

**1. DEFINITIONS**

1.1 The following words and expressions shall have the meanings as are respectively assigned to them:

"the Agreement" shall mean the Proposal and the Client's written acceptance thereof together with any other documents agreed in writing by the Client and the Consultant as forming part of the Agreement including these terms and conditions and special terms and conditions included in the Proposal.

"the Client" shall mean the party with whom the Consultant has entered into the Agreement for the provision of consultancy services.

"the Consultant" shall mean DMT Geosciences Ltd. of Suite 415, 708 -11th Avenue SW Calgary, Alberta, Canada, T2R 0E4, a company registered in Canada.

"the Project" shall mean the Project of the Client in relation to which the Services are provided.

"the Proposal" shall mean the offer for the provision of consultancy services submitted by the Consultant to the Client.

"the Services" shall mean the consultancy services to be provided by the Consultant as defined in the Agreement.

"the Site" shall mean the location where the Services are to be performed.

1.2 Words importing the singular only also include the plural and the masculine includes the feminine and vice-versa where the context requires.

**2. CHANGES IN LEGISLATION**

2.1 If, there should occur subsequent to the date of the Agreement changes to any applicable Law, rule or regulation which causes additional or decreased cost to the Consultant in the performance of the Services, the agreed remuneration shall be adjusted accordingly.

**3. EFFECTIVE DATE OF THE AGREEMENT**

3.1 The Agreement shall come into force on the earlier of receipt by the Consultant of written acceptance by the Client of the Proposal, or immediately upon the date of signature of the Agreement by or on behalf of the Client and the Consultant, or such other date as is defined in the Agreement.

**4. COMMENCEMENT AND PERFORMANCE OF THE SERVICES**

4.1 The Consultant shall commence the Services within the period defined in the Agreement and shall proceed expeditiously with performance of the Services and endeavour to meet any program or scheduled completion date incorporated in the Agreement.

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**5. MODIFICATION OF THE AGREEMENT**

- 5.1 Should circumstances arise which call for modification of the Agreement such modification shall be mutually agreed between the Client and the Consultant and shall be evidenced in writing. Modifications proposed by one party shall be given due consideration by the other party.

**6. ASSIGNMENT AND SUBCONTRACTING**

- 6.1 Neither party shall, except with the written consent of the other, assign all or any of its rights and obligations under the Agreement.
- 6.2 The Consultant shall be entitled to subcontract any part of the Services as the Consultant deems necessary to complete the Project with the approval of the Client, such approval shall not be unreasonably withheld by the Client. The Consultant shall not be relieved of any liability or obligation under the Agreement in respect of subcontracted Services.

**7. SUSPENSION OF THE SERVICES ON FORCE MAJEURE**

- 7.1 Neither party shall be considered in default in the performance of its obligations hereunder if and to the extent that the performance of such obligations is delayed, hindered or prevented by an event of Force Majeure. For the purposes of this Clause, "Force Majeure" includes, without limitation: Acts of God; inclement weather; strikes, lockouts or other industrial action; inability to procure labour or supplies due to shortages; fire; riot; incendiarism; interference by civil or military authorities; compliance with the regulations or orders of any government authority; the outbreak of war or insurgence; acts of war (declared or undeclared); or any other act, event, cause or occurrence rendering a party unable to perform its obligations, which is beyond the reasonable control of that party other than impecuniosity. Upon the occurrence of such a situation or event, the Services shall be suspended for a period of time equal to that period during which the Force Majeure subsists and a reasonable period to organize the re-commencement of the Services.

**8. CONSULTANT'S RIGHT TO TERMINATE**

- 8.1 The Consultant may, by written notice to the Client, terminate the Agreement forthwith if any, invoice or part thereof remains unpaid for a period of thirty (30) days from the date of delivery of the invoice to the Client or, if the Services have been suspended as provided for in Clause 7.1 and the period of suspension has exceeded six (6) months in aggregate.

**9. ENTITLEMENT OF CONSULTANT ON SUSPENSION OR TERMINATION**

- 9.1 Upon suspension of the Services or termination of the Agreement pursuant to Clause 8, the Client shall pay to the Consultant:
- (a) fees due to the Consultant up to the date of such suspension or termination; and
  - (b) all cost and expenses incurred by the Consultant in providing the Services up to the effective date of such suspension or termination;
  - (c) all costs and expenses incurred by the Consultant in and incidental to the orderly termination of the Services - including the cost of return travel of the Consultant's personnel.

**10. DEFAULT BY THE CONSULTANT**

- 10.1 The Client shall notify the Consultant, in writing and detailing the basis of its objection, if it considers that the Consultant is not discharging its obligations under the Agreement. In the event that the Consultant fails to instigate remedial action within a period of fourteen (14) days after receiving the notice or, if it is not reasonable or practical to instigate action within the said period, fails to notify the Client in writing, within the said period, of a strategy for remedying the fault at issue in as short a period as possible and by no later than a date thirty (30) days after expiration of the said period, then the Client may terminate the Agreement by giving not less than thirty (30) days written notice. In such event, the Consultant shall be entitled to receive fees due and costs incurred in respect of the Services rendered up to the date of termination.

