

INTERNATIONAL SALVAGE UNION
SUB-CONTRACT (AWARD SHARING) 2001

B E T W E E N

The Contractor

- and -

The Sub-Contractor

THIS AGREEMENT is made the day of 2

Between:-

for and on behalf of ("the Contractor")

and

for and on behalf of ("the Sub-Contractor").

WHEREAS:

- (1) The Contractor is presently or is about to become engaged in rendering salvage services to the " ", her cargo, freight, bunkers, stores and any other property thereon under a Lloyd's Standard Form of Salvage Agreement "No Cure - No Pay" dated ("the LOF") and the Contractor wishes to engage the services of the Sub-Contractor on "No Cure - No Pay" terms to assist him in the performance of his obligations under the LOF.
- (2) The Sub-Contractor is willing to assist the Contractor and will provide the personnel, equipment and services set out in the schedule, together with any further personnel, equipment or services which may reasonably be requested by the Contractor from time to time during the performance of the services.

NOW in consideration of the mutual promises and undertakings contained herein it is agreed as follows:-

DEFINITIONS

1. In this Agreement the following expressions shall have the following meanings:-
 - (a) "ISU Terms" means award sharing terms which are the same (mutatis mutandis) or substantially the same as the terms of this agreement;
 - (b) "Non Award Sharing Terms" means terms which provide for the remuneration of a sub-contractor otherwise than by way of a share of the Salvage Remuneration payable under the LOF;
 - (c) "Relevant Sub-Contract" means a sub-contract whereby the Contractor engages the service of a sub-contractor on ISU Terms to assist him in the performance of his obligations under the LOF;
 - (d) "Salvage Remuneration" means any and all remuneration plus interest thereon paid or payable whether awarded, agreed or received in respect of services rendered under the LOF, including out of pocket expenses, interim payments, article 14 special compensation, SCOPIC Remuneration and costs.

OBLIGATIONS OF CONTRACTOR

2. The Contractor agrees:-
- (a) To engage the Sub-Contractor on "No Cure - No Pay" terms to assist him in the performance of his obligations under the LOF and to include in his claim for Salvage Remuneration the agreed services rendered by the Sub-Contractor;
 - (b) To share with the Sub-Contractor the Salvage Remuneration as finally awarded under the LOF or as agreed by the parties thereto and received by the Contractor;
 - (c) To use his best endeavours to recover, as part of those legal costs as finally awarded to him under the LOF, or as agreed between the parties thereto, such legal costs (calculated on the standard basis) incurred by the Sub-Contractor in and about the provision and presentation of evidence by him for use in the LOF proceedings, and thereafter to account to the Sub-Contractor for his legal costs recovered as aforesaid;
 - (d) As soon as is reasonably practical to instruct solicitors in London to open an identified interest bearing client deposit account established in accordance with the Solicitors Act 1974 (as amended) (the "Trust Account") and to hold in the Trust Account any and all such remuneration as may be received pursuant to the LOF as stakeholder on trust for the Contractor and the Sub-Contractor with authority, upon final agreement or determination of the share due to each party, to release such share on being requested in writing by such party so to do; and
 - (e) As soon as reasonably practicable to inform the Council of Lloyd's and the owners of the salvaged property and the guarantors of the existence of this Agreement, the identity of the Sub-Contractor and to give them irrevocable instructions to pay any and all monies due under the LOF to the Trust Account.

OBLIGATIONS OF SUB-CONTRACTOR

3. The Sub-Contractor agrees:-
- (a) To use his best endeavours to assist the Contractor in the performance of his obligations under the LOF, including the provision of such personnel, equipment and services as are set out in the attached schedule or as are reasonably requested by the Contractor during the performance of the service;
 - (b) To assist the Contractor in the presentation of the claim for Salvage Remuneration by the provision and retention of evidence relating to the salvage services and to the sub-contractor's contribution to the same;
 - (c) Not to claim Salvage Remuneration and/or article 14 special compensation against the owner(s) of the property salvaged or any part thereof, nor to make any claim for Salvage Remuneration in respect of the services rendered pursuant to this agreement, save insofar as this agreement provides; and
 - (d) To provide an indemnity satisfactory to the Contractor against any successful claim for Salvage Remuneration made by the sub-contractor's servants and/or agents and/or sub-contractors (and/or the servants and/or agents of the same) against the owner(s) of such property.

