



**BIMCO**



# WRECKHIRE 2010

INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (DAILY HIRE)

## PART I

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1. Place and Date of Agreement	
2. Contractor/Place of Business	3. Company/Place of Business
4. Vessel Specifications (Cl. 1, 2, 4)	
(i) Name	(ii) Flag
(iii) IMO number	(iv) Place of Registry
(v) Length/Beam/Depth	(vi) Maximum Draft
(vii) GT/NT/DWT	(viii) Details and Nature of Cargo
(ix) P&I Club/insurer(Cl. 23 (b))	(x) Any other Vessel details relevant to this Agreement
5. Condition of Vessel (Cl. 2, 4)	6. Position of Vessel and Condition of Worksite (Cl. 1, 2, 4)
7. Nature of Services (Cl. 1, 2, 4, 10(c))	8. Place of Delivery and/or Disposal of Vessel (Cl. 2, 9(a), 9(c), 12)
(i) Nature of services:	
(ii) Compliance with orders of competent authorities (state party to obtain confirmation):	
9. Extra costs of disposal of Vessel(Cl. 14)	10. Bonus payment/Reduced hire (Cl. 11, 12)
(i) state which party is responsible for costs and/or division between the parties:	(i) Amount of Bonus (state either total amount or percentage of the total payable under Agreement)
(ii) handling charge, if applicable (state percentage):	(ii) Full bonus (state applicable date or commencement date/event and subsequent period in days for full bonus)
	(iii) Pro rata bonus/reduced hire (state applicable date or commencement date/event and subsequent period in days for pro rata bonus after which reduced hire to apply)
11. Payment and Rates of Hire (Cl. 7, 8(a), 8(c), 10(a), 12)	
(i) Daily Working Rate for Craft and Equipment	(ii) Daily Working Rate for Personnel
(iii) Daily Standby Rate for Craft and Equipment	(iv) Daily Standby Rate for Personnel
(v) Reduced Daily Rates of Hire (Cl. 10(a), 12)	(vi) Payment of the appropriate Working Rate of Hire is to be made in advance every (state number of days)
(a) Daily Working Rate for Craft and Equipment:	(a) Commencing from:
(b) Daily Working Rate for Personnel:	(b) and continuing until:
(c) Daily Standby Rate for Craft and Equipment:	(c) with a minimum payment of hire in any event (state number of days hire)
(d) Daily Standby Rate for Personnel:	

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12. Payment Details ( <a href="#">Cl. 10(e)</a> )	
(i) Currency	
(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) ( <a href="#">Cl. 10</a> )	14. Extra Costs (state percentage to be applied) ( <a href="#">Cl. 13</a> )  (i) General handling charge ( <a href="#">Cl. 13(a)-13(h)</a> )  (ii) Fuels and lubricants handling charge ( <a href="#">Cl. 13(i)</a> )
15. Dispute Resolution (state <a href="#">Cl. 21 (a)</a> , <a href="#">21 (b)</a> or <a href="#">21 (c)</a> of <a href="#">Cl. 21</a> as agreed; if <a href="#">21 (c)</a> agreed, also state place of arbitration) ( <a href="#">Cl. 21</a> )	16. Number of Additional Clauses covering special provisions, if agreed

It is agreed that this Agreement shall be performed subject to the Terms and Conditions which consist of PART I, including Additional Clauses, if any agreed, and PART II, as well as Annex I (SCHEDULE OF PERSONNEL, CRAFT AND EQUIPMENT), Annex II (METHOD OF WORK AND ESTIMATED TIME SCHEDULE), and Annex III (CONTRACTOR'S DAILY REPORTS) or any other Annexes attached to this Agreement.

In the event of a conflict of terms and conditions, the provisions of PART I including Additional Clauses, if any agreed, shall prevail over those of PART II to the extent of such conflict but no further.

