



STANDARD TERMS AND CONDITIONS OF SALE

The Standard Terms and Conditions of Sale contained herein, together with any additional terms and conditions set forth in Deep Down, Inc.'s Order Acknowledgement Form, shall apply to all quotations made, and to all contracts entered into, between Deep Down, Inc. and Buyer for the sale of any Goods and Services as defined below.

1. DEFINITIONS

"Seller" means Deep Down, Inc. "Buyer" means the legal entity purchasing Goods or Services from Seller. "Goods" means any manufactured products, components, or spare parts offered by Seller and/or purchased by Buyer. "Services" means any services offered or provided by Seller to Buyer. "Offer" means any quote, proposal, or offer to sell Goods or Services provided by Seller to Buyer. "Order" means any purchase order or similar written instrument issued and signed by an authorized agent of Buyer to Seller to purchase Goods and Services. Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

2. ACCEPTANCE

The terms and conditions included in this "Standard Terms and Conditions of Sale" document (hereinafter, this "Agreement") apply to all Offers made by Seller to Buyer and all Buyer's Orders accepted by Seller. Acceptance of Buyer's Order, and any changes or amendments thereto, is expressly conditioned upon Buyer's assent to these terms and conditions. Unless specifically agreed to in writing by a duly authorized representative of Seller, Seller objects to, and is not bound by, any terms or conditions that differ from or add to the terms and conditions specified herein. Seller's failure to object to any terms and conditions or any other provisions contained in any communication from Buyer, including, but not limited to, Buyer's Orders, does not waive any of the terms and conditions specified herein. Seller's acceptance of any resulting Order or Buyer's receipt of Goods or consent to being any Services, whichever occurs first, will conclusively evidence Buyer's unconditional acceptance of these terms and conditions.

3. PRICES

Unless stated otherwise in writing by Seller, all prices are stated in U.S. Dollars and the prices offered are valid for a period of thirty (30) days from the date of Seller's Offer. The prices offered apply only to the specific quantities, specifications, and delivery schedules set forth in Seller's Offer. Any variation in quantity, specifications, or delivery schedules may necessitate a price and/or delivery schedule adjustment. Unless stated otherwise, all prices Ex-Works, as defined by INCOTERMS 2000. Unless otherwise stated, transportation charges, including transportation documents and contracts with carriers, shall be based upon the point of manufacture and shall be paid by Buyer.

4. PAYMENT TERMS

Unless otherwise mutually agreed in writing, payment of all invoices by Buyer shall be in U.S. Dollars and are due thirty (30) days from the date of invoice. A late charge of the lesser of 1.5% per month or the maximum amount permitted by law shall be assessed on all overdue payments. Buyer hereby waives any right of setoff against payments due Seller. Moreover, the Buyer agrees to pay all costs of collection, including reasonable attorney's fees, incurred by Seller in conjunction with the Buyer's failure to pay for the subject Goods or Services.

Unless otherwise quoted, Buyer will pay, in addition to the purchase price of the Goods or Services, all charges for export processing, insurance and transportation and the price of products does not include personnel or equipment required to install any products.

All price quotations of Seller are based upon the manufacture and/or delivery, and upon agreed terms as otherwise set forth herein. Storage of Buyer's completed Goods at Seller's location has only been included if expressly written into the quotation and agreed up on by Seller. Failure of the Buyer to provide proper shipping details, or if Buyer arranges shipping that leads to the storage of any Goods, may result in the assessment of storage fees which will be determined at the time of storage.



5. TAXES AND FEES

The amount of any present or future sales, use, excise, import duty, income or other tax and the amount of any surcharge, custom duty, consular fees, fees for stamping Bills of Lading or any other such document, assessments imposed by any Governmental authority or other applicable charges applicable to the manufacture, sale, or lease of Goods and Services will be added to the invoice and must be paid by Buyer, unless the Buyer provides Seller with a tax exemption certificate acceptable to the applicable taxing authority.

6. SHIPPING TERMS & RISK OF LOSS

All shipments by Seller are Ex-Works, as defined by INCOTERMS 2000. Risk of loss for Goods will transfer to Buyer upon Seller presenting Goods to carrier. If Seller prepays shipping, insurance, or other related costs, Buyer agrees to reimburse Seller promptly for the actual costs incurred by Seller.

7. BUYER'S OBLIGATION OF ASSISTANCE

Except to the extent Seller has otherwise assumed such responsibility for itself under the express provisions of any "Statement of Work" attached to Buyer's Order: a) Buyer will place at Seller's disposal all information necessary for performance of the work including any plans, plant layout, and operational information that may reasonably be required or expected to affect the performance of the work. This includes, to the extent reasonable, previous studies or reports and other data relative to the design, installation, and selection of equipment for the work to be performed by Seller; b) Buyer will guarantee access to and to make all reasonable provisions for Seller to enter on its property and other public and private lands as is required for performance of the work, including safe storage of equipment, materials, and tools during the process of any such off-site work; c) Buyer agrees to cooperate in all reasonable ways necessary to facilitate Seller's performance of the work; and d) Buyer covenants that it has disclosed fully and accurately to Seller all general and local conditions that can affect performance of the work prescribed hereunder or the price thereof. Buyer acknowledges that Seller is entitled to rely on information furnished by Buyer in developing its specifications, equipment selection, price, and other terms of the Order.

8. CHANGES AND MODIFICATION IN DESIGN

Seller hereby reserves the right to change or modify the specification and construction of any of its products or Goods without incurring any obligations to furnish or install such changes or modifications on products previously or subsequently sold.

9. PROPRIETARY RIGHTS & LICENSES

Unless otherwise provided by special written agreement signed by Seller and Buyer, all data, software programs, tools, tooling, molds, patterns, formulas, product designs, equipment, fixtures, specifications, templates, scripts, ideas, concepts, inventions, works of authorship, products, know-how, processes, and techniques used or developed, produced, acquired, or used by Seller or its employees or subcontractors for the purposes of fulfilling Buyer's Order remain the property of Seller and Seller retains all rights, title and interest in same. For the Goods provided to Buyer pursuant to these terms and conditions for which Buyer has paid Seller all amounts owed, Seller hereby grants to Buyer a non-exclusive, royalty-free, perpetual license to use and display such Goods solely for its own internal business purposes. Buyer agrees that Seller retains proprietary rights in and to all Goods, specifications, designs, engineering details, discoveries, inventions, patents, copyrights, trademarks, trade secrets and other proprietary rights relating to the Goods.

