



SHIPPING

BIMCO WRECKSTAGE 2024 – OVERVIEW OF CHANGES

20 MARCH 2024



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- WS 2010 no longer fit for purpose
 - Exponential rise in wreck removal costs/exposure – Nairobi Convention
 - Demand for more sophisticated contracting and QRA
 - Controversy over management of change and Clause 4
 - Unhappiness with tendering process, perceived lack of fairness and transparency
 - Termination, cancellation uncertainties, dispute resolution
-

*"das Kind mit dem Bade
ausschütten"*

or

***Don't throw the baby out with the
bathwater***





- Retain familiar box layout, Part I and Part II and Annexes
 - Box 5,6 and 7 amendments (see Clause 1 definitions)
 - NEW Box 10 – QRA
 - Specific reference to Annexes being incorporated
 - New and expanded definitions, Vessel, Worksite, Project Change and Variation Order
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WRECKSTAGE 2024

INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (LUMP SUM – STAGE PAYMENTS)



PART I

1. Place and Date of Agreement	
2. Contractor/Place of Business (Cl. 1)	3. Company/Place of Business (Cl. 1)
4. Specifications of the Vessel (Cl. 1, 4 and 21), including such plans and drawings of the Vessel, cargo manifests, stowage plans, etc., and such other information as the Contractor may reasonably require for the performance of the Services (see Annex VI).	
(i) Name	(vii) Flag
(ii) IMO Number	(viii) Place of Registry
(iii) Class	(ix) Maximum Draft
(iv) Length/Beam/Depth	(x) Details and Nature of Cargo
(v) GT/NT/DWT/LSW	(xi) Lead H&M underwriter/insurer
(vi) P&I Club/insurer (Cl. 21(b))	(xii) Any other Vessel details relevant to this Agreement
5. Position and Condition of Vessel (Cl. 1)	6. Extent and Condition of Worksite (Cl. 1)
7. Nature of Services (Cl. 2 and 5 and Annexes II and III)	8. Completion of Services (Cl. 9)
	(i) Place(s) of delivery/disposal (ii) Condition of Vessel (iii) Number of days for Company to nominate alternative place of delivery/disposal (Cl. 9(b)) (iv) Number of days for parties to agree alternative place of delivery/disposal (Cl. 9(b))
9. Permits (state which party to provide) (Cl. 7)	10. Risk Allocation Procedure (Cl. 4)
	State if Clause 4 (Risk Allocation Procedure) to apply: Y/N
11. Payments (Cl. 1, 4 and 5)	
(i) Lump Sum (state amount in figures and words)	(ii) Amount due and payable on signing this Agreement
	(iii) Amount due and payable on
(iv) Amount due and payable on	(v) Amount due and payable on
(vi) Amount due and payable on	(vii) Amount due and payable on
12. Payment Details (Cl. 10)	
(i) Currency	

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(ii) Bank	(iii) Address
(iv) Account Number	(v) Account Name
13. Time of Payment and Interest (state period within which sums must be received by the Contractor and rate of interest per month) (Cl. 10)	14. Extra Costs (Cl. 3(b) and 11)
	(i) Meals and accommodation (state daily rate per person)
	(ii) Contractor shall be responsible for and pay for the following extra costs
	(iii) Company shall be responsible for and pay for the following extra costs
	(iv) Handling charge to be applied, where applicable (state percentage)
15. Delay Payment Rate (Cl. 5, 8 and 9)	16. Mobilisation (state conditions) (Cl. 1 and 13)
17. Cancellation Fee (Cl. 13)	18. Termination Fee (state percentage of balance of unpaid stages) (Cl. 13)
19. Number of Unworkable Days (Cl. 8(c)) (i) Adverse weather or sea conditions (ii) Other delays	20. Number of additional clauses covering special provisions, if agreed
21. Arbitration and Mediation ((a) English law/London arbitration, (b) US law/New York arbitration, (c) Other. Choose law and arbitration venue. If no choice is made, subclause 19(a) shall apply) (Cl. 19)	
22. Email address for receipt of arbitration notices and communications on behalf of Contractor (Cl. 19)	23. Email address for receipt of arbitration notices and communications on behalf of Company (Cl. 19)

It is mutually agreed that this Agreement shall be performed subject to the terms and conditions contained in PART I, including additional clauses, if any agreed and stated in Box 20, and PART II, as well as Annex I (Worksite), Annex II (Schedule of Personnel, Craft and Equipment), Annex III (Method of Work and Estimated Time Schedule), Annex IV (Contractors' Daily Reports), Annex V (Risk Allocation Matrix), and Annex VI (Plans and Drawings of the Vessel, Cargo Manifests, Stowage Plans, etc), Annex VII (Variation Order) and any other Annexes attached to this Agreement.

In the event of a conflict of terms and conditions, the provisions of PART I, any additional clauses, and Annexes I, II, III, IV, V, VI, and VII (and any other Annexes attached hereto), shall prevail over those of PART II to the extent of such conflict but no further. In the event of a conflict between Part I and any additional clauses and the Annexes, Part I and the additional clauses shall prevail.

