

STANDARD TERMS AND CONDITIONS ("CONDITIONS")

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the words and phrases below have the following meanings: -

Business Day means a day (other than a [Saturday or Sunday] or declared public holiday) on which banks are open for business in British Columbia where the Terminal is located.

Cargo means any goods, merchandise or other property whatsoever, whether or not in a Container and includes goods carried on Equipment (other than a Container) and containerized Cargo.

Cargo Owner includes the actual owner, agent, sender, shipper, consignee, receiver, or bailee of the Cargo, or any other person who is or may become interested in, or entitled to possession of, the Cargo, and the carrier of such Cargo to, upon, over or from the Port Authority Property, but does not include the Operator.

Competent Authority means any national, regional, local or other authority, court, administrative agency or commission or any other governmental, municipal, administrative or regulatory body, to the extent it has jurisdiction over either or both of the parties, the Cargo, the Vessel, the Terminal or the Services.

Container means any container, flat-rack, open top, artificial tween-deck, pallet-wide, platform, reefer and tank container, bolster or other unit conforming with ISO dimensional standards for international shipping and which is owned, leased, chartered, managed, operated and/or used by the Customer.

Container Crane means a crane used in loading or discharging containerized Cargo from a Vessel at the Terminal.

Contract of Carriage means a bill of lading or other transport document, evidencing contracts of carriage, being issued in respect of Cargo.

Custody has the meaning given to it in clause 3.5.

Customer means any person to whom or on behalf of whom the Operator provides any Service including the owner of, charterer (of whatever nature) of, the Vessel, the members of any shipping consortium or alliance or any person who is or may become interested in a Vessel calling at the Terminal, the Vessel's master and any person who has control of the operation of such Vessel.

E-services means all the electronic services offered by the Operator through various e-service platforms.

Equipment means any plant, machinery, Container, package, case, pallet, vehicle, trailer, truck or railcar of any description which is not owned or leased by the Operator and which is not Cargo.

Hazardous Cargo means Cargo of any kind which is or may become dangerous (whether or not so listed in any applicable law, regulations, codes or requirements), inflammable, damaging, injurious (including radioactive materials), toxic, noxious, liable to give off injurious gas, fumes or liquid or which is or may become liable to contaminate, injure, pollute or damage or be a nuisance to the environment, any property and/or person whatsoever, including any Cargo, substance or material that is listed, defined or otherwise designated as "hazardous", "noxious"

or "dangerous" under any applicable laws or international convention or standard including, without limitation, the International Maritime Dangerous Goods Code or the Hazardous and Noxious Substances Convention as defined in the *Marine Liability Act*, SC 2001, c 6.

Operations Manager means any manager duly appointed from time to time by the Operator to oversee any operation at or on the Terminal and shall include their deputies and/or assistants.

Operator means DP World Saint John, Inc., having a Terminal address at 10 King Street West, Saint John, NB, trading as DP World Saint John, having a business office at 10 King Street West Unit 8, Saint John, NB E2M 7Y5 Canada, and includes all their respective directors, officers, employees, agents, representatives, authorized external advisors and other third parties acting on the Operator's behalf.

Operator Group means the Operator and its Affiliates and "member of the Operator Group" shall be construed accordingly. For the purpose of this definition: (i) Affiliate means, in relation to a person, any other person which directly or indirectly Controls, is Controlled by or is under common Control with that person, and (ii) Control means, in relation to a person, the direct or indirect ownership of more than 50 per cent of the voting capital or similar right of ownership of that person or the legal power to direct or cause the direction of the general management and policies of that person whether through the ownership of voting capital, by contract or otherwise, and Controls and Controlled shall be interpreted accordingly.

Port Authority means the port authority as defined in the *Canada Marine Act*, S.C. 1988, c. 10 having jurisdiction over the port in which the Services are provided and includes the officers, employees, servants and agents of the respective Port Authority.

Port Authority Fee Document means the fee document in the applicable Port Authority's standard public fee document, as amended, revoked, replaced or otherwise altered from time to time.

Services means all services and activities performed or arranged, and all the facilities made available, by the Operator, in each case whether gratuitous or not.

SOLAS Convention shall mean the International Convention for the Safety of Life at Sea 1974 of the International Maritime Organisation as supplemented by the SOLAS Guidelines as amended from time to time.

SOLAS Guidelines means the guidelines regarding the verified gross mass of a container carrying cargo (MSC.1/Circ.1475) published by the International Maritime Organization, as amended or updated or replaced from time to time.

Tariff means the Operator's Tariff for the Terminal where the Services are provided, which Tariff is available on-line at www.dpworlcanada.com, as amended from time to time.

Terminal means the Container or multi-purpose Terminal operated by the Operator where, in respect of specific Cargo or a specific Vessel, the Services are provided and includes any land thereon or adjacent thereto leased or otherwise occupied by the Operator for the purposes of providing its Service, but in the case of DP World Fraser Surrey does not include the Port Authority Rail Yard.

Users means the (i) Customers and (ii) the Cargo Owner; (iii) the owner, or any other person who is or may become interested in, or entitled to possession of, the Containers, or in any Equipment; (iv) the owner, or any other person who is or may become interested in, or entitled to possession of, any road or rail vehicle which enters the Terminal; and (v) any person who drives or operates such vehicle and (vi) any person who uses and/or enters the Terminal.

Vessel means any ship, container ship, barge, lighter or other ship of any description, including all lashing equipment for the proper securing of Containers, Equipment or Cargo, its gear and all other equipment or other property on board.

VGM or **Verified Gross Mass** means the total gross mass of a packed container as obtained by one of the two methods prescribed by the SOLAS Convention and otherwise in accordance with applicable laws.

VGM Procedures shall mean the procedures which the Operator may have published in the applicable Tariff, and/or the Canadian Procedure for obtaining the Verified Gross Mass of Packed Containers as required by SOLAS VI/2 - TP 15330, or otherwise in accordance with applicable laws.

1.2 In these Conditions:

- 1.2.1 each sub-clause shall be construed severally;
- 1.2.2 where the context permits, words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;
- 1.2.3 where the context permits, any reference to: (i) Containers will include laden and empty Containers; (ii) Cargo will include the Equipment the Cargo is contained or carried on or in and (iii) Equipment will included loaded and empty Equipment;
- 1.2.4 the words **include(s)** or **including** shall be deemed to have the words "without limitation" following them.

1.3 Legislation

- 1.3.1 If any legislation whether national or international is compulsorily applicable and cannot be derogated from, these Conditions shall, in so far as possible, be construed in accordance with such legislation. If any of these Conditions are found by any competent court or tribunal to be contrary to such legislation, these Conditions shall be varied only to the extent necessary to comply with such legislation.
- 1.3.2 Nothing in these Conditions shall operate to limit or deprive the Operator of any statutory protection, defence, exception or limitation of liability authorised by any applicable laws, statutes or regulations and the Operator shall have the full benefit of such laws, statutes or regulations.