10. PACKING AND PACKAGING

Unless otherwise stated, packing and packaging are not provided by the Seller. The Seller, at the Buyer's request and per the Buyer's specifications, will provide packing and packaging at the prevailing time and material labor rates and cost, plus twenty (20) percent markup for all materials required. At any such time that Seller provides packing and packaging, Seller shall attempt to pack and prepare such shipments in such a manner as to prevent breakage, or deterioration in transit. Seller does not, however, guarantee against such damage, and risk of any damage to the products in transit shall be borne by the Buyer at all times. Unless requested by Buyer and agreed to in writing by Seller, no shipments are insured by Seller against loss or damage in transit and Seller assumes no liability whatsoever in regard to obtaining such insurance.



11. CHANGE ORDERS & AMENDMENTS

All change order requests must be submitted by the Buyer to the Seller in writing and will not be effective unless and until Seller consents in writing to the change. Seller will advise Buyer in writing of the price and/or delivery schedule impact, if any, of the change request. Seller's acceptance of changes will be subject to Buyer's agreement to any price and/or delivery schedule adjustments. No agreement or understanding to modify this contract shall be binding upon the Buyer unless in writing and signed by Buyer's authorized agent.

12. INSPECTION & TEST

All Goods manufactured by Seller are subject to Seller's standard inspection processes and, if applicable, acceptance testing at Seller's facility. Any additional requirements, including, without limitation, Buyer's source inspection or additional testing, are at Buyer's sole expense. If Seller and Buyer agree that Buyer is to inspect or provide for inspection at the place of manufacture, such inspection may not interfere unreasonably with Seller's operations and the Buyer's approval or rejection of Goods based on such source inspection and/or testing must be made prior to shipment of the Goods.

13. EXPORT COMPLIANCE; FOREIGN CORRUPT PRACTICES ACT

Buyer acknowledges that Goods sold by Seller for resale, export, or re-export are subject to the U.S. Commerce and/or U.S. Department of State Export Regulations under the law and regulations of the United States and the laws and regulations of other countries as applicable. Buyer agrees to comply with all laws and regulations governing the use, resale, export, re-export, and transfer of the Goods and the technology embodied therein. Buyer and Seller each agree to provide to the other such information and assistance as may reasonably be required in connection with securing any required authorizations or licenses in a timely manner. Buyer agrees to indemnify and hold Seller harmless from any claims or liability arising from Buyer's failure to comply with all such laws and regulations.

Buyer further agrees that it will comply with the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd1 through 78dd3, as amended.

14. FORCE MAJEURE & SCHEDULE

Shipping dates are approximate and require prompt receipt of all necessary Buyer-furnished information and material if applicable.

Seller is not liable for any damages, re-procurement costs, or penalties related to late deliveries. Without limiting the generality of the foregoing, Seller is not liable for delays due to force majeure, including, but not limited to, weather conditions, acts of God, acts of civil or military authorities, fires, strikes, job actions, floods, earthquakes, epidemics, quarantine restriction, war, terrorism, riot, supplier or vendor delays, or any other causes beyond the reasonable control of Seller. In the event of such delay, Seller will promptly notify Buyer and the date(s) of delivery will be deferred for a period commensurate with the time lost due to the delay. If the excusable delay under force majeure continues for more than ninety (90) days, Seller and Buyer will each have the option of terminating the affected Order(s) under Article 15, Termination for Convenience. If Seller's production is curtailed for any of the above reasons so that Seller is unable to deliver the full quantity of Goods scheduled for delivery to Buyer, Seller may allocate deliveries of available Goods among its various customers then under order for similar Goods. The allocation will be made in a commercially fair and reasonable manner. When such allocation has been made, Buyer will be notified of the estimated quota made available.



15. TERMINATION FOR CONVENIENCE

Buyer may request to terminate Buyer's Order for convenience in whole or in part and Seller agrees to cooperate with Buyer in attempting to make such arrangements conditioned on (a) Buyer providing reasonable advance written notice and (b) Buyer paying Seller for the cost of all materials, supplies and services for which Seller has placed firm orders and which cannot be cancelled or revoked as at the date of termination without incurring a penalty, plus a ten percent (10%) of the purchase order price termination fee. To the extent possible, Seller will use reasonable commercial efforts to divert materials and work in process from Buyer's Order to other customers' orders in order to minimize Buyer's termination costs.

16. TERMINATION FOR DEFAULT

Either Party may terminate the Order if the other Party breaches a material provision of this Agreement or of the Order. In the event that a Party (the "Defaulting Party") is in breach of a material provision of this Agreement or the Order, the other Party (the "Non-Defaulting Party") will submit a written cure notice to the Defaulting Party advising of such breach. The Defaulting Party will have thirty (30) days to cure the breach, beginning on the date the Defaulting Party receives the written cure notice. If the Defaulting Party does not cure the breach within the thirty (30) day period, the Non-Defaulting Party may terminate the Order. Seller may immediately terminate Buyer's Order(s) if Buyer is adjudicated bankrupt, files a petition in bankruptcy, makes an assignment for the benefit of creditors, or if action under any law for the relief of debtors is taken.

17. CHANGES ORDERS AND AMENDMENTS

All change order requests must be submitted by the Buyer to the Seller in writing and will not be effective unless and until Seller consents in writing to the change. Seller will advise Buyer in writing of the price and/or delivery schedule impact, if any, of the change request. Seller's acceptance of changes will be subject to Buyer's agreement to any price and/or delivery schedule adjustments.

