



- I. The party requesting products, services, or work ("Customer") agrees and acknowledges these Terms and Conditions ("Terms") apply to the provision of Customer on-site or off-site services ("Services"); products and supplies ("Equipment"); SaaS Solutions (as defined below) and Performance Tools (as defined below) (each and collectively, the "Work") by Nabors Drilling Solutions (a division of Nabors Drilling Technologies USA, Inc.) or its affiliates ("NDS"), including, without limitation, the Work listed in the accompanying quotation ("Quotation"). Every order placed by Customer ("Order") is subject to acceptance by NDS and acceptance is expressly limited to the terms and conditions of the Quotation and these Terms (collectively, this "Agreement").
- II. **Notwithstanding any oral or written statement made by Customer, NDS' acceptance of a purchase order, order confirmation or any other document or electronic transmittal issued by Customer does not constitute acceptance of Customer's terms, conditions, or provisions, and if such acceptance is found to be an acceptance of an offer, NDS' acceptance is expressly made conditional on acceptance by Customer of the terms and conditions in these Terms. If NDS' Quotation, order acknowledgement, invoice, or other document or electronic transmittal is found to be an offer, Customer's acceptance of the offer is limited to the terms and conditions in these Terms. It is expressly understood and agreed Customer's terms and conditions are not a part of this Agreement, or any contract between Customer and NDS, and NDS does not accept, and expressly objects to, any such terms, conditions, or provisions. No Order shall be binding on NDS until accepted in writing by an authorized officer of NDS. NDS is not obligated to accept any Order from Customer.**
- III. **Pricing and Payment.**
 - A. Customer shall pay NDS for the Work at the rates as specified in the Quotation, or if no rates are specified, at NDS' then-current standard rate (all collectively, "Fees"). Customer is obligated to pay to NDS Fees for Work rendered regardless of whether or not Customer's desired results are achieved. Notwithstanding anything in any Quotation or Agreement, Fees shall accrue from the date of delivery through the date of return receipt in good condition, in the case of Equipment, or deactivation, in the case of Performance Tools, by NDS. Unless otherwise stated in the applicable Quotation, NDS may change its pricing for any or all Work at any time without notice.
 - B. Unless otherwise specified in the Quotation, a non-refundable down payment of forty percent (40%) of the Fees are due upon acceptance of an Order and NDS shall not be required to deliver any Equipment until all Fees are paid in full. Customer shall pay all Fees within thirty (30) days of the date of NDS' invoice, unless otherwise set forth in this Agreement. Invoices are payable in U.S. Dollars unless otherwise specified in the invoice, free of exchange, collection, or other charges. Any amount not paid when due shall accrue interest until paid at a rate equal to the lesser of either one and one-half percent (1.5%) per month or the maximum rate permissible by law. Notwithstanding anything to the contrary, NDS' performance of Work is subject to NDS' prior credit approval of Customer, which approval may be modified or withdrawn by NDS at any time prior to or following acceptance of any Order.
 - C. Fees do not include any local, state, federal, foreign, or international sales, use, excise, value-added, goods and services, rental, import, export, stamp, or other similar taxes, duties, charges, or fees (and/or any related fines, penalties, interest, or similar charges) (collectively, "Taxes") and Customer agrees to pay such Taxes as may be applicable to the price, delivery, or use of any Work furnished by NDS hereunder. If Customer is required to deduct or withhold any Taxes from any amount owed to NDS, the amount payable to NDS will be increased so after all required deductions or withholdings have been made, NDS will receive an amount equal to the sum which would have been payable had no deductions or withholdings been made. Any and all carbon credits arising out of NDS or any NDS affiliate's execution of the Work shall be owned by NDS or the applicable NDS affiliate.
 - D. If payment of undisputed amounts is not timely received, or if NDS determines, in its reasonable discretion, Customer's financial condition or creditworthiness has become impaired, in addition to any remedies NDS may have pursuant to this Agreement or at law, NDS shall be entitled, at its option, to:
 1. Require payment in advance for Work yet to be performed pursuant to this Agreement;
 2. Reduce Customer's payment terms to net ten (10) days of the invoice date;
 3. Require Customer to furnish security with respect to its obligations; and/or
 4. Immediately suspend its performance of Service under this Agreement, which includes terminating this Agreement, without penalty or liability.In such case, **Customer shall indemnify NDS from and against any and all claims** resulting from or arising out of such suspension or termination.
 - E. Customer shall pay all of NDS' costs, including attorney's fees and court costs, incurred in connection with the collection of any past due amounts owed.
 - F. Upon request, Customer agrees to provide a parent company guarantee, bond, or letter of credit ("Guarantee"), in a form acceptable to NDS, prior to NDS' performance of any Work for any affiliate of Customer. If any Guarantee is required of Customer, NDS shall have no obligation to perform Work for the Customer's affiliate unless and until NDS receives such Guarantee.
 - G. Customer grants NDS a security interest in all Equipment for which title has passed to Customer (including all after-acquired Equipment) and all proceeds of Equipment (including, but not limited to, all products into which Equipment is incorporated and any funds and products Customer receives in exchange for Equipment) to secure Customer's performance of its obligations under this Agreement. Customer consents to NDS' execution of any documents to evidence and perfect this security interest, and agrees to execute the same if requested by NDS. In addition, NDS reserves the right, prior to making any shipment, to require from Customer any other additional security for the performance of Customer's obligations, in a form determined by NDS.
- IV. **Delivery, Title, and Risk of Loss.**
 - A. Unless otherwise agreed by NDS in writing, shipping terms for all Equipment is FCA NDS' named facility (Incoterms 2010). Customer shall arrange for shipping and pay all shipment costs. If Customer requests and NDS agrees to arrange for shipment, and/or if Customer does not furnish NDS with shipping instructions prior to the time any delivery is ready for shipment, NDS shall ship to Customer, at Customer's risk, via a commercial carrier of NDS' choice, and charge Customer at NDS' cost, plus fifteen percent (15%).
 - B. Agreed delivery dates are approximate and are subject to change by NDS. If NDS stores any completed Work at Customer's request, or if Customer's acts or omissions prevent delivery in accordance with this Section IV, payment will nevertheless become due, risk of loss will pass as if delivery occurred in accordance with this Section IV, and NDS may charge a storage fee for the storage of any Work NDS deems appropriate.
 - C. Unless otherwise provided in writing by NDS:
 1. NDS shall provide installation and removal services related to the Performance Tools and Equipment;
 2. Customer will not install, modify, move, remove, or repair the Performance Tools or Equipment without NDS' prior written consent; and
 3. Customer will provide all routine maintenance for all Equipment.
 - D. Customer shall have no rights or property interest in any Work, except as expressly provided in these Terms.
 - E. NDS retains title to Equipment until the later to occur of delivery, or NDS' receipt of payment in full for such Equipment.
 - F. Upon delivery of the Work, Customer will furnish NDS a certificate executed by Customer's authorized representative, stating the Work has been delivered and is accepted without reservation. If Customer fails to furnish such certificate and fails to rightfully reject the Work within seven (7) days of delivery, Customer will be deemed to have accepted such Work without reservation at the time of delivery. Rejection is rightful only if Customer shows the Work fails substantially to conform to applicable specifications. Once Work is accepted, Customer waives any right to revoke acceptance.
 - G. Customer may only reject the Work if it is materially defective or fails to materially meet the specifications of this Agreement. Any rejection of the Equipment must be in writing and detail the reasons for rejection. If NDS considers the reasons specified by Customer for any rejection of the Equipment do not conform to the requirements of this Section IV(G), it may proceed as if the purchase of the Equipment had been canceled by Customer pursuant to Section XIII.
- V. **Proprietary Works.**
 - A. For the purposes of this Agreement, the term "Proprietary Works" shall mean, without limitation, all designs, ideas, discoveries, creations, works, devices, masks, models, works in progress, service deliverables, inventions, products, special tooling, software, computer programs, data, works of authorship, procedures, improvements, know-how, developments, drawings, notes, documents, business processes, information, and materials made, conceived, or developed by NDS alone or with others resulting from or relating to any or all of the Work.
 - B. Customer acknowledges and agrees nothing herein shall confer on Customer any intellectual property or other rights, nor shall anything in this Agreement be construed as granting Customer any rights, by license or otherwise, under any patents, copyrights, trademarks, trade secrets, or other intellectual property owned by NDS and/or any of its affiliates. All Proprietary Works shall at all times be and remain the sole and exclusive property of NDS. If NDS cannot be considered as the author or owner of the Proprietary Works or rights for any reason, then such Proprietary Works are automatically assigned to NDS at their creation by this Agreement.
 - C. Customer hereby agrees to irrevocably assign and transfer to NDS, and does hereby assign and transfer to NDS (and shall ensure any of its affiliates, employees, officers, directors, or agents claiming any rights to the Proprietary Works assigns) any and all of its worldwide right, title, and interest in and to the Proprietary Works, including all associated intellectual property rights. Customer hereby waives any and all moral and other rights in the Proprietary Works or any other intellectual property created, developed, or acquired with respect to any or all of the Work, without any further act being required. NDS will have the sole right to determine the treatment of the Proprietary Works, including the right to keep it as trade secret, execute and file patent applications on it, use and disclose it without prior patent application, file registrations for copyright or trademark in its own name, or follow any other procedure NDS deems appropriate.
 - D. Customer agrees to:
 1. Disclose promptly in writing to NDS all Proprietary Works in its possession;