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 <b>the Contractor</b> )	Signature (for and on behalf of <b>the Company</b> )
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**ANNEX I (SCHEDULE OF PERSONNEL, CRAFT AND EQUIPMENT)  
INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (DAILY HIRE)  
CODE NAME: WRECKHIRE 2010**

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Dated:

Vessel:

Schedule of Personnel, Craft and Equipment ([Cl. 2, 4](#) and [13\(g\)](#))

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**ANNEX II (METHOD OF WORK AND ESTIMATED TIME SCHEDULE)  
INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (DAILY HIRE)  
CODE NAME: WRECKHIRE 2010**

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Dated:

Vessel:

Method of Work and Estimated Time Schedule ([Cl. 2](#) and [4](#))

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**ANNEX III (CONTRACTOR'S DAILY REPORTS)  
INTERNATIONAL WRECK REMOVAL AND MARINE SERVICES AGREEMENT (DAILY HIRE)  
CODE NAME: WRECKHIRE 2010**

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Date	Report no
Status of wreck:	
Vessel	
Cargo	
Bunkers	
Status of wreck site:	

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Weather on location:			
	1200	2400	Forecast next 24 hours
Wind direction & speed (Bft)			
Swell direction & height (m)			
Wave Height & max wave height (m)			
Long range forecast (5 days):			

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Services:
- performed in last 24 hours:
- planned for next 24 hours:

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Vessels:					
Name	On hire	Standby rate	Reduced rate	Off hire	Remarks
<i>Demobilised, inoperative or damaged – insert under "Remarks"</i>					
Equipment:					
Description	On hire	Standby rate	Reduced rate	Off hire	Remarks
<i>Demobilised, inoperative, consumed, lost or damaged – insert under "Remarks"</i>					

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Personnel:					
Name	On hire	Standby rate	Reduced rate	Off hire	Remarks

continued

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<i>Demobilised, inoperative or injured – insert under "Remarks"</i>					

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Areas of concern:
Health & safety
Environmental
Other
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Comments:
Contractor's Representative
Company Representative

Signed:			
Company Representative			
Contractor's Representative			
	Name	Position	Signature

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**WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)**  
**PART II**

<b>1. Definitions</b>	1
“Company” means the party stated in <a href="#">Box 3</a> .	2
“Contractor” means the party stated in <a href="#">Box 2</a> .	3
“Services” means the services stated in <a href="#">Box 7</a> .	4
“Vessel” means any vessel, craft, property, or part thereof, of whatsoever nature, including anything contained therein or thereon, such as but not limited to cargo and bunkers, as described in <a href="#">Box 4</a> .	5 6
“Worksite” means the position of the Vessel stated in <a href="#">Box 6</a> .	7
<b>2. The Services</b>	8
The Contractor agrees to exercise due care in rendering the Services which shall include, if applicable, the delivery and/or disposal of the Vessel. 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.	9 10 11 12
The Contractor shall provide the Personnel, Craft and Equipment set out in Annex I of this Agreement which the Contractor deems necessary for the Services based upon the Specifications, Condition and Position of the Vessel and Worksite set out in <a href="#">Boxes 4, 5 and 6</a> .	13 14 15
The Contractor's Method of Work shall be as described in Annex II, utilising the Personnel, Craft and Equipment described in Annex I.	16 17
The Contractor shall consult with the Company if there is any need for substantial change in the Method of Work and/or Personnel, Craft or Equipment. (See <a href="#">Clause 4</a> hereof).	18 19
The Contractor shall provide the Company's representative with daily reports in accordance with Annex III.	20
The party identified in <a href="#">Box 7(ii)</a> of this Agreement shall be given all reasonable assistance by the other party in connection with obtaining confirmation from the competent authorities that the Company has complied with any orders issued by them.	21 22 23
<b>3. Company Representative</b>	24
The methods and procedures to be employed in the Services shall at all times be discussed and agreed between the Company and the Contractor.	25 26
The Company's representative will be available during the performance of the Services with the full authority to act on behalf of the Company. The Company Representative shall have full and unfettered access at all times to the site and to the Contractor's craft and equipment, unless such access is reasonably refused by the Contractor.	27 28 29 30
In addition, the Company will provide at its sole risk and expense sufficient officers or their equivalents, who are fully conversant with the cargo system and/or layout of the Vessel, and who should be in attendance when reasonably required during the performance of the Services in order to provide advice as and when requested by the Contractor.	31 32 33 34
<b>4. Change of Method of Work and/or Personnel, Craft and Equipment</b>	35
The Rates of Hire stated in <a href="#">Box 11</a> are based upon the Nature of the Services, as set out in <a href="#">Box 7</a> , Method of Work, and Personnel, Craft and Equipment, as set out in Annexes I and II, and the Description, Specifications, Position, Condition of the Vessel and the Worksite, as set out in <a href="#">Boxes 4, 5 and 6</a> .	36 37 38
<b>(a)</b> If before or during the performance of the Services, and without fault on the part of the Contractor, there is a substantial change in the Services, and/or in the Personnel, Craft and Equipment required to undertake the Services 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:	39 40 41 42 43
<b>(i)</b> The Contractor shall forthwith give notice in writing thereof to the Company and of the estimated additional costs to effect the Services;	44 45
<b>(ii)</b> Any and all substantial changes to the nature of such Services which are agreed between the Contractor and the Company shall be drafted into a variation order by the Company, which shall be signed by the parties;	46 47
<b>(iii)</b> The parties shall, without delay, consult each other to reach agreement on the amount of the additional costs to be added to the Rates of Hire and any agreement shall be incorporated into the variation order.	48 49
<b>(b)</b> 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 work and/or personnel, craft and/or equipment requirements, then:	50 51 52
<b>(i)</b> The Company may, subject to the provisions of <a href="#">Clause 10(d)</a> hereof, seek a reduction in respect of the monies payable pursuant to <a href="#">Clause 10(a)</a> hereof;	53 54

