The “Scope and Conditions of Classification”, as contained in the entirety of Part 1 of the ABS Rules for Building and Classing Steel Vessels currently in force as of the date of signing, are hereby incorporated by reference into these Terms and Conditions as if fully set forth herein. A copy of the “Scope and Conditions of Classification” may be obtained at any office of American Bureau of Shipping (hereinafter “ABS”) or over the internet at [www.eagle.org.](http://www.eagle.org/)

INDEPENDENT CONTRACTOR - In performance of the services, hereunder, ABS is and shall remain at all times an independent contractor and neither ABS nor any of its officers, employees, servants, agents or subcontractors shall be or act as the employee, servant or agent of any other party hereto in its performance of any of the terms and conditions hereof.

ACCESS - The party or parties requesting the services of ABS (hereinafter the “Client”) will arrange for ABS, its officers, employees, servants, agents and subcontractors to have access to all vessels, plans and specifications necessary to conduct the contract services and to all places where the materials, equipment, components and parts are being manufactured, stored, assembled, fabricated or otherwise prepared. Client shall also grant access to auditors from the International Association of Classification Societies (IACS) or flag administration when requested by ABS and accompanied by ABS personnel. It is expressly understood that all plans, specifications or other documents furnished to ABS hereunder are and shall remain the sole property of the Client and ABS shall treat all such material as confidential.

Client is responsible for establishing and maintaining safe working conditions in accordance with applicable safety standards and for providing ABS surveyors with safe access to sites and assistance during construction, testing and trials. ABS personnel shall comply with Client’s safety procedures to the extent such procedures are communicated to ABS personnel and are not in contravention of any applicable safety standard. If ABS personnel feel the proposed working conditions are unsafe they may refuse to attend the work site.

RESPONSIBILITY - ABS shall designate its representative(s) to the facilities specified by the Client where items related to the project are being kept, processed, manufactured, assembled and/or fabricated to examine, inspect, check and witness tests as specified hereunder and to confirm conformity of completed items with the requirements specified hereunder.

NOTICES - The Client will arrange to provide ABS with sufficient notice of required attendance at the inspection site.

INSURANCE - ABS shall arrange for and at all times maintain adequate insurance for its employees and servants against any and all accidents, illness, injuries or other occurrences in conformity with any applicable Workers’ Compensation statutes or other similar laws. Nothing herein contained shall be deemed to affect or enlarge upon the rights of any employee, servant, agent or subcontractor of ABS.

HOLD HARMLESS - The Client or his assignee or successor in interest agrees to release, indemnify and hold harmless ABS from and against any and all claims, demands, lawsuits or actions for damages, including legal fees, for harm or loss to persons and/or property tangible, intangible or otherwise which may be brought against ABS incidental to, arising out of or in connection with the work to be done, services to be performed or material to be furnished hereunder except for those claims caused solely and completely by the negligence of ABS, its directors, officers, employees, agents or subcontractors.

LIMITATION OF LIABILITY – If any party to this Agreement relies on any information or advice given by ABS and suffers loss, damage or expense directly therefrom which is proven to have been caused by the sole negligent act, omission or error of ABS, its officers, employees or agents, or from breach of any implied or express warranty of workmanlike performance in connection with the services, or from any other reason, then the combined liability of American Bureau of Shipping, its officers, employees, agents or subcontractors to Client or any other person, corporation, partnership, business entity, sovereign, country or nation, will be limited to the greater of: (a) the total sum of $100,000\*; or (b) an amount equal to ten times the sum actually paid to ABS for services alleged to be deficient.

\*This limitation of liability may be increased up to an amount twenty-five times the sum paid for services upon receipt of Client’s written request at or before the time of performance of services by ABS and upon payment by Client of an additional fee of $10.00 for every incremental $1,000.00 increase in the limitation.

CONSEQUENTIAL DAMAGES - In no event shall either ABS or Client be liable for indirect or consequential damages, including, without limitation, loss of use, loss of profit, or loss of contract suffered by any person regardless of whether such claim is based upon alleged breach of contract, willful misconduct, or negligent act or omission.

EXPORT CONTROL - The parties shall comply with applicable United States international trade laws and regulations, including the Arms Export Control Act, the International Traffic in Arms Regulations (ITAR), the International Emergency Economic Powers Act (if invoked) (or any successor legislation), the Export Administration Regulations (including the anti-boycott provisions), and the trade sanctions regulations administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control. Client acknowledges that any hardware, software, technology or services transferred under this Agreement may be subject to the U.S. export control restrictions and that it has implemented and will adhere to appropriate procedures to comply with such U.S. restrictions.

