



Liability Provision
Guidelines for Offshore
Petroleum Operations

Guidelines

Issue 2
2020

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1 Introduction

These Guidelines are intended to assist licensees in fulfilling their obligations under the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015, in making adequate financial provision to cover liabilities potentially deriving from their offshore petroleum operations.

To estimate the liability provision required to be maintained and demonstrated by licensees it is necessary to estimate the potential consequences which might result from an offshore pollution incident and a well blow-out in particular. These Guidelines propose methods to assess the two elements of this cost:

- the cost of bringing a well under control following a blowout; and
- the cost of clean-up and legal liability to pay compensation to third parties for pollution damage.

These Guidelines supersede the “Oil & Gas UK Guidelines to assist licensees in demonstrating Financial Responsibility to DECC for the consent of Exploration & Appraisal Wells in the UKCS, November 2012” and the “Oil & Gas UK Financial Responsibility Technical Note – ENV005, December 2015”, which are now withdrawn.

1.1 Legislative Background

Offshore Safety Directive (2013/30/EU) and Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015.

In June 2013, the European Union passed Directive 2013/30/EU on safety of offshore oil and gas operations, to establish minimum requirements for preventing major accidents in offshore oil and gas operations and limiting the consequences of such accidents. Article 4(3) of the Directive states:

“Member States shall ensure that the licensing authority does not grant a licence unless it is satisfied with evidence from the applicant that the applicant has made or will make adequate provision, on the basis of arrangements to be decided by Member States, to cover liabilities potentially deriving from the applicant’s offshore oil and gas operations. Such provision shall be valid and effective from the start of offshore oil and gas operations. Member State shall require applicants to provide, in an appropriate manner, evidence of technical and financial capacity and any other relevant information relating to the area covered by the licence and the particular stage of offshore oil and gas operations.

Member States shall assess the adequacy of provisions referred to in the first subparagraph in order to establish whether the applicant has sufficient financial resources for the immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation.

Member States shall facilitate the deployment of sustainable financial instruments and other arrangements to assist applicants for licences in demonstrating their financial capacity pursuant to the first subparagraph.

Member States shall, as a minimum, establish procedures for ensuring prompt and adequate handling of compensation claims including in respect of compensation payments for trans- boundary incidents.

The Member States shall require the licensee to maintain sufficient capacity to meet their financial obligations resulting from liabilities for offshore oil and gas operations.”

In the UK, the requirements of the Directive have been transposed through the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (the “Licensing Regulations”).

Regulation 3 of the Licensing Regulations places a statutory duty on the Licensing Authority not to grant an offshore licence or consent to the transfer of a licence unless it takes into account the capability, including technical and financial capability, of the prospective offshore licensee to meet the requirements for operations within the framework of the licence, and is satisfied that the prospective licensee has made, or will make, adequate provision to cover liabilities potentially deriving from the prospective licensee’s offshore petroleum operations.

In addition, regulation 9(a) of the Licensing Regulations places a statutory duty on licensees to make adequate provision to cover liabilities which potentially derive from their offshore petroleum operations and to maintain sufficient capacity to meet all the financial obligations which may result from any liability for offshore petroleum operations carried out by operators appointed by or in respect of it. De-facto the Licensing Regulations build on the previous DECC requirement for demonstration of Financial Responsibility (FR) for Exploration and Appraisal (E&A) wells by extending the requirements to cover details of liability arrangements for all offshore petroleum operations.

Regulation 11 of the Licensing Regulations contains provision for the Licensing Authority (LA) or the Competent Authority (CA) to issue a legally enforceable Information Notice to request information from a licensee, including information relating to liability arrangements, at any time during the life of the licence.

On 2 June 2015 DECC (now BEIS) issued draft guidance which, in Appendix C (Section 1.4), outlined the requirements for demonstrating financial capability.

On 10 August 2015 DECC issued a letter confirming that they:

- a) are extending the existing FR requirements for E&A wells to the drilling of remote subsea development wells and platform development wells that are drilled prior to the establishment of the installation and/or connected infrastructure; and
- b) will in addition, request details of the liability arrangements for all production and/or decommissioning operations, and this information will be requested following submission of relevant Safety Cases as part of the implementation programme for the Offshore Safety Directive (OSD).

Note that the BEIS Offshore Petroleum Regulator Environment and Decommissioning (OPRED) will review financial capability and liability arrangements on behalf of the CA and may determine to share the information with the LA. It should also be noted that failure to provide the information requested in an Information Notice is an offence under regulation 14(1)(b) of the Licensing Regulations.

1.2 Well control, clean-up and third party legal liability

In the UK, there is no financial cap on the liability of oil and gas companies for the consequences of an incident for which they are legally liable. Nevertheless, without prejudice to any legal liability under the

general law, the industry also operates, through the Offshore Pollution Liability Association Ltd (OPOL), a voluntary industry mutual agreement which requires each operator to accept strict liability for pollution damage and reimbursement of third parties (including public authorities) for clean-up and compensation costs under the terms of the OPOL agreement up to a pre-determined limit of US \$250 million per occurrence.

There are, however, offshore operations where the cost of clean-up and compensation arising from an incident may exceed the OPOL limit. In addition, there may be costs related to well control that are not covered by OPOL. The following sections in these Guidelines have been prepared to assist licensees in determining the level of liability provision they need to maintain, the financial instruments generally acceptable to maintain that provision and to clarify the information that BEIS OPRED requires to be submitted by licensees when served with an information notice under regulation 11 of the Licensing Regulations. The Guidelines do not relate to liability provision under the Environmental Liability Directive and only covers liability arrangements with respect to well control, clean-up costs and legal liability to third parties as a result of a release of hydrocarbons.

2 Obligation to Maintain and Evidence Liability Arrangements

The liability provision to be declared or demonstrated comprises two elements:

- Cost of well control (see Section 4)
- Cost of clean-up and third party legal liability (see Section 5)

When requested to do so by BEIS OPRED, licensees must make a ‘declaration’ or ‘demonstration’ that they understand their legal obligations and that they have and will maintain appropriate liability provision.

Upon receipt of an Information Notice under regulation 11 of the Licensing Regulations, licensees should make a **declaration** of liability arrangements for relevant:

- Platform Production / Development Wells;
- Remote Production / Development Wells; Offshore Installations, including FSUs, FSOs and FPSOs;
- Decommissioning Operations.

or a **demonstration** of liability arrangements for relevant:

- Exploration Wells;
- Appraisal Wells;
- Remote Subsea Development Wells;
- Pre-drilled Platform Development Wells;
- Re-entry of Abandoned Phase 1 and Phase 2¹ Exploration or Appraisal Wells.

Each licensee is only required to maintain appropriate liability provision and, if requested, provide a declaration or demonstration of that provision for its equity percentage interest share of the total liability arrangement for the offshore petroleum operations being undertaken under the relevant licence or licences. Where provision is only provided in relation to the equity interest, it should be noted that BEIS OPRED will require submissions from all equity holders to meet the confirmed response deadline.

If BEIS OPRED requires more detailed information, a licensee may (at any time) be requested to provide evidence of the liability arrangements (e.g. how the level of provision required for offshore petroleum operations being undertaken under the relevant licence or licences was determined, the provision of insurance certificates, confirmation of credit rating etc.).

2.1 Methods acceptable to satisfy liability provision obligations

The methods considered acceptable to comply with the obligation to maintain and, if requested, provide evidence of liability provision are:

- Reliance on credit / financial strength rating of the relevant licensee

¹ See OGUK Well Abandonment Guidelines: <https://oilandgasuk.co.uk/publications/>

- Insurance;
- Parent company / affiliate undertaking;
- Any combination of the above (for instance it may be appropriate to use different methods to meet the two elements of the provision);
- Any other means acceptable to BEIS OPRED (for instance in particular cases a letter of credit may be acceptable).

If operators are unsure about the acceptability of a proposed method, prior discussion with BEIS OPRED is recommended.

1. Reliance on Credit / Financial Strength Rating

The primary financial measure used for assessing a company's capacity to meet any liability, such as its share of the costs associated with a well control incident (including cost of clean-up and third party legal liability) is a comparison of the liability against the financial strength of the company. The question is whether, if the liability should crystallise, the company could meet its share of those costs out of its own resources and thus effectively self-insure against the loss. Such financial strength can be demonstrated by possessing an adequate credit or financial strength rating awarded by an independent rating agency. BEIS OPRED has indicated that at present it will not consider as sufficient for these purposes any rating which is less than "BBB-" from Standard & Poor's; less than "B+/bbb" from A. M. Best; less than "Baa3" from Moody's; or less than "BBB-" from Fitch (i.e. "Investment Grade"). This does not affect arrangements between licensees which may set other standards.

2. Insurance

If a company does not satisfy the financial strength test set out above then another option may be to demonstrate liability provision by taking out insurance with third party insurer(s) (including a captive). The insurer(s) should be authorised by the Financial Services Authority, be exempt from authorisation in the UK or be subject to an equivalent level of regulation for the purposes of the Solvency II Directive. (Non-admitted insurance is acceptable provided it is not prohibited.). It should also have an adequate credit or financial strength rating. BEIS has indicated that at present it will not consider as sufficient for these purposes, any rating which is less than Investment Grade.

The policy or policies should cover well control, and/or clean-up and third-party liability, as applicable, on terms which are market standard for those types of coverage. The company may have separate policies for well control and for clean-up and third-party liability provided the relevant levels of liability provision are appropriately demonstrated. The policy may also cover other risks e.g. re-drill and/or may also apply to operations outside the UKCS. The policy may have a Combined Single Limit for all risks. Provided that the limit is equal to or greater than the level of liability provision suggested under these Guidelines (taking account of any ring-fenced OPOL coverage) there should be no requirement for the insurance coverage required under these Guidelines to be ring-fenced from other risks or for UKCS coverage to be ring-fenced from coverage for other areas of operation.

Where insurance is being used to demonstrate provision of both elements of liability provision covered by these Guidelines i.e. well control and clean-up and third-party liability, the combined limit of liability under the policy or policies should equal or exceed the aggregate figure for well control and clean-up and third-party liability estimated in accordance with these Guidelines.