2. Assist NDS in every reasonable way, at NDS' expense, to secure, perfect, register, apply for, maintain, and defend for NDS' benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Proprietary Works in NDS' name as NDS deems appropriate, including the signing of any affidavits, patent, or other applications and assignment documents; and
 3. Otherwise treat all Proprietary Works as NDS' Confidential Information as defined herein.
- E. NDS, its licensor, or one of their affiliates is the sole owner of the trademarks and trade names which designate, or which may in the future designate the Work, and reserves all rights to its intellectual property. Customer shall only use such trademarks, trade names, or any other trademarks or trade names of NDS when and as approved by NDS in writing. Except as expressly approved by NDS, Customer shall not, and shall not direct or permit any third party to, disassemble, decompile, analyze, or otherwise seek to reverse engineer the Work in an effort to discover any Work's design, structure, construction, formulation, make-up, process, or procedures, or in any effort to replicate the Work or services, products, parts, supplies, or software similar to the Work.
- VI. **Rental Equipment.** The provisions of this Section VI apply to NDS' Rental Equipment, which includes Equipment which is delivered to Customer for its or its Group's use on site for a rental fee. Rental Equipment shall be distinguished as such in this Agreement from other types of Equipment which may be available from NDS and/or associated with a related Service, as provided herein. To the degree any terms in this Section VI conflict with corresponding Terms herein, with regard to Rental Equipment, this Section VI shall prevail.
- A. **Rental Term.** The minimum term of any rental of Rental Equipment shall be the period stated in this Agreement; at the conclusion of such period, the rental term shall continue on a month-to-month basis until such time as either party gives the other thirty (30) days prior written notice of termination (collectively, the "Rental Term"). Notwithstanding the stated Rental Term, NDS may terminate the Rental Term at any time in event of any default.
- B. **Cancellation.** If Customer cancels an Agreement for Rental Equipment prior to the commencement of the Rental Term, Customer shall pay or reimburse NDS for all testing, inspection, and/or other costs incurred by NDS prior to its receipt of Customer's notice of cancellation. If Customer cancels this Agreement for Rental Equipment after commencement of the Rental Term and prior to the end of the Rental Term, it shall remain liable for all of its obligations under this Agreement, including this Section VI.
- C. **Timing.** Shipment dates are approximate, based on NDS' projected lead time, current inventory of Rental Equipment, availability of personnel, and commitments from suppliers. NDS shall not be subject to any damages or penalty for making Rental Equipment available for shipment later than the approximate shipping date specified, provided, however, if any item of Rental Equipment is not available within twenty (20) days after the approximate shipping date, Customer may, as its sole and exclusive remedy, terminate this Agreement with respect to the item of Rental Equipment not available.
- D. **Fees, Invoicing and Payment.** Rental Fees shall be set out in the applicable Quotation and may include a down payment, payable on invoice prior to shipment. Rental Fees may be adjusted by NDS upon thirty (30) days prior written notice at the end of the minimum rental term set out in the applicable Quotation or upon written notice at any time during the Rental Term when the Rental Equipment is moved from one location to another (with NDS' prior written consent). Provided the Rental Equipment is returned to NDS in the condition required by this Agreement, any down payment remitted shall be applicable to the final invoice upon return of the Rental Equipment. Customer shall not be entitled to receive any interest on any down payment paid. Upon NDS' request, Customer shall furnish a written representation concerning its solvency at any time prior to shipment and at any time during the Rental Term.
1. Rental Fees shall accrue from the date of delivery through the date of return receipt in good condition.
 2. NDS shall invoice Customer for amounts due pursuant to this Agreement, on a monthly basis and in accordance with Section III of these Terms. Customer shall also be responsible for payment of all costs of transportation of the Rental Equipment, including insurance, freight and brokerage costs, levies, duties, import or export charges, and related fines, penalties, or interest (collectively, "Transit Charges") from shipment to return. Customer shall timely and accurately make all filings required in connection with the transportation of the Rental Equipment. In the event NDS pays any Taxes or Transit Charges, Customer shall, on invoice, reimburse NDS for such charges plus fifteen percent (15%).
 3. Customer's obligation to pay amounts due pursuant to this Section VI is absolute and unconditional, and Customer shall not have the right to abate, setoff, deduct, or reduce any payments for Rental Equipment for any reason. Should Customer fail to timely pay rental Fees or other amounts due to NDS with respect to Rental Equipment, or to otherwise comply with its obligations with respect to the Rental Equipment, NDS shall, upon seven (7) days written notice, have the right to enter upon Customer's premises to take possession of the Rental Equipment, with or without judicial process. Customer hereby waives any and all claims for damages occasioned by such taking of possession. NDS' taking possession of the Rental Equipment shall not constitute a termination of this Agreement under which the Rental Equipment was provided, and shall not relieve Customer of its obligations pursuant to this Agreement.
- E. **Shipment and Delivery.** If shipping arrangements vary from those set forth in Section IV herein, Customer assumes all expense and risk of loss or damage to the Rental Equipment upon shipment by NDS. The method and route of shipment to the location specified in this Agreement shall be at NDS' discretion. Customer shall conduct a thorough visual inspection of all Rental Equipment upon its delivery to the worksite and shall promptly notify NDS of any apparent defects or deficiencies therein or damages thereto. Within 72 hours of its first use of the Rental Equipment, Customer shall notify NDS, in writing, if the Rental Equipment is non-operational by reason of a latent defect not discoverable from a thorough visual inspection, or otherwise fails to satisfy the material requirements of this Agreement. If Customer timely notifies NDS the Rental Equipment is damaged, defective, non-operational, or otherwise materially fails to satisfy the requirements of this Agreement, NDS shall replace the Rental Equipment, at NDS' expense, as soon as reasonably practicable after its receipt of such notice NDS reserves the right to make partial shipments.
- F. **Condition.** NDS represents all Rental Equipment shall, upon delivery to Customer, be:
1. In good mechanical condition;
 2. Capable of operating in accordance with its rated capacities and capabilities when operated in accordance with the Rental Equipment Instructions (as defined below);
 3. Conform to any specifications set forth in this Agreement; and
 4. Comply with the requirements of all applicable laws.
 5. Except as expressly stated in this Section VI(F), NDS makes no other representations or warranties whatsoever regarding Rental Equipment, hereby disclaiming any and all other warranties, express or implied, including any warranties of non-infringement, merchantability, or fitness for any particular or general purpose.
- G. **Ownership.** Notwithstanding any other terms set forth herein, the Rental Equipment shall at all times be the sole and exclusive property of NDS. Customer shall have no rights or property interest in the Rental Equipment, except for the right to use the Rental Equipment in normal drilling operations during the Rental Term at the location(s) agreed upon by the parties. Customer shall not take any action which would prejudice the ownership of NDS in the Rental Equipment. NDS shall have the right to inspect the Rental Equipment wherever it is located at any time and Customer shall arrange for NDS' full and complete access to such location.
1. Customer shall keep the Rental Equipment free and clear from all claims, levies, liens, encumbrances, and process other than those arising by, through, or under NDS. Customer shall immediately notify NDS of any attachment or other judicial process affecting all or any part of the Rental Equipment and take all such action as may be necessary to promptly remove the same.
 2. Customer shall not make any alterations, additions, or modifications to the Rental Equipment without NDS' prior written consent, and Customer agrees any permitted alterations, additions, or modifications shall be deemed part of the Rental Equipment for all purposes and shall become the property of NDS.
 3. Customer shall not sublet or part with possession of the Rental Equipment or any part thereof, attempt to dispose of the Rental Equipment, or transfer or assign its rights under this Agreement without the prior written consent of NDS. No such assignment, sublease, or other parting with the possession of the Rental Equipment shall relieve the Customer of its liabilities and obligations under this Section VI
 4. The parties intend any Agreement regarding the Rental Equipment shall be and shall be treated as:
 - a. An operating or true lease, for purposes of the Internal Revenue Code, as amended from time to time, or any successor statute thereto; and
 - b. A true lease for the purposes of the Uniform Commercial Code (as in effect in the State of Texas), as amended from time to time or any successor statute ("UCC"), and not a transaction "intended as security," as such phrase is used in the UCC.
 5. Notwithstanding the foregoing, if any federal, state, or local court or any adjunct thereof shall determine or deem this Agreement is intended as security, then Customer shall be deemed hereby to have granted, and does hereby grant to NDS a purchase money security interest in and to the Rental Equipment and a security interest in all proceeds thereof, to secure the payment and performance of all indebtedness, liabilities, and obligations of Customer to NDS due or to become due under the terms of this Agreement, or any renewal, modification, extension, or supplement thereof or thereto.
 6. Customer warrants the Rental Equipment shall at all times during the Rental Term constitute equipment and not inventory. Customer shall do, make, execute, and deliver all such additional and further acts, things, deeds, assurances, and instruments as NDS may reasonably request in order to perfect and protect more completely NDS' rights in and to the Rental Equipment.
- H. **Operation.** Customer shall have, assume all responsibility for, and pay all costs associated with the installation, care, custody, control, removal, and return of the Rental Equipment during the Rental Term, and agrees to use and operate the Rental Equipment in a careful and prudent manner, using only competent and properly trained employees or subcontractors, and only in accordance with any installation, maintenance, and/or operating procedures or instructions applicable thereto (including any applicable original equipment manufacturer specifications or warranty requirements) furnished by NDS (collectively, "Rental Equipment Instructions") and the requirements of all applicable laws. Customer shall not move the Rental Equipment from the worksite specified in this Agreement, sublease the Rental Equipment, or allow any third party to operate such equipment without the prior written consent of NDS. Customer shall not modify the Rental Equipment without



