



TERMS & CONDITIONS: SERVICES

1. **Acknowledgement of Terms & Conditions.** Customer acknowledges and agrees that its acceptance of the quote provided by Winterhawk Pipeline Services is Customer's agreement and acceptance of Winterhawk Pipeline Services' Terms & Conditions as set forth herein (the "Terms & Conditions"). CUSTOMER FURTHER ACKNOWLEDGES THAT THE TERMS & CONDITIONS SHALL GOVERN ALL COMMERCIAL TRANSACTIONS BETWEEN CUSTOMER AND WINTERHAWK PIPELINE SERVICES, INCLUDING, BUT NOT LIMITED TO, THE SCOPE OF WORK AGREED IN THE QUOTE. ADDITIONALLY, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE TERMS & CONDITIONS SHALL NOT BE MODIFIED, SUPERSEDED, OR SUPPLEMENTED BY ANY OTHER TERMS AND SHALL APPLY TO ALL OF CUSTOMER'S ORDERS IRRESPECTIVE OF ANY PROVISIONS IN CUSTOMER'S PURCHASE ORDERS OR OTHER BUSINESS FORMS. WINTERHAWK PIPELINE SERVICES REJECTS AND REFUSES TO BE BOUND BY ANY TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE CONTAINED HEREIN.
2. **Orders.** All orders for services will be subject to approval and acceptance by Winterhawk Pipeline Services and Winterhawk Pipeline Services may refuse to approve or accept an order at its own discretion. Customer must assume responsibility for accuracy of orders placed by telephone unless a correct written confirmation is received prior to commencement of services. When urgencies require verbal orders, Customer's confirming order should be marked "Confirming Order-Do Not Duplicate". No refund will be allowed for duplicate orders.
3. **Cancellation.** Cancellation or alteration of an order by Customer may not be made without advance written consent by Winterhawk Pipeline Services and, at the option of Winterhawk Pipeline Services, shall be subject to a cancellation or alteration charge acceptable to Winterhawk Pipeline Services. Such charges shall include, but are not limited to, actual expenses and reasonable allowance for overhead and profit.
4. **Payment.** Standard payment terms of Winterhawk Pipeline Services are NET 30 DAYS with 1.5 % interest per month charged on any past due balance. All accounts are payable in United States funds, free of exchange, collection or other charges. If Customer fails to fulfill the terms of payment or if Winterhawk Pipeline Services shall have doubt at any time as to Customer's ability to pay, Winterhawk Pipeline Services may suspend and/or decline to provide services except upon receipt of cash or security satisfactory to Winterhawk Pipeline Services.
5. **Change Order.** Based upon information received from Customer at time of bid, Winterhawk Pipeline Services has quoted certain personnel, materials/consumables, and equipment necessary to complete this project safely and efficiently according to the quoted schedule. Should any additions be required beyond that of which are stated in the quote, then a change order shall apply and additional charges may be incurred by Customer. Additionally, should any errors or omissions in such information provided by



Customer cause additional cost, delay or disruption to Winterhawk Pipeline Services' schedule, then additional charges to the Customer at the applicable rate could result.

6. **Start Date.** The start date for work shall be mutually agreed between the parties giving consideration to the availability of Winterhawk Pipeline Services' personnel and equipment.
7. **Mobilization.** Winterhawk Pipeline Services' quote is based upon receiving the purchase order and any other supporting documents from Customer a minimum of 10 business days prior to the mobilization date to allow for preparation. If Customer's contract award and job mobilization dates result in reduced preparation time, a change order shall apply and additional charges may be charged to Customer.
8. **Additional Mobilizations/Demobilizations.** Should extra mobilizations/demobilizations be required, at no fault of Winterhawk Pipeline Services, a change order shall apply and, as reasonably determined by Winterhawk Pipeline Services, additional charges may be charged to Customer.
9. **Additional Services.** Should extra time for filling, stabilization, hydrostatic testing, dewatering, smart pigging, chemical cleaning and drying be required, at no fault of Winterhawk Pipeline Services, a change order shall apply and, as reasonably determined by Winterhawk Pipeline Services, additional charges may be charged to Customer.
10. **Third Party Services.** Any third party services have been estimated upon the information provided by the Customer. Should extra time, equipment or materials be required, a change order shall apply and, as reasonably determined by Winterhawk Pipeline Services, additional charges may be charged to Customer. Any third-party services that are not covered in this proposal and approved through a change order shall be invoiced at cost +20%.
11. **Materials and Consumables.** All materials and consumables purchased or manufactured for Customer's project and Winterhawk Pipeline Services' cost of preparation shall be invoiced to Customer at cost plus normal profit margin if the project is significantly delayed or cancelled. All materials and consumables purchased for this project by Winterhawk Pipeline Services shall be invoiced, regardless if utilized or not utilized during the project.
12. **Delays.** Any delays at no fault of Winterhawk Pipeline Services shall be invoiced by Winterhawk Pipeline Services to Customer in accordance with extra work /standby rate quoted or Contractor's current published Rate Schedule for the personnel and equipment on site.
13. **Work Schedule.** Should the work schedule fall into a public holiday or during a public holiday weekend, a 1.5X multiplier for all day rates (Full & Standby) shall apply.



