

1. Definitions and Interpretation

- 1.1. In these terms and conditions (the “**Terms & Conditions**”), unless the context otherwise requires, the following expressions have the following meanings:

Affiliate: with respect to a party, any company, partnership or legal entity directly or indirectly Controlling, being Controlled by or under common Control with that party, where “**Control**” means the legal power to direct or cause the direction of the general management of that company, partnership or other legal entity and/or the holding beneficially of more than fifty per cent (50%) of the issued share capital of that entity (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital) and “**Controlled**” and “**Controlling**” shall be construed accordingly.

Applicable Laws: means, all provincial, federal and/or national laws, rules and regulations applicable to the jurisdiction in which substantial performance of the Contract is made.

Bribe: anything that would amount to an offence of bribery or corruption under any applicable corruption laws (including, in part, anything which would be an offence under: (a) the Bribery Act 2010 as amended if the person concerned were subject to the jurisdiction of the UK courts under such Act; and/or either of the *Criminal Code (Canada)* or *Corruption of Foreign Officials Act (Canada)*, if the person concerned were subject to the jurisdiction of any provincial or federal court of Canada, under such Act; and “**Bribes**”, “**Bribed**”, “**Bribery**” and other variants of “**Bribe**” shall be construed accordingly.

Business Day: a day (other than a Saturday or a Sunday) when banks are open for business Vancouver, British Columbia (“**BC**”) and in the country of business of the Supplier.

Claims: any and all claims, demands, suits, judgments, liabilities, damages, costs (including legal costs on a solicitor and own client costs basis), losses, penalties, expenses, and causes of action of whatever nature.

Consequential Loss: (i) consequential or indirect loss under Canadian (federal and/or BC provincial) law; and (ii) loss and/or deferral of services, loss of product, loss of use, loss of opportunity, loss of revenue, profit or anticipated profit (if any) in each case whether direct or indirect, and whether or not foreseeable at the date of the Contract.

Contract: the contract between the Supplier and the Customer for the provision of the Services, which consists of: (i) the Proposal; and (ii) these Terms & Conditions.

Co-Venturer: any other entity with whom the Customer or the Supplier, as the case may be, is or may be from time to time a party to a joint operating agreement, production sharing agreement or similar agreement relating to the Contract and operations in respect of which the Services are being provided.

Customer: the company named in the Proposal who is purchasing the Services from the Supplier pursuant to the Contract.

Customer Group: the Customer, its Co-Venturers, its and their respective Affiliates, its and their respective sub-contractors and its and their respective directors, invitees, officers, agents and employees but shall not include any member of the Supplier Group.

Data Protection Legislation: all applicable laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality, security, integrity or protection of personal data, including without limitation, the Canadian federal *Personal Information Protection and Electronics Documents Act (S.C. 2000, c.5)*, the BC provincial *Personal Information Protection Act [SBC 2003] Chapter 63*, the EU Data Protection Directive 95/46/EC and the EU ePrivacy Directive 2002/58/EC together with all national implementing legislation, the EU General Data Protection Regulation 2016/679 and all other applicable data protection laws, in each case as amended, supplemented or superseded from time to time.

Embargoed Country: any country or geographic region subject to comprehensive economic sanctions or embargoes administered by, GAC, OFAC or the European Union, including without limitation Cuba, Iran, North Korea, Syria, and the Crimea region.

Global Trade Laws: the U.S. Export Administration Regulations; the U.S. International Traffic in Arms Regulations; the economic sanctions rules and regulations administered by the Federal Government of Canada including, in part, Global Affairs Canada (“**GAC**”), the U.S. Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) as well as any relevant Executive Orders; the economic sanctions rules and regulations administered by the United Kingdom, European Union (“**E.U.**”) Council Regulations on export controls, including Nos. 428/2009, 267/2012; other E.U. Council sanctions regulations, as implemented in E.U. Member States; United Nations sanctions policies; all relevant regulations made under any of the foregoing; and other applicable economic sanctions or export and import control laws.

Intellectual Property Rights: patents, rights to inventions, utility models, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including Know-How), and all other intellectual property rights, in each case whether registered or unregistered and including all applications for such rights and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Know-how: means any and all technical information, practical knowledge, data, formulae, standards, processes, methods, techniques or practices relating to the performance of the Services by the Supplier, which are secret or otherwise not available in the public domain and which may or may not be recorded in some tangible form.

Proposal: means the Supplier’s proposal, including all attachments to it, submitted by the Supplier and agreed by the Customer, setting out the scope of Services to be provided by the Supplier to the Customer, the time, payment and (if applicable) other terms for the provision of the Services and attaching these Terms & Conditions.