18. LIMITED WARRANTY

SELLER WARRANTS THAT THE GOODS DELIVERED UNDER BUYER'S ORDER WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD EQUAL TO ONE YEAR FROM THE DATE OF ORIGINAL SHIPMENT. SELLER WARRANTS ALL SERVICES FOR NINETY (90) DAYS UNLESS OTHERWISE MUTUALLY AGREED UPON UNDER A SEPARATE SERVICE CONTRACT. THIS WARRANTY SHALL NOT APPLY TO ANY GOODS THAT UPON EXAMINATION BY SELLER ARE FOUND TO HAVE BEEN SUBJECT TO MISHANDLING, MISUSE, NEGLIGENCE, TAMPERING, REPAIR, OR ALTERATION WITHOUT SELLER'S EXPRESS PRIOR APPROVAL, GOODS THAT ARE IMPROPERLY STORED, INSTALLED, OPERATED, OR MAINTAINED IN A MANNER NOT IN ACCORDANCE WITH SELLER'S INSTRUCTIONS, OR GOODS DAMAGED DUE TO AN ACCIDENT. ALL RETURNS ARE SUBJECT TO SELLER'S THEN CURRENT RETURN MATERIAL AUTHORIZATION (RMA) PROCEDURE. SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY UNDER THIS WARRANTY IS THE REPAIR OR REPLACEMENT OF DEFECTIVE GOODS, SUCH REPAIR OR REPLACEMENT BEING AT SELLER'S SOLE DISCRETION. THIS WARRANTY DOES NOT COVER ANY COSTS ASSOCIATED WITH ASSESSING LOCATION OF THE GOODS, DISMANTLING, RE-INSTALLATION, OR RE-COMMISSIONING AFTER REPAIR AND SELLER WILL NOT BE RESPONSIBLE FOR THE SAME. SELLER WILL ALSO NOT BE LIABLE FOR COSTS RELATED TO ANY WORK PERFORMED BELOW THE WATERLINE OR SUBSEA, HEAVY LIFT OPERATIONS, OR THE TRANSPORTATION TO OR FROM OFFSHORE LOCATIONS. IN THE EVENT THAT BUYER IDENTIFIES ANY DEFECTS IN MATERIAL OR WORKMANSHIP, BUYER WILL PROMPTLY NOTIFY SELLER OF THE DEFECTIVE GOODS AND THE SPECIFIC NATURE OF THE DEFECT IN ACCORDANCE WITH ARTICLE 19, RETURN AUTHORIZATIONS. ANY CLAIM REGARDING THIS WARRANTY MUST BE IN WRITING AND RECEIVED BY SELLER BEFORE THE LAST EFFECTIVE DATE OF THE WARRANTY PERIOD.

THESE EXPRESS WARRANTIES, INCLUDING REMEDIES, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A



PARTICULAR PURPOSE IS INTENDED OR GIVEN. BUYER'S SOLE REMEDY AND SELLER'S SOLE OBLIGATION ARISING OUT OF OR IN CONNECTION WITH DEFECTS IN MATERIALS, WORKMANSHIP OR SERVICES WHICH ARE BASED ON WARRANTY, CONTRACT NEGLIGENCE, STRICT LIABILITY OR OTHERWISE SHALL BE THOSE STATED IN THIS SECTION. IN THE CASE OF GOODS OTHER THAN THOSE OF SELLER'S OWN MANUFACTURE, SELLER MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED.

19. RETURN AUTHORIZATIONS

Buyer will promptly notify Seller of any nonconformance or defects in the Goods and afford Seller a reasonable opportunity to inspect the Goods. No Goods may be returned without Seller's prior authorization, as evidenced by a return authorization number, or a "RMA number." Once a return authorization number is obtained, Buyer will return defective Goods, transportation and insurance prepaid, in accordance with instructions issued by Seller. Failure to follow Seller's return procedures may result in lost Goods, delays, additional service, restocking charges, warranty denial, or refusal of a shipment. The RMA number must appear on the shipping label along with all paperwork associated with the return. Buyer will identify the part number(s), description(s), and serial number(s) for all Goods returned along with an explanation of the nonconformance or defect. Seller has the right to reject Goods returned without the correct return authorization number clearly marked on the outside of the shipping container. Granting a return authorization number does not necessarily mean that a credit will be approved or that the evaluation or repair will take place without a fee. Goods repaired or replaced under warranty will be shipped back to Buyer at Buyer's expense. If any Goods returned by Seller are not found to be defective, Buyer will be so notified and such Goods will be returned to Buyer at Buyer's expense. In addition, Seller may charge Buyer for any testing or inspection costs. In no event will Seller retain or store returned Goods for more than six (6) months, after which time the Buyer shall be responsible for all storage and handling charges at prevailing company rates.

20. INDEMNIFICATION

Each Party (the "Indemnifying Party") will hold harmless and indemnify the other Party (the "Indemnitee") against all claims, judgments, costs, and fees, including attorney fees, relating to infringement of U.S. patents, designs, copyrights, or trademarks to the extent that the infringing Goods are manufactured, sold, or used in whole or in part to the Indemnifying Party's specifications, designs, drawings, or other technical data. To the extent that one Party's employees or agents enter on the property owned or controlled by the other Party, the first Party will indemnify and hold harmless the other Party, its officers, directors, and employees for any property damage or bodily injury or death caused by the first Party's employees or agents. Seller will indemnify and defend Buyer and its affiliates, officers, directors, and employees, from (or settle at its option and expense) any third-party claims brought against Buyer, to the extent that it is based on a claim that the Goods provided to Buyer by Seller and used in accordance with any specification provided by Seller infringes on any U.S. patent, copyright, or trade secret, and Seller will pay all reasonable damages, fines, penalties, expenses, and costs (including reasonable legal fees) incurred by Buyer or paid in settlement or awarded by a court of final appeal attributable to such claim, provided that Buyer notifies Seller in writing of any such claim as soon as reasonably practicable and allows Seller to control, and reasonably cooperates with Seller in, the defense of any such claim and related settlement negotiations (subject however, to Buyer's reasonable approval of Seller's decisions). To the extent that any Service or Goods are held by a court of competent jurisdiction, or is believed by Seller, to infringe or otherwise violate a third-party proprietary right, Seller may, at its option and expense, do one or more of the following: (a) modify the affected material to be non-infringing; or (b) obtain for Buyer a license to continue using such material on substantially the terms set forth herein; or, if neither alternative (a) nor (b) is reasonably available to Seller, (c) require return of the infringing material and all rights thereto from Buyer and refund to Buyer the fees paid for the infringing material and provide costs of locating replacement material. Seller will have no obligation under this provision to the extent any claim is based on: (a) modifications to the Services, Goods or deliverables by any person or party other than Seller or its authorized representative; (b) the combination, operation, or use of the Services, Goods or deliverables with equipment, devices, software or data not supplied by Seller, or in an environment for which the Services or Goods were not intended; (c) Buyer's failure to use updated or modified versions of the deliverables provided by Seller; (d) Seller's compliance with any designs or specifications provided by Buyer, or (e) the negligent acts or willful misconduct of Buyer, its employees, or its representatives (each, an "Indemnity Exclusion"). The forgoing constitutes the entire liability of Seller and Buyer's sole and exclusive remedy with respect to any claims of infringement of any third-party intellectual property rights.