14. **Taxes.** Customer agrees to bear all sales, use, privilege, or personal property tax and each other tax of every other character by whatever name designated that now is or hereafter may be imposed in any manner by international, federal, state and local authorities on this transaction, or on the services covered hereby; and Customer agrees to pay the same either to Winterhawk Pipeline Services or the public authorities upon demand, as may be required.
15. **Representations and Warranties of Customer.** Customer represents and warrants to Winterhawk Pipeline Services that:
- a. The pipeline, including bends, valves and fittings, will be of such design and condition that will allow the free passage of pipeline pigs necessary to complete the scope of work with Winterhawk Pipeline Services' equipment on site;
 - b. The work site shall be maintained such that it will be accessible by over-the-road equipment or Customer shall, at its cost, provide adequate assistance to move and service equipment;
 - c. Customer shall assure the structural integrity of each of all piping systems and their associated components will be able to withstand the stresses of all Winterhawk Pipeline Services operations;
 - d. Customer shall obtain and furnish all required permits which are required to be issued in Customer's name in connection with Winterhawk Pipeline Services' services;
 - e. Customer has prepared piping systems for all of Winterhawk Pipeline Services' services, including but not limited to, flushing, draining and degassing, and valve manipulation;
 - f. Customer is in compliance with all applicable pipeline regulations and agrees that Winterhawk Pipeline Services is not responsible for compliance related to pipeline operations, integrity management, assessments, evaluations, evaluation of repair conditions or any other similar activity and that Customer has designated other qualified persons and any regulatory compliance is the sole responsibility of Customer;
 - g. Customer shall report any hydrogen sulfide, saltwater, brine, and any other fluid chemical or compound other than oil, sweet gas, odorant, or water to Winterhawk Pipeline Services, and Winterhawk Pipeline Services shall specify any extra costs or potential damage to Tool prior to launching.



16. **Winterhawk Pipeline Services' Tools.** For all Winterhawk Pipeline Services' tools, including but not limited to, the Speed Control Pig or DIGI-CAL™ Caliper Pig (the "Tool") the Customer agrees as follows:
- a. From the delivery of the Tool until the Tool leaves the Customer's facilities, Customer shall be liable and pay for any damage to any Tool beyond normal wear and tear at currently prevailing prices;
 - b. At its sole cost, risk, and expense Customer shall recover any Tool that becomes lodged in the pipeline. Winterhawk Pipeline Services shall assist Customer in proposing methods of dislodging Tool at the standby rate. If any such lodged Tool is not recovered within five (5) days from the date when the Customer provides written notice to Winterhawk Pipeline Services of such lodging, Winterhawk Pipeline Services shall provide an invoice to the Customer, and Customer shall pay to Winterhawk Pipeline Services the cost of replacing such Tool within ten (10) days along with the rental of the Tool for fifteen (15) days or until the invoice is paid, whichever period is longer. In the event that any such lodged Tool is recovered later, Customer shall provide written notice to Winterhawk Pipeline Services and, after acceptance of the cleaning of the Tool, return the Tool to Winterhawk Pipeline Services at its designated location, and upon inspection and if the Winterhawk Pipeline Services determines that the Tool is repairable, within fifteen (15) days of repairs and successfully testing as the Winterhawk Pipeline Services determines in its sole discretion, the Winterhawk Pipeline Services shall pay Customer the actual cost paid by Customer for replacing such Tool less the costs of repairs, if any, actually paid by Customer;
 - c. If the Tool gets stuck or if travel is delayed while inside of the pipeline due to pipeline conditions or due to tool performance issues, the Customer agrees to pay Winterhawk Pipeline Services 60% of the value of run charges for the Tool as well as the charges for the rescue pig (if utilized). All other charges and fees (mobilization, technician fees, etc.) will be invoiced at 100%.
 - d. Customer shall clean the Tool immediately upon removal from the pipeline. The cleaning shall include the removal of fluids and debris, including hazardous wastes or substances. Customer shall also be responsible for disposal of any such hazardous waste and contaminated components. Customer shall not return any Tool until Winterhawk Pipeline Services has approved the cleaning;
 - e. Customer agrees to pay for any re-run related to the loss or quality of data due to damage to any Tool, any adverse conditions, any operations on the pipeline; velocity, and/or cleanliness at the Re-run rate in the quote.
17. **PPE.** Winterhawk Pipeline Services will have on site the basic Personal Protective Equipment (i.e. hard hats, safety glasses, steel toed work boots, work gloves and fire



