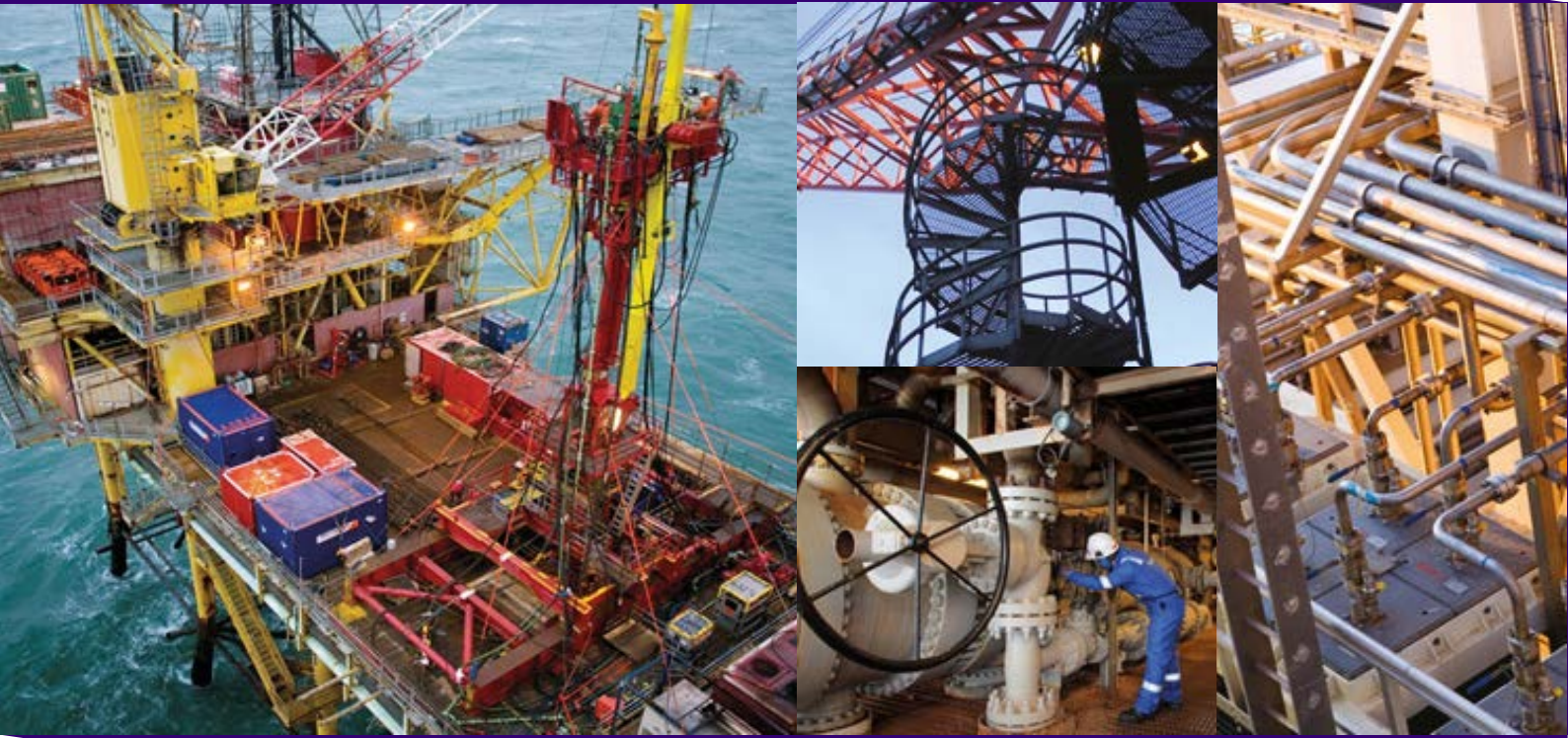




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Code of Practice on Access to Upstream Oil and Gas  
Infrastructure on the UK Continental Shelf –  
ICOP Guidance Notes

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August 2017

## Acknowledgments

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## Contents

<b>1</b>	<b>Introduction</b>	<b>5</b>
<b>2</b>	<b>Guidance to Infrastructure Owners</b>	<b>7</b>
2.1	Preparation: Ongoing Readiness for Enquiries	7
2.2	Initiation: Formal Enquiry from a Third Party User (Bona fide Enquirer)	8
2.3	Technical Studies, Option Selection and Early Deal Negotiation	9
2.4	Submitting ARN and Late-Stage Negotiation	10
2.5	Deal Close-Out – ARN Closed or Determination Triggered	11
2.6	Post Execution	12
2.7	Pro-forma Indicative Terms	13
<b>3</b>	<b>Guidance to Bona fide Enquirers (Infrastructure Users)</b>	<b>15</b>
3.1	Preparation: Venture alignment / Prepare Statement of Requirements (SOR)	15
3.2	Initiation: Formal Enquiry to Infrastructure Owner(s)	16
3.3	Technical Studies, Option Selection and Early Deal Negotiation	17
3.4	Submitting ARN and Late Stage Negotiation	19
3.5	Deal Close-out: ARN Closed or Determination Triggered	20
3.6	Post Execution	21
3.7	Pro Forma Statement of Requirements (SOR)	21
3.7.1	Field Overview	21
3.7.2	Service Requirements	22
3.7.3	Production Profiles (Gas, Oil, Water)	22
<b>4</b>	<b>Guidance to Commercial Managers Forum Representatives</b>	<b>25</b>
4.1	The Role of the Commercial Managers Forum Representative	25
4.2	Preparation: Ongoing Readiness for Enquiries	26
4.3	Initiation	26
4.4	Submitting ARN and Late Stage Negotiation	27
4.5	Deal Close-out: ARN Closed or Determination Triggered	27
4.6	Post Execution	27
<b>5</b>	<b>Guidance to Senior Management</b>	<b>28</b>
5.1	The Role of the Senior Manager	28
5.2	Preparation: Ongoing Readiness for Enquiries	28
5.3	Technical Studies, Option Selection and Early Deal Negotiation	28
5.4	Submitting ARN and Late Stage Negotiations	29
5.5	Deal Close-out: ARN Closed or Determination Triggered	29
<b>6</b>	<b>The OGA’s Role in the Process</b>	<b>30</b>
6.1	Preparation: Ongoing Readiness for Enquiries	30
6.2	Initiation	30

6.3	Technical Studies, Option Selection and Early Deal Negotiation	30
6.4	Submitting ARN and Late Stage Negotiation	31
6.5	Deal Close-out: ARN Closed or Determination Triggered	31
6.6	Post Execution	31
<b>7</b>	<b>Guidance to Oil &amp; Gas UK</b>	<b>32</b>
7.1	Preparation: Ongoing Readiness for Enquiries	32
7.2	Post Execution	32
<b>8</b>	<b>Further Guidance on Liabilities and Indemnities</b>	<b>33</b>
8.1	Issues to Consider in Relation to Setting/Applying the Cap on Maximum Liability Exposure of the Bona fide Enquirers	33
8.1.1	Introduction	33
8.1.2	Guidance Suggested	33
8.2	Issues to Consider in Relation to the Insurance Arrangements of Modifications and/or Tie-ins to Offshore Infrastructure Required by a Third Party Bona fide Enquirer	34
8.2.1	Introduction	34
8.2.2	Further Information	34
8.2.3	Guidance Suggested	35
8.3	Liability and Indemnity Issues to Consider in Relation to Contractors of a Bona fide Enquirer, the Contractors of the Infrastructure owners, and the Respective Employees Performing Work on Modifications and/or Tie-ins to Offshore Infrastructure Required by the Bona fide Enquirer	35
8.3.1	Introduction	35
8.3.2	Typical Liability and Indemnity Regime	36
8.3.3	Explanation of Schematic	36
8.3.4	Guidance Suggested	37
8.4	Issues to Consider in Relation to Inputting of Off-Specification Hydrocarbon Deliveries during the Operating Phase of Third Party Access Leading to Losses	38
8.4.1	Introduction	38
8.4.2	Guidance Suggested	38
8.4.3	Areas which should be addressed in the Negotiation Process	38
<b>9</b>	<b>Guidance on Considerations when Developing Service and Remuneration Terms for the Different Phases of a Development</b>	<b>40</b>
9.1	Introduction	40
9.2	Evaluation and Study Phase	40
9.3	Construction and Tie-in Phase	41
9.4	Terms for Production Phase	42
9.5	Conclusion	44

## 1 Introduction

These guidance notes (the “Guidance Notes” or “ICOP Guidance Notes”), initially drafted in 2008, were updated in 2012 and in 2017. On each occasion, a working group consisting of representatives from industry, the OGA<sup>1</sup> (and its predecessors) and Oil & Gas UK reviewed the Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf (also known as the “Infrastructure Code of Practice” and abbreviated here as the “Code” or “ICOP”), and its associated Guidance Notes, with a view to updating the documents to reflect changes to legislation. The opportunity was taken for a wider review to ensure that current industry practice is adequately addressed. The working group also checked that common issues and problems are addressed in the Code.

The most recent changes in 2017 incorporate the requirement to maximise the economic recovery of UK petroleum, introduced into UK law in 2015. This ‘principal objective’ should influence all negotiations for access to infrastructure, with the expectation that parties will collaborate constructively and creatively to seek commercial solutions that maximise value for the UK overall.

Abbreviations used in these Guidance Notes are taken from those defined in the ICOP.