**WRECKHIRE 2010 - International Wreck Removal and Marine Services Agreement (Daily Hire)**  
**PART II**

(ii) All such material changes which are agreed by the Contractor and the Company shall be drafted into a variation order by the Company, which shall be signed by the parties;	55 56
(iii) The parties shall, without delay, consult each other to reach agreement on the amount of the costs to be deducted from the Rates of Hire and any agreement shall be incorporated into the variation order.	57 58
(c) Alternatively either party may refer the matter to expert evaluation in accordance with <a href="#">Clause 20</a> (Expert Evaluation) or to arbitration or mediation pursuant to <a href="#">Clause 21</a> (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 the variation order.	59 60 61 62
In the event the matter is referred either to expert evaluation or arbitration or mediation the Contractor will continue to provide the Services, without prejudice to his claim for additional remuneration.	63 64
<b>5. Miscellaneous</b>	65
(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 its own equipment during the Services under this Agreement.	66 67 68
(b) The Contractor may make reasonable use of Vessel's machinery, gear, equipment, anchors, chains, stores and other appurtenances 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.	69 70 71
(c) Subject to approval of the Company which shall not be unreasonably withheld, and subject to it being permitted by 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.	72 73 74 75
(d) The Company will use its best endeavours to provide the Contractor with 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.	76 77 78
<b>6. Permits</b>	79
All necessary licences, approvals, authorisations or permits required to undertake and complete the Services without let or hindrance shall be obtained and maintained by the Contractor (see <a href="#">Clause 13(e)</a> (Extra Costs)). The Company shall provide the Contractor with all reasonable assistance in connection with the obtaining of such licences, approvals, authorisations or permits.	80 81 82 83
<b>7. Delays</b>	84
(a) Adverse Weather and Other Delays In the event that the Contractor is prevented from progressing the Services due to adverse weather or sea conditions or any other reason outside the Contractor's control, the Standby Rate ( <a href="#">Box 11(iii)</a> and <a href="#">(iv)</a> ) shall apply. In such circumstances where there is a partial reduction in Services, there shall be an adjustment to the Daily Working Rate between the Working Rate and the Standby Rate to be agreed between the Contractor and the Company Representative.	85 86 87 88 89 90
(b) Contractor's Equipment and/or Personnel If there is a breakdown of any of the Contractor's equipment or non-availability of personnel, the Company Representative and the Contractor shall consult each other to reach an agreement on the amount of time lost as a result, if any. The Standby Rate shall apply for the agreed period.	91 92 93 94
(c) Hired-in Equipment and/or Personnel The Contractor shall use its best efforts to ensure that appropriate standby rates of hire are agreed in any sub-contract agreement in the event of breakdown of their equipment or non-availability of their personnel. If there is a breakdown of equipment or non-availability of personnel, the Company Representative and the Contractor shall consult each other to reach an agreement on the amount of time lost as a result, if any. The sub-contract standby rate shall only apply for the agreed period if such standby rates have been agreed with sub-contractors. The Contractor shall pass on to the Company the benefit of any off-hire or reduction in the rate of hire in respect of equipment or personnel hired in by the Contractor.	95 96 97 98 99 100 101 102
(d) The Company Representative shall promptly advise the Contractor of all periods when they consider that Standby Rates shall apply and shall at the same time confirm same in writing to the Company and the Contractor.	103 104 105
(e) <a href="#">Sub-clauses 7(b)</a> and <a href="#">7(c)</a> shall not apply for individual delays unless such delays exceed six (6) consecutive hours when the Standby Rate shall apply to the whole agreed delay period.	106 107
(f) In the event that the parties cannot reach agreement in respect of the applicable reductions in <a href="#">Sub-clauses (a), (b) or (c)</a> above to the Daily Rates of Hire, or the duration of such reduction then the issue may be referred to expert evaluation in accordance with <a href="#">Clause 20</a> (Expert Evaluation) or to arbitration or mediation	108 109 110