retardant clothing). Any additional PPE that would need to be included by Winterhawk Pipeline Services for safety and environmental reasons will be invoiced at cost +20%.

18. **NORM**. Customer shall be responsible for all Naturally Occurring Radioactive Material (“NORM”) contaminated components, hazardous materials, asbestos and lead paint. Prior to the arrival of Winterhawk Pipeline Services, Customer shall seal off or remove all items containing NORM, hazardous materials, asbestos and lead paint. Any items identified as containing asbestos will be sealed to prevent escape of particles into the atmosphere.
19. **NORM Levels**. NORM level readings of salvaged materials are to be within state or federal safe limits. Customer is to provide an Environmental Survey. A qualified NORM technician and equipment, if required, to monitor NORM levels and direct operations if hot materials are found shall be provided by Customer or alternatively Winterhawk Pipeline Services will charge this service at cost + 20%. Disposal of all environmentally sensitive materials, disposable equipment, liquids or product which requires special handling (including but not limited to, those with asbestos, those with NORM levels greater than zero, etc.) shall remain the Customer’s responsibility. Any handling of such materials by Winterhawk Pipeline Services, prior to disposal by Customer, shall be charged to Customer in accordance with Winterhawk Pipeline Services’ current Schedule of Rates.
20. **OQ Qualified**. Customer acknowledges and agrees that not all of Winterhawk Pipeline Services’ technicians are OQ qualified and as such shall not be permitted to handle any pipeline related equipment besides the SCP tool and other related equipment brought onsite by Winterhawk Pipeline Services. All Winterhawk Pipeline Services personnel have successfully completed basic plus safety training. If additional safety classes (such as OQ training, etc.) are required, Winterhawk Pipeline Services shall invoice Customer at cost +20%.
21. **Insurance**. Winterhawk Pipeline Services maintains various casualty, liability and workers’ compensation insurance coverage. A certificate of insurance is available upon request. Special insurance requirements are handled on an individual request basis. Any additional insurance beyond that of which Winterhawk Pipeline Services normally carries that is required shall be charged to Customer at cost plus 20%.
22. **Force Majeure**. Winterhawk Pipeline Services shall not be liable for any delay in performance or delivery due to compliance with or other action taken to carry out the intent or purpose of any international, federal, state or local laws and regulations, fire, explosion, casualty, strike, labor dispute, shortage of material, utility, facility or labor, delay in transportation, breakdown or accident, force majeure, or any cause whether similar or dissimilar beyond the control of Winterhawk Pipeline Services. Further, Winterhawk Pipeline Services shall have such additional time for performance as may be reasonably necessary under the circumstances and the right to apportion its services among its customers in any manner it determines in its sole and absolute discretion.