21. LIMITATION OF LIABILITY

Notwithstanding any other provisions of this Agreement, under no circumstances is either Party liable for consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its performance under this Agreement, whether based upon breach of this Agreement, warranty, or negligence and whether grounded in tort, contract, civil law, or other theories of liability including strict liability, even if advised in advance of the possibility of such damages. Seller's total liability, including, but not limited to, liability for indemnity, defense, and hold harmless obligations, is limited to no more than the amount paid to Seller for the subject Goods or Services and Buyer agrees to indemnify Seller for any excess amounts. In no event shall Seller be liable for damages arising from delays, loss of use or of profits or for other incidental or consequential damages of any kind. To the extent that this limitation of liability conflicts with any other provision(s) of this Agreement, such provision(s) will be regarded as amended to whatever extent required to make such provision(s) consistent with this provision.

22. NOTICES

Unless otherwise specified, all notices shall be in writing and delivered personally or mailed, first class mail, postage prepaid, to the addresses of the Parties set forth on the applicable Order. All notices shall be deemed given on the date delivered. Either Party may change the address(es) or addressee(s) for notice upon providing prior written notice to the other Party. All notices shall be deemed given on the date delivered.

23. GOVERNING LAW

The validity, interpretation, and performance of Orders will be controlled by and construed under the laws of the State of TEXAS, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the State and federal courts of TEXAS shall have jurisdiction over any claim arising hereunder. Notwithstanding the foregoing, either Party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such Party's proprietary rights.

24. ARBITRATION AND LAW

Disputes that arise under this Agreement or Buyer's Order that cannot be settled amicably by the Parties will be settled by arbitration in Houston, Texas, United States of America under the prevailing rules of the commercial conciliation and arbitration rules of the American Arbitration Association. Judgment upon the arbitration award or decision may be entered in any court of competent jurisdiction. Arbitration awards and decisions are subject to Article 21, Limitation of Liability.

25. ASSIGNMENT

Buyer may not assign or transfer this Agreement or any Order, in whole or in part, without the prior written approval of Seller. Any attempted assignment or transfer of this Agreement or any Orders without the written consent of Seller shall be void and of no effect whatsoever.

26. UNENFORCEABLE PROVISIONS

In the event that one or more provisions of this Agreement is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision that lawfully enforces the Parties' intention underlying the invalid or unenforceable provision.



27. ETHICS AND VALUES

Seller is committed to uncompromising ethical standards, strict adherence to law, and customer satisfaction. Buyer is encouraged to communicate any concerns or questions regarding the ethics and value to the Deep Down Corporate Ethics Help Line, at 1-281-949-5050.

28. SURVIVAL

The following Articles will survive the termination or expiration of this Agreement or any Order: 1: Definitions; 4: Payment Terms; 5: Taxes and Fees; 6: Shipping Terms and Risk of Loss; 9: Proprietary Rights and Licenses; 13: Export Compliance; Foreign Corrupt Practices Act; 14: Force Majeure & Schedule; 15: Termination for Convenience; 16: Termination for Default; 18: Limited Warranty; 20: Indemnification; 21: Limitation of Liability; 22: Notices; 23: Governing Law; 24: Arbitration and Law; 25: Assignment; 26: Unenforceable Provisions; and 28: Survival.

29. WHOLE AGREEMENT; AMENDMENT

This Terms and Conditions of Sale document, and any Orders subsequently issued by Buyer and accepted by Seller, constitutes the entire understanding and agreement between the Parties and it supersedes all previous or additional agreements, arrangements, proposals, quotations, and drafts whether written or oral between the Parties. The terms and conditions contained herein and applicable statement(s) of work will prevail over all preprinted forms, including Orders and invoices, as any terms and conditions on such preprinted forms shall be null and void unless otherwise agreed to in writing by both Parties. No modification, amendment, supplement to, or waiver of these terms and conditions, or any provisions hereof or thereof, will be binding upon the Parties unless made in writing and duly signed by both Parties; provided, for the avoidance of doubt, no modification, amendment, supplement to or waiver of these terms and conditions, or provision hereof or thereof, shall be made via electronic communication unless the Parties first agree in writing (that is not an electronic communication) to be bound by electronic communications.

30. NO WAIVER

At no time will any failure or delay by either Party in enforcing any of the terms and conditions contained herein, exercising any option, or requiring performance of any provisions herein, be construed to be a waiver of same.

31. RESTRICTIONS

Should any government law, regulation, ruling and/or policy (including but not limited to import/export restrictions, license requests, exchange controls or requirements, or any document for certifications or information which may tend to discriminate or favor Seller's customers) effectively prohibit or restrict Seller or its affiliates from delivering Goods or Services or restrict Seller or its affiliates from receiving or remitting currency payments or the equivalent thereof, in full payment for Goods/Services, then Seller or its affiliate shall not be obligated to deliver Goods/Services or pay any amounts so prohibited or restricted and in such cases Seller or its affiliates shall not be liable for any damages. Seller shall endeavor to promptly notify Buyer of any known restrictions or prohibitions.



DEEP DOWN, INC.

OPERATING PERSONNEL AGREEMENT

This **OPERATING PERSONNEL AGREEMENT** ("Agreement"), effective as of _____, 20____, is entered into between Deep Down, Inc. (the "Company") and _____ (the "Customer"). The terms of this Agreement shall apply to all personnel provided by the Company to Customer, together with any products or equipment provided in connection therewith. Personnel shall be provided only upon the terms and conditions contained herein, which shall be binding on the parties, their successors and assigns, and Customer shall be deemed to have agreed to and accepted these terms and conditions upon Customer's authorization to the Company to engage such personnel ("Commencement of Services").

- (1) **SERVICES.** The Company will provide the technical, professional or other personnel ("Consultants") requested by Customer, as described in the Company proposal accepted by Customer or in such other document(s) describing the scope, price, and similar commercial terms (the "Proposal"), which is attached hereto as Appendix "A" and incorporated herein by reference, and the Company agrees to provide such Consultants as set forth in the Proposal and in accordance with these terms and conditions (the "Services"). Customer agrees that in the event it requires Consultants for any other project, location, or job, it will notify the Company and offer the Company an opportunity to provide such Consultants at rates and on terms mutually agreeable to Customer and the Company.

- (2) **TERM.** The initial term of this Agreement shall be _____ [year(s)] [month(s)] [week(s)] from the date of **Commencement of Services** and shall be automatically renewed for like terms thereafter unless either party shall give written notice of termination at least thirty (30) days prior to the termination of the initial term or any renewal term. Notwithstanding the foregoing, the parties may extend or renew this Agreement at any time by executing a written instrument to such effect.

- (3) **TERMINATION FOR CONVENIENCE.** Customer may request to terminate this Agreement for convenience prior to the end of the initial term as provided in paragraph 2 above in whole or in part and Company agrees to cooperate with Customer in attempting to make such arrangements conditioned on (a) Customer providing reasonable advance written notice and (b) Customer paying Company for the cost of all materials, supplies and services for which Company has placed firm orders and which cannot be cancelled or revoked as at the date of termination without incurring a penalty, plus a ten percent (10%) termination fee of the remaining initial term.