The insurance should cover the entire duration of the relevant offshore petroleum operations. If the insurance is an annual policy which expires during the relevant offshore petroleum operations, then it should be renewed or replaced as appropriate.

Deductibles should not exceed US \$10 million for any interest.

3. Parent company / affiliate undertaking.

Liability provision may also be demonstrated by providing an undertaking given by the parent company or an affiliate of the operator / co-venturer which in either case has an adequate credit or financial strength rating. BEIS OPRED has indicated that at present it will not consider as sufficient for these purposes, any company rating which is less than Investment Grade.

The reason for recommending an undertaking rather than a guarantee is that the underlying obligations of the operator / co-venturer which are being supported are not owed directly to BEIS OPRED and it would be unlikely to be able to demonstrate loss that would enable it to claim on the guarantee, particularly in the case of clean-up and third-party liability. In addition, the parties who may suffer loss if an incident occurs are unknown and therefore cannot be party to a guarantee at the time that consent is sought. In order to render the undertaking effective, but to avoid the administration that would be required by a trust arrangement, we have recommended that there should be an undertaking by the parent or an affiliate to be liable for payments to third parties in respect of the identified categories of costs. The expectation is that those third parties, when they are identified, could potentially use third party rights to claim under the undertaking. However, the undertaking provides that this liability is conditional, arising only where the subsidiary / affiliate has failed to meet the relevant liability, and where a demand is made through BEIS OPRED. Liability is limited to a sum which equals the relevant co-venturer's share of the liability provision estimated in accordance with these Guidelines (or the total amount if the operator is providing an undertaking for the entire venture). The undertaking may also be for a limited period, for example corresponding to the anticipated duration of the drilling of a relevant well.

The original of the undertaking should be submitted to BEIS OPRED, unless it is drafted to cover more than one well in which case a certified copy should be provided so that further copies can be taken and provided for subsequent wells.

If there is a call on an undertaking, then it is unlikely to provide adequate financial assurance for any other ongoing or future drilling operations and therefore a new undertaking or other financial assurance should be given by the relevant co-venturer or operator before any other operations are consented and if ongoing operations are to continue.

Counsel's opinion may be required by BEIS OPRED in the case of undertakings from companies established outside the EU.

2.2 Changes affecting liability arrangements

Licensees are required to maintain sufficient liability provision, determined in line with the methodology outlined in these guidelines, to cover potential obligations resulting from liabilities from their oil and gas operations.

When a change in liability arrangements is required, BEIS OPRED is unlikely to object to any licence operator or licensee replacing one form of provision with another form, provided the latter meets the requirements of these Guidelines. Any other change in circumstances which the licence operator or licensee considers to have a material impact on the liability provision should be notified to BEIS OPRED in writing.

If any liability provision ceases to be valid during the application process, during the drilling of a well or during the year in relation to production facilities, e.g. an insurance policy expires or a fall in rating means that an insurer or provider of an undertaking no longer possesses the required rating, BEIS OPRED should be informed promptly in writing and replacement provision, which meets the requirements of these Guidelines, should be demonstrated as soon as practicable and in any event within 30 days. In the case of drilling operations, BEIS OPRED will normally require operations to be suspended pending confirmation of the new liability arrangements.

2.3 Timing of declaration / demonstration

There are several points within the life of a licence when BEIS OPRED, on behalf of the CA, may require information relating to liability arrangements:

- Application for a licence;
- Transfer into a licence, or any other significant change affecting licensees;
- Appointment of well operator if this affects liability arrangements;
- To support submission of environmental applications for an exploration or appraisal well;
- Re-entry of an abandoned Phase 1 or Phase 2 exploration or appraisal well;
- Transition from the exploration phase to the development phase;
- To support submission of environmental applications for a remote subsea development well or a pre-drilled platform development well;
- Appointment of installation operator if this affects liability arrangements;
- Transition from the production phase to the decommissioning phase;
- Transition of a Safety Case to meet the OSD requirements;
- Thorough review of a Safety Case; and
- Submission of a new Safety Case.

Notwithstanding the above, the Licensing Regulations contain provision for the LA or the CA (usually through BEIS OPRED) to request information from a licensee at any time during the life of the licence.

2.4 Safety Case submissions

Regulation 15 of the Licensing Regulations contains transitional provisions in respect of operators which will also be applied to the liability arrangements of the licensees.

The Licensing Regulations apply to an operator of a planned production installation and its connected infrastructure from the 19 July 2016 and to an existing installation² from the earlier of the date of thorough review of the relevant Safety Case or the 19 July 2018.

Where a production installation is not a planned production installation or an existing production installation as defined in the Regulations, but is an installation in respect of which a current Safety Case applied before 19 July 2016, the Regulations apply to an operator from the 19 July 2016.

The Licensing Regulations apply to well operations³ from the earlier of the date of thorough review of the Safety Case for the installation from which the well operations will be executed or the 19 July 2016.

Note that where a Safety Case covers more than one well or offshore installation (including associated infrastructure), the expectation is that liability provision will be maintained and declared or demonstrated based on the worst-case scenario (as detailed in the Oil Pollution Emergency Plan). It is not expected to be cumulative. However, those licensees that rely on insurance to satisfy their obligations need to maintain types and levels of insurance sufficient to cover well control and pollution from all wells and/or offshore installations. This means separate insurance certificates may be required to evidence insurance for the wells and/or installations. This doesn't increase the level of liability provision that needs to be maintained but recognizes that different insurance cover may be required to respond to different types of incidents.

2.5 Licence applications

At licence application, when there is no physical activity that could result in the release of hydrocarbons, confirmation that the prospective licensees have, or will make, adequate provision, including the licence operator's membership of OPOL where appropriate, will be sufficient.

2.6 Licence transfers

A company entering into a licence must maintain, declare and, if required, be able to demonstrate sufficient liability provision to cover its equity percentage interest in the licence.

Where the change of licensee also affects the overall liability arrangements e.g. by changing the distribution of the equity percentage interest, the licensees must be able, if requested to do so by BEIS OPRED, either via a single joint submission or via relevant individual submissions in proportion to their respective percentage interest, to declare sufficient provision to cover the entire equity. In all cases, BEIS OPRED will confirm their requirements in writing to the relevant licensees.

The required level of liability provision will depend upon the work scope of the licence, e.g. if it involves exploration or appraisal activity, or if it involves production or decommissioning activity.

² In the Regulations "existing installation" means an installation in respect of which a current safety case applied on 18th July 2013 and "planned production installation" means a production installation in respect of which a design notification had been sent to the Health and Safety Executive before 18th July 2013, but which had not commenced operations at that date

³ In the Regulations "well operations" means the drilling of a well, including recommencement of drilling after a well has been completed, suspended or abandoned by plugging at the seabed and any operation in relation to a well which may result in an accidental release of fluids from that well which could give rise to the risk of a major accident

3 Determination of Level of Liability Provision

3.1 Declarations

BEIS OPRED will request and assess liability provision for production and/or decommissioning operations. The first submissions will be requested at the time of transition of Safety Cases to implement the provisions of the Offshore Safety Directive (2013/30/EU), but new or amended declarations may be requested at the relevant trigger points detailed in Section 2.3. All declarations should be submitted using the forms in Appendix 1 or 2.

Relevant matters to be covered in the declaration are detailed below.

1. Gas and condensate production

The OPOL agreement is applicable where there has been a release⁴ of oil. The definition of oil in the agreement is – *“Oil means crude oil and condensate (being those products of natural gas processing which assume liquid form at normal temperature and pressure, whether or not such materials are mixed with or present in other substances)”*.

The OPOL agreement, therefore, does not apply to the release of dry gas or condensate that has no liquid content at the point of release, as the pollution risk is considered minimal. Similarly, the diesel inventory of a production installation or MODU does not fall under the scope of OPOL.

Where there is sufficient data to show that a well will only release dry gas or gaseous condensate it is only necessary to consider the cost of well control (See Section 4), and clean-up and third party legal liability are unlikely to be relevant.

A nominal liability provision of US \$20 million is therefore recommended to cover potential costs including monitoring of the environment.

In the case of a release of liquid condensate (with or without associated gas), or a sub-sea release of gaseous condensate, there could be additional clean-up and third party legal liability costs, and the OPOL agreement or an equivalent level of provision may be relevant. In most cases, BEIS OPRED would therefore expect OPOL membership, or an equivalent level of provision, for liquid condensate production operations but would expect operators producing dry condensate to seek alternative provision.

2. Platform production / development wells

The liability provision should cover drilling of new platform production/ development wells, bringing new wells online, routine well operations, well interventions, shut-in wells, abandoned Phase 1 and 2 wells and the final well abandonment operations. Separate declarations will not be requested for well intervention or abandonment operations where pressure containment will be breached, but it may be necessary to amend the liability provision if these operations will impact liability and they were not considered in the original declaration.

⁴ Please note in the OPOL agreement this is termed a ‘discharge’.

Where insufficient data is available to characterise the well fluids, or it is known that liquid hydrocarbons will be encountered, the total cost of well control, clean-up and third party legal liability should be calculated as described in Sections 4 and 5. If relevant data is available, a flow rate decline curve may be used to identify the worst-case release scenario. A plot of release rate of liquid hydrocarbons against time should be constructed and the average release rate per day calculated.

Where it is known that liquid hydrocarbons will be encountered but there is sufficient data to show that the well will not flow without assistance, it will be sufficient to declare that the licence operator is a member of OPOL or has an equivalent level of liability provision and calculation of the additional cost of well control, clean-up or third-party liability will not be necessary.

3. Remote production / development wells

The liability provision should cover bringing new wells online, routine well operations, well interventions, shut-in wells, abandoned Phase 1 and 2 wells and the final well abandonment operations. Separate additional declarations or demonstrations will not be requested for remote well intervention or abandonment operations where pressure containment will be breached, but it may be necessary to amend the liability provision if these operations will impact liability and they were not considered in the original declaration. Abandoned Phase 3 wells, i.e. those wells where the wellhead and conductor have been removed, where they will never be used or re-entered again and where they have been removed from the well examination scheme, do not require a demonstration of liability provision.