## **11. LIABILITY OF THE CONSULTANT**

- 11.1 The Consultant shall be responsible for any negligent faults in the Services, provided that such faults do not arise from inaccurate or defective information furnished by the Client, its agents, directors, officers, employees or servants. The Consultant shall, at its own expense, re-perform the Services to the extent necessary to remedy such faults provided that the Client shall have given written notice of those faults to the Consultant within a period of six (6) months from completion of Services. Performance of the Consultant's obligations under this Clause 11.1 shall represent full satisfaction of the Consultant's liability for any such faults.
- 11.2 The Client agrees that any claim including costs, legal expenses, defence and investigation costs which he has or hereafter may have against the Consultant in respect of the Services, howsoever arising, whether in contract or in tort including negligence and strict liability, shall be limited to the lesser amount of the fees stated in the Agreement or the actual payments for Services the Consultant has received from the Client. The Consultant shall not be liable for any indirect or consequential losses and damages arising from the provision of the Services, including, without limitation, any delays or loss of use, or loss of profits or products or to third parties.
- 11.3 The Client shall indemnify, defend and hold harmless the Consultant from and against any and all claims, damages, expenses, costs or other sums payable (including those asserted by third parties and including legal fees and expenses incurred as the result thereof) directly or indirectly related to the Services to the extent that such claims, damages, expenses, costs and other sums payable exceed in aggregate the Consultant's maximum liability as described in Clause 11.2.
- 11.4 For the purposes of the limitation of liability provisions contained in this Agreement, the Client expressly agrees that it has entered into the Agreement with the Consultants, both on its own behalf and as an agent of its employees and principals. The Client expressly agrees that the Consultant's employees and principals shall have no personal liability to the Client in respect of a claim, whether in contract, tort and/or any other cause of action in law. Accordingly, the Client expressly agrees that it will bring no proceedings and take no action in any court of law against any of the Consultant's employees or principals in their personal capacity

## **12. RIGHTS AND DUTIES OF THE CONSULTANT**

- 12.1 The Consultant shall exercise a reasonable level of skill, care and diligence in the performance of the Services and shall undertake its responsibilities in accordance with recognized professional standards
- 12.2 The Consultant shall in professional matters act as a faithful adviser to the Client and, insofar as any of its duties are discretionary, act fairly as between the Client and third parties.
- 12.3 All documents, drawings, designs, data and computer software prepared or used by the Consultant in undertaking the Services shall remain the copyright of the Consultant. The Consultant authorizes

the Client to make use of such documentation in relation to the Project but not in any other respect without the prior written approval of the Consultants.

**13. RIGHT AND DUTIES OF THE CLIENT TO PROVIDE DATA AND INFORMATION**

13.1 The Client shall furnish, without charge and within a reasonable time, all pertinent data and information available to it and shall give such assistance as shall reasonably be required by the Consultant for the carrying out of its duties under the Agreement.

**14. CLIENT TO ASSIST IN PROVIDING FACILITIES**

14.1 The Client shall facilitate the timely granting to the Consultant, and any of its personnel unobstructed access to and exit from and safe passage within all Sites and locations which the Services are to be performed.

14.2 To the extent that it is agreed that the Client shall arrange the provision of services by others, then:

- (a) the Consultant shall, insofar as it is reasonable and practical to do so, cooperate with the firms/individuals provided;
- (b) in the event that the Consultant is delayed in obtaining such services from others, it shall notify the Client of such delay and shall be entitled to receive appropriate time extension and increased remuneration for completion of the Services;
- (c) if the anticipated services are not forthcoming, the Client and the Consultant shall agree on how the affected part of the Services will be carried out and upon a revised remuneration therefore;
- (d) if the services provided by others engaged by the Client are being discharged in such a way as to interfere with the Consultant's ability to perform its Services, the Consultant may notify the Client of such interference and require either intervention by the Client to correct the situation or removal and replacement of the party/parties providing the services, or appropriate time extension and additional remuneration for the completion of the services;
- (e) the Client shall indemnify and hold the Consultant harmless against any losses or claims or demands resulting from the failure of others to provide services to be arranged by the Client, properly and/or within the time periods specified by the Consultant.

**15. REMUNERATION OF THE CONSULTANT**

15.1 Remuneration for the Services shall be effected by the Client to the Consultant in accordance with the manner and within the period or periods defined in the Agreement.

15.2 In the absence of specific provisions in the Agreement, remuneration for the Services shall be effected by the Client to the Consultant:

- (a) in a method of payment acceptable to the Consultant;
- (b) within fourteen (14) days of presentation of the Consultant's invoice calculated in accordance with the rates defined in the Agreement for the Services performed in the preceding month.; and,
- (c) in the event that the Consultant is acting as a sub-consultant to a third party (Prime

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Consultant) who has a contractual relationship with the Client then the Prime Consultant is responsible for ensuring payment to the Consultant.