The party responsible for issuing the final execution version of this Agreement warrants that it is an Authentic BIMCO Template procured from a properly authorised source and that all modifications to it are clearly visible. "Authentic BIMCO Template" means a BIMCO-approved standard contract in an editable electronic format.

The undersigned warrant that they have full power and authority to sign this Agreement on behalf of the parties they represent.

Signature (for and on behalf of the Contractor)	Signature (for and on behalf of the Company)
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1. Definitions

“Affiliates” means a company, partnership, or other legal entity which controls, is controlled by, or is under common control with, a party. For the purposes of this definition, the term “control” means the direct or indirect ownership of fifty per cent (50%) or more of the issued share capital or any kind of voting rights in a company, partnership, or legal entity, and “controls”, “controlled” and “under common control” shall be construed accordingly.

“Applicable Law” means:

- (i) any statutes (including regulations enacted under those statutes);
 - (ii) national, regional, provincial, state, municipal, or local laws;
 - (iii) judgments and orders of courts of competent jurisdiction;
 - (iv) rules, regulations, and orders issued by government agencies, authorities, and other regulatory bodies; and
 - (v) regulatory approvals, permits, licences, approvals, and authorisations,
- all as amended from time to time.

“Banking Days” means the days, except for Saturdays and Sundays, on which banks are open for business in the places/countries stated in Box 12 and, if the currency is US Dollars, New York.

“Company” means the party stated in Box 3.

“Company Group” means any of the following:

- (i) the Company; and/or
- (ii) co-venturers of the foregoing; and/or
- (iii) Company Affiliates; and/or
- (iv) Employees of any of the foregoing,

but always related to the performance of the Services.

“Contractor” means the party stated in Box 2.

“Contractor Group” means any of the following:

- (i) the Contractor; and/or
- (ii) co-venturers of the foregoing; and/or
- (iii) Affiliates of any of the foregoing; and/or
- (iv) sub-contractors (of any tier) of any of the foregoing; and/or
- (v) Employees of any of the foregoing,

but always related to the performance of the Services.

“Demobilisation Fee” means the daily Delay Payment Rate or pro rata thereof for the number of days from the date and time of termination until personnel, craft and equipment have returned to their home base(s).

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“Employees” means employees, directors, officers, servants, agents or invitees.

“Lump Sum” means the amount stated in Box 11.

“Method of Work” means the method of work set out in Annex III (Method of Work and Estimated Time Schedule).

“Mobilisation” means the conditions stated in Box 16, or, if Box 16 is left blank, the first departure of any personnel, craft or equipment to the Worksite.

“Project Change” means a change in the Method of Work and/or in the Personnel, Craft and/or Equipment and/or Estimated Time Schedule which gives rise to a substantial increase in cost.

“Services” means the services stated in Box 7.

“Variation Order” means an agreement in writing between the parties as to changes in the nature of the Services and/or to a change to the Lump Sum, in the form of an Addendum as per Annex VII (Variation Order).

“Vessel” means the vessel identified or named in Box 4, or part thereof, whether or not attached, including anything contained therein or thereon, such as but not limited to debris, cargo, bunkers, spares and consumables, which lie within the Worksite.

“Worksite” means the position of the Vessel stated in Box 5 and the area set out in Box 6 and/or in accordance with the diagram in Annex I (Worksite).

2. Performance of Services

- (a) The Contractor agrees to exercise due care in rendering the Services which shall include, if applicable, the delivery and/or disposal of the Vessel, in accordance with this Agreement, the Annexes hereto, any Applicable Law and in accordance with good industry practice. Insofar as it is not inconsistent with the nature of the Services to be rendered under this Agreement, the Contractor will also exercise due care to prevent and minimise damage to the environment.
- (b) The Contractor shall provide the Personnel, Craft and Equipment set out in Annex II (Schedule of Personnel, Craft and Equipment) which the Contractor deems necessary for the Services based upon the Specifications, Position and Condition of the Vessel and Worksite set out in Boxes 4, 5 and 6.
- (c) The Contractor’s Method of Work and Estimated Time Schedule shall be as described in Annex III (Method of Work and Estimated Time Schedule), utilising the Personnel, Craft and Equipment described in Annex II.
- (d) The Contractor shall provide the Company with daily reports in accordance with Annex IV (Contractor’s Daily Reports).
- (e) The Contractor shall give the Company all reasonable assistance in complying with the Company’s obligations under any wreck removal order or legal obligation to remove the Vessel.

3. Company Representative

- (a) A representative appointed by the Company (the “Company Representative”) will be in attendance (or otherwise contactable at any time) during the performance of the Services with the full authority to act on behalf of the Company. The Company Representative will be appointed and/or substituted at the sole option of the Company and notified to the Contractor in writing in advance.
- (b) (i) The Contractor shall provide the Company Representative with free and unrestricted access to the craft and equipment used for the Services (subject to health and safety requirements and within that craft’s limitations) and to the Worksite where the Services are being performed.



