



## TERMS AND CONDITIONS FOR SERVICE – P&L TESTING, LLC

These terms and conditions for service (“Terms”), along with any conditions expressly incorporated in the quotation or bid form, will govern any sale of service by P&L Testing, LLC (“Provider”) to Customer (“Customer”)(collectively, the “Parties”). These Terms, including any applicable conditions in the quotation or bid form, (collectively, the “Agreement”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. If the Parties have entered into a Master Services Agreement (a “MSA”), the Order shall be governed by the terms of such MSA. In case of discrepancy between the Agreement documents, they shall be applied in the following order: (i) the MSA (if any); (ii) these Terms.

**1. The Work.** Customer desires to enter into this Agreement with Provider, an independent contractor, for the performance of services and/or purchase or lease goods, equipment, materials, tools, property, or supplies. This Agreement shall control and govern any and all (i) services (including the goods, equipment, materials, tools, property or supplies necessary for the services) performed by Provider for Customer (the “Services”), and/or (ii) the lease of equipment, tools, or property by Customer from Provider (the “Rentals”). The Services performed and the Rentals provided (collectively, the “Work”) will be as requested by Customer and will be defined by separate work orders or purchase orders (either oral or written) (collectively, “Orders”). This Agreement does not obligate Customer to issue any Order to Provider or accept Provider’s offers in response to a request to perform Work, nor does it obligate Provider to accept an Order from Customer, but this Agreement shall govern and be deemed to be incorporated in full in every Order accepted and agreed to by the parties. The terms and conditions of this Agreement shall take precedence over any conflicting or similar terms and conditions in any Order or other document, unless the parties (in accordance with Section 10) expressly state, in writing, the intent to amend the terms and conditions of this Agreement.

**2. Acceptance of Work.** Upon Customer’s notifying Provider of Work desired and Provider’s acceptance thereof, Provider will commence the Work at the agreed upon time and place and continue such Work diligently and without delay, in a good and workmanlike manner, in accordance with industry standards, and in strict conformity with the specifications and requirements contained in this Agreement.

**3. Maintenance of Records.** Provider will maintain all books and records relating to the Work for a 36-month period commencing at the completion of the applicable Work, and for any additional period as may be necessary to permit Customer to complete any audit commenced within such period.

**4. Terms of Payment.** Customer will pay Provider for Work satisfactorily rendered (i) in accordance with Providers published schedule of rates and/or prices, as such rates and/or prices are in effect on the date of service or (ii) at such other rates and/or prices as are agreed to by Provider and Customer in the Agreement. Provider shall provide Customer an invoice at Customer’s address below and in accordance with instructions provided at the time of the issuance of the Customer purchase order, or if no such instructions were given, at the weekly

during the course of the Work. Payment shall be made by Customer within 30 calendar days of receipt of Provider's invoice for Work performed.

## **5. Warranties.**

(a) Provider shall provide the Work in good faith, in a good and workmanlike manner, with due diligence and dispatch, in accordance with good practice in the oilfield service industry, and in compliance with all applicable laws, rules, regulations, and orders of any governmental authority having jurisdiction. Provider further warrants that the Provider is regularly and customarily engaged in providing the Rentals requested by Customer hereunder, and that Rentals shall conform with the written specifications Customer supplies to Provider and be free of all liens and encumbrances arising out of Provider's ownership or possession of such equipment; but Provider does not and shall not control Customer's use and operation of the Rentals and all written or oral advice or assistance provided by Provider in connection with the Rentals are recommendations given strictly in an advisory capacity in connection with information supplied to Provider.

(b) Notwithstanding any contrary provision in this Agreement, Customer acknowledges the results of Provider's Services and Rentals (including, but not limited to, Services and Rentals related to hydro static testing, EMI scanning services, and well testing and flowback services) identify the characteristics of the item(s) at the specific time of the test and/or scan and such results are not indefinite. Therefore, Provider does not guarantee and makes no representations or warranties as to any particular results to be achieved, and all warranties not specifically set forth herein are hereby disclaimed and waived (including but not limited to any express or implied warranty of fitness, durability or suitability for a particular use or purpose, and/or merchantability), and (ii) as Provider's sole liability and Customer's sole remedy for any breach of any warranty or representation hereunder shall be Provider's removal, replacement, or correction of the Services at Provider's sole cost prior to Provider's departure from the worksite or Provider's furnishing of replacement Rentals if notified of any breach of the above warranties within 24 hours of delivery.

## **6. Risk Allocation.**

(a) **Definitions.** Throughout this Agreement and the attached exhibits, the following terms shall have the designated definitions:

“Customer Group” shall mean, individually or in any combination, Customer, its parent, affiliate and subsidiary entities and customers (if any), partners, co-owners, co-lessees, joint ventures, and joint interest owners, its and their contractors and subcontractors of any tier (other than Provider Group), and the respective directors, officers, agents, representatives, employees, insurers and invitees of all the foregoing.

