

Terms and Conditions for ROV Support Services



The International Marine Contractors Association (IMCA) is the international trade association representing offshore, marine and underwater engineering companies.

IMCA promotes improvements in quality, health, safety, environmental and technical standards through the publication of information notes, codes of practice and by other appropriate means.

Members are self-regulating through the adoption of IMCA guidelines as appropriate. They commit to act as responsible members by following relevant guidelines and being willing to be audited against compliance with them by their clients.

There are two core activities that relate to all members:

- ◆ Safety, Environment & Legislation
- ◆ Training, Certification & Personnel Competence

The Association is organised through four distinct divisions, each covering a specific area of members' interests: Diving, Marine, Offshore Survey, Remote Systems & ROV.

There are also four regional sections which facilitate work on issues affecting members in their local geographic area – Americas Deepwater, Asia-Pacific, Europe & Africa and Middle East & India.

IMCA R 008

The Terms and Conditions for ROV Support Services have been developed by the Remote Systems & ROV Division of IMCA, based on the principles set out in IMCA R 007 – *European ROV Services Contracting Principles* - published in December 2001.

They have been prepared for use by IMCA members in particular, but not exclusively, in the situation where the client entity contracting for and that providing such services are both members of the Association.

They have been prepared in accordance with English law. If other governing law is being used, certain of the clauses may need to be amended to take into account the change in governing law.

They are not binding. Each IMCA members is free to enter into whatever contracts it deems to be in its own interests.

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This Contract is made and shall be effective from the [] day of [] 200[] by and between;

[], a company incorporated in [] and having its registered office at [] (hereinafter referred to as "the Company"), and

[], a company incorporated in England and having its principal place of business at [] (hereinafter referred to as "the Contractor"), both the Company and Contractor also being referred to herein as Party or Parties as appropriate.

I Definitions and Interpretation

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

2 Entire Agreement

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

3 Contract Duration

This Contract shall commence on the date hereof and continue for a period of []. This Contract shall, subject to Article II hereof, automatically terminate on expiry of the said period or the completion of Services then being provided whichever is later.

4 Scope of Services

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

5 Title to the Services

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

6 Compensation

For satisfactory performance of the Services the Contractor shall be paid the applicable rates specified in Appendix 2. The Contractor shall submit its invoice(s) (together with all forms, invoices, documents or other information which the Company may reasonably require) as soon as reasonably practicable after the end of the period or the completion of the Services, whichever is the later. Undisputed invoices shall be paid by the Company within [] days of receipt. However if any portion of an invoice is disputed Company shall immediately notify Contractor of the substance of any such dispute and pay only the undisputed value thereof within the time specified. Thereafter the Parties shall, in good faith, negotiate and resolve the disputed portion without undue delay and thereafter the Company shall remit any balance found owing to Contractor within [] days of the resolution date.

In the event that valid invoices are not paid within 15 days of the period prescribed, the Contractor shall have the right to apply interest at the rate of []% above the Bank of England Base Rate.

7 Variations (Alternative I)

- 7.1 The Company may by written notice to the Contractor propose to vary the Services in any respect. Within [] days of the receipt of any such notice or such longer period as the Parties may agree the Contractor shall advise the Company in writing of any alteration to the contract price or other of the Contractor's obligations which would result from the variation. The Company shall then either:
- i) confirm a variation in writing with such amendment to the contract price and the Contractor's obligations as the parties have agreed, or
 - ii) withdraw the variation.

Subject to 7.4 below the Contractor shall not proceed with any variation until it has received written confirmation from the Company.

- 7.3 If the Contractor considers that an occurrence has taken place for which it is entitled to receive a variation, the Contractor shall without delay request, in writing, that the Company issue a variation. Any request shall include all relevant information for which the Contractor considers itself to be entitled to a variation. The Company shall respond in accordance with the provisions of this Clause 7.
- 7.4 If exceptionally the Company decides that for reasons of urgency a variation must be carried out immediately, then the Company may instruct the Contractor accordingly and the Contractor shall forthwith carry out such instruction. Within [] days of the issue of any such instruction, the Contractor shall advise the Company in writing of any changes which he proposes to the contract price or of the time of completion or any other of the Contractor's obligations under the Contract arising out of such variation. The Company within [] days of the receipt of such proposal shall issue a variation order confirming changes as the parties have mutually agreed.

8 Inspection

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

9 Warranty

- 9.1 The Contractor warrants that it has the ability, qualifications, resources, equipment and personnel to perform the Services and shall, at all times, perform same in accordance with good and prudent practice and in accordance with applicable law and government regulations and good industry practice and in accordance with applicable law and governmental regulations.
- 9.2 Contractors liability shall be limited for defective work and/or breach of warranty and/or breach of Contract shall be limited to [] of the Contract Value irrespective of the cause or nature of the breach.
- 9.3 The aforesaid warranty shall be the only Warranty for the work, all other warranties express or implied by law and/or contract are hereby excluded, it is further acknowledged that Contractor's liability for the Services shall cease on departure from the site.