- Biggest Challenge for the BIMCO committee
 - Clause 4 is all new, applicable ONLY if Box 10 is ticked and QRA incorporated
 - The Rumsfeld enigma.....
 - Allocation of risk as part of QRA and negotiation of lump sum
 - “True” lump sum except for 4 (c), limited entitlement to additional remuneration filtered to Clause 5
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(ii) The Company may request the Contractor to provide, if available, suitable accommodation and meals on board the craft used for the Services for the Company Representative, for which the Company will pay the Contractor the daily rate for accommodation and meals per person stated in Box 14.

(iii) The Company shall ensure that the Company Representative has adequate insurance in place to cover their risks and liabilities during the performance of the Services.

- (c) Upon request by the Contractor, the Company will provide at its sole risk and expense representatives of the Company or their managers, who are fully conversant with the Vessel and its systems, and who should be in attendance when reasonably required during the performance of the Services in order to provide advice.

4. Risk Allocation Procedure

- (a) This Clause shall not apply unless indicated in Box 10.
- (b) The parties hereto have elected to adopt the Risk Allocation Procedure and allocate the risks in accordance with Annex V (Risk Allocation Matrix) and the following procedure shall apply:

(i) Any and all costs related to risks allocated to the Contractor shall be incorporated into the Lump Sum and the Contractor shall not be entitled to any additional remuneration except in the limited circumstances described below at subclause 4 (c).

(ii) Any and all costs related to risks allocated to the Company shall be dealt with in accordance with subclauses 5 (b)(i)-(iii) and (d).

- (c) If before or during the performance of the Services, and without fault on the part of the Contractor a Project Change is required due solely to a misdescription or error in the Vessel specification stated in Box 4 or in such documents and information as may have been provided in accordance with subclause 6(d) that relates to the risks allocated under subclause 4(b) (i)), upon which the Contractor has relied, then the procedure set out at subclauses 5(b)(i)-(iii) and (d) shall apply.

- (d) For any risks that are not covered by subclauses 4 (b) (i) and (ii) above then the provisions of Clause 5 (Change of Method of Work, Personnel, Craft and Equipment and/or Estimated Time Schedule) shall apply.

5. Change of Method of Work, Personnel, Craft and Equipment and/or Estimated Time Schedule

- (a) The Lump Sum is based upon the Nature of the Services, as set out in Box 7, Method of Work and Estimated Time Schedule, and Personnel, Craft, Equipment and risks as set out in Annexes II (Schedule of Personnel, Craft and Equipment), III (Method of Work and Estimated Time Schedule) and, if relevant, Annex V (Risk Allocation Matrix), and the Description, Specifications, Position, Condition of the Vessel and the Worksite, as set out in Boxes 4, 5 and 6.

- (b) If before or during the performance of the Services, and without fault on the part of the Contractor, a Project Change is required due to any misdescription by the Company or error in the specification provided by the Company, upon which the Contractor has relied, or a material change in the position and/or condition of the Vessel or the Worksite, then

(i) The Contractor shall give notice in writing forthwith to the Company on becoming aware of a Project Change (the "Initial Notice") and, as soon as possible thereafter, further notice detailing the estimated additional costs to effect the Services (the "Further Notice");

(ii) Where the Further Notice is given, the Contractor shall firstly consult with the Company with a view to reaching an agreement on the scope and cost of the proposed Project Change, and thereafter, if required, with the competent authorities;

(iii) Any agreed Project Change and/or additional costs shall be drafted into a Variation Order, including any amendment to the stage payments and/or the Lump Sum, which shall be signed by the parties. Any such final

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determination of the additional costs shall be added to the Lump Sum at the appropriate payment stage or stages as agreed.

- (c) If, as a result of a material change in the position and/or condition of the Vessel or the Worksite, subsequent to entering into this Agreement, the Services become easier to perform in terms of the Method of Work and/or in the Personnel, Craft and/or Equipment and/or Estimated Time Schedule requirements, then:

(i) The Company may, subject to subclause 10 (c) (Payment), seek a reduction in respect of the amounts payable pursuant to subclause 10 (a) (Payment) hereof by giving notice to the Contractor forthwith.

(ii) The parties shall, without delay, consult each other to reach agreement on the amount of the costs to be deducted from the Lump Sum and any agreement shall be incorporated into a Variation Order.

- (d) In the event that the parties are unable to reach agreement on any variation in costs described in subclauses (b) and (c) above, the parties may agree to refer the matter to expert evaluation in accordance with Clause 18 (Expert Evaluation). Alternatively, either party may refer any of the matters in subclauses (b) or (c) to arbitration or mediation pursuant to Clause 19 (Arbitration and Mediation) for a decision on the reasonableness and quantum of such costs, or the claim by the Company for a reduction in remuneration, which shall be incorporated into a Variation Order. Until such time as a Variation Order is agreed or ordered, the Contractor shall continue to provide the Services, without prejudice to any claim either party may have for an adjustment to the remuneration.