Sanctioned Person: at any time: (a) any person or entity included on: OFAC’s Specially Designated Nationals and Blocked Persons List, the Sectoral Sanctions Identifications List, or the Foreign Sanctions Evaders List; the E.U.’s Consolidated List of Sanctions Targets; the Consolidated Canadian Autonomous Sanctions List, or any similar list; (b) any person resident in, or entity organised under the laws of, an Embargoed Country; or (c) any person or entity majority-owned or controlled or acting on behalf of any of the foregoing.

Services: means the services to be provided to the Customer by the Supplier pursuant to the Contract as described in the Proposal.

Sub-Contractor: any party with whom the Supplier has a contract for performance of any part of the Services, or with whom the Supplier has a contract (other than as set out in the Contract) for performance of services relating to the Supplier, and, shall extend to include such party’s sub-contractors and vendors.

Supplier: means, , Avantis North America Inc. a company incorporated under the laws of [@], or any member of the Supplier Group named in the Proposal as being the entity providing the Services to the Customer pursuant to the Contract.

Supplier Group: the Supplier, its Co-Venturers, its and their respective Affiliates, its and their respective Sub-Contractors and its and their respective directors, invitees, officers, agents and employees but shall not include any member of the Customer Group.

Supplier Materials: all materials, equipment, assets, documents (including reports, studies, drawings, plans, diagrams, maps, designs, images, tapes, discs or other devices or records embodying information in any form) and other property of the Supplier.

Vessel: the vessel provided by the Customer (whether owned, chartered, leased or operated by it) and as set out in the Proposal with respect to which the Services or part thereof will be provided.

- 1.2. Reference to clauses and sub-clauses are, unless otherwise stated, to clauses and sub-clauses of these Terms & Conditions.
- 1.3. Words importing the singular include the plural and vice versa. Words importing a gender include every gender and references to persons include bodies corporate or unincorporated.
- 1.4. Headings are inserted for convenience and shall not affect the interpretation of the Contract (including these Terms & Conditions).
- 1.5. Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of Contract and Services

- 2.1. The Customer's acceptance of a Proposal ("**Order**") constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted by the Supplier when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4. The Supplier shall exercise reasonable skill, care, and diligence in the provision of Services for the Customer and shall perform the Services in accordance with normal professional standards within the shipping services industry.
- 2.5. The Supplier shall use all reasonable endeavours to perform the Services within any time periods or performance dates indicated in the Proposal, but it is expressly agreed and understood between the parties that such time periods or performance dates are estimates only and time is not of the essence in respect of the performance of the Services.
- 2.6. Where members of the Supplier's staff are specifically nominated in the Proposal for the performance of any part of the Services, the Supplier has the right to nominate alternative staff of equal standing at any time with the consent of the Customer, which consent shall not be unreasonably delayed or withheld.
- 2.7. Where any Supplier Materials are to be used for or in connection with the performance of the Services, and any or all of such Supplier Materials are not readily available, the Supplier reserves the right to substitute the same for other materials with written notice to, but without the consent of, the, provided that in the Supplier's view, acting reasonably, the substituted materials are fit for purpose.
- 2.8. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer, in writing, in any such event.
- 2.9. The Supplier does not verify the correctness of statements provided by classification societies or their representatives. In performing the Services, the Supplier shall be entitled to rely on any information, data, or documents provided to it by any classification society or competent regulatory body or authority.
- 2.10. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not (and are not intended to) form part of the Contract, constitute any representation which can be relied upon, or have any contractual force.

law are hereby, to the fullest extent permitted by law, excluded from these Terms & Conditions and from the Contract.