- (4) **OBLIGATIONS OF CUSTOMER.** Customer shall provide the Company with information in writing, outlining the nature, location and anticipated duration of the work for which the Consultants are required by Customer (the "Work"), the type and number of Consultants required and their respective duties, the experience, qualifications (including technical or professional degrees) and any other job criteria required of each type of Consultant and any other information reasonably necessary to enable the Company to engage qualified Consultants (the "Specifications"). Customer shall promptly notify the Company in writing of any changes in the Specifications or the Work and the Company shall have no obligation to provide additional or different Consultants unless it has received timely written notice of such changes. Any material, safety clothing and equipment or other tools or equipment necessary for the Consultants to perform their duties shall be provided as agreed between the Customer and the Company or as set forth in the Proposal. Customer shall provide all meals and lodging at the work site or in connection with travel to and from the work site, transportation to and from the work site and any other or similar items directly related to the performance of the Work or Consultant's assigned duties, unless otherwise agreed in writing by Customer and the Company. Except as otherwise provided in the Proposal and agreed to by the Company, if such items are provided by the Company, Customer agrees to reimburse the Company for any and all expenses incurred by the Company in connection therewith. Customer shall provide and ensure a safe working environment and working conditions for all Consultants supplied by the Company.
- (5) **OBLIGATIONS OF THE COMPANY.** The Company shall be responsible for verifying the qualifications of the Consultants provided and shall make every effort to ensure that the Consultants possess all necessary technical knowledge, work experience, integrity and reliability necessary to meet or exceed Specifications and perform the Work. Notwithstanding the foregoing, the Company cannot guarantee that the performance of the Consultants provided will meet the expectations or requirements of Customer and the Company's only obligation in such cases shall be to provide substitute Consultants. Further, the Company shall not be responsible for any loss (including theft) or damage to Customer's or third parties' property or injury to persons caused by the acts or omissions of any Consultant provided by the Company, nor shall the Company be liable for any damages incurred by Customer or delays in the Work as a result of the failure, refusal or inability of any Consultant to perform their assigned duties.
- (6) **PAYMENT.** Customer shall pay the Company for the Services at the rates set forth in the Proposal or as otherwise specified in writing. All compensation paid to the Consultants shall be the sole responsibility of the Company and Customer shall not make any payment directly to any Consultants for work performed by such Consultant pursuant to this engagement. The Company will invoice twice monthly unless otherwise agreed by the Company. Payment shall be made by Customer within thirty (30) days from the date of the invoice from the Company or as otherwise specified in the Proposal or agreed by the Company. In the event that any payment is not made when due, the Company at its sole option may, upon notice to the Customer, suspend Services or terminate the Agreement. Customer agrees to pay a late fee for all past due payments not to exceed the lesser of 1.5% per month or the maximum rate permitted by law. Customer agrees to pay all costs of collection, including reasonable attorney's fees, incurred by the Company in conjunction with Customer's failure to pay for the subject Services or any other item under this Agreement. If Customer is paying from a non-U.S. location, payment shall be made by wire transfer to a



Company account. All payments made to the Company in connection with this Agreement, the Services or the Work shall be made in U.S. dollars.

- (7) **INDEPENDENT CONTRACTOR.** The Company's relationship with Customer shall be that of an independent contractor and nothing contained herein shall be construed to designate the Company or any of its employees as an employee, joint venture, agent or partner of Customer. Customer further acknowledges that the Consultants provided are either (a) employees of the Company and therefore, pursuant to the preceding sentence, are not to be construed as employees or agents of Customer, or (b) not employees of the Company but are independent contractors of the Company; accordingly, nothing contained herein shall be construed to designate the Consultants as employees or agents of Customer, nor shall the Company and Customer be considered co-employers of the Consultants. Furthermore, nothing contained herein shall be construed to designate those Consultants which are independent contractors of the Company as employees or agents of the Company. Customers shall be solely responsible for allocating work or assigning duties to the Consultants and for the supervision, direction and control of the Consultants and shall use its sole discretion in determining the manner and method of utilizing the Consultants. Nothing contained herein shall prevent the Customer from exercising its right to dismiss a Consultant in the event that the Consultant commits any act which would merit termination if the Consultant were an employee of Customer. In such event, the Company's sole obligation shall be to provide substitute Consultants.
- (8) **ADDITIONAL SERVICE/CHANGES.** In the event Customer requests services not included in the Specifications, the Proposal or the Work, requires additional Consultants or otherwise changes the scope of the Services, the Company shall diligently endeavor to provide such additional services or Consultants as soon as reasonably possible under the circumstances. The Company shall be entitled to charge Customer for such additional services or Consultants at the Company's usual and customary rates then in effect. These terms and conditions shall apply to all such additional services or Consultants unless otherwise specified in writing signed by the parties.
- (9) **CHANGE IN WORK LOCATION.** Any change in the location of the Work or the location where the Consultants are to be performing any Services or where the Consultants are to be located during the Term of the Work shall require advance notice to the Company. The Company shall have the right, in its sole discretion, to modify the rates at which the Consultants are to be provided, supply substitute Consultants or terminate this Agreement and require the negotiation and execution of a new agreement to cover such new work or location.
- (10) **MOTOR VEHICLES.** Customer shall not allow the use by Consultants of any motor vehicle belonging to Customer or leased or hired by Customer without providing or procuring full insurance coverage on such use. The provision of any such transport or use by a Consultant of Customer's motor vehicles shall be at Customer's sole risk and cost.