- (e) Notwithstanding subclause (d) above, where the parties are unable to reach agreement on the additional costs within seven (7) days of the Contractor having given the Further Notice, either party shall have the right to terminate the Services by giving three (3) days' notice of termination to the other party.

(i) In the event of termination by the Contractor, the Company shall pay all sums due at the time of termination in accordance with the provisions of Boxes 11, 14, 15 and 17.

(ii) In the event of termination by the Company, the Company shall pay all sums due at the time of termination in accordance with the provisions of Boxes 11, 14, 15 and 17, plus the balance of Box 11 multiplied by the percentage stated in Box 18, plus the Demobilisation Fee.

(iii) If permission to terminate is not given by the competent authorities the Contractor shall be paid by the Company at the Delay Payment Rate set out in Box 15 during any standby period, and the Company shall be liable for the Contractor's reasonable and necessary costs of continuing the Services.

(iv) Termination under this Clause is without prejudice to any rights and/or claims either party may otherwise have under this Agreement.

6. Miscellaneous

- (a) The Company shall arrange and pay for any marking of the Vessel and cautioning required. The Contractor shall arrange and pay for any marking or cautioning required in respect of contracted craft and equipment during the performance of the Services under this Agreement.

- (b) The Contractor may make reasonable use of the Vessel's machinery, gear, equipment, anchors, chains, stores and other fixtures or fittings during and for the purposes of these Services free of expense but shall not unnecessarily damage, abandon or sacrifice the same or any property which is the subject of this Agreement.

- (c) Subject to prior approval of the Company which shall not be unreasonably withheld, and permission of the competent authorities, the Contractor shall be entitled to remove, dispose of or jettison cargo, or parts of the Vessel, or equipment from the Vessel if such action is considered by the Contractor to be reasonably necessary to perform the Services under this Agreement, provided always that any such operations are fully in accordance with Applicable Law.

- (d) The Company shall use its best endeavours to provide the Contractor with such plans and drawings of the Vessel, cargo manifests, stowage plans, and such other information as the Contractor may reasonably require for the



- Clause 5 is an updated “old” Clause 4, applies to Clause 4(c) and where QRA NOT adopted
 - Clause 5 much more limited than previous Clause 4, additional remuneration limited to misdescription, error in specification OR material change of Vessel or Worksite
 - Protocol involving formal notices, mandatory consultation
 - Sophisticated process for dispute resolution, option for expert evaluation OR arbitration
 - Clarification of rights of termination
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- Clause 8 – Delays, needs to be read in conjunction with Cl 4, logical amends and simplification
 - Clause 11 – Extra Costs
 - Clause 14 – K4K tidied up, note “group” definitions
 - Expert evaluation retained
 - Clarification of rights of termination
 - Annex V – where QRA adopted
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performance of the Services.

7. Permits

The party stated in Box 9 shall obtain and maintain all necessary licences, approvals, authorisations or permits required to undertake and complete the Services without obstruction or delay and the other party shall provide all reasonable assistance. (see subclause 11(a)(v)).

8. Delays

(a) Except as expressly provided under Clause 4 (Risk Allocation Procedure), the following shall apply:

(b) General

(i) The Contractor shall promptly advise the Company of all periods when they consider that the Delay Payment Rate in Box 15 shall apply and shall at the same time confirm same in writing to the Company. The Contractor shall consult the Company to reach agreement on the amount of time lost as a result.

(ii) In the event that the parties cannot reach agreement in respect of the additional compensation in subclauses 8(c)-(d), then the issue may be referred to expert evaluation in accordance with Clause 18 (Expert Evaluation) or to arbitration or mediation pursuant to Clause 19 (Arbitration and Mediation).

(c) Adverse Weather or sea conditions or other delays

In the event that the Contractor is prevented from progressing the Services in excess of the number of days set out in Box 19 solely due to adverse weather or sea conditions (Box 19(i)), or any other reason outside the Contractor's control (Box 19(ii)), the Contractor shall receive from the Company additional compensation – per working day or pro rata – at the rate set out in Box 15, for the time the Contractor is delayed in commencing or continuing the Services.

(d) Hired-in or Subcontracted Personnel, Craft and Equipment

(i) The Contractor shall use its best efforts to ensure that offshore and/or Delay Payment Rate clauses are included in any sub-contract.

(ii) In the event of non-availability of the hired-in or subcontracted personnel or breakdown of their craft or equipment the Contractor shall invoke the offshore and/or delay payment rate clauses, as applicable.

(iii) The Contractor shall promptly notify the Company of such clauses being invoked. The Contractor shall receive from the Company additional compensation – per working day or pro rata – at the Delay Payment Rate, for the time the Contractor is delayed in commencing or continuing the Services. The Contractor shall pass on to the Company the benefit of any off-hire or reduction in the rate of hire in respect of personnel, craft or equipment hired-in or subcontracted by the Contractor.

(iv) This subclause (d) shall not apply for individual delays unless such delays exceed six (6) consecutive hours in which case the Delay Payment Rate shall apply to the whole agreed delay period.