2. **APPLICATION OF THESE CONDITIONS**

2.1 These Conditions shall apply to:

- 2.1.1 all Services provided, or made available, by the Operator;
- 2.1.2 the use by any User of the Terminal and/or the facilities at the Terminal;
- 2.1.3 all Vessels which berth at the Terminal.

2.2 In the absence of express acceptance by the User of these Conditions, by receiving or using the Services from the Operator, or by using or entering the Terminal, including by berthing any Vessel at the Terminal, the User is deemed to have read, understood and agreed to these Conditions, without amendment.

- 2.3 These Conditions shall apply to the exclusion of any printed (whether in electronic form or otherwise) terms and conditions of any purchase order or other correspondence or documents issued by the User in connection with the Services unless expressly accepted in writing.
- 2.4 There shall be no variation to these Conditions unless expressly agreed by both parties in writing. Any notice to be given under these Conditions must be given in writing to the registered office of the Operator or the User or the branch or agency office of the User through which it has dealt with the Operator in respect of the Services.
- 2.5 The User represents and warrants that it will bring these Conditions (including the limits, defences, exceptions, liberties and exclusions herein) to the attention of any person who the User may instruct to enter upon the Terminal or otherwise deal with the Operator including any subcontractor, agent, employee or other party instructed by the User.
- 2.6 The User shall ensure that it is familiar with, and that it follows, any regulations, instructions or directions issued by the Operator, the Operations Manager, any the Operator employee or any authorised agent of the Operator which relate to the use of the Terminal, entry thereon or the use of any Equipment or Vessel there on or there at.
- 2.7 The User shall ensure that any third party which it might instruct to enter on to the Terminal (including any subcontractor, agent, employee or other party) is familiar with any such regulations, instructions or directions.
- 2.8 If the Customer has appointed an agent, or if the Operator reasonably believes that the Customer has appointed an agent, in respect of the Services the Customer shall be deemed to have authorised such agent to act on its behalf in respect of all matters hereunder including to pay to or receive from the Operator all sums due under these Conditions unless the Customer notifies the Operator to the contrary at any time and the Operator shall be entitled to act upon any instruction, request, notice or other communication from such agent without prior reference to the Customer.
- 2.9 The User is solely responsible for and will indemnify the Operator and hold the Operator harmless from, all and any duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Competent Authority and/or any expenses incurred in complying with the requirements of any Competent Authority in relation to the Cargo, Equipment and/or Vessel.
- 2.10 These Conditions do not create a relationship of employer and employee, principal and agent (except for the limited purpose stated in clause 9.8) or partnership between the Operator and the Customer.

3. SERVICES PROVIDED

- 3.1 The Operator will provide the Services using reasonable care and skill.
- 3.2 Subject to specific written instructions given by the User and accepted by the Operator in writing, the Operator reserves to itself complete freedom in respect of the means and procedures to be employed in the provision of the Services. The Operator may deviate from the User's instructions (whether or not accepted by the Operator) in any respect if the Operator considers it is necessary in the interest of the User and the User shall reimburse the Operator with all reasonable expenses incurred thereby.
- 3.3 The Operator will exercise reasonable despatch in providing Services but will not be liable for any delay whatsoever, howsoever caused (including negligence), unless a special arrangement is agreed to the contrary in writing with the Operator. If such arrangement is agreed, the Operator 's liability will be limited in accordance with clause 8.6.5.

3.4 The Operator may, at its discretion, arrange for the Services or any part thereof, to be carried out by one or more sub-contractors or agents on any terms whatsoever. Where such a sub-contractor is appointed at the request of the Customer, the Operator shall have no liability for the acts or omissions of sub-contractor.

3.5 Custody

3.5.1 Containers, non-containerised Cargo and Equipment shall be deemed to be in the custody of the Operator:

- (a) in respect of import Containers, non-containerised Cargo or Equipment, when the Container, non-containerised Cargo or Equipment is physically lifted off from the Vessel's deck, hold or from the top of other Containers on the Vessel;
- (b) in respect of export Containers, non-containerised Cargo or Equipment, when the Container, non-containerised Cargo or Equipment is (i) physically lifted off from the truck or railcar by the Operator's cargo handling equipment for stacking at the container yard of the Terminal or (ii) detached from the incoming truck;
- (c) in respect of transshipment Containers, non-containerised Cargo or Equipment, when the Container, non-containerised Cargo or Equipment is physically lifted off from one Vessel's deck, hold or from the top of the Containers on one Vessel.

3.5.2 Containers, non-containerised Cargo and Equipment shall cease to be deemed to be in the custody of the Operator:

- (a) in respect of import Containers, non-containerised Cargo or Equipment, when the Container, non-containerised Cargo or Equipment is (i) mounted onto the withdrawing truck or railcar by the Operator's cargo handling equipment for delivery to the consignee or (ii) attached to the withdrawing truck for delivery to the consignee;
- (b) in respect of export Containers, non-containerised Cargo or Equipment, when the Container, non-containerised Cargo or Equipment is restowed on the Vessel's deck, hold or on top of another container on the Vessel (as from locking twist locks on board);
- (c) in respect of transshipment Containers, non-containerised Cargo or Equipment, when the Container, non-containerised Cargo or Equipment is restowed on another Vessel's deck, hold or on top of another container on another Vessel (as from locking twist locks on board).

3.5.3 With regards to any vehicle which is driven by a passenger using the Terminal as the point of embarkation or disembarkation in connection with travelling on a passenger Vessel ("**Passenger Vehicles**"), the Operator shall only be liable in respect of any damage to or loss of a Passenger Vehicle whilst the Passenger Vehicle is on land within the Terminal. The Operator accepts no liability in respect of such loss or damage after such Passenger Vehicle has crossed the Vessel's loading ramp to embark that Vessel or before such Passenger Vehicle has left the Vessel's loading ramp to disembark that Vessel. The Operator accepts no liability in respect of damage to Passenger Vehicles resulting from the malfunctioning of any apparatus or equipment belonging to a Vessel and used for loading Passenger Vehicles. The Operator accepts no liability in respect of damage to or loss of Passenger Vehicles resulting from the

instructions issued to the drivers of those Passenger Vehicles by or on behalf of the Customer or its appointed agent during the embarkation or disembarkation of those Passenger Vehicles.