Where insufficient data is available to characterise the well fluids, or it is known that liquid hydrocarbons will be encountered, the total cost of well control, clean-up and third party legal liability should be calculated as described in Sections 4 and 5. If relevant data is available, a flow rate decline curve may be used to identify the worst-case release scenario. A plot of release rate of liquid hydrocarbons against time should be constructed and the average release rate per day calculated.

Where it is known that liquid hydrocarbons will be encountered but there is sufficient data to show that the well will not flow without assistance, it will be sufficient to declare that the licence operator is a member of OPOL or has an equivalent level of liability provision and calculation of the additional cost of clean-up or third-party liability will not be necessary.

Depending on the circumstances it might be appropriate to calculate the cost of well control (Section 4) and licensees should provide information to confirm a suitable level of liability provision.

4. Offshore installations, including FSUs, FSOs and FPSOs

The following applies where there is a risk of a release of liquid hydrocarbons:

Fixed Offshore Installations

The licence operator's membership of OPOL, or evidence of an equivalent level of liability provision, is considered sufficient to satisfy the licensees' joint obligations. This would apply for both surface and subsea installations.

Floating Production Storage and Offloading Vessels (FPSO, FSO, FSU)

A liability provision for salvage, clean-up and third party legal liability of US \$250 million, in addition to OPOL membership (or an equivalent level of liability provision), is recommended.

Pipelines

Pipelines within an installation's safety zone are considered to be part of the installation and covered by membership of OPOL or evidence of an equivalent level of liability provision. This would apply for both surface and subsea installations.

Pipelines outside the 500m safety zone are not subject to the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015. However, operators of pipelines are expected to confirm appropriate liability provision in their OPEPs, and operators of pipelines transporting liquid hydrocarbons will normally be expected to have OPOL membership, or to provide evidence of an equivalent level of liability provision.

5. Decommissioning operations

The risk profile and worst-case scenario will change as the decommissioning plan is implemented, and this will be reflected in the Dismantling Safety Case⁵.

Where preparatory works are taking place whilst the installation is still producing, the existing declaration of liability provision remains valid. However, the licensee may wish to amend the liability provision to cover the permanent abandonment of the development well inventory, or if there is any change in the worst-case assessment. BEIS OPRED should be notified in the event of any change, but there will be no requirement to submit a revised declaration.

Post Cessation of Production (CoP), BEIS OPRED may request and assess a new declaration of liability provision during the transition to the Dismantling Safety Case.

3.2 Demonstrations

BEIS OPRED will request and assess liability provision for all non-platform drilling operations, all exploration and appraisal wells drilled from a platform, and for any re-entry of abandoned Phase 1 or Phase 2 exploration or appraisal wells where pressure containment will be breached. All demonstrations should be submitted using the appropriate forms provided in Appendix 3.

Relevant matters to be covered in the demonstration are detailed below.

1. Drilling of exploration and appraisal wells

Where there is sufficient data to show that the well will only produce dry gas or gaseous condensate, it is only necessary to consider the cost of well control (see Section 4) and clean-up and third party legal liability are unlikely to be relevant.

A nominal liability provision of US\$20 million is therefore recommended to cover potential costs including monitoring of the environment.

Where it is known that liquid hydrocarbons will be encountered but there is sufficient data to show that the well will not flow without assistance, it will be sufficient to declare that the licence operator is a member of OPOL or has an equivalent level of liability provision and calculation of the additional cost of clean-up or third-party liability will not be necessary. Depending on the circumstances it might be

⁵ See HSE Guidance on The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015

appropriate to calculate the cost of well control (Section 4) and licensees should provide information to confirm a suitable level of liability provision.

Where insufficient data is available to characterise the well fluids, or it is known that liquid hydrocarbons will be encountered, the total cost of well control, clean-up and third party legal liability should be calculated as described in Sections 4 and 5. If relevant data is available, a flow rate decline curve may be used to identify the worst-case release scenario. A plot of release rate of liquid hydrocarbons against time should be constructed and the average release rate per day calculated.

2. Drilling of remote subsea development and pre-drilled platform development wells

Where there is sufficient data to show that the well will only produce dry gas or gaseous condensate, it is only necessary to consider the cost of well control (see Section 4) and clean-up and third party legal liability are unlikely to be relevant.

A nominal liability provision of US\$20 million is therefore recommended to cover potential costs including monitoring of the environment.

Where it is known that liquid hydrocarbons will be encountered but there is sufficient data to show that the well will not flow without assistance, it will be sufficient to declare that the licence operator is a member of OPOL or has an equivalent level of liability provision and calculation of the additional cost of clean-up or third-party liability will not be necessary. Depending on the circumstances it might be appropriate to calculate the cost of well control (Section 4) and licensees should provide information to confirm a suitable level of liability provision.

Where insufficient data is available to characterise the well fluids, or it is known that liquid hydrocarbons will be encountered, the total cost of well control, clean-up and third party legal liability should be calculated as described in Sections 4 and 5. If relevant data is available, a flow rate decline curve may be used to identify the worst-case release scenario. A plot of release rate of liquid hydrocarbons against time should be constructed and the average release rate per day calculated.

3. Re-entry of abandoned Phase 1 or Phase 2 exploration and appraisal wells

Liability would remain with the licensees for the duration of any abandoned Phase 1 or Phase 2 exploration or appraisal well, but BEIS OPRED will not seek evidence of maintenance of the liability arrangements. However, a demonstration will be requested for any intervention where pressure containment will be breached.

Where there is sufficient data to show that the well will only produce dry gas or gaseous condensate, it is only necessary to consider the cost of well control (See Section 4) and clean-up and third party legal liability are unlikely to be relevant.

A nominal liability provision of US\$20 million is therefore recommended to cover potential costs including monitoring of the environment.

Where it is known that liquid hydrocarbons will be encountered but there is sufficient data to show that the well will not flow without assistance, it will be sufficient to declare that the licence operator is a member of OPOL or has an equivalent level of liability provision and calculation of the additional cost of clean-up or third-party liability will not be necessary. Depending on the circumstances it might be

appropriate to calculate the cost of well control (Section 4) and licensees should provide information to confirm a suitable level of liability provision.

Where insufficient data is available to characterise the well fluids, or it is known that liquid hydrocarbons will be encountered, the total cost of well control, clean-up and third party legal liability should be calculated as described in Sections 4 and 5. If relevant data is available, a flow rate decline curve may be used to identify the worst-case release scenario. A plot of release rate of liquid hydrocarbons against time should be constructed and the average release rate per day calculated.

4 Calculating Cost of Well Control

The costs of well control consist primarily of deploying a capping device, where appropriate, and the drilling of a relief well. The costs estimated below include some provision for clearance of the site, the application of dispersants (where relevant) to provide safer surface conditions and aid subsea visibility, regaining access to the well and also for the plugging and abandoning of the original well and the relief well.

4.1 Cost of drilling of a relief well

The OGUK Guidelines on relief well planning – subsea wells, Issue 2, March 2013 define ‘Complex’ and ‘Basic’ relief wells and provide a means of undertaking a complexity assessment of the relief well required.

Complex relief wells will require more extensive plans and will result in the preparation of a Relief Well Estimate. The Relief Well Estimate should be used to determine the level of liability provision for a complex relief well.

Basic relief wells will have less extensive plans and may not have a calculated Relief Well Estimate. For the purposes of determining the level of liability provision for a well requiring a basic relief well it is appropriate to multiply the original well Authorisation For Expenditure (AFE) by a factor of two to reflect the likely increased cost of drilling a relief well. If an AFE is not available an estimate of US \$45 million (90 days x US \$0.5 million) may be used. If MODU spread rates demonstrably differ from US \$0.5 million per day, an alternative figure may be used.

4.2 Cost of deployment of a capping device

It is assumed that, for appropriate wells, each licensee has in place arrangements which provide access to a capping device in the event of a well control incident, and as a result it is unlikely that there will be any significant cost in obtaining access to, or the right to use, a capping device at the time of an incident and the only costs likely to be involved are those associated with its deployment.

The costs associated with the deployment of a cap are the cost of hiring vessels to prepare the site and then deploy the cap (this may involve ROV / BOP intervention, the use of subsea dispersants (where relevant) to create a safe environment for the deployment, the cutting and clearance of debris e.g. risers, and then the cap installation itself) and the consultant expertise to manage this operation.

The proposed formula for calculating the cost of well control therefore includes a fixed component of US \$40 million for the cost of mobilisation, preparation and installation of a capping device, where such deployment is appropriate, or zero where a capping device is not appropriate.

Formula

The suggested methodology for estimating the cost of well control is:

for a Basic Well $C = [(2 \times AFE) + Z]$ or

for a Complex Well $C = [R + Z]$

Where:

C = the total estimated cost to cap a well and drill a relief well in US \$

AFE = the US \$ value of the approved drilling AFE for the original well (converted at the exchange rates used for the purposes of the AFE, if the AFE was prepared in pounds sterling)

R = the Relief Well Estimate in US \$

Z = US \$40 million estimated cost of deployment of a capping device (or zero where a capping device is not appropriate).

5 Calculating Cost of Clean-Up and Third Party Legal Liability

The cost estimation methods provided in the “Oil & Gas UK Guidelines to assist licensees in demonstrating Financial Responsibility to DECC for the consent of Exploration & Appraisal Wells in the UKCS, November 2012” and the “Oil & Gas UK Financial Responsibility Technical Note – ENV005, December 2015” are replaced in these Guidelines by a simpler and justifiable method described below.

The method is fully described in an OGUK commissioned report “Financial Responsibility for Oil Spill Clean -Up” BMT Cordah, March 2017.

The report provides data from new spill modelling, using the SINTEF model OSCAR version 6.6.1, with releases from 6 locations in four geographical basins – West of Shetland; Northern North Sea; Central North Sea and Moray Firth. The modelling locations are shown in Figure 1. The resulting costs of shoreline clean-up and waste disposal and third party legal liability to Fisheries, Aquaculture and Tourism are calculated.