9. Completion of Services

(a) (i) The Vessel shall be accepted promptly and taken over by the Company or its duly authorised representative at the Place of Delivery and in the condition stated in Box 8(ii). References to delivery or the Place of Delivery shall include disposal or the Place of Disposal, if applicable.

(ii) The Place of Delivery and/or Disposal shall always be safe and accessible for the Contractor's own or hired-in craft and the Vessel to enter and operate in and shall be a place where the Contractor is permitted by governmental or other authorities to deliver and/or dispose of the Vessel.

(iii) In the event the Vessel is not accepted promptly by the Company or delivery is prevented or delayed by action

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of governmental or other authorities outside the control of the Contractor, then from the moment of the tender for delivery the Company shall reimburse the Contractor for (a) any additional time used pursuant to this subclause (a) at the Delay Payment Rate set out in Box 15, and (b) for any additional expenses reasonably and necessarily incurred by the Contractor.

(b) (i) If it is reasonably considered by the Contractor to be impossible or unsafe for the Vessel to be delivered or disposed of at the place indicated in Box 8(i) the Contractor shall notify the Company forthwith. The Company shall nominate an alternative place of delivery or disposal within the number of days stated in Box 8(iii). If the Contractor does not agree with the Company's proposed alternative place within the number of days stated in Box 8(iv) the Contractor may deliver or dispose of the Vessel at the nearest place it can reach safely and without unreasonable delay, provided delivery or disposal at such place is permitted by governmental or other authorities, and such delivery or disposal shall be deemed delivery or disposal by the Contractor under this Agreement.

(ii) The Company shall reimburse the Contractor for any additional time used pursuant to subclause 9(b)(i) from the moment of the Contractor's notification at the Delay Payment Rate set out in Box 15, and shall be liable to the Contractor for any additional expenses arising under this subclause reasonably and necessarily incurred by the Contractor.

(c) In the event the Vessel is delivered under the control of pumps and/or compressors or other equipment the Company shall with all due dispatch arrange for their own equipment and operators to replace the Contractor's equipment and operators. Until such replacement the Company shall pay the Contractor for the use of its equipment and operators at reasonable rates as from the day of delivery until and including the day of arrival of the equipment and personnel at the Contractor's base, plus any additional costs relating thereto and incurred by the Contractor.

(d) If the Company fails, on completion of the Services, to take delivery of the Vessel within five (5) days of the Contractor tendering written notice of delivery or, if in the opinion of the Contractor the Vessel is likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of its value, the Contractor may, without prejudice to any other claims the Contractor may have against the Company, without notice and without any responsibility whatsoever attaching to the Contractor, sell or dispose of the Vessel and apply the proceeds of sale in reduction of the sums due to the Contractor from the Company under this Agreement. Any remaining proceeds will be refunded to the Company.

In the event that such sale or other disposal of the Vessel fails to raise sufficient net funds to pay the monies due to the Contractor under the terms of this Agreement then the Company shall remain liable to the Contractor for any such shortfall.

(e) Reference to delivery and/or disposal of the Vessel shall include parts of the Vessel and/or cargo and/or any other thing emanating from the Vessel and such delivery may take place at different times and different places (see Box 8).

10. Payment

(a) The Company shall pay the Contractor the Lump Sum, which amount shall be due and payable as set out in Box 11.

(b) Each instalment of the Lump Sum shall be fully and irrevocably earned at the moment it is due as set out in Box 11.

(c) All sums due and payable to the Contractor under this Agreement shall be paid without any discount, deduction, set-off, lien, claim or counterclaim.

(d) All payments to the Contractor shall be made in the currency and to the bank account stipulated in Box 12.

(e) The Contractor shall promptly invoice the Company for all sums payable under this Agreement. If any sums which become due and payable are not actually received by the Contractor within the period specified in Box 13, they shall attract interest in accordance with the rate set out in Box 13.



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- (f) If any amount payable under this Agreement has not been paid by the due date, the Contractor shall promptly give written notice to the Company requiring payment within seven (7) days and stating that unless payment is made the Contractor shall be entitled to terminate this Agreement without prejudice to the sums already due to the Contractor and to any further rights or remedies which the Contractor may have against the Company. If after seven (7) days of the written notice the amount payable has still not been received, the Contractor may within three (3) banking days send the Company written notice of termination of this Agreement.

If the late payment is received in full after the expiry of the seven (7) days notice but prior to the notice of termination, then the right to terminate in respect to that late payment shall be extinguished.