- 3.6 Without prejudice to any other rights under these Conditions or otherwise, the Operator reserves the right, but is under no obligation, to: -
- 3.6.1 open and/or inspect any Containers, Equipment, Vessel and/or Cargo;
 - 3.6.2 remove Cargo and/or Equipment immediately which the Operator reasonably believes is Hazardous Cargo and to dispose of such Cargo and/or Equipment without notice;
 - 3.6.3 refuse to handle, move or otherwise deal with Cargo or Equipment which in the Operator 's opinion appear to be or may become Hazardous Cargo;
 - 3.6.4 refuse acceptance of damaged or distorted Containers or Equipment, or of any Container or Equipment which in its opinion is in an unsatisfactory condition;
 - 3.6.5 refuse to handle any Container or Cargo with a weight which exceeds its stated weight or the safe working load of any cargo handling equipment; or
 - 3.6.6 take any action which the Operator considers is reasonable to comply with applicable law and/or the lawful requirement of any Competent Authority.
- 3.7 The User shall be responsible for the safe keeping of any data, figures, passwords or other information of any nature entered within the E-services or any other computer or operating system used or operated by or on behalf of the Operator or any other party and supplied to the User, its agents or employees which might be used to demand or otherwise facilitate the release of any Cargo or Equipment from the Operator.
- 3.8 If the Operator releases or allows the release of the Cargo or Equipment to a party who uses correct data, figures, passwords or other information as entered within the E-services or such other computer or operating system, the Operator shall have no liability whatsoever for such release unless it can be shown that the Operator was negligent in disclosing the data, figures, passwords or other information or in releasing the Cargo or Equipment. The burden of proving that the Operator was negligent in the disclosure or release shall rest with the User.
- 3.9 Cargo and Equipment which for any reason whatsoever cannot be delivered at the time of delivery into the Terminal from a Vessel or otherwise will be placed within the Terminal at the expense and risk of the User. The Operator 's charges will be paid by the User. Details of the Operator's charges are set out in the applicable Tariff.
- 3.10 If the User does not collect any Cargo or Equipment within thirty (30) days of a request from the Operator to do so, the Operator shall be entitled, without prejudice to any other rights that it may have against the User, to dispose of the Cargo or Equipment in accordance with the procedure set out in clauses 7.9 to 7.11, and thereupon the liability of the Operator in respect of the Cargo or Equipment, or that part thereof shall cease.

4. USER WARRANTIES AND OBLIGATIONS

- 4.1 The User represents and warrants that:
- 4.1.1 it is either the owner of the Cargo, the Equipment or Vessel or that it is authorised by the owner and/or other persons interested in, or entitled to possession of, the Cargo, the Equipment or the Vessel to accept these Conditions not only for itself but also as

agent and/or trustee for and on behalf of the owner or other persons interested therein, or entitled to possession thereof;

- 4.1.2 its servants (and those of any agents or independent contractors it may engage) are trained and competent to carry out the tasks at any time assigned to them in relation to the giving of any instructions to the Operator or the inputting of any information into any electronic service or system operated, managed or utilised by the Operator (which shall include the E-services platforms) whether such instruction or input of information is given in writing, verbally or by any electronic or any other means whatsoever and that such persons have the full authority to give such instructions or input such information;
 - 4.1.3 all the documentation and information provided by or on behalf of the User in relation to the Cargo, Equipment and/or Vessel is full and accurate and is sufficient to enable the Operator to handle them safely and in full compliance with applicable laws;
 - 4.1.4 none of its activities conducted whilst at the Terminal violate any applicable anti-slavery and human trafficking laws, statutes, regulations and codes in force from time to time; and
 - 4.1.5 it has complied with all relevant local, national and international legislation and regulations relating to the carriage, handling and movement of the Vessel, Cargo or Equipment and the Operator accepts no responsibility whatsoever for the failure of the User to comply with such local, national or international legislation or regulations or the consequences of such failure.
- 4.2 Unless otherwise specified in writing to the Operations Manager before the Cargo or Equipment is delivered to the Terminal, the User represents and warrants that any Cargo or Equipment which it delivers, directs to or causes to be upon the Terminal:
- 4.2.1 does not include, or is not, Hazardous Cargo;
 - 4.2.2 is not infested, verminous, rotten or subject to fungal attack and not liable to become so while at the Terminal;
 - 4.2.3 is not over-heated or under-heated or liable to become so while at the Terminal;
 - 4.2.4 requires for its safekeeping no special protection (other than as may be agreed in writing between the Operator and the User) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other Cargo or from flammability but will remain safe if left standing in the open or at the Terminal or in covered accommodation if agreed in writing with the Operator;
 - 4.2.5 contains no unauthorised controlled drugs, contraband, prohibited or stolen goods, pornographic or other illegal material or substances;
 - 4.2.6 is properly and sufficiently packed in accordance with all local, national or international legislation or regulations from time to time applicable and the codes of conduct, practice directions and regulations of the International Maritime Organisation;
 - 4.2.7 is properly and sufficiently prepared, marked, packed, stowed, documented and labelled for all carriage, handling, movement and other operations or transactions affecting them; and
 - 4.2.8 is fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by the Operator.

- 4.3 The User will immediately inform the Operations Manager of any occurrence or incident which might affect the safe and efficient operation of the Operator or other persons using the Terminal and take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience as may be required by the Operator. Without prejudice to the foregoing, the User shall indemnify and hold the Operator harmless from and against any costs, fines, claims, liabilities or other losses of whatever nature arising from such occurrence or incident unless the occurrence or incident has been caused by the negligence of the Operator.
- 4.4 All manifests, delivery orders, sub-orders, shipping notes/advices, consignment notes, documents of title, Cargo handling instructions and orders for any Services provided by the Operator which are necessary for the Operator 's safe and efficient handling of the Cargo, Equipment or Vessel and/or compliance with any obligation imposed by government or regulatory authorities or any similar laws, regulations, rules or requirements must accompany (where required) the Cargo, Equipment or Vessel and be lodged with the Operations Manager or E-services platforms before the Services are required to be performed. Any order given verbally must be confirmed in writing as specified above.
- 4.5 The User will be solely responsible for complying, and will comply, with all formalities, procedures, laws, regulations, bylaws and guidance prescribed by any Competent Authority which apply to the Cargo, Equipment or Vessel and/or the use of Terminal.
- 4.6 Subject to alternative arrangements being agreed in writing with the Operator any standard shipping note, dangerous goods note (where appropriate), temperature control document, or other document accompanying the Cargo or Equipment as required in clause 4.4 must specify marks and number of packages, description of Cargo, gross weight, any weight imbalances, cubic measurement, the name of any Vessel or port to which the Cargo are to be shipped (where appropriate), any special carriage or storage requirements in relation to the Cargo and the name and address of the User or company to whom charges are to be rendered.
- 4.7 A standard shipping note or dangerous goods note in respect of Hazardous Cargo must be clearly endorsed to that effect and the User shall provide all information, including the IMDG Class and the UN number, necessary for the Operator to perform its obligation in connection with such Hazardous Cargo in accordance with all applicable laws, regulations and/or requirements. The User shall ensure that the Cargo is labelled, and the Containers or Equipment distinctly marked, in accordance with applicable laws, regulations and/or requirements.