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<sup>1</sup> See ICOP document for definitions of abbreviations used in these Guidance notes

Table 1 Typical Plan for the Commercial Negotiation Process

Phase Number	1	2	3	4	5	6	
Phase Name	Preparation	Initiation	Tech studies / Option Selection / Early Deal Negotiation	ARN Submission	Late Stage Negotiation	Deal Close-out	Post Execution
Enquirer / Prospective User preparation	[Green bar]						
Initiation meeting (CA, SOR, timeline)	[Green bar]						
Clarifications / Technical studies	[Green bar]						
<b>Indicative offer</b>	[Green bar] ★						
User analysis of alternatives	[Green bar]						
Revised data e.g. new well result	[Green bar]						
Choice from competing export options	[Green bar]						
Operational / technical analysis	[Green bar]						
<b>Submit ARN and Late Stage Negotiation</b>	[Green bar] ★						
Escalation process (if required)	[Green bar]						
Negotiate Fully Termed Agreement	[Green bar]						
<b>Sign FTAs</b>	[Green bar] ★						
Close-out deal	[Green bar]						
Post execution	[Green bar]						

## 2 Guidance to Infrastructure Owners

### 2.1 Preparation: Ongoing Readiness for Enquiries

	References
<p>This section applies to operators and owners of infrastructure with capacity to accept third party business and who have a reasonable expectation that they will be approached by a third party for service.</p> <p>The operator should ensure their joint venture (JV) publishes high level capacity information in accordance with ICOP and has an agreed basis to respond to any enquiries.</p> <p>It is expected that third party business would be regularly addressed by the operating committee to ensure a degree of readiness by the JV to potential enquiries. This would include: agreeing and regularly reviewing and updating ullage available, understanding the potential for third party enquiries, agreeing the form of response including consideration of competition law, divided rights* and legislative requirements, and ensuring publicly available website information is up to date.</p> <p>The aim is to have relevant and up-to-date information for <i>Prospective Users</i> available on websites and to be ready to respond to <i>bona fide</i> enquiries within a reasonable time. The availability and use of industry standard agreements e.g. Confidentiality and Studies Agreements and other standard system arrangements e.g. standard form Transport and/or Processing agreements or Construction and Tie-in Agreements, is encouraged to speed up this early phase.</p> <p>Infrastructure owners should have regular update meetings on infrastructure access issues with the OGA and should include infrastructure issues in their annual stewardship discussions.</p> <p>*Where divided rights to the infrastructure system have been agreed within the JV then it is still likely that technical issues are addressed through the operator but clearly commercial matters will be handled by individual owners on their own behalf. For the benefit of <i>Prospective Users</i> it is important that this arrangement is noted on the system website and relevant contacts for each owner duly noted. It is also important that the way enquiries are handled is clarified between owners ahead of any enquiry, so this can be effectively communicated to avoid undue delay to the start of negotiations. (It should be noted that there will be slight differences in procedure in these cases, but this distinction has not been explicitly included in the following sections).</p>	<p>ICOP 7.2, 7.3, ICOP-Annex D</p>

## 2.2 Initiation: Formal Enquiry from a Third-Party User (*Bona fide* Enquirer)

<p>This process typically starts with a formal written enquiry from a <i>Bona fide Enquirer</i> containing relevant field information, proposed process and timetable and an outline of the statement of requirements. It is likely that full details as outlined in the pro-forma SOR (see section 3.7) will require a reciprocal Confidentiality Agreement to be in place.</p> <p>Owners of infrastructure should appoint and inform the <i>Bona fide Enquirer</i> of the named contact who will lead the response to the enquiry. Normally this would be the operator unless there is a conflict of interest (and “operator” is used in the following text). In the case of a substitute operator being necessary, it should be mandated to act in this capacity by the other JV partners.</p> <p>The operator should respond in writing to this “Service Request” letter and arrange to meet with the <i>Bona fide Enquirer</i> within a reasonable time from receipt of the enquiry (normally within two weeks), if possible the meeting to include both commercial and technical staff. The aim of this meeting is to:</p> <ol style="list-style-type: none"> <li>a) Clarify representatives on both sides</li> <li>b) Agree a way forward on confidentiality (e.g. sign Confidentiality Agreement)</li> <li>c) Reach mutual understanding of the <i>Bona fide Enquirer’s</i> request (see Pro-forma SOR in 3.7) and the infrastructure owners’ ability to provide the service sought</li> <li>d) At a high-level, identify engineering works and studies that will be required</li> <li>e) Agree a high-level process and initial timetable</li> <li>f) Adopt a pragmatic solution to any conflicts-of-interest</li> <li>g) Identify roles and responsibilities on both sides, including the escalation process to be used.</li> </ol> <p>The timetable should be realistic and recognise the reasonable time required for the Operator to resource any necessary studies and other work. The timetable should contain a provisional date when the ARN is expected to be submitted by the <i>Bona fide Enquirer</i>. If circumstances mean that conclusion of agreements is required by the <i>Bona fide Enquirer</i> in less than six months from the appropriate time for submission of the ARN and that this is reasonably expected to be achievable, this should be agreed at this time. Note, ICOP is not intended to constrain a <i>Bona fide Enquirer</i> to wait six months from submission of an ARN before applying to the OGA to make a determination.</p>	<p>ICOP 6, 7.4 GN 3.7, Oil &amp; Gas UK industry standard Confidentiality Agreement</p> <p>ICOP 10</p> <p>ICOP 6,8(4)</p>
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<p>The meeting should be recorded / minuted by the <i>Bona fide Enquirer</i> and include the process and timetable. A copy of the minutes should be sent to the Operator’s Commercial Managers’ Forum representative (CMF representative). A copy of the timetable will also be sent (by the <i>Bona fide Enquirer</i>) to the OGA contacts.</p> <p>Subsequent discussion (at or following initial meeting) should seek to reach agreement with <i>Bona fide Enquirer</i> on the timetable (including when the ARN should be submitted).</p>	
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### 2.3 Technical Studies, Option Selection and Early Deal Negotiation

<p>Technical studies are normally necessary to determine whether access to the infrastructure is possible, at what cost, whether any modifications are required and to understand any specific risks introduced to the infrastructure system.</p> <p>The infrastructure operator will normally manage and resource these studies, in accordance with the agreed timetable, at the <i>Bona fide Enquirer’s</i> expense. Any deviations from the timetable should be discussed with the <i>Bona fide Enquirer</i> with a view to agreeing a revised, achievable timetable as soon as possible.</p> <p>The infrastructure owners are expected to provide a mandate to the operator for terms and tariff to be proposed to the <i>Bona fide Enquirer</i>. The terms and tariff should be fair and reasonable, and include an appropriate and justifiable liability and indemnity regime. The tariff offer should be made in a reasonable timeframe (in accordance with the agreed timetable). Offers are normally made after the technical studies to determine ullage, CAPEX, risks and schedule are complete. However, this should not preclude offers made before this time. It is also possible that further studies may have to be commissioned after initial findings. See pro-forma (section 2.7) on indicative offers, which is intended to provide an example of the matters that should be considered in preparing such offers.</p> <p>Where technical studies are lengthy or delay the firm offer, operators should, where possible, refer enquirers to already published terms on their websites to enable the <i>Bona fide Enquirer</i> to progress their understanding of development options.</p> <p>Following technical considerations of the service request there may be constraints that have to be applied or it may be that more than one commercial option can be offered. It is important that infrastructure owners explore all possible commercial options requested by the <i>Bona</i></p>	<p>ICOP 6,</p> <p>OGA Guidance on Disputes over Third Party Access to Upstream Oil &amp; Gas Infrastructure</p> <p>Section 2.7 of these Guidance Notes.</p>
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<p><i>fide Enquirer</i> (and possibly other options), with any restrictions to the range of commercial options being fully explained and justified; e.g. where Infrastructure Owners are only proposing to offer a gas purchase option instead of a transportation and processing service that allows onshore sales alternatives (N.B. “Terms for services offered should not result from an infrastructure owner leveraging market power in one component to deny choice in other parts of the chain.”)</p> <p>As studies progress, any deviations from the timetable should be discussed with the <i>Bona fide Enquirer</i> with a view to agreeing a revised, achievable timetable. It is good practice to exchange regular timetable updates between all involved parties, enquirers and infrastructure owners.</p> <p>Meetings should be recorded / minuted, by the <i>Bona fide Enquirer</i> and any process and timetable changes notified to the Operator’s CMF representative. It is good practice to have regular, say at least six monthly, meetings with the OGA to appraise them of the status of the enquiry and especially any substantive timetable changes that could impact the overall timeline.</p> <p>This stage ends with option selection by the <i>Bona fide Enquirer</i>. In the light of experience, it is suggested as a practical interpretation of ICOP, that the normal process should be for an ARN to be issued to the operator(s) in respect of the preferred infrastructure route only and not to the full list of alternative options that have been under consideration during this stage. Where, less usually, the <i>Bona fide Enquirer</i> submits an ARN for more than one export route, then the <i>Bona fide Enquirer</i> needs to notify the OGA and the relevant parties when the less favoured route(s) have been eliminated and the ARN(s) withdrawn.</p>	<p>ICOP 11</p> <p>ICOP 8 (3)</p>
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## 2.4 Submitting ARN and Late-Stage Negotiation

<p>The <i>Bona fide Enquirer</i> submits the ARN to the operator, copied to the OGA. This should be in accordance with the latest agreed timetable, which should be attached to the ARN. Upon receipt, the operator should circulate it to the other infrastructure owners and make a response promptly (within two weeks). The operator’s CMF representative should be notified that the ARN has been received.</p> <p>The operator’s response to receipt of the ARN should be endorsed by senior management and copied to the OGA. The ARN is expected to be submitted consistent with the process and timetable previously agreed, and in these circumstances the infrastructure owners would</p>	<p>ICOP 9.1, ICOP- Annex E</p>
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<p>not normally be expected to have concerns about the submission of the ARN. However, if there are reasonable concerns, the infrastructure operator on behalf of the owners should set out in the response any concerns they have regarding the feasibility of completing negotiations within the period of the ARN.</p> <p>Negotiations of agreements should be progressed in accordance with the agreed process and timetable. Any deviations that would affect the ability to conclude agreements within the ARN expiry date should be notified to the operator’s CMF representative.</p> <p>At four months after the ARN submission, a specific review with the operator’s CMF representative should be made of whether intervention is required to maintain the timetable. Intervention should take the form of escalation in the first place to the respective CMF representatives who will attempt to resolve the matter. Should this fail, the CMF representatives should escalate further to senior management in order to seek resolution. This process of escalation, if needed, is an extremely important part of the procedure. Infrastructure owners should make all possible effort to resolve issues constructively with <i>Bona fide Enquirers</i>.</p> <p>During this final two months of the ARN period, it may become the view of the <i>Bona fide Enquirer</i> that, while agreement is unlikely before the ARN period expires, an extension of time would facilitate a satisfactory agreement being reached. If the infrastructure owners agree with that view, the infrastructure operator should be prepared to support the <i>Bona fide Enquirer</i> in notifying the OGA of an extension of the ARN period. However, the infrastructure operator is not obliged to do this and may not wish to do so.</p>	
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## 2.5 Deal Close-Out – ARN Closed or Determination Triggered