3. Customer's Obligations, Assistance & Liaison

- 3.1. The Customer shall ensure that any information it provides to the Supplier, including information on which the Proposal is based (whether such information is included in the Proposal or not), is complete and accurate.
- 3.2. The Customer shall provide the Supplier with all relevant data and information available to it, without charge, and within sufficient time and shall give such assistance as the Supplier shall reasonably require in order to enable it to perform the Services effectively, efficiently and without delay. In the event of any changes in the data or information already provided to the Supplier which are relevant for the performance of the Services, the Customer shall promptly after becoming aware of such changes provide the updated data or information to the Supplier. The Supplier shall be entitled to rely on the accuracy and completeness of all data and information provided by the Customer.
- 3.3. The Customer will also:
 - 3.3.1. Provide the Supplier, its employees, agents, consultants and Sub-Contractors, with all necessary access to the Customer's premises, office accommodation and other facilities, as well as the Vessel, as reasonably required by the Supplier and ensure that all appropriate safety measures have been taken in accordance with applicable laws and regulations to ensure safe and secure working conditions at all times during performance of the Services;
 - 3.3.2. Ensure that any instructions, consents or approvals required from the Customer by the Supplier with respect to the performance of the Services shall be given to the Supplier in sufficient time to enable it to perform the Services efficiently and without disruption or delay;
 - 3.3.3. Appoint a named representative who will be responsible for liaison between the Supplier and the Customer who can enter into legally binding agreements with the Supplier;
 - 3.3.4. Prepare the Customer's premises for the supply of the Services within sufficient time for the commencement of the Services;
 - 3.3.5. Prepare the Vessel prior to the commencement of the Services by the date set out in the Proposal safely afloat or, if applicable, in drydock and, unless otherwise agreed, gas free and/or inerted, free of cargo, slops, sludge, dirty ballast and of any substances in the structure of the Vessel which are dangerous or harmful to health, with suitable access/egress/lighting as required and in accordance with all safety requirements under any applicable laws and regulations and otherwise in such state as required for the performance of the Services without disruptions or delays;
 - 3.3.6. Retain control and responsibility over the Vessel at all times;
 - 3.3.7. Provide the crew of the Vessel, as well as any consumables, materials and other supplies necessary for the implementation of the trial run or test (if applicable);

- 3.3.8. Obtain and maintain all necessary licences, permissions, approvals and consents which may be required by applicable laws and regulations or otherwise before the date on which the Services are to start and for the duration of the Contract; and
- 3.3.9. Keep and maintain the Supplier Materials at the Customer's premises or on the Vessel, as applicable, in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 3.4. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation under the Contract (the "**Customer Default**"):
 - 3.4.1. the Supplier shall without limiting its other rights or remedies under the Contract or at law have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations under the Contract;
 - 3.4.2. the Supplier shall not be liable for any costs, expenses, losses, damages or liabilities sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this Clause 3.4;
 - 3.4.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default; and
 - 3.4.4. without prejudice to the generality of Clause 3.4.3 above and without limiting the Supplier's other rights or remedies under the Contract or at law, in the event of a suspension of the Supplier's performance of the Services due to Customer Default pursuant to Clause 3.4.1, the Customer shall reimburse the Supplier on written demand for:
 - (a) the full costs of laying off (and re-hiring if necessary) any employees and consultants employed or hired specifically for the purposes of the Contract, including without limitation any costs which the Supplier has paid to any employment agent;
 - (b) Costs irrevocably committed by the Supplier to subcontractors relating to the period of suspension, under a subcontract which relates to the Contract; and
 - (c) any other costs which the Supplier or its employees or agents have irrevocably committed in respect of the period of suspension.
- 3.5. The Supplier shall not be liable for any delay or failure in the performance of the Services or of any of its obligations under the Contract which has been caused by the Customer's acts or omissions or breach of its obligations under the Contract, including without limitation any breach of any of its obligations under Clauses 3.1, 3.2 and 3.3 above.

4. Payment

- 4.1. The Customer shall pay the Supplier for the Services the fees and other sums as provided in the Proposal. Where rates are provided, the fees payable shall be based on, and calculated in accordance with, such rates.
- 4.2. Payment shall be made at the time or times stated in the Proposal.
- 4.3. In the event that the fees payable for the Services are a fixed lump sum, this shall only cover the Services specifically stated in the Proposal and any services outside the scope of Services specifically stated in the Proposal shall be charged at the applicable rates stated in the Proposal or, in the absence of such rates, they shall be subject to separate agreement between the parties.
- 4.4. The Supplier reserves the right to increase its standard daily fee rates stated in the Proposal, provided that such charges cannot be increased more than once in any twelve (12) month period. The Supplier will give the Customer written notice of any such increase three (3) months before the proposed date of the increase
- 4.5. All quotations for Services to be carried out at anchorages or berths are subject to permission being granted by the relevant authorities for such Services to be carried out. Customer is responsible for acquiring all necessary permissions and for all associated costs.
- 4.6. Unless otherwise agreed, the Supplier shall invoice the Customer thirty (30) days in arrears against the schedule of payments set out in the Contract (if applicable).
- 4.7. The invoice will be sent directly to the Customer at the address and for the attention of such persons indicated in the Contract to receive invoices.
- 4.8. Unless otherwise agreed, the Customer shall pay each invoice submitted by the Supplier:
 - 4.8.1. within thirty (30) days of the date of the invoice; and
 - 4.8.2. in full and in cleared funds in the currency of the invoice to the bank account nominated in writing by the Supplier;
- 4.9. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of, goods and services tax ("**GST**"), provincial sales tax ("**PST**"), and/or any other sales or other local taxes as may apply (individually, and collectively, the "**Taxes**").
- 4.10. Time for payment by the Customer of any amounts payable under the Contract shall be of the essence of the Contract. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Supplier shall be entitled to notify the Customer in writing of such failure and require payment within three (3) Business Days after the date of the notice. In addition, the Supplier shall be entitled to any or all of the following remedies (without prejudice to any other right or remedy available to the Supplier):
 - 4.10.1. to suspend the performance of any or all of the Services under the Contract until all the outstanding invoices have been paid in full. In case of such suspension the provisions of Clauses 3.4.1 to 3.4.4 (inclusive) shall apply;
 - 4.10.2. to withdraw all credit facilities (if any) offered to the Customer with immediate effect;
 - 4.10.3. to require immediate payment of any and all outstanding invoices issued by the Supplier whether or not they are due for payment;
 - 4.10.4. to withdraw any discount applied on the Contract;
 - 4.10.5. to recover all expenses and legal costs arising out of recovery of monies from the Customer;
 - 4.10.6. to charge interest on the overdue amount at the rate of four percent (4%) per cent per annum above Barclay's base rate as varied from time to time, such interest to be compounded at quarterly intervals. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and