5. CUSTOMER WARRANTIES AND OBLIGATIONS

- 5.1 The Customer shall provide all the documents and information detailed at least 48 hours before the estimated time of arrival of the Vessel, or as otherwise agreed with the Operator.
- 5.2 The Customer will be deemed to have familiarised itself with and considered all conditions which could affect arrival, mooring, manoeuvring, unmooring and departure of any Vessel at the Terminal, including data relating to the Terminal and its surroundings, the minimum water depth (at any state of the tide) and any physical, surface and sub-surface condition and to have taken into account climatic condition (**Site Conditions**). The Customer acknowledges that the Operator gives no warranty whatsoever in respect of the Site Conditions and it shall have no liability whatsoever and howsoever arising in respect of the Site Conditions.
- 5.3 The Customer shall use reasonable skill and care when berthing the Vessel at the Terminal.
- 5.4 The Customer warrants and represents to ensure that the Vessel is operated in compliance with all applicable laws and international standards with respect to safety, stability,

seaworthiness, fitness for purpose and security including, without limitation, regulations introduced pursuant to the ISPS Code.

- 5.5 At all times when a Vessel is berthed at the Terminal, the Customer shall ensure that the Vessel:
- 5.5.1 furnishes adequate lighting and safe ingress and egress (for the the Operator 's personnel);
 - 5.5.2 maintains appropriately qualified and experienced officers and crew aboard in order to maintain an alert watch and respond to emergencies and to enable the Operator to provide the Services;
 - 5.5.3 maintains engines in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth; and
 - 5.5.4 its crew members adhere at all times to all health and safety rules of the Operator notified to the Customer from time to time.
- 5.6 Any Customer that is not the actual or registered owner of the Vessel berthed or being provided Services at the Terminal, by requesting the Services, represents and warrants that they are doing so on their own behalf and on behalf of the actual or registered owner of the Vessel.

6. SOLAS AND CONTAINER VGMS

- 6.1 The User's attention is drawn to the SOLAS Convention, and to the VGM Procedures followed in order to address the SOLAS Convention and the need to provide a VGM for every export shipment loaded from the Terminal.
- 6.2 The User represents and warrants that it shall comply with the VGM Procedures and shall either supply to the Operator and to any other relevant party a VGM in accordance with the VGM Procedures.
- 6.3 If, and to the extent that, the User fails to comply with the VGM Procedures, or where the Operator reasonably believes that the VGM provided by or on behalf of the User is inaccurate or incomplete:
- 6.3.1 the Operator may, in its absolute discretion, but shall not be obliged to, arrange for a VGM to be provided and the User shall be responsible for any costs or charges arising in relation to the provision of such VGM;
 - 6.3.2 the Operator may withhold the Cargo and any Container from shipment and arrange the storage of such Cargo and Container at the sole expense and risk of the Customer; and
 - 6.3.3 the User shall pay any charges which the Operator may raise in relation to the relevant Cargo or Container.
- 6.4 The User agrees that the Operator may disclose the VGM to any party, including any Competent Authority, which may require disclosure of the VGM for any reason and any carrier or service provider interested in or concerned with the carriage or handling of the Cargo or Container.
- 6.5 The User represents and warrants that it is the shipper of the Cargo or Container for the purposes of the SOLAS Convention or that it is authorised by such shipper to instruct the Operator to perform the Services in accordance with the VGM Procedures.

6.6 The User shall pay any charges which the Operator may raise in relation to its VGM Procedures and the User agrees to pay such charges.

7. **CHARGES, EXPENSES AND LIENS**

7.1 Unless otherwise agreed in writing, the Customer shall be charged the rates and fees set out in the applicable Tariff for all Services provided and all charges shall be paid immediately upon presentation of an invoice whether this be before or after the Services have been provided (and in any event, no later than five (5) days following the invoice date).

The Customer shall confirm to the Operator within three (3) Business Days after receipt by the Customer, the accuracy of actual Vessel working information provided by the Operator to the Customer for invoicing purposes.

7.2 The Customer shall pay to the Operator in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim, deduction, abatement or set-off.

7.3 Where credit approval is granted by the Operator, the charges prescribed by the Tariff are payable within seven (7) days from the date due and, where any charge is not paid within that time, an additional charge of one and one-half percent of any such charge shall be imposed for each thirty (30) day period or portion thereof during which it remains unpaid, which additional charge is equivalent to eighteen percent (18%) per annum. A failure to pay charges on their due date may cause a lien to be placed on the Cargo handled and the Customer may be denied further use of the Terminal until all outstanding charges have been paid.

7.4 Notwithstanding any agreement by the Operator to collect charges from any person other than the Customer, the Customer shall remain liable to the Operator for payment of all charges when due.

7.5 The granting of any credit by the Operator (including any credit terms shown on any invoice or the credit terms applied by clause 7.1) hereof shall be at the absolute discretion of the Operator.

7.6 If the Customer fails to make any payment on the due date or if the Customer becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purposes of reconstruction or amalgamation), or if an administrator, administrative receiver or receiver is appointed in respect of the Customer and/or the whole or part of the Customer's assets, or if the Customer makes any assignment for the benefit of, or composition with its creditors generally or is subject to an equivalent or analogous insolvency event in any jurisdiction:

7.6.1 all and any sums owed by the Customer to the Operator shall become immediately payable, whether or not such sums are subject to a credit agreement (which shall, for the avoidance of doubt, include the payment terms shown on the Operator's invoices and any credit terms applied by clause 7.1); and

7.6.2 the Operator may, without prejudice to any other right or remedy available to it, delay or suspend Services, refuse to provide Services or cancel any or all orders for Services with the Customer.