<p>If due process is followed, including adherence to agreed timetables and, if necessary,</p> <ul style="list-style-type: none"> <li>a) there has been timely escalation of areas of disagreement to CMF representatives or senior management; and</li> <li>b) extension of the ARN period,</li> </ul> <p>then it is expected that agreements will be executed without the need for the <i>Bona fide Enquirer</i> to request the intervention of the OGA. Once agreement is reached, the infrastructure operator should join the (former) <i>Bona fide Enquirer</i> in informing the OGA of that fact.</p> <p>However, a point may be reached where the <i>Bona fide Enquirer</i> considers it appropriate to apply to the OGA to grant access and impose terms in accordance with the relevant legislative provisions.</p>	<p>ICOP 9.1(4)</p> <p>ICOP 9.1(5)</p>
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<p>While every effort should be made, even at this late stage, to resolve any remaining issues commercially, the infrastructure operator should not seek unduly to delay an application being made by the <i>Bona fide Enquirer</i> to the OGA once an ARN period (including any notified extension) has expired.</p> <p>The infrastructure operator should note that the <i>Bona fide Enquirer</i> has the right under the legislation to apply to the OGA for a notice of determination at any time after negotiations have started, notwithstanding the terms of the ARN, although in accordance with the legislation the OGA may decide not to entertain such an application. The infrastructure operator should not seek to oppose or unduly delay exercise of that right unless there is a particular reason to do so.</p> <p>If the <i>Bona fide Enquirer</i> makes an application to the OGA, it is suggested in 3.5 of these Guidance Notes that the infrastructure operator will be informed of this action. The infrastructure operator, on behalf of the owners, may wish to offer his comments to the OGA at this stage. However, it should be noted that, if in accordance with the legislation the OGA notifies the applicant and the infrastructure owners that it proposes to consider the application, it will before doing so give them a formal opportunity of being heard with respect to it.</p> <p>Note that the Energy Act 2011 allows the OGA to act on its own initiative by setting terms in situations where the parties have had a reasonable time in which to reach agreement and there is no realistic process that they will do so. The OGA Guidance on Disputes over Third Party Access to Upstream Oil describes this in more detail.</p>	<p>Energy Act 2011</p> <p>OGA Guidance on Disputes over Third Party Access to Upstream Oil &amp; Gas Infrastructure</p> <p>Energy Act 2011</p>
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## 2.6 Post Execution

<p>When the deal becomes unconditional, the infrastructure operator posts a summary of key terms of the signed agreement on its website. For this purpose, the deal should be regarded as unconditional once development approval has been granted by the OGA, and significant conditions precedent have been satisfied. Publication should not be held up for non-significant conditions. Agreements should contain terms to specifically permit the publication of this information.</p> <p>Commercial terms for transportation and processing and other operating service agreements should identify all the principal provisions sufficiently to reflect the cost for the service being provided.</p>	<p>ICOP 14</p>
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<p>The infrastructure operator arranges a time for a post-activity audit with the <i>Bona fide Enquirer</i>. This may be a meeting, or for smaller deals simply a phone call. The outcome of this should be copied to the operator’s CMF representative.</p>	CCOP
<p>The information from the post activity audit should be retained for the annual ICOP review submission at the year end.</p>	CCOP

## 2.7 Pro-forma Indicative Terms

Indicate whether standard system agreements for third parties are already available and reference the SOR on which this offer is based.

### *Construction and Tie-in Agreement (CTA)*

- Obligations of the parties (who does what)
- Budget estimate of cost/schedule and scope of modifications
- Who pays for the modifications and ownership of new facilities and who bears the cost of decommissioning facilities
- Indication of studies (if any) required to determine costs more definitively (scope, time and cost of studies)
- Project management/co-ordination arrangements etc. and hand-over (including run-in and test periods)
- L&I regime
  - Capped (at what level?)
  - Position of contractors in L&I regime
- Back-out provisions (if required)
- Shutdown implications
- Any special risks
- Credit risk provisions (e.g. letters-of-credit)
- Governing law/jurisdiction

### *Transportation and Processing Operating Service Agreement (TPOSA)*

- Conditions precedent
- Commencement and termination
- Obligations of the Parties including:
  - List of Services to be provided (tariff and non-tariff services)
- Quantities and capacity including:
  - Capacity booking mechanisms
  - Prioritisation in the event of restrictions
  - Firm or reasonable endeavours capacity
  - Minimum length of firm service
- Measurement, allocation and sampling
- Tariff, Fee and Costs including:
  - Indexation provisions and base period
  - Basis for any switch to OPEX share
  - Send or pay/minimum bill
  - Cost basis for non-tariff services
  - Tariff/terms for any reasonable endeavours service
- L&I regime, including:
  - Treatment of off-specification product
  - Capped liabilities (at what level)
  - Liability for failure to process
- Mechanism for contributing to fuel and flare gas
- Mechanism for contributing to greenhouse gas and OIPW costs
- Decommissioning liabilities with respect to the new facilities.
- Co-operation between the Infrastructure Owners and the *Bona fide* Enquirer for decommissioning of the *Bona fide* Enquirer's facilities
- Back-out provisions (if required)
- Credit risk provisions (e.g. letters-of-credit)
- Title and risk in product delivery
- Governing law/jurisdiction

### 3 Guidance to *Bona fide* Enquirers (Infrastructure Users)

#### 3.1 Preparation: Venture alignment / Prepare Statement of Requirements (SOR)

	References
<p>Before approaching potential infrastructure owners, usually through the operator, prospective infrastructure users should endeavour to define as clearly as possible the development scenario (including timing, profiles and facilities) associated with the particular export route. Initial screening of export options can then take place, utilising the infrastructure’s published data as provided in accordance with the ICOP.</p>	<p>ICOP 6</p> <p>ICOP 7</p>
<p>Prior to approaching the infrastructure operator*, infrastructure users should have a proposed solution to any conflicts of interest within the group. If required, they should have appointed a “substitute commercial operator” to lead commercial negotiations with the infrastructure operator* on behalf of the infrastructure user group, under an agreed mandate. (See guidance provided on such matters within the ICOP).</p>	<p>ICOP 5.2 &amp; 10</p>
<p>The operator of the infrastructure users will then be in a position to provide to the operator(s) of the infrastructure owners an agreed SOR (see section 3.7) which should be in keeping with the ICOP and the guidance provided herein.</p>	<p>SOR, Section 3.7 of these Guidance Notes.</p>
<p>As a general recommendation to <i>Bona fide Enquirers</i> it is good practice to keep good records of the key events, decisions and milestones throughout an enquiry and also to keep the OGA apprised of progress with regular updates</p>	<p>CCOP</p>
<p>* It should be noted that divided rights have been agreed within some infrastructure systems. In this instance, it is still likely that technical issues are addressed through the operator but clearly commercial matters will be handled by individual owners on their own behalf. Consequently, there will be slight differences in procedure in these cases, but this distinction has not been explicitly included in the following sections.</p>	

### 3.2 Initiation: Formal Enquiry to Infrastructure Owner(s)

<p>This process typically starts with a formal written enquiry from the operator (or substitute commercial operator) of the field development group requiring access to the infrastructure (<i>Bona fide Enquirer</i>) containing relevant field information and an outline of requirements.</p> <p>Timely instigation of negotiations has been one of the main areas of concern for <i>Bona fide Enquirers</i> and it is recommended that a formal “Service Request” letter is sent to the infrastructure operator to indicate the intent to enter into serious negotiations (as opposed to obtaining general information on the system). The information that should be supplied in this letter is an outline of the statement of requirements (SOR) and any other relevant information. It is likely that full details, as outlined in the attached pro-forma SOR, will require a reciprocal Confidentiality Agreement to be in place.</p> <p>It is recommended that a signed standard industry Confidentiality Agreement (CA) is attached to the “Service Request” letter, to be returned after it is also signed by the infrastructure operator so that the detailed information that will be needed to progress the request can be provided early and expedite the first meeting.</p> <p>If an initial response from the infrastructure owners is not forthcoming then, in the first instance, the CMF representatives should be used to instigate action. They will be aware of field development activities and may also make enquiries about initial export discussions and on-going progress but contact can be made between the <i>Bona fide Enquirer</i> and the OGA if necessary (see section 6).</p> <p>An initial meeting should be planned (normally within two weeks of the infrastructure operator receiving a request) which should, if possible, include both commercial and technical staff. The initial meeting represents acknowledgement that a <i>bona fide</i> enquiry has started.</p> <p>The aim of the initial meeting is to:</p> <ol style="list-style-type: none"> <li>a) Clarify representatives on both sides</li> <li>b) Agree a way forward on confidentiality (e.g. sign standard CA)</li> <li>c) Reach mutual understanding of the <i>Bona fide</i> Enquirer’s request (see SOR) and the infrastructure owners’ ability to provide the service sought</li> <li>d) At a high level identify engineering works and studies that will be required</li> <li>e) Agree a high-level process and initial timetable</li> <li>f) Adopt a pragmatic solution to any conflicts-of-interest</li> <li>g) Identify roles and responsibilities on both sides, including the escalation process to be used.</li> </ol>	<p>ICOP 6</p> <p>SOR, Section 3.7 of these Guidance Notes</p> <p>Oil &amp; Gas UK industry standard Confidentiality Agreement</p>
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<p>The timetable should be realistic and recognise the time required for the infrastructure operator to resource any necessary studies and other work. The timetable should contain a provisional date when the ARN is expected to be submitted. (Note that, ICOP states such timing is determined by the <i>Bona fide Enquirer</i>). The meeting should be recorded / minuted (this is best done by the <i>Bona fide Enquirer</i>, as they should be driving progress to meet field development plans, but should reflect the statements of both parties). This record should include the agreed process and timetable, noting where this is agreed with the infrastructure operator, to whom it should be copied. The minutes should also be copied to the CMF representative and sent to the OGA.</p> <p>Subsequent discussion (at or following the initial meeting – see below) should seek to reach agreement with the infrastructure operator on the timetable (including an indication of when an ARN would be submitted) and identify any potential constraints to progress. Updating the timeline is a key project management tool. In progressing any subsequent negotiations, the <i>Bona fide Enquirer</i> should be open to the use of standard form agreements to the extent practicable and ensure appropriate resources are made available to enquiries from the infrastructure operator(s).</p>	<p>ICOP 8(4)</p>
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### 3.3 Technical Studies, Option Selection and Early Deal Negotiation

