



Photoacoustic Oil in Water Monitor

Ongoing Development, Marinisation & Field Trials

Participation Agreement

05	Issued for signature	19/01/02	JES, OTM	Kvaerner
04	Issued for signature	14/12/01	JES, OTM	Kvaerner
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Notes:				

Participation Agreement

DATED.....day of.....19.....

PARTIES

1 KVAERNER OILFIELD PRODUCTS LTD (Registered no.63277) a company incorporated under the laws of Scotland and having its registered office at Howe Moss Avenue, Kirkhill Industrial Estate, Dyce, Aberdeen AB21 0NA ("KVAERNER")

2 (Registered no.) a company incorporated under the laws of and having its registered office at ("the Participant")

RECITALS

- (A) KVAERNER is undertaking a joint industry project to complete development, marinisation and field trials of their photoacoustic oil in water monitor, more fully described in the Appendix to this Agreement ("the Project").
- (B) The Participant is one of several participant companies who are subscribing to the Project ("JIP Participants"). Each JIP Participant will enter into an agreement with KVAERNER substantially on the same terms and conditions as this Agreement.
- (C) KVAERNER has agreed to provide the services in relation to the Project more particularly described in part 5 of the Appendix to this Agreement.

IT IS THEREFORE AGREED AS FOLLOWS:

TERMS AND CONDITIONS

1 *Definitions and Interpretation*

- 1.1 References to clauses and to the Appendix in this Agreement are to the clauses of and the appendix to this Agreement.
- 1.2 In this Agreement and in the Appendix, unless the context otherwise requires, the following words shall have the meanings set opposite them:

"Affiliate" the ultimate holding company or companies of a Participant 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 Participant.

For the purposes of this definition "holding company" shall have the meaning

	given in S736 of the Companies Act 1985
“Appendix”	Kvaerner Photoacoustic Oil in Water Monitor JIP Proposal PR-3092-01G December 2001
“Contractor”	a contractor appointed by KVAERNER to carry out any of the Services on behalf of KVAERNER
“Contractor Agreement”	an agreement entered into by KVAERNER and a Contractor
“Force Majeure”	an event beyond the control of KVAERNER such that KVAERNER 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
“JIP Participants”	the participant companies who have agreed to subscribe to the Project including any additional participants who later join the Project as Late Participants
“JIP Agreements”	this Agreement and the agreements between KVAERNER and each other JIP Participant entered into in accordance with clause 2.4
“Late Participant”	a JIP Participant who joins the Project in accordance with clause 7, after the date the Project commences
“Licence”	the licence granted in accordance with clause 12.3
“Milestone Date(s)”	a date noted in the Schedule for the completion of a part of the Services as set out in the Appendix part 9
“Participation Fee”	the fee payable by the Participant as set out in part 8 of the Appendix
“Project”	the Joint Industry Project described in Recital A
“Project Chairman”	the chairman of the Steering Committee appointed in accordance with clause 6.5
“Representatives”	the duly appointed representatives of KVAERNER and the JIP Participants
“Schedule”	the schedule for completion of the Services as set out in part 9 of the Appendix
“Services”	the services to be provided by KVAERNER as set out in part 5 of 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 prepared and developed by KVAERNER or Contractors during the course of the Services
“Third Party”	a person, company or other entity who is not either a party to this Agreement or the Participant’s Affiliate

