

otm

a science group company

Report



Production Engineering Association

Participation Agreement

Ref: 3035 Version: 01

PARTICIPATION AGREEMENT

THIS AGREEMENT is made by and between **Oakland Innovation Ltd doing business as OTM Consulting** (hereinafter referred to as "**OTM**") and (hereinafter referred to as ("**the Participant**"). **OTM** and **the Participant** shall collectively be known as **the Parties**.

WHEREAS the Participant is one of the members of an unincorporated association known as the **EUROPEAN PRODUCTION ENGINEERING ASSOCIATION ("PEA")**.

WHEREAS the Participant wishes to collaborate in a project to develop an Internet Website and other technology transfer initiatives to promote the image and potential of the **PEA**, and

WHEREAS OTM is prepared to co-ordinate and execute an agreed programme of work with respect to the aforesaid project and as set out in **Schedule One (Proposal for Ongoing Project Management, PR-3035-01P-2019)**.

NOW THEREFORE IT IS HEREBY AGREED

1 DEFINITIONS

1.1 Affiliate

“Affiliate” with regard to **Parties** other than **SHELL** means a company or corporation or other entity which directly or indirectly controls or is controlled by a **Party** to this Agreement including the ultimate holding company, corporation or other entity of such a **Party** and any company, corporation or other entity directly or indirectly controlled by such ultimate holding company, corporation or other entity.

In the definition of "**Affiliate**" the words "controls" and "controlled" mean the ability to exercise fifty percent or more of the voting power of a company, corporation or entity and a reference to the voting power in such a company, corporation or entity is a reference to the maximum number of votes that might be cast at a general meeting thereof.

“Affiliate” with regards to SHELL means

- a. N.V. Koninklijke Nederlandsche Petroleum Maatschappij, a Netherlands company ("Royal Dutch"), and The "Shell" Transport and Trading Company p.l.c. an English company ("Shell T&T"), and any company other than SHELL which is at the time in question directly or indirectly affiliated with either Royal Dutch or Shell T&T or both of them. For the purpose of this definition a particular company is
 - i. directly affiliated to a company or companies beneficially owning shares carrying fifty per cent (50%) or more of the votes exercisable at a general meeting (or its equivalent) of the particular company; and
 - ii. indirectly affiliated to a company or companies ("the parent company or companies") if a series of companies can be specified, beginning with the parent company or companies and ending with the particular company, so related that each company of the series, except the parent company or companies, is directly affiliated with one or more of the companies earlier in the series.
- b. Any company not falling under the definition set out in (a) above which is for the time being managed or operated by a company as defined in (a) above or which has a construction, operating or technical services agreement with SHELL and / or company as defined in (a) above; as of the effective date of this Agreement the companies included under this 1.1(b) are:
 - i. Woodside Offshore Petroleum
 - ii. Bapetco (Egypt)
 - iii. AFPC (Syria)
 - iv. PDO (Oman)

1.2 Commencement / Termination Date

“Commencement/ Termination Date” means the date on which the Work was/ will be commenced and terminated in accordance with Clauses 2.2 and 8 (as appropriate).

1.3 Other Participants / Participants

Other Participants means the other members of the PEA wishing to collaborate in a project to develop an PEA Internet Home Page, provide other technology transfer and publicity services and provide a secretariat function for the PEA, each of whom shall enter into an agreement with OTM which shall be substantially similar in terms, form and content to this Agreement.

“Participants” shall collectively mean the Participant and the Other Participants. A register of all Participants shall be maintained and circulated by OTM to all Participants on a regular basis.

1.4 Late Joining Participant

“Late Joining Participant” shall have the meaning ascribed thereto in Clause 3.4.

1.5 Participation Fee

“Participation Fee” means the amount referred to in Clause 3.1 or such lesser amount as may be payable by the Participant in the event of a reduction in the Participation Fee pursuant to Clause 3.6

1.6 PEA Chairman

“PEA Chairman” is the chairman of the PEA as appointed by the Steering Committee

1.7 Representative

“Representative” shall have the meaning ascribed thereto in Clause 4.1

1.8 Steering Committee

“Steering Committee” means the committee formed pursuant to Clause 4 hereof.

1.9 Work

“Work” means the programme of work to be undertaken by OTM as more fully described in Schedule One (Proposal for Ongoing Project Management) hereto.

2 THE WORK

2.1 Programme of work

The Work will comprise the programme of work described in Schedule One (Proposal for Ongoing Project Management) hereto and hereby made a part hereof.

2.2 Commencement Date

This Participation Agreement will commence on the later of the dates on which this Agreement signed by both Parties (the "Commencement Date") and continue until such a time as terminated in accordance with Clause 8.

2.3 OTM

The Work will be undertaken by OTM who will be subject to appraisal of the Steering Committee with duties as set out in Schedule One (Proposal for Ongoing Project Management).

