



1. **Definitions:** In this Agreement:

- a) "Agreement" means the Agreement entered into by the Buyer for the purchase of Deliverables from the Seller based solely upon the content of the following documents taken together: the terms and conditions of the Purchase Order, and the RFP, RFQ, or Standing Offer, or Offer (as the case might be) associated with the Purchase Order and Seller's Proposal or Response to the same as accepted by the Buyer and reflected in the Purchase Order.
- b) "Buyer" means Oceanex Inc. (hereafter "Oceanex").
- c) "Claim" means any claim, suit or action by any Person concerning or related to the Agreement and the supply of Deliverables to the Buyer by the Seller.
- d) "Copyright" means the copyright to any and all artwork, copy, labels and packaging, manuals and/or other documentation in electronic, paper or other format for or related to the Deliverables.
- e) "Deliverables" means the Goods and/or Services described in Purchase Order.
- f) "Fees" means the fee for a Good and/or a Service as defined in section 11 of these Terms and Conditions.
- g) "Future Goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale and/or supply of those goods.
- h) "Goods" means and includes tangible and/or intangible personal property other than things in action and money and includes natural products of the land, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale and Future Goods.
- i) "Government Authority" means any governmental authority, department, regulatory agency, board, commission, court, tribunal, or other body having jurisdiction over a matter related to, the Agreement, a Party to the Agreement, the Deliverables and/or the supply of the Deliverables.
- j) "Indemnified Party" means all persons, including any third parties, which the Indemnifying Party agrees to indemnify under this Agreement.
- k) "Indemnifying Party" means the Party assuming indemnification obligations under this Agreement.
- l) "Laws" means all laws, statutes, by-laws, ordinances, codes, standards, regulations, decisions and other pronouncements by any Government Authority that are legally binding upon a Party or the Parties or that have the effect of law on a matter relating to the Agreement or the supply of Deliverables under the Agreement.
- m) "Losses" means: any damages awarded and fines assessed or imposed by a Government Authority; any amounts due under claim settlement; and any other costs, losses, damages, expenses, charges, fines, penalties and/or injuries of every kind and character (including without limiting the generality of the foregoing, legal and other professional fees) related to the Agreement or the supply of Deliverables.
- n) "Marks" means the names, trademarks, service marks, logos, and related designs or trade names of the Deliverables.
- o) "Materials" means all raw materials, components, and other items necessary for the manufacture and/or supply of Deliverables.
- p) "Offer" means the offer of the Seller made to the Buyer on a single occurrence or other basis, but not in response to an RFP, RFQ or Standing Offer to supply Deliverables
- q) "Parties" means each of the Buyer and the Seller, and "Party" means either one of them.
- r) "Person" includes an individual, sole proprietorship, firm, corporation, partnership, limited partnership, joint venture and every other juridical, legal or business entity whatsoever.
- s) "Proposal" means the proposal of the Seller issued in response to the RFP, RFQ, Standing Offer or RFS, as applicable.
- t) "Purchase Order" means a binding commitment in writing to purchase the Deliverables.
- u) "RFP" means the request for proposals for the Deliverables issued by the Buyer, as applicable.
- v) "RFQ" means the request for quotations for the Deliverables issued by the Buyer, as applicable.
- w) "Seller" means the Party named on the Buyer's Purchase Order who is selling the Deliverables.
- x) "Services" means the supply and provision of requested work or professional services such as legal, accounting, engineering, architectural or other services as described in the RFP, RFQ or Standing Offer related to those services by the Seller to the Buyer.
- y) "Standing Offer" means a written agreement between the Parties under which the Seller offers to supply Deliverables being Goods and/or Services to the Buyer at a predetermined price or rate for a certain period defined in that agreement on an "as and when" required basis.
- z) "Terms and Conditions" means the terms and conditions contained in this document.

2. **Deliverables (scope):** The Deliverables are the Goods and/or Services as described in the Purchase Order and Proposal as accepted by the Buyer related to the RFP, RFQ, or, Standing Offer, as the case may be, associated with the same.