- 4.10.7. if the Customer's failure to make payment of any amount due under the Contract continues for more than three (3) Business Days after the date of the Supplier's written notice referred to in Clause 4.10, the Supplier shall have the right at any time after the expiry of such three (3) Business Day period to terminate the Contract at any time thereafter by notice in writing with immediate effect, irrespective of whether the Supplier has exercised its right to suspend performance of any or all of the Services under Clause 4.10.1 above.
- 4.11. The Customer shall pay all amounts due under the Contract in full and in a timely manner without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). If and to the extent the Customer is required by any applicable law to deduct or withhold from any amounts payable to the Supplier under the Contract any sum in respect of taxes, duties or imposts:
- 4.11.1. the Customer shall: (i) make the necessary deduction or withholding; (ii) promptly pay the sum so deducted or withheld to the relevant authorities; and (iii) provide the Supplier with copies of all receipts (and returns filed) in connection therewith evidencing such payment; and
- 4.11.2. the relevant amount payable to the Supplier under the Contract shall be increased so that the amount received by the Supplier, net of such taxes, duties or imposts, shall be the amount which would have been received but for such deduction or withholding.
- 4.12. The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 4.13. Should the Customer dispute any of the contents of the Supplier's invoices, the Customer must raise this with the Supplier within five (5) Business Days of the date of the invoice. In any event, the undisputed amount of the Invoice shall be paid in accordance with Clause 4.

5. Variations

- 5.1. The Customer shall be entitled to request a variation in the scope of the Services. All variation requests shall be in writing and shall clearly define the nature and extent of the variation requested.
- 5.2. No variation shall be binding on the Supplier until it has been expressly accepted by the Supplier in writing and agreement has been reached between the parties in writing with regard to any additional payments for the Services (as varied), any revised time periods applicable for the performance of the Services (as varied) and any other consequential amendments to the Scope of Services and the Services deliverables and/or the terms of the Contract.
- 5.3. The parties' agreement in relation to any variation in the scope of Services under Clauses 5.1 and 5.2 shall be recorded in a contract variation form or an addendum to the Contract, which, once signed by both parties, shall take effect as an amendment to the Contract. Unless and until such a contract variation form or addendum to the Contract has been signed by both parties, the Supplier shall be entitled at its option to either: (i) continue the provision of the Services in accordance with the Contract without any variation; or (ii) suspend the performance of the Services until such contract variation form or addendum to the Contract has been signed. In the event of suspension by the Supplier of the performance of the Services under subparagraph (ii) above, the provisions of Clauses 3.4.1 to 3.4.4 inclusive shall apply.
- 5.4. Except as provided in Clauses 5.1, 5.2 and 5.3 above with respect to variation in the scope of the Services, no other variation in the terms of the Contract, including the introduction of any additional terms, shall be effective unless agreed in writing and signed by both parties.