- 2.1 This Agreement comprises the following documents:
- 2.1.1 these Terms and Conditions
 - 2.1.2 the Appendix
- 2.2 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.
- 2.3 This Agreement represents the entire agreement between KVAERNER and the Participant and supersedes all previous communications, representations or agreements between them concerning the Project.
- 2.4 In consideration of the Participant entering into this Agreement, KVAERNER undertakes to procure that each JIP Participant shall enter into an agreement with KVAERNER substantially on the same terms and conditions as this Agreement and that no substantial amendment to any JIP Agreement shall be made without the consent in writing of all the JIP Participants.
- 3 *Condition***
- 3.1 This Agreement shall be conditional on a minimum number of 6 JIP Participants (including the Participant) entering into binding agreements with KVAERNER for the Services.
- 3.2 In the event that such minimum number of JIP Participants have not executed agreements with KVAERNER within 90 days of the date the Services should have commenced in accordance with the Schedule, this Agreement shall be considered null and void and neither KVAERNER nor the Participant shall have any further liability to the other and any monies already paid by the Participant in respect of the Participation Fee shall be returned to the Participant forthwith.
- 3.3 Subject to clause 2.4, this condition may be waived or amended by agreement in writing of KVAERNER and the Participant.
- 4 *Obligations of the Participant***
- 4.1 The Participant shall pay the Participation Fee as set out in part 8 of the Appendix on the dates set out in that Schedule.
- 4.2 The Participant shall participate in the Project in a professional and responsible manner and in the interests of the Project.

5 *Participant's Representative*

- 5.1 The Participant shall appoint, by notice in writing to KVAERNER, a representative to act as its Representative for the purposes of the Project.
- 5.2 Such Representative shall have authority to bind the Participant in all matters relating to this Agreement and shall be responsible for the issuance to and receipt from KVAERNER of all instructions, notices and decisions and shall represent and vote on behalf of the Participant at Steering Committee and other Project meetings.
- 5.3 In the event that the Participant wishes to change its Representative it shall give notice to this effect to both KVAERNER 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 change the Project budget;
 - 6.1.2 change the Schedule;
 - 6.1.3 extend Milestone Dates
 - 6.1.4 extend or cancel the Project;
 - 6.1.5 approve or disapprove of the results obtained from the Services;
 - 6.1.6 allocate surplus funds;
 - 6.1.7 authorise the appointment by KVAERNER of Contractors and the major terms of Contractor Agreements;
 - 6.1.8 examine and approve any Project publications;
 - 6.1.9 invite a Third Party to sit on the Steering Committee and to have voting powers;
 - 6.1.10 authorise the release of Technical Information to Third Parties or into the public domain, subject to the existence of confidentiality agreements or other restrictions concerning publication;
 - 6.1.11 evaluate and approve Late Participants;
 - 6.1.12 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 in accordance with part 8.1 of 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. Votes shall be cast at the meeting called to consider such matter or 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, change the budget, release Technical Information into the public domain or to Third Parties and to accept a Third Party on the Steering Committee. In proportion to their input of funds to the Project, oil company Representatives shall have one vote each and the KVAERNER 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 Participants***

A Late Participant 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 KVAERNER***

- 8.1 KVAERNER 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 of such matters as are contained in clause 6.1.

- 8.2 KVAERNER 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***

KVAERNER shall report to the JIP Participants via the Steering Committee in accordance with the reporting requirements contained in the Appendix.

10 ***Project Schedule; Delayed Progress***

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

- 10.2 In the event that KVAERNER 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 KVAERNER considers appropriate to avoid, limit or recover the delay.

- 10.3 KVAERNER shall take all such measures as are acceptable to the Steering Committee to mitigate the effects of the delay but subject to clause 15.1, KVAERNER shall not be held liable for any additional costs of delay.

11 *Invoicing and Payment for the Services*

- 11.1 KVAERNER shall, in respect of the Services, be entitled to be paid the amounts set out in part 8.2 of the Appendix in accordance with the further provisions of the Appendix.
- 11.2 KVAERNER shall submit its invoices to the Participant in accordance with part 8.2 of of the Appendix together with such documentary substantiation as may reasonably be required by the Participant.