3. **Purchase Orders:** Each Purchase Order:

- a) in the case of a Purchase Order for Goods will specify:
 - i) the quantity of Deliverables ordered; and
 - ii) the required delivery date, except that where no delivery date is specified in the Purchase Order delivery will be within the time period referenced the document be it the RFQ, RFP, Standing Offer or Offer as accepted by the Buyer establishing the terms of supply); and
 - iii) the Fees being the price to be paid for the Deliverables; and
 - iv) the shipping address and routing instructions; and/or
 - v) reference any terms and conditions (including Deliverables specific terms and conditions) related to the supply of the Deliverables.
- b) in the case of a Purchase Order for Services will specify:
 - i) the description of the Deliverables ordered; and
 - ii) the Fees being the price or rate to be paid for the Deliverables, including how the price to be paid will be determined; and
 - iii) the required date of delivery and supply of the Deliverables, except that where no delivery date is specified in the Purchase Order delivery will be within the time period referenced the document be it the RFQ, RFP, Standing Offer or Offer as accepted by the Buyer establishing the terms of supply); and/or

- iv) reference any terms and conditions (including Deliverables specific terms and conditions) related to the supply of the Deliverable.
4. **Deliverables in Excess:** Goods and/or Services delivered in excess of amount called for in a Purchase Order may be refused by the Buyer and returned at the Seller's expense.
5. **Tagging Instructions and Product Details:**
- When applicable, the Seller shall clearly show the manufacturer's part numbers on shipping/packing slips and invoices for each line item on the Purchase Order;
 - Packing Lists, referencing the Buyer's Purchase Order, must accompany each shipment;
 - For Goods requiring Material Safety Data Sheets (MSDS), the Seller must forward current MSDS directly to: Oceanex Inc. and include one copy of the Material Safety Data Sheet(s) with each shipment. Any shipment of Goods will be refused unless suitably identified as required by WHMIS. The Seller is also required to ensure that a full list of the MSD Sheets for all Goods supplied to the Buyer is filed with the Canadian Centre for Occupational Health and Safety (CCOHS) 135 Hunter Street East Hamilton ON Canada L8N 1M5 Phone: 905-572-2981 Toll-free: 1-800-668-4284 (in Canada and the United States) Fax: 905-572-4500 for inclusion on its MSDS data base.
6. **Change of Part Number of Goods Being Supplied:** Should there be any change in the manufacturer's part number occur, the Seller shall cause the old part number, the new part number, and the Purchase Order number, to appear on the Seller's packing slip.
7. **Substitution of Goods and Shipments in Excess of Requested Quantities:** No substitution of Goods for those specified in the Purchase Order or shipment of Goods exceeding the quantity on the Purchase Order, may be made by the Seller, unless that substitution or shipment Good is approved of in writing by the Buyer prior to the shipment of those Goods. Where Goods are substituted by the Seller without the Buyer's prior consent the substituted Goods may be refused by the Buyer and returned at the Seller's expense.
8. **Specifications:** If the Purchase Order, RFP, RFQ or Standing Offer refers to plans or specifications, these shall be deemed to be incorporated in and be a part of this Agreement.
9. **Non-Disclosure of Supplied Information:** Unless otherwise specified by the Buyer in writing, any plans, blueprints, patterns, etc., furnished by the Buyer to the Seller shall not be published or disclosed by the Seller to any other person or corporation, and shall be returned to the Buyer upon completion of the Purchase Order.
10. **Ownership of Documents:** Unless otherwise specified by the Buyer:
- Subject to section 26 hereof, any and all documentation issued by the Buyer in relation to a Purchase Order, including any RFQ, RFP or Standing Offer related to a Purchase Order, including Specifications related to the same, shall be regarded by the Seller and treated as property owned by the Buyer, and may not be used by the Seller for any other purpose other than one related to responding to the same and/or supplying the Deliverables referenced in that documentation; and
 - Subject to section 26 hereof, any Proposal or Offer made by the Buyer in response to a RFQ, RFP, Standing Offer or request by the Buyer related to an Offer shall be regarded the property of the Buyer.
