed in Canada; (ii) the amount chargeable for SERVICES performed outside Canada; (iii) the cost of services provided by third parties (along with a copy of the relevant invoices separately indicating the cost of SERVICES provided in Canada, the cost of SERVICES provided outside Canada, and the amount of reimbursed expenses); (iv) identification and rationale for any charge that is unrelated to the provision of SERVICES; (v) the information prescribed by the Input Tax Regulations under the Excise Tax Act (Canada) or any other information prescribed for a similar value added tax; and (vi) details of any expenses for which reimbursement is sought, including for meals, hotel, airfare, travel, and the similar expenses.

**(c)** Where CONTRACTOR demonstrates that it is exempt from any withholding or deductions under APPLICABLE LAWS, it will inform COMPANY and provide COMPANY with a valid certificate of exemption or immunity from the relevant AUTHORITY. COMPANY may act on the information given to it and will not be liable to CONTRACTOR or any other PERSON if COMPANY applies the withholding or deduction according to APPLICABLE LAWS.

#### **2.4 INDIRECT TAXES in event of CONTRACT changes**

Any amount payable as a result of a breach, modification, or termination of the CONTRACT, will be increased by any applicable INDIRECT TAXES remittable by the recipient of the payment.

#### **2.5 Indemnity for LIABILITIES Related to TAXES**

**(a)** CONTRACTOR will INDEMNIFY COMPANY GROUP for any LIABILITIES, including any interest, fines, or penalties for which CONTRACTOR GROUP or any PERSON directly or indirectly employed or engaged by CONTRACTOR GROUP is liable as referred to in this Article.

(b) If CONTRACTOR GROUP is considered to have a permanent establishment in connection with the performance of SCOPE, CONTRACTOR GROUP will be solely responsible for resulting LIABILITIES, TAXES, and any other costs incurred by CONTRACTOR GROUP because of the presence of the permanent establishment.

### **3. LIENS**

CONTRACTOR warrants good and clear title to SCOPE supplied. CONTRACTOR will not, to the fullest extent permitted by APPLICABLE LAWS, permit CONTRACTOR GROUP to place any LIENS or claim any LIENS. CONTRACTOR will immediately notify COMPANY and promptly remove any LINES by CONTRACTOR GROUP.

### **4. SUSPENSION**

(a) COMPANY may suspend the CONTRACT or part of SCOPE for cause by written notice with immediate effect pending COMPANY's decision on termination where COMPANY concludes it has grounds to terminate the CONTRACT for cause. Where suspending for cause, CONTRACTOR will not be entitled to any VARIATION or other compensation.

(b) COMPANY may suspend the CONTRACT or part of SCOPE for convenience at its own discretion with seven days' prior written notice. CONTRACTOR may seek a VARIATION if actions required by suspension impact the schedule or timing of SCOPE.

(c) COMPANY may at any time withdraw by written notice all or part of a suspension and CONTRACTOR will resume performance.

### **5. TERMINATION for cause**

#### **5.1. Termination by COMPANY**

(a) COMPANY may terminate the CONTRACT or part of SCOPE for cause by written notice with immediate effect if: (i) in connection with the performance of the CONTRACT, CONTRACTOR GROUP breaches its own Business Principles, or if it has no equivalent principles, then Shell's Business Principles; (ii) CONTRACTOR GROUP violates ANTI-CORRUPTION LAWS, applicable competition laws or HSSE Standards, TRADE CONTROL LAWS, other APPLICABLE LAWS, or HSSE STANDARDS or causes COMPANY to be in violation of those laws; (iii) CONTRACTOR GROUP becomes a RESTRICTED PARTY; or (iv) CONTRACTOR is subject to an INSOLVENCY EVENT.

(b) COMPANY may terminate the CONTRACT or part of SCOPE for cause where COMPANY determines CONTRACTOR materially breached a term or condition of the CONTRACT other than those set out in the preceding paragraph. COMPANY will first provide written notice which may require CONTRACTOR to remedy the breach, or COMPANY may terminate the CONTRACT if COMPANY determines the breach is not capable of timely remedy, or it is not subsequently remedied.