<p>Technical studies are normally necessary to determine whether access to the infrastructure is possible, at what cost, what modifications are required and to understand any specific risks thereby introduced.</p> <p>The infrastructure operator will normally manage and resource these studies, in accordance with the agreed timeline, at the <i>Bona fide Enquirer's</i> expense. Any anticipated deviations from the timetable should be discussed with the infrastructure operator with a view to agreeing a revised timetable as soon as possible.</p> <p>The infrastructure operator is expected to provide commercial terms including tariffs to the <i>Bona fide Enquirer</i>. Such commercial terms should be fair and reasonable, in accordance with the ICOP, and include a liabilities and indemnities regime. The tariff offer should be made in a reasonable timeframe (in accordance with the agreed timeline). Offers are normally made after the technical studies to determine ullage, capex risks, and schedule are complete. However, this should not preclude offers made before this time. It is also possible that further studies may have to be commissioned after initial findings. See attached pro-forma</p>	<p>ICOP 6</p> <p>Indicative Terms, Section 2.7 of these Guidance Notes</p>
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<p>on indicative offers, which is intended to provide an example of the matters that should be considered in preparing such offers.</p> <p>Following technical considerations of the service request there may be constraints that have to be applied or it may be that more than one commercial option can be offered. <i>Bona fide Enquirers</i> are encouraged to be clear on the range of commercial options sought and should request full justification where the range of options offered by the infrastructure owners is limited, e.g. by the infrastructure owners only proposing a gas purchase option instead of a transportation and processing service that also allows onshore sales alternatives. (N.B. “Terms for services offered should not result from an infrastructure owner leveraging market power in one component to deny choice in other parts of the chain.”)</p> <p>Following receipt of terms the <i>Bona fide Enquirer</i> may wish to clarify and/or negotiate key terms to a level where a mutual understanding is established on the basis on which production from the field can be transported and/or processed if the infrastructure in question was selected as the preferred export route. As studies and clarifications progress, best practice would require regular exchange of schedule updates between <i>Bona fide Enquirer</i> and infrastructure operators.</p> <p>Meetings should be recorded / minuted (by the <i>Bona fide Enquirer</i>) and any process and timetable changes notified to their CMF representative. It is good practice to have regular, say at least six monthly, meetings with the OGA, to appraise them of the status of the enquiry and especially any substantive timetable changes that could impact the overall timeline.</p> <p>This stage ends with option selection by the <i>Bona fide Enquirer</i>, so the normal process is for an ARN to be issued to the infrastructure operator(s) in respect of the preferred infrastructure route only and not to the full list of alternative options that have been under consideration during this stage. Where the <i>Bona fide Enquirer</i> submits an ARN for more than one export route, then the <i>Bona fide Enquirer</i> needs to notify the OGA and the relevant parties when the less favoured route(s) have been eliminated and the ARN withdrawn.</p>	<p>OGA Guidance on Disputes over Third Party Access to Upstream Oil &amp; Gas Infrastructure</p> <p>ICOP 11</p> <p>ICOP 9.1(2)</p>
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### 3.4 Submitting ARN and Late Stage Negotiation

<p>Having regard for the significance of the ARN under the ICOP (parties undertake to ultimately settle disputes under an automatic referral to the OGA) it is recommended that all members of the prospective user group endorse it and that the <i>Bona fide Enquirer's</i> senior management has approved its issue. The operator of the selected infrastructure may be consulted on the submission timing which will normally be in accordance with the agreed timetable. The <i>Bona fide Enquirer</i> submits the ARN to the infrastructure operator, copied to the OGA. The latest agreed process and timetable should be attached to the ARN. The <i>Bona fide Enquirer's</i> CMF representative should be aware that the ARN has been submitted.</p>	<p>ICOP 5.2</p> <p>ICOP-Annex E</p>
<p>The issue of the ARN signifies the entering of the final six months or less of detailed negotiations to conclude the deal. Negotiation of agreements should be progressed in accordance with the agreed process and timetable. Any deviations that would affect the ability to conclude agreements within the ARN expiry date should be notified to the <i>Bona fide Enquirer's</i> CMF representative.</p>	<p>ICOP 6</p>
<p>At four months after the issue of the ARN, a specific review with the <i>Bona fide Enquirer's</i> CMF representative should be made to consider whether intervention is required to maintain the timetable. Intervention should take the form of escalation in the first place to the respective CMF representatives who will attempt to resolve the matter. Should this fail, the CMF representatives should escalate further to senior management in order to seek resolution. This process of escalation, if needed, is an extremely important part of the procedure. <i>Bona fide Enquirers</i> should have made (and be seen to have made) all possible effort to resolve issues before making any application to the OGA.</p>	
<p>During this final two months of the ARN period, if it becomes clear to the <i>Bona fide Enquirer</i> that agreement is unlikely before the ARN period expires, but that an extension of time would facilitate a satisfactory agreement being reached, the <i>Bona fide Enquirer</i> should inform the OGA that an extension is needed. Such a notification should ideally have the support of the infrastructure operator and be accompanied by an agreed revised timetable. In the absence of such support, the OGA may seek other evidence of the status of the negotiation. The CMF representatives should in all cases be informed that such a notification is being made to the OGA. If the circumstances appear to justify it, the <i>Bona fide Enquirer</i> may over time submit more than one notification for extension of the ARN period.</p>	<p>ICOP 9.1(4)</p>

### 3.5 Deal Close-out: ARN Closed or Determination Triggered

<p>If due process is followed, including adherence to agreed timetables and, if necessary,</p> <ul style="list-style-type: none"> <li>a) there has been timely escalation of areas of disagreement to CMF representatives or senior management; and</li> <li>b) extension of an ARN period,</li> </ul> <p>then it is expected that agreements will be executed without the need to request the intervention of the OGA. Once agreement is reached, the (former) <i>Bona fide Enquirer</i> should jointly with the infrastructure operator inform the OGA of that fact.</p>	<p>ICOP 9.1(4)</p>
<p>Where the ARN period has expired or where it appears to the <i>Bona fide Enquirer</i> that no reasonable prospect of achieving agreement by commercial negotiation remains, the <i>Bona fide Enquirer</i> should apply to the OGA to grant access and impose terms in accordance with the relevant legislative provisions. The <i>Bona fide Enquirer</i> should bear in mind that under the terms of the legislation the OGA may not entertain an application unless it is satisfied that the parties have had a reasonable time in which to reach agreement between themselves. The <i>Bona fide Enquirer</i> should therefore seek to assure himself, before submitting an application that the situation is such that the OGA may reasonably be satisfied in this respect.</p>	<p>ICOP 9.1(5)</p>
<p>Conversely, while every effort should be made, even at these final stages, to resolve any remaining issues commercially, the <i>Bona fide Enquirer</i> should not unduly delay making an application to the OGA for a notice of determination once an ARN period (including any agreed extension) has expired. The basic principle of the ARN procedure is that the application to the OGA should be automatic once the ARN period has expired without agreement being reached.</p>	<p>Energy Act 2011</p> <p>OGA Guidance on Disputes over Third Party Access to Upstream Oil &amp; Gas Infrastructure</p>
<p>Any application to the OGA should be made in the manner set out in the OGA's own guidance notes. If the <i>Bona fide Enquirer</i> makes an application, he should inform the infrastructure operator that he has done so.</p>	
<p>The <i>Bona fide Enquirer</i> should also bear in mind that he has the right under the legislation to apply to the OGA for a notice of determination at any time during his negotiations with infrastructure owners, notwithstanding the terms of an ARN. This right to apply to the OGA for a determination may be particularly applicable where the initially agreed timetable anticipated negotiations being completed in less than the "standard" six month ARN period.</p>	<p>Energy Act 2011</p>

<p>Note that the Energy Act 2011 allows the OGA to act on its own initiative by setting terms in situations where the parties have had a reasonable time in which to reach agreement and there is no realistic process that they will do so. The OGA Guidance on Disputes over Third Party Access to Upstream Oil describes this in more detail.</p>	
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### 3.6 Post Execution

<p>When the deal becomes unconditional the infrastructure operator posts key terms of the signed agreement on its website with the assistance of the <i>Bona fide Enquirer</i> who provides an appropriate summary of the development. Agreements should contain terms to specifically permit the publication of this information.</p>	<p>ICOP 14</p>
<p>The infrastructure operator should arrange a time for a post-activity audit with the <i>Bona fide Enquirer</i>. This may be a meeting or, for a smaller deal, simply a phone call. The outcome of this should be copied to the <i>Bona fide Enquirer's</i> CMF representative.</p>	<p>CCOP</p>
<p>The information from the post activity audit should be retained for annual ICOP review submission at the year's end.</p>	<p>CCOP</p>

### 3.7 Pro Forma Statement of Requirements (SOR)

#### 3.7.1 Field Overview

##### 3.7.1.1 Introduction

Provide a high-level overview of the development and include what the request is for e.g. type of discovery/field, location map, license block number, fluid characteristics, and service required.

##### 3.7.1.2 Field Owners and Equities

Provide Operator/Co-Venturer details including equity percentages.

##### 3.7.1.3 Development Options

Outline the development base case; system design pressure, include requirements for Water Injection, Artificial Lift, Treatment Chemicals and number of wells. Also outline any other development options under consideration.

##### 3.7.1.4 Project Schedule (see Table 2)

To include key decision milestone dates; offer due date, ARN Submission, First FDP Submission, Final Investment Decision.

#### 3.7.1.5 Selection Criteria

To include key selection decision driver.

### 3.7.2 Service Requirements

Provide details of the type of service(s) required.

#### 3.7.2.1 Construction and Tie-in

Likely tie-in points for field tiebacks or likely modifications to existing facilities where known.

#### 3.7.2.2 Processing Services

Oil and gas separation, oil dehydration and export, produced water treatment and disposal, gas treatment compression and export.

#### 3.7.2.3 Commissioning Services (Gas)

Identify the need for commissioning gas and also how commissioning is envisaged.

#### 3.7.2.4 Transportation Services

Delivery and redelivery points, bundled or unbundled service.

#### 3.7.2.5 Metering, Sampling and Allocation

Export Oil and Gas metering, Produced Water metering for allocation, Gas lift allocation (if shared system), Process allocation – if fluids undergo significant processing after arrival/blending with native fluids (requiring allocation by simulation, i.e. NGL conditioning, oil stabilization), Fuel/Flare gas allocation, Carbon dioxide emissions allocation.

#### 3.7.2.6 Operational Services

Provide details of requirements for gas lift, water injection, chemical injection, well operation/testing, pigging and process blowdown.

### 3.7.3 Production Profiles (Gas, Oil, Water)

Provide production profiles for low, mid and high case until end of field life.