12 *Rights to Reports, Documents and Technical Information*

- 12.1 Subject to the rights and restrictions expressed in this clause 12 and in clause 13, KVAERNER or KVAERNER's Contractors, as the case may be, shall retain ownership of the Intellectual Property Rights in the Technical Information.
- 12.2 The Participant shall, together with the other JIP Participants, have unlimited access to all tangible representations of the Technical Information including, without limitation, any reports or other documents, software, materials or equipment and shall be entitled to use such Technical Information in accordance with the Licence subject to the restrictions as to confidentiality contained in clause 13.
- 12.3 KVAERNER hereby grants to the Participant and the Participant's Affiliates, or undertakes to procure on behalf of the Participant and the Participant's Affiliates from Contractors under Contractor Agreements the right to grant Participant, an irrevocable, worldwide, royalty-free Licence:
- 12.3.1 to use, reproduce, publish and prepare derivative works based on the Technical Information;
- 12.3.2 to extend a non-transferable licence upon the terms of this Licence to third party operators of joint ventures in which the Participant or Participant'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.
- 12.4 Under the terms of this license, the Participant is not entitled to make, use, sell or license any equipment, material or other goods based on or using the Technical Information, except that if KVAERNER elects not to market equipment, materials or other goods based on or using Technical Information or if KVAERNER fails to supply such equipment, materials or other goods to a Participant or Participant's Affiliates on reasonable commercial terms, the Participant shall have the right to buy such equipment, materials or other goods from one or more separate supplier(s) and such Technical Information as is in the possession of the Participant may be provided to the separate supplier(s) under obligations of confidentiality no less restrictive than set forth herein so that manufacture and supply of such equipment, materials or other goods to the Participant and its Affiliates becomes possible.
- 12.5 The terms of this clause 12 shall survive termination of this Contract.

13 *Confidentiality*

- 13.1 Notwithstanding clause 12.3, KVAERNER and the Participant shall, and the Participant undertakes to procure that the Participant's Affiliates shall, keep confidential all Technical Information, and shall not disclose or cause to be disclosed such Technical Information to any person other than the JIP Participants, and KVAERNER's or the Participant's or their Affiliates' employees to whom disclosure is reasonably necessary, for a "Confidentiality Period" of five years following the date of issuance 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 KVAERNER, the Participant and the Participant's Affiliates may disclose the Technical Information to Contractors, and contractors, consultants and operators or members of joint ventures but only on the terms of clause 12.3.2 and further only provided that such persons agree in writing to hold the Technical Information in confidence to the same extent as required herein and to use the Technical Information solely on behalf of the JIP Participants, the Participant, the Participant's Affiliates or the joint venture in question as the case may be.
- 13.4 Following expiration of the Confidentiality Period the Participant may use all or any part of such Technical Information 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 already lawfully part of the public domain; or
 - 13.5.2 the recipient can show was in its possession prior to disclosure; or
 - 13.5.3 is lawfully available 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 KVAERNER warrants that the possession, use or disclosure by the Participant or the Participant's Affiliates in accordance with this Agreement, of any information which is in the Technical Information shall not infringe any Intellectual Property Right of a Third Party. Subject to clause 15.4, KVAERNER shall indemnify the Participant against all damages and costs awarded against the Participant or the Participant's Affiliates in any suit or proceeding which the Participant or the Participant's Affiliates are required to defend as a result of any breach of this warranty.
- 14.2 KVAERNER shall promptly inform the Participant by notice to the Steering Committee on becoming aware of any such infringement or alleged infringement, or any other matter which may in the reasonable opinion of KVAERNER or the Participant give rise to a claim for infringement. In such event the Steering Committee shall have the right to require KVAERNER, without cost to the JIP Participants, to amend the Services or KVAERNER's performance of the Services in such manner as shall avoid or mitigate the risk of infringement, whether actual, alleged or potential.
- 14.3 The Participant shall inform KVAERNER without delay if it receives notice of any claim that KVAERNER is obliged to indemnify under clause 14.1. KVAERNER shall be entitled but not obliged, at its own cost, to take over the handling of the claim and the Participant shall give all reasonable assistance and information to KVAERNER for the handling of such claim.
- 15 ***Guarantee of Performance; Limitations on Liability; Insurance***
- 15.1 KVAERNER hereby guarantees that it will carry out the Services in accordance with the standard set out in clause 8. If KVAERNER fails to so perform the Services due to any error, failure or omission of

KVAERNER, KVAERNER shall be liable for the cost of re-performance of the Services to correct any such failure in performance.

