



Shut Off Knowledge System

Phase 2

Membership Agreement

A	Issued for internal approval	08/08/02	KAG	
Version	Description	Date	Author	Approved
Notes:	1. The information contained in this document is confidential and must not be transmitted, copied, shown or otherwise disclosed to a third party without the prior written agreement of OTM Consulting Ltd. 2. If information is transmitted to a third party by agreement of OTM Consulting Ltd a copy of condition 1 above must be attached.			



Membership Agreement

DATED day of 20
PARTIES

- 1 OTM CONSULTING LTD (Registered no. 2856199) a company incorporated under the laws of England and having its registered office at 44 Quarry Street, Guildford, GU1 3XQ, England ('OTM')
- 2 (Registered no.:) a company incorporated under the laws of and having its registered office at ('the Member')

Recitals

- (A) OTM is organising and managing phase 2 of a joint industry project called SOKS for collating, analysing and mounting information on Water and Gas Shut Off projects in the oil and gas industry on a security-protected Website, more fully described in the Appendix to this Agreement ('the Project').
- (B) The Member is one of several member companies who are subscribing to the Project ('Members'). Each of the Members will enter into an agreement with OTM substantially on the same terms and conditions as this Agreement.
- (B) OTM has agreed to provide the services in relation to the Project more particularly described in the Appendix to this Agreement.

It Is Therefore Agreed As Follows:

Terms and Conditions

1. This Agreement

- 1.1 This Agreement comprises the following documents:
 - 1.1.1 these Terms and Conditions
 - 1.1.2 the Appendix (as defined)
- 1.2 If any provision of the Appendix is in conflict with any of these Terms and Conditions, then the provisions of these Terms and Conditions shall prevail. If any provision of any part of the Appendix is in conflict with the provisions of any other part then such conflict shall be resolved by applying priority to the parts of the Appendix in the order that they appear.
- 1.3 This Agreement represents the entire agreement between OTM and the Member and supersedes all previous communications, representations or agreements between them concerning the Project.
- 1.4 In consideration of the Member entering into this Agreement, OTM undertakes to procure that each of the Members shall enter into an agreement with OTM substantially on the same terms and conditions as this Agreement and that no substantial amendment to any Agreement shall be made without the consent in writing of all the Members.

2. Definitions and Interpretation

- 2.1 References in this Agreement to clauses are to the clauses of the Terms and Conditions.



2.2 In this Agreement, unless the context otherwise requires, the following words shall have the meanings set opposite them:

“Affiliate” the ultimate holding company or companies of a Member including any body corporate whether incorporated in the United Kingdom or overseas, any company holding more than 50 per cent of the voting stock which is controlled directly or indirectly by such holding company or companies, and any company that is owned or controlled by a Member. For the purposes of this definition “holding company” shall have the meaning given in S736 of the Companies Act 1985

In addition, where the definition ‘Affiliates’ is used with reference to Affiliates of Shell this shall mean:

- (a) N. V. Koninklijke Nederlandsche Maatschappij, a Netherlands company, the ‘Shell’ Transport and Trading Company plc., an English company, and any company other than Shell which is for the time being directly or indirectly affiliated with the two first mentioned companies or either of them.

For the purpose of this definition a particular company is:

- (i) directly affiliated with another company or companies if the latter hold/ holds shares carrying fifty per cent (50%) of 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 or companies, except the parent company or companies, is directly affiliated with one of more of the companies earlier in the series.

“Appendix” SOKS ‘Shut Off Knowledge System’ Phase 2 JIP Proposal, document ref: PR-3089-01A attached to this Agreement

“Background Technical Information” Technical Information owned and provided by Members to OTM for the purposes of the Project

“Contractor” a contractor appointed by OTM to carry out any of the Services on behalf of OTM

“Contractor Agreement” an agreement entered into by OTM and a Contractor

“Force Majeure event” an event beyond the control of OTM such that OTM could not have reasonably foreseen such event at the time of entering into the Agreement or have reasonably avoided or overcome its consequences