7.7 The Operator shall have:

7.7.1 a general lien on all Cargo, Equipment and/or Vessels and any documents relating thereto in respect of which the Operator is providing Services or which come into the possession or control of the Operator to secure the payment by the Customer of all

charges and liabilities whatsoever due at any time from the Customer to the Operator under these Conditions; and

- 7.7.2 a particular lien (or equivalent possessory security rights) on all Cargo, Equipment or Vessels in the Operator 's possession.
- 7.8 The Operator may, notwithstanding clause 7.3, exercise its lien at any time and at any place in its sole discretion, whether the Services are completed or not and with or without notice. Upon the Operator exercising its lien under clause 7.7 hereof, storage charges shall apply to any Cargo, Equipment or Vessel held subject to the lien. Moreover, other charges such as, but not limited to, equipment demurrage and rental charges may accrue. The Operator 's lien shall extend to cover such storage charges and other expenses of exercising its lien (including any legal fees or other costs incurred in enforcing and preserving its lien and in recovering or attempting to recover any sums due from the Customer) and any sums due.
- 7.9 Once a lien under clause 7.7 has been exercised, or where clause 3.10 applies, and upon giving the Customer at least fourteen (14) days written notice, the Operator may sell, dispose of or otherwise deal with the Cargo, Equipment or Vessel as agents for and at the expense of the Customer and apply the proceeds towards the payment of any sums due from the Customer.
- 7.10 Upon accounting to the Customer for any balance remaining after payment of any due sums and the costs of and associated with the storage and other expenses the Operator shall be discharged from any liability whatsoever in respect of the Cargo, the Equipment or the Vessel.
- 7.11 The notice period for the sale, disposal or dealing with the Cargo, Equipment or Vessel in clause 7.9 above shall not apply where the Cargo, Equipment or Vessel are likely to perish, deteriorate, reduce in value or damage other Cargo, Equipment or Vessels or property or if the Operator considers them to be a danger or hazard to life or the environment. In such circumstances, the right to sell, dispose or otherwise deal with the Cargo, Equipment or Vessel shall arise immediately upon the sum becoming due. The Operator shall take reasonable steps to notify the Customer or other persons interested in the Cargo, Equipment or Vessel of its intention to sell, dispose or otherwise deal with the Cargo, Equipment or Vessel.
- 7.12 The Operator is not obliged to provide any Services unless complete information has been provided by the Customer in accordance with these Conditions. In cases of: (a) unannounced or not timely announced changes or (b) in the absence of a written acceptance by the Operator of such change and no cancellation of the change request; the Operator shall be entitled at its discretion to accommodate the changes or provide the Services as initially agreed. In case the Operator accommodates the change, the rates as agreed between the parties or, in the absence of such agreement, the rates set out in the applicable Tariff, shall be subject to an additional charge ("Change Request Surcharge") and the Operator reserves the right to claim reimbursement of any additional costs that result from the provision of Services in excess of the Change Request Surcharge.

8. DEFENCES AND LIABILITY LIMITS

- 8.1 The Operator 's liability for any loss or damage to the Cargo, Equipment and/or Vessel shall be determined and limited in accordance with the provisions of clauses 3, 8 and 9.
- 8.2 The Operator will not be responsible for the security or safety of any Vessel while tied up at the Terminal.

- 8.3 The Operator shall not be liable for any loss, damage, delay, non-performance, error or omission whatsoever (including for any loss or damage to Cargo, Equipment and/or Vessel) arising directly or indirectly from the following categories of event: -
- 8.3.1 acts of God including storm, tempest, flood, lightning strike or extreme adverse weather conditions;
 - 8.3.2 nuclear explosion, radioactive, biological or chemical contamination;
 - 8.3.3 landslides, earthquakes and tsunamis;
 - 8.3.4 epidemic, pandemic, plague or quarantine;
 - 8.3.5 blockade or closure of the port;
 - 8.3.6 the nature of the Cargo and/or Equipment and/or Vessel exposing them to total or partial loss or damage due to breakage, rust, decay, desiccation, leakage, wastage, inherent or latent defect or vice or natural deterioration;
 - 8.3.7 insufficiency or inadequacy of marks or numbers on the Cargo and/or Equipment and/or Vessel or the packaging of the Cargo or Equipment;
 - 8.3.8 shortage of berth space, labour, plant deficiency, fuel or power or insufficient depth of water at any berth or the approaches thereto, other than those caused by or directly attributable to the Operator;
 - 8.3.9 strikes, lock-out or other industrial action affecting the Terminal and/or the Terminal Services, other than those caused by or directly attributable to the Operator;
 - 8.3.10 lack of or defective condition of packaging;
 - 8.3.11 war (whether declared or not), civil war, rebellion, invasion, embargo, military coup, revolution or armed conflict on a national scale;
 - 8.3.12 sabotage, criminal damage, terrorism, piracy but only when any of the Services are directly affected;
 - 8.3.13 riot, civil commotion, insurrection on a massive or national scale;
 - 8.3.14 compliance with any law, order, rule or regulation of any Competent Authority, acts of any governmental or super-national authority;
 - 8.3.15 expropriation or nationalisation of the Operator 's assets;
 - 8.3.16 power outage at the Terminal other than those caused by or directly attributable to the Operator;
 - 8.3.17 catastrophic impact on the Operator 's information technology ecosystem (software and hardware), including malicious cyber-attacks or cyber terrorism; and
 - 8.3.18 any other cause or event which is outside the control of the Operator, could not be avoided, prevented or overcome with reasonable foresight, prudence and diligence and materially prevents, hinders or delays performance of all or a material part of the Operator 's obligations under these Conditions.

8.4 In respect of loss or damage to Cargo, the Operator (or any other party for whom the Operator is responsible) shall, in addition and at its option, be entitled to avail itself of the defences, limitations and exclusions of liability which are available to the Customer under the Contract of Carriage which has been issued in respect of Cargo carried by the Customer.

8.5 Mixed Cargo – Limitation of Liability; The Operator will not acknowledge the receipt of or have any responsibility or liability whatsoever for any Cargo that is unloaded from a Vessel in such a manner that they are likely to be mixed with Cargo covered by more than one Contract of Carriage, unless an employee or agent of the Operator is given sufficient time and opportunity to sort, count and inspect the Cargo, and the Operator has been paid by the User to sort, count and inspect the Cargo.

The record of sort, count or damage compiled by the Operator shall in the event of any claims being made against the Operator for loss, damage or expense be deemed to be an accurate record of sort, count or damage of the Cargo upon receipt from the Vessel.

8.6 The Operator shall not be liable for loss of or damage to any Vessel, Equipment or Cargo unless the User can establish that the loss or damage was directly caused by the Operator or any other party for whom the Operator is responsible whilst (i) in respect of Cargo or Equipment, the same was in the Custody of the Operator or any other party for whom the Operator is responsible or (ii) in respect of the Vessel, the same was at the Terminal. If the loss or damage was contributed to by the act or omission of the User or any other person, the Operator shall be exonerated from liability to the extent that such act or omission contributed to the loss or damage.

