

**SAND Geophysics Ltd.  
Terms & Conditions for  
Survey Support Services**

# Terms & Conditions for Survey Support Services

SAND – April 2018

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## **I Definitions & Interpretation**

- 1.1 In these terms and conditions, the following words and phrases shall have the meaning ascribed thereto;
- 1.2 “Company” means the party contracting the survey support services
- 1.3 “Contractor” means SAND Geophysics Limited
- 1.4 “Affiliates” means, in respect of any company or corporation, any holding or subsidiary company thereof and any subsidiary of such holding company, the terms holding and subsidiary company having the meaning as set out in Sections 736 and 736A of the Companies Act 1985.
- 1.5 “Client” means any party (together with its co-ventures), with whom the Company has contracted and for whose ultimate benefit the Services hereunder are provided.
- 1.6 “Company Group” means the Company, and the Client from time to time, and the Company’s contractors (other than the Contractor) and their subcontractors of any tier and its and their Affiliates from time to time and, in respect of all the foregoing, their respective officers, directors, employees and agents.
- 1.7 “Contract” means this agreement together with Appendices 1, 2 and 3 made a part hereof.
- 1.8 “Contractor Group” means the Contractor and Sub-contractors of any tier, its and their Affiliates and their respective officers, directors, employees and agents.
- 1.9 “Party or Parties” refers to both the Company and Contractor as appropriate.
- 1.10 “Services” means the provision of personnel and equipment as listed in Appendix 1 and the operation of the equipment to provide support to the Company’s operations within the defined capabilities of the said personnel and equipment.
- 1.11 “Subcontractor” means any party with whom Contractor contracts for the supply of products or services in support of Contractor’s performance of the Services.
- 1.12 Reference to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date of the Contract) from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modifications). The statutory provisions applying to the Contract as amended, re-enacted or repealed shall not be construed as imposing any additional liability on the parties to this Contract.

## **2 Entire Agreement**

- 2.1 These terms and conditions constitute the entire agreement between the Parties. In the event of ambiguity or contradiction between the documents comprising this Contract, this document shall take precedence followed by the Appendices in the sequence listed.
- 2.2 No amendment to or waiver of any of these terms and conditions shall be binding upon either Party unless it is reduced to writing and signed by an authorised representative of that Party.

### **3 Contract Duration**

This Contract shall commence on the date of acceptance of a Purchase Order or on the date of the start of works, whichever is earliest. This Contract shall, subject to Article 11 hereof, automatically terminate on completion of Services then being provided.

### **4 Scope of Services**

The Contractor shall perform Services as required by the Company in consideration for which the Company shall pay the compensation calculated pursuant to Appendix 2 and in accordance with Article 6 below.

### **5 Title to The Services**

Title to the Services where relevant, including drawings and specifications, shall vest in the Company immediately upon their creation. All patents, copyrights, trademarks, and other proprietary information developed solely from, or directly for the purposes of, the Services and based upon proprietary information provided by the Company shall become the sole property of the Company and the Contractor shall carry out all such reasonable acts and create such documentation as the Company may reasonably require for the purposes of vesting title thereto in the Company.

### **6 Compensation**

For performance of the Services the Contractor shall be paid the applicable rates specified in Appendix 2. The Contractor shall submit its invoice(s) (together with all forms, invoices, documents or other information which the Company may reasonably require) as soon as reasonably practicable after the end of the period or the completion of the Services or part thereof. Undisputed invoices shall be paid by the Company within 30 days of receipt. However, if any portion of an invoice is disputed Company shall immediately notify Contractor of the substance of any such dispute and pay only the undisputed value thereof within the time specified. Thereafter the Parties shall, in good faith, negotiate and resolve the disputed portion without undue delay and thereafter the Company shall remit any balance found owing to Contractor within 7 days of the resolution date. In the event that valid invoices are not paid within 7 days of the period prescribed, the Contractor shall have the right to apply interest at the rate of 8% above the Bank of England Base Rate.