23. NO EXPRESS OR IMPLIED WARRANTIES. WINTERHAWK PIPELINE SERVICES DOES NOT MAKE ANY WARRANTY, EXPRESSED OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR PURPOSE, DESCRIPTION, QUALITY, PRODUCTIVENESS, ASSESSMENTS, INTEGRITY, ACCURACY OR ANY OTHER MATTER WITH RESPECT TO THE GOODS OR SERVICES PROVIDED UNDER THESE TERMS & CONDITIONS, AND ANY EXPRESS OR IMPLIED WARRANTIES ARE SPECIFICALLY AND EXPRESSLY DISCLAIMED. WINTERHAWK PIPELINE SERVICES MAY OFFER TECHNICAL ADVICE WITH REGARD TO THE GOODS AND SERVICES PROVIDED UNDER THESE TERMS & CONDITIONS BASED ON ITS EXPERTISE AND FIELD EXPERIENCE AND CUSTOMER UNDERSTANDS AND AGREES THAT SUCH ADVICE REPRESENTS ONLY GOOD FAITH OPINIONS AND DOES NOT CREATE ANY WARRANTY OR GUARANTEE. CUSTOMER IS ACCEPTING THE GOODS AND SERVICES IN AN ARM'S-LENGTH TRANSACTION BETWEEN THE PARTIES THAT WAS FREELY NEGOTIATED BY PARTIES OF RELATIVELY EQUAL BARGAINING POWER, IS MADE AN IMPORTANT BASIS OF THE BARGAIN, AND THESE PROVISIONS ARE NOT AN INCIDENTAL OR BOILERPLATE PROVISION. THE CONSIDERATION WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THOSE CONTAINED IN THESE TERMS & CONDITIONS. WINTERHAWK PIPELINE SERVICES HEREBY EXPRESSLY DISCLAIMS AND CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT WINTERHAWK PIPELINE SERVICES HAS DISCLAIMED MAKING ANY REPRESENTATIONS, WARRANTIES, GUARANTEES, OR ASSURANCES WITH RESPECT TO THE GOODS AND SERVICES; SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS OR WARRANTIES AS TO MATTERS OF PHYSICAL CONDITION, ASSESSMENTS, INTEGRITY, OPERATING HISTORY OR PROJECTIONS, REPAIR CONDITIONS, OR GOVERNMENTAL APPROVALS OR GOVERNMENTAL REGULATIONS. WINTERHAWK PIPELINE SERVICES MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, MARKETABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE OR OTHERWISE. ANY IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED. CUSTOMER AGREES THAT CUSTOMER HAS NOT RELIED ON AND IS NOT RELYING ON ANY REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE GOODS AND SERVICES, EXCEPT THOSE EXPRESSLY CONTAINED IN THESE TERMS & CONDITIONS. CUSTOMER HAS NOT RELIED ON AND IS NOT RELYING ON ANY INFORMATION, REPRESENTATIONS, OR DISCLOSURES WITH RESPECT TO THE GOODS AND SERVICES PROVIDED BY ANY PERSON, EXCEPT THOSE CONTAINED IN THESE TERMS & CONDITIONS, AND CUSTOMER IS RELYING UPON CUSTOMER'S INSPECTIONS AND CUSTOMER'S QUALIFIED PERSONNEL AND REPRESENTATIVES OF OR CUSTOMER'S DETERMINATIONS NOT TO INSPECT THE SAME, AND CUSTOMER ACCEPTS THE GOODS AND SERVICES IN THEIR "AS IS" CONDITION, "WITH ALL FAULTS."

24. Limitation of Liability. IN NO EVENT SHALL WINTERHAWK PIPELINE SERVICES BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL

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DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF USE, LOSS OF GOODWILL, LOSS OF PRODUCTION, LOSS OF REVENUE, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE. Notwithstanding anything in the agreement or any related document to the contrary, Winterhawk Pipeline Services' total liability, whether under warranty, indemnity, contract, tort, insurance or otherwise, shall not exceed \$1,000,000, inclusive of any payments to customer by Winterhawk Pipeline Services' insurance carriers.