15.3 Payments in respect of remuneration due to the Consultant from the Client in accordance with the Agreement which are delayed beyond the period defined in the Agreement shall be subject to interest at the rate of two percent (2%) above the Prime Rate of interest established from time to time by The Royal Bank of Canada for Canadian Dollar commercial loans in Canada.

15.4 If the Client has reasonable cause to dispute or call into question any portion of an invoice presented by the Consultant the Client shall notify the Consultant accordingly, in writing (which shall be deemed to include facsimile or telex transmission) within ten (10) days of receipt by the Client of the invoice in question. The Consultant and the Client shall make all endeavours to resolve any such dispute or question related to an invoice or portion thereof in the most reasonable and expeditious manner. The Client shall not be entitled to delay payment of any portion of any invoice which is not in dispute or question on the grounds that a portion of the same invoice is in dispute or question.

## **16. EXPENSES**

16.1 The Client shall reimburse to the Consultant all expenses reasonably incurred by the Consultant and its personnel in connection with the performance of the Services at cost plus 10% handling/administration fee.

16.2 In the absence of specific provisions in the Agreement, the reimbursement of expenses so incurred shall be effected by the Client to the Consultant in a manner and within the period or periods as set out for the remuneration of Services in Clause 15 hereof. The Consultant may at its option include expenses for reimbursement in invoices presented for Services rendered or submit separate invoices for expenses incurred.

16.3 In the event that physical equipment is damaged as a result of field conditions or operational usage the Client shall reimburse the Consultant for the costs to repair or replace such equipment whether owned or leased by the Consultant provided that such damage is not caused by an error or omission of the Consultant.

## **17. CONFIDENTIALITY**

17.1 The Consultant shall treat as confidential all information obtained in the performance of the Services, which is not public knowledge or which was not previously disclosed to the Consultant by third parties or otherwise known and shall not divulge such information to any third party without the Client's prior written approval. The Client shall keep confidential and shall not divulge to any third party all information disclosed to it by the Consultant.

## **18. PERSONNEL**

18.1 The Services shall be carried out by personnel specified in the Agreement or as reasonably determined to be necessary by the Consultant in order to perform the Services, over the respective periods of time indicated therein, provided that the Consultant may make such reasonable substitution of personnel as approved by the Client and adjustments to such periods as may be necessary or appropriate to ensure the efficient performance of the Services and acceptable to the Client.

18.2 The Consultant shall designate a Project Leader to be in charge of the Project and to be responsible for liaison between the Client and the Consultant.

- 18.3 Should it become necessary to replace any person specified by name in the Agreement, the Consultant shall forthwith arrange for such replacement with a person of comparable experience. The party requesting the replacement shall be responsible for the financial consequences thereof, except in cases when the Consultant's personnel is replaced for reasons of proven misconduct, inability to perform or violation of laws. Every such request, for whatever reason, shall be presented in writing with the reasons for the request clearly stated.
- 18.4 During the currency of the Agreement and for a period of six months after its termination, the Client shall not make offers of employment to or engage any of the Consultant's personnel without the prior written consent of the Consultant. For the purposes of this Clause, and Clause 18.5, the term 'personnel' includes employees, associates, contractors, agents and servants of the Consultant.
- 18.5 The Consultant has taken considerable time and effort in developing the professional expertise of the personnel assigned to a project with the Client. Should the Client retain or employ any of the Consultant's personnel within 6 months of the termination or expiration of this Agreement, the Client will be charged 6 months payroll costs for each personnel member hired by the Client as a genuine pre-estimate of damages for loss of productivity.

## **19. INSURANCE**

- 19.1 The Consultant will maintain insurance for those commercial risks and at such levels of cover that it deems appropriate. In particular, it will maintain insurance:
- (a) to meet its legal liability to its personnel for bodily injury sustained by them in the course of their work on its behalf under the Agreement, without prejudice to its right to claim against any party which it considers to have caused or contributed to such injury; and
  - (b) to meet its legal liability for injury caused to others and damage caused to the property of others by the direct action of personnel acting on its behalf in the course of work under the Agreement.

## **20. GOVERNING LAW**

- 20.1 The Agreement shall be construed and governed in all respects in accordance with the Laws of the Province of Alberta and the laws of Canada applicable therein.

## **21. SETTLEMENT OF DISPUTES**

- 21.1 Any dispute between the parties which cannot be resolved by mutual agreement within sixty (60) days of it being first notified in writing as a matter of disagreement may, by either party, be finally referred for arbitration to an arbitrator appointed in accordance with the provisions of the United Nation's Commission on International Trade Law Arbitration Rules. The Arbitrator's decision shall be final and binding on both parties and the resulting award shall be in lieu of any other remedy. The costs of arbitration shall be borne as the Arbitrator directs or, failing direction, equally.