- (11) HIRING OF CONSULTANTS.** Should Customer offer employment to any Consultant during or at the end of the term of this Agreement, or within twelve (12) months thereafter, Customer shall be obligated to pay and the Company shall be entitled to receive a placement fee equal to twenty percent (20%) of the gross annualized compensation to be paid to such Consultant; which fee shall become due and payable immediately once the Consultant/employee has been in Customer's employ for a period of ninety (90) days after the date such Consultant/employee began employment with Customer. For purposes hereof, "gross annualized compensation" shall include any bonuses, offshore allowances or similar pay or benefits to which Consultant/employee is entitled.
- (12) EXCUSED PERFORMANCE.** The Company shall not be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, insurrection, acts of terrorism, compliance with laws or governmental orders, inability to obtain or delays in obtaining qualified personnel, inability to obtain or delays in obtaining suitable transportation to the job site, fires, earthquakes, hurricanes, other inclement weather or other acts of God and such failure shall not constitute a Default under this Agreement.
- (13) INDEMNIFICATION.** Customer shall and does hereby agree to defend (including reimbursement of attorneys' fees and costs), indemnify and hold the Company, its employees, directors, officers, and agents, the Company's parent, affiliates and each of their employees, directors and officers (the "Indemnified Parties"), harmless from and against any and all loss, damage, cost, liability, expense, penalty or assessment arising out of, attributable to, connected with or resulting from any claim for loss, destruction or damage to property (including, but not limited to, the property of Customer or any third party) or death or injury of persons (including, but not limited to, Customer's employees or representatives, the Consultants or any third party) caused by or attributable to: (i) any act or omission, whether or not negligent, of Customer, its employees, officers, agents or representatives, the Consultants or any third party, in connection with or related to the Services, the Work or the subject matter of this Agreement; (ii) any violation of any law, statute, ordinance or regulation or of the rights of any of the Consultants by Customer, its officers, employees, agents or representatives; and (iii) any breach of any provision of this Agreement by Customer, its officers, employees, agents or representatives.
- (14) CONFIDENTIALITY.** All technical data, designs, drawings, calculations and specifications ("Technical Data") furnished to the Company or the Consultants by Customer shall remain the sole property of Customer and shall not be reproduced by or on behalf of the Company or the Consultants except as required for the Work or as authorized by Customer. All technical data developed or created for Customer in the course of the Work by the Consultants shall become and remain the property of Customer. Both parties shall treat as confidential and not disclose to others, except as is necessary to perform the Services, the Work or this Agreement or as may be required by law, rule or regulation or court order, any technical data or other confidential or proprietary information received from the disclosing party in the performance of the Services or this Agreement; provided, however, that nothing contained herein shall prevent a receiving party from disclosing to others or using in any manner any information that (a) has



been published and has become part of the public domain, (b) that has been furnished or made known to the receiving party by other parties as a matter of legal right without restriction as to its disclosure or (c) was known by or in the possession of the receiving party at the time of the disclosure. The Company will take reasonable steps to insure that the Consultants provided by it to Customer are bound by and adhere to the requirements of this provision. The receiving party shall be entitled to disclose Technical Data in response to a valid order of a court or other governmental body or otherwise required by law; provided, however, that the receiving party shall first have promptly notified the disclosing party and provide reasonable assistance to the disclosing party to obtain a protective order requiring that the Technical Data so disclosed be used only for purposes for which the order was issued.

(15) COMPLIANCE WITH LAW. In the performance of the Work and all services to be provided hereunder, the Company and Customer shall comply with all applicable federal, state and local laws, rules and regulations, any applicable laws, rules, regulations, orders or decrees of any foreign government or authority and any other requirements of any duly constituted authority that may pertain to the Work or the location where the Services are being performed or travel by the Consultants to and from the such location. The Company and Customer shall have obtained all necessary permits, licenses, and other forms of documentation required to perform their respective obligations hereunder and, upon request of any other party, each shall furnish copies thereof to such other party.

(16) GOVERNING LAW. The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the state of Texas, without giving effect to the principles of conflicts of law, and the state and federal courts of Texas shall have jurisdiction over any claim arising hereunder.

(17) CONTROLLING DOCUMENT. The terms and conditions of this Agreement shall take precedence over any additional or different terms provided by Customer, including those pre-printed terms or conditions contained in any Customer Purchase order or other customer document, unless these terms and conditions are modified in writing or are specifically accepted by the Company in writing, and in no event shall any such pre-printed terms or conditions be considered an amendment or modification of this Agreement, even if such documents are signed by representatives of both parties. Commencement of performance by the Company shall not be deemed or construed as acceptance of Customer's additional or different terms.

(18) NOTICES. Any notices required to be given shall be in writing and delivered to the receiving party at the address shown on the signature line below or at such other address as the receiving party may from time to time designate in writing. Delivery may be by regular mail, overnight or other courier, electronic mail, facsimile transmission or in person. The party relying on such notice shall have the obligation of demonstrating its receipt by the other party, which may be accomplished by any judicially acceptable means including, but not limited to, a signed receipt, courier's tracking records or verification of electronic or facsimile transmission.



- (19) ENTIRE AGREEMENT.** This Agreement, and the documents incorporated herein by reference, constitutes the entire agreement between the Company and the Customer relating to the subject matter hereof. This Agreement and the referenced documents supersede all prior written oral agreements or understandings and all communications between the parties or their representatives relating to the subject matter hereof, whether prior to or contemporaneous with the execution of this Agreement. No statement, representation, communication, modification, amendment or other agreement relating to the subject matter hereof which is made by either party and which is not included in this Agreement shall be binding on either party unless signed in writing by both parties.
- (20) ASSIGNMENT.** Neither party shall assign, subcontract, or otherwise transfer this Agreement or any of their respective rights, obligations, duties or responsibilities hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- (21) WAIVER.** Any waiver by either party of any provision or condition of this Agreement, any rights hereunder or the enforcement of said rights or any breach or default by the other party shall be in writing and shall not be construed or deemed to be a waiver of any other provision, condition, or right nor a waiver of any subsequent breach or default of the same provision or condition.
- (22) SEVERABILITY.** If any section, subsection, sentence, clause, phrase, term or condition of this Agreement be adjudged illegal, invalid, or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of this Agreement as a whole or of any other section, subsection, sentence, clause, phrase, term or condition not so adjudged.
- (23) TERMINATION.** Either party may terminate this Agreement in the event the other party breaches any provision hereof or defaults in the performance of any obligation or duty hereunder; provided, that the terminating party shall provide the defaulting or breaching party with written notice of any such breach or default and allow such party a reasonable time under the circumstances, but in any event not to exceed thirty (30) days (fifteen (15) days in the event of nonpayment of any sums due), to cure such breach. If such default or breach is not cured within the specified period, the terminating party may then immediately effect termination by delivering notice thereof to the other party.
- (24) AUTHORITY.** Each party represents, warrants and agrees that the person signing this Agreement of behalf of said party is authorized to do so and that this Agreement is legally binding on the parties, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.



DEEP DOWN, INC.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Address: _____



DEEP DOWN, INC.