### **7 Variations**

- 7.1 The Company may by written notice to the Contractor propose to vary the Services in any respect. Within 7 days of the receipt of any such notice or such longer period as the Parties may agree the Contractor shall advise the Company in writing of any alteration to the contract price or other of the Contractor's obligations which would result from the variation. The Company shall then either:
- i) confirm a variation in writing with such amendment to the contract price and the Contractor's obligations as the parties have agreed; or
  - ii) withdraw the variation.
- Subject to 7.3 below the Contractor shall not proceed with any variation until it has received written confirmation from the Company.
- 7.2 If the Contractor considers that an occurrence has taken place for which it is entitled to receive a variation, the Contractor shall without delay request, in writing, that the Company issue a variation. Any request shall include all relevant information for which the Contractor considers itself to be entitled to a variation. The Company shall respond in accordance with the provisions of this Clause 7.
- 7.3 If exceptionally the Company decides that for reasons of urgency a variation must be carried out immediately, then the Company may instruct the Contractor accordingly and the Contractor shall forthwith carry out such instruction. Within 7 days of the issue of any such instruction, the Contractor shall advise the Company in writing of any changes which he proposes to the contract price or of the time of completion or any other of the Contractor's obligations under the Contract

arising out of such variation. The Company within 7 days of the receipt of such proposal shall issue a variation order confirming changes as the parties have mutually agreed.

## **8 Inspection**

The Company shall have the right to inspect any portion of the Services at any reasonable time. Any such inspection undertaken by the Company shall not relieve the Contractor of any its obligations under this Contract.

## **9 Warranty**

- 9.1 The Contractor warrants that it has the ability, qualifications, resources, equipment and personnel to perform the Services and shall, at all times, perform same in accordance with good and prudent practice and in accordance with applicable law and government regulations and good industry practice and in accordance with applicable law and governmental regulations.
- 9.2 Contractor's liability in respect of defective work shall be limited to re-performance of that portion of the work performed defectively or in breach of the foregoing warranty, up to 100% of the value of such defective work irrespective of the cause.
- 9.3 The aforesaid warranty shall be the only Warranty for the work, all other warranties express or implied by law and/or contract are hereby excluded. It is further acknowledged that Contractor's liability for the Services, except for any data collected and processed during or after performance of the work in the field, shall cease upon departure from the site. Liability in respect of data collected during the work in the field shall cease 14 days after presentation of such data in its final processed form.

## **10 Indemnities**

- 10.1 The Company shall defend, indemnify and hold the Contractor Group harmless from and against any and all claims, demands, proceedings, loss actions, liabilities, judicial awards and costs, including reasonable legal costs, or/and expenses howsoever arising by reason of:

- i) injury to, illness or death of the Company Group personnel; and/or
- ii) loss of or damage to Company Group property; and/or
- iii) loss of or damage to such permanent third party facilities and plant as are specified in Appendix 3.

arising out of or in consequence of the performance of this Contract irrespective of the negligence or wilful misconduct or breach of duty (statutory or otherwise) on the part of the Contractor Group.

Notwithstanding the foregoing, the indemnities granted herein with respect to Client personnel and property and permanent third-party facilities shall be limited to the extent such indemnities are granted by the Client under the Company's contract with Client for the benefit of the Contractor Group. Contractor may request sight of the appropriate indemnity provisions prior to executing this Contract.

- 10.2 The Contractor shall indemnify and hold the Company Group harmless from and against any action, liability, judicial awards and costs, including reasonable legal costs, or expenses howsoever arising by reason of injury to illness or death of the Contractor Group's personnel and/or loss of or damage to Contractor Group's property arising out of or in consequence of the performance of this Contract unless due to the negligence, wilful misconduct or breach of duty, whether statutory or otherwise, on the part of the Company Group.
- 10.3 The Company shall indemnify and hold the Contractor Group harmless from and against any action, liability, judicial awards and costs, including reasonable legal costs, or expenses arising by reason of pollution originating from the reservoir or from the Company Group's property or from the third party facilities specified in Appendix 3, arising out of or in consequence of the performance of this Contract irrespective of the negligence or wilful misconduct or breach of duty whether statutory or otherwise on the part of the Contractor Group.