“Provider Group” shall mean, individually or in any combination, Subcontractor, its parent, affiliate, and subsidiary entities, and its and their contractors and subcontractors of every tier, and the respective directors, officers, agents, representatives, employees, insurers and invitees of all the foregoing.

“Losses” shall mean claims, demands, causes of action, legal proceedings, losses, liabilities, costs, damages, or expenses of any kind and character (including, but not limited to, reasonable attorneys' fees, court costs, and other legal expenses).

“REGARDLESS OF FAULT” shall mean regardless of whether the injury, illness, death, damage to property, pollution, or contamination is caused or allegedly caused by, contributed to by, or occasioned by, in whole or in part, the joint, sole or concurrent negligence (whether active or passive), breach of contract, breach of warranty, strict liability, unseaworthiness of any vessel, un-airworthiness of any aircraft, preexisting condition, or any other fault (expressly excluding

gross negligence and willful misconduct) attributable to the indemnitee and/or its respective Group or any other person or entity.

(b) **Parties' Intent.** Customer and Provider intend for the release, defense, indemnity and hold harmless obligations provided for in this Section 6 to apply to any Losses directly or indirectly arising out of, resulting from, or related to the performance or subject matter of this Agreement or any Work, including the ingress, egress, loading/unloading of cargo or personnel, or any presence on any premises (whether land, building, vehicle, platform, aircraft, vessel, or otherwise) owned, operated, chartered, leased, used, controlled, or hired by any person or entity.

(c) **Provider's General Indemnity.** Subject to Section 6(e) below, Provider shall release, defend, indemnify, and hold harmless Customer Group from and against any and all Losses arising from injury, illness, death, or damage to property of any member of Provider Group, **REGARDLESS OF FAULT.**

(d) **Customer's General Indemnity.** Customer shall release, defend, indemnify, and hold harmless Provider Group from and against any and all Losses arising from injury, illness, death, or damage to property of any member of Customer Group, **REGARDLESS OF FAULT.** Customer further shall release, defend, indemnify, and hold harmless Provider Group from and against any and all Losses arising from: (i) pollution and/or contamination (excluding that which emanates from Provider's property above the surface of the land or water, but subject to Section 6(e) below); (ii) fire, explosion, subsurface pressure, a wild well or losing control of a well, well blowout, cratering, seepage of any uncontrolled flow of oil, gas, water or other substance, and the use of radioactive material; and/or (iii) surface and subsurface damage and ground water contamination, damage or loss to the reservoir, formation and well loss damage, and subsurface trespass or any action in the nature thereof, **REGARDLESS OF FAULT.**

(e) **Specific Terms for Rentals.** If Customer leases any Rentals from Provider, the following terms shall expressly apply:

(i) Notwithstanding Section 6(d)(i) above, Customer shall release, defend, indemnify, and hold harmless Provider Group from and against all Losses arising from any pollution and/or contamination (including, but not limited to, that which results from Customer Group's use or operation of Provider's Rentals), **REGARDLESS OF FAULT.**

(ii) Notwithstanding Section 6(c) above, Customer shall bear all risk of loss to any Rentals leased by Provider to Customer, and Customer shall further be liable for and/or reimburse Provider for any maintenance, repairs, loss, destructions, or damage to such Rentals arising out of or related to the lease and use by Customer of such Rentals, **REGARDLESS OF FAULT.**

(f) **Consequential Damages.** Notwithstanding any contrary provision in this Agreement, neither party shall be liable to the other or the other's respective Group for, and each party release the other and the other party's respective Group from, consequential, indirect, incidental, special, and punitive damages (including, but not limited to, loss of profits, economic damages, loss of hydrocarbons, downtime, and business interruption), **REGARDLESS OF FAULT.**

## **7. Insurance.**

(a) Provider shall at its own expense (including deductibles) carry insurance (with insurance companies satisfactory to Customer) to insure the release, defense and indemnity obligations assumed by Provider under this Agreement, including, but not limited to, insurance in the

minimum amounts and in accordance with the specifications set forth in Exhibit A, with all such insurance to be effective prior to the commencement of any Work under this Agreement, and Provider represents and warrants the entire cost of such insurance has been included in and shall be recovered by Provider through the Provider's prices. Such insurance shall be maintained in full force and effect at all times Work is performed and/or this Agreement is in effect.

(b) All insurance policies of Provider, in any way related to the Work, and whether or not required by this Agreement, shall, but only to the extent of the release, defense and indemnity obligations assumed by Provider in this Agreement, (1) name Customer Group as additional insureds (except for worker's compensation) (with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent); (2) waive subrogation against Customer Group; and (3) be primary and non-contributory to any insurance of Customer Group.