#### **5.2 Termination by COMPANY for convenience**

COMPANY may terminate the CONTRACT or part of SCOPE for convenience at its own discretion with 30 days' prior written notice.

#### **5.3. Termination by CONTRACTOR for cause**

(a) CONTRACTOR may terminate the CONTRACT if COMPANY fails to pay an undisputed amount to CONTRACTOR that is properly presented, due, and payable for more than 60 days and exceeds 5% of the CONTRACT PRICE, assuming complete performance of the CONTRACT, subject to: (i) CONTRACTOR giving COMPANY with prior written notice specifying the unpaid amount which is due and payable for more than 60 days and requiring it to be paid within a further period of 45 days of such notice; and (ii) COMPANY failure to cure or provide proper grounds for non-payment during the notice period.

(b) CONTRACTOR'S termination rights do not apply to non-payment in the case of COMPANY'S valid exercise of set off rights.

### **5.4. CONTRACTOR Obligations on Termination**

On any termination, CONTRACTOR will promptly cease performance, give access to SCOPE in progress, avoid unreasonable interference with others, and take reasonable steps to allow COMPANY to complete SCOPE, including turning over all documentation for SCOPE and SOFTWARE which was to be supplied in connection with the CONTRACT.

### **5.5. Compensation in the Event of Termination**

(a) If COMPANY terminates the CONTRACT or part of SCOPE for cause, COMPANY will determine and pay (subject to valid set offs) the amounts owed to CONTRACTOR for SCOPE properly performed in accordance with the CONTRACT prior to termination.

(b) If COMPANY terminates the whole of the CONTRACT "for convenience" or CONTRACTOR validly terminates for non-payment, COMPANY will also pay reasonable, unavoidable, and auditable demobilisation costs that COMPANY has specifically agreed elsewhere in the CONTRACT to pay on termination for convenience by COMPANY.

### **5.6. Exclusive Reasons for Termination**

The parties waive any right to terminate, rescind, or otherwise end the CONTRACT, on grounds other than those set out in the CONTRACT.

### **6. LIQUIDATED DAMAGES**

Any LIQUIDATED DAMAGES set out in the CONTRACT are genuine pre-estimates of the losses that may be sustained by failure of performance. COMPANY may claim demonstrated general damages in any case where LIQUIDATED DAMAGES are unenforceable.

### **7. LIABILITIES AND INDEMNITIES**

(a) Liability for loss of and damage to property and for personal injury, death, or disease to any PERSON, arising in connection with the CONTRACT, will be determined in accordance with APPLICABLE LAW.

(b) Neither party will be liable to the other for that other party's own CONSEQUENTIAL LOSS, regardless of negligence or other fault.

(c) Neither party excludes or limits its LIABILITIES to the extent they may not be excluded under APPLICABLE LAW.

### **8. INSURANCE**

Prior to commencement of performance, CONTRACTOR will arrange any insurance required by APPLICABLE LAW, and maintain that insurance in effect throughout the duration of the CONTRACT. Satisfaction of the obligation to procure insurance and perform other actions in connection with this Article will not relieve CONTRACTOR of any other obligations or LIABILITIES.

### **9. COMPLIANCE WITH APPLICABLE LAWS, BUSINESS PRINCIPLES, AND HSSE STANDARDS**

#### **9.1. APPLICABLE LAWS**

(a) CONTRACTOR will comply with APPLICABLE LAWS in the performance of the CONTRACT and will notify COMPANY of any material breaches.

(b) Where CONTRACTOR is providing SCOPE to Shell Upstream operations, CONTRACTOR is required to be familiar with and comply with applicable guidelines, policies, and procedures which are located at [www.shellcontractor.com](http://www.shellcontractor.com). This includes policies for health and safety, as well as requirements regarding use of COMPANY contracted aircraft and marine vessels, and compliance with COMPANY's land transportation programs for deliveries to and from its sites.