11. **Standards:** The Deliverables shall comply with and meet all Laws and standards applicable to the Deliverables.
- The Seller is to supply applicable certificates to accompany any Goods and/or Services for which such certificates are required to confirm acceptability or to meet conditions imposed by a Classification Society, Transport Canada, or other Government Authority. In a case of supply of steel to a ship, delivery of steel (shapes, plate, and etcetera) shall be accompanied by mill certificates acceptable to satisfy Canadian Welding Bureau requirements.
 - In the case of Goods, the Buyer reserves the right to refuse acceptance of:
 - Any or all electrical equipment or component parts which has not been approved by the Canadian Standards Association (CSA), or ULC; and
 - Any or all equipment or component part that does not meet the standards and requirements for such equipment or component of any applicable Government Authority and in the case of equipment or a component part for a ship the standards and requirements for the same established by Transport Canada, any applicable Government Authority and of the applicable Classification Society for the ship as identified in the Purchase Order.
 - In the case of Services, the Buyer reserves the right to refuse acceptance of:
 - Services that do not meet the plans or specifications referred to in the Purchase Order, or RFP, RFQ or Standing Offer associated with the Purchase Order; and
 - Services that do not meet the standards and requirements for such Services established by any applicable Government Authority and in the case of Services to a Ship, Services that do not meet the standards and requirements for the same established by Transport Canada, any applicable Government Authority and of the applicable Classification Society for the ship as identified in the Purchase Order.
 - The Seller shall have a quality system that conforms to the requirements or any standards referenced in the Purchase Order or the RFQ, RFP, Standing Offer or Offer as accepted by the Buyer that relates to the Purchase Order. The Seller shall upon request by the Buyer provide the Buyer with a certificate of conformance acceptable to the Buyer attesting that the Seller and/or those in the Seller's supply chain has such status. On request by the Buyer, the Seller will permit or facilitate access by the Buyer to the Seller's premises and facilities and operations and those in its supply chain for the purpose of confirming by way of an audit that the Seller and the members of the Seller's supply chain have such a quality system in place.
 - The Seller shall have a health and safety system that conforms to the requirements of Laws and any further standard referenced in the Purchase Order or the RFQ, RFP, Standing Offer or Offer as accepted by the Buyer that relates to the Purchase Order. The Seller shall upon request by the Buyer provide the Buyer with a certificate of conformance acceptable to the Buyer attesting that the Seller and/or those in the Seller's supply chain has such status. On request by the Buyer, the Seller will permit or facilitate access by the Buyer to the Seller's premises and facilities and operations and those in its supply chain for the purpose of confirming by way of an audit that the Seller and the members of the Seller's supply chain have such a quality system in place.
12. **Manuals:** Seller shall at no additional cost to the Buyer Supply the Buyer with any and all manuals and information sheets related to the use and Deliverables and their maintenance.
13. **Ownership, Title and Risk of Loss:**
- Ownership of, title to, and risk of loss for the Deliverables passes to the Buyer upon the Buyer's acceptance of the Deliverables.
 - When the Deliverables have been received by the Buyer and the Buyer is satisfied that the Deliverables meet the specifications and standards and have passed all performance testing and inspections referenced in the Purchase Order and this Agreement, the Buyer will accept the Deliverables. On acceptance by the Buyer, the warranty period will commence. Acceptance shall not release the Seller from its legal obligations and liabilities. Should the Deliverables not be in accordance with the Purchase Order and this Agreement, the Seller will, at the Buyer's option, repair or replace such defective goods at the Seller's own cost and expense.