NDS' prior written consent, and shall not change, alter, or remove any insignia, serial number, or lettering of or on the same, or affix any of its own markings or insignia thereto.

I. Risk of Loss or Damage to Rental Equipment.

1. The entire risk of loss, destruction, or damage to the Rental Equipment from any cause or condition shall be borne solely and exclusively by Customer from the date of shipment of the Rental Equipment until it has been returned in accordance with the terms of this Agreement. No loss, theft, destruction, or damage to the Rental Equipment shall relieve Customer of the obligation to pay amounts due under or to comply with any obligation pursuant to this Agreement.
2. Customer shall immediately notify NDS of all details concerning any damage to, or loss of the Rental Equipment arising out of any event or occurrence whatsoever, including but not limited to, the alleged or apparent improper manufacture, functioning, or operation of the Rental Equipment. Customer shall, at its cost and expense, follow the instructions provided by NDS with regard to repair or replacement of the Rental Equipment affected by such loss or damage.

J. Maintenance.

1. Unless otherwise specified in this Agreement, Customer shall have sole responsibility for the installation, routine inspection, service and maintenance of the Rental Equipment, and shall be responsible for furnishing or obtaining all labor, parts and other materials necessary to service and maintain the Rental Equipment in good operating condition throughout the rental period in accordance with the Rental Equipment Instructions using spare parts from the inventory consigned by NDS, and as directed by NDS. Customer shall be responsible for keeping and properly storing an adequate stock of consigned spare parts on-site. Any associated charges shall be invoiced to Customer as incurred and Customer shall pay such invoices in accordance with the terms of this Agreement. Customer warrants routine maintenance shall be performed by skilled and qualified technicians trained in the function and operation of the Rental Equipment or by a repair facility designated by NDS. Customer shall maintain reports indicating the details of all maintenance and service performed on the Rental Equipment, as well as of spare parts on hand. Customer shall provide a copy of any and all such reports to NDS upon request, and NDS may audit any such report at any reasonable time.
2. If agreed between NDS and Customer in this Agreement, Customer shall have an option to elect a NDS maintenance plan whereby NDS shall provide an on-site technician to assist Customer in the operation and routine maintenance of the Rental Equipment at the rates set forth in such Agreement. If an on-site technician is not provided, NDS will dispatch a technician for regularly scheduled on-site visits for maintenance monitoring, inventory audit, and personnel training. Customer shall reimburse NDS, on invoice, for all travel costs and expenses associated with such visits. In addition, if the NDS maintenance plan option is elected by Customer, NDS may provide repair and replacement parts as necessary to keep the Rental Equipment in good operating condition under normal operating conditions, provided Customer provides NDS written notice of the need for repair.
3. Notwithstanding the foregoing, Customer shall be responsible for all costs associated with NDS' provision of repair or replacement parts or services in connection with any operational failure of the Rental Equipment which does not arise from the normal and proper use of the Rental Equipment (an "Excluded Cause"), including but not limited to, negligence, accident, misuse, improper application, and/or Customer's failure to install, maintain, transport, operate, move, or remove the Rental Equipment in accordance with the Rental Equipment Instructions. If NDS reasonably determines problems or failures in operation result from an Excluded Cause, Customer shall be charged for the support and remediation provided by NDS at NDS' then standard charges for such services, plus expenses, and Customer agrees to pay such invoice in accordance with the terms set forth in this Agreement.

K. Return of Rental Equipment. Upon expiration of the Rental Term or earlier termination of this Agreement, Customer shall return all Rental Equipment DDP NDS' named facility (Incoterms 2010) clean, and in a condition at least equivalent to its original condition at the time of delivery, ordinary wear and tear excepted, and shall pay or reimburse NDS for the costs of any inspections performed by NDS or any third party engaged by NDS for such purpose. Where Rental Equipment is returned in a condition which varies from that set forth herein, NDS reserves the right to take any necessary action to return the Rental Equipment to such condition. In such case, all charges associated with any remediation and the disposal of any waste resulting therefrom shall be subject to reimbursement by Customer, plus, in the case of third party work, fifteen percent (15%). Notwithstanding the provisions of this Section VI, if the Rental Equipment is damaged or otherwise not returned in the same condition as delivered to Customer, ordinary wear and tear excepted, Customer shall pay to NDS the lesser of

1. All costs incurred by NDS to restore the same to such condition, or
2. Its replacement price (plus applicable taxes and shipping costs).

L. Rental Equipment parts or components replaced shall be charged to Customer at NDS' current published rate or the manufacturer's current list price, as applicable. Customer shall promptly pay all applicable charges and shall retain all risk of loss or damage until NDS has executed a written acknowledgement of return. Except as otherwise set forth in this Section VI, Rental payments shall not apply to the cost of repair or replacement.

VII. Performance Tools License.

A. Title, ownership, and all patent, trademark, copyright, trade secret, and intellectual property/proprietary rights ("Rights") to any on-prem or embedded software, firmware, PLC, or other logic instructions, configuration settings, all related documentation, and any copies and/or derivative works thereof ("Performance Tools") provided by or used in connection with any products or Equipment provided by NDS are either owned by or licensed to NDS.

B. Accordingly, Customer understands and agrees:

1. NDS or its licensor (as applicable) is and shall remain the sole owner of all Rights in the Performance Tools;
2. NDS owns and reserves all Rights in any interface hardware provided to Customer for the purpose of allowing information or data to be accessible by the Performance Tools;
3. No Rights to the Performance Tools or their associated hardware are granted to Customer; and
4. The license NDS grants to Customer herein is limited, personal, non-exclusive, non-sublicensable, and non-transferable ("Performance Tools License").

