

## Request for Class – Existing Vessels

### Terms and Conditions

#### DEFINITIONS

a) "Vessel" means any vessel, drilling unit, offshore installation, platform, submersible or marine structure, owned, by the Client or by any company whose shares are at least fifty percent controlled by Client, and which is intended to be presented to AP Class for classification. Pages 9 through 15 detail all of the class services & requirements for the vessels governed by this Agreement, and the main particulars, which the Client shall update by written notice to the AP Class Chief Surveyor as changes occur.

b) "Classification" - The Classification process consists of: i) the development of Rules, Guides, standards and other criteria for the design and construction of marine vessels and structures, for materials, equipment and machinery; ii) the review of design and survey during and after construction, to verify compliance with such Rules, Guides, standards or other criteria; and iii) the assignment and registration of class when such compliance has been verified.

The Rules and standards are developed by AP Class staff and passed upon by technical and special committees made up of naval architects, marine engineers, shipbuilders, engine builders, steel makers and by other technical, operating and scientific personnel associated with the worldwide maritime industry. Theoretical research and development, established engineering disciplines, as well as satisfactory service experience are utilized in their development and promulgation.

AP Class and its committees can act only upon such theoretical and practical considerations in developing Rules and standards and in no way should classification, issuance of certificates or performance of services be deemed to be a representation, statement or warranty of seaworthiness, structural integrity, quality or fitness for a particular use or service, of any vessel, structure, item of material, equipment or machinery beyond the representations contained in the Rules of AP Class.

Surveyors apply normally accepted examination and testing standards to those items specified for each survey by the Rules; construction procedures, safety procedures and construction supervision remain the responsibility of the shipyard, ship repairer, manufacturer, owner, or other Client.

It is understood and agreed that the issuance of classification certificates or the performance of services shall be at the sole discretion of AP Class and that AP Class reserves the right to withhold or withdraw classification, certificates or services for lack of conformity with its Rules or for any other reason, whether or not such reason be deemed by the other party to be unreasonable, frivolous, arbitrary or capricious.

AP Class reserves the right to reconsider, withhold, suspend, or cancel the class of any vessel immediately for noncompliance with the Rules, for defects or damages which are not reported to AP Class, for defects reported by the Surveyors which have not been rectified in accordance with their

recommendations, or for nonpayment of fees which are due on account of Classification and other services.

## 2. AP Class SERVICES

a) Upon Client's request, AP Class shall review plans and calculations (as appropriate, AP Class may consider all or part of the design based on satisfactory service and the previous class society's plan approval), perform surveys, witness testing and issue reports as required for classification under AP Class Rules. Client is familiar with and is referred to the AP Class Rules for survey contents and on-line computer status service for details of survey timing. The vessel shall be reviewed for compliance with the AP Class Rules in effect on the date of build or the date of construction contract between the Client and the prospective vessel owner (if being converted/modified) unless Client requests the application of a later edition of the Rules, or AP Class requires earlier implementation of a specific Rule change.

**All services covered by this Agreement are indicated on pages 10 through 16.**

b) The work shall be performed solely under the terms and conditions of this Agreement, and any printed terms or conditions found in other documents used to implement this Agreement shall be void and shall not affect or extend any rights or obligations under this Agreement nor create any new rights or obligations. These provisions apply regardless of whether the loss, damage, or expense has affected a party to this Agreement, or a third party who acted or relied on the information given by AP Class.

c) In performance of this Agreement, AP Class shall be and remain, at all times, an independent contractor and neither AP Class nor any of its officers, employees, servants, agents or subcontractors shall be or act as the employee, servant or agent of any other party hereto in its performance of any of the terms and conditions of this agreement.

d) All work performed on behalf of flag administrations shall be governed by the terms and conditions of this Agreement unless the flag administration specifies otherwise.

e) Client shall verify to AP Class that the materials and components intended for classification or certification (if being converted/modified) meet the requirements of the Rules by producing certificates for such materials and components.

f) If the vessel is being converted or modified and any part of the work is subcontracted, Client shall provide AP Class with the names of the subcontractor(s), and address of the subcontractor's site(s), and shall provide the subcontractors with correct and adequate information regarding AP Class requirements and any statutory requirements. AP Class shall be entitled to rely on certificates provided by such subcontractors as it would rely on Client's certificates. Client stands surety for the acts and debts of its subcontractors. The cost of services at a sub-contractor are in addition to those stated in item 3a, and will be billed directly to the subcontractor.