14. **Fees:**

- a) Unless otherwise agreed by the Buyer and Seller and confirmed in the Purchase Order, no additional fees, charges or expenses shall be incurred or paid by the Buyer to the Seller in respect of the supply of the Deliverables. Prices are firm through delivery for the Deliverables specified or for the term of the Agreement, whichever is greater.
- b) Where the Deliverables are Goods the Buyer, when the Seller has complied with the provisions of the Agreement, agrees to pay the Seller the fixed price of the Deliverables as agreed in writing between the Parties as set out in the Purchase Order and the Agreement (the "Fees") related to the supply of those Goods by the Seller to the Buyer.
- c) Where the Deliverables are Services the Buyer, when the Seller has complied with the provisions of the Agreement, agrees to pay the Seller, (as the case might be) either, the fixed price amount agreed in writing between the Parties related to the supply of the Services or the amount determined to be owing to the Seller and calculated at the rate agreed in writing between the Parties related to the supply of the Services, and any expenses or costs of the Seller related to the Supply of the Services that the Parties agree in writing are to apply to the Supply of those Services by the Seller to the Buyer, as set out in the Purchase Order and the Agreement.
- d) Unless otherwise expressly stated, and confirmed in the Purchase Order, the Fees shall include all taxes, duties, tariffs and charges of any kind which either Party is required to pay with respect to the manufacture, supply, delivery and import (if applicable) of the Deliverables or any part of the Deliverables (as the case might be).
- e) All Fees unless otherwise specified in the Purchase Order are in Canadian dollars.
- f) Where the Seller is a non-resident of Canada, the Parties agree that the Buyer is obligated pursuant to the *Income Tax Act (Canada)* to withhold for Canadian tax purposes a percentage of the Fees for remission to the appropriate Canadian tax authority to be paid to that Seller, unless a valid exemption order is obtained by the Seller.