#### **9.2. Business Principles**

(a) CONTRACTOR acknowledges that it has actual knowledge of: (i) the Shell General Business Principles, at [www.shell.com/sgbp](http://www.shell.com/sgbp), and Shell's Supplier Principles, at [www.shell.com/suppliers](http://www.shell.com/suppliers); (ii) Shell's Code of Conduct, at <http://www.shell.com/codeofconduct>; and (iii) Shell's Global Helpline, at <http://www.shell.com/globalhelpline>.

(b) CONTRACTOR agrees CONTRACTOR GROUP will adhere to and notify of violations of the principles contained in the Shell General Business Principles and Shell Supplier Principles (or where CONTRACTOR has adopted equivalent principles, to those equivalent principles) in all its dealings with or on behalf of COMPANY, in connection with this CONTRACT and related matters.

(c) If CONTRACTOR GROUP supplies staff that work on behalf of COMPANY or represent COMPANY, CONTRACTOR commits that the staff will behave in a manner that is consistent with the Shell Code of Conduct.

### 9.3. Anti-Bribery and Corruption

(a) CONTRACTOR represents that, in connection with this CONTRACT and related matters: (i) it is knowledgeable about ANTI-CORRUPTION LAWS and will comply with those laws; (ii) CONTRACTOR GROUP has not made, offered, authorised, or accepted, and will not make, offer, authorise, or accept, any payment, gift, promise, or other advantage, whether directly or through any other PERSON, to or for the use or benefit of any GOVERNMENT OFFICIAL or any other PERSON where that payment, gift, promise, or other advantage would: (A) comprise a facilitation payment; or (B) violate the relevant ANTI-CORRUPTION LAWS.

(b) CONTRACTOR will immediately notify COMPANY if CONTRACTOR receives or becomes aware of any matter that is prohibited by the preceding paragraph.

(c) CONTRACTOR affirms that no PERSON in CONTRACTOR GROUP is a government official or other PERSON who could assert illegal influence on behalf of COMPANY or its AFFILIATES. If a PERSON in CONTRACTOR GROUP becomes a government official, CONTRACTOR will promptly notify COMPANY and remove that individual from performance in connection with SCOPE at COMPANY's request.

(d) CONTRACTOR will maintain adequate internal controls and procedures to ensure compliance with ANTI-CORRUPTION LAWS, including the ability to demonstrate compliance through adequate and accurate recording of transactions in its BOOKS AND RECORDS.

(e) COMPANY will have the right to confirm compliance with ANTI-BRIBERY LAWS and record keeping by audit.

CONTRACTOR will keep BOOKS AND RECORDS available for audit for five years following termination of the CONTRACT.

(e) Audits may take place during performance or after completion of SCOPE, so long as notice of an audit is provided prior to the expiration of the period set out above for the retention of BOOKS AND RECORDS. Conditions of the audit will be as prescribed for financial and performance audits in the CONTRACT.

(f) Where CONTRACTOR relies on of CONTRACTOR GROUP to perform part of SCOPE, CONTRACTOR will ensure that CONTRACTOR GROUP: (i) maintains its BOOKS AND RECORDS for the same purposes and for equivalent periods; and (ii) provides BOOKS AND RECORDS, which may be required by COMPANY to similarly confirm satisfaction of the compliance and record keeping obligations.

(g) CONTRACTOR will INDEMNIFY COMPANY GROUP for any LIABILITIES arising out of CONTRACTOR GROUPS's breach of ANTI-CORRUPTION LAWS or any related undertakings under this Article.

(h) For purposes of this Article, the term GOVERNMENT OFFICIAL includes a member of any elected aboriginal body.

### 9.4. Export and Trade Controls

(a) CONTRACTOR will comply with, all applicable TRADE CONTROL LAWS and will provide COMPANY with necessary data to comply with TRADE CONTROL LAWS.