In 2020, OGUK commissioned a second report, “Financial Responsibility for Oil Spill Clean-Up in the Irish Sea and Liverpool Bay” BMT Cordah, April 2020 to cover areas not included in the original 2017 report.

Licensees may wish to use their own OPEP spill modelling, together with the costs provided in the BMT Cordah report referenced above, however, it is recommended that the values provided in Table 1 are used. This provides a summary of the total cost of clean-up and third party legal liability for the geographical basins modelled, from which an appropriate value can be selected which best represents the worst case being considered.

In the event that the worst case exceeds the catastrophic exploration event scenario considered in the BMT Cordah report, it is acceptable to use the liability provision for a release of 100,000 barrels of oil per day.

For oil and gas operations undertaken in areas outside the geographical basins that were modelled, for example the English Channel, licensees may wish to undertake location specific modelling and apply relevant cost estimates included in the BMT Cordah report, or use one of the modelled basins as a surrogate. However, it is recommended that a conservative approach is taken if there is considered to be a risk of significant oil pollution and the highest cost assumed.

The following should be noted for Table 1:

The flow rates are in barrels of oil per day, not total well fluids. Any water cut should be disregarded. If confirmed flow rates or water cut data are not available, the flow rates should be based on best estimates.

If data is available, a flow rate decline curve may be used to identify the worst-case scenario. A plot of release rate of liquid hydrocarbons against time should be constructed and the average release rate per day calculated and used to determine liability.

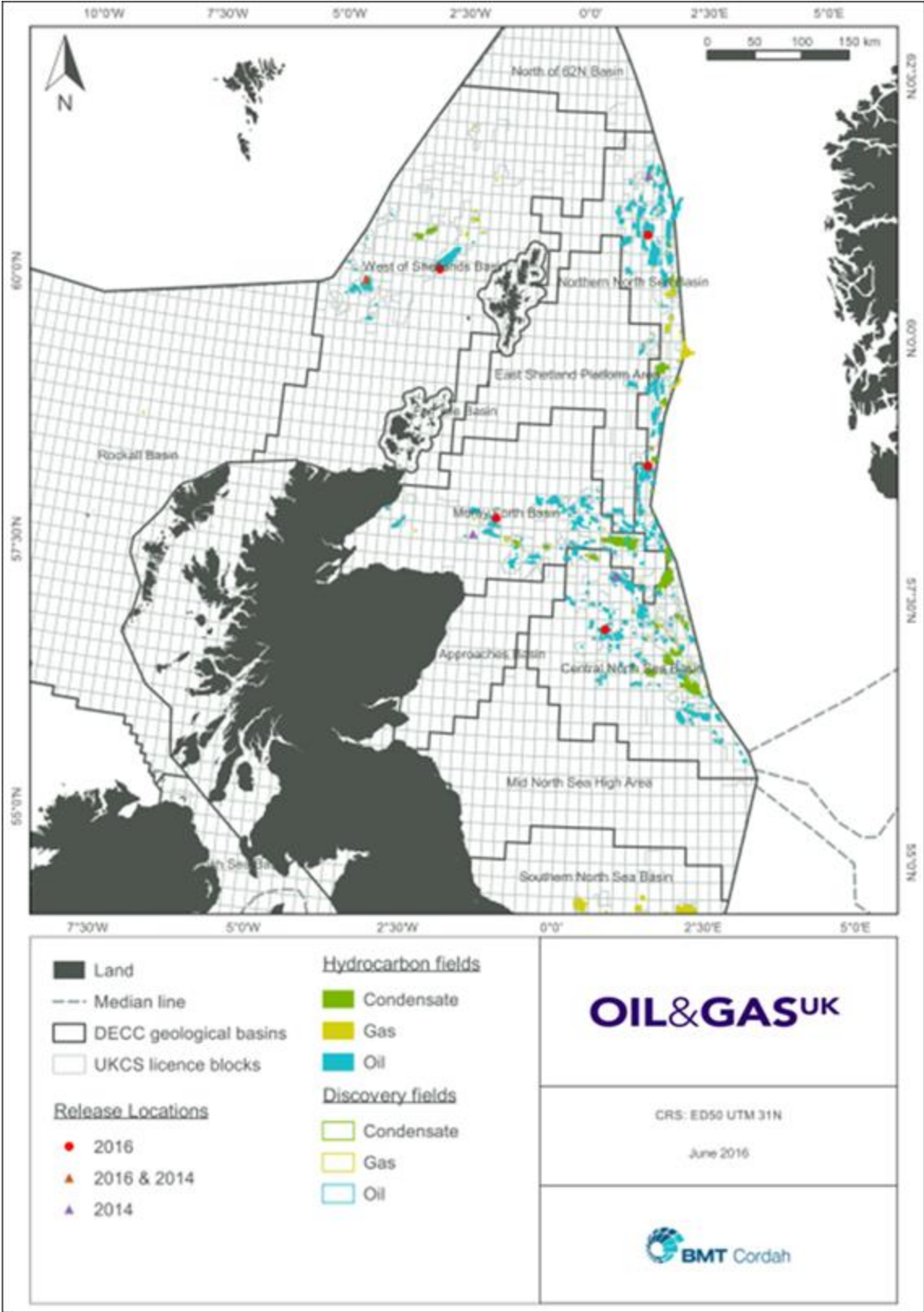
The values are based on 90-day release scenarios. However, where a well is amenable to capping and the licensee considers that the cap can be effectively deployed and well control effected in less than 90 days, it may be possible to make a case to BEIS OPRED to calculate clean-up and third party legal liability costs based on modelling scenarios for less than 90 days. This would require the licensee to confirm in

the declaration or demonstration that the method recommended in the Guidelines has not been followed, and to provide details of the method used.

The costs calculated in the BMT Cordah report are in GBP. The costs presented in Table 1 are in USD using a rate of 1 GBP = 1.21545 USD. Should this rate change significantly, licensees may wish to review their liability provision. The rate used will be formally reviewed at the next revision of the Guidelines.

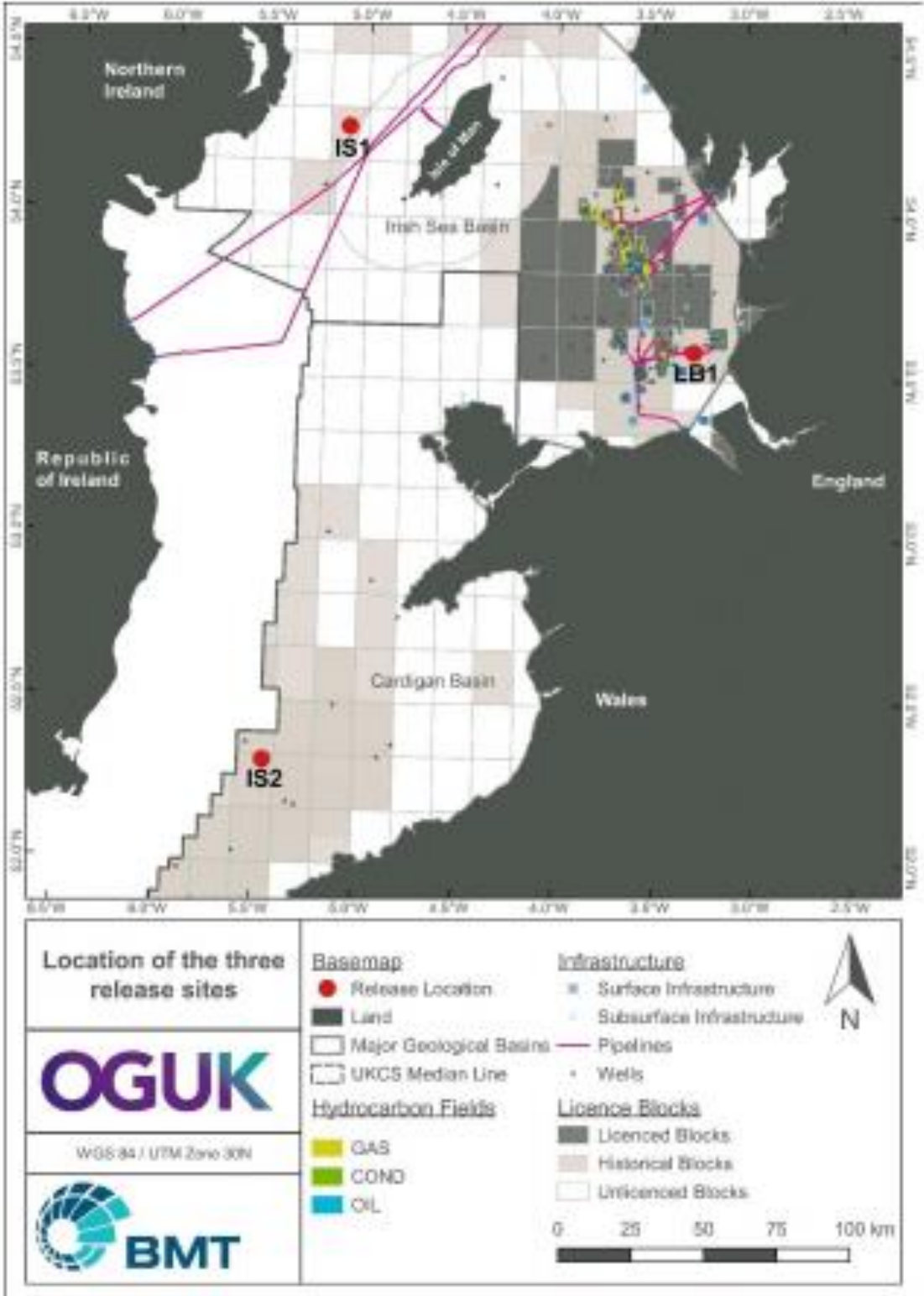
Costs for any operation with a flow rate potential greater than those shown in the table should be derived from the graphs provided in the BMT Cordah report or from independent modelling.