“Intellectual Property Rights” patents, copyrights, trade names and marks, registered designs, unregistered designs, moral rights, rights in confidential information and any other similar statutory or common law rights that



	may affect the use and/or disclosure of Technical Information
``Members``	the companies and other entities, including the Member, who have agreed to subscribe to the Project including any additional members who later join the Project as Late Members
``Membership Agreements``	this Agreement and the agreements between OTM and each other Member entered into in accordance with clause 1.4
``Late Member``	a Member who joins the Project in accordance with clause 7, after the date the Project commences
``Licence``	the licence granted in accordance with clause 12.4
``Membership Fee``	the fee payable by the Member as set out in the Appendix
``Project``	the Project described in Recital A to this Agreement
``Project Chairman``	the chairman of the Steering Committee appointed in accordance with clause 6.5
``Project Results``	Technical Information prepared and developed by OTM as part of and during the course of the Services
``Representatives``	the duly appointed representatives of OTM and the Members
``Schedule``	the schedule for completion of the Services as set out in the Appendix
``Services``	the services to be provided by OTM as set out in the Appendix
``Steering Committee``	the steering committee to be formed in accordance with clause 6 having the powers set out in that clause
``Technical Information``	information of a scientific or technical nature including results, conclusions, advice, opinions, inventions, discoveries, methods, techniques, processes, formulae, drawings, designs, specifications, data, computer programmes and calculations and any other like information and data of a confidential and proprietary nature
``Third Party``	a person, company or other entity who is not either a party to a Membership Agreement or a Member's Affiliate

3. Condition

- 3.1 This Agreement shall be conditional on a minimum number of six (6) Members (including the Member) entering into binding Membership Agreements with OTM for the Services.
- 3.2 In the event that such minimum number of Members have not executed Membership Agreements within 120 days of the date the Services should have commenced in accordance with the Schedule, this Agreement shall be considered null and void and neither OTM nor the Member shall have any further liability to the other and any monies already paid by the Member in respect of the Membership Fee shall be returned to the Member without delay.
- 3.3 Subject to clause 1.4, this condition may be waived or amended by agreement in writing of OTM and the Member.

4. Obligations of the Member

- 4.1 The Member shall pay the Membership Fee detailed in part 10.1 of the Appendix on the dates set out therein.
- 4.2 The Member shall participate in the Project in a professional and responsible manner and in the interests of the Project.

5. Member's Representative

- 5.1 The Member shall appoint, by notice in writing to OTM, a representative to act as its Representative for the purposes of the Project.
- 5.2 Such Representative shall have authority to bind the Member in all matters relating to this Agreement and shall be responsible for the issuance to and receipt from OTM of all instructions, notices and decisions and shall represent and vote on behalf of the Member at Steering Committee and other Project meetings.
- 5.3 In the event that the Member wishes to change its Representative it shall give written notice to this effect to both OTM and the Steering Committee.

6. Project Organisation

- 6.1 A Steering Committee, comprising all the Representatives shall be established with power to:
 - 6.1.1 Discuss and approve priorities within the Project scope of work, as defined in the Appendix;
 - 6.1.2 Ensure that the Schedule is being adhered to and that sufficient progress is being made by OTM;
 - 6.1.3 Approve or disapprove of the Project Results;
 - 6.1.4 Terminate the Services or part of the Services;
 - 6.1.5 Examine and approve any Project publications;
 - 6.1.6 Evaluate and approve Late Members;
 - 6.1.7 Invite a Third Party to sit on the Steering Committee and to have voting powers;
 - 6.1.8 Authorise the release of Project Results to Third Parties or into the public domain, subject to the existence of confidentiality agreements or other restrictions concerning publication;
 - 6.1.9 Subject to the above subclauses, regulate the management of the Steering Committee as it sees fit.
- 6.2 Meetings of the Steering Committee shall be held at regular intervals as described in the Appendix.
- 6.3 Each Representative shall be entitled to receive reasonable notice of and be present at meetings of the Steering Committee. Such meetings shall only be valid if at least two-thirds of all Representatives are present or represented by a duly authorised delegate.
- 6.4 Decisions on all matters shall be made by the Steering Committee by majority vote of all Representatives present at the meeting called to consider such matter, or voting by proxy in accordance with any regulations laid down by the Steering Committee. However, unanimity of all Representatives shall be required in respect of decisions to terminate the Services and to accept a Third Party on the Steering Committee. Each non oil company Representative other than the OTM Representative shall have one vote, and each oil company Representative shall have two votes.
- 6.5 A Project Chairman shall be appointed by majority vote of the Steering Committee to act as leader of the Steering Committee.