## 3. PAYMENT CONDITIONS

a) Fees for classing this vessel are payable for services provided regardless of whether or not the vessel is classed.

b) Unless otherwise directed by AP Class, all fees are to be remitted upon receipt of invoice in U. S. Dollars to AP Class in the designated account by check or by wire transfer to the account so specified in the invoice and shall refer to the AP Class issued invoice number.

c) Unless otherwise provided by agreement or prohibited or restricted by law, interest will be charged at a rate of 1 1/2% per month on any amounts not paid within 30 days from invoice date.

d) The vessel and its owner, operator, and charterer shall be jointly and severally liable to AP Class for the payment of all charges including but not limited to court costs, expenses and reasonable attorney's fees incurred in collecting sums due AP Class, and AP Class may take judgment for the entire amount due. Payment to anyone other than AP Class or its authorized agent shall not be deemed payment and shall be made at payer's sole risk.

#### 4. DEFAULT

In the event of a default in the payment of any fees assessed in accordance with this Agreement, AP Class shall have the right to terminate this Agreement and cancel classification and the vessel, as well as all plans, drawings, specifications, information and reports in possession of AP Class, shall be subject to a lien for the payment of all fees and expenses due and owing by virtue of this Agreement and the termination or default hereof.

#### 5. ASSIGNMENT & SALE

Any attempt to subcontract, assign, delegate, sublet, or transfer this agreement without prior written notice to AP Class shall at AP Class's option render this Agreement void. AP Class may deem the classification of any vessel canceled upon the vessel's sale or transfer without prior written notice to AP Class.

If Client shall breach any provision hereof or shall become insolvent, enter voluntary or involuntary bankruptcy or receivership proceedings, or make an assignment for the benefit of creditors, or should the vessel be arrested or sold at auction or at a Marshall's sale AP Class shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law) to terminate this Agreement, whereupon AP Class shall be relieved of any and all further obligation hereunder and Client shall be liable to AP Class for all resulting damages. AP Class's right to require any previous waiver, forbearance, or course of dealing hereunder shall not affect strict performance of any obligation.

#### 6. CONFIDENTIALITY

Subject to sections 4 and 5 hereof, all plans, drawings, specifications and information given to and reports prepared by AP Class in connection with performance under this Agreement shall be treated as confidential by AP Class and shall not be used for any other purposes than those for which furnished without prior written consent, except as required by judicial order, governmental order or regulation, by subpoena or by direction of a governmental agency with subpoena power.

Notwithstanding the obligations of confidentiality outlined above, during conversion or modification of the vessel AP Class is authorized to discuss and disclose to the Client all submitted drawings, specifications and information from the designer and subcontractors and to discuss and disclose all pertinent information provided by the Client with subcontractors.

By signing this Agreement Client authorizes AP Class, in accordance with the GACS Transfer of Class Agreement, to obtain from the present classification society, if any, the classification survey status indicating any overdue surveys, outstanding conditions/recommendations for the subject vessel, to disclose to the present society the means of satisfying any such overdue surveys, outstanding conditions/recommendations, and consents to AP Class providing the corresponding information to any successor society.

#### 7. ACCESS

AP Class, its officers, employees, servants, agents or subcontractors shall have access to all vessels, drawings, plans, records, places of manufacture and assembly or other items necessary to complete the requested services. Client shall also grant access to auditors from AP Class, the Global Alliance of Classification Societies (GACS) or flag administration when requested by AP Class and accompanied by AP Class personnel.

Notwithstanding the general duty of confidentiality owed by AP Class to its clients in accordance with the AP Class Rules, as a condition of classification, all vessels, owners, operators and vessel personnel shall authorize AP Class to permit the European Commission and its agents to have access to all vessels, equipment, activities and records for the purposes of assessing AP Class compliance with Regulation (EC) No.391/2009 on "Common rules and standards for ship inspection and survey organizations".