(c) All insurance policies of Customer, in any way related to the Work, and whether or not required by this Agreement, shall, but only to the extent of the release, defense and indemnity obligations assumed by Customer in this Agreement, (1) name Provider Group as additional insureds (except for worker's compensation) (with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent); (2) waive subrogation against Provider Group; and (3) be primary and non-contributory to any insurance of Provider Group.

(d) As respects all Work performed in Louisiana, or offshore Louisiana, Customer (on behalf of Customer Group) may elect to pay to Provider's insurers (or their agent or representative) the premium required by their insurer for extending all of Provider's insurance policies (and additional insured status, waiver of subrogation, and primary status) to include coverage for Customer Group as required under this Agreement, and such insurance protection shall be governed by Louisiana law. Upon receipt of written notice of Customer's election to pay such premium, Provider will arrange to have Customer billed for that premium by Provider's insurers (or their agent or representative).

(e) If the laws of the State of Texas are applicable to this Agreement or any Work performed by Provider, **each Party's indemnity obligations will be supported by liability insurance obtained for the benefit of the other Party (and its respective Group) as indemnitees of the types and with minimum limits and coverages not less than those required to be obtained by Provider under this Section 7 and Exhibit A.** The parties acknowledge the foregoing is to ensure compliance with the Texas Oilfield Anti-Indemnity Act regarding indemnification mutually assumed for the other Party's sole or concurrent negligence and to ensure the enforceability of the release, defense, indemnity and hold harmless obligations of each party.

**8. Independent Contractor/Statutory Employer.** Provider shall be an independent contractor with respect to the performance of all Work, and neither Provider nor anyone employed by Provider shall be deemed for any purpose to be the employee, agent, servant, borrowed servant, or representative of Customer in the performance of any Work. Customer shall have no direction or control of Provider or its employees, agents, representatives or subcontractors, except in the results to be obtained. The actual performance and supervision of all Work shall be by Provider, but Customer shall have full and complete access to the work site to determine whether the Work is being performed by Provider in accordance with all provisions of this Agreement and for reasons otherwise stated in this Agreement.

Notwithstanding the foregoing, in all cases where Provider's employees (defined to include Provider's or its subcontractor's direct, borrowed, special, or statutory employees) are covered by the Louisiana Workers' Compensation Act, La. R.S. 23:1021 *et seq.* or a similar statute of any other state law, all work and operations performed by Provider and its employees pursuant to

this contract are an integral part of and are essential to the ability of Customer to generate Customer's goods, products and services for purposes of La. R.S. 23:1061(A)(1) (or a similar statute of any other state law). Furthermore, Customer is the statutory employer or special employer (as defined in La. R.S. 23:1031(C) or a similar statute of any other state law) of Provider's employees, but Provider shall remain primarily responsible for the payment of Louisiana Workers' Compensation benefits to its employees, and shall not be entitled to seek contribution for any such payments from Customer. Provider's worker's compensation insurance and employer's liability insurance policies shall be endorsed to designate Customer as an alternative employer and as a principal and statutory employer or borrowing employer and shall be further endorsed to waive unconditionally those underwriter's or insurer's rights of subrogation against Customer.

**9. Confidentiality.** Each party ("Disclosing Party") recognizes information provided to the other party pursuant ("Receiving Party") to this Agreement is proprietary to the Disclosing Party and private and confidential. Such information includes, but is not limited to, business and economic information relating to the Disclosing Party's business, technical data, trade secrets or know-how, and geological or geophysical information. The Receiving Party shall not divulge the Disclosing Party's confidential information to any person other than for purposes of performing the Work. Before making a disclosure of the Disclosing Party's confidential information in any legal proceeding, the Receiving Party shall notify the Disclosing Party, in writing, of the relevant circumstances so the Disclosing Party may participate in the legal proceeding (at its option) to protect any confidential information.

**10. Conflicts/Modification.** If there are any conflicts between the provisions of this Agreement and, either party's work ticket, invoice, statement, published rate schedule, or any other type of memoranda, whether written or oral, between Customer and Provider, the provisions of this Agreement shall control to the extent of the conflict. No change, modification, extension, renewal, ratification, rescission, discharge, abandonment, or waiver of this Agreement or any of its provisions or any representation, promise, or condition relating to this Agreement shall be binding upon the parties unless made in writing, signed by the parties, and specifically referencing this Agreement.

**11. Third-Party Beneficiaries.** The provisions of this Agreement shall extend to and be enforceable by and for the benefit of all obligees set forth therein, including the members of each party's respective "Group." The parties intend such entities to be third-party beneficiaries of this Agreement.