7. Late Members

A Late Member may join the Project on substantially the same terms as this Agreement, subject to the consent of the Steering Committee who may impose such additional conditions for late entry as it thinks fit.

8. Performance of the Services by OTM

8.1 OTM shall carry out the Services at its sole risk and under its exclusive direction, control and responsibility, subject to the requirement for approval by the Steering Committee on such matters as are contained in clause 6.1.

8.2 OTM shall carry out, or procure that the Services are carried out by competent supervisory, technical and other skilled personnel as are capable of diligently performing the Services in a professional and careful manner.

9. Reporting

9.1 OTM shall report to the Members via the Steering Committee in accordance with the reporting requirements contained in the Appendix.

10. Project Schedule; Delayed Progress

10.1 OTM shall use its best endeavours to ensure that the Services are performed in accordance with the Schedule.

10.2 In the event that OTM has cause to believe that the Services cannot be carried out in accordance with the Schedule it shall without delay notify the Steering Committee and within 14 days thereafter inform the Steering Committee of:

10.2.1 the reasons for the delay;

10.2.2 the estimated effect on the Project budget, the Schedule and follow up phases of the Project;

10.2.3 the measures which OTM considers appropriate to avoid, limit or recover the delay.

10.3 OTM shall take all such measures as are acceptable to the Steering Committee to mitigate the effects of the delay but subject to clause 16.1, OTM shall not be held liable for any additional costs of delay.

11. Invoicing and Payment for the Services

11.1 OTM shall, in respect of the Services, be entitled to be paid the amounts set out in part 8.1 of the Appendix in accordance with the further provisions of the Appendix.

11.2 OTM shall submit its invoices to the Member in accordance with part 8.2 of the Appendix together with such documentary substantiation as may reasonably be required by the Member.

12. Rights to Reports, Documents and Technical Information

12.1 Subject to the rights and restrictions expressed in clauses 12 and 13, OTM shall retain ownership of the Intellectual Property Rights in the Project Results.

12.2 OTM shall be entitled to use Background Technical Information for the purposes of the Project and in the development and preparation of Project Results.

12.3 Each Member shall have unlimited access to all tangible representations of the Project Results, including any reports or other documents, software, materials or equipment, and shall be entitled to use such Project Results in accordance with the Licence, subject to the restrictions as to confidentiality contained in clause 13.



- 12.4 OTM hereby grants to the Member and the Member's Affiliates, or undertakes to procure on behalf of the Member and the Member's Affiliates from Contractors under Contractor Agreements the right to grant Member, an irrevocable, worldwide, royalty-free Licence:
- 12.4.1 to use, reproduce, publish and prepare derivative works based on the Project Results to which Member is entitled under clause 12.3;
 - 12.4.2 to make, use, sell or licence any equipment, materials or other goods based on or using the Project Results to which Member is entitled under clause 12.3;
 - 12.4.3 to extend a non-transferable licence upon the terms of this Licence to third party operators of joint ventures in which the Member or Member's Affiliates have an ownership or equity interest or production sharing arrangement strictly to the extent that such licence is required in direct connection with equipment or services provided by those parties for the purposes of such joint venture or arrangement.
- 12.5 The terms of this clause 12 shall survive termination of this Contract.