6. Contract Termination

- 6.1. Without limiting any other rights and remedies provided to it under the Contract or at law, either party shall have the right to terminate the Contract at any time without cause upon thirty (30) days' written notice to the other.
- 6.2. Without limiting any other rights and remedies provided to it under the Contract or at law, the Supplier shall have the right to terminate the Contract in accordance with Clause 4.10.7 in case of failure by the Customer to pay any amounts due under the Contract in a timely manner, as provided under Clause 4.10.
- 6.3. Without limiting any other rights and remedies provided to it under the Contract or at law, either party shall have the right to terminate the Contract by notice in writing to the other party with immediate effect if:
- (i) the other party is in material breach of its obligations under the Contract which is not capable of remedy or, where such breach is capable of remedy, the other party fails to remedy such breach within fourteen (14) days after receipt of written notice requiring it to do so; or
- (ii) an order is made, or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver, administrator or similar officer of such other party is appointed (or any petition is made in respect of same), or if such other party suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.
- 6.4. In the event of termination of the Contract for any reason and without prejudice to any other rights and remedies available under the Contract or at law:
- (i) the Customer shall immediately pay the Supplier for all work performed up to the date on which termination takes effect and in particular the Customer shall pay to the Supplier any and all of the Supplier's outstanding unpaid invoices, together with interest (if applicable) and Taxes, and in respect of Services performed in respect of which no invoice has been issued, the Supplier may issue and submit an invoice, which shall be payable by the Customer immediately upon receipt, along with all Taxes payable thereon;
- (ii) the Customer shall pay to the Supplier all costs and expenses reasonably incurred by the Supplier as a consequence of such termination;
- (iii) if applicable, the Customer shall return to the Supplier any and all of the Supplier Materials which are in the Customer's (or its employees' or agents') possession. Until such Supplier Materials have been returned to the Supplier, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- (iv) all the accrued rights, remedies, obligations and liabilities of the parties as at the time of expiry or termination of the Contract shall remain unaffected; and
- (v) any provisions which expressly or by implication survive termination shall continue in full force and effect.

7. Ship Inspections

- 7.1. Where the Services consist of or include inspections of the Vessel or other vessels, such inspections will, unless otherwise expressly agreed in writing, be superficial inspections afloat or in drydock undertaken on the following terms of Clauses 7.2 and 7.3.
- 7.2. Inspections shall be limited to those parts of the Vessel (or, if applicable, other relevant vessel), her machinery equipment or records (if made available) which are actually exposed, uncovered or readily accessible and the Supplier is under no obligation to report on any other part of the Vessel (or, if applicable, other relevant vessel), her machinery, or equipment and the Supplier shall have no responsibilities whatsoever in such respect under the Contract.
- 7.3. The Supplier is under no obligation to report on the Vessel's (or, if applicable, any other relevant vessel's) water tightness or integrity, the operational efficiency of its machinery or equipment, its suitability for any business or trade, or its stability characteristics.

8. Right to Sub-Contract

- 8.1. The Supplier shall be entitled to sub-contract any part of the Services and otherwise of its obligations under the Contract without the Customer's prior written consent, to its parent, subsidiaries or Affiliates or to other suitably qualified third parties.
- 8.2. Any such performance of all or any of the Supplier's obligations by the sub-Contractors shall be and constitute full and sufficient performance by the Supplier of its obligations under the Contract.
- 8.3. Any performance of the Supplier's obligations by the sub-Contractors shall be without prejudice to the rights of the Customer for any failure by the Supplier in performance of the Supplier's duties and obligations, and notwithstanding performance by the sub-Contractors, the Supplier shall remain solely responsible to the Customer for performance of its obligations under the Contract.

9. Liability

- 9.1. Except as otherwise expressly provided in the Contract (including in these Terms & Conditions), neither party shall be liable to the other for any Consequential Loss whatsoever arising out of or in connection with the performance or non-performance of the Contract, in contract, tort (including negligence), breach of duty (statutory or otherwise) or otherwise howsoever at law.
- 9.2. Without prejudice to Clauses 3.4, 3.5, 9.1 and 20, the Supplier shall be under no liability whatsoever to the Customer for any loss, damage, delay or expense of whatsoever nature and howsoever arising in the course of performance of the Services or caused by or arising out of or in connection with the performance or non-performance of the Services by the Supplier, UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Supplier, or Sub-Contractors employed by the Supplier in connection with the Services or their respective employees or agents.
- 9.3. The Supplier's total liability for any Claims which may arise in connection with the Supplier's performance or non-performance of its obligations under the Contract and otherwise in the course of, or in connection with, the performance or non-performance by the Supplier of the Services under the Contract, shall under no circumstances exceed the lower of: (a) an amount equal to the total fees payable by the Customer for the Services under the Contract; or (b) US\$100,000. The Supplier and the Customer agree that having regard to the nature of the Services, the fees paid for such Services by the Customer and all other circumstances known to the Supplier and the Customer relating to the Services, the foregoing limits of liability are fair and reasonable.
- 9.4. Nothing in this Contract shall exclude or restrict any liability of either party in respect of any liability which cannot legally be limited, including liability for:
 - 9.4.1. death or personal injury caused by negligence;
 - 9.4.2. fraud or fraudulent misrepresentation; and
 - 9.4.3. breach of the terms implied by those provisions of the *BC Sale of Goods Act [RSBC 1996] Chapter 410*, incapable of being waived or otherwise contracted out of.