11. Extra Costs

- (a) Except as expressly provided under Clause 4 (Risk Allocation Procedure), the following shall be paid as and when they fall due by the respective parties as indicated in Box 14:
- (i) all port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature levied upon or payable in respect of the Vessel and the craft used for the Services;
 - (ii) the costs of the services of any assisting tugs when reasonably deemed necessary by the Contractor or prescribed by port or other authorities;
 - (iii) all costs in connection with clearance, agency fees, visas, guarantees and all other expenses of such kind;
 - (iv) all taxes and social security charges (other than those normally payable by the Contractor in the country where it has its principal place of business), stamp duties, or other levies payable in respect of or in connection with this Agreement, any import - export dues and any customs or excise duties;
 - (v) all costs incurred in obtaining and maintaining licences, approvals, authorisations or permits required to undertake and complete the Services in accordance with Clause 7 (Permits);
 - (vi) all costs incurred due to requirements of governmental or other authorities or unions over and above those costs which would otherwise be reasonably incurred by the Contractor in the execution of the Agreement;
 - (vii) any costs incurred by the Contractor in respect of portable salvage equipment, materials, or stores which are reasonably sacrificed during the disposal or other operations of the Vessel.
- (b) If any such costs are in fact paid by or on behalf of one party by the other party, the party on whose behalf the payment has been made shall reimburse the paying party on the basis of the actual cost to the paying party plus a handling charge of the percentage amount indicated in Box 14(iv) upon presentation of invoice.

12. Security

- (a) The Company shall on the Contractor's written request provide after signing this Agreement an irrevocable and unconditional security in a form and amount as agreed between the parties.
- (b) If required and requested by the Contractor the Company shall provide further security in a form and amount as agreed between the parties for all or part of any amount which may be or become due under this Agreement. Such security shall be given on one or more occasions as and when reasonably required and requested by the Contractor.
- (c) If the security in subclauses (a) and (b) above has not been provided by the date requested, the Contractor shall promptly give written notice to the Company requiring security to be provided within seven (7) days and stating that unless the security is provided the Contractors shall be entitled to terminate this Agreement without prejudice to any further rights or remedies which the Contractor may have against the Company. If after seven (7) days of the written notice the security has still not been received, the Contractor may within three (3) banking days send the Company written notice of termination of this Agreement.

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If the security is provided after the expiry of the seven (7) days notice but prior to the notice of termination, then the right to terminate in respect of the security shall be extinguished.

13. Cancellation and Termination

- (a) Cancellation - The Company may cancel this Agreement at any time prior to commencement of Mobilisation, upon payment of the Cancellation Fee set out in Box 17.
- (b) Termination - The Contractor, with the agreement of the Company, which shall not be unreasonably withheld, may terminate this Agreement without any further liability, if completion of the Services or any agreed change of work under Clause 5 (Change of Method of Work, Personnel, Craft and Equipment and/or Estimated Time Schedule) hereof, utilising the Personnel, Craft and Equipment set out in Annex II (Schedule of Personnel, Craft and Equipment), or any amendment thereto, becomes technically or physically impossible.

In the event of such termination, the Contractor shall be entitled to payment of all monies due in accordance with the provisions of Boxes 11, 14, 15 and 18.

- (c) If termination of the Services is not allowed by the competent authorities, the Contractor shall be paid by the Company at the Delay Payment Rate set out in Box 15 for Personnel, Craft and Equipment during any standby period, and the Company shall be liable for the Contractor's reasonable and necessary costs of continuing with the Services.

14. Liabilities

- (a) The Contractor will indemnify, release, protect, defend and hold the Company Group harmless in respect of any liability adjudged due or claim, demand or cause of action of any nature reasonably compromised arising out of or in connection with injury, death or illness occurring during the Services hereunder whether or not the same is wholly or partly due to breach of contract, negligence, tort or any fault howsoever arising, on the part of the Company Group, to any of the following persons:
- (i) any servant, agent or subcontractor of the Contractor Group;
 - (ii) any other person at or near the site of the operations for whatever purpose on behalf or at the request of the Contractor Group.
- (b) The Company will indemnify, release, protect, defend and hold the Contractor Group harmless in respect of any liability adjudged due or claim, demand or cause of action of any nature reasonably compromised arising out of or in connection with injury, death or illness occurring during the Services hereunder whether or not the same is wholly or partly due to breach of contract, negligence, tort or any other fault howsoever arising, on the part of the Contractor Group, to any of the following persons:
- (i) any servant, agent or subcontractor of the Company Group;
 - (ii) any other person at or near the site of the operations for whatever purpose on behalf or at the request of the Company Group.
- (c) None of the Company Group shall have any liability to the Contractor who will indemnify, release, protect, defend and hold the Company Group harmless for any loss or damage of whatsoever nature, howsoever arising, sustained by the Contractor Group's owned or hired-in craft or equipment (excluding portable salvage equipment, materials or stores which are reasonably sacrificed during the disposal or other operations on the Vessel), unless the Contractor is the party responsible for such costs as indicated in Box 14 (ii), whether or not the same is due to breach of contract, negligence, tort or any other fault howsoever arising on the part of the Company Group.
- (d) None of the Contractor Group shall have any liability to the Company who will indemnify, release, protect, defend and hold the Contractor Group harmless for any loss or damage of whatsoever nature, howsoever arising, sustained by the Vessel, whether or not the same is due to breach of contract, negligence, tort or any other fault howsoever arising on the part of the Contractor Group.