ABS agrees to fully cooperate with Client in an effort to determine if items are subject to U.S. export control laws and regulations. Client agrees that it shall not export, re-export, re-transfer or otherwise dispose of items transferred under this Agreement (including releases of such items to persons who are not U.S. citizens or permanent residents, wherever located) except in compliance with the licensing and other applicable requirements of the appropriate U.S. export regulations. Client agrees to indemnify and hold harmless ABS from and against any liability (including fines or legal fees) incurred by ABS, to the extent that Client is at fault, with respect to any export or re-export activities by Client in violation of the U.S. export control laws and regulations.

TERMINATION - Either party hereto may cancel this Agreement upon thirty (30) days’ written notice to the other party.

DISPUTES - ABS and the Client will make every effort to settle any dispute amicably. In the event an amicable resolution is not achieved, any and all differences and disputes of whatsoever nature arising out of this Agreement shall be put to arbitration in the City of New York, New York pursuant to the laws of arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by ABS, one by Client, and one by the two so chosen . The decision of any two of the three on any point or points shall be final. Until such time as the arbitrators finally close the hearings, either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Agreement for hearing and determination. The arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. The arbitrators may grant any relief other than punitive damages which they, or a majority of them, deem within the scope of the agreement of the parties, including, but not limited to, specific performance. Awards made pursuant to this clause may include costs including a reasonable allowance for attorneys’ fees and judgment may be entered upon any award made hereunder in any court having jurisdiction. Both parties hereby mutually waive any and all claims to punitive damages in any forum.

Client shall be required to notify ABS within thirty (30) days of the commencement of any arbitration between it and third parties which may concern ABS’s work in connection with this Agreement and shall afford ABS an opportunity, at ABS’s sole option, to participate in the arbitration.

PAYMENTS - For all work in progress, ABS will submit invoices to the Client in conformance with this Agreement. Unless otherwise provided, all fees hereunder shall be payable in United States Dollars to American Bureau of Shipping, P.O. Box 201614, Houston, Texas 77216-1614 U.S.A. by check and shall refer to the ABS-issued invoice number. Wire transfers may be made through Chase Bank of Texas, NA, Houston, Texas 77252-8025 U.S.A. account number 0010-088-8180 ABS/Routing number 113000609 and shall refer to the ABS issued invoice number.

If there should be a dispute over the invoice amount, the undisputed portion of the invoice shall be paid and an explanation of the dispute shall accompany payment so that action may be taken to resolve the dispute. In addition, ABS shall have the right to annually increase its costs and/or fees and will provide Client with notice of the same.

Upon default in payment for a period in excess of thirty (30) days from the date of the invoice, the Client shall be liable for a late charge of one and one-half (1-1/2) percent per month thereafter. Should ABS be required to take any action for the collection of fees hereunder, there shall be added to the invoice amount all costs and expenses of such action, including reasonable attorneys’ fees, and ABS may take judgment for the entire amount due.

SCHEDULED COMPLETION - Any fixed or lump sum fee quotations are based on a definite schedule completion date at the time of the entry into this Agreement. Should this Agreement for services be extended beyond the anticipated completion date, the Client shall be liable for additional charges in accordance with the then-current fees.

ASSIGNMENT - In performance of this Agreement, ABS may at its discretion designate one or more sub-contractors to perform all or any part of its duties hereunder.

DEFAULT - In the event of a default in performance on the part of the Client or in the event of termination, all plans, drawings, specifications, information and reports or any property of the Client in possession of ABS shall be subject to lien for the payment of all fees and expenses due and owing by virtue of this Agreement, the termination hereof, or default hereunder and ABS will have the right to withhold reports on any projects from the Client.

ENTIRE AGREEMENT - This Agreement entered into by and between ABS and the Client, constitutes the entire Agreement between the parties. None of the Terms and Conditions contained herein may be added to, modified, superseded or otherwise altered except by written instrument signed by an authorized representative of both ABS and the Client.

TIME BAR TO LEGAL ACTION - Any statutes of limitation notwithstanding, Client expressly agrees that its right to bring or to assert against ABS any and all claims, demands, or proceedings, whether in arbitration or otherwise, shall be waived unless: (a) notice is received by ABS within ninety (90) days after the Client had notice of, or should reasonably have been expected to have had notice of, the basis for such claims; and (b) arbitration or legal proceedings, if any, based on such claims or demands of whatever nature are commenced within one (1) year of the date of such notice to ABS.

NON-WAIVER AND SEVERABILITY - No waiver by either party of any breach of any of the terms of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of any other term hereof. If a provision of this Agreement is held invalid all valid provisions that are severable from the invalid provision shall remain in force.

GOVERNING LAW - The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of New York.

FORCE MAJEURE - Neither party hereto shall be liable to the other for default or delay in performing its obligations hereunder if such default or delay is caused by fire, strike, riot, war, act of God, pandemic, delay of carriers, governmental order or regulations or any other similar or different occurrence beyond the reasonable control of the party so defaulting or delaying, except that cancellation for such causes may not be made without reimbursement to ABS for expenditures actually incurred for labor and materials upon the authority of this agreement prior to receipt of such notice.