Figure 1: Modelling release locations



Source: OGUK/BMT Cordah 2017

Figure 2: Additional modelling release locations



Source: OGUK/BMT Cordah 2020

Table 1: Bands to determine potential cost of clean-up and third party legal liability

West of Shetland	
Release Rate Range (bopd)	Liability Provision (US \$)
0 – 1,000	OPOL
1,000 – 5,000	OPOL
5,000 – 10,000	OPOL + 50,000,000
10,000 – 20,000	OPOL + 150,000,000
20,000 – 30,000	OPOL + 250,000,000
30,000 – 40,000	OPOL + 350,000,000
40,000 – 60,000	OPOL + 550,000,000
60,000 – 80,000	OPOL + 750,000,000
80,000 – 100,000	OPOL + 950,000,000
Northern North Sea	
Release Rate Range (bopd)	Liability Provision (US \$)
0 – 1,000	OPOL
1,000 – 5,000	OPOL
5,000 – 10,000	OPOL + 5,000,000
10,000 – 20,000	OPOL + 50,000,000
20,000 – 30,000	OPOL + 150,000,000
30,000 – 40,000	OPOL + 200,000,000
40,000 – 60,000	OPOL + 300,000,000
60,000 – 80,000	OPOL + 400,000,000
80,000 – 100,000	OPOL + 500,000,000
Central North Sea	
Release Rate Range (bopd)	Liability Provision (US \$)
0 – 1,000	OPOL
1,000 – 5,000	OPOL
5,000 – 10,000	OPOL + 25,000,000
10,000 – 20,000	OPOL + 100,000,000
20,000 – 30,000	OPOL + 200,000,000
30,000 – 40,000	OPOL + 250,000,000
40,000 – 60,000	OPOL + 400,000,000
60,000 – 80,000	OPOL + 600,000,000
80,000 – 100,000	OPOL + 700,000,000
Moray Firth	
Release Rate Range (bopd)	Liability Provision (US \$)
0 – 1000	OPOL
1,000 – 5,000	OPOL
5,000 – 10,000	OPOL + 20,000,000
10,000 – 20,000	OPOL + 100,000,000
20,000 – 30,000	OPOL + 150,000,000
30,000 – 40,000	OPOL + 250,000,000
40,000 – 60,000	OPOL + 400,000,000
60,000 – 80,000	OPOL + 500,000,000
80,000 – 100,000	OPOL + 650,000,000

Liverpool Bay	
Release Rate Range (bopd)	Liability Provision (US \$)
0-1000	OPOL + 210,000,000
1,000 – 5,000	OPOL + 240,000,000
5,000 – 10,000	OPOL + 280,000,000
10,000 – 20,000	OPOL + 360,000,000
20,000 – 30,000	OPOL + 440,000,000
30,000 – 40,000	OPOL + 515,000,000
40,000 – 60,000	OPOL + 670,000,000
60,000 – 80,000	OPOL + 825,000,000
80,000 – 100,000	OPOL + 980,000,000
Irish Sea North	
Release Rate Range (bopd)	Liability Provision (US \$)
0 – 1000	OPOL + 340,000,000
1,000 – 5,000	OPOL + 380,000,000
5,000 – 10,000	OPOL + 430,000,000
10,000 – 20,000	OPOL + 525,000,000
20,000 – 30,000	OPOL + 620,000,000
30,000 – 40,000	OPOL + 715,000,000
40,000 – 60,000	OPOL + 900,000,000
60,000 – 80,000	OPOL + 1100,000,000
80,000 – 100,000	OPOL + 1290,000,000
Irish Sea South	
Release Rate Range (bopd)	Liability Provision (US \$)
0 – 1000	OPOL + 220,000,000
1,000 – 5,000	OPOL + 265,000,000
5,000 – 10,000	OPOL + 320,000,000
10,000 – 20,000	OPOL + 425,000,000
20,000 – 30,000	OPOL + 530,000,000
30,000 – 40,000	OPOL + 640,000,000
40,000 – 60,000	OPOL + 855,000,000
60,000 – 80,000	OPOL + 1070,000,000
80,000 – 100,000	OPOL + 1300,000,000

6 Process for Declaring or Demonstrating Compliance

Upon receipt of an Information Notice under regulation 11 of the Licensing Regulations, licensees should make a declaration or demonstration depending on the nature of the operations.

6.1 Declaration

A **declaration** is required for:

- Platform Production / Development Wells;
- Remote Production / Development Wells;
- Offshore Installations, including FSUs, FSOs and FPSOs;
- Decommissioning Operations.

Upon receipt of an information notice from BEIS OPRED each licensee is required to submit an Individual Declaration Form (Appendix 1). Alternatively, the licence operator can submit a declaration on behalf of all licensees using the Joint Declaration Form (Appendix 2).

If BEIS OPRED requires further details of liability provision calculations and/or arrangements relating to the well inventory, use of the relevant Demonstration (Certification Process) forms (Appendix 3) is recommended.

Where a Safety Case covers a number of different fields, for example the Safety Case for a hub installation serving a number of tied-back fields served by NUIs or subsea installations, BEIS will separately submit information notices to the licensees of each field covered by the Safety Case. However, where there is more than one field with the same licence / field operator, the relevant licensees can choose to submit a single joint declaration to cover those fields. Where the licensee groups for the relevant fields are the same this will simplify the coordination process, but a single joint declaration can also be made for fields with different licensee groups. In both cases it will be necessary to separately identify the licences, licensees and equity shares for each field, but the licence operator will be signing the declaration on behalf of all the named licensees.

6.2 Demonstration (Certification Process):

A **demonstration** is required for the following well operations:

- Exploration Wells;
- Appraisal Wells;
- Remote Subsea Development Wells;
- Pre-drilled Platform Development Wells;
- Re-entry of Abandoned Phase 1 and Phase 2 Exploration or Appraisal Wells.

Upon receipt of an Information Notice from BEIS OPRED the licence operator must submit:

- a) Certificate of Assessment of Liability Provision. This sets out the calculation of the level of liability provision to be provided, and should use the form set out in Appendix 3 Part A. If the

assessment is that membership of OPOL is sufficient to cover estimated clean-up and third party legal liability, then confirmation of OPOL membership (or an equivalent level of liability provision) is sufficient to cover this element. Evidence of liability provision will, however, still need to be provided for the well control element; and

- b) Certificate of Liability Provision:
 - I. If the licence operator is demonstrating liability provision for the entire joint venture it should use the form set out in Appendix 3 Part B; or
 - II. If each licensee is demonstrating liability provision for its participating interest share of the relevant liability then each licensee should use the form set out in Appendix 3 Part C; and
- c) Verification of Insurance: Where the licence operator or the licensee has certified that liability provision will be provided through insurance this should be evidenced by a certificate signed by the insurer or broker substantially in the form set out in Appendix 3 Part D; or
- d) Form of Parent Company / Affiliate Undertaking: Where the licence operator or licensee has certified that liability provision will be provided through a Parent Company / Affiliate Undertaking this should be evidenced by a certificate signed by Parent Company / Affiliate substantially in the form set out in Appendix 3 Part E

The relevant documents should be signed by an officer of the board of the relevant company.

Under these Guidelines, the licence operator is not responsible for verifying the accuracy of the evidence supplied by its co-venturers or reviewing the underlying documents (although it may wish to do so for its own purposes).

Note: The certification process is primarily for the purposes of providing a demonstration of liability provision. It can, however, be used if BEIS OPRED require additional information following the submission of a declaration of compliance.

7 Declaration of Claims Handling Procedure

The Offshore Safety Directive requires Member States to have procedures which ensure prompt and adequate handling of compensation claims including in respect of compensation payments for transboundary incidents.

Insurance philosophies and insurance programmes established to cover liability obligations will vary between licensees depending on, for example, the assessed risk, the size of the company and any risk retentions.

This variation will, in turn, influence the claims handling arrangements that licensees will have with their insurers and whether one or several service providers will be required.

Regardless, these arrangements must be able to provide assurance that, if there is an incident, licensees can:

- Rapidly provide clarity on where and how to submit claims and who is responsible for ensuring prompt and adequate handling of compensation claims;
- Rapidly appoint service provider(s) that have the ability to receive and deal with a large number of claims in a timely manner, including providing advice on the type of information to be submitted, confirming where to file a claim, arranging access to a claims call centre or other single toll free number and a website for making a claim, and arranging prompt payment of valid claims;
- Liaise with the service provider(s) to ensure a co-ordinated approach to:
 - the application of a process for third parties to submit claims,
 - the prompt and adequate investigation and handling of all compensation claims arising,
 - arrangements for prompt payment of valid claims, and
 - the timely provision of funds from insurers to meet those claims and costs;
- Provide a process which would operate regardless of the nationality or residence of claimants.

Since the circumstances of any single incident will vary and may require a tailored response, it should not be necessary to have a contract in place, but licensees must have confirmation from the service provider, in agreement with the insurer, that they will provide a service subject to agreement of terms at the time.

The licensees must certify in the relevant Appendices that they have, either directly, through group-wide provision or through an agreement with the licence operator, arrangements in place which will in the event of an incident allow rapid appointment of a service provider or providers acceptable to their insurers for the prompt and adequate handling of all compensation claims and will maintain equivalent arrangements at all times while they have interests in the licence(s).

8 Transitional Arrangements for Irish Sea and Liverpool Bay

8.1 Declaration of Liability Arrangements

The new arrangements should apply for all new production or decommissioning operations. For all new operations licensees are encouraged to comply with the new arrangements unless they have already arranged liability provision in accordance with existing guidance and/or submitted a declaration to OPRED.

For all other existing production or decommissioning operations where the licensees have already arranged liability provision in accordance with existing guidance and/or notified the proposals to OPRED, licensees should review their provision in accordance with the new guidelines but are not required to submit a new declaration until they reach a relevant trigger point as detailed below:

- Transfer of a new company into the licence, or any other significant change affecting licensees;
- Appointment of new installation operator if this affects liability arrangements;
- Transition from the production phase to the decommissioning phase;
- Thorough review of a Safety Case; or
- Submission of a new Safety Case.