8.7 The liability of the Operator under these Conditions shall not exceed the financial limits set out below for the specified category of loss or damage provided that the maximum liability of the Operator arising out of any single incident or series of related incidents or series of incidents arising from a common cause, or breach of these Conditions, shall not in any case exceed seven hundred and fifty thousand Dollars (\$750,000):

8.7.1 in the case of damage to a Vessel, a maximum of \$750,000;

8.7.2 in the case of physical loss or damage to a Container, or a Container and its ancillary equipment, the lesser of (i) depreciated value and (ii) five hundred dollars (\$500). The depreciated value of the Container shall be calculated on the basis of the invoice value with a straight-line depreciation of five point five per cent (5.5%) per annum from the date of manufacturing as per the Container's container safety certificate until the day before the incident;

8.7.3 in the case of any other Equipment owned or operated by the Customer not previously referred to in this clause, the lesser of (i) the depreciated value and (ii) five hundred dollars (\$500);

8.7.4 in the case of physical loss or damage to Cargo the lesser of:

i) the landed cost of the Cargo, including invoiced cost as paid to the supplier, plus freight, insurance and any duty paid and not refundable, minus any salvage market value; and,

ii) five hundred dollars (\$500) per package or per customary freight unit,

whichever is less, unless the nature and value of the Cargo is declared in writing to the Operator at or before the time the Cargo is received on the Terminal, in which case the liability of the Operator shall be limited to the landed cost of the Cargo described in

clause i) above. For the purpose of clause ii) hereof, where Cargo is received or handled by the Operator within a Container, trailer or railcar, the Container, trailer or railcar and not the number of articles therein shall for the purpose of clause ii) be deemed to be a package or customary freight unit; and

8.7.5 in the case of all other claims, a sum equal to the charges paid to the Operator for the Services in respect of which the claim arose.

8.8 Save as set out in clause 8, the Operator shall not have any liability for any loss of or damage arising out of or in connection with these Conditions, performance or any failure to perform the Services howsoever arising (whether caused by negligence or otherwise).

8.9 If the User requires the limits of liability in clause 8.6 to be increased, the User shall request such increase in writing from the Operator. No such increase shall be binding upon the Operator unless agreed by an authorised officer of the Operator. The Operator shall consider any such request in its absolute discretion and may agree to such a request subject to any terms which it considers appropriate including, but not limited to, an increase in the charges raised by the Operator in relation to the relevant Services.

9. GENERAL LIABILITY PROVISIONS AND INDEMNITY

9.1 Exclusion of certain losses; Under no circumstances shall the Operator be liable for any loss of profit, loss of market share, loss of goodwill, loss of future or anticipated sales, loss of production or factory "down time", damages, costs or expenses incurred or payable by the User to any third party (in each case whether direct or indirect) or any indirect or consequential loss.

9.2 Applicability of limits and exclusions; The limits and exclusions of liability in clauses 8 and 9 shall apply to any claim made against the Operator whether such claim be made in contract, tort (including negligence), bailment breach of express or implied warranty or otherwise or otherwise.

9.3 Exclusions, Exemptions and Limitations are Cumulative; The exclusions, exemptions and limitations of liability set forth herein, either expressly or by reference are cumulative and are in addition to and not in substitution for or in limitation of any other clauses excluding, exempting or limiting liability or any other exclusions, exemptions or limitations of liability upon which the Operator may rely at law or in equity.

9.4 Port Authority; In addition to and not in substitution for or in limitation of the exceptions, exemptions, immunities and limitation of liability provisions set out in the Port Authority Fee Document, the Port Authority and its employees shall be also entitled to the same exceptions, exemptions, restrictions and limitation of liability provisions set out herein as are applicable to the Operator.

9.5 Weather Damage; The Operator and the Port Authority shall not be liable or responsible for damage to Cargo, chassis or any other property whatsoever caused by the weather while in outside storage or in transit or on Terminal.

9.6 Container Crane;

9.6.1 The Operator makes no representations or warranties whatsoever as to the condition or fitness of a Container Crane or the competence of a Container Crane operators or any personnel whomsoever involved directly or indirectly in the preparation, position, movement, use, operation or shut-down of any Container Crane.

- 9.6.2 The Operator shall have no liability whatsoever for any loss, damage or expense, whether involving economic loss, physical loss or damage, or personal injuries or death, arising from or in any way related to the preparation and / or positioning of a Container Crane prior to or during operations, as well as the use or operation of a Container Crane during the period of hire or the shut-down time of a Container Crane following the end of operations. The Customer, Cargo Owner and/or User shall indemnify and hold harmless the Operator from all claims, demands, causes of action or liability, whether in contract, tort or otherwise, arising from or in any way related to the preparation and / or positioning of a Container Crane prior to the beginning of the period of operations, including but not limited to claims for economic loss, physical loss or damage, or personal injuries or death, together with all expenses and costs of any nature or kind whatsoever arising therefrom.
- 9.6.3 The Customer, Cargo Owner and/or User shall indemnify and hold harmless the Operator from any and all loss, damage and expense incurred by the Operator arising from or in any way related to the preparation and / or positioning of a Container Crane prior to the beginning of the period of operations, the use or operation of a Container Crane during operations or the shut-down time of a Container Crane following the end of operations, which loss, damage and expense shall include but shall not be limited to all physical damage to property of the Operator or for which the Operator is responsible, physical damage to a Container Crane, damage to the Port Authority's property and all economic loss to the Operator including but not limited to loss of revenue and loss of business. The liability of the Customer, Cargo Owner and/or User under this Section 9.6.3 and under Section 9.6.2 shall be joint and several.
- 9.6.4 The provisions of clauses 9.6.1, 9.6.2 and 9.6.3 herein shall apply whether or not any damage, loss, expense or claims arise directly or indirectly as a result of the act or omission of the Operator, its officers, employees, servants or agents or any other person whomsoever for whose conduct or actions the Operator might otherwise be legally responsible, even if such act or omission constitutes negligence or willful misconduct. The provisions of clauses 9.6.1, 9.6.2 and 9.6.3 and 9.6.4 shall apply notwithstanding any other term or condition herein, unless any such provision conflicts directly with the terms or conditions of the Port Authority Fee Document, in which case the Port Authority Fee Document shall apply but only to the extent of any such conflict.
- 9.7 Vessel or Crew Damage: Customer and the actual or registered Vessel owner are liable on a joint and several basis to the Operator for any costs, expenses, damages or losses caused or occasioned as a result of the use by the Vessel and/or its crew of the Terminal;
- 9.8 De minimis; The User shall not make any claim against the Operator where the value of the loss suffered by the User arising from the incident or event giving rise to the claim does not exceed five hundred dollars (\$500).
- 9.9 Time limits, notice period; No claim may be pursued by either the Operator or the User (**Claimant** for the purpose of this clause) against the other (**Recipient** for purposes of this clause) and the Recipient will be discharged of all liability whatsoever and howsoever, unless:
- 9.9.1 in the case of an event which customarily requires a survey of damage, the Claimant must notify the Recipient as soon as reasonably practicable the Claimant becomes aware of the event. Failure to do so may release Recipient from liability with regards to any claim.
- 9.9.2 the Recipient has been advised in writing of the event or events giving rise to the claim within sixty (60) days of their occurrence; and