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- (e) Neither party shall be liable to the other party for:
- (i) any loss of profit, loss of use or loss of production whatsoever and whether arising directly or indirectly from the performance or non-performance of this Agreement, and whether or not the same is due to negligence, tort or any other fault, howsoever arising, on the part of either the Company Group or Contractor Group; or
 - (ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence, tort or any other fault, howsoever arising, on the part of either the Company Group or Contractor Group.
15. **Himalaya Clause**
- (a) All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement or by any applicable statute, rule or regulation for the benefit of the Contractor shall also apply to and be for the benefit of the Contractor Group and their respective insurers.
 - (b) All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement or by any applicable statute, rule or regulation for the benefit of the Company shall also apply to and be for the benefit of the Company Group and their respective insurers.
 - (c) The Company or the Contractor shall be deemed to be acting as agent or trustee of and for the benefit of all such persons and parties set forth above, but only for the limited purposes of contracting for the extension of such benefits to such persons and parties.
16. **Lien**
- Without prejudice to any other rights which the Contractor may have, whether in rem or in personam, the Contractor shall be entitled to exercise a possessory lien upon the Vessel in respect of any amount howsoever or whatsoever due to the Contractor under this Agreement and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the Vessel, provided always that the Company shall pay to the Contractor all reasonable costs and expenses howsoever or whatsoever incurred by or on behalf of the Contractor in exercising or attempting or preparing to exercise such lien.
17. **Time for Suit**
- Any claim which may arise out of or in connection with this Agreement or any of the Services performed hereunder shall be notified to the party against whom such claim is made, within twelve (12) months of completion or termination of the Services hereunder, or within twelve (12) months of any claim by a third party, whichever is later. Any suit shall be brought within twelve (12) months of the notification to the party against whom the claim is made. If either of these conditions is not complied with, the claim and all rights whatsoever and howsoever shall be absolutely barred and extinguished.
18. **Expert Evaluation**
- Expert evaluation is intended to provide the parties with a quick and simple method to resolve issues arising whilst the services are being performed under this Agreement. Where expert evaluation is used the parties are expected to enter into the process in good faith.
- (a) Whenever under this Agreement expert evaluation is available as a method of resolving issues arising between the parties, then the parties may together request an expert evaluation in accordance with the following procedure:
 - (i) The parties shall agree a sole expert (the "Expert") for evaluations who shall be impartial, immediately available, and have the requisite experience to deal with the issues in question.
 - (ii) Both parties shall provide short written statements to the Expert setting out their arguments within twenty-four (24) hours of the appointment of the Expert, and shall provide copies of their statement to the other party.

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- (iii) The Expert shall as quickly as possible following the receipt of written statements advise the parties in writing of their decision. The Expert may also provide short reasons explaining the evaluation.
 - (iv) Subject to subclause (b)(ii), in the first instance the costs of the Expert shall be paid by the party calling for the expert evaluation, but such party shall then be entitled to recover fifty per cent (50%) of the Expert's fees from the other party.
 - (v) Each party shall notify the other whether they agree with the Expert's evaluation within five (5) working days of publication. Failing to notify shall be deemed to be disagreement with the evaluation. If one party disagrees with the Expert's evaluation, then the evaluation shall not be binding on the parties.
- (b) If the Expert's evaluation is not agreed, then:
- (i) the Company shall in any event make payments to the Contractor calculated in accordance with the evaluation. Such payments shall be on a provisional basis and without prejudice to the parties' rights to seek a determination in accordance with Clause 19 (Arbitration and Mediation); and
 - (ii) unless both parties disagree with the evaluation, the party disagreeing with the evaluation shall be at risk as to costs (including the costs of the Expert) on an indemnity basis in the event that the Expert's evaluation is upheld or an outcome no more favourable to the party seeking the evaluation is obtained.
19. **Arbitration and Mediation**
- (a)* This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.
- The reference shall be to a sole arbitrator ("Arbitrator"), to be selected by the first party claiming arbitration from the persons currently on the Panel of Lloyd's Salvage Arbitrators with a right of appeal from an award made by the Arbitrator to either party by notice in writing to the other within twenty-eight (28) days of the date of publication of the original Arbitrator's Award.
- The Arbitrator on appeal shall be the person currently acting as Lloyd's Appeal Arbitrator.
- No suit shall be brought before another Tribunal, or in another jurisdiction, except that either party shall have the option to bring proceedings to obtain conservative seizure or other similar remedy against any assets owned by the other party in any state or jurisdiction where such assets may be found.
- Both the Arbitrator and Appeal Arbitrator shall have the same powers as an Arbitrator and an Appeal Arbitrator under LOF 2000 or any standard revision thereof, including a power to order a payment on account of any monies due to the Contractor pending final determination of any dispute between the parties hereto.
- In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
- In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of US\$400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.
- Any and all notices and communications in relation to any arbitration proceedings under this subclause, including commencement notices and appointment of arbitrators, shall be treated as effectively served from the date and time the e-mail was sent if sent by e-mail to the e-mail address of the Contractor stated in Box 22 and of the Company stated in Box 23, respectively.
- (b)* This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the



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Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the Maritime Arbitration Rules of the Society of Maritime Arbitrators, Inc. current at the date of the Agreement.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the date of the Agreement.