8.2 Demonstration of Liability Arrangements

For all relevant well operations where liability provision has already been arranged in accordance with existing guidance and/or a demonstration has already been submitted to OPRED, licensees should review their provision in accordance with the new guidelines but are not required to submit a new demonstration.

9 Appendices

1. Individual Liability Provision Declaration Form

Liability Provision Declaration	
Licensee Name⁽¹⁾	
Licensee Business Address	
Licence(s) considered in this declaration	
Licence Number(s)	Block Number(s)
Safety Case Name(s) (where relevant)	
Determination of level of Liability Provision	
<p>The level of liability provision required has been determined by using:</p> <ul style="list-style-type: none"> • the OGUK Liability Provision Guidelines for Offshore Petroleum Operations <input type="checkbox"/> • other methods (provide details below) <input type="checkbox"/> 	
Declaration⁽²⁾	
<p>The undersigned:</p> <ul style="list-style-type: none"> • certifies that [Licensee Name] has, with regard to the above licence(s) implemented arrangements with respect to well control, clean-up costs and legal liability to third parties using the determination method indicated above in order to comply with regulation 9 of the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (the Regulations) and will maintain such arrangements; and 	

- certifies that [Licensee Name] has, either directly, through group-wide provision or through an agreement with the licence operator, arrangements in place which will in the event of an incident allow rapid appointment of a service provider or providers acceptable to its insurers for the prompt and adequate handling of all compensation claims and will maintain equivalent arrangements at all times while it has an interest in the licence(s); and
- acknowledges that the provision of false information to the licensing authority or competent authority, without reasonable excuse, in response to an information notice issued under regulation 11(5) of the Regulations, is an offence under regulation 14 of the Regulations.

Authorised Signature	
Full Name	
Title	
E-mail Address	
Date	

Footnotes:

- (1) The Licensee Name is the name registered with Companies House and listed on the relevant licence
- (2) The Declaration should be signed by an Officer of the Board.

2. Joint Liability Provision Declaration Form

Liability Provision Declaration
--

Licence Operator Name⁽¹⁾

Licence Operator Business Address

Licence(s) considered in this declaration	
Licence Number(s)	Block Number(s)

Licensees covered in this declaration	
Licensee ⁽¹⁾ Name	Equity Share

Safety Case Name (where relevant)

Determination of level of Liability Provision	
<p>The level of liability provision required has been determined by using:</p> <ul style="list-style-type: none"> • the OGUK Liability Provision Guidelines for Offshore Petroleum Operations <input type="checkbox"/> • other methods (provide details below) <input type="checkbox"/> 	

Declaration ⁽²⁾
<p>The undersigned:</p> <ul style="list-style-type: none"> certifies that the licensees named above have, with regard to the above licence(s) implemented arrangements with respect to well control, clean-up costs and legal liability to third parties using the determination method indicated above in order to comply with regulation 9 of the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (the Regulations) and will maintain such arrangements; and certifies that the licensees named above have, either directly, through group-wide provision or through an agreement with the licence operator, arrangements in place which will in the event of an incident allow rapid appointment of a service provider or providers acceptable to the insurers for the prompt and adequate handling of all compensation claims and will maintain equivalent arrangements at all times while they have interests in the licence(s); and acknowledges that the provision of false information to the licensing authority or competent authority, without reasonable excuse, in response to an information notice issued under regulation 11(5) of the Regulations, is an offence under regulation 14 of the Regulations.

Authorised Signature	
Full Name	
Title	
E-mail Address	
Date	

Footnotes:

- (1) The Licence Operator Name and the Licensee Names are the names registered with Companies House and listed on relevant licence documentation
- (2) The Declaration should be signed by an Officer of the Board of the licence operator.

3. Part A – Certificate of Assessment of Liability Provision

Certificate of Assessment of Liability Provision

Licence Operator Name (as registered with Companies House and listed on relevant licence)

Licence Operator Business Address

Licence Number	Block Number	Well Name

Cost of Well Control		
1	Well will <u>not</u> flow without assistance (provide details below)	<input type="checkbox"/>
2	Cost of well control determined using the Oil and Gas UK Guidelines for Offshore Petroleum Operations, <u>including</u> a capping device	<input type="checkbox"/>
3	Cost of well control determined using the Oil and Gas UK Guidelines for Offshore Petroleum Operations, <u>excluding</u> a capping device (provide details below)	<input type="checkbox"/>
4	Cost of well control NOT determined using the Oil and Gas UK Guidelines for Offshore Petroleum Operations (provide details below)	<input type="checkbox"/>
5	Estimated well flow rate	bopd
5	Total cost of well control	US \$

Cost of Clean-up and Third Party Legal Liability		
1	Member of OPOL	<input type="checkbox"/>
2	<u>Not</u> member of OPOL but have equivalent level of liability provision (provide details below)	<input type="checkbox"/>
3	Cost of clean-up and third party legal liability, determined using the OGUK Guidelines for Offshore Petroleum Operations is covered by OPOL membership (or equivalent)	<input type="checkbox"/>
4	Cost of clean-up and third party legal liability, determined using the OGUK Guidelines for Offshore Petroleum Operations is covered by OPOL membership plus [US \$]	<input type="checkbox"/>
5	Cost of clean-up and third party liability, NOT determined using the OGUK Guidelines for Offshore Petroleum Operations is covered by OPOL membership plus [US\$]. Provide details of determination below.	<input type="checkbox"/>

Summary of Liability Provision	
Cost of well control	US \$
Cost of clean-up and third party legal liability	US \$
Total Liability Provision	US \$

Licensees Shares of Liability Provision				
Licensee	% Participating Interest	Share of Cost of Well Control	Share of Cost of Clean-up and Third Party Legal Liability	Licensee Total
				US \$
				US \$
				US \$
Total				US \$

Evidence of Liability Provision	

The undersigned licence operator hereby attaches a Licensee Certificate of Liability Provision for the participating interest of each licensee	<input type="checkbox"/>
The undersigned Licence Operator hereby attaches a Licence Operator's Certificate of Liability Provision on behalf of all licensees	<input type="checkbox"/>

Certification	
Authorised Signature	
Full Name	
Title	
Email Address	
Date	

3. Part B – Licence Operator Certificate of Liability Provision

Licence Operator Certificate of Liability Provision (Issued on behalf of all licensees)

Licence Operator Name (as registered with Companies House and listed on relevant licence)

Licence Operator Business Address

Licence Number	Block Number	Well Name

Demonstration of Liability Provision	
The undersigned licence operator:	
Hereby represents and certifies that, at the date of this Certificate, it has one or more of the following credit or financial strength ratings: “BBB” or higher from Standard & Poor’s; “B+/bbb” or higher from A>M> Best; “Baa3” or higher from Moody’s; “BBB” or higher from Fitch; and/or the equivalent from another internationally recognised credit rating agency	<input type="checkbox"/>
Attaches a Verification of Insurance in the form set out in the Oil and Gas UK Guidelines for Offshore Petroleum Operations	<input type="checkbox"/>
Attaches a certified copy of a Parent Company / Affiliate Undertaking	<input type="checkbox"/>

Demonstration	
<p>The undersigned:</p> <ul style="list-style-type: none"> • Certifies that [Licence Operator Name] has the financial resources necessary to meet the aggregated cost of well control, clean-up and third party legal liability, as set out in the Certificate of Assessment of Liability Provision; • Confirms that there is no reason to believe that such financial resources will not continue in place for the duration of activity on the well • Certifies that the licensees as set out in the Certificate of Assessment of Liability Provision have, either directly, through group-wide provision or through an agreement with the licence operator, arrangements in place which will in the event of an incident allow rapid appointment of a service provider or providers acceptable to the insurers for the prompt and adequate handling of all compensation claims and will maintain equivalent arrangements at all times while they have an interest in the licence(s) • Acknowledges that the provision of false information to the licensing authority or competent authority, without reasonable excuse, in response to an information notice issued under regulation 11(5) of the Regulations, is an offence under regulation 14 of the Regulations 	

Certification	
Authorised Signature	
Full Name	
Title	
Email address	
Date	

3. Part C – Licensee Certificate of Liability Provision

<p>Licensee Certificate of Liability Provision (For its Participating Interest)</p>
--

Licensee Name (as registered with Companies House and listed on relevant licence)

Licensee Business Address

Licence Number	Block Number	Well Name

Demonstration of Liability Provision	
The undersigned licensee:	
Hereby confirms support for the Certificate of Assessment prepared by the licence operator	<input type="checkbox"/>
Hereby represents and certifies that, at the date of this Certificate, it has one or more of the following credit or financial strength ratings: “BBB” or higher from Standard & Poor’s; “B+/bbb” or higher from A>M> Best; “Baa3” or higher from Moody’s; “BBB” or higher from Fitch; and/or the equivalent from another internationally recognised credit rating agency	<input type="checkbox"/>
Attaches a Verification of Insurance in the form set out in the Oil and Gas UK Guidelines for Offshore Petroleum Operations	<input type="checkbox"/>
Attaches a certified copy of a Parent Company / Affiliate Undertaking	<input type="checkbox"/>

Demonstration
<p>The undersigned:</p> <ul style="list-style-type: none"> • Certifies that [Licensee Name] has the financial resources necessary to meet its participating interest share of the cost of well control and cost of clean-up and third party legal liability, as set out in the Certificate of Assessment of Liability Provision; • Confirms that there is no reason to believe that such financial resources will not continue in place for the duration of activity on the well • Certifies that [Licensee Name] has, either directly, through group-wide provision or through an agreement with the licence operator, arrangements in place which will in the event of an incident allow rapid appointment of a service provider or providers acceptable to its insurers for the prompt and adequate handling of all compensation claims and will maintain equivalent arrangements at all times while it has an interest in the licence(s) • Acknowledges that the provision of false information to the licensing authority or competent authority, without reasonable excuse, in response to an information notice issued under regulation 11(5) of the Regulations, is an offence under regulation 14 of the Regulations