**12. Notices.** All notices to be given with respect to this Agreement shall be considered as given to Customer and to Provider, respectively, if given in writing and delivered personally, or sent by registered or certified mail, return receipt requested, or by facsimile or telex. General correspondence pertaining to this Agreement may be sent by regular mail. Such notices shall be effective when delivered, if delivered personally, or when placed in the mail if mailed in the manner provided above to the addresses shown below. Notices sent by facsimile or telex shall be effective on the date of receipt if received on a business day during normal business hours, or, if received other than on a business day during normal business hours, then on the first business date after receipt.

**13. Severability.** If any term or provision of this Agreement is held by a court or agency of competent jurisdiction to be inconsistent with or contrary to any applicable federal, state, or local law, rule, or regulation, said term or provision shall be deemed to be modified to the extent, but only to the extent, required to comply with said law, rule, or regulation, and, as so modified, said provision and this Agreement shall continue in full force and effect.

**14. Integration and Survival.** This Agreement supersedes all other agreements, either oral or in writing, between the parties with respect to the subject matter of in this Agreement and contains all the covenants and agreements between the parties with respect to the subject matter. The representations, warranties, and

obligations of each party in this Agreement shall survive the completion of any Work performed by Provider and the termination of this Agreement.

**15. Waiver.** The failure of either Party to exercise any of its rights or remedies under this Agreement shall not act as a waiver of such rights or remedies nor shall such failure excuse the other Party from any of its obligations under this Agreement.

**16. Choice of Law.** The validity, construction, interpretation, and effect of this Agreement shall be governed by the laws of the State of Texas, excluding any choice of law rules which would refer the matter to the laws of another jurisdiction.

**17. Multiple Counterparts.** This Agreement may be executed in one or more counterparts, and all such counterparts shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to each other party, which delivery may occur by facsimile or other electronic means (including a “.pdf” format data file). An executed copy of this Agreement delivered by facsimile or other electronic means shall for all purposes be considered an original document.

**Exhibit A - Provider's (P&L Testing) Minimum Insurance Requirements)**

**The following minimum insurance shall be maintained by Provider (P&L Testing):**

**A. Workers' Compensation and Employer's Liability Insurance** covering all states and jurisdictions where Provider provides services or where Provider provides Work or conducts operations for Provider. Each such policy shall be endorsed to include an alternate employer endorsement and provide voluntary compensation coverage.

Employer's Liability (including maritime employer's liability) limits of:

- |    |                           |                              |
|----|---------------------------|------------------------------|
| 1. | Bodily injury by accident | \$1,000,000.00 each accident |
| 2. | Bodily injury by disease  | \$1,000,000.00 policy limit  |
| 3. | Bodily injury by disease  | \$1,000,000.00 each employee |

**B. Commercial General Liability Insurance** (Occurrence Form) with per occurrence limits of \$1,000,000.00. Such policy shall contain coverage for contractual liability, sudden and accidental pollution, products and completed operations, premises, personal injury, and independent subcontractors. If applicable, the territory under said policy shall be extended to cover the Gulf of Mexico. Such policy shall include an "in rem" endorsement and non-owned watercraft coverage (without restrictions as respects operations and contractual liability).

**C. Business Automobile Liability Insurance** covering all owned, non-owned, and hired vehicles with a combined single limit for bodily injury and property damage liability of \$1,000,000.00 per accident or occurrence. If Subcontractor transports any hazardous or oilfield products or waste, such policy shall contain coverage for pollution liability.

**D. Excess Umbrella Insurance.** Provider shall provide comprehensive excess liability insurance ("Umbrella Policy") with limits of \$10,000,000.00. The Umbrella Policy shall provide excess coverage over the insurance required under items A (only with regards to Employer's Liability coverage), B, and C above.



## Credit Card Payment Authorization Form

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Customer Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Invoice Number(s) \_\_\_\_\_

**A 3% transaction fee will be assessed on all credit card transactions.**

Invoice amount \$ \_\_\_\_\_

Processing fee of 3% \$ \_\_\_\_\_

Transaction amount \$ \_\_\_\_\_

Credit Card type      VISA      MASTERCARD      AMERICAN EXPRESS

Credit Card # \_\_\_\_\_

Expiration Date \_\_\_\_\_

Security Code \_\_\_\_\_

Authorized User Name \_\_\_\_\_

Billing Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

\_\_\_\_\_  
Signature & Title

\_\_\_\_\_  
Date

**All services provided by P&L Testing, LLC are subject to the Terms and Conditions for Service – P&L Testing, LLC and incorporated herein by reference and made part of the contractual agreement between P&L Testing LLC and Customer specified above. Terms and Conditions for Service – P&L Testing, LLC can be found at [pltesting.com](http://pltesting.com) or available upon request**