15. **Invoices:** The Buyer agrees to pay to the Seller all Fees properly owing under this Agreement within thirty (30) days after the date of delivery and receipt of a properly supplied invoice for the same. A properly supplied invoice is one that contains the invoice number, invoice date, description of the transaction, total invoice amount with any applicable expenses or costs listed separately and payment terms, consistent with and not additional to any provisions under this Agreement.

16. **Representations and Warranties:**

- a) **Mutual Warranties:** Each Party represents, warrants and covenants to the other that:
 - i) it is a person validly existing and in good standing under the laws of its jurisdiction applicable to its existence;
 - ii) it is qualified or licensed to do business and in good standing in every jurisdiction where qualification or licensing is required;
 - iii) it has the power and authority as a person to negotiate, be bound by, execute any other documents, deliver and perform its obligations under this Agreement;
 - iv) legally valid and binding obligation enforceable against it in accordance with its terms; and
 - v) it and the business it conducts are in compliance with all applicable Laws.
- b) **Warranties by the Seller:** The Seller represents, warrants and covenants to the Buyer that:
 - i) All Deliverables that are Goods have been and will manufactured, supplied and sold and delivered in strict compliance with all applicable Laws and the Agreement, and are free from all defects in manufacture, design, Materials, performance and workmanship (as the case might be);
 - ii) All Deliverables that are Services shall be performed in a competent and professional manner, in accordance with good and workmanlike practices for the type of work to be performed, and shall be performed in full compliance with applicable Laws and the Agreement. In this regard, without limiting the generality of foregoing, the Seller warrants that the Seller shall provide a quality of service at least equal to that generally accepted in the industry for similar work and that the Deliverables have been performed in strict compliance with all applicable Laws;
 - iii) The Deliverables shall conform to the requirements of the Agreement, are free from any defect in manufacture, design, material, performance and workmanship (as the case might be) for: a minimum period of one (1) year after acceptance pursuant to section 13 hereof (unless the Parties otherwise agree in writing that another period will apply), , unless there is a longer period of warranty offered by the Seller for the Deliverables in the usual course of the Seller's business in which case that period shall apply, or unless a longer period is referenced in the RFQ, RFP, Stand Offer, Offer or Purchase Order related to that RFQ, RFP, Stand Offer or Offer (as the case might be) in which case the longer period referenced shall apply;
 - iv) The Deliverables are free of all liens, security interests, claims and encumbrances of any kind;
 - v) Pursuant to the warranty obligations set forth above, the Seller will, at the Seller's expense, either repair, or at the Buyer's option, replace all or any part of the Deliverables found by the Buyer to be defective or to not meet the standard or specification provided for in the Agreement related to those Deliverables. All expenses associated with such repair or replacement including any freight, custom, duties and brokerage fees shall be for the Seller's account;
 - vi) The warranty period shall be extended by the time during which the Deliverables are unusable for the purpose intended, or out of service, by reason of a defect the Seller is required to repair or replace;
 - vii) If the RFP, RFQ or Standing Offer so provides the Seller will ensure the supply of all spare parts as shall be necessary for the proper operation of the Deliverables once accepted by the Buyer pursuant to section 13 hereof for the period so specified;
 - viii) The Deliverables or their supply by the Seller to the Buyer do not violate any patent, trade secret, copyright or other intellectual property or proprietary rights of any third party registered or recognized in Canada or elsewhere with respect to or in connection with the Deliverables or the intended use of the Deliverables by the Buyer;
 - ix) There is no actual or threatened litigation: that affects the Seller's ability to comply with this Agreement, or concerning or related to the Deliverables;
 - x) All statements and information contained in the Proposal are true and accurate; and
 - xi) The Buyer shall, at its sole discretion, be entitled at any time to require the withdrawal of a person performing the Deliverables, and the Seller on receipt of such notice shall provide a replacement whose qualifications and experience shall be acceptable to the Buyer.
- c) **Insurance:** The Seller represents and warrants to the Buyer that it has Commercial General Liability Insurance on an occurrence basis covering all risks with a combined limit of not less than five million dollars (\$5,000,000); and if an automobile of the Seller or Seller's contractor or Seller's subcontractor is required to enter Oceanex's premises or engage in transport related to the supply of the Deliverables, automobile liability insurance (including owned, non-owned and hired vehicles) with a limit not less than two million dollars (\$2,000,000) per occurrence, personal injury and property damage combined. The Seller or Seller's contractor or Seller's subcontractor shall also have any and all other types of insurance referenced as required in the RFP, RFQ, Standing Offer or Offer as accepted by the Seller (as the case might be) having at least the coverage limits referenced in the same and also provide any endorsements referenced in the same. On request by the Buyer, the Seller shall provide current proof of such coverage.