- 9.9.3 proceedings are commenced in accordance with clause 11.5 and written notice thereof is received by the Recipient, within one (1) year of the occurrence of such event or events.
- 9.10 To the extent permitted by law, the Customer hereby agrees, for and on behalf of itself, and the Vessel owner, to waive any statutory right to limit liability for personal injury or property damage by establishing a limitation fund under any applicable international convention or national law governing the liability of owners and/or operators of seagoing vessels, including the Limitation Conventions. The Customer hereby warrants that it has the authority to bind the Vessel owner to such waiver of limitation. For the purpose of this clause, "Limitation Conventions" means the Convention on Limitation of Liability for Maritime Claims 1924, the Convention on Limitation of Liability for Maritime Claims 1957, the Convention on Limitation of Liability for Maritime Claims 1976, and the 1996 Protocol thereto.
- 9.11 Indemnity; The User shall promptly, indemnify and hold the Operator harmless, its sub-contractors or any member of the Operator Group (and their respective employees, servants, agents, insurers or reinsurers) against all costs (including the costs of investigating and defending any claims), expenses, claims, losses, liabilities, orders, awards, fines, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered by the Operator, any of its sub-contractors or any member of the Operator Group (and their respective employees, servants, agents, insurers or reinsurers) as a result of or in connection with any of the following:
- 9.11.1 the act, omission or instructions of the User, consignee, consignor or owner or other persons interested in the Cargo and/or Equipment and/or Vessel;
- 9.11.2 any breach by the User of any of the warranties given or obligations undertaken by the User under these Conditions, including the provisions of clauses 4, 5 and/or 6;
- 9.11.3 the User becoming liable to any other party (including to any authority having legal jurisdiction over the Services, the Terminal, the Vessel, the Containers, the Equipment and/or the Cargo) and/or incurring or suffering additional costs by reason of the Operator carrying out the Customer's instructions;
- 9.11.4 any cause arising from or with respect to the Vessel, Containers, Equipment and/or Cargo for which the Operator is not responsible, including any loss, damage or personal injury arising in any way from Hazardous Cargo presented by a User for handling at the Terminal;
- 9.11.5 the Operator incurring liability in excess of its liability under the provisions of these Conditions regardless of whether such liability arises from, or in connection with a breach of contract, negligence or breach of duty by the Operator, its agents, servants, members of the Operator Group or any of its sub-contractors; and
- 9.11.6 delayed, inaccurate or incomplete information whenever provided, including VGM information provided by, or on behalf of, the Customers on which the Operator relies.
- 9.12 The Customer, on its own behalf and on behalf of the actual or registered Vessel owner, if the Customer is not the actual or registered Vessel owner, hereby agrees to release the Operator from any claims whatsoever arising from or related to the use by the Vessel of the Terminal and to hold harmless and indemnify the Operator against any loss, damage or expense, including but not limited to, physical damage to the property of the Operator, claims by third parties for physical damage and/or personal injury, and/or death, and/or consequential loss howsoever caused or occasioned as a result of the use by the Vessel and/or its crew of the Terminal.

9.13 Contract of Carriage;

9.13.1 The Customer (where acting as a carrier) undertakes to incorporate in all its Contracts of Carriage provisions to the effect that:

- (a) the Operator shall not be liable to any person other than the Customer in relation to the Cargo and no claim or allegation shall be made against the Operator or any of its subcontractors whatsoever, whether directly or indirectly, which imposes or attempts to impose upon the Operator or any of its subcontractors any liability whatsoever in connection with the Cargo, the carriage of the Cargo or Contract of Carriage, whether or not arising in contract, bailment, tort, negligence, breach of express or implied warranty or otherwise; and
- (b) the Operator and all its subcontractors shall have the benefit of all terms, rights, defences, provisions, conditions, exceptions, limitations and liberties in the Contract of Carriage benefiting the Customer, including the governing law and jurisdiction clauses (**Defences**), as if the Contract of Carriage (including the governing law and jurisdiction clauses thereof) were expressly for their benefit. In entering into the Contract of Carriage the Customer, to the extent of the Defences, does so not only on its own behalf but also as agent and/or trustee for the Operator and its subcontractors, and the Operator and its subcontractors shall, to the extent of the Defences, be or be deemed to be parties to the Contract of Carriage.

9.13.2 Notwithstanding the liability of the Operator to the Customer under these Conditions, if any claim or allegation should nevertheless be made against the Operator and/or any of its subcontractors (including in the event the Customer fails to incorporate the above-mentioned provisions into the Contract of Carriage), the Customer indemnifies and holds harmless the Operator on the Operator 's own behalf and on behalf of its subcontractors against all consequences thereof.

9.14 No Personal Liability; There is no agreement between the Customer and any director, employee or consultant (whether employed or self-employed) of the Operator (each an Employee) and any services provided by such Employees are provided on behalf of the Operator and not in his or her personal capacity and no Employee assumes any personal responsibility, obligation or duty to the Customer. The Customer undertakes that it will not bring any claim (including under these Conditions or in law of tort) against an Employee.

9.15 Insurance; The Operator does not arrange insurance for or on behalf of the User or any other party. The User is solely responsible for arranging insurance or ensuring that insurance has been arranged in relation to any Cargo, Equipment, Vessel, subcontractor, agent or any person which or who may, at the instruction or direction of or on behalf of the User, enter upon the Terminal. The Customer must take out and maintain with insurers of international standing (which shall include any members of the International Group of P&I Clubs but also any other insurers acceptable to the Operator with a minimum credit rating of BBB) all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent shipping operator including P&I Club insurances.

10. **TERMINAL DAMAGE**

10.1 In case of any Vessel allision causing damage to the Terminal or any of the Operator 's facilities or equipment, the provisions of this clause 10 shall apply. Vessel allisions cause the Operator and its affiliates significant financial losses including the costs associated with repair and/or repairing property; operational impact and inefficiencies, reputation damage; loss of business;

increases in insurance premiums; unrecoverable legal costs; and management time and cost in responding to vessel allisions and investigating purchase and carriage options for repair and/or replacement of damaged property. In developing the following sections of these Conditions, the Operator has sought to provide for a regime that allows the Operator to recover its losses in a formulaic way and seeks to strike a fair balance between the interests of the Operator on the one hand and the Customer and Vessel owner on the other hand. The Customer hereby warrants that it has the authority to bind the Vessel owner to the following terms.