It is understood that AP Class is a United States corporation and must abide by U.S. law. It is also understood that U.S. statutes and the rules, regulations, interpretations or guidelines established thereunder may be amended or changed such that AP Class cannot perform some or all of its obligations under this Agreement consistent with U.S. law. Should such an amendment to or change of law occur, or should an Owner or prospective Owner be identified as an entity to which American corporations cannot lawfully provide services, AP Class will not be liable to Client or to any third person for any damages, actual or consequential, for failure to perform any of the obligations of AP Class under this Agreement.

Client is responsible for establishing and maintaining safe working conditions in accordance with applicable safety standards and for providing AP Class surveyors with safe access to sites and assistance during construction, testing and trials. AP Class personnel shall comply with Client's safety procedures to the extent such procedures are communicated to such personnel. If AP Class personnel feel the proposed working conditions are unsafe they may refuse to attend the work site.

Client shall provide AP Class with the following documentation before issuance of a full-term classification certificate:

- a) Plans and calculations required by the Rules for review
- b) Technical descriptions and data, including material specifications
- c) All the necessary documentation as required under the GACS transfer of class agreement.

#### 8. NON-WAIVER AND SEVERABILITY

No waiver by either party of any breach of any of the terms of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of any other term hereof. If a

provision of this Agreement is held invalid all valid provisions that are severable from the invalid provision remain in effect.

9. FORCE MAJEURE

Upon prompt notification of the other party by fax, telex or letter communication, neither party hereto shall be liable to the other for default or delay in performing its obligations hereunder if such default or delay is caused by fire, strike, riot, war, act of God, delay of carriers, governmental order or regulations and/or any other similar or different occurrence beyond the reasonable control of the party so defaulting or delaying, except that cancellation for such causes may not be made without reimbursement to AP Class for expenditures actually incurred for labor and materials upon the authority of this Agreement prior to receipt of such notice.

10. TERM

This Agreement shall remain in force until terminated pursuant to the terms of this Agreement or by either Client or AP Class upon thirty days' prior written notice.

11. RESPONSIBILITY AND LIABILITY

It is understood and agreed that any report, statement, notation of plan review or certificate (hereafter referred to collectively as "certificate") issued as part of the services rendered under this Agreement is a representation solely to the signatory to this Agreement and only that at the time of survey the vessel, structure, item of material, equipment or machinery or any other item covered by a certificate has met one or more of the Rules or standards of AP Class and is issued solely for the use of AP Class, its committees, clients or other authorized entities. AP Class is not an insurer or guarantor of a vessel's integrity or safety or that of any of its equipment or machinery. The validity, applicability, and interpretation of a certificate issued under the terms of or in contemplation of this Agreement are governed by the Rules and standards of AP Class who shall remain the sole judge thereof. Nothing contained herein or in such a certificate or in any report issued in contemplation of such a certificate shall be deemed to relieve any designer, builder, owner, manufacturer, seller, supplier, repairer, operator, insurer or other entity of any duty to inspect or any other duty or warranty express or implied. If an entity is specifically identified as "Owner" in the vessel details section of this Agreement, such entity shall be considered a third party beneficiary of this agreement. Except for such entity, nothing in this agreement or in any certificate or report issued under this Agreement shall be deemed to create any interest, right, claim, or benefit in any insurer or other third party. It is understood and agreed that nothing expressed herein is intended or shall be construed to give any person, firm or corporation, other than the signatories hereto and any identified "Owner", any right, remedy or claim hereunder or under any provisions herein contained; all provisions hereof are for the sole and exclusive benefit of the parties hereto.