13. Confidentiality

- 13.1 Notwithstanding clause 12.4, OTM and the Member shall, and the Member undertakes to procure that the Member's Affiliates shall, keep confidential all Project Results, and shall not disclose or cause to be disclosed such Project Results to any person other than the Members properly entitled to such Project Results under the terms of clauses 12.3, and OTM's or the Member's or their Affiliates' employees to whom disclosure is reasonably necessary, for a "Confidentiality Period" of two years following the date of issue of the final report resulting from the Services.
- 13.2 The Steering Committee may with the consent of the originator, such consent not to be unreasonably withheld, propose from time to time that a document or result originating from the Services is placed in the public domain before expiration of the Confidentiality Period.
- 13.3 During the Confidentiality Period OTM, the Member and the Member's Affiliates may disclose the Project Results to which the Member is entitled under clause 12.3 to Contractors, and contractors, consultants and operators or members of joint ventures but only on the terms of clause 12.4.3 and further only provided that such persons agree in writing to hold the Project Results in confidence to the same extent as required in this Agreement and to use the Project Results solely on behalf of the Members, the Member, the Member's Affiliates or the joint venture in question as the case may be.
- 13.4 Following expiration of the Confidentiality Period the Member may use all or any part of such Project Results in accordance with the Licence.
- 13.5 The restrictions contained in clauses 13.1 and 13.3 shall not apply to information which:
- 13.5.1 at the time of disclosure is part of the public domain other than by a breach of clause 13.1 or clause 13.3; or
 - 13.5.2 the recipient can show was already known to it prior to disclosure; or
 - 13.5.3 lawfully becomes available to the recipient from a source having a right to disclose the same; or
 - 13.5.4 the recipient can show to have been developed by or for the recipient at any time independently of the information disclosed to it by the disclosing party.
- 13.6 The terms of this clause 13 shall survive termination of this Contract.



14. Warranty and Indemnity

14.1 OTM shall promptly inform the Member by notice to the Steering Committee on becoming aware of any infringement or alleged infringement of any Intellectual Property Right of a Third Party, or any other matter which may in the reasonable opinion of OTM or the Member give rise to a claim for infringement. In such event the Steering Committee shall have the right to require OTM, without cost to the Members, to amend the Services or OTM's performance of the Services in such manner as shall avoid or mitigate the risk of infringement, whether actual, alleged or potential.

15. Guarantee of Performance; Limitations on Liability; Insurance

15.1 OTM hereby guarantees that it will carry out the Services in accordance with the standard set out in clause 8. If OTM fails to so perform the Services due to any error, failure or omission of OTM, OTM shall be liable for the cost of re-performance of the Services to correct any such failure in performance.

15.2 OTM shall be entitled to carry out the re-performance of the Services itself if reasonably possible. In the event that OTM is not able to undertake such re-performance within a reasonable time of being notified by the Steering Committee of this requirement the Steering Committee shall be entitled to appoint others to do so at OTM's cost provided that the Steering Committee acts in a reasonable manner.

15.3 The obligations of OTM contained in clauses 15.1 and 15.2 represent OTM's sole liability to the Member (and for the avoidance of doubt, Member's Affiliates) in respect of OTM's performance of the Services. Subject to clause 14, the Member agrees that neither OTM nor the other Members shall otherwise be held liable by the Member for any loss or damage to the Member or the Member's Affiliates on account of anything contained in the Project Results or otherwise arising from this Agreement.

16. Force Majeure

16.1 Subject to clause 16.2 OTM shall be relieved from its responsibilities under this Agreement without giving rise to any claim for compensation or damage by the Member if its failure to comply with the terms of this Agreement is occasioned by a Force Majeure event.

16.2 In seeking relief under this clause OTM shall:

16.2.1 notify the Steering Committee without delay of the Force Majeure event and shall with reasonable diligence furnish all reasonable information as to the cause of the event and estimate the time required to remedy the failure;

16.2.2 without delay, take all reasonable practical steps to minimise the loss to the Members caused by the Force Majeure event.

17. Contract Term and Termination

17.1 This Agreement shall come into force on the date written above and, subject to fulfilment or waiver of the condition contained in clause 3 and the provisions contained in this clause 17, shall continue to have full force and effect until the Steering Committee is satisfied that the Services have been completed. Clauses 12 and 13 shall survive termination, for whatever cause, of this Agreement.

17.2 OTM may terminate this Agreement by notice with immediate effect to the Member, or the Steering Committee may by giving written notice to OTM terminate all the Agreements with immediate effect, if the Member or OTM (as the case may be) has a winding up order made against it, or except for the purposes of amalgamation or reconstruction, has a resolution for voluntary winding up passed in respect of it, or has a liquidator, receiver or administrator appointed over it.