Certification	
Authorised Signature	
Full Name	
Title	
Email address	
Date	

3. Part D – Verification of Insurance

Verification of Insurance

Policy Number	Effective Date	Expiry Date

Insured Licensee (as registered with Companies House and listed on the relevant licence)

Insured Licensee Business Address

Offshore Petroleum Operations Insured

Policy Provisions			
Subject to the policy terms and conditions, the policy provides for:			
Control of Well insurance	Up to a limit of US\$ per incident	100%	<input type="checkbox"/>
		Or	
		For insured's interest	<input type="checkbox"/>
Seepage and Pollution, Clean-up and Contamination insurance	Up to a limit of US\$ [] per incident	100%	<input type="checkbox"/>
		Or	
		For insured's interest	<input type="checkbox"/>

		Including OPOL coverage <input type="checkbox"/> Or Excluding OPOL coverage <input type="checkbox"/>
Control of Well plus Seepage and Pollution, Clean-up and Contamination insurance (including coverage for pollution remediation and compensation)	With a combined single limit of US\$ [] per incident	(100%) <input type="checkbox"/> Or For insured's interest <input type="checkbox"/> Including OPOL coverage <input type="checkbox"/> Or Excluding OPOL coverage <input type="checkbox"/>
Coverage for legal liability to pay compensation to third parties for pollution damage.	With a combined single limit of US\$ [] per incident	(100%) <input type="checkbox"/> Or Insured's interest <input type="checkbox"/>
Deductible	US\$	Per incident (100%) <input type="checkbox"/> or Insured Interest <input type="checkbox"/>
NOTE: If separate policies are in place for COW and TPL then two forms should be submitted		

Agreement	
The undersigned Insurer or Insurance Broker / Agent certify and agree:	
That the coverage afforded by the said policy will not be cancelled until notice in writing has been given to the insured and, furthermore, that such cancellation shall not become effective until after the expiration of 30 days from the date the notice is received by the Insured	
That we, the undersigned, have one or more of the following credit or financial strength ratings	<input type="checkbox"/>
OR	
That the insurers underwriting the policy above each have one or more of the following credit or financial strength ratings:	<input type="checkbox"/>
“BBB-“ or higher from Standard & Poor’s; “B+/bbb-“ or higher from A>M> Best; Baa3” or higher from Moody’s; “BBB-“ or higher from Fitch; and/or the equivalent from another internationally recognised credit rating agency	
If we cease	<input type="checkbox"/>
OR	
any such insurer ceases	<input type="checkbox"/>
to satisfy such requirements, then we shall as soon as is practicable notify the insured and BEIS OPRED in writing of the same	
The issuance of this document does not make BEIS OPRED an additional insured, nor does it modify in any manner the contract of insurance between the insured and the insurer	

Certification	
Name of [Insurer] / [Insurance Broker or Agent]	
Address of [Insurer] / [Insurance Broker or Agent]	
Authorised Signature	
Full Name	
Title	
Date	

3. Part E – Licensee Certificate of Liability Provision

THIS DEED OF COVENANT dated [●]

IS GRANTED BY:

[●], (registered in [England] with number [●]) whose registered office is at [●] (“Grantor”);

IN FAVOUR OF:

[The Secretary of State for Business, Energy and Industrial Strategy (“Secretary”).]

BACKGROUND

The [Company/Companies] (as hereinafter defined) [is/are each] [operator of or a co-venturer in one or more United Kingdom Petroleum Production Licences pursuant to which applications may be made for consent to drill exploration and appraisal wells (the “Wells”)] [a licensee under United Kingdom Petroleum Licence Number [NUMBER], Block [NUMBER] pursuant to which application has been made to drill Well [NUMBER] (the “Well”)] .

[Delete as appropriate: Note that the covenant may be given for a specific well or for all E & A wells drilled in the UKCS under any licence in which the Company is either operator or co-venturer so that there is no requirement for the Grantor to give multiple Deeds of Covenant. If the Grantor has multiple UK operating subsidiaries, the Deed may be amended to apply to all subsidiaries of the Grantor from time to time which are operators of/co-venturers in one or more UK PPLs or to specifically identified subsidiaries which fall into that category.]

Pursuant to the Liability Provision Guidelines for Offshore Petroleum Operations dated [DATE], as amended from time to time (“Guidelines”), [the/each] Company wishes to demonstrate that it has the financial resources to fulfil its obligations in respect of well control, pollution remediation and compensation in respect of the Well(s).

Accordingly, the Grantor has agreed to assist [the/each] Company in demonstrating that it has such financial resources in place by covenanting to be jointly and severally liable with [the/such] Company for certain potential future obligations of [the/such] Company.

IT IS AGREED as follows:

1.1.1 Definitions and interpretation

(1) Definitions

In this Deed:

[Affiliate means: (a) if the Grantor has its registered office in the UK, any subsidiary or holding company of the Grantor or any other subsidiary of such holding company. For the purpose of this paragraph (a) of this definition, “subsidiary” and “holding company” shall have the respective meanings ascribed to them under Section 1159 of the Companies Act 2006 (and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (i) another

person (or its nominee) by way of security or in connection with the taking of security, or (ii) its nominee); or (b) if the Grantor has its registered office outwith the UK, any company or other entity controlled by, under the control or under common control with, the Grantor. For the purposes of this paragraph (b) of this definition, “control” shall mean the right to exercise directly or indirectly the vote of more than fifty percent (50%) of the voting shares or being a member of and having the right to appoint or remove a majority of the board of directors and “controlled” shall be construed accordingly;]

Company means [[●] (registered in [England] with number [●]) whose registered office is at [●]] OR [any [Affiliate/Subsidiary] from time to time of the Grantor which is operator of or a Co-venturer in one or more United Kingdom Petroleum Production Licences] OR [those [Affiliates/Subsidiaries] of the Grantor which are identified in Schedule 1];⁶

Demand means any written demand issued by the Secretary in respect of any liability of the Grantor pursuant to Clause 2.1 of this Deed, requiring the payment of Indemnified Obligations, (which written demand shall specify in reasonable detail the identity of the Third Party and the basis of liability for and calculation of the Indemnified Obligations);

Expiry Date means the earliest of the following dates:

[●];

where this Deed is given in respect of a single Well, the date on which drilling operations on such Well are completed and the drilling rig has moved away from the Well location

Guidelines has the meaning given to it in recital (B) above;

Indemnified Obligations means the Indemnified Well Control Obligation and the Indemnified Pollution Remediation/Compensation Obligation;

Indemnified Pollution Remediation/Compensation Obligation means all legal liabilities now or hereafter due, owing or incurred by the Company in respect of the cost of remediating any pollution arising directly as a result of any Well being Out of Control during the period of validity of this Deed and/or the cost of any compensation for pollution damage awarded by any court of competent jurisdiction against the Company to any Third Party arising directly as a result of any Well being Out of Control during the period of validity of this Deed which award is final and non-appealable;

Indemnified Well Control Obligation means the actual costs and expenses incurred by the Company in regaining or attempting to regain control of any Well(s) which get Out of Control during the period of validity of this Deed, including the costs of drilling any relief well, but only such costs and/or expenses incurred until such Well is brought Under Control;

Insolvency Event means in relation to any Party:

any resolution being passed or order being made for the winding-up, dissolution, administration or reorganisation of such Party;

⁶ The undertaking may relate to a specific company or Grantor may issue a single guarantee for all of its relevant subsidiaries, or if appropriate, affiliates. If the guarantee is for a specific company, the definitions of Affiliate and Subsidiary can be deleted and the references to those terms in the definition of Company can also be deleted.

any composition, compromise, assignment or arrangement being made with any of its creditors;

the appointment of any liquidator, administrator, receiver, administrative receiver, compulsory manager or other similar office in respect of the Party or any of its assets; or

any analogous procedure or step being taken in any jurisdiction;

Maximum Amount means in respect of any Well the lower of (i) [insert figure] and (ii) the aggregate of the Well Control Limit and the R/P Limit;

[**Note: The Guarantee is limited to the amount of liability provision to be demonstrated by the Company in respect of the particular Well whether that is the Total liability provision (where the Company is the Operator and has chosen to demonstrate the whole amount for convenience) or its Co-venturers' liability provision. However, in order to manage their exposures, parents may wish also to include a specific maximum (based on Banding amounts, an estimate of likely Control of Well Costs and their largest participating interest) so that they are made aware if a subsidiary is to drill a well in a higher band and in such circumstances may need to issue a separate or replacement guarantee.**]

Out of Control in relation to any well (including a Well) means that there is an unintended flow from the well of drilling fluid, oil, gas or water above the surface of the ground or water bottom, which flow either:

cannot promptly be stopped by use of the equipment on site and/or the blowout preventer, storm chokes or other equipment at the well site;

cannot promptly be stopped by increasing the weight by volume of drilling fluid or by the use of other conditioning materials in the relevant well(s);

cannot be safely diverted into production;

Party means a party to this Deed;

R/P Limit means in respect of any Well the Pollution Remediation/ Compensation Costs specified in the Operator's Certificate of Liability Provision for Licence Area/Well (Operator demonstrating liability provision for entire joint venture) signed by the Company in respect of the Well or the Share of Pollution Remediation/Compensation Costs specified in the Co-venturer's Certificate of Liability Provision for its Participating Interest in a Well signed by the Company in respect of the relevant Well (as the case may be);

[**Subsidiary** means: (a) if the Grantor has its registered office in the UK, any subsidiary of the Grantor. For the purpose of this paragraph (a) of this definition, "subsidiary" shall have the meaning ascribed to it under Section 1159 of the Companies Act 2006 (and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (i) another person (or its nominee) by way of security or in connection with the taking of security, or (ii) its nominee); or (b) if the Grantor has its registered office outwith the UK, any company or other entity controlled by the Grantor. For the purposes of this paragraph (b) of this definition, "control" shall mean the right to exercise directly or indirectly the vote of more than fifty percent (50%) of the voting shares

or being a member of and having the right to appoint or remove a majority of the board of directors and “controlled” shall be construed accordingly;]

Tax Deduction means a deduction or withholding for or on account of tax from a payment under this Deed;

Third Party means any person, company, partnership or other legal entity (not being a party to this Deed) to which any Indemnified Obligations are due and payable from time to time, as the Secretary may direct, pursuant to any Demand;

Under Control in relation to any well (including a Well) means that:

the flow giving rise to a claim hereunder stops, is stopped or can be safely stopped; or

the drilling, deepening, servicing, working over, completing, reconditioning or other similar operation(s) taking place in the well(s) immediately prior to the occurrence giving rise to a claim hereunder is (are) resumed or can be resumed; or

the well(s) is (are) or can be returned to the same producing, shut-in or other similar status that existed immediately prior to the occurrence giving rise to a claim hereunder; or

the flow giving rise to a claim hereunder is or can be safely diverted into production;

whichever shall first occur; and

Well Control Limit means in respect of any Well the Control of Well Cost specified in the Operator’s Certificate of Liability Provision for Well (Operator demonstrating liability provision for entire joint venture) signed by the Company in respect of the relevant Well or the Share of the Control of Well Cost specified in the Co-venturer’s Certificate of Liability Provision for its Participating Interest in a Well signed by the Company in respect of the relevant Well (as the case may be).