15.2 KVAERNER shall be entitled to carry out the re-performance of the Services itself if reasonably possible. In the event that KVAERNER 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 KVAERNER's cost provided that the Steering Committee acts in a reasonable manner.

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

15.4 Notwithstanding any other provision of this Agreement:

15.4.1 KVAERNER shall not be liable to the Participant or Participant's Affiliates or any other person or entity to whom Participant discloses the Technical Information for any consequential loss, including but not limited to loss of profits.

15.4.2 KVAERNER's total liability under all the JIP Agreements shall not exceed the total Project value.

16 *Force Majeure*

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

16.2 In seeking relief under this clause KVAERNER shall:

16.2.1 notify the Steering Committee without delay of the Force Majeure event and shall with reasonable diligence furnish all reasonable information on 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 JIP Participants 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 In accordance with the provisions of part 8.2 of the Appendix, the Participant may terminate this Agreement with immediate effect by giving written notice to KVAERNER at any Milestone Date, providing that:

17.2.1 the Steering Committee has agreed that the part of the Services detailed in the Appendix part 9 as due for completion by the Milestone Date, has not been completed, or

- 17.2.2 the Steering Committee has voted in accordance with clause 6.1.5 to disapprove of the results of the part of the Services completed by the Milestone Date; and
- 17.2.3 the Steering Committee has acted reasonably and in accordance with the further provisions of part 9 of the Appendix.
- 17.3 KVAERNER may terminate this Agreement by notice with immediate effect to the Participant, or the Steering Committee may by giving written notice to KVAERNER terminate all the JIP Agreements with immediate effect, if the Participant or KVAERNER (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.
- 17.4 In the event that KVAERNER 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:
- 17.4.1 KVAERNER may terminate this Agreement by giving written notice of at least one month to the Steering Committee that KVAERNER intends to terminate all the JIP Agreements; or
- 17.4.2 the Steering Committee may by giving written notice of at least one month to KVAERNER, terminate all the JIP Agreements; and
- 17.4.3 such termination shall take effect from the date set out in the respective notice and shall be without liability to either KVAERNER or the Participant except that KVAERNER shall be entitled to be paid for Services provided up to the date of termination and KVAERNER's other expenses directly attributable to an orderly closeout of this Agreement.
- 17.5 In the event that KVAERNER 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 KVAERNER, terminate all the JIP Agreements with immediate effect. In addition, the Steering Committee shall be entitled, on behalf of the JIP Participants, to enforce the provisions of clause 15.1. KVAERNER 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 KVAERNER to the JIP Participants.
- 17.6 The Participant shall be entitled to a pro rata share of any monies refunded to the JIP Participants on termination.
- 17.7 In the event that the Participant is in breach of clause 4.1 and the breach is not rectified forthwith following written notice of the same from KVAERNER, KVAERNER may terminate the Participant's participation in the Project by written notice to the Participant. Such termination shall not entitle the Participant 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 Technical Information. The Participant shall not be entitled to use such of the Technical Information which has already been provided.
- 18 **General**
- 18.1 All notices hereunder or in connection with this Agreement shall be effective upon delivery by registered mail, telex 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. However, notices under clauses 5.1, 5.3 and 6.3 may also be deemed to have been given by e-mail.

- 18.2 Wherever it is stated in this Agreement that KVAERNER or the Participant 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 Scottish law and KVAERNER and the Participant hereby submit to the non-exclusive jurisdiction of the Scottish courts.

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

Signed:

Signed:

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for Kvaerner Oilfield Products Ltd

for Participant

Name:

Name:

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Position:

Position:

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APPENDIX

Kvaerner Photoacoustic Oil in Water Monitor JIP Proposal PR-3092-01G December 2001.