#### 3.7.3.1 Field Reservoir Data

#### 3.7.3.2 Field Reservoir Fluid PVT Properties (See Table 3)

#### 3.7.3.3 Field Reservoir Fluid Composition including contaminants (See Table 4)

#### 3.7.3.4 Produced Water Composition (See Table 5)

Table 2: Example Project Schedule

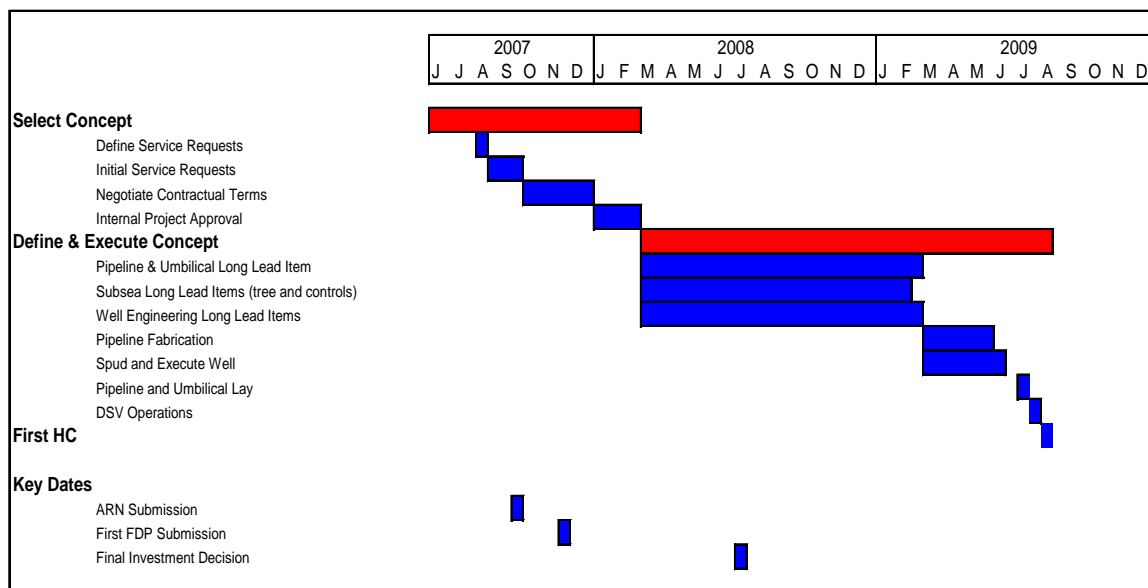


Table 3: Typical Reservoir Fluid PVT Properties

Property
Reservoir Temperature (deg F)
Initial Reservoir Pressure (psia)
Bubble Point (psia)
Stock Tank Oil Gravity (deg API)
Gas Gravity (SG)
Initial Solution GOR (scf/stb)
Oil Formation Volume Factor at initial pressure (rb/stb)
Dead Oil Viscosity (cSt) and 20 degree C
H <sub>2</sub> S (ppm)
CO <sub>2</sub> (mol%)
Water Gravity
Pour Point
Wax Content
Sulphur Content
Acid Number (TAN)

Table 4: Typical Fluid Composition

Component
N <sub>2</sub>
CO <sub>2</sub>
H <sub>2</sub> S
CH <sub>4</sub>
C <sub>2</sub> H <sub>6</sub>
C <sub>3</sub> H <sub>8</sub>
IC <sub>4</sub> H <sub>10</sub>
NC <sub>4</sub> H <sub>10</sub>
IC <sub>5</sub> H <sub>12</sub>
IC <sub>5</sub> H <sub>12</sub>
Pseudo C <sub>6</sub>
C <sub>7+</sub> including equivalent Molecular Weight

Table 5: Typical Produced Water Composition

Property	Concentration (mg/L)
Na	
K	
Li	
Mg	
Ca	
Sr	
Ba	
Fe	
Cl	
Br	
SO <sub>4</sub>	
HCO <sub>3</sub>	
pH	
TDS (Calculated)	



## 4 Guidance to Commercial Managers Forum Representatives

### 4.1 The Role of the Commercial Managers Forum Representative

	References
<p>The CMF representative should be someone at senior level within the organisation (typically the Commercial Manager), chosen by and endorsed by an appropriate senior manager (typically the UK-based MD/CEO), who is committed to good negotiating practice and has the authority to ensure that both the CCOP and ICOP are understood and adopted by The organisation as the basis for all relevant UKCS negotiations. Oil &amp; Gas UK can provide a list of the contact details of the people currently appointed as the CMF representative for their organisation.</p> <p>The role of the CMF representative is to act as the driving force to promote the CCOP and ICOP, taking leadership for Code issues with negotiators and others within the organisation and for external high-level liaison with commercial partners and the OGA/Oil &amp; Gas UK. This role will include:</p> <ul style="list-style-type: none"> <li>• Leading the company’s commitment to the Code, ensuring such commitment throughout the organisation, and that the principles of the CCOP and ICOP are publicised and embedded in company practice (for example into the annual staff appraisal process).</li> <li>• Acting as the external contact on issues where the Codes are applied – i.e. as the point of reference or escalation for external contacts (especially negotiating partners) who may have concerns about the conduct of specific negotiations;</li> </ul> <p>The person appointed as the CMF representative may delegate their ICOP responsibilities (as might be expected in larger organisations) but will retain their CMF role accountability. Where delegation is to be used, the identity and contact details of the delegate should be notified to the relevant parties (<i>Bona fide</i> Enquirer, infrastructure operator, the OGA) at the initiation stage.</p>	<p>CCOP &amp; ICOP-Annex B (summary of the CCOP)</p>

## 4.2 Preparation: Ongoing Readiness for Enquiries

<p>The CMF representative should advise internally on all CCOP and ICOP matters (see below).</p>	
<p>The CMF representative should ensure that commercial personnel within the organisation have adequate understanding of CCOP and ICOP expectations, including this guidance. Regular industry training sessions and updates on code of practice guidance will be available from Oil &amp; Gas UK from time-to-time. It is expected that the CMF representative will bring this to the attention of commercial personnel and arrange appropriate training.</p>	ICOP 5, 6
<p>The CMF representative should encourage the use of standard agreements, where appropriate and practicable.</p>	ICOP 8(2)
<p>All commercial personnel should report all upcoming deals to their CMF representative.</p>	
<p>The CMF representative of an operator of a potential host facility should ensure that all potential users receive the required attention. Where the response to an enquiry is delayed, it is expected that CMF representatives network will be used to establish timely engagements.</p>	
<p>The CMF representative should ensure that the lead negotiator(s) keep good records of key events, decisions and progress and keep senior management and the OGA informed on a regular basis. This is particularly important in the case of the OGA as it has the ability, under legislation, to intervene on its own initiative in negotiations in certain circumstances.</p>	Energy Act 2011, ICOP-Annex A
<p>The CMF representative should endeavour to attend CMF meetings and meet annually with the OGA to discuss all related infrastructure issues.</p>	

## 4.3 Initiation

<p>The CMF representative should be made aware of all <i>bona fide</i> enquiries made or received by the organisation.</p>	
<p>The CMF representative should check that the Confidentiality Agreement is signed in a timely manner, that the SOR is complete, and the high-level process and timetable for carrying out and concluding the necessary negotiations are agreed up front, as far as possible.</p>	ICOP 8
<p>The CMF representative should support, as required, any kick off meetings and will be responsible for discussing any issues with CMF representatives in other organisations, as required, to ensure that the necessary meetings are taking place in the timeframe required.</p>	

#### 4.4 Submitting ARN and Late Stage Negotiation

<p>The CMF representative should ensure that ARNs are issued for all negotiations carried out under ICOP at the appropriate time and they will review and advise on all ARN submissions.</p>	<p>ICOP 9 ICOP-Annex E</p>
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#### 4.5 Deal Close-out: ARN Closed or Determination Triggered

<p>The CMF representative should review all internal ARNs at around the four-month stage after submittal to review progress and check against the agreed timetable.</p> <p>The CMF representative should be available to discuss any matters with the CMF representatives in other organisations if negotiations are not progressing as planned.</p> <p>The CMF representatives should ensure that senior management are engaged, as and when appropriate, to ensure that negotiations are progressing as planned.</p>	<p>COP 9, ICOP-Annex E</p>
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#### 4.6 Post Execution

<p>The CMF representative of the infrastructure operator should ensure that all completed deals are posted on the company website at the appropriate point.</p>	<p>ICOP 14</p>
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## 5 Guidance to Senior Management

### 5.1 The Role of the Senior Manager

	References
<p>The senior manager referred to in the codes of practice is that person within the organisation accountable for UK negotiations. With respect to the ICOP, the senior manager is that person accountable for negotiations involving new UK developments or third party infrastructure business. This is likely to be the UK MD/CEO for small companies but possibly at a lower level for larger companies where these accountabilities are delegated.</p>	

### 5.2 Preparation: Ongoing Readiness for Enquiries

<p>The OGA and Oil &amp; Gas UK expect all UKCS licensees to become signatories to the industry’s codes of practice. An appropriate senior manager of the relevant licensee will be the signatory to the ICOP and the CCOP (typically the senior manager for this purpose would be the UK-based MD/CEO).</p> <p>To fulfil code commitments, senior management should ensure that all relevant staff (including those located outside of the UK and external advisors supporting their organisation) will operate in accordance with ICOP and the CCOP and ensure that all such personnel are made aware of the behaviours that they are expected to follow in all commercial negotiations.</p> <p>Senior management should nominate and support a CMF representative, internally and externally to fulfil this commitment.</p>	<p>ICOP 1 &amp; 2 ICOP-Annex A</p> <p>ICOP 5 ICOP-Annex B</p>
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### 5.3 Technical Studies, Option Selection and Early Deal Negotiation

<p>Senior management will consider and, if appropriate, approve a mandate for all negotiations.</p>	
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## 5.4 Submitting ARN and Late Stage Negotiations

<p>The ARN is a commitment to automatically submit a request for determination to the OGA at the end of the period. Senior management will approve and endorse the submission of (or response to) an ARN before it is submitted to the OGA.</p>	<p>ICOP 9, ICOP- Annex E</p>
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## 5.5 Deal Close-out: ARN Closed or Determination Triggered