10. "Himalaya"

- 10.1. It is hereby expressly agreed that no employee or agent of the Supplier (including every sub-contractor from time to time employed by the Supplier for the performance of the Services and the employees or agents of such sub-contractor) shall in any circumstances whatsoever be under any liability whatsoever to the Customer for any loss, damage, or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions in this Clause, every exemption, limitation, condition and liberty contained in the Contract (including in these Terms & Conditions) and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Supplier or to which the Supplier are entitled under the Contract (including under these Terms & Conditions) or otherwise at law shall also be available and shall extend to protect every such employee or agent or sub-contractor of the Supplier acting as aforesaid.

11. Solicitation of Employees

- 11.1. Throughout the duration of the Contract and for a period of twelve (12) months after its expiry or termination, the parties hereby agree that no party shall solicit or endeavour to entice away an employee, agent, or any sub-contractors' employees or agents of the other party with an offer of employment unless the other party has given express permission in writing for that offer to take place. In the event that this clause is breached, the defaulting party shall pay to the other party three (3) times the annual salary of the employee that has been solicited.

12. Confidentiality

- 12.1. A party to the Contract (the "Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, technologies, techniques, inventions, processes, reports, plans, drawings, initiatives or similar or other materials which are of a confidential nature and have been disclosed to the Receiving Party, its Affiliates or its or their respective employees, agents or sub-contractors by the other party ("Disclosing Party"), its Affiliates or its or their respective employees, agents or sub-contractors for the purpose of, or in connection with, the Contract, and any other confidential information concerning the Disclosing Party's and its Affiliates' business, products and services which the Receiving Party may obtain for the purpose of, or in connection with, the Contract.
- 12.2. The Receiving Party shall only use the confidential information referred to in Clause 12.1 (collectively, the "Confidential Information") for the purpose of the performance of the Contract. The Receiving Party shall not disclose such Confidential Information to any third party except only to those of its

Affiliates or its or their respective employees, agents and sub-contractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such Affiliates such respective employees, agents and subcontractors comply with the obligations set out in this Clause as though they were a party to the Contract. In any event, the Receiving Party shall be liable for any use or disclosure or use of such Confidential Information in breach of this Clause 12 by any of the aforementioned recipients to whom the Receiving Party has disclosed such Confidential Information. The Receiving Party may also disclose such of the Disclosing Party's Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 12.3. Without prejudice to any other Clause of the Contract, the Customer shall indemnify and hold harmless the Supplier and any of the Supplier's Affiliates against all Claims and in respect of all loss suffered by them as a result of, or relating to, violations of this Clause 12. Clause 9.1 shall not apply in respect of a party's rights under this Clause 12. This Clause 12 shall survive termination of the Contract.

13. Intellectual Property

- 13.1. All Know-how and all Intellectual Property Rights in or in relation to any work, materials, products or documentation produced or provided by the Supplier as part of the Services provided by it under the Contract shall remain vested in and owned by the Supplier. The Supplier hereby grants the Customer a licence to use such materials, products or documentation only for the purposes for which they were prepared and subject to the payment to the Supplier of all fees and charges agreed under the Contract.
- 13.2. The Customer shall indemnify the Supplier in full on demand against all losses, liabilities, damages, costs, and expenses which the Supplier may incur as a result of work done in accordance with the Customer's specifications which involves or results in the infringement of any third party Intellectual Property Rights or Know-how.

15. Indemnity

- 15.1 Subject always to the limitations and provisions of Clause 9, the Supplier shall indemnify, defend, and hold harmless the Customer Group in respect of all Claims against any members of the Customer group arising out of or in connection with the performance or non-performance of the Contract in respect of loss of or damage to, or pollution from, the property or Supplier Materials of the Supplier Group (whether such property or Supplier Materials are owned, leased or chartered by the relevant member of the Supplier Group), irrespective of the negligence, gross negligence, wilful misconduct, or breach of duty (statutory, tortious, or otherwise) of the Customer Group.
- 15.2 The Customer shall indemnify, defend, and hold harmless the Supplier Group in respect of all Claims against any members of the Supplier Group arising out of or in connection with the performance or non-performance of the Contract in respect of loss of or damage to or pollution from the property or equipment of the Customer Group, including the Vessel (whether such property or equipment, including the Vessel, is owned, leased or chartered by the relevant member of the Customer Group), irrespective of the negligence, gross negligence, wilful misconduct or breach of duty (statutory, tortious or otherwise) of the Supplier Group.
- 15.3 All exclusions and limitations of liability and any indemnities set out in the Contract shall survive the expiry or termination of the Contract but only in respect of liabilities which arise and indemnities which are invoked as a result of incidents which occurred prior to the effective date of expiry or termination of the Contract.
- 15.4 All Services provided, any work undertaken, and any documents or materials produced, by the Supplier under the Contract are provided, undertaken or produced solely for the benefit of the Customer and under no circumstances shall the Supplier have any liability whatsoever in respect of or in connection with the same to any other person. The Customer shall not without the prior written consent of the Supplier (which the Supplier shall be entitled to withhold in its absolute discretion) convey, disclose or make available to any third party any documents issued by the Supplier pursuant to or in connection with the Contract. The Customer shall indemnify and hold harmless the Supplier Group against all Claims and in respect of all loss suffered by any member of the Supplier Group as a result of or relating to violations of this Clause.