EQUIPMENT RENTAL AND SERVICES AGREEMENT

This Equipment Rental and Services Agreement ("Agreement"), effective as of _____, 20____ is entered into between **Deep Down, Inc.** (the "Company") and _____ ("Renter"). The terms of this Agreement govern the relationship of the Company and Renter with regard to Renter's rental and use of items of equipment owned by the Company (the "Equipment") and with regard to any services provided to Renter in connection with the use of the Equipment (the "Services"). The Company and Renter are sometimes referred to collectively herein as the "Parties," and each individually as a "Party." The Equipment and Services are further described in the "Proposal" as prepared by the Company and attached hereto as Appendix "A" and incorporated herein for all purposes.

1. Rent: The rental rate for the Equipment, and as applicable, the rate for the Services, shall be as provided on the Proposal. Rent begins to accrue from the time the Equipment is picked up and will continue to accrue until the Equipment is returned by Renter to the Company's facilities. One-day minimum rental will be charged for each item of Equipment, unless otherwise negotiated. Equipment exchange due to misuse or damage shall be considered a separate rental. Rent does not include delivery and/or pickup charges unless expressly agreed to in writing by both Parties. Pickup and delivery charges do not include cost of any necessary permits. Any delay in excess of one (1) hour for delivery or pickup will be charged at \$55.00 per hour. Deliver and return of the Equipment in excess of 45 miles of the Company's facilities are quoted at the time of such delivery and return. Mechanics are available at a cost of \$60.00 per hour, with a two hour minimum charge. Long-term rentals of Equipment may be negotiated between Renter and the Company. Determination and approval of weather days and start and stop dates are at the discretion of the Company. It is the Renter's responsibility to advise the Company of any purchase order numbers, job charges, offshore location, tax status, or any other pertinent information that relates to this Agreement or Renter's use of the Equipment.

2. Terms of Payment: Rent is due net 30 days. Renter agrees to pay full replacement cost plus any accrued Rent for any item of Equipment not returned. Renter agrees to pay for all parts and labor for any improperly used or damaged Equipment. If it becomes necessary for the Company to consult an attorney for collection of rental and/or for payment for loss of the Equipment, Renter agrees to pay for the fees of said attorney plus interest at the rate of 18% per annum on the amounts due hereunder from the date payable until paid in full. A late charge of the lesser of 1.5% per month or the maximum amount permitted by law shall be assessed on all overdue payments.

3. Inspection and Maintenance: It is the Renter's responsibility to inspect all items of Equipment and the delivery ticket to ensure that all items of Equipment are listed on the delivery ticket. Unless Renter immediately notifies the Company of any defects in the Equipment, Renter shall be conclusively presumed to have accepted the Equipment in as is condition and with all faults. Thereafter, Renter will have no right to revoke acceptance and any attempt of revocation shall be without effect. It is agreed that the Equipment shall be returned to the Company in the same condition in which it was received by Renter, less normal wear and tear, and that Renter shall be responsible for all damage, repairs, replacements and maintenance during the rental term and while the Equipment is in Renter's possession, and also all repairs and maintenance made necessary by Renter's use of the Equipment. Renter shall take care of normal needs of the Equipment including daily checking of general condition, replacing parts, supplying consumables and other routine maintenance. If the Equipment becomes disabled, the Company will not be responsible for furnishing substitute equipment, and will for no reason be held liable for special or consequential damages resulting from such disablement.



4. Use: Renter shall be responsible for the proper and safe operation of the Equipment in its entirety, including, but not limited to, providing proper preventative maintenance. Renter shall not make any alterations, additions, modifications or improvements, or disfigure, cover or remove any lettering, emblems, insignia or labels displayed on the Equipment without prior written consent of the Company. Renter shall employ competent, experienced personnel who are familiar with the Equipment and its intended use. Renter shall see that the Equipment is not subjected to careless or needlessly rough usage and, if applicable, shall insure that the Equipment is not installed in such a manner that it might be considered attached to realty.

5. Personnel: Renter shall provide and ensure a safe working environment and working conditions for all personnel provided by or through the Company to perform the Services. Any change in the location where the Services are to be provided requires advance notice to the Company. The Company shall have the right, in its sole discretion, to modify the rates at which the Services are provided or terminate this Agreement and require the negotiation and execution of a new agreement to cover such new location. The Company shall not be responsible for any damages incurred by Renter or delays in the work of Renter as a result of the failure, refusal or inability of any of the personnel provided by or through the Company to perform the Services to perform their assigned duties.

6. Indemnity: RENTER SHALL INDEMNIFY, DEFEND (INCLUDING REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS), PROTECT AND HOLD HARMLESS THE COMPANY, ITS EMPLOYEES, DIRECTORS, OFFICERS, AGENTS AND UNDERWRITERS, THE COMPANY'S PARENT, AFFILIATES AND THEIR EMPLOYEES, DIRECTORS AND OFFICERS (THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL CLAIMS, ACTIONS, PROCEEDINGS, LOSSES, DAMAGES, INJURIES, DEATHS, PROPERTY DAMAGE, THEFTS, LIABILITIES, DISABILITIES, ARISING OUT OF, ATTRIBUTABLE TO, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, THE EQUIPMENT (INCLUDING WITHOUT LIMITATION, THE MANUFACTURE, SELECTION, DELIVERY, TRANSPORTATION, REPAIR, MAINTENANCE, POSSESSION, USE, OPERATION, OR RETURN OF SUCH EQUIPMENT) AND/OR THE SERVICES, BROUGHT BY ANY PERSON, INCLUDING WITHOUT LIMITATION ANY EMPLOYEE, AGENT, SUBCONTRACTOR, INVITEE, CUSTOMER, CONSULTANT OF THE RENTER OR THE COMPANY, AND ANY TRESPASSERS, OR ENTITY OR ACCOUNT OF ANY SUCH INJURY, DEATH, PROPERTY DAMAGE OR OTHER CLAIM OR CASUALTY ARISING IN ANY WAY OUT OF THIS AGREEMENT, THE SERVICES, OR RENTER'S POSSESSION AND/OR USE OF THE EQUIPMENT. THIS INDEMNITY SHALL APPLY REGARDLESS OF THE NEGLIGENCE, STRICT LIABILITY, UNSEAWORTHINESS OR FAULT, SOLE, COMPARATIVE OR CONCURRENT, OF ANY OF THE INDEMNIFIED PARTIES, AND SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON.