(2) Interpretation

Unless a contrary indication appears, a reference in this Deed to:

the Secretary, any other Party or any other person shall be construed so as to include, where relevant, its successors in title, permitted assigns and permitted transferees;

clauses are references to clauses of this Deed;

the Guidelines or any other agreement or instrument is a reference to the Guidelines or other document as amended, novated, supplemented or restated (however fundamentally) or replaced from time to time; and

a provision of law is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced whether before or after the date of this Deed.

Clause and schedule headings are for ease of reference only.

Words importing the plural shall include the singular and vice versa.

(3) Deed

This Deed is intended to take effect as a deed notwithstanding the fact that the Grantor may only execute this Deed under hand.

1.1.2 Covenant

(1) Covenant

Subject to clauses 2.6 and 2.7, the Grantor:

covenants to the Secretary for the benefit of any Third Party to be liable for the Indemnified Obligations in respect of each Well; and

covenants to the Secretary for the benefit of any Third Party that (whenever [the/the relevant] Company does not satisfy any Indemnified Obligations, and following receipt by the Grantor of a Demand from the Secretary to make payment of the same) the Grantor shall make due and punctual payment of such Indemnified Obligations to any relevant Third Party entitled to be paid the same, and in any event within [five (5)] Business Days of receipt of the relevant Demand;

provided always that under no circumstances shall the Grantor's liability under this Deed exceed the liability of [the/the relevant] Company for the relevant Indemnified Obligations.

(2) Continuing covenant

Subject to clauses 2.6 and 2.7, the covenants given in clause 2.1 of this Deed are continuing covenants and will extend to the ultimate balance of the Indemnified Obligations for each Well, regardless of any intermediate payment or discharge in whole or in part.

(3) Reinstatement

If any discharge, release or arrangement is made by the Secretary or any relevant Third Party in whole or in part on the faith of any payment, security or other disposition given by the Grantor or the Company which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Grantor under this clause 2 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

(4) Waiver of defences

The obligations of the Grantor under this Deed will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or to the Secretary) including:

any release, time, waiver or consent granted to, or composition with, any person;

the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over the assets of any person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Grantor, the Company or any other person;

any amendment (however fundamental) or replacement of the Guidelines or any other agreement or security;

any unenforceability, illegality or invalidity of any obligation of any person under the Guidelines or any other document; or

any insolvency of the Company or similar proceedings.

(5) Third party rights

Unless expressly provided to the contrary in this Deed a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 ("1999 Act") to enforce or enjoy the benefit of any term of this Deed.

Subject to the remaining provisions of this clause 2.5, this Deed is intended to be enforceable by a Third Party by virtue of the 1999 Act.

Notwithstanding clause 2.5(b), this Deed may be rescinded, amended or varied by the Parties without notice to or the consent of any Third Party even if, as a result, that person's right to enforce a term of this Deed may be varied or extinguished.

The rights of any Third Party under clause 2.5(b) shall be subject to the Third Party's written agreement to the provisions of this Deed. Any claim by a Third Party pursuant to this Deed shall be made through the Secretary and no such claim shall be enforceable unless and until a Demand has been served by the Secretary in accordance with clause 2.6. The Grantor shall have no liability to any Third Party to the extent that the aggregate of payments made under this Deed exceeds or would as a result of such liability exceed any of the limits set out in clause 2.7. In such circumstances the decision of the Secretary as to the apportionment of claims shall be final.

(6) Recourse

The Grantor shall not be obliged to make payment to or at the direction of the Secretary of Indemnified Obligations demanded by the Secretary under clause 2.1 to the extent that such demand relates to Indemnified Obligations that the Grantor or the Company has already paid to the relevant Third Party in accordance with any Demand relating to the same or otherwise.

The Secretary shall not make a demand on the Grantor pursuant to clause 2.1 unless the Secretary has first made a demand on the Company and the Company has failed to comply with the same; and:

the Secretary believes, in its reasonable opinion, that demand must be made on the Grantor urgently in order to preserve the rights of the Secretary under this Deed; or

an Insolvency Event has occurred in respect of the Company or the Grantor.

(7) Maximum Amount

In no circumstances shall the amount recoverable from the Grantor under this Deed in respect of any Well exceed any of the following:

in aggregate a total financial sum equal to the relevant Maximum Amount applicable to that Well; or
the relevant Well Control Limit in respect of the Indemnified Well Control Obligation applicable to that Well; or

the relevant R/P Limit in respect of the Indemnified Pollution Remediation/Compensation Obligation applicable to that Well.

For the purposes of this clause 2.7 the Maximum Amount applicable to a Well shall be reduced by any payments made by the Grantor to the Secretary or to any Third Party in respect of any of the Indemnified Obligations relating to that Well, provided that:

any payments made by the Grantor in respect of the Indemnified Well Control Obligation applicable to that Well shall reduce the applicable Well Control Limit; and

any payments made by the Grantor in respect of the Indemnified Pollution Remediation/Compensation Obligation applicable to that Well shall reduce the applicable R/P Limit.

(8) Additional security

This Deed is in addition to and is not in any way prejudiced by any other undertaking, deed of covenant, guarantee or security now or subsequently held by any of the Secretary, the Company or any Third Party.

(9) Grantor represents and certifies that as at the date of this Deed it has one or more of the following credit or financial strength ratings: “BBB-” or higher from Standard & Poor’s; “B+/bbb” or higher from A.M. Best; “Baa3” or higher from Moody’s; “BBB-” or higher from Fitch; and/or the equivalent from another internationally recognised credit rating agency.

1.1.3 Payment Mechanics

(1) All payments by the Grantor under this Deed shall be made for value on the due date at the time and in the currency in which the Indemnified Obligations are due and payable.

(2) Payment shall be made to such account and/or to such Third Party which the Secretary specifies.

1.1.4 Costs and expenses

The Grantor shall pay to the Secretary the amount of all costs and expenses (including legal fees, stamp duties and any value added tax) incurred by the Secretary in connection with the enforcement of, or preservation of, any rights under, this Deed on a full indemnity basis subject in the case of costs and expenses relating to any particular Well, to the Maximum Amount relevant to such Well.

1.1.5 Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

1.1.6 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Secretary, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

1.1.7 Notices

(1) [All notices to be given to the Secretary in connection with this Deed shall be sent by email (as a pdf, tif or similar un-editable attachment) to [email address].]

(2) All demands and notices to be given to the Grantor in connection with this Deed shall be given in writing to the Grantor at
marked for the attention of

1.1.8 English language

Any notice or other document given or provided under or in connection with this Deed must be in English.

1.1.9 Counterparts

This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

1.1.10 Termination

(1) The liability of the Grantor pursuant to its obligations and undertakings in clause 2 of this Deed shall not extend beyond the termination of this Deed.

(2) This Deed shall terminate at 2400 hours G.M.T. on the Expiry Date provided, however, that if a Well is Out of Control during the period this Deed is in force, then this Deed shall not terminate with respect to any Indemnified Obligations which arise as a direct result of such Well being Out of Control until [they are discharged/the expiry of a period of three years from the date on which the Well is brought Under Control].

(3) If [the/each] Company at any time demonstrates to the Secretary that it has the financial resources to fulfil its obligations in respect of well control, pollution remediation and compensation in respect of the Wells without reference to this Deed then the Secretary shall release the Grantor from its undertakings under this Deed and shall return the original of this Deed to the Grantor on request for cancellation.

1.1.11 Governing law and jurisdiction

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law. The courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed.

1.1.12 Service of process

[Note: to be included if Grantor is not an English company] [Grantor irrevocably appoints [●] of [●] as its agent to receive on its behalf in England and Wales service of any proceedings. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by Grantor) and shall be valid until such time as the Secretary has received prior written notice from Grantor that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, Grantor shall forthwith appoint a substitute acceptable to the Secretary and deliver to the Secretary the new agent's name, and address within England and Wales.]

THIS DEED has been entered into on the date stated at the beginning of this Deed and shall be effective from _____ hours G.M.T on that date.

The Grantor

Executed as a deed by [●])

[acting by two directors, by a director and) Director
its secretary or by a director whose)
execution of this Deed has been witnessed])

:) Director/Secretary

[Schedule]

[The Companies]

|



oilandgasuk.co.uk/guidelines

OGUK Guidelines

Member companies dedicate specialist resources and technical expertise in developing these guidelines with Oil & Gas UK with a commitment to work together, continually reviewing and improving the performance of all offshore operations.

Guidelines are free for our members and can be purchased by non-members.

oilandgasuk.co.uk

info@oilandgasuk.co.uk

 [@oilandgasuk](https://twitter.com/oilandgasuk)

 [Oil & Gas UK](https://www.linkedin.com/company/oilandgasuk)

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