<p>If necessary, and usually brought to their attention by the CMF representative through the escalation process, senior management will become involved in any necessary discussions with the senior management in other companies in order to resolve any issues that are preventing negotiations from progressing as planned.</p> <p>If submission of a request to the OGA for a determination is considered necessary, the senior management of the <i>Bona fide Enquirer</i> should mandate that submission.</p>	
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## 6 The OGA’s Role in the Process

### 6.1 Preparation: Ongoing Readiness for Enquiries

<p>The OGA will review the status of facilities and pipelines, and encourage the development of near-field potential, as part of ongoing monitoring and regulatory activity which includes the annual Stewardship process.</p> <p>The activity is intended to support the objective of ensuring that all economic hydrocarbon reserves in the UK are recovered. For offshore developments, this relies upon access for new (potentially smaller) fields to existing infrastructure on fair and reasonable terms.</p>	<p>OGA - Strategy for Maximising Economic Recovery</p>
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### 6.2 Initiation

<p>The OGA will examine the infrastructure aspects of all field development proposals, and encourage compliance with the ICOP and associated guidance.</p> <p>The OGA should be aware of potential export options, note enquiries between parties and prompt owners of infrastructure to respond, if necessary.</p> <p>It is important that the OGA is able to take an active part in monitoring initial <i>Bona fide Enquirer</i> contacts, especially where a formal “Service Request” has been sent and no kick-off meeting is scheduled.</p> <p>Timelines that are submitted for negotiations associated with proposed developments will be acknowledged and reviewed and discussed with <i>Bona fide Enquirer</i> and infrastructure owners if necessary.</p>	
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### 6.3 Technical Studies, Option Selection and Early Deal Negotiation

<p>The OGA will review progress with the selection of export routes for proposed developments and the associated technical studies against stated timelines. Assistance will be given in resolving difficulties, if requested.</p>	
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## 6.4 Submitting ARN and Late Stage Negotiation

<p>The OGA will record the submitted ARNs for the selected export route, and regularly check (about every two months) on progress with negotiations during the ARN period. Assistance will be given in resolving difficulties if requested.</p> <p>The OGA will make available aggregated and non-attributable ARN status tracking information to the CMF upon request.</p>	
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## 6.5 Deal Close-out: ARN Closed or Determination Triggered

<p>The OGA will ensure that ARN end dates are managed appropriately and promptly, either by:</p> <ul style="list-style-type: none"> <li>• The completion of negotiations, or</li> <li>• Withdrawal of the ARN at the request of the <i>Bona fide Enquirer</i>, or</li> <li>• Being notified by the enquirer of an extension of the ARN, or</li> <li>• Carrying out a determination at the request of the enquirer or on the initiative of the OGA*.</li> </ul> <p>*It is expected that the OGA will actively encourage parties to engage and resolve conflicts through corporate escalation (CMF representatives and/or senior management) before an OGA determination becomes necessary.</p> <p>Determinations will be carried out by the OGA in accordance with the relevant legislation and the latest version of the OGA Guidance on disputes over third party access to upstream oil and gas infrastructure.</p>	<p>OGA Guidance Notes on Disputes over Third Party Access for Upstream Oil &amp; Gas Infrastructure &amp; ICOP 9</p> <p>ICOP-Annex A</p>
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## 6.6 Post Execution

<p>In conjunction with the industry, the OGA will review the effectiveness of negotiations in meeting the objective of maximising the economic recovery of hydrocarbon reserves.</p>	
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## 7 Guidance to Oil & Gas UK

### 7.1 Preparation: Ongoing Readiness for Enquiries

	References
<p>To ensure accurate information is made available, Oil &amp; Gas UK will conduct regular reviews of the ICOP portal (accessed via the UK Oil and Gas Data website <a href="http://www.ukoilandgasdata.com">www.ukoilandgasdata.com</a>) and linked operator websites, feeding back deficiencies and errors for the relevant operator to correct in good time.</p> <p>So that the use of industry standard form agreements can be maximised, Oil &amp; Gas UK will conduct regular updates and reviews, and ensure the availability of these to CMF representatives. Standard Agreements can be found on the Oil &amp; Gas UK website. To assist the dialogue between CMF representatives, Oil &amp; Gas UK will, in consultation with the OGA, make regular reviews and updates to the CMF contacts list. This list is available to companies via Oil &amp; Gas UK. Oil &amp; Gas UK will also organise regular meetings of the CMF.</p> <p>To ensure the effective dissemination of knowledge and best practice behaviours, Oil &amp; Gas UK should organise regular mixed-industry training opportunities for CMF representatives and frontline negotiators.</p> <p>Oil &amp; Gas UK should manage the maintenance and dissemination of ICoP guidance and best practice information so that areas of uncertainty are clarified and understood by all those involved in access to infrastructure negotiations.</p>	<p>ICOP 7.1, 7.2, 7.3</p> <p>Annex D</p>

### 7.2 Post Execution

<p>Infrastructure owners should publish short summaries of newly concluded construction and tie-in agreements, transportation and processing agreements and/or operating services agreements within one month of these becoming unconditional.</p> <p>This information should be made available on infrastructure owner/operators websites. Oil &amp; Gas UK should conduct regular reviews of the provision of this data and where not available follow-up with the appropriate infrastructure owner/operator.</p> <p>Oil &amp; Gas UK should undertake annual reviews of infrastructure systems technical data hosted on operators' websites and accessed via the UK Oil &amp; Gas Data website <a href="http://www.ukoilandgasdata.com">www.ukoilandgasdata.com</a>. The review should quantify the level of compliance of data provision as detailed in the ICOP and where insufficient, the appropriate operator be asked to update in good time.</p> <p>At ad-hoc intervals, Oil &amp; Gas UK should hold informal one-to-one discussions with infrastructure owners and users to ensure concerns are highlighted and progressed appropriately.</p>	<p>ICOP 14</p>
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## 8 Further Guidance on Liabilities and Indemnities

A broadly represented industry working group identified the following points and guidance to address the issues related to liabilities and indemnities which were highlighted in the 2006 ICOP survey as having potential to block or delay deals. Information provided in this guidance note was reviewed in 2012 and 2017 and is still relevant to industry practice. Those using this guidance note should ensure that they take legal/insurance/other professional advice as appropriate.

### 8.1 Issues to Consider in Relation to Setting/Applying the Cap on Maximum Liability Exposure of the *Bona fide* Enquirers

#### 8.1.1 Introduction

ICOP (Section 13.2.2) provides that if, during a tie-in and/or modification phase, a *bona fide* enquirer agrees to indemnify infrastructure owners for losses arising, then the infrastructure owners in return should generally be prepared to cap the maximum liability of the *bona fide* enquirer. These caps should be:

- Reasonable
- Have regard for the realistic exposure of the infrastructure owners
- Have regard for the overall risk-reward balance of the transaction.

#### 8.1.2 Guidance Suggested

- Infrastructure owners should consider credible scenarios of loss and the overall risk versus reward proposition of the transaction and, in accordance with the ICOP, should generally be prepared to offer a cap on the maximum liability exposure of the *bona fide* enquirer.
- The majority of companies should be able to obtain insurance for indemnity caps of £50-100m, but there is more of an issue with availability of indemnity insurance cover for sums in excess of £100m. Where an indemnity cap in excess of £100 million is required by the infrastructure owner it is more important for the *bona fide* enquirer that (i) this position is explained by the infrastructure owner, and (ii) supporting details of the potential losses are provided by the infrastructure owner.
- Infrastructure owners are encouraged to disclose supporting details of the credible potential losses which were considered in the setting of the indemnity cap. It is recognised that commercial and/or confidentiality and/or competition law considerations might prevent certain disclosures, but greater disclosure of information, in general, would assist all parties down the chain (see ICOP 2(6)). In particular, it would assist the *bona fide* enquirer in developing appropriate terms in the supporting insurance documentation. The scope of work specified in the construction and tie-in agreement usually provides a basis on which an insurer can assess the risks of the tie-in, but additional information in respect of the potential for consequential losses is usually helpful to the *bona fide* enquirer.

## 8.2 Issues to Consider in Relation to the Insurance Arrangements of Modifications and/or Tie-ins to Offshore Infrastructure Required by a Third Party *Bona fide* Enquirer

### 8.2.1 Introduction

This note provides some general guidance on matters connected with insurance issues during the construction and tie-in phase of operations.

There is evidence of a trend towards increasing indemnity caps being specified by infrastructure owners. In real terms, the cost of insurance cover has not changed much over recent years, but this may be because there have been no significant UK claims that have impacted the insurance markets to change the perception of the risk. This position could change overnight in the event of a major loss.

### 8.2.2 Further Information

#### 8.2.2.1 Construction and Tie-In Insurance Availability

- Third party liability insurance relating to construction and tie-in risk exposures is generally available up to limits of indemnity of £100 million per occurrence at reasonable cost; higher levels of indemnity insurance may also be available but this is dependent on the actual liability coverage required.
- Access to a specific insurance market for liability insurance capacity in excess of £100 million per occurrence can be more difficult, and requires more detailed data disclosure, negotiation, and possible justification. For the avoidance of doubt, coverage for uncapped liability risk exposures is not available (i.e. insurance will always only provide up to an absolute sterling or dollar limit).
- Third party liability insurance may provide legal liability coverage for the production deferment risk exposure, but only to the extent that this arises as a result of an event involving physical loss of or damage to property.
- As with any insurance, it is an obligation of the insured to disclose material and / or the insurers to require such information and for the insured (and their insurance / legal advisers) to determine appropriate insurance cover is in place for the risks and liabilities which they have assumed.

#### 8.2.2.2 Insurable Risk Considerations

- a) Regardless of the existence of liability caps and the agreed level, there is a requirement in the event of an insured incident for the claimant to prove the extent of any losses arising.
- b) Property damage losses can be specifically evidenced by costs of repairs, whereas consequential losses arising (for example) as a result of deferment of production are by their nature more difficult to define and prove.

- c) Prior to entering into a construction and tie-in agreement, and in respect of simple infrastructure systems, a *bona fide* enquirer may make an assessment of the production deferment value assuming market prices from data available in the public domain.
- d) Although a *bona fide* enquirer may be assisted by obtaining forward production data to understand the nature and range of the tie-in risk exposures, an infrastructure owner may be constrained by confidentiality / commercial considerations in the amount of information it can disclose. By way of examples, there may be a number of third party users already flowing hydrocarbon through the infrastructure system, there may be product buyers who would be unwilling for disclosures to be made, there may be additional commercial considerations between the infrastructure owner and the *bona fide* enquirer over and above the access enquiry.
- e) Recovery of financial compensation for deferred production in the event of an incident covered by the insurance would be made more likely if the construction and tie-in agreement is specific on this point. A more detailed pre-assessment of loss or even a better understanding of how a loss will be assessed would assist the settlement of claims. There may be a need to go beyond the general descriptions of indemnity to link the insurance policy to the construction contract.
- f) The nature of the construction and tie-in works and the identity of the contractor concerned may influence the extent and pricing of insurance coverage.