25. INDEMNIFICATION

- a. Except as provided in Section 25(b), Customer SHALL PROTECT, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS Winterhawk Pipeline Services and its affiliates and their respective agents, employees, employers, officers, partners, respective subsidiaries, shareholders, members, managers, legal representatives, attorneys, successors, and assigns and (all collectively the "WINTERHAWK PIPELINE SERVICES GROUP") FROM AND AGAINST ANY LIENS, LOSS, CLAIM, DEMAND, FINE, PENALTY, ACTION, CAUSE OF ACTION, LIABILITY, DAMAGE OR COST, INCLUDING COURT COSTS AND ATTORNEY'S FEES OF ANY NATURE WHATSOEVER, OCCASIONED BY, BASED UPON, ARISING OUT OF, OR OTHERWISE IN RESPECT OF THESE TERMS & CONDITIONS AND/OR OPERATION OF THE PIPELINE OR ANY FACILITIES, ANY PERSONAL INJURY, INCLUDING DEATH, OR ANY DAMAGES OR LOSS OF ANY PROPERTY, WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, OR THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR INTENTIONAL ACT OF ANY PERSON, REGARDLESS OF WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, ACTIVE OR PASSIVE OR ANY OTHER THEORY OF LEGAL LIABILITY; INCLUDING CONDITIONS, PATENT OR LATENT, BREACH OF REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, BREACH OF CONTRACT, STRICT LIABILITY, OR TORT; PROVIDED HOWEVER, CUSTOMER SHALL NOT INDEMNIFY THE WINTERHAWK PIPELINE SERVICES GROUP AND SHALL NOT BE LIABLE FOR INJURIES OR DAMAGES RESULTING FROM THE GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF ANY OF THE WINTERHAWK PIPELINE SERVICES GROUP. EXCEPT AS OTHERWISE PROVIDED HEREIN, IT IS THE INTENT OF THE PARTIES THAT ALL INDEMNITY OBLIGATIONS ASSUMED BY THE PARTIES HEREUNDER BE WITHOUT MONETARY LIMIT AND SHALL NOT BE LIMITED BY ANY AMOUNTS OF INSURANCE.

- b. Winterhawk Pipeline Services SHALL PROTECT, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS Customer and its affiliates and their respective agents, employees, employers, officers, partners, respective subsidiaries, shareholders, members, managers, legal representatives, attorneys, successors, and assigns and (all collectively the "CUSTOMER GROUP") FROM AND AGAINST ANY LIENS, LOSS, CLAIM, DEMAND, FINE, PENALTY, ACTION, CAUSE OF ACTION, LIABILITY, DAMAGE OR COST, INCLUDING COURT COSTS AND ATTORNEY'S FEES OF ANY



NATURE WHATSOEVER, OCCASIONED BY, BASED UPON, ARISING OUT OF, OR OTHERWISE IN RESPECT OF THESE TERMS & CONDITIONS AND/OR OPERATION OF THE PIPELINE OR ANY FACILITIES, ANY PERSONAL INJURY, INCLUDING DEATH OF ANY MEMBER OF WINTERHAWK PIPELINE SERVICES GROUP, OR ANY DAMAGES OR LOSS OF ANY PROPERTY OF ANY MEMBER OF WINTERHAWK PIPELINE SERVICES GROUP (EXCLUDING ANY TOOLS WHILE IN THE PIPELINE OR OTHERWISE IN THE CARE, CUSTODY OR CONTROL OF THE CUSTOMER GROUP), WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, OR THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR INTENTIONAL ACT OF ANY PERSON, REGARDLESS OF WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, ACTIVE OR PASSIVE OR ANY OTHER THEORY OF LEGAL LIABILITY; INCLUDING CONDITIONS, PATENT OR LATENT, BREACH OF REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, BREACH OF CONTRACT, STRICT LIABILITY, OR TORT; PROVIDED HOWEVER, WINTERHAWK PIPELINE SERVICES SHALL NOT INDEMNIFY THE CUSTOMER GROUP AND SHALL NOT BE LIABLE FOR INJURIES OR DAMAGES RESULTING FROM THE GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF ANY OF THE CUSTOMER GROUP. EXCEPT AS OTHERWISE PROVIDED HEREIN, IT IS THE INTENT OF THE PARTIES THAT ALL INDEMNITY OBLIGATIONS ASSUMED BY THE PARTIES HEREUNDER BE WITHOUT MONETARY LIMIT AND SHALL NOT BE LIMITED BY ANY AMOUNTS OF INSURANCE.

26. **Successors and Assigns.** These Terms & Conditions shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
27. **No Modification.** No modification to these Terms & Conditions will be valid unless accompanied by a written agreement signed by an authorized representative of Winterhawk Pipeline Services that specifically references this Section 27 of the Terms & Conditions.
28. **Governing Law.** These Terms & Conditions, and any dispute or claim arising out of or in connection with these Terms & Conditions or its subject matter or formation, including any non-contractual disputes or claims, will be exclusively governed by and construed in accordance with the laws of the State of Texas, excluding conflict of law rules and choice of law principles. Customer and Winterhawk Pipeline Services agree that venue shall be the state and federal courts located in Houston, Harris County, Texas.