7. Damages and Lost Equipment: Renter is responsible for Equipment and its associated components from the time Equipment departs the Company's facilities until it is returned into the possession of the Company. Any damage to the Equipment shall be assessed promptly upon return of the Equipment to the Company's facilities. Renter is entitled to inspect any damages assessed by the Company and shall, in all events, be presented with a quote for the cost of repair, including projected mechanic hours. The cost of any parts or fabrication materials necessary for repairs by the Company shall be calculated on a cost plus 15% basis. Renter may, at its own option and cost, obtain a quote for repair or replacement of any damaged Equipment and have such repair or replacement performed, provided that any such repair or replacement is to the satisfaction of the Company and is completed within seven (7) days of the date of return of the Equipment by Renter to the Company. Any negotiations regarding the repairs or replacement costs referenced in this paragraph will be conducted between the Company and Renter only. Equipment that is not returned, whether lost or stolen, will be replaced at the then current replacement value and charged to Renter.

8. Termination for Convenience: To the extent the Proposal sets forth a term for hire of the Equipment and/or Services ("Term for Hire"), Renter may request to terminate Renter's order for convenience in whole or in part and Company agrees to cooperate with Renter in attempting to make such arrangements conditioned on (a) Renter providing



reasonable advance written notice and (b) Renter paying Company for the cost of all materials, supplies and services for which Company has placed firm orders and which cannot be cancelled or revoked as at the date of termination without incurring a penalty, plus a ten percent (10%) termination fee of the remaining Term for Hire.

9. Return of Equipment: Renter agrees that if it fails to pay the Rent when due, or if it commits an act of bankruptcy, goes into receivership, or fails to abide by any of the provisions of this Agreement, Renter will return said Equipment forthwith to the Company. The Company has the right and privilege, upon reasonable notice to Renter, to inspect the Equipment on the premises of Renter or wherever located and to observe the use of the Equipment.

10. Title: Title to the Equipment remains with the Company. Renter shall give the Company immediate notice in the event any Equipment is levied upon, claimed or otherwise threatened with seizure for any reason.

11. Warranty: The Company warrants that it has the right to rent the Equipment and give Renter possession of the Equipment pursuant to the terms of this Agreement. THE COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT AND ASSUMES NO RESPONSIBILITY FOR ITS CONDITION. ANY WARRANTY, EXPRESS OR IMPLIED, IS HEREBY EXCLUDED AND DISCLAIMED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION THERETO, THE COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED AGAINST PATENT OR LATENT DEFECTS IN MATERIAL, WORKMANSHIP OR CAPACITY OF THE EQUIPMENT, NOR DOES THE COMPANY WARRANT THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC MACHINERY OR OPERATIONS, OR SPECIAL METHOD. ALL LIABILITIES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE EQUIPMENT ARE ENTIRELY ASSUMED BY RENTER AT RENTER'S SOLE RISK AND SOLE EXPENSE.

12. Limitation of Liability: Notwithstanding any other provisions of this Agreement, under no circumstances is either Party liable for consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its performance under this Agreement, whether based upon breach of this Agreement, warranty, or negligence and whether grounded in tort, contract, civil law, or other theories of liability including strict liability, even if advised in advance of the possibility of such damages. The liability of the Company with respect to this Agreement, or anything done in connection therewith such as the performance or breach thereof, or with respect to the manufacture, sale, delivery, resale, installation or use of any Equipment furnished under this Agreement, whether in contract, in tort, under any warranty, or otherwise, shall not, except as expressly provided herein, exceed the total rental charges paid by Renter under this Agreement and Renter agrees to indemnify the Company for any excess amounts. In no event shall the Company be liable for damages arising from delays, loss of use or of profits, down time, costs of renting replacements, personal injury, any claim which may occur due to mechanical failure or improper operation of the Equipment, or for other incidental or consequential damages of any kind. To the extent that this limitation of liability conflicts with any other provision(s) of this Agreement, such provision(s) will be regarded as amended to whatever extent required to make such provision(s) consistent with this provision. The rental price stated for the Equipment is a consideration in limiting the Company's liability.

13. Insurance: Renter shall, at its own expense, provide and maintain liability insurance in amounts satisfactory to the Company, including, but not limited to, overage for the contractual liability of the hold harmless clause contained in Paragraph 6 hereof. Renter shall also at its own expense, provide and maintain insurance against loss by all risks of physical loss or damage such as at least that which is normally provided by a contractor's equipment floater policy, in an amount equal to the manufacturer's list price. Renter shall, upon request of the Company, provide the Company with certificates of Insurance evidencing the coverages required above, and naming the Company as an insured party under



the policies. Such certificates shall provide that the Company be given at least ten (10) days prior written notice of any cancellation of or material changes in such coverage. Renter must provide certificates of insurance, if requested by the Company, before shipment or delivery of Equipment to Renter. If Renter is self-insured, it shall furnish written evidence of such fact all to the satisfaction of the Company. THE PROVIDING OF ANY INSURANCE REQUIRED HEREIN DOES NOT RELIEVE RENTER OF ANY OF THE RESPONSIBILITIES OR OBLIGATIONS ASSUMED BY RENTER IN THIS AGREEMENT, OR FOR WHICH RENTER MAY BE LIABLE BY LAW OR OTHERWISE. If requested by the Company, Renter at its own expense shall furnish a bond in the amount of the value of the Equipment with sureties satisfactory to the Company, to insure fulfillment of this Agreement.

14. Governing Law: This Agreement shall be governed in accordance with the laws of the State of Texas and any action arising hereunder shall be brought in the state or federal courts of the State of Texas. No action, regardless of form, arising out of the transactions under this Agreement may be brought by Renter more than one year after the cause of action has accrued.

15. Entire Agreement: This Agreement constitutes the entire agreement between the Parties. The terms and conditions of this Agreement shall take precedence over any additional or different terms contained in Renter's documents, notwithstanding the acknowledgement by the Company of Renter's purchase order or other similar document provided by Renter.

16. Amendment: No modification, amendment, supplement to, or waiver of the terms of this Agreement, or any provisions hereof, will be binding upon the Parties unless made in writing and duly signed by both Parties.

17. Assignment: Renter may not assign or transfer this Agreement, in whole or in part, without the prior written approval of the Company. Any attempted assignment or transfer of this Agreement without the written consent of the Company shall be void and of no effect whatsoever.

18. Force Majeure: The Company shall not be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, insurrection, acts of terrorism, compliance with laws or governmental orders, fires, earthquakes, hurricanes, other inclement weather or other acts of God and such failure shall not constitute a default or breach under this Agreement.

19. Unenforceable Provisions: In the event that one or more provisions of this Agreement is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision that lawfully enforces the Parties' intention underlying the invalid or unenforceable provision.

20. No Waiver: At no time will any failure or delay by either Party in enforcing any of the terms and conditions contained herein, exercising any option, or requiring performance of any provision herein, be construed as a waiver of same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.



DEEP DOWN, INC.

RENTER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____