(b) CONTRACTOR will ensure that, except with the prior written consent of COMPANY: (i) COMPANY PROVIDED ITEMS are not exported, provided, or made available to any RESTRICTED JURISDICTION or RESTRICTED PARTIES; (ii) CONTRACTOR PERSONNEL with access to COMPANY GROUP's technical information, information technology resources (including COMPANY GROUP's infrastructure), or COMPANY GROUP WORKSITES, are not RESTRICTED PARTIES or nationals of a RESTRICTED JURISDICTION; and (iii) CONTRACTOR will not utilise SUBCONTRACTORS that are RESTRICTED PARTIES.

### 9.5. PERSONAL DATA Protection

(a) The parties may provide each other with PERSONAL DATA in the course of the performance of this CONTRACT, the processing and transfer of which will be done in accordance with APPLICABLE DATA PROTECTION LAW. Each party is a data controller in respect of the PERSONAL DATA. The parties may provide each other with PERSONAL DATA in the course of the performance of this CONTRACT, the processing and transfer of which will be done in accordance with APPLICABLE DATA PROTECTION LAW. Each party is a data controller in respect of the PERSONAL DATA.

(b) Where COMPANY is located in the European Economic Area and CONTRACTOR is located in a country that has not been deemed to provide an adequate level of protection for PERSONAL DATA and has not implemented a program or certification that is recognised as providing an adequate level of protection in accordance with Regulation (EU) 2016/679, the standard contractual clauses as set out in the Annex to Decision to 2004/915/EC are incorporated into this agreement in full including the data processing principles set forth in Annex A to those clauses. **9.6. Health, Safety, Security, and Environment ("HSSE")**

In performing SCOPE at COMPANY GROUP WORKSITES, or other location if specified in the HSSE STANDARDS, CONTRACTOR will, and will ensure that CONTRACTOR GROUP will, at all times: (i) pursue Shell's HSSE principle of Goal Zero; (ii) comply with Shell's "Life Saving Rules", at <http://www.shell.com/lifesavingrules>; and (iii) comply with other applicable HSSE STANDARDS.

### 9.7 APPLICABLE WORKSITE Rules

In connection with its policies against use or possession of illegal or unauthorised drugs or controlled substances, intoxicating beverages, or weapons of any type, including firearms on its premises, CONTRACTOR agrees that entry onto COMPANY GROUP WORKSITES constitutes consent to and recognition of the right of COMPANY GROUP and its authorised representatives to search the person, vehicle, and other property of individuals while on those premises. If all or part of the performance of SCOPE on COMPANY GROUP WORKSITES or in transportation of its products or materials: i) requires exercise of independent action and results in direct and immediate irreversible effects; and ii) creates substantial risk of serious physical injury to fellow employees or the general public, or significant environmental damage, then CONTRACTOR must have in place at its own expense a substance abuse policy meeting applicable STANDARDS OF PRACTICE.

### 9.8 Ontario Carpentry SERVICES

For all SCOPE performed in the Province of Ontario, CONTRACTOR must ensure all carpentry, scaffolding, concrete



forming, caulking, dry wall, or fencing as defined in the "Provincial Collective Agreement" between the Carpenters' Employer Bargaining Agency and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, in effect at the time, is performed by that union, either through members of the appropriate local chapter or members who carry a valid travel certificate from the appropriate local chapter.

## **10. CONFIDENTIAL INFORMATION**

### **10.1 Obligations in Connection with CONFIDENTIAL INFORMATION**

(a) CONTRACTOR will, and will ensure that CONTRACTOR GROUP will, not disclose or permit a disclosure to a third party of COMPANY GROUP's CONFIDENTIAL INFORMATION without the prior written consent of COMPANY and will use COMPANY GROUP's CONFIDENTIAL INFORMATION only in connection with performance of the CONTRACT.