10 Indemnities

- 10.1 The Company shall defend, indemnify and hold the Contractor Group harmless from and against any and all claims, demands, proceedings, loss actions, liabilities, judicial awards and costs, including reasonable legal costs, or/and expenses howsoever arising by reason of injury to, illness or death of the Company Group personnel and/or loss of or damage to Company Group property arising out of or in consequence of the performance of this Contract or in tort irrespective of the negligence or wilful misconduct or breach of duty, whether statutory or otherwise, on the part of the Contractor Group. Notwithstanding the foregoing the indemnities granted herein with respect to Client personnel and property shall be limited to the extent such indemnities are granted by the Client under the Company's contract with Client for the benefit of the Contractor Group. Contractor may request sight of the appropriate indemnity provisions prior to executing this Contract.
- 10.2 The Contractor shall indemnify and hold the Company Group harmless from and against any action, liability, judicial awards and costs, including reasonable legal costs, or expenses howsoever arising by reason of injury to illness or death of the Contractor Group's personnel and/or loss of or damage to Contractor Group's property arising out of or in consequence of the performance of this Contract irrespective of the negligence, wilful misconduct or breach of duty, whether statutory or otherwise, on the part of the Company Group.
- 10.3 The Company shall indemnify and hold the Contractor Group harmless from and against any action, liability, judicial awards and costs, including reasonable legal costs, or expenses arising by reason of pollution originating from the Company Group's property arising out of or in consequence of the performance of this Contract irrespective of the negligence or wilful misconduct or breach of duty whether statutory or otherwise on the part of the Contractor Group.
- 10.4 The Contractor shall indemnify and hold the Company Group harmless from and against any action, liability, judicial awards and costs, including reasonable legal costs, or expenses arising by reason of pollution originating from the Contractor Group's property arising out of or in consequence of the performance of this Contract irrespective of the negligence or wilful misconduct or breach of duty whether statutory or otherwise on the part of the Company Group.
- 10.5 The Parties shall maintain adequate insurance cover, or procure that such cover is obtained, against such liabilities as are referred to herein including but not limited to those policies specified in Article 15 below. The existence or otherwise of such insurance and the respective indemnities provided thereby shall in no way limit, or be deemed to limit, the liabilities assumed by the Parties herein.

11 Force Majeure

Except for the timely payment of monies properly earned hereunder; neither Party shall be liable to the other for any breach of this Contract to the extent that such breach may result from circumstances out with the control of the affected Party which circumstances could not have been reasonably foreseen at the date hereof and the effects thereof cannot be overcome by the application of due diligence by the affected Party. In such circumstances the Parties shall communicate at regular intervals not exceeding [] days with a review to mitigating the effects of the applicable breach, until the circumstances causing the breach cease to exist and/or the Parties can otherwise mutually agree an alternative means of by-passing the effects of the circumstances.

12 Termination of Contract

12.1 Company may by notice in writing to the Contractor terminate the Contract as follows:

- a) forthwith if the Contractor shall be in material breach of any of the terms of the Contract and shall have failed to remedy, or to have commenced to remedy, such breach within seven days of receipt of written notice from Company so to do, or
- b) forthwith if the Contractor becomes insolvent or bankrupt or is unable to pay its debts as they fall due or is the subject of a winding up petition or has a receiver appointed over all or any of its assets or enter into liquidation including a provisional liquidator or a trustee manager, factor or administrator of its affairs being appointed, or
- c) forthwith if the Company's Client terminates its contract with the Company.

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

13 Assignment

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

14 Choice of Law

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

15 Insurance

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

- a) Employer's Liability and Worker's Compensation insurance to comply with the relevant Party's legal liability.
- b) General Public Liability insurance (including automobile if applicable) in respect of the persons and property of third parties with cover adequate to cover the liabilities assumed under this Contract.
- c) All Risks Physical Damage insurance in respect of the responsible Party's property and the property of its Group, and where applicable.
- d) Protection and Indemnity insurance, including wreck removal, and
- e) Hull and Machinery Insurance.

15.2 Each Party shall furnish the other with Certificates of Insurance evidencing cover. All such policies maintained or procured shall contain a waiver of subrogation against the non-insuring Party's respective group and shall be limited to the extent of the liabilities and indemnities assumed under this Contract.

16 Consequential Damages

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

17 Independent Contractor

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

18 Taxes

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

19 Confidentiality

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

20 Notices

Notices under the Contract shall be deemed validly served:

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

21 Contracts (Rights of Third Parties) Act 1999

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

- a) in making a claim under this Contract the remedies of as member of the Company Group or Contractor Group as the case may be shall be limited to claiming damages;
- b) notwithstanding any other provision of the Contract, no third party shall be entitled to assign any benefit conferred on it pursuant to this Contract; and

- c) no right of either Company or Contractor to agree to any amendment, variation, waiver or settlement under or arising from or in respect of this Contract, or to rescind or terminate this Contract, shall be subject to the consent of any third party who has rights to enforce a term of this Contract by virtue of this Article 21 even if as a result that third party's said rights will be varied or extinguished.

22 Health, Safety & Environment

- 22.1 The Services will be undertaken in accordance with the latest version of the Contractors standard Health, Safety and Environmental policies and procedures.
- 22.2 All risks associated with the Services shall be assessed in accordance with Contractor's standard Risk Assessment methodology prior to project execution. Company is responsible for informing Contractor of any exceptional risks to which Contractor may be exposed in the course of the Services.
- 22.3 The Contractor shall familiarise itself with the location and any hazards, which may be encountered while carrying out the Services. Contractor shall follow all guidelines, instructions and recommendations issued by Company, Client or other relevant authority.

23 Limitation of Liability

- 23.1 Subject to the provisions of Articles 10, 15 and 16 but notwithstanding any other provision of the Contract, Contractor Group's total cumulative liability irrespective of cause, including the negligence, breach of Contract or duty, act or omission of any of the Contractor Group to Company for delay, defective performance, breach of warranty, suspension and/or termination shall be limited to £ [] in aggregate.

_____		_____	
For on and on behalf of		For and on behalf of	
[]		[]	
Name	_____	Name	_____
Title	_____	Title	_____
Date	_____	Date	_____

Scope of Services

Compensation Schedule