12. LIMITATION

AP Class MAKES NO REPRESENTATIONS BEYOND THOSE CONTAINED IN SECTIONS 1 AND 11 HEREOF REGARDING ITS REPORTS, STATEMENTS, PLAN REVIEW, SURVEYS, CERTIFICATES OR OTHER SERVICES. EXCEPT AS SET OUT HEREIN, NEITHER AP Class, NOR ANY OF ITS OFFICERS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY LOSS, DAMAGE OR EXPENSE OF WHATEVER TYPE OR KIND SUSTAINED BY ANY PERSON DUE TO ANY ACT, OMISSION OR ERROR OF ANY NATURE CAUSED BY AP

Class, ITS OFFICERS, EMPLOYEES OR AGENTS, OR DUE TO ANY INACCURACY OF ANY NATURE, EVEN IF HELD TO AMOUNT TO A BREACH OF WARRANTY.

13. INSURANCE

The Client agrees that AP Class and all of its officers, employees, or agents will be additional assureds under the Client's relevant insurance and that full waivers of rights of subrogation will be provided by relevant underwriters to AP Class and all of its officers, employees or agents.

14. ARBITRATION

Any and all differences and disputes of whatsoever nature arising out of this Agreement shall be put to arbitration in the City of New York pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by AP Class, one by Client, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Agreement for hearing and determination. The arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. The arbitrators may grant any relief other than punitive damages, which they, or a majority of them, deem just and equitable, and within the scope of the agreement of the parties, including, but not limited to, specific performance. Awards made in pursuance to this clause may include costs including a reasonable allowance for attorney's fees and judgment may be entered upon any award made hereunder in any court having jurisdiction. AP Class and Client hereby mutually waive any and all claims to punitive damages in any forum.

Client shall be required to notify AP Class within thirty (30) days of the commencement of any arbitration between it and third parties which may concern AP Class's work in connection with this Agreement and shall afford AP Class an opportunity, at AP Class's sole option, to participate in the arbitration.

15. TIME BAR TO LEGAL ACTION

Any statutes of limitation notwithstanding, Client expressly agrees that its right to bring or to assert against AP Class any and all claims, demands or proceedings whether in arbitration or otherwise shall be waived unless (a) notice is received by AP Class within ninety (90) days after Client had notice of or should reasonably have been expected to have had notice of the basis for such claims; and (b) arbitration or legal proceedings, if any, based on such claims or demands of whatever nature are commenced within one (1) year of the date of such notice to AP Class.

16. LIMITATION OF LIABILITY

**If any party to this Agreement relies on any information or advice given by AP Class and suffers loss, damage, or expense directly thereby which is proven to have been caused by the negligent act, omission or error of AP Class, its officers, employees or agents, or from breach of any implied or express warranty of workmanlike performance in connection with the services, or from any other reason, then the combined liability of AP Class, its officers, employees, agents or subcontractors to Client or any other person, corporation, partnership, business entity, sovereign, country or nation,**

will be limited to the greater of a) \$100,000 or b) an amount equal to ten times the sum actually paid for the services alleged to be deficient.

The limitation of liability may be increased up to an amount twenty-five times that sum paid for services upon receipt of Client's written request at or before the time of performance of services and upon payment by Client of an additional fee of \$10.00 for every \$1,000.00 increase in the limitation.

AP Class shall in no circumstances be liable for indirect or consequential loss or damage (including, but without limitation, loss of profit, loss of contract, loss of use) suffered by any person resulting from any failure by AP Class in the performance of its obligations under this Agreement. Under no circumstances whatsoever shall any individual who may have personally caused the loss, damage or expense be held personally liable.

THE UNDERSIGNED PARTIES ACKNOWLEDGE THAT ALL OF THE TERMS AND CONDITIONS CONTAINED IN PAGES 1 THROUGH 8 HEREOF (AND IF APPLICABLE, THE MODU ADDENDUM) HAVE BEEN REVIEWED. THIS AGREEMENT REPRESENTS THE ENTIRE INTEGRATED AGREEMENT BETWEEN THE PARTIES; THERE ARE NO OTHER REPRESENTATIONS OR ORAL AGREEMENTS. ALL SERVICES RENDERED IN CONNECTION WITH THIS CLASSIFICATION AGREEMENT ARE GOVERNED BY THE TERMS AND CONDITIONS CONTAINED HEREIN.