C. The Performance Tools License:

1. Provides Customer with the ability to utilize the Performance Tools exclusively as installed by NDS solely in conjunction with NDS' products and only for Customer's internal business purposes;
2. Prohibits the disclosure of, access to, or right to use any associated source code; and
3. Does not entitle Customer to enhancements, updates, or any other modifications to the Performance Tools or to any of the equipment on which such Performance Tools are installed.

D. Customer agrees it shall not, without NDS' prior written authorization:

1. Circumvent any technological measure, such as a password, encryption, or the like, used to control access to the Performance Tools;
2. Copy, reverse engineer, decompile, disassemble, or transfer the Performance Tools;
3. Attempt to derive any source code, alter default settings, translate, or convert the Performance Tools into another language or system;
4. Establish any type of interface with the Performance Tools either directly or indirectly;
5. Replace the Performance Tools or their code with any version or type not provided to Customer by NDS; or
6. Utilize the Performance Tools in conjunction with non-NDS products or equipment.

E. Customer shall promptly report to NDS any actual or suspected violation of this Performance Tools License provision and shall take all reasonable and necessary further steps requested by NDS to prevent or remedy any such violation.

VIII. SaaS Solutions. The provisions of this Section VIII apply to software-as-a-service and related software, hardware, and services offered by NDS to connect third-party drilling rigs, equipment, and other controllable devices for the purpose of performing analytics, processing, displaying, and storing data in the cloud using mobile applications, online portals, and other interfaces ("SaaS Solutions"). SaaS Solutions shall be distinguished as such in this Agreement from other types of solutions which may be available from NDS and/or associated with a related Service, as provided herein. To the degree any terms in this Section VIII conflict with corresponding Terms herein, with regard to SaaS Solutions, this Section VIII shall prevail.

A. Use. Subject to Customer's compliance with these Terms and timely payment of applicable Fees NDS will provide Customer access to SaaS Solutions specified in the subject Order, and grant to Customer a personal, revocable, non-assignable, non-exclusive, non-transferable license to download, install, and use the SaaS Solutions ("Use Rights"). Acceptable use of the SaaS Solutions is limited to Use Rights. Use Rights are subject to any limits as may be detailed in any Order (including but not limited to number of users, sensors, data limits, or other methods of measuring Customer usage), and NDS may suspend access to SaaS Solutions until any required Fees are paid. Use Rights are further subject to Customer's compliance with all laws and regulations applicable to use of the SaaS Solutions including but not limited to: (a) data privacy, (b) data residency, (c) data localization, (d) anti-bribery, and (e) export control laws. Customer shall not use SaaS Solutions pursuant to efforts to: (a) benchmark or gather information to create a competing offering; (b) create derivative works, improvements, or reverse engineer; (c) interfere with the security or operation of the SaaS Solutions (including vulnerability testing, probing, or misrepresenting transmission sources); (d) infringing on a third-party's intellectual property rights; or (e) use in any environment other than that specified in the subject Order. Customer is responsible for binding Users to these Terms and for any breaches of such Terms by Users. "Users" means Customer, its employees or service providers or any third party or person using Customer's Use Rights to access the SaaS Solutions on Customer's behalf (including any channel partners and any party to which Customer "sells on" such Use Rights (if expressly permissible in any Order). Users may utilize Customer Use Rights under these Terms provided Customer has bound such Users to these Terms. Notwithstanding the foregoing, Customer shall be responsible for Users' breaches of, and compliance with, these Terms and shall remain responsible for Users' acts and omissions. NDS reserves the right to take SaaS or manual actions to prevent unauthorized use. Unless otherwise expressly agreed in writing by the parties Customer shall



use SaaS Solutions for its internal use only and has no right to use SaaS Solutions (or the analytics derived from the SaaS Solutions) to provide services for third parties.