TRUST

- 4.
- (a) From the time when this agreement is concluded, all sums paid or payable by way of Salvage Remuneration due under the LOF or this agreement shall be owned in law by the Contractor and the Sub-Contractor jointly and shall be subject to a trust in favour

of the Contractor and Sub-Contractor as beneficiaries. Save as is expressly provided in this agreement, neither party shall have the right to assign or otherwise dispose of or deal with such sums or any part Thereof or any interest therein.

- (b) In the event of either party receiving any sum howsoever on account of or in payment of Salvage Remuneration in respect of any of the services rendered under the LOF or this agreement, such sum shall be held on trust as aforesaid for the Contractor and the Sub-Contractor and shall forthwith be paid into the Trust Account.

CONDUCT OF LOF ARBITRATION

- 5 (a) The Arbitration under the LOF and/or any negotiations for an amicable settlement shall be conducted solely by the Contractor but the Sub-Contractor agrees to provide all necessary evidence and assistance in connection therewith. The Contractor shall keep the Sub-Contractor fully advised as to the amount of the security demanded from the Owner(s) of the salvaged property and as to the nature and form of the guarantees received and the identity of all guarantors.
- (b) The Contractor, so far as the circumstances reasonably permit, shall consult with the Sub-Contractor and keep the Sub-Contractor informed at all significant stages of the Arbitration or of any settlement negotiations, but failing agreement by the Sub-Contractor the Contractor shall be entitled at his discretion to proceed with the Arbitration or to conclude a bona fide settlement.
- (c) The Sub-Contractor shall be entitled to attend the Arbitration as an observer but at his own cost.

ASSIGNMENT

- 6 (a) The Contractor shall not without the consent in writing of the Sub-Contractor (such consent not to be unreasonably withheld) make or purport to make any assignment of the benefit of the LOF or of the whole or any part of the Salvage Remuneration.
- (b) Neither the Contractor nor the Sub-Contractor shall without the consent in writing of the other (such consent not to be unreasonably withheld) make or purport to make any assignment of the benefit of this agreement or of the share of the Salvage Remuneration to which it is entitled under the joint operation of the LOF and this agreement or of its interest under the trust herein before contained.

INDEMNITIES

- 7 (a) The Contractor agrees to indemnify fully and hold harmless the Sub-Contractor, his servants and/or agents against any claim by the owner(s) of the property salvaged or by any other person (other than the Sub-Contractor's own servants and/or agents) for loss or damage caused by the negligence in the salvage operations of the Contractor, his servants or agents and/or by any defects (other than latent defects) in any equipment of the Contractor used in the salvage operation.
- (b) The Sub-Contractor agrees to indemnify fully and hold harmless the Contractor, his servants and/or agents against any claim by the owner(s) of the property salvaged or by any other person (other than the Contractor's own servants and/or agents) for loss or damage caused by the negligence in the salvage operation of the Sub-Contractor, his servants or agents and/or by any defects (other than latent defects) in any equipment of the Sub-Contractor used in the salvage operation.
- (c) The Contractor will make no claim against the Sub-Contractor, his servants and/or agents for loss or damage sustained by the Contractor's equipment or by any servant

or agent of the Contractor caused by the negligence of the Sub-Contractor, his servants or agents and/or by defects in the Sub-Contractor's equipment and hereby agrees to indemnify fully and hold harmless the Sub-Contractor in respect of any such claim made by the Contractor's servants and/or agents.

- (d) The Sub-Contractor will make no claim against the Contractor, his servants and/or agents for loss or damage sustained by the Sub-Contractor's equipment or by any servant or agent of the Sub-Contractor caused by the negligence of the Contractor, his servants and/or agents and/or by defects in the Contractor's equipment and hereby agrees to indemnify fully and hold harmless the Contractor in respect of any such claim made by the Sub-Contractor's servants and/or agents.

LIMITATION OF LIABILITY

8. Notwithstanding anything contained herein, and in particular clause 7, either party to this agreement shall be entitled to limit any liability to the other party which he and/or his servants and/or agents may incur in and about the services under this agreement in the manner and to the extent provided by English law, save that this clause shall not apply to any liability under clause 3(d) above.