(b) Information that CONTRACTOR can prove at disclosure is public knowledge, in the possession of CONTRACTOR without binder of secrecy, or developed independently of COMPANY's CONFIDENTIAL INFORMATION is not CONFIDENTIAL INFORMATION. Restrictions on disclosure of COMPANY's CONFIDENTIAL INFORMATION will cease if CONTRACTOR can prove that the information had become part of the public knowledge through no fault of CONTRACTOR GROUP or is subsequently disclosed to CONTRACTOR without an obligation of confidentiality by a third party who has the legal right to do so.

(c) On COMPANY's request, CONTRACTOR will return promptly any CONFIDENTIAL INFORMATION and delete it from electronic storage, and delete or destroy all extracts or analyses that reflect any CONFIDENTIAL INFORMATION.

### **10.2 CONTRACTOR INFORMATION**

Except where the obligation is expressly stated elsewhere in the CONTRACT or through a separate agreement, COMPANY GROUP will not have an obligation of non-disclosure or non-use regarding information provided by CONTRACTOR GROUP.

### **10.3 External Communications**

CONTRACTOR must obtain written approval from COMPANY before proceeding with any external communications in connection with the CONTRACT, disclosure of business relationships, or use of COMPANY's trademarks.

## **11. INTELLECTUAL PROPERTY**

(a) Except for IP RIGHTS vested with CONTRACTOR as provided below, all ownership rights, title, and interest in and to SCOPE and WORK PRODUCT will vest in COMPANY. This CONTRACT does not grant CONTRACTOR GROUP any rights, title, or interest in or to COMPANY GROUP's IP RIGHTS, other than those set out in the CONTRACT. IP RIGHTS created by modifications, amendments, enhancements, or improvements (including tailor-made to the specifications of COMPANY) to COMPANY GROUP's IP RIGHTS, or made using COMPANY GROUP's CONFIDENTIAL INFORMATION, will vest with COMPANY or its nominee when created.

(b) CONTRACTOR, warranting that it is entitled to do so, grants to COMPANY GROUP the irrevocable, non-exclusive, perpetual, worldwide, royalty-free right and licence, with the right to grant sub-licences, to possess, and use any of CONTRACTOR's IP RIGHTS embodied in SCOPE, including the right to import, export, operate, sell, maintain, modify and repair SCOPE. CONTRACTOR warrants that any possession or use of SCOPE as delivered by CONTRACTOR or of CONTRACTOR's IP RIGHTS will not infringe the IP RIGHTS of any third party.

(c) COMPANY's ownership rights in SCOPE under this article will not extend to CONTRACTOR's IP RIGHTS that: (i) pre-existed the performance under the CONTRACT; (ii) are developed

independently from performance of the CONTRACT; or (iii) are used by CONTRACTOR in connection with or to perform the CONTRACT, but are not based on or arising out of COMPANY GROUP's IP RIGHTS or CONFIDENTIAL INFORMATION.

(d) CONTRACTOR will INDEMNIFY COMPANY GROUP, assignees, transferees, and sublicensees permitted by this CONTRACT for any LIABILITIES resulting from any claim that the ownership possession or use of any SCOPE or WORK PRODUCT infringes or misappropriates the IP RIGHTS of any third party.

## **12. FINANCIAL AND PERFORMANCE AUDIT**

(a) COMPANY will have the right to audit: (i) invoiced charges and proper invoicing; (ii) other BOOKS AND RECORDS; and (iii) the performance of any other of CONTRACTOR's obligations under the CONTRACT, where capable of being verified by audit.

(b) Based on the findings of the audit the parties will settle any amounts charged incorrectly within 45 days of any audit finding; and CONTRACTOR will provide or re-perform any SCOPE where the requirement to do so is identified by any audit within 45 days of any audit finding.

(c) CONTRACTOR will keep BOOKS AND RECORDS available for audit for the longer of the following periods: (i) five years following termination of the CONTRACT or any longer period as required by APPLICABLE LAWS; or (ii) two years after the period expires on any obligation of CONTRACTOR to perform or re-perform any SCOPE.