- 10.4 The Contractor shall indemnify and hold the Company Group harmless from and against any action, liability, judicial awards and costs, including reasonable legal costs, or expenses arising by reason of pollution emanating from the Contractor Group's property arising out of or in consequence of the performance of this Contract unless due to the negligence or wilful misconduct or breach of duty whether statutory or otherwise on the part of the Company Group.
- 10.5 The Parties shall maintain adequate insurance cover, or procure that such cover is obtained, against such liabilities as are referred to herein including but not limited to those policies specified in Article 15 below. The existence or otherwise of such insurance and the respective indemnities provided thereby shall in no way limit, or be deemed to limit, the liabilities assumed by the Parties herein.

## **11 Force Majeure**

- 11.1 Except for the timely payment of monies properly earned hereunder, neither Company nor Contractor shall be responsible for any failure to fulfil any term or condition of the Contract if and to the extent that fulfilment has been delayed or prevented by a force majeure occurrence as hereunder defined, which has been notified in accordance with this Article.
- 11.2 For the purposes of this Contract the phrase "force majeure" shall mean any event:
- i) the occurrence, continuation and consequences of which, by exercise of reasonable diligence the affected Party is unable to prevent or control.
  - ii) that falls within one or more of the following categories:
    - a) act of God;
    - b) riot, war (including civil war), invasion, act of foreign enemies, hostilities (whether war is declared or not), acts of terrorism, rebellion, revolution, insurrection of military or usurped power;
    - c) expropriation, confiscation, requisitioning or commandeering of all or part of the Services by any Government;
    - d) explosion, fire, flood, earthquake, catastrophic weather conditions or other natural calamities;
    - e) strikes or industrial disputes at a national or regional level, or by labour not employed by the affected Party, its subcontractors or suppliers and which affect a substantial or essential part of the Services;
    - f) Changes to, or introduction of, any general or local Statute, Ordinance, Decree, Law, regulation or bye-law of any duly constituted authority whether at local, regional or national level.
- 11.3 In the event of a force majeure occurrence, the Party that is, or may be, delayed in, or prevented from, performing its obligations under the Contract shall notify the other Party forthwith, giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay. Notwithstanding the foregoing the Parties shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise the effects of any such occurrence and shall maintain frequent and regular contact for this purpose.
- 11.4 Save as may otherwise be provided for in the Contract, no payments of whatever nature shall be made in respect of Services not provided for reasons of force majeure and each Party shall bear its own costs, expenses and losses incurred as a result of a force majeure occurrence.

## **12 Termination of Contract**

- 12.1 Company may by notice in writing to the Contractor terminate the Contract as follows:
- i) forthwith if the Contractor shall be in material breach of any of the terms of the Contract and shall have failed to remedy, or to have commenced to remedy, such breach within seven days of receipt of written notice from Company so to do; or
  - ii) forthwith if the Contractor becomes insolvent or bankrupt or is unable to pay its debts as they fall due or is the subject of a winding up petition or has a receiver appointed over all or

any of its assets or enter into liquidation including a provisional liquidator or a trustee manager, factor or administrator of its affairs being appointed; or

iii) forthwith if the Company's Client terminates its contract with the Company.

12.2 In the event of termination arising from the causes specified under subarticles (i) or (ii) above the Company shall only be liable to the Contractor in respect of the Services performed up to the effective date of termination. In the event of termination under subarticle (iii), provided termination has not arisen by default of Contractor, the Contractor shall, in addition, be entitled to claim for and receive compensation in respect of duly substantiated direct additional costs attributable to early termination of this Contract.

### **13 Assignment**

The Contractor shall not be entitled to assign the Contract or any benefit under the Contract without the written consent of the Company which consent shall not be unreasonably withheld or delayed. The Company shall be entitled to assign all or any part of its rights, liabilities or obligations hereunder to any co-venturer or otherwise with the written consent of the Contractor which consent shall not be unreasonably withheld or delayed.

### **14 Choice of Law**

This Contract shall be governed by and construed in accordance with the laws of England and the Parties hereto submit to the jurisdiction of the English Courts.