- 10.2 The Customer hereby agrees, for and on behalf of itself, and the Vessel owner, that in the event of any vessel allision causing damage to the Terminal or any of the Operator 's facilities or Equipment, the Customer and the Vessel owner will provide security, in a form acceptable to the Operator, for the Operator 's worst realistic case losses, as determined by the Operator, plus two and half (2.5) years interest and costs together with written agreement from the Customer as to the Operator 's submission for appropriate jurisdiction. In the event that such security is not provided, the Operator shall, without prejudice to any other remedies available to it, be entitled to arrest the Vessel at the Terminal or elsewhere until such time as the foregoing security and written agreement have been provided by the Customer or Vessel owner.
- 10.3 The Customer agrees (for and on behalf of itself and the Vessel owner) that the Operator shall only be required to obtain a maximum of three (3) quotations from contractors in respect of the repair or replacement of damaged Terminal infrastructure or equipment. In the event of the Operator 's property being damaged, the Operator shall be entitled to recover from the Customer or the Vessel owner the cost of repairing or restoring the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new. In the event of the Operator 's property being destroyed (which for the purposes of this clause shall mean when the property cannot be repaired within a reasonable time or to a condition at least equal to its condition prior to damage without incurring costs greater than the value of the property prior to it being damaged), the Operator shall be entitled to recover from the Customer or the Vessel owner the cost of replacing the damaged property with a similar property in a condition equal to, but not better or more extensive than, its condition when new.
- 10.4 Each party shall appoint, or procure that their insurers appoint on its behalf, a professional and independent forensic accountant to quantify the actual losses (including financial and business interruption losses) suffered by the Operator arising from the vessel allision. The parties shall provide all appointed forensic accountants with all reasonable co-operation and documents.
- 10.5 Within fifteen (15) days of the six (6)-month anniversary of the date of the vessel allision, the appointed forensic accountants shall jointly issue a summary of the actual losses suffered by the Operator arising from the vessel allision during the period of six (6) months from the date of the vessel allision.
- 10.6 If the forensic accountants disagree on the assessment of losses under clause 10.5, then each forensic account shall, within 5 days of the expiry of the period stipulated in 10.5 above, issue to the parties its sole assessment of the losses suffered by the Operator arising from the vessel allision during the period of six (6) months from the date of the vessel allision. If the results of the loss assessments made by the two (2) forensic accountants appointed by the parties (or their insurers) pursuant to clause 10.4 differ by ten percent (10%) or less, then such values will be averaged and such result shall be final and binding for the parties as the value of the business interruption element of the Operator 's claim for the applicable period.
- 10.7 If the results of the loss assessments made by the two (2) forensic accountants appointed by the parties (or their insurers) pursuant to clause 10.4 differ by more than ten percent (10%), then the parties shall mutually agree and appoint a third independent appraiser or, if not so

agreed with seven (7 days) of the date of a written notice from one party to the other proposing the identity of a third independent appraiser then an independent third party appraiser shall be appointed by the ICC International Centre for Expertise (or such other body agreed by the parties), and such appraiser shall select one (1) of the two (2) valuations which, in its sole opinion, based on good industry practice, shall be final and binding for the parties as the value of the business interruption element of the Operator 's claim for the applicable period.

- 10.8 The process set out in clause 10.5 to 10.7 shall be repeated every six (6) months until such time as the Terminal has resumed full operations (with a final reconciliation loss assessment to be conducted following the resumption of full operations).
- 10.9 Costs of appointed forensic accountants - The parties shall bear their own costs in relation to the appointment of any forensic accountants pursuant to this clause 7. The cost of any third independent appraiser appointed in accordance with clause 8.7 shall be shared equally between the parties.
- 10.10 The Customer shall pay to the Operator, in addition to any other remedies available to the Operator under this Agreement or at law, the amount determined pursuant to clause 10.5 to 10.7 within thirty (30) days of receipt of an invoice from the Operator issued following completion of the process set out in clause 10.5 to 10.7.

11. MISCELLANEOUS PROVISIONS

- 11.1 Entire agreement; (a) Subject to 11.1(b), these Conditions, including the Tariff, comprise the entire agreement between the parties with respect to the Services and any representations or statements whether made orally or written elsewhere are hereby excluded, provided that this clause shall not exclude or limit any liability or any right which any party may have in respect of pre-contractual statements made or given fraudulently; (i) hereby excludes, to the fullest extent permitted, all conditions, warranties or other terms implied or expressed by applicable law; and (ii) supersedes all previous agreements and arrangements between the parties with respect to the provision of the Services. (b) the Operator may issue separate terms and conditions governing the provision of special services which are not covered by the applicable Tariff. Unless specified otherwise in writing, such additional terms and conditions shall apply in respect of the special services and these Conditions shall continue to apply to the extent they are applicable.
- 11.2 EDI Communications; This clause shall apply (without prejudice to the other clauses in these Terms) where partial or exclusive transmission and interchange of information between the parties happens by means of an electronic data interchange system whereby electronic messages are transmitted from one party to another party ("EDI System"). The parties shall maintain (without modification) a data log of EDI System messages exchanged between them including details of times of transmission ("Data Log"). Data contained in the Data Log shall be retained by way of record for a period of not less than twelve (12) months. The Data Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the data must be capable of being readily retrieved and presented in human readable form. Each of the parties shall take reasonable care in so far as it is within its power to do so to ensure that EDI System transmissions are secure and that unauthorised access to its EDI System is prevented. The parties agree that in the event of any complete or partial breakdown or failure of the EDI System and/or any related intermediary service platform, they will each take necessary steps to ensure the continued transmission and receipt of relevant messages, notices and information by alternative and/or additional means such that the operation of these Conditions is not adversely affected. The sender is responsible and shall use its best endeavours to ensure that EDI System messages are complete and correct. Notwithstanding the foregoing, the recipient must immediately inform the sender if it is, or should in all the

circumstances, be reasonably obvious to the recipient that the transmission of such EDI System message is incomplete, incorrect or otherwise deficient.

- 11.3 Waiver; The waiver by either party of a breach or default of any of the provisions of these Conditions by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 11.4 Governing law; These Conditions, the applicable Tariff and any contract or other relationship subject thereto shall be governed by and construed in accordance with the laws of British Columbia and the federal laws of Canada applicable in British Columbia, without regard to the conflict of law rules of British Columbia that would apply a different body of law.
- 11.5 Jurisdiction; Subject to clause 11.7, the Courts of British Columbia and the Federal Court of Canada (Vancouver Registry) shall have exclusive jurisdiction over any dispute arising from or in relation to these Conditions, the applicable Tariff or any relationship (whether arising in contract, tort or otherwise) which is subject to these Conditions.
- 11.6 The Operator shall have the right to bring any claim in connection with or arising out of these Conditions or the applicable Tariff in the court of any jurisdiction.
- 11.7 Severability; If any provision of these Conditions shall be or be determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of these Conditions shall not be affected and the remainder of these Conditions shall continue in full force and effect.
- 11.8 Language; Where these Conditions are translated into a language other than English and in the event of any conflict between the English version and the other version, the English version of these Conditions shall always prevail.