(d) If a longer period is specified in the CONTRACT for retention of relevant BOOKS AND RECORDS for compliance with ANTI-CORRUPTION LAWS, CONTRACTOR will comply with that requirement.

## **13. RELATIONSHIP OF THE PARTIES**

### **13.1 Independent CONTRACTOR**

CONTRACTOR is an independent contractor in all aspects of performance under the CONTRACT. CONTRACTOR is responsible for the method and manner of performance to achieve the results required by the CONTRACT.

### **13.2 No Business Relationship**

(a) Neither the CONTRACT nor its performance creates a partnership or joint venture. No party is appointed as agent of the other. The CONTRACT does not permit CONTRACTOR to make any commitment on behalf of COMPANY GROUP.

(b) CONTRACTOR and CONTRACTOR PERSONNEL are not to be considered employees of COMPANY GROUP and are not eligible to participate in any of COMPANY GROUP's employee benefit plans. CONTRACTOR will indemnify COMPANY GROUP for any LIABILITIES related to claims for private or governmental benefits by CONTRACTOR GROUP.

(c) CONTRACTOR will INDEMNIFY COMPANY GROUP for any LIABILITIES incurred as a result of any finding that: (i) any CONTRACTOR PERSONNEL is an employee of COMPANY GROUP; (ii) COMPANY GROUP should have or must make statutory deductions from payments to CONTRACTOR or for CONTRACTOR PERSONNEL under APPLICABLE LAWS (including concerning employment insurance, pension plans, health insurance, or income tax); or (iii) COMPANY should have or must include CONTRACTOR or CONTRACTOR PERSONNEL in COMPANY's workers' compensation assessment.

## **14. CONTRACTOR PERSONNEL AND SUBCONTRACTING**

### **14.1 Responsibility**

CONTRACTOR is responsible for any SCOPE performed by and all activities, omissions, and defaults of any SUBCONTRACTOR and all CONTRACTOR PERSONNEL as if they were the activities, omissions, or defaults of CONTRACTOR.

### **Condition to SUBCONTRACT**

CONTRACTOR may not subcontract any part of its obligations under the CONTRACT except as agreed in writing by COMPANY.

## **Formation and Content of SUBCONTRACTS; Further Requirements**

CONTRACTOR will ensure that SUBCONTRACTS are in all material respects consistent with the terms and conditions of the CONTRACT.

### **15. ASSIGNMENT**

An assignment or novation by a party of all or part of the CONTRACT requires the written consent of the other party, except that COMPANY may assign and novate all or part of the CONTRACT to an AFFILIATE without the consent of CONTRACTOR by giving written notice to CONTRACTOR.

### **16. FORCE MAJEURE**

(a) COMPANY and CONTRACTOR are each excused from performance of the affected part of an obligation of the CONTRACT while performance is prevented by a FORCE MAJEURE EVENT unless the event was contributed to by the fault of the party or was due to circumstances that could have been avoided or mitigated by the exercise of reasonable diligence.

(b) Only the following are FORCE MAJEURE EVENTS: (i) riots, wars, blockades, or threats or acts of sabotage or terrorism; (ii) earthquakes, floods, fires, named hurricanes or cyclones, tidal waves, or tornadoes; (iii) radioactive contamination, epidemics, maritime or aviation disasters; (iv) strikes or labour disputes at a national or regional level or involving labour not forming part of CONTRACTOR GROUP or COMPANY GROUP, which materially impair the ability of the party claiming force majeure to perform the CONTRACT; (v) government sanctions, embargoes, mandates, or laws, that prevent performance; (vi) except as expressly provided otherwise in the CONTRACT, inability of a party to timely obtain licences, permits, or AUTHORITIES' consents required for performance; or (vii) non-performance of a party's SUBCONTRACTOR where the SUBCONTRACTOR has been or is affected by one of the above FORCE MAJEURE EVENTS. However, performance will only be excused under this sub-paragraph if the parties to the CONTRACT agree that substitute performance by another SUBCONTRACTOR is impracticable under the circumstances.