Any and all notices and communications in relation to any arbitration proceedings under this subclause, including commencement notices and appointment of arbitrators, shall be treated as effectively served from the date and time the e-mail was sent if sent by e-mail to the e-mail address of the Contractor stated in Box 22 and of the Company stated in Box 23, respectively.

- (c)* This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.
- (d) Notwithstanding subclauses (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement. In the case of a dispute in respect of which arbitration has been commenced under subclauses (a), (b) or (c) above, the following shall apply:
- (i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.
- (ii) The other party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that it agrees to mediation, in which case the parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitrator or such person as the Arbitrator may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.
- (iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.
- (iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.
- (v) Either party may advise the Arbitrator that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Arbitrator may take the mediation timetable into account when setting the timetable for steps in the arbitration.
- (vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.
- (vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Arbitrator except to the extent that they are disclosable under the law and procedure governing the arbitration.
- (Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)
- (e) If Box 21 is not appropriately filled in, subclause (a) of this Clause shall apply. Subclause (d) shall apply in all cases.

*Subclauses (a), (b) and (c) are alternatives; indicate alternative agreed in Box 21.

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20. Notices

- (a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing and shall, unless specifically provided in this Agreement to the contrary, be sent to the address for that other party as set out in Boxes 2 and 3 or as appropriate or to such other address as the other party may designate in writing.

A notice may be sent by registered or recorded mail, electronically or delivered by hand in accordance with this subclause (a).

- (b) Any notice given under this Agreement shall take effect on receipt by the other party and shall be deemed to have been received:

(i) if posted, on the seventh (7th) day after posting;

(ii) if sent electronically, on the day of transmission; or

(iii) if delivered by hand, on the day of delivery.

And in each case proof of posting, handing in or transmission shall be proof that notice has been given, unless proven to the contrary.

21. Insurance

- (a) The Contractor warrants that throughout the period of this Agreement it will maintain full cover against normal P&I risks including salvors' liabilities as evidenced by a Certificate of Entry issued by a P&I Club or insurer acceptable to the Company and shall comply with all the requirements of the policy.
- (b) The Company warrants that at the time of the incident the Vessel was covered against normal P&I risks as evidenced by a Certificate of Entry issued by a P&I Club or insurer stated in Box 4(vi) and for the normal covered liabilities and consequences arising from or related to the incident and the Services.

22. Damage to the Environment and Pollution

- (a) The Contractor shall exercise due care throughout the performance of the Services to prevent and minimise damage to the environment and shall also put in place, maintain and implement throughout the Services a pollution response plan which meets the requirements of the competent authorities and the Company, or the Company Representative if applicable. The Contractor shall provide the Company with a copy of the pollution response plan on request by the Company.
- (b) The Company shall indemnify and hold the Contractor Group harmless in respect of any and all consequences of any damage to the environment or pollution resulting from or caused by the Vessel, or any discharge or escape of any pollutant from the Vessel, except where such damage or pollution arises as a consequence of the negligence of the Contractor Group.
- (c) The Contractor shall indemnify and hold the Company Group harmless in respect of any and all consequences of any damage to the environment or pollution, resulting from or caused by the craft used for the Services or any discharge or escape of any pollutant from such craft.

23. Rotation and Replacement of Craft, Equipment and Personnel

The Contractor shall have the right to rotate and replace any craft, equipment and personnel with other suitable replacement craft, equipment and personnel subject to the approval of the Company, or the Company Representative if applicable, which shall not be unreasonably withheld.

24. General Provisions

- (a) Severability



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If, in any legal proceedings, it is determined that any provision of this Agreement is unenforceable under applicable law, then the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of this Agreement, and this Agreement shall be construed and enforced as if such provision had not been included.

(b) Third Party Beneficiaries

Except as specifically provided for elsewhere in this Agreement, this Agreement shall not be construed to confer any benefit on any third party not a party to this Agreement nor shall this Agreement provide any rights to such third party to enforce any provision of this Agreement.

(c) Waiver

No benefit or right accruing to either party under this Agreement shall be waived unless the waiver is reduced to writing and signed by both the Contractor and the Company. The failure of either party to exercise any of its rights under this Agreement, including but not limited to either party's failure to comply with any time limit set out in this Agreement, shall in no way constitute a waiver of those rights, nor shall such failure excuse the other party from any of its obligations under this Agreement.

(d) Warranty of Authority

The Contractor and the Company each warrant and represent that the person whose signature appears in Part I above is its representative and is duly authorised to execute this Agreement as a binding commitment of such party.

(e) Singular/Plural

The singular includes the plural and vice versa as the context admits or requires.

(f) Headings

The headings to the clauses and appendices to this Agreement are for convenience only and shall not affect its construction or interpretation.



THANK YOU



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