### 8.2.3 Guidance Suggested

- a) It is suggested that the *bona fide* enquirer and the infrastructure owner seek insurance advice at an early stage in the consideration of their tie-back projects.
- b) The construction and tie-in agreement should be made as specific as practicable in relation to how any potential recovery of losses for deferred production and/or other consequential losses are calculated, including agreed mechanisms where feasible.
- c) The terms of the available insurance should be matched to the extent practicable to the terms of the construction and tie-in agreement.

## 8.3 Liability and Indemnity Issues to Consider in Relation to Contractors of a *Bona fide* Enquirer, the Contractors of the Infrastructure owners, and the Respective Employees Performing Work on Modifications and/or Tie-ins to Offshore Infrastructure Required by the *Bona fide* Enquirer

### 8.3.1 Introduction

Clause 13.2.2 of ICOP makes reference to the consideration of indemnities for liabilities and losses arising out of tie-in activity or modification activity (as opposed to Clause 13.2.3 which deals with the post tie-in production phase). It is during the tie-in phase when contractors working for either the *bona fide* enquirer and/or the infrastructure owners are active in the vicinity of offshore infrastructure. The risk of losses due to a physical damage event is typically higher at this stage than during the production

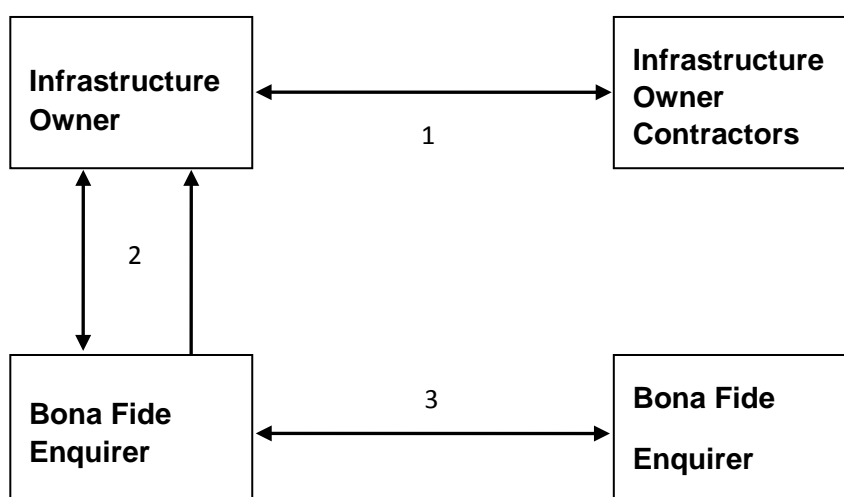
phase. It is, therefore, important for all the parties and their respective insurers to fully consider the risks and their potential exposures to these risks during this phase and how best to allocate these risks. This section is intended to offer guidance on how the liability and indemnity regime can typically be structured in relation to contractors. It is also intended to offer guidance to all parties on what issues to watch out for and other considerations to take into account. Parties need to recognise that every deal is different, as is the overall risk reward balance and the final liability and indemnity regime.

### 8.3.2 Typical Liability and Indemnity Regime

In general, it is customary for the parties to agree that the *bona fide* enquirer will indemnify the infrastructure owner(s) against liabilities and losses arising out of the actual tie-in and/or modifications to the infrastructure owner's facilities. Below is set out a typical schematic of how the liability and indemnity regime can be structured. The schematic assumes that the infrastructure owner's infrastructure undergoes modification to enable the tie-in, and that this modification work is carried out by the infrastructure owner/the infrastructure owner's contractors on behalf of the *bona fide* enquirer.

### 8.3.3 Explanation of Schematic

- Infrastructure owner - infrastructure owner contractor L&I regime:  
Will adopt a liability and indemnity regime in relation to damage to property, personal injury to employees, pollution from facilities and consequential losses.
- Infrastructure owner - *bona fide* enquirer L&I regime:
  - Generally, there is a *bona fide* enquirer indemnity to infrastructure owner for damage to property and loss (usually capped);
  - Generally, there is a *bona fide* enquirer indemnity to infrastructure owner for damage to *bona fide* enquirer and *bona fide* enquirer contractor property (uncapped); and
  - Consider mutual hold harmless in relation to personal injury to their respective employees.
- *bona fide* enquirer – *bona fide* enquirer contractor:  
Will adopt a liability and indemnity regime in relation to damage to property, personal injury to employees, pollution from facilities and consequential losses.



#### 8.3.4 Guidance Suggested

The parties to a CTIA should consider the implications of whether contractors (and sub-contractors) are or are not included in the CTIA indemnity clauses (in particular whether or not any *bona fide* enquirer indemnity to the infrastructure owner extends to damage to the infrastructure owner contractor property) and the wording of clauses regarding third party claims. A risk of not regulating situations where contractors are active on tie-in modification works (or may be affected by them) within the CTIA is potential exposure of parties to unlimited legal liability at law as a result of negligence.

The infrastructure owner should consider in relation to the contract it has with its own contractor:

- Whether it contemplates tie-ins for third parties?
- What is position if the contractor damages the *bona fide* enquirer's facilities or the property of its contractor?
- Could the *bona fide* enquirer's facilities fall within the definition of "infrastructure owner's property" for the purposes of this contract?
- What is the position regarding damage to other owner contractors engaged in the work?

If the *bona fide* enquirer's contractors are engaged in or potentially affected by the tie - in works, the *bona fide* enquirer should consider corresponding points in relation to its own contractual arrangements with its contractors.

Parties should consider the position, both under the CTIA and under their own L&I regimes with their contractors, should a contractor, engaged by either the infrastructure owner or the *bona fide* enquirer, damage the property of a party (or a party's contractor) with whom it has no contractual relationship or suffers damage caused by a party (or a party's contractor) with whom it has no contractual relationship. In this context, it should be noted that it may not be appropriate for either party to see or rely upon the terms of the contract between the other party and its contractors.

All parties should consider whether risks are insured to the extent reasonable and that where appropriate, duplication of insurance is avoided. Parties should consider whether there is the opportunity for insurers that have paid out to sue parties that have caused damage.

Parties (and in particular the *bona fide* enquirer) should consider whether another party (or its insurers) can sue for recovery following an insurable event. For example, it is possible for an infrastructure owner's contractor which is damaged by the *bona fide* enquirer (or more likely the *bona fide* enquirer's contractors) to seek compensation for damages from the *bona fide* enquirer, a party with which the infrastructure owner's contractor has no contractual relationship.

The *bona fide* enquirer and infrastructure owners should consider if the *bona fide* enquirer indemnity for damage to property and loss in favour of the infrastructure owner extends to infrastructure owner contractors. If this is the case, and the indemnity is capped, the *bona fide* enquirer and infrastructure owner should consider the impact on the cap if there is a pay out under the indemnity for damage to the infrastructure owner's contractor. If the indemnity is extended to the infrastructure owner's contractor, the issue of whether infrastructure owner's contractors should be able to access this indemnity directly (through Third Party Rights language) or not should also be considered.

Parties should consider the implications of the limitations on liability potentially available to vessel owners under the Merchant Shipping Act 1995 (as amended) which enacts the 1976 Limitation Convention.

## 8.4 Issues to Consider in Relation to Inputting of Off-Specification Hydrocarbon Deliveries during the Operating Phase of Third Party Access Leading to Losses

### 8.4.1 Introduction

It is not feasible to be prescriptive on this complex issue. Some example scenarios for multi-user systems are below, and the consequences for all stakeholders need to be considered.

- Contaminant introduced by one party, immediately known to the infrastructure owner. Potential consequences include system shutdown, a need to dispose of contaminated product at cost or reduced price, system clean-up, potential system damage. Could be wilful, negligence, carelessness, mistake, accident, equipment breakdown.
- Contaminant introduced by one party, unknown to all for a substantive period of time. Potential consequences include system damage potentially leading to system shutdown for repairs. Could be wilful, negligence, carelessness, mistake, accident, equipment breakdown.
- Upstream processor enters into agreement to remove contaminant but, on the day, fails to remove contaminant of a party giving rise to the potential consequences noted in bullet 1 above.
- Infrastructure owner enters into agreement with a user to permit the commingled stream to be contaminated on the basis that the contaminant will be removed or blended away at the onshore terminal but, on the day, the infrastructure owner fails to remove contaminant of the user or blending fails (as the case may be) giving rise to the potential consequences noted in bullet 1 above.

### 8.4.2 Guidance Suggested

- a) There is no established uniform practice regarding how off-specification issues are handled on the UKCS, and there is not a uniform approach to these issues across the major offshore infrastructure systems.
- b) The existence of a Cross User Liability Agreement (“CULA”) which regulates inter-user liabilities including for input of off-specification material is useful in identifying the extent of risks taken on by a *bona fide* enquirer as a new entrant to a multi user system. A number of existing multi-user systems currently operate without a CULA in place and, where this is the case, it is unlikely, due to the logistical complexities entailed, that the contractual arrangements for such systems will be amended to include a CULA.

### 8.4.3 Areas which should be addressed in the Negotiation Process

- a) Infrastructure owner – *Bona fide* enquirer agreement

As between the infrastructure owner and the *bona fide* enquirer, the liabilities will be regulated by the transportation and processing agreement and the parties need to agree (i) if those liabilities will be capped, and, if so, (ii) whether any agreed cap applies in the event of wilful misconduct and/or negligence.