16 Contractual Documents and Hierarchy

- 16.1 These Terms & Conditions shall be deemed incorporated in, and shall form an integral part of, the Contract.
- 16.2 In the event of any conflict or inconsistencies between any of the documents forming part of the Contract, the following order of priority will apply:
- (i) the Proposal;
 - (ii) these Terms & Conditions; and
 - (iii) any documents relating to the offer and acceptance resulting in the Contract (referred to in clauses 2.1 and 2.2).

17 Anti-Bribery

- 17.1 The Customer represents and warrants, to the Supplier, that the Customer, (including its Affiliates and its and their respective employees, directors, officers or agents) has not Bribed at any time in connection with entering into the Contract and shall not Bribe in connection with the Contract or its performance.
- 17.2 The Customer shall, if so requested by the Supplier in writing, promptly provide any information which the Supplier may reasonably require in order to monitor its compliance with this Clause. In particular and without limitation, a director or other duly authorised representative of the Customer with direct responsibility for the Contract shall certify in writing to the Supplier on an annual basis its full compliance with this Clause during the preceding year.
- 17.3 The Customer shall, where permitted by law, notify the Supplier immediately in writing upon becoming aware of, or suspecting:
- (i) Any failure to comply with any provisions of this Clause; and
 - (ii) Any extortive solicitation, demand or other request for anything of value, by or on behalf of any person relating to the Contract or its subject matter.
- 17.4 Any failure by the Customer (or any of its Affiliates or any of its or their respective employees, directors, officers or agents) to comply with any provision of this Clause shall constitute a material breach of the Contract.
- 17.5 In the event of a breach or suspected breach of this Clause, such determination to be at the sole discretion of the Supplier, the Supplier shall be entitled to, with immediate effect, suspend provision of the Services under the Contract (in which case the provisions of Clauses 3.4.1 to 3.4.4 (inclusive) shall apply) and/or terminate the Contract by notice in writing with immediate effect.

18 Trade Compliance

- 18.1 The Customer warrants compliance by the Customer, by its Affiliates and its and their respective employees, directors, officers or agents with:
- 18.1.1 Global Trade Laws in all respects related directly or indirectly to the performance of the Contract and undertakes that it and/or they will not, through any act or omission place the Supplier in violation of Global Trade Laws; and
 - 18.1.2 all other rules and regulations including those of the territories where goods and/or Services are to be delivered.
- 18.2 Without prejudice to any other clause of the Contract, the Customer shall indemnify and hold harmless the Supplier and any member of the Supplier Group against all Claims and in respect of all loss suffered by them as a result of or relating to violations of this Clause including any penalties or costs associated with government investigations or enforcement actions under Global Trade Laws. Clause 9.1 shall not apply in respect of a party's rights of indemnity under this Clause.
- 18.3 The Customer represents and warrants that it, its Affiliates, and its and their respective directors, officers, employees or agents are not Sanctioned Persons.
- 18.4 Any breach and/or potential breach of this Clause, or a change to Global Trade Laws which makes continued performance under the Contract impermissible, entitles the Supplier at its absolute discretion to immediately terminate the Contract, by notice to the Customer in writing, in which case the provisions of Clause 6.4 shall apply, to the fullest extent permitted by the relevant applicable law. In that event and if either party terminates the Contract due to a change in applicable Global Trade Laws, both parties agree that: (i) such termination shall not constitute a breach of the Contract by the party terminating and the other party waives any and all claims against the terminating party for any loss, damage, cost or expense that the other party may incur by virtue of such termination; and (ii) they shall take reasonable steps to cooperate in winding down the Contract.

19 Data Protection

- 19.1 The Customer warrants that it shall process any personal data in relation to the Contract at all times in accordance with the requirements of the Data Protection Legislation, including without limitation, those pertaining to the establishment of adequate safeguards for data privacy and security, and to upholding the rights of data subjects. The Customer undertakes to keep the Supplier indemnified and to hold it harmless against all Claims whatsoever or howsoever arising which may be brought against the Supplier or incurred or suffered by it arising out of or in connection with breach of this Clause.