- d) **Workers Compensation ("WC"):** The Seller represents and warrants that it has WC coverage and either is a member of a government workers' compensation program or permitted government sanctioned scheme or that it has employer's liability insurance of at least \$2 million per occurrence. On request by the Buyer, the Seller shall provide current proof of a WC coverage certificate certifying that the Seller is in good standing with all premiums paid to date;
- e) Certificates evidencing the insurance coverage referenced in paragraph 16 c) and d) hereof during the period related to the supply of Deliverables referenced in the Agreement shall be provided to the Buyer via the email or fax address shown in section 23 hereof.
- f) **Good Standing:** The Seller (where the Seller is a corporation) represents and warrants that it is in good standing with the corporate registry under which it is licensed to carry on business.
17. **Limitation of Liability and Indemnification:** The Seller shall unequivocally and unconditionally indemnify and save harmless the Buyer, and at the Buyer's request, defend the Buyer, its directors, officers, members, employees, and agents from and against any Losses arising from or as a result of any Claim by the Seller, or a third party, including as applicable their representatives, officers, directors, agents and servants including any and all liability, loss expense, damage, claim, licence, and encumbrance, legal expenses or other expenses of any kind or nature whatsoever, imposed on or assumed by, or incurred by or asserted against the Buyer, its directors, officers, agents and servants in any way relating to, or arising out of the supply contemplated in this Agreement except for losses, or portions thereof, arising as a result of the proven negligence or proven contributory negligence of the Buyer.
18. **Indemnification Procedures:**
- a) **Notice:** The Indemnified Party must give the Indemnifying Party prompt written notice of a Claim, provided, however, that failure of an Indemnified Party to give prompt written notice does not relieve the Indemnifying Party from its indemnification obligations under this Agreement except to the extent the defence is materially prejudiced by the failure. When the Indemnifying Party receives notice of a Claim from an Indemnified Party, the Indemnifying Party agrees, at its sole cost and expense, to assume the defence of the Claim by representatives chosen by the Indemnifying Party. The Indemnified Party may participate in the defence of the Claim and employ counsel at its own expense to assist in the defence of the Claim, subject to the Indemnifying Party retaining final authority and control over the conduct of the defence.
- b) **Conduct of Defence:** The Indemnifying Party's defence lawyers must be reasonably experienced and qualified in the areas of litigation applicable to the defence. The Indemnifying Party has the right to assert any defences, causes of action or counterclaims available given the subject of the Claim and also has the right to settle the Claim, subject always to the Indemnified Party's prior written consent. The Indemnified Party agrees to provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, as may be reasonably requested by the Indemnifying Party in connection with any defence, including, without limitation, providing the Indemnifying Party with information, documents, records and reasonable access to the Indemnified Party as the Indemnifying Party reasonably deems necessary.
19. **Termination:**
- a) **Termination for Insolvency:** If either Party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any Laws relating to insolvency, or if an involuntary petition in bankruptcy is filed against a Party and the petition is not discharged within thirty (30) days after filing, or upon any assignment for the benefit of a Party's creditors, or upon the appointment of a receiver, liquidator or trustee of any of a Party's assets, or upon the liquidation, dissolution or winding up of its business (each, an "**Event of Bankruptcy**"), then the Party affected by any Event of Bankruptcy must immediately give notice of the Event of Bankruptcy to the other Party, and the other Party may terminate this Agreement by notice to the affected Party.
- b) **Termination for Breach:** If either Party breaches any material provision contained in this Agreement and the breach is not cured within fourteen (14) days after the breaching Party receives notice in writing of the breach (together with reasonable details of such breach) from the non-breaching Party, the non-breaching Party may then deliver a second notice to the breaching Party immediately terminating this Agreement.
- c) **Termination for Convenience:** The Buyer may also terminate the Agreement for any reason on providing the Seller with ten (10) days prior written notice and any Fees properly owing shall be prorated to the date of termination.
20. **Force Majeure:** Any failure or delay by a Party in the performance of its obligations under this Agreement is not a default or breach of the Agreement or a ground for termination under this Agreement to the extent the failure or delay is due to elements of nature or acts of God, acts of war, terrorism, riots, revolutions, or strikes or other factors beyond the reasonable control and without the fault or negligence of the Party claiming the force majeure, and which, despite all reasonable efforts, taken in a timely manner by the Party claiming the force majeure to prevent its occurrence or mitigate its effects, causes failure or delay (each, a "Force Majeure Event"). The Party failing or delaying due to a Force Majeure Event agrees to give notice to the other Party which describes the Force Majeure Event and includes a good faith estimate as to the impact of the Force Majeure Event upon its responsibilities under this Agreement, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, or should more than two (2) Force Majeure Events apply to the performance of a Party during any calendar year, the Party not subject to the Force Majeure Event may terminate this Agreement by notice to the Party subject to the Force Majeure Event. Lack of financial resources shall not be considered Force Majeure.
21. **Disclaimer:** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SELLER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OR COVENANTS OF ANY KIND, EITHER EXPRESS OR IMPLIED.
22. **General:**
- a) **Entire Agreement and Amendment:** The Agreement constitutes the entire agreement between the Parties and supersedes all other earlier and simultaneous agreements regarding the subject. The Agreement may only be amended by a written document, signed by both Parties. **IT IS EXPRESSLY AGREED BY THE SELLER THAT ONLY THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL PREVAIL OVER ANY OTHER TERMS AND CONDITIONS SUBMITTED BY THE SELLER, ATTEMPTING OR PURPORTING TO LIMIT, NEGATE, AMEND, REPLACE OR SUPERCEDE THIS AGREEMENT, WHETHER FORMING PART OF THE SELLER'S QUOTATION, PROPOSAL OR OTHERWISE SUBMITTED OR REFERENCED IN ANY WAY OR FORM, SHALL NOT APPLY.**
- b) **Independent Contractors, Third Party Beneficiaries, and Subcontractors:** The Parties acknowledge that they are independent contractors under this Agreement, and except if expressly stated otherwise, none of the Parties, or any of their employees or agents, has the power or authority to bind or obligate the other Party. Except if expressly stated, no third party is a beneficiary of this Agreement. The Seller may not subcontract any obligation under this Agreement without the Buyer's prior written consent. The Seller shall be responsible for compliance with and any breach of this Agreement by its permitted subcontractors as if such subcontractors' acts and omissions were its own. The Seller shall have no authority to act, or to hold the Seller as agent of the Buyer. The Seller shall not, without the prior written consent of the Buyer, enter into any contract or commitment in or on behalf of the Buyer or bind the Buyer in any respect whatsoever.
- c) **Policies of Buyer:** The Seller will comply with all of the policies of the Buyer disclosed to the Seller in writing from time to time that relate to the Agreement.
- d) **Independent Contractor Status:** The Seller shall provide the Deliverables as an independent Contractor, and nothing in this Agreement shall be construed to create a relationship of employee and employer.
- e) **Taxes:** The Buyer shall not be required to deduct or remit to any Governmental Authority in respect of the Seller any amounts, including those relating to state and federal income taxes, employment insurance, and other similar levies in respect of the Agreement. Rather, the Seller shall be solely responsible to satisfy all such government obligations.
- f) **No Delegation of Supply:** The Deliverables to be provided hereunder to the Buyer by the Seller shall be provided exclusively by the Seller. The Seller covenants and agrees with the Buyer that it shall not delegate performance of the Deliverables to anyone without prior written consent of the Buyer.
- g) Time shall be of the essence of this Agreement.