- b) *Bona fide* enquirer – Intermediate processor  
On occasion the *bona fide* enquirer will need to contract for initial processing prior to entering a multi-user system (e.g. subsea tie-back to platform). As a fundamental part of the risk-reward proposition the parties should agree which party retains liability for processing failure leading to off-specification contamination and whether or not the liability is capped.
- c) Infrastructure owner – *Bona fide* enquirer; Blending  
Instead of intermediate processing an infrastructure owner may seek to operate a blending arrangement as part of the agreement with the user. As a fundamental part of the risk-reward proposition the parties should agree which party retains liability for blending failure leading to off-specification contamination and whether or not the liability is capped.
- d) Events known well in advance versus unexpected events  
Distinction can usefully be made between events where off-specification material enters a multi-user system without the knowledge of the user and without the knowledge or consent of the system operator and a planned event where the consent of the system operator has been obtained in advance. The liability consequences might be expected to be different provided that the user has adhered to any special conditions which have been specified by the system operator.
- e) Information available to the infrastructure owner  
Typically, multi-user gas systems will monitor quality of hydrocarbon streams entering the system on a real-time basis whereas this is less likely for multi-user oil systems. The perceived quality and availability of data relating to the input stream will impact the system operator's ability to control the system and will influence the liability and indemnity terms which are to be agreed.
- f) Identifying the off-specification user  
It may be the case that the identity of the off-specification user is never satisfactorily proved, and this situation should be provided for in the agreement between the *bona fide* enquirer and the infrastructure owner.
- g) Joining CULA arrangements  
The operators of multi-user systems often put in place CULAs which frequently provide for a mutual hold harmless regime between such users except in the event of wilful misconduct. In such event, a liability cap may or may not apply. The *bona fide* enquirer is required to accede to the existing inter-user arrangements.
- h) Amending CULA arrangements  
In the event that the *bona fide* enquirer is proposing to deliver a contaminant into the commingled stream on a planned, long term basis (on the proposition that a downstream processor will clean up the commingled stream), any existing mutual hold harmless arrangement might reasonably be expected to be renegotiated.

## 9 Guidance on Considerations when Developing Service and Remuneration Terms for the Different Phases of a Development

### 9.1 Introduction

Section 9 considers the different phases of a development, documenting and highlighting the typical considerations of both infrastructure owners and applicants on service and remuneration terms for access to infrastructure, with the purpose of;

- assisting, not replacing negotiations
- promoting a negotiated outcome that is fair to both infrastructure owner and applicant
- preventing issues being overlooked to the detriment of the equity and balance of final executed agreements, and
- encouraging issues to be discussed at an early stage and mitigate against late issues delaying the execution of agreements.

There are many issues, risks and rewards that the negotiating parties may need to consider, quantify and evaluate in order to develop fair and reasonable tariff and terms throughout the different phases of development. Negotiations should be conducted on a case-by-case basis and section 9 should not be considered an exhaustive document, nor should it be considered that all elements are applicable or equally weighted in all situations.

Section 9 intentionally stops short of recommending how tariffs may be calculated or how deals could be structured and instead highlights considerations to assist in the negotiation of such terms. When negotiating these points, you may consider the extent to which the arguments are fair and demonstrable; the probability and frequency of occurrence; the robustness to full life cycle; and appropriate discounting for the impact of time.

Considered alongside the liability and indemnity regime, as described in section 8, the overall risk reward balance may be determined by the relevant factors from all phases taken together to create an efficient and effective arrangement that both infrastructure owners and applicants are keen to progress.

### 9.2 Evaluation and Study Phase

Consistent with sections 2 and 3, consideration may be given to the points listed below and how these may impact subsequent phases.

- a) Early and open two way sharing of data, considering commercial issues, on the following points:
  - I. Technical data of infrastructure and development
  - II. Capacity requested and available considering base production, low-side and upside
  - III. Appraisal, development and on-going work plans
  - IV. System capacity sterilization and opportunity cost
  - V. Confidentiality requirements.
- b) Evaluation of technical performance:



- I. Health, safety and environmental performance
  - II. Entry specification and product quality through time and potential impacts
  - III. Ability to accommodate modifications
  - IV. Maintenance backlog
  - V. Infrastructure uptime, reliability records, asset maturity, remaining field life and robustness of plans to cessation of operations and decommissioning.
- c) Evaluation of timeframe:
- VI. Ability to use standard agreements
  - VII. Scope of studies required and provision of resources to progress
  - VIII. Internal company processes
  - IX. Equity stakeholder alignment
  - X. Appraisal/development schedules and existing scopes of work.
- d) Other:
- XI. Existing arrangements which are likely to apply
  - XII. *Bona fide* enquiry demonstrated
  - XIII. Credit risk and financial security
  - XIV. Scope, timing and charges for technical studies.

### 9.3 Construction and Tie-in Phase

In negotiating the overall risk reward balance of the terms, consideration may be given to the items listed below in conjunction with the liability and indemnity regime.

- a) Scope of tie-in and/or modifications:
- I. Applicant and owner's requirements
  - II. Opportunities and risks of proposed design
  - III. Replacing used access points to maintain flexibility for future tie-ins.
- b) The agreed schedule and priority of a tie-in or modification may consider the following factors:
- I. Integration with planned shutdown or dedicated shutdown
  - II. Impact on routine, planned host activities and available bed space
  - III. Impact of non-routine and/or unexpected activity driven by brownfield risk and mature infrastructure
  - IV. Incentive schemes to optimise schedules.
- c) Reimbursement of infrastructure owner's additional direct capital costs may consider:
- I. The distribution and scale of tangible benefits
  - II. Control and management of schedule and costs, including allocation of responsibility for overruns
  - III. Incentive schemes to manage costs
  - IV. Payment terms, audit and dispute procedures.
- d) Credit risk provisions and financial security

Reimbursement of infrastructure owner's demonstrable additional indirect costs may consider:

- I. The distribution and scale of tangible benefits
- II. The extent and value of deferred/lost production, which should be minimised when possible
- III. The ability to define readily calculable terms and supply tangible data for compensation
- IV. The ability to demonstrate evidence of good cost management and control.

e) Payment terms, audit and dispute procedures

Negotiated adjustment of costs to a mutually agreed and demonstrably fair level may consider:

- I. Opportunity cost and infrastructure owners expected return
- II. Incremental benefit to infrastructure owner for own production or third party business directly arising from construction and tie-in work
- III. Expected benefits and risks during the production phase and/or risks of not reaching the production phase.

f) Ownership of facilities:

- I. Ownership of modifications to existing facilities
- II. Ownership of new facilities and agreed point of ownership change if applicable and the extent of any warranties if ownership does transfer
- III. Decommissioning liabilities of any additional facilities.

g) Commissioning:

- I. Agreed moment of completion
- II. Responsibilities for testing and commissioning
- III. Supply of commissioning hydrocarbons.

h) Termination may consider:

- I. Scenarios contemplating significant delays
- II. Facilities damage or if it becomes uneconomic to continue
- III. Non-payment of costs
- IV. Reinstatement and other provisions that survive termination.

## 9.4 Terms for Production Phase

Typically, the production phase considers the full life cycle of the infrastructure owner and applicant. The terms should take under consideration a number of relevant factors and determine the relevance, if any, and the weighting of such factors listed below in the overall risk reward balance and in conjunction with the liability and indemnity regime.

a) Conditions precedent for fully termed agreements to come into force

b) Commencement, term and termination:

- I. Firm period of time for provision of service
- II. Field life or period of dedication

- III. Termination typically on cessation of production, failure to deliver product or service for various reason over an agreed period of time and non-payment
  - IV. Should it become uneconomic to continue.
- c) The extent of services required, impact on existing operations, increased system complexity, costs, risks, obligations and benefits of providing the services and the exposure if not met:
- I. Potential changes to health, safety and environmental protection procedures
  - II. Extent of services included in tariff and extent of non-tariff services
  - III. Unforeseeable cost escalation
  - IV. Fair compensation for demonstrable back out of production
  - V. Lifting procedures
  - VI. Additional administration costs and reporting obligations
  - VII. Downtime estimates, incremental maintenance and costs
  - VIII. Blending service and maintaining specification over field life
  - IX. Obligations for supply and payment of fuel
  - X. Procedures for future tie-ins, priorities and compensation
  - XI. Benefits to existing operations due to introduction of new facilities
  - XII. Unlocking of additional business and opportunities through changes in catchment area
  - XIII. Extended field life and increased reserves
  - XIV. Potential reduced unit operating costs and/or reduced potential for delivering operating costs reduction/efficiency improvement initiatives
  - XV. Positive and negative impacts due to deferral of decommissioning.
- d) Capacity, quantities and nomination. Consider known, estimated and unforeseen changes on the system and reservoirs over time:
- I. The extent of firm, interruptible or reasonable endeavours service
  - II. Flexibility in capacity booking reservations
  - III. Incentives to nominate accurately
  - IV. Priority in periods of restrictions
  - V. Any send or pay/take or pay provisions
  - VI. Tariff changes for capacity above nomination
  - VII. Implications in cost share phase
  - VIII. Dedicated reserves and extension of services to future potential.
- e) Measurement, allocation and sampling:
- I. Integration with established arrangements
  - II. Improvements in accuracy or biases introduced in the system and/or procedures
  - III. Back allocation of contaminants
  - IV. Secondary/tertiary allocation.
- f) Effect of commingling and impact on product value
- g) Other charges, costs and taxes:
- I. Exposure to future legislation changes such as fiscal, health, safety and/or environmental
  - II. Impact on costs and credits.

- h) Title, receipt/delivery points and specifications
  
- i) Billing and payment:
  - I. Credit risk and financial security provisions
  - II. Indexation
  - III. Minimum bill
  - IV. Default
  - V. Payment terms, audit and dispute procedures
  - VI. Assignment
  - VII. Change in risk balance with different owners.
  
- j) Cost Share:
  - I. Existing arrangements
  - II. Determination of cost share and trigger date
  - III. Definition of cost share pools (total facilities or individual systems, inclusive/exclusive of sustaining costs, future expenditure, extraordinary operating costs etc)
  - IV. Share of cost pools (volumes included, future fields, periods of downtime/zero production)
  - V. Provision of regular projections of costs and throughput volumes to aid decision making
  - VI. Negotiated adjustment to cost share to a demonstrably fair level
  - VII. Notice of switch to cost share and available options
  - VIII. Level and transparency of operating costs control
  - IX. Risk of cost and production projections
  - X. Uncertainty in magnitude of sustaining costs
  - XI. Likelihood and potential magnitude of material damage events requiring management and repair (or even potentially early decommissioning).

## 9.5 Conclusion

Section 9 is designed as an aid to negotiations with the aim of promoting an economically efficient and fair outcome with the balance of risks and rewards creating a business that both owner and applicant want to be in.

When experiencing difficulties in this process, regard should be given to the escalation process documented in sections 2.4, 3.4 and 4.5 where CMF representatives and senior management have appropriate involvement to resolve issues constructively.

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