- B. **Accounts.** Customer and Users must: (i) maintain confidentiality of log in credentials; and (ii) not allow others to use Customer's credentials. Customer shall promptly notify NDS (and maintain in confidentiality) any: (a) unauthorized use of Customer's or any other account; or (b) breach of security or security vulnerability discovered by Customer.
- C. **Equipment and Support.** Use of SaaS Solutions may require compatible equipment, internet access, and certain software. Provision and initial set up and configuration are provided if stated in the Order. Except for downtime for required maintenance, NDS will use commercially reasonable efforts to make SaaS Solutions available to Customer. NDS is not responsible or liable for any security incidents, delays, or other issues arising from or related to: (i) conditions or events reasonably outside of NDS's control; (ii) cyberattack; (iii) public internet and communications networks; (iv) data, software, hardware, telecommunications, infrastructure or networking equipment not provided by NDS; (v) Customer's and Users' negligence, gross negligence, or willful misconduct, or failure to use the latest version or follow published documentation; (vi) modifications or alterations not made by NDS; or (v) unauthorized access made using Customer's credentials.
- D. **Channel Partners.** NDS may use other parties to sell or support SaaS Solutions, or to include SaaS Solutions with other equipment and software provided by such other parties each of whom are independent entities ("Channel Partners"). NDS is not responsible for the pricing, support, acts, omissions, promises or warranties of Channel Partners.
- E. **Indemnification.** NDS will: (i) defend claims against Customer that Customer's use of the SaaS Solutions (subject to Use Rights) infringes a valid U.S. patent existing as of the effective date of the subject Order; and (ii) indemnify Customer for any resulting final judgment against Customer provided Customer: (a) gives NDS prompt notice on becoming aware of a claim, (b) gives complete authority and assistance to NDS (at NDS's expense) for disposition of the claim, and (c) makes no prejudicial statement about the claim. NDS has no liability, and Customer will indemnify NDS for claims related to: (a) use of SaaS Solutions other than for Use Rights, (b) combining SaaS Solutions with other software or equipment not supplied by NDS, (c) Customer Data, (d) Customer's use of output data provided by NDS, (e) modifications to SaaS Solutions made by Customer, (f) failure to accept any of the remedies provided herein to make Customer non-infringing, or (g) settlements or concessions made by Customer without NDS's prior written consent. If an infringement claim is made or is likely NDS may at its option and expense: (i) procure a right for Customer to continue using the SaaS Solution, (ii) modify the SaaS Solution to make it non-infringing (including NDS' provision of a non-infringing version or release of the SaaS Solutions), or (iii) procure a license to a reasonable alternate product. If NDS is not able to effect one of the aforementioned remedies, then NDS may at its option terminate the subject Order and refund to Customer a pro-rata portion of any pre-paid Fees made under the subject Order. THE FOREGOING STATES NDS'S SOLE LIABILITY AND OBLIGATION AND CUSTOMER'S SOLE RECOURSE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT. ALL WARRANTIES AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WHETHER IMPLIED, STATUTORY, OR EXPRESS, ARE DISCLAIMED. Customer will defend (at its cost and expense) NDS and its Channel Partners, licensor, and suppliers (and the employees, consultants, agents, directors, and affiliates of each) ("NDS Indemnitees") against all claims, demands, suits, actions or proceedings, and will hold NDS Indemnitees harmless from and pay out or reimburse all liabilities arising out of third party claims related to: (a) possession, processing or use of Customer Data or Personal Data related to an Order for SaaS Solutions, or (b) violation or misappropriation of NDS intellectual property or the intellectual property of a third party (except if caused by Customer while in compliance of Use Rights).
- F. **Intellectual Property and Data.** NDS retains all global rights, title, and interest (including all intellectual property rights, proprietary rights, and moral rights in and to the SaaS Solutions and all improvements and derivative works). Customer retains all rights over Customer Data or its Users input into the system, or that is collected from Customer's devices and equipment by the SaaS Solutions ("Customer Data"). Customer grants to NDS and its Channel Partners and their respective affiliates the right to use Customer Data to provide and protect the SaaS Solutions, and for any other purpose, including to train, test, or otherwise develop NDS artificial intelligence (AI) and machine learning (ML) tools, provided NDS aggregates and anonymizes the Customer Data ("Data Rights"). NDS shall own any analysis, inventions, algorithms, AI and/or ML models, or the like resulting from utilization of Data Rights and same shall be NDS's Confidential Information. Customer and its Users waive any rights to feedback or suggestions provided to NDS with respect to the SaaS Solutions. NDS may store, transfer, process or perform analytics using Customer Data in any jurisdiction where NDS has infrastructure provided NDS abides by all applicable data residency laws and localization regulations.
- G. **Confidentiality.** In addition to as otherwise provided in these Terms: (i) all information shared between the parties in performance of an SaaS Solution that is not generally known; and (ii) the contents of these Terms shall be considered Confidential Information and treated as such by the parties. The parties further agree the internal operation, workings, processes, and performance of the SaaS Solutions (including trial evaluation results if any) are the Confidential Information of NDS.
- H. **Privacy.** The parties agree each may process certain business contact information relating to persons employed by or working on behalf of the parties ("Personal Data") in performance of obligations hereunder or under any Order. Each party agrees to: (i) take commercially reasonable measures to adequately protect Personal Data against any security breaches; and (ii) delete Personal Data once no longer needed for purposes required hereunder or under any Order.
- I. **Security.** (i) NDS will use commercially reasonable administrative, physical and technical safeguards to protect Personal Data and follow industry-standard security practices; and (ii) following a confirmed breach of security leading to the accidental or unlawful destruction, loss, alteration or unauthorized access, disclosure or use of Customer Personal Data NDS will notify Customer without undue delay. NDS will further notify Customer as relevant information becomes available to assist in meeting Customer's potential reporting or notice obligations under applicable law and Customer will work with NDS in good faith to develop any related public statements or required notices. Customer will implement commercially reasonable administrative, physical, and technical safeguards to protect the SaaS Solutions and follow industry-standard security practices. Customer is solely responsible for costs and liability incurred due to unauthorized use or access through Customer or User's account credentials or systems.
- J. **Warranty Disclaimer.** NDS EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PURPOSE. NDS FURTHER MAKES THESE SAME DISCLAIMERS ON BEHALF OF ITS LICENSORS AND SUPPLIERS. NDS DOES NOT WARRANT THAT SAAS SOLUTIONS WILL MEET CUSTOMER REQUIREMENTS, NOR THAT SAAS SOLUTIONS WILL BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION.
- K. **Limitation of Liability and Waiver of Consequential Damages.**
 - 1. **Limitation of Liability.** NDS'S AGGREGATE LIABILITY FOR ALL CLAIMS (HOWSOEVER CAUSED) ARISING UNDER AN ORDER SHALL NOT EXCEED THE TOTAL OF AMOUNTS PAID OR PAYABLE TO NDS UNDER THE SAME ORDER ISSUED PURSUANT TO THESE TERMS DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE ASSERTION OF ANY CLAIM. NDS'S AGGREGATE LIABILITY FOR ALL CLAIMS ARISING UNDER EVALUATION OR TRIAL USE OF SAAS SOLUTIONS BY CUSTOMER IS LIMITED TO \$1,000.00 USD. NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY IN THESE TERMS OR THE SUBJECT ORDER CUSTOMER SHALL INDEMNIFY NDS INDEMNITEES FOR ALL AMOUNTS IN EXCESS OF THE AFOREMENTIONED LIMITS.
 - 2. **Consequential Damages.** EXCEPT FOR BREACHES OF THE: (I) CONFIDENTIALITY; (II) USE RIGHTS; (III) LICENSES, OR (IV) OWNERSHIP OF INTELLECTUAL PROPERTY PROVISIONS OF THESE TERMS NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS AND REVENUES, OR THE LOSS OR CORRUPTION OF DATA.
- L. **Other.** NDS has the right to monitor usage of SaaS Solutions. For the duration of an SaaS Solutions Order and for 12 months thereafter NDS reserves the right, on five (5) days of notice in writing, to inspect and audit (including on-site) Customer's compliance with these Terms. Customer shall cooperate fully with such audits and inspections. Customer has no right to assign, novate, or transfer these Terms or any Order without NDS's prior written consent and any attempt to do so shall be void. Except for payment obligations failures to perform which are beyond a party's reasonable control are excused. The terms of these Terms shall govern Company's use of SaaS Solutions whether purchased from NDS or a third party. Customer purchase orders are applicable only for purposes of authorizing payment and any additional or different terms and conditions contained therein shall not apply.
- IX. **Limited Warranty.**
 - A. **Services.** NDS does not guarantee the results of any Services it performs or represent such Services will achieve Customer's intended objectives; however, NDS agrees to perform its Services in a good and workmanlike manner, with reasonable diligence, using competent workmen and supervisors; in accordance with the specifications (if any) detailed in this Agreement; and in accordance with the requirements of applicable law.
 - B. **Other Manufacturers.** No warranty is made with respect to any Equipment, including, but not limited to, component parts or accessories, manufactured by others but supplied by NDS; however, to the extent it may do so, NDS may use commercially reasonable efforts to assign to Customer any warranties granted to NDS by such other manufacturers.
 - C. **Data.** Any data, including log data, or well or reservoir descriptions provided by NDS and/or any of its Performance Tools, and all interpretations, recommendations and decisions resulting from the use thereof ("Data"), are inferences and assumptions based on a variety of factors which are not infallible and involve opinions and judgments about which reasonable professionals may differ. In addition, such interpretations, recommendations, and decisions may involve information and data furnished by Customer, the accuracy and reliability of which are not the responsibility of NDS. Therefore, NDS provides no representation or warranty for accuracy, correctness, or completeness of any Data or the Performance Tools will be error-free. NDS does not and cannot guarantee the accuracy of any interpretation of any Data it provides, and Customer is fully responsible for all decisions and actions it takes based on such Data. Under no circumstances should Customer treat or rely upon the use of the Performance Tools or Data, including any interpretation, recommendation, and well or reservoir description, as the basis for any decision, be it operational, technical, financial, commercial, or otherwise, relating to the wellbore, the reservoir or the field, including, but not limited to, any decision relating to



well planning, drilling safety and performance, field development, well control, production optimization, contingency planning, and infrastructure and systems design and optimization. NDS shall not be liable under any warranty for Data regardless of the alleged breach or cause, including, but not limited to, the outcome of Customer's decisions, misuse, neglect, improper installation or testing, unauthorized attempts to repair, or any force majeure event.

D. DISCLAIMER. THIS SECTION VIII SETS FORTH CUSTOMER'S SOLE REMEDIES AND NDS' EXCLUSIVE OBLIGATION WITH REGARD TO THE WORK. EXCEPT AS EXPRESSLY STATED IN THIS SECTION VIII, THE WORK IS PROVIDED "AS IS" AND NDS MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, REGARDING THE WORK AND HEREBY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR OR GENERAL PURPOSE. Notwithstanding any provision set forth herein, NDS is the sole adjudicator with respect to all claims of non-conformance. No breach or alleged breach of warranty shall affect Customer's obligations with respect to indemnification or payment contained in this Agreement.

X. Confidentiality.

A. NDS and Customer acknowledge, in the performance of this Agreement, each shall have access to certain information which the other party deems proprietary or confidential. The parties agree the party who receives such information ("Recipient") shall not use and shall prevent the disclosure of any information it receives from the party providing the information ("Discloser"), whether delivered in writing, orally, or otherwise ("Confidential Information"). Recipient shall use the same degree of care, but not less than reasonable care, to avoid the disclosure of such Confidential Information as Recipient employs with respect to its own Confidential Information of like importance.

B. The parties agree Confidential Information shall not include, and Recipient shall have no obligation with respect to any such information which Recipient can show:

1. Is known to Recipient, without any confidentiality restriction, prior to receipt from Discloser;
2. Is, or becomes publicly known through no action or inaction by Recipient;
3. Is received from a third party without breach of this Agreement or any other obligation to maintain the confidentiality of such information;
4. Is independently developed by Recipient without use of Discloser's Confidential Information; or
5. Is required to be disclosed by securities laws or the rules or regulations of a stock exchange.

Any combination of elements of information shall not be deemed to be excluded from the class of Confidential Information by reason of each such element satisfying one or more of the exclusions set forth in Section X(B)(1-5), unless the combination itself satisfies one or more such exclusions.

C. If Recipient is required by legal process to disclose any of Discloser's Confidential Information, Recipient shall, to the extent not prohibited by law, promptly notify Discloser of such requirement so Discloser may seek an appropriate protective order or waive compliance with this Section X. If, in the absence of a protective order or the receipt of a waiver hereunder, Recipient is compelled to disclose the Confidential Information, Recipient agrees to disclose only such of the Confidential Information as is required by such legal process and, in connection with such compelled disclosure, Recipient shall use commercially reasonable efforts to obtain from the party to whom such disclosure is made written assurance confidential treatment will be accorded the information.