- h) **Governing Law and Forum:** All claims must be arbitrated or litigated, as the case may be, in St. John's, Newfoundland and Labrador, Canada, regardless of the inconvenience of the forum, or at the Buyer's option the Federal Court of Canada, the Supreme Court of Newfoundland and Labrador, Trial Division, or the Provincial Court of Newfoundland and Labrador sitting in the Province of Newfoundland and Labrador.
- i) **Non-Applicability of Convention:** The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to a Contract, and is strictly excluded.
- j) **Assignment:** The Seller shall not assign all or any of its rights or obligations under this Agreement without the prior written consent of the Buyer.
- k) **Enurement:** This Agreement binds and enures to the benefit of the Parties' successors and permitted assigns.
- l) **Waivers and Cumulative Remedies:** The failure of a Party to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. Unless expressly stated otherwise, all remedies under this Agreement, at Law or in equity, are cumulative and nonexclusive.
- m) **Severability:** If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the Parties, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions.
- n) **Headings and Plural Terms:** All headings are for purposes of convenience only and are not to be used in interpretation or enforcement of this Agreement. Terms defined in the singular have the same meaning in the plural and vice versa.
23. **Notices:** All notices, including notices of address changes, under this Agreement must be sent by registered or certified mail or by overnight commercial delivery to the Buyer at address below.
- Oceanex Inc.
Baine Johnston Centre
Suite 701, 10 Fort William Place
St. John's, NL A1C 1K4 Canada
Attention: Procurement Manager
Phone: 709-7580-0382. Ext. 1127 Fax: 709-758-0360
Email: gthomas@oceanex.com
24. **Survival:** The following captioned sections shall survive any termination, expiration or non-renewal of this Agreement: "Limitation of Liability & Indemnification", "Representations and Warranties", "Survival" and "General", as well as any other provisions expressly stating that they are perpetual or survive this Agreement.
25. **Interpretation:** Unless the context otherwise requires, words importing the singular include the plural and vice-versa. Headings are for convenience of reference only and shall not affect interpretation. In the case of inconsistency or conflict between the RFP, RFQ, the Proposal, a Purchase Order and this Agreement (or either one of them), the following priority shall apply:
- a) the Purchase Order shall prevail over these Terms and Condition, the RFP, RFQ or Standing Offer (as the case might) be related to that Purchase Order, and the Proposal or Response of the Seller received in response to the RFP, RFQ or Standing Offer as the case might be related to the Purchase Order;
- b) these Terms and Conditions shall prevail over the RFP, RFQ or Standing Offer (as the case might be) related to the Purchase Order, and the Proposal or Response of the Seller received in response to the RFP, RFQ or Standing Offer (as the case might be) related to the Purchase Order, but not over Purchase Order;
- c) the RFP, RFQ or Standing Offer (as the case might) be related to that Purchase Order shall prevail over the Proposal or Response of the Seller received in response to the RFP, RFQ or Standing Offer (as the case might be) related to the Purchase Order, but not over Purchase Order and these Terms and Conditions.
26. **Confidentiality:** Each of the Buyer and the Seller agrees that it will not, either during the term of this Agreement or any time thereafter (except in accordance with its duties under this Agreement or as required by Law or the other Party) disclose to any Person any confidential information of or relating to the other Party of which it has become possessed of as a result of this Agreement (including the terms of this Agreement). Nothing in this Agreement prohibits disclosure of information which:
- a) is in the public domain;
- b) after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party;
- c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party; or
- d) is required to be disclosed by Law or by any Government Authority having jurisdiction over a Party.
27. **Language of Documentation:** This Agreement as well as any other document incorporated by reference into it, notices, schedules and authorizations may be drafted or completed in any one of both official languages in Canada. However, by using or accepting to use the English version form of this Agreement, the parties are deemed to have agreed that their agreement be drawn in the English language. In case of any inconsistency between the English and French version of same, the English version shall prevail. *Cette entente ainsi que tout document qui y est incorporé par référence, avis, annexe ou autorisation ont été ou peuvent être rédigés ou complétés dans l'une ou l'autre des deux langues officielles au Canada. Toutefois, par leur utilisation ou acceptation de la version anglaise de cette entente, les parties aux présentes sont réputées avoir convenu à ce que cette entente soit rédigée dans la langue anglaise. En cas de divergences entre leur version anglaise et française, le texte de la version anglaise prévaudra.*