- 17.3 In the event that OTM has been and continues to be prevented from carrying out the Services for a period of at least 90 days due to a Force Majeure event:
- 17.3.1 OTM may terminate this Agreement by giving written notice of at least one month to the Steering Committee that OTM intends to terminate all the Membership Agreements; or
 - 17.3.2 the Steering Committee may by giving written notice of at least one month to OTM, terminate all the Membership Agreements; and
 - 17.3.3 such termination shall take effect from the date set out in the respective notice and shall be without liability to either OTM or the Member except that OTM shall be entitled to be paid for Services provided up to the date of termination and OTM's other expenses directly attributable to an orderly closeout of the Membership Agreements.
- 17.4 In the event that OTM fails to fulfil this Agreement in a material way, and such breach is not rectified following written notice of the same by the Steering Committee within 60 days, the Steering Committee may by giving further written notice to OTM, terminate all the Membership Agreements with immediate effect. In addition, the Steering Committee shall be entitled, on behalf of the Members, to enforce the provisions of clause 15.1. OTM shall be entitled to be paid for that part of the Services already properly performed and to be reimbursed for such expenditure irrevocably committed to the date of termination, less any amounts due from OTM to the Members.
- 17.5 The Member shall be entitled to a pro rata share of any monies refunded to the Members on termination.
- 17.6 In the event that the Member is in breach of clause 4.1 and the breach is not rectified immediately following written notice of the same from OTM, OTM may terminate the Member's membership in the Project by written notice to the Member. Such termination shall not entitle the Member to any refund of monies already paid either for the Project or any earlier phase of the Project or to receive any further rights or Project Results. The Member shall be entitled to use such of the Project Results which has already been provided, in accordance with the terms of this Agreement.
- 17.7 Invoices will be issued by OTM to the member on an annual basis each April in accordance with the provisions of part 11 of the Appendix until an Agreement is terminated.
- 17.8 The member may terminate the Agreement at any time by giving written notice of at least one month to OTM. No refund of membership fees will be made following termination. Invoices for membership fees properly issued in accordance with this Agreement and part 8 of the Appendix prior to the date of termination will be honoured by the Member.
- 18. General**
- 18.1 All notices hereunder or in connection with this Agreement shall be effective upon delivery by registered mail or facsimile transmission or personally in writing, to the respective party's address appearing in this Agreement or at any such address as that party shall from time to time notify to the other by notice in writing.
- 18.2 Wherever it is stated in this Agreement that OTM or the Member is required to give notice to or report to the Steering Committee, or entitled to receive notice from the Steering Committee, such notice or report shall be deemed to have been validly given or received if it is addressed to or from (as the case may be) the Project Chairman and delivered in accordance with clause 18.1.
- 18.3 No waiver by either party to this Agreement of any default of the other party under this Agreement shall operate as a waiver of any future default, whether of like or different in character.



18.4 If any provisions or provision of this Agreement shall be held to be in whole or in part invalid, illegal or unenforceable in any jurisdiction, or if any governmental agency or authority shall require the parties to this Agreement to delete any provision of this Agreement, such invalidity, illegality, unenforceability or deletion shall not impair or affect the remaining provisions of this Agreement or the validity or enforceability of such provision in any other jurisdiction. The parties to this Agreement shall endeavour, in good faith negotiations, to replace the invalid, illegal, unenforceable or deleted provision by valid provisions, the economic effect of which comes as close as legally possible to that of the invalid, illegal, unenforceable or deleted provision.

19. Governing law

This Agreement shall be governed by and be construed in accordance with English law and OTM and the Member hereby submit to the non-exclusive jurisdiction of the English courts.

IN WITNESS to this Agreement it is signed by the duly authorised officers of OTM and the Member:

Signed for OTM Consulting Ltd:

.....
Christopher Dudgeon, Managing Director

Signed:
.....
for Member:
Name:
Position:

APPENDIX

SOKS 'Shut Off Knowledge System' Phase 2 Proposal, document ref: PR-3089-01A