20 Force Majeure

- 20.1 Neither the Customer nor the Supplier shall be liable for any loss or damage, or delay or total or partial failure to perform this Contract (other than a failure to perform an obligation to pay money) caused wholly or partly by any circumstance or matter beyond the reasonable control of the relevant party, as the case may be, including (without limiting the generality of the foregoing) acts of God, acts of governmental authorities, fires, explosions, strikes, lock-outs or labour disputes of any kind, floods, hurricanes, natural catastrophes, adverse weather conditions, epidemics, quarantines, wars, insurrections, riots, violent demonstrations, riots, civil commotion, criminal offences, acts and omissions of civil or military authority or of usurped power, war (whether declared or undeclared), civil war, requisition, or hire by any governmental or other competent authority, embargoes, blockades, sabotage, or prolonged power failure, shortages of materials, or delays on the part of classification societies or other third party bodies or authorities ("Force Majeure Event").
- 20.2 Where a party seeks to rely upon a Force Majeure Event as described in Clause 20.1, it will advise the other party of the Force Majeure Event at the earliest opportunity and also advise that party of the likely duration of such Force Majeure Event.
- 20.3 Each party shall have the option to terminate the Contract on giving fourteen (14) Business Days' written notice in the event that it or the other party is unable to fulfil its obligations under the Contract for a continuous duration of three (3) months by reason of a Force Majeure Event that so prevents a party fulfilling such obligations.

21 Governing Law and Dispute Resolution

- 21.1 The Contract and any non-contractual obligations arising out of or in connection with it, shall be governed by, and construed in accordance with, the laws of the Province of BC, and the Federal laws of Canada, as applicable.
- 21.2 Except as otherwise expressly prohibited by applicable law, any dispute arising out of or in connection with the Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.
- 21.3 The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of the sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- 21.4 In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
- 21.5 Where a dispute is incapable of being referred to arbitration because of applicable laws, such dispute shall be governed by the laws of the Province of BC and the Federal laws of Canada (as applicable) and the parties attorn to the jurisdiction of the Courts of BC and the Federal Courts of Canada, to the extent such dispute cannot be referred to arbitration.

22 Entire Agreement

- 22.1 These Terms & Conditions together with the Proposal and any documents relating to the offer and acceptance resulting in the Contract (referred to in clauses 2.1 and 2.2) constitute the entire agreement and understanding of the parties in relation to the subject-matter of the Contract and supersede any previous agreement, understanding, discussion, statement or exchange between the parties (or their representatives) relating to subject-matter of the Contract

- 22.2 Both parties agree and represent to each other that neither party is entering into the Contract as a result of, or in reliance on, any warranty, representation, statement, agreement or undertaking of any kind whatsoever (whether in writing or oral and whether made negligently or innocently) made by any person other than as expressly set out in the Contract as a warranty and identified as such in the Contract.

23 Waiver

- 23.1 A waiver of any right or remedy under the Contract or at law: (i) shall only be effective if it is in writing; (ii) shall apply only vis-à-vis the party to whom it is addressed and with respect to the circumstances for which it is given; and (iii) shall not be deemed to be a waiver of any subsequent breach or default.
- 23.2 No failure or delay by a party in exercising any right or remedy provided under the Contract or at law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise by that party of that or any other right or remedy. No single or partial exercise of any such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 23.3 Unless expressly provided in the Contract, rights and remedies arising under the Contract are cumulative and do not exclude rights and remedies provided by law.

24 Severance

- 24.1 If any provision of the Contract is or becomes or is held by any arbitrator or any competent court or other competent body to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from the Contract to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

25 No Partnership or Agency

- 25.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

26 Notices

- 26.1 Notices or other communications under or in connection with the Contract shall be in writing and shall be delivered personally or shall be sent by mail to the parties at their registered business addresses or by email to the parties at their respective addresses set forth in the Proposal or to such other address notified in writing.
- 26.2 In the absence of evidence of earlier receipt, a notice shall be deemed given:
- (i) if delivered personally, when left at the address of the relevant recipient set out in the Proposal;
 - (ii) if sent by mail, on the third (3rd) Business Day next following the day of posting it to the parties at their registered business addresses; and
 - (iii) if sent by email, when actually received in readable form and if transmitted during normal business hours (9.30am – 5.30pm) on any Business Day. An email transmitted after midnight but on or before 9.30am on any Business Day shall be deemed to be given at 9.30am on that Business Day. An email transmitted after 5.30pm but on or before midnight on any Business Day and an email transmitted on a non-Business Day shall be deemed to be given at 9.30am on the following Business Day.
- 26.3 The provisions of this Clause 26 shall not apply to the service of any proceedings or other documents in any legal action.