D. Discloser agrees Recipient may disclose Discloser's Confidential Information to its affiliates and their respective employees, directors, and officers (collectively, "Representatives"), but only for the purpose of facilitating Recipient's performance under this Agreement, and only if each internal recipient of such information is informed of and agrees to comply with the use and disclosure prohibitions contained in this Section. Notwithstanding the foregoing, Recipient shall remain responsible for any breach of the terms of this Agreement as a result of a disclosure by its Representatives.

E. All written data delivered by Discloser to Recipient pursuant to this Agreement shall be and remain the property of Discloser, and all such written data, and all copies thereof, shall be promptly returned to Discloser upon written request, or destroyed at Discloser's option. Each of NDS and Customer agree monetary damages may not be a sufficient remedy for any breach of this Agreement by Recipient and Discloser shall be entitled to seek specific performance and injunctive relief as remedies for any such breach, without requirement of posting bond. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but will be in addition to all other remedies available at law or in equity.

XI. Indemnification.

A. As used in this Agreement, "Claims" means all liabilities, losses, costs, damages (including punitive damages), fines, penalties, causes of action, proceedings, claims, demands, and expenses (including reasonable attorney's fees) whatsoever.

B. EXCEPT AS MAY BE OTHERWISE PROVIDED IN THIS AGREEMENT, NDS SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CUSTOMER, ITS AFFILIATES, SUBSIDIARIES, PREDECESSORS, SUCCESSORS, CONTRACTORS, SUBCONTRACTORS (EXCLUDING NDS GROUP, AS DEFINED BELOW), CO-OWNERS, CO-VENTURERS, PARTNERS, ANY ENTITY WITH WHOM CUSTOMER HAS AN ECONOMIC INTEREST WITH RESPECT TO THE WORK, INCLUDING CUSTOMER'S CUSTOMER(S), AND THE AFFILIATES, SUBSIDIARIES, PREDECESSORS, SUCCESSORS; EMPLOYEES, DIRECTORS, AND OFFICERS OF ANY OF THE FOREGOING (COLLECTIVELY, THE "CUSTOMER GROUP") FROM AND AGAINST ANY CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATED TO THE PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OF ANY MEMBER OF NDS GROUP (AS DEFINED BELOW) ARISING OUT OF OR IN CONNECTION WITH THE WORK.

C. EXCEPT AS MAY BE OTHERWISE PROVIDED IN THIS AGREEMENT, CUSTOMER SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS NDS ITS AFFILIATES, SUBSIDIARIES, PREDECESSORS, SUCCESSORS, AND SUBCONTRACTORS; AND THE EMPLOYEES, DIRECTORS, AND OFFICERS OF ANY OF THE FOREGOING (COLLECTIVELY, "NDS GROUP") FROM AND AGAINST ANY CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATED TO THE PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OF ANY MEMBER OF THE CUSTOMER GROUP ARISING OUT OF OR IN CONNECTION WITH THE WORK.

D. CUSTOMER SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS NDS GROUP FROM AND AGAINST ANY CLAIMS ARISING FROM OR RELATED TO:

1. DAMAGE TO OR LOSS OF THE HOLE, INCLUDING THE CASING THEREIN;
2. DAMAGE TO OR LOSS OF NDS GROUP'S (OR ITS SUBCONTRACTOR'S) IN-HOLE EQUIPMENT WHILE IN THE HOLE BELOW THE ROTARY TABLE;
3. DAMAGE TO OR LOSS OF NDS GROUP'S (OR ITS SUBCONTRACTOR'S) EQUIPMENT, INCLUDING CORROSION AND CONTAMINATION THEREOF, RESULTING FROM THE PRESENCE OF H₂S, CO₂, OR OTHER CORROSIVE, DESTRUCTIVE, OR ABRASIVE ELEMENTS INTRODUCED INTO THE DRILLING FLUID (INCLUDING ELEMENTS INTRODUCED FROM THE HOLE);
4. DAMAGE TO, DESTRUCTION OF, OR LOSS OR IMPAIRMENT OF ANY PROPERTY RIGHT IN OR TO OIL, GAS, OR OTHER MINERAL SUBSTANCE OR WATER, IF AT THE TIME OF THE ACT OR OMISSION CAUSING SUCH DAMAGE, DESTRUCTION, LOSS, OR IMPAIRMENT, SAID SUBSTANCE HAD NOT BEEN REDUCED TO PHYSICAL POSSESSION ABOVE THE SURFACE OF THE EARTH;
5. LOSS OF OR DAMAGE TO ANY PROPERTY, EQUIPMENT, STRUCTURE, FORMATION, STRATA, OR RESERVOIR BENEATH THE SURFACE OF THE EARTH;
6. LOSS OF WELL CONTROL;
7. CATASTROPHIC LOSSES, INCLUDING, BUT NOT LIMITED TO, THAT WHICH MAY RESULT FROM:

a. ANY BLOWOUT, FIRE, EXPLOSION, OR OTHER CATASTROPHIC EVENT RESULTING IN A WILD WELL, OR ANY FIRE OR EXPLOSION AT THE WORKSITE, AND ALL COSTS ASSOCIATED WITH ANY OF THE FOREGOING EVENTS, INCLUDING:

- (i) THE COST OF REGAINING CONTROL OF A WILD WELL,
- (ii) DAMAGES CAUSED TO A RIG, PLATFORM, VESSEL, PIPELINE, ANY SUBSEA STRUCTURE, OR ANY OTHER OIL AND GAS INFRASTRUCTURE ITEM,
- (iii) ANY DOWNTIME OR REMEDIATION/RECOVERY TIME,
- (iv) ANY COSTS OF CLEAN UP OR REMEDIATION WITH RESPECT TO ANY CONTAMINATION OR POLLUTION, AND/OR
- (v) THE COSTS OF REMOVING DEBRIS OR WRECKAGE;

b. LOSS OR DAMAGE TO ANY RESERVOIR, FORMATION, OR WELL BORE, AND ANY OTHER SUBSURFACE AND SUBSEA LOSS OR DAMAGE, AND/OR THE COST OF REDRILLING A WELL OR FISHING; AND/OR

c. ANY LOSS, DAMAGE, INJURY AND/OR DEATH SUFFERED OR SUSTAINED BY ANY THIRD PARTY RESULTING FROM ANY OF THE EVENTS DESCRIBED IN SECTIONS XI(D)(7)(a) OR XI(D)(7)(b) ABOVE, INCLUDING LOSS OF, OR DAMAGE TO, OIL OR GAS PRODUCTION FACILITIES, PIPELINES, FLOW LINES, SUBSEA STRUCTURES, OR

d. ANY OTHER THIRD-PARTY PROPERTY, INSTALLATIONS, RIGS, PLATFORMS, OR VESSELS.

FOR THE PURPOSES OF THIS SECTION XI(D), A "WILD WELL" MEANS A WELL IN WHICH THE ESCAPE OF OIL OR GAS IS NOT INTENDED AND CANNOT BE CONTROLLED BY EQUIPMENT USED IN NORMAL DRILLING PRACTICE.

E. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED BY AND BETWEEN NDS AND CUSTOMER THE RESPONSIBILITY FOR POLLUTION OR CONTAMINATION SHALL BE AS FOLLOWS:

1. NDS SHALL ASSUME ALL RESPONSIBILITY AND LIABILITY FOR (INCLUDING CONTROL AND REMOVAL OF THE POLLUTANT INVOLVED) AND SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD CUSTOMER GROUP HARMLESS FROM AND AGAINST ALL CLAIMS ARISING FROM ALL POLLUTION OR CONTAMINATION ORIGINATING ABOVE THE SURFACE OF THE LAND, OR IF OFFSHORE, THE SURFACE OF THE WATER, FROM SPILLS OF FUELS, LUBRICANTS, MOTOR OILS, PIPE DOPE, PAINTS, SOLVENTS, BALLAST, BILGE AND GARBAGE, EXCEPT UNAVOIDABLE POLLUTION OF OR FROM RESERVE PITS, WHOLLY IN NDS' POSSESSION AND CONTROL AND DIRECTLY ORIGINATING FROM NDS' EQUIPMENT AND FACILITIES;
2. CUSTOMER SHALL ASSUME ALL RESPONSIBILITY FOR (INCLUDING CONTROL AND REMOVAL OF THE POLLUTANT INVOLVED) AND SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD NDS GROUP HARMLESS FROM AND AGAINST ALL CLAIMS ARISING FROM ALL POLLUTION OR CONTAMINATION, OTHER THAN THAT DESCRIBED IN SECTION XI(E)(1) ABOVE, INCLUDING, BUT NOT LIMITED TO, THAT WHICH MAY RESULT FROM FIRE, BLOWOUT, CRATERING,



SEEPAGE OR ANY FLOW OF GAS, WATER OR OTHER SUBSTANCE, OR THE USE OR DISPOSITION OF DRILLING AND COMPLETION FLUIDS (INCLUDING OIL EMULSION, OIL BASE OR CHEMICALLY TREATED FLUIDS), CONTAMINATED CUTTINGS OR CARVINGS, LOST CIRCULATION AND FISH RECOVERY MATERIALS AND FLUIDS; AND

3. IN THE EVENT A THIRD PARTY COMMITS AN ACT OR OMISSION RESULTING IN POLLUTION OR CONTAMINATION FOR WHICH EITHER NDS OR CUSTOMER, FOR WHOM SUCH PARTY IS PERFORMING WORK, IS HELD TO BE LEGALLY LIABLE, THE RESPONSIBILITY THEREFOR SHALL BE CONSIDERED, AS BETWEEN NDS AND CUSTOMER, TO BE THE SAME AS IF THE PARTY FOR WHOM THE WORK WAS PERFORMED HAD PERFORMED THE SAME AND ALL OF THE OBLIGATIONS RESPECTING RELEASE, DEFENSE, INDEMNITY, HOLDING HARMLESS AND LIMITATION OF RESPONSIBILITY AND LIABILITY, AS SET FORTH IN THIS SECTION XI(E), SHALL BE SPECIFICALLY APPLIED.

F. THE LIMITATION, LIABILITY, RELEASE, DEFENSE, AND INDEMNITY PROVISIONS CONTAINED IN THIS AGREEMENT SHALL APPLY NOTWITHSTANDING ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT OR ANY CONTRACT, OR THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, AND SHALL BE WITHOUT REGARD TO CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, PRE-EXISTING DEFECTS IN EQUIPMENT OR MATERIALS, THE NEGLIGENCE, WHETHER SOLE, CONCURRENT, ACTIVE, PASSIVE, SIMPLE, GROSS, PRIMARY OR SECONDARY, OF EITHER PARTY OR ANY OTHER PERSON, INCLUDING, BUT NOT LIMITED TO, THE PARTY OR PERSON BEING RELEASED OR INDEMNIFIED, OR OTHERWISE, STRICT LIABILITY OR THE UNSEAWORTHINESS OF ANY VESSEL, INGRESS AND EGRESS, LOADING AND UNLOADING.

G. If it is judicially determined the monetary limits of the indemnities voluntarily assumed hereunder (or of the insurance required under Section XII exceed the maximum limits permitted under applicable law, it is agreed such indemnities or insurance requirements shall automatically be amended to conform to the maximum monetary limits permitted under such law.

XII. **Insurance.** NDS and Customer each agree to procure and maintain insurance in support of their respective indemnification obligations pursuant to this Agreement in mutually agreed, equal amounts. Each party agrees the mutual amount of such supporting insurance shall be the lesser of the maximum amount carried by either party at the time of the incident giving rise to the claim. If a party does not carry or fails to maintain insurance as mutually agreed, such party will be deemed to be self-insured in an amount equal to the amount of insurance carried by the other party in compliance with this Section XII. Customer shall name NDS Group as an additional insured under Customer's insurance policies, shall provide Customer's underwriters and insurance companies shall not have any right of subrogation against NDS Group or their underwriters and insurance companies, and shall provide the Customer's insurance will be primary and non-contributory in relation to any insurance NDS Group may carry. Customer shall provide a certificate of insurance evidencing the requirements in this Agreement upon request by NDS.

XIII. **Limitation of Liability.** EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, AND EXCEPT FOR CLAIMS ARISING FROM A BREACH OF SECTIONS V (PROPRIETARY WORKS) OR VI (PERFORMANCE TOOLS LICENSE), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THESE TERMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, PUNITIVE, OR EXEMPLARY DAMAGES (WHETHER OR NOT FORESEEABLE); LOST REVENUE OR PROFITS; LOSS OR DELAY OF USE OR PRODUCTION; RESERVOIR LOSS OR DAMAGE; LIQUIDATED OR BUSINESS INTERRUPTION DAMAGES; OR ANY OTHER DAMAGES NOT MEASURED BY ACTUAL DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NDS GROUP'S LIABILITY TO CUSTOMER GROUP EXCEED THE AMOUNT RECEIVED BY NDS FROM CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, NOT TO EXCEED ONE MILLION DOLLARS (\$1,000,000.00) (THE "LIABILITY CAP"), AND CUSTOMER HEREBY WAIVES AND RELEASES NDS GROUP FROM ANY SUCH LIABILITY IN EXCESS OF THE LIABILITY CAP. THE PARTIES ACKNOWLEDGE THE FEES ARE BASED ON THE AGREED ALLOCATION OF RISK IN THESE TERMS. IF, NOTWITHSTANDING THIS AGREEMENT, A COURT OF COMPETENT JURISDICTION DETERMINES ANY TERMS AND CONDITIONS OTHER THAN THESE TERMS APPLY TO THIS AGREEMENT, NDS SHALL HAVE THE RIGHT TO EITHER:

- A. MODIFY THE PRICES OR FEES (INCLUDING RETROACTIVELY) ACCORDING TO THE ADDITIONAL LEVEL OF RISK AND RESPONSIBILITY THE TERMS AND CONDITIONS REQUIRE NDS TO UNDERTAKE OR
- B. TERMINATE THIS AGREEMENT AT ANY TIME WITHOUT LIABILITY FOR SUCH TERMINATION.

XIV. **Cancellation of Work.**

A. Subject to the provisions of this Section XIV, Customer may cancel this Agreement prior to being notified by NDS the applicable Work is ready for delivery or complete, by providing NDS with a written notice of cancellation.

B. With respect to the cancellation of this Agreement for:

1. Equipment or Performance Tools, Customer shall pay or reimburse NDS the greater of:
 - a. A cancellation fee of twenty-five percent (25%) of the price of the cancelled Work, or
 - b. The vendor termination fees or charges incurred by NDS with respect to any cancelled Order.
2. Equipment which has been or is being specially manufactured or modified to Customer's specifications, Customer shall pay or reimburse NDS:
 - a. The costs and fees described in Section XIV(B)(1) above, and
 - b. The full cost of any raw materials or component parts purchased for such Equipment, after receipt of which NDS shall deliver the raw materials and component parts to Customer, at Customer's expense, without any warranty of any kind.
3. Services, Customer shall pay or reimburse NDS for
 - a. All Services performed prior to the date NDS receives the notice of cancellation,
 - b. All costs incurred by NDS which would not have been incurred, but for the cancellation, including vendor or subcontractor termination fees or charges; and
 - c. Any mobilization and demobilization costs incurred by NDS.

C. NDS may terminate this Agreement without prior notice if it is assigned by Customer without NDS' prior written consent or if there is a change in the control or management of Customer which is unacceptable to NDS.

D. The provisions of this Agreement which by their nature are reasonably intended by the parties to survive its cancellation, expiration or termination, including, but not limited to, Sections II-XII, and XVI-XXII, shall survive the cancellation, expiration, or termination of this Agreement.

XV. **Change Orders, Amendments.**

A. Any Customer request for changes in the scope and/or scheduling of the Work must be given in the form of a written change order ("Change Order").

B. Upon NDS' receipt of a Change Order, the parties shall negotiate in good faith the scope of Work to be included therein. Each Change Order shall reference the original Agreement and shall specify:

1. The changes in the scope or timing of the Work to be provided under the affected Agreement, and
2. The adjustment (if any) to be made to the Fees and other amounts due to NDS in connection therewith.
3. Once mutually agreed, such Change Order shall be executed on behalf of each party by an authorized officer, and shall be considered an amendment to this Agreement, subject to these Terms ("Amendment").