(c) A party whose performance is delayed or prevented will use reasonable endeavours to notify the other party and mitigate the effects of any FORCE MAJEURE.

(d) COMPANY may terminate the CONTRACT or part of SCOPE if any FORCE MAJEURE EVENT results in a delay that exceeds 90 consecutive or 180 cumulative days.

### **17. NOTICES**

All notices or other communications under the CONTRACT must be in English and in writing, and: (i) delivered by hand; (ii) sent by prepaid courier; (iii) sent by registered post; or (iv) sent by email with confirmation receipt requested. Notices and communications are effective when actually delivered at the address specified in the CONTRACT.

## **18. GOVERNING LAW, DISPUTE RESOLUTION AND REMEDIES**

### **18.1. Governing Law**

This CONTRACT, and any dispute or claim arising out of or in connection with this CONTRACT 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 the Province of Alberta, Canada, excluding conflict of law rules and choice of law principles that provide otherwise. The United Nations Convention on the International Sale of Goods will not apply to this CONTRACT.

### **18.2. Dispute Resolution**

(a) Any dispute or claim arising out of or in connection with the CONTRACT or its subject matter or formation, whether in tort, contract, under statute, or otherwise, including any question regarding its existence, validity, interpretation, breach, or

termination, and including any non-contractual claim, will be finally and exclusively resolved by arbitration by the ADR Institute of Canada under its then current commercial arbitration rules.

(b) The arbitral tribunal, to be appointed in accordance with the arbitration rules, will consist of one arbitrator. However, if either party asserts the amount in controversy exceeds USD \$5 million, then the tribunal will consist of three arbitrators.

(c) The seat of the arbitration will be Calgary, Alberta, Canada.

(d) The language of the arbitration will be English.

(e) Nothing in this Article will be construed as preventing any party from seeking conservatory or similar interim relief from any court with competent jurisdiction. Any award rendered by the arbitral tribunal will be made in writing and will be final and binding on the parties. The parties will carry out the award without delay. Judgment upon any award or order may be entered in any court having jurisdiction. All aspects of the arbitration will be considered confidential.

### **18.3. Specific Performance**

COMPANY is entitled to specific performance of the CONTRACT.

## **19. ADDITIONAL LEGAL PROVISIONS**

(a) The parties retain their rights and remedies under APPLICABLE LAWS, subject to any provisions in the CONTRACT that provide otherwise.

(b) A provision of the CONTRACT is not waived unless made in writing by an authorised representative of the waiving party.

(c) Provisions that state that they survive or by their nature are intended to survive completion of performance or termination of the CONTRACT do so, along with all remedies attached to them.

(d) Amendments to the CONTRACT must be made in writing and signed by the parties' authorised representatives in order to be binding.

(e) CONTRACTOR GROUP or COMPANY GROUP not a party to the CONTRACT, but conferred rights in it are entitled to enforce those rights, but are not required to consent to amend or terminate those rights.

(f) The CONTRACT, and all ancillary notices, correspondence, and other documents, will be in English. Where translations have been provided, the English version will prevail in case of any conflicts or inconsistencies between translations. Les parties déclarent qu'il est leur volonté expresse que ce Contrat d'achat soit rédigé en anglais et que tous documents s'y rattachant ou ayant trait ou suite au présent Contrat d'achat soient rédigés en anglais.

(g) The CONTRACT sets forth the entire agreement between the parties concerning its subject matter and supersedes any other agreements or statements pertaining to the same subject matter, except those agreements or statements expressly referenced in the CONTRACT as included. Any confidentiality agreement pertaining to the subject matter will remain in effect according to its terms, unless the CONTRACT provides that it is terminated or replaced.