3 PARTICIPATION FEE

3.1 The Participation Fee

The estimated cost of carrying out the Work shall be four thousand and two hundred (4.200) pounds sterling per year per Participant (the "Participation Fee").

This Participation Fee is for the current membership year and is calculated on the assumption that the number of members in the PEA shall be twenty (20) in number. If the total number of PEA members is less than 20, then the Steering Committee may decide to increase the Participation Fee or to reduce the scope of the work described in this Agreement accordingly.

3.2 Value Added Tax

The Participation Fee excludes Value Added Tax. The proper amount of such tax where applicable will be shown as a separate item on each invoice and shall be paid by the Participant as part of its agreed contribution to the total cost of the Work.

3.3 Payment of the Participation Fee

Payment of the Participation Fee shall be made by the Participant to OTM in annual instalments of 4,200 pounds sterling in January of each year of membership for existing members and on signing of participation agreement for a late joining participant for the first year only, thereafter, participation fees in subsequent years will be due annually in January. Payment shall be made within thirty (30) days of receipt of an invoice for the same presented by OTM.

3.4 Late Joining Participant

A prospective member wishing to join the PEA after the Commencement Date as a Late Joining Participant") may do so with the approval of the Steering Committee on payment to OTM of the Participation Fee (together with any additional fee which may be agreed by the Steering Committee as applicable to late joining participants).

3.5 Rights and obligations of a Late Joining Participant

A late Joining Participant as referred to in Clause 3.4 above shall be subject to all accrued rights and obligations of a participant hereunder.

3.6 Excess monies

All monies in excess of the aggregate of the fees received by OTM from 20 Participants shall, with the approval of the Steering Committee be applied by OTM to extend the scope of the Work to the mutual benefit of all Participants and/or to reduce the Participation Fee due from each Participant.

4 STEERING COMMITTEE

4.1 Representative

The Participant shall be entitled to nominate one Representative to be a member of a Steering Committee and such Representative shall have one voting right. The PEA Chairman shall act as the Chairman of the Steering Committee.

4.2 Meeting

The Steering Committee shall agree to meet at regular intervals during the progress of the Work and shall have the responsibility for considering and approving the Work, including any amendments thereto.

4.3 Vote arrangements

Except with regard to an increase in the Participation Fee, which would require the unanimous approval of all Steering Committee members, any other matter properly referred to the Steering Committee for decision shall be decided by the affirmative vote of not less than two-thirds of its members. A Representative who is unable to attend meetings shall be allowed to send a deputy who shall have the power to vote on his or her behalf or shall give a written proxy to vote on his or her behalf to the Chairman of the Steering Committee.

4.4 Future meetings

The dates, location and agenda for future meetings of the Steering Committee shall be agreed by the Representatives at each meeting. The Chairman shall give notice of any changes to the agreed meeting to the Participant a minimum of two weeks prior to the proposed meeting. OTM shall have the responsibility to produce and distribute minutes of a meeting of the Steering Committee within a reasonable period.

4.5 Costs

The Participant shall be responsible for all costs incurred by its Representative in connection with his or her attendance at a meeting of the Steering Committee.

5 RESPONSIBILITIES OF OTM

5.1 OTM's responsibility

OTM shall be responsible for the general co-ordination and execution of the Work to be carried out with due diligence, and in this capacity OTM's relationship to the Participant shall be that of an independent contractor.

5.2 Results of the work

The results of the Work shall be provided on an "as is" basis without any warranties, expressed or implied. Especially and without limitation on the preceding, OTM is in no way liable for the merchantability and the fitness for a particular purpose thereof. Each Participant agrees to hold OTM harmless from any claims, demands, damages or liabilities arising from, or related to, the use by the Participant of, or intended use of, the results of the Work provided to the Participant hereunder. In no event will OTM be liable for loss of profits or indirect or consequential damages.

6 RIGHTS RELATING TO THE WORK

6.1 Participant's right

During the term of this Agreement, the Participant shall have the right to receive the results of the Work and, subject to Clause 6.3, to utilise the same in its own operations (including those of its Affiliates) and at its own risk. Participant shall have right to copy and make use of information on PEA website for its internal use.

6.2 Patents, patentable inventions, copyright or other intellectual property

Any patents or patentable inventions, copyright or other intellectual property arising in whole or in part out of the Work shall, subject to the rights of any third party, be the joint property of both the Participant and all Other Participants.

6.3 Results of the Work

Information pertaining to the business of the PEA and the results of the Work shall be treated by the Participant and its Affiliates thereof with the same reasonable precautions with which a Participant treats its own confidential information, to prevent access thereto by any third party other than as necessary for the Participant to enjoy its rights under this Agreement.

7 INDEMNIFICATION

7.1 Participant

The Participant shall indemnify and hold OTM harmless from any and all claims, demands, causes of action, damages, costs or losses howsoever arising from injury to or death of any personnel of the Participant working on or observing the Work or damage to property of that Participant or any personnel of that Participant.