C. Requests for change may be given orally to NDS' worksite supervisor when the worksite or other conditions demand an immediate response (and NDS may rely on the authority of any Customer representative who makes such oral request); however, such request shall be documented in a mutually acceptable Amendment within seven (7) days of NDS' receipt of the oral request, failing which, NDS shall not be required to continue with any requested changes to the Work, and may suspend the Work unless and until an appropriate Amendment has been executed. If the parties are unable to agree upon or fail to timely execute an Amendment with respect to orally requested changes to the Work, NDS shall be entitled to permanently suspend the Work and cancel the affected Agreement, and Customer shall pay NDS for all Work performed prior to the date of cancellation, as well as any applicable mobilization or demobilization charges or other costs incurred by NDS.

XVI. **Force Majeure.** NDS shall not be liable for any delays in delivery or performance, or for failure to deliver or perform, due to any Force Majeure Event. "Force Majeure Event" means any cause beyond NDS' reasonable control, including, but not limited to, acts of God, acts of governmental authority, acts of civil or military authority, acts of terrorism, governmental priorities, strikes or other labor disturbances, floods, named storms, epidemics, war, riot, delays in transportation or railcar shortages, unavailability on reasonable commercial terms of necessary labor, materials, components, services, facilities, energy, fuel, or transportation, or delays in or unavailability of necessary government or governmental agency authorizations or instructions. NDS may, in its sole discretion, terminate this Agreement upon notice to Customer for any Force Majeure Event lasting more than fourteen (14) days.

XVII. **Compliance with Regulations and Laws.**

A. NDS shall comply with its own safety rules and regulations as well as all applicable state and federal safety standards and shall comply with such safety rules as may be reasonably requested by Customer and provided to NDS in advance of any Work performed for Customer.

B. Customer agrees it shall comply in all material respects with all relevant and applicable provisions of national, state, and local laws and regulations including, but not limited to, all export/import control laws and regulations and all laws and regulations regarding the procurement, production, storage, transportation, zoning, and/or sale of any hazardous, toxic, or other regulated substances.

C. Customer acknowledges its receipt and/or use of the products and services associated with the Work is subject to United States Government import and export laws and regulations (including, but not limited to, the U.S. Export Administration Regulations at 15 C.F.R. Part 730 et. seq., and the U.S. Office of Foreign Assets Control ("OFAC") Regulations at 31 C.F.R. Part 500 et. seq.), and may be subject to other similar foreign laws and regulations. Customer is solely responsible for and will



comply with such laws and regulations. Customer warrants it is legally eligible to procure the products and services contemplated pursuant to this Agreement, and, specifically, Customer warrants it is not named on any of the following:

1. OFAC's Specially Designated Nationals or Blocked Persons List;
 2. OFAC's Consolidated Sanctions List or any of its component lists;
 3. The Denied Persons List of the U.S. Department of Commerce Bureau of Industry and Security; or
 4. Any similar table of denial orders or entity lists.
- D. Customer agrees it will not, directly or indirectly, sell, transfer, license, import, export, re-export, utilize, and/or enable the utilization of any of NDS' products or services in violation of any applicable U.S. or foreign import or export laws or regulations.
- E. Should Customer learn of or have reason to know of any violation of this **Section XVII**, Customer will immediately advise NDS of its knowledge or suspicion in writing. Customer shall use its best efforts to assist NDS in validating evidence relating to any potential violation, and shall provide NDS access to Customer's relevant documentation or correspondence to obtain such information.
- F. In the event NDS reasonably believes or learns Customer has violated or intends to violate this **Section XVII**, NDS has the right, in its sole discretion to:
1. Review Customer's relevant records to obtain this information,
 2. Provide written notice to the appropriate government agency of its knowledge or suspicion, and/or
 3. Terminate this Agreement with immediate effect, without notice or penalty, in addition to, and not in lieu of all other remedies available to NDS due to Customer's default.
- G. Customer agrees to complete NDS' end-use, end-user, and end-destination documentation when requested.
- H. NDS complies with, and requires each member of the Customer Group comply with, the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and/or any applicable laws related to anti-corruption, anti-kickbacks, and anti-money laundering with regard to the Work. Customer shall make no facilitating payments, or grease payments, with regards to the Work.
- I. NDS, its affiliates, and/or its agents or Representatives bear no responsibility to notify Customer of any regulatory changes which may limit the use of the Work.
- XVIII. Assignment, Successors, and Assigns.** Except to an affiliate, this Agreement may not be assigned by either Customer or NDS to any person or entity without the other party's written consent. Notwithstanding the foregoing, NDS may assign its right to payment to any person or entity without Customer's consent.
- XIX. Entire Agreement.** This Agreement is the final, complete, and exclusive agreement between the parties with regard to the subject matter addressed herein and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Any representation, promise, course of dealing or trade usage not contained or referenced herein shall not be binding on NDS. No modification, amendment, rescission, waiver, or other change shall be binding on NDS unless agreed to in writing by NDS' authorized representative. To the extent there is a conflict between these Terms and any other document, these Terms control.
- XX. Severability and Waiver.** If any provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, for any reason, the invalidity, illegality, or unenforceability of that provision will not affect any other provision in this Agreement, but the invalid, illegal, or unenforceable provision will be substituted with a valid provision most closely approximating the intent and the economic effect of the original provision and which would be enforceable to the maximum extent permitted in the jurisdiction.
- XXI. Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, excluding the conflict of laws provisions thereof otherwise requiring the application of the law of any other jurisdiction. The parties agree to the exclusive jurisdiction of the Federal or State courts of Texas with respect to any dispute between the parties arising out of this Agreement or the performance thereof, including, but not limited to, its interpretation or the breach of or performance required herein. The parties submit to the personal jurisdiction of the Federal and State courts of Texas with respect to any dispute between the parties arising out of this Agreement or the performance thereof including, but not limited to, its interpretation or the breach of or performance required. The parties agree the venue for any action arising out of this Agreement or the performance thereof including, but not limited to, its interpretation or the breach of or performance required by this Agreement shall be in the Federal or State courts of Houston, Texas. The parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. The parties have expressly required these Terms be prepared in the English language.
- XXII. Waiver of Sovereign Immunity.** IF CUSTOMER IS OWNED, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, BY ANY COUNTRY OR SOVEREIGN, OR IS AN AUTHORITY OR AGENCY OF ANY COUNTRY OR SOVEREIGN, THEN CUSTOMER HEREBY WAIVES ANY AND ALL RIGHTS AND IMMUNITIES, INCLUDING WITHOUT LIMITATION, ANY IMMUNITIES FROM LAWSUITS, CLAIMS, PREJUDGMENT SEIZURE, ARREST, OR ATTACHMENT IT MAY HAVE UNDER ANY STATUTE, LAW, RULE, OR REGULATION OF ANY COUNTRY OR SOVEREIGN.
- XXIII. Nabors Dispute Resolution Program.** Customer, its parent, subsidiary and affiliated corporations, as well as the employees, officers and directors of each (collectively, "Customer") is cognizant of the Nabors Dispute Resolution Program and wishes to become an Electing Entity, as defined in that Program. Accordingly, Customer and Nabors Industries, Inc., its parent, subsidiary and affiliated corporations ("Nabors") hereby agree that Customer is an Electing Entity as to all Disputes between Customer and the present and former Employees and Applicants of Nabors pursuant to the Nabors Dispute Resolution Program as it currently exists and as may be amended from time to time. In the event the Program is amended, Nabors agrees to provide a copy of the amendment(s) to Customer. Customer may withdraw this election to participate in the Program at any time by giving notice of such withdrawal to Nabors, such revocation to be effective with respect to any claims not yet instituted as of the date of revocation. Customer understands that it is bound by the terms of the Program with respect to all Disputes with Nabors employees, regardless of whether such Dispute is initiated by the employee or by Customer. Customer and Nabors acknowledge that the Program does not apply to disputes between Customer and Nabors and that the Program does not alter the terms of any indemnification agreement between them.
- XXIV. Acknowledgement and Acceptance.** NDS may revise and update these Terms from time-to-time, and this Agreement will be subject to the most recent version of these Terms. In accepting Work from NDS, Customer shall be deemed to have accepted these Terms, unless NDS and Customer have entered into a separate, written master agreement or other contract which governs the Work signed by authorized officers of each of Customer and NDS.

[End of Terms](#)