### **15 Insurance**

15.1 Each Party undertakes to maintain or procure the provision of (at the responsible Party's expense) the following insurance cover in respect of its obligations hereunder:

- i) Employer's Liability insurance to comply with the relevant Party's legal liability;
- ii) General Public Liability insurance in respect of the persons and property of third parties with cover adequate to cover the liabilities assumed under this Contract;
- iii) All Risks Physical Damage insurance in respect of the responsible Party's property and the property of its Group, and where applicable;
- iv) Protection and Indemnity insurance, including wreck removal, in respect of any vessels used in the performance of the Services; and
- v) Hull and Machinery Insurance in respect of any vessels used in the performance of the Services.

15.2 Upon request each Party shall furnish the other with Certificates of Insurance evidencing cover.

### **16 Consequential Damages**

In no event shall either Party hereto be liable to the other for any consequential loss or damage, which for the purposes of this Clause 16, shall mean business interruptions, loss of revenues or profit (including anticipated profit), use of capital, production and/or project delays, loss of products, or losses resulting from failure to meet contractual commitments.

## **17 Independent Contractor**

The Contractor is an independent Contractor and neither the Contractor nor any of his employees, agents or servants shall be deemed to be employees, agents or servants of the Company.

## **18 Taxes**

The Contractor shall indemnify, defend and hold harmless the Company and its Client and their Affiliates from and against any and all taxes, duties or other charges (together with any interest and penalties in relation thereto) on income, profits or gains, Contractors taxes, social insurance organisation charges imposed by any government or taxing authority on the Company, its Clients and their Affiliates, their respective officers, directors and employees, or any assignee of the Contractor in respect of any payment made to or earned by the Contractor, its Subcontractors their respective officers, directors and employees, or any assignee of the Contractor or in respect of the Services performed under the Contract. The Company shall make all payments to the Contractor net of tax or other deductions which the Company is required to make in compliance with its statutory obligations. The Contractor shall supply and shall ensure that its Sub-Contractor shall supply all information as may be necessary to enable the Contractor to comply with the legal demand of any government taxation authority for such information.

## **19 Confidentiality**

Neither Party shall disclose to any party without the other Party's prior written consent, any information pertaining to the performance of the Services or any proprietary information disclosed by one Party to the other.

## **20 Notices**

Notices under the Contract shall be deemed validly served:

- i) 24 hours after posting by Recorded Delivery to the last known address of the addressee; or
- ii) immediately on faxing same to the addressee provided that the sender is in receipt of the answer-back slip and confirmation of same is sent to the addressee as set out in 20(i) hereof.

## **21 Contracts (Rights of Third Parties) Act 1999**

Each of Company and Contractor agrees that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Contract but only to the extent that a member of the Company Group or Contractor Group, as the case may be, (and not any other third party) shall be entitled in its own right to enforce the benefit only of the indemnities given to it in Articles 10, 15 and 16 but not in any other respect, and in particular:

- i) in making a claim under this Contract the remedies of a member of the Company Group or Contractor Group as the case may be shall be limited to claiming damages;
- ii) notwithstanding any other provision of the Contract, no third party shall be entitled to assign any benefit conferred on it pursuant to this Contract; and
- iii) no right of either Company or Contractor to agree to any amendment, variation, waiver or settlement under or arising from or in respect of this Contract, or to rescind or terminate this Contract, shall be subject to the consent of any third party who has rights to enforce a term of this Contract by virtue of this Article 21 even if as a result that third party's said rights will be varied or extinguished.

## **22 Health, Safety & Environment**

- 22.1 The Services will be undertaken in accordance with the latest version of the Contractors standard Health, Safety and Environmental policies and procedures.



## **Scope of Services**

*Unless otherwise defined below the scope of services shall be as detailed in the latest tender document provided by the Contractor*

## **Compensation Schedule**

*Unless otherwise defined below the compensation schedule shall be as detailed in the latest tender document provided by the Contractor & payment milestones will be completion of each line item or monthly whichever is earliest.*

## **Proximate Third-Party Facilities**

*The indemnity in Article 10.1 (iii) is given in respect of the following property.*