TRUSTEE EXONERATION

- 9 Neither the Contractor nor any other trustee of the trust herein before contained shall be liable for or for the consequences of any error or mistake (whether by way of commission or omission and whether on the part of the Contractor or other trustee himself, or on the part of any agent or adviser employed or instructed by the Contractor or other trustee) made or committed in or about the agreement or ascertainment or recovery of the Salvage Remuneration, or the obtaining enforcement or release of any security therefor or otherwise in or about the execution of the trust herein before contained unless such error or mistake shall be proved to have occurred or been committed in personal conscious bad faith of the party sought to be made liable.

RELATIONSHIP TO OTHER SUB -CONTRACTS

- 10 a) Save as may be specifically advised, the Contractor hereby warrants that he has not hitherto engaged the services of any other party to assist him in the performance of his obligations under the LOF except upon ISU Terms or Non-Award Sharing Terms.
- (b) The Contractor may at any time hereafter engage the services of such other parties as he may think fit to assist him in the performance of his obligations under the LOF, but the terms upon which each such party is engaged must either be ISU Terms or Non-Award Sharing Terms.
- (c) Where in relation to the performance of his obligations under the LOF, the Contractor has entered or hereafter enters into any engagement with another party on ISU Terms or Non Award Sharing Terms he will, at the request of the Sub-Contractor, furnish to the Sub-Contractor all information in his possession concerning the identity and address of every such other party.
- (d) In case this agreement is not the only Relevant Sub-Contract, the following provisions shall apply:-
- (i) Clause 2(d) (release of money from the Trust Account pursuant to written direction), Clause 4 (declaration of trust by this agreement) and clause 11 (quantification of the shares of the Contractor and the Sub-Contractor in the Salvage Remuneration) shall have effect as if references to every Sub-Contractor under all Relevant Sub-Contracts were substituted for references to the Sub-Contractor;

- (ii) The Contractor will so instruct solicitors in London that a single account becomes the Trust Account in relation to every relevant Sub-Contract;
- (iii) Whenever a matter or dispute has to be determined or resolved by arbitration pursuant to this agreement and an arbitrator has already been appointed to determine or resolve the same, or an equivalent matter or dispute under another Relevant Sub-Contract, then notwithstanding anything to the contrary in clause 11(a) of this agreement, that matter or dispute shall be referred to the same arbitrator (if he so consents) and so far as possible he will determine or resolve that matter in relation to every Relevant Sub-Contract in a single arbitration.

ARBITRATION

- 11 (a) Any dispute arising hereunder, including any dispute as to the share of the Salvage Remuneration due to the Contractor and Sub-Contractor, shall be referred to the arbitrament of an 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 28 days of the date of publication of the original arbitrator's award.
- (b) The arbitrator on appeal shall be the person currently acting as Lloyd's appeal arbitrator.
- (c) Both the arbitrator and the appeal arbitrator shall have the same powers as an arbitrator and appeal arbitrator respectively would have under LOF 2000 or any standard revision thereof, including a power to order a payment on account of a share due to a party pending final determination of any dispute between the parties hereto.
- (d) For the purposes of any apportionment between the parties the term "Salvage Remuneration" as defined in clause 1(d) shall include all expenses, unrecovered costs and brokers' commissions. The arbitrator or arbitrator on appeal, unless he/she considers it unfair or unjust so to do, in determining the shares of the aforesaid Salvage Remuneration, shall first apportion to the Contractor and/or Sub-Contractor(s) all sums specifically awarded other than the sums for Salvage Remuneration and interest under LOF and all reasonably incurred out of pocket expenses, unrecovered but customary costs and brokers' commissions. Where interest has been awarded or earned in respect to any of the foregoing by reason of the LOF award or award on appeal, and/or by reason of being held in the Trust Account, the said interest shall be included in the initial apportionment.

RELEVANT LAW

12. This Agreement shall be governed and construed in accordance with English law.

AS WITNESS the hands of the duly authorised representatives of the parties hereto.

For and on behalf of the Contractor

For and on behalf of the Sub-Contractor

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SCHEDULE OF PERSONNEL, EQUIPMENT AND SERVICES