7.2 OTM

OTM shall indemnify and hold the Participant harmless from any and all claims, demands, causes of action, damages, costs or losses howsoever arising from injury to or death of any personnel of OTM (including the personnel of any of OTM's contractors) working on or observing the Work or damage to property of OTM (or any personnel of OTM, including the said contractors).

7.3 The Participant and OTM

The Participant and OTM agree to hold each other harmless from any claims, demands, causes of action, damages, costs or losses howsoever arising in relation to patent infringement or infringement of the rights of third parties.

7.4 Conscious Recklessness

The above provisions shall apply irrespective of negligence, however the foregoing shall not apply to the extent conscious recklessness of any party caused the damage or injury.

8 TERM AND TERMINATION

8.1 Termination by the Participant

This Participation Agreement shall take effect from the Commencement Date and may be terminated by the Participant at any time without cause by writing to OTM. Termination will take effect on receipt of such notice by OTM.

8.2 Termination by the Steering Committee or OTM

The PEA, this Participation Agreement and/or OTM's provision of the Work may also be terminated by the Steering Committee in accordance with Clause 4.3.

If OTM wish to resign from the provision of the Work to the PEA (and also thereby terminate this Participation Agreement) at any time without cause, it may do so by giving notice at any time in writing to the Steering Committee.

8.3 Consequences of Termination

No refund of the Participation Fee will be made following termination and invoices for Participation Fees properly issued prior to the date of termination will be honoured by the Participant.

The Participant will be entitled to receive all results of the PEA dating from prior to the Termination date.

8.4 Rights and obligation due to termination of this Participation Agreement

Termination of this Participation Agreement shall not affect the rights and obligations set out in Clauses 5.2, 6 and 7.

9 ASSIGNMENT

9.1 Assignment

This Agreement shall be assignable by the Participant only to an Affiliate or to the successor in title of its entire business and shall be subject to the acceptance by such Affiliate or successor of all of the obligations of the Participant hereunder. This Agreement may also be assignable by the Participant to another party at the discretion of the Steering Committee, which consent shall not be unreasonably withheld. Notwithstanding any such assignment as aforesaid the assigning Participant shall continue to be bound by the obligations of confidence under Clause 6.3 hereof.

10 NOTICES

10.1 Given in writing

All notices, reports or other correspondence required herein shall be given in writing to the address of the Party as set out below.

10.2 Party for whom the notice is directed

Any notice or other communications referred to in Clause 10.1 shall be deemed to be given or delivered only when received by the Party to whom such notice or correspondence is directed.

11 ARBITRATION AND APPLICABLE LAW

11.1 Arbitration

Any dispute arising out or in connection with this Agreement which is not amicably settled by negotiation within 60 days from its commencement shall be finally settled by arbitration in accordance with the Arbitration Rules of the London Court of International Arbitration. Arbitration proceedings shall take place in London. The language of arbitration shall be English.

11.2 Applicable Law

This Participation Agreement shall be construed and the legal relationship between the Parties shall be determined in accordance with the laws of England.

12 GENERAL PROVISIONS

12.1 Participation agreement

This Participation Agreement sets forth the entire and the only agreement between the Parties with respect to the Work hereunder and supersedes and cancels all previous understandings, negotiations, commitments, representations and agreements with respect thereto.

12.2 Headings used in this agreement

The headings used in this Agreement are only used for convenience, and shall not affect the meaning or interpretation thereof.

12.3 Rights, duties, obligations and liabilities

The rights, duties, obligations and liabilities of the Parties under this Agreement shall be individual, not collective. It is not the intention of the Parties to create a partnership, joint venture or a trust.

12.4 Provisions of this agreement

None of the provisions of this Agreement shall be regarded as waived or amended unless the same be agreed in writing and executed by the Parties hereto.

12.5 Signature

This Agreement may be signed in one or more counterparts, each of which shall have equal force and effect.

For and on behalf of: Oakland Innovation Ltd doing business as OTM Consulting:

Address: Harston Mill, Harston, Cambridge CB22 7GG, UK

Authorised signature:

Name in block letters: SARAH COLE

Designation: DIRECTOR

Date:

For and on behalf of the Participant:

Address:

Authorised signature:

Name in block letters:

Designation:

Date



About OTM Consulting

OTM Consulting is an international energy and chemicals technology advisory consultancy. With over 25 years' industry experience, we help oil & gas, energy, petrochemical and chemical companies to maximise the value from their investments in R&D and technology.

Our services help you understand market & technology opportunities, trends & risks and to decide which technologies to invest in and how; accelerating product and technology commercialisation for faster market access. With a team of cross-industry specialists, the ability to access industry practitioners & opinion leaders, we have science and technology at the core of everything we do. We are committed to delivering insight and innovation and are passionate about enabling R&D to serve our industry.

Partnering with OTM Consulting provides you with a powerful engine to accelerate and stretch your innovation impact and capability.

OTM Consulting is a Science Group company, part of the Technology Advisory Division

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info@sciencegroup.com
www.sciencegroup.com