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pursuant to <a href="#">Clause 21</a> (Arbitration and Mediation).	111
<b>8. Suspension or Termination</b>	<b>112</b>
<b>(a)</b> The Company has the right to suspend or terminate the Services to be carried out under this Agreement at any time, provided always that notice of such suspension or termination is given to the Contractor in writing. In such event the Contractor is entitled to be paid all sums due at the time of suspension or termination in accordance with the provisions of <a href="#">Box 11</a> .	113 114 115 116
<b>(b)</b> Such suspension or termination of the Services will be carried out with all reasonable despatch by the Contractor, subject always to the safety of Personnel, Craft and Equipment involved in the Services. Any additional direct expenses arising as a consequence of the instructions to suspend or terminate the Services shall be for the account of the Company.	117 118 119 120
<b>(c)</b> If permission to suspend or terminate is not given by the competent authorities the Contractor shall be paid by the Company at the appropriate rate set out in <a href="#">Box 11</a> 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.	121 122 123 124
<b>9. Delivery and/or disposal</b>	<b>125</b>
<b>(a)</b> If applicable, the Vessel shall be accepted forthwith and taken over by the Company or its duly authorised representative at the place of delivery indicated in <a href="#">Box 8</a> . References to delivery or the place of delivery shall include disposal or the place of disposal, if applicable.	126 127 128
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.	129 130 131
In the event the Vessel is not accepted forthwith by the Company or delivery is prevented or delayed by action of governmental or other authorities outside the control of the Contractor, all costs necessarily incurred by the Contractor from the moment of the tender for delivery shall be for account of the Company, and the Daily Rate of Hire shall continue to be payable to the Contractor.	132 133 134 135
<b>(b)</b> 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.	136 137 138 139 140 141 142
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.	143 144 145
<b>(c)</b> 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 <a href="#">Box 8</a> ).	146 147 148
<b>10. Payment</b>	<b>149</b>
<b>(a)</b> The Company shall pay the Contractor the Daily Working and Standby Rates of Hire for Personnel, Craft and Equipment set out in <a href="#">Box 11</a> and, if applicable, Reduced Daily Rates of Hire in accordance with <a href="#">Box 11(v)</a> .	150 151
<b>(b)</b> Such hire shall be fully and irrevocably earned on a daily basis and shall be non-returnable.	152
<b>(c)</b> Within 14 days of termination or completion of the Services set out in <a href="#">Box 7</a> the Contractor shall return any overpayments to the Company.	153 154
<b>(d)</b> All monies due and payable to the Contractor under this Agreement shall be paid without any discount, deduction, set-off, lien, claim or counterclaim.	155 156
<b>(e)</b> All payments to the Contractor shall be made in the currency and to the bank account stipulated in <a href="#">Box 12</a> .	157
<b>(f)</b> If any amount payable under this Agreement has not been paid within seven (7) days of the due date, or if the security required in accordance with <a href="#">Clause 15</a> is not provided within five (5) banking days following the request by the Contractor, then at any time thereafter 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, provided always that the Contractor shall give the Company at least three (3) working days written notice of its intention to exercise this right.	158 159 160 161 162 163

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(g) 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 <a href="#">Box 13</a> , they shall attract interest in accordance with the rate set out in <a href="#">Box 13</a> .	164 165 166
<b>11. Bonus</b>	167
If the Contractor completes the Services to the satisfaction of the Company:	168
<b>(a)</b>	169
<b>(i)</b> before the date or within the period stated in <a href="#">Box 10(ii)</a> , the Company shall pay the Contractor the bonus set out in <a href="#">Box 10(i)</a> ; or	170 171
<b>(ii)</b> on or after the date or outside the period stated in <a href="#">Box 10(ii)</a> , but before the date or within the period stated in <a href="#">Box 10(iii)</a> , the Company will pay the bonus set out in <a href="#">Box 10(i)</a> reduced pro-rata on a daily basis from 100% on the date or period stated in <a href="#">Box 10(ii)</a> down to zero on or after the date or period stated in <a href="#">Box 10(iii)</a> .	172 173 174
<b>(b)</b> Delays ( <a href="#">Clause 7</a> ) shall not affect the dates or periods to be applied for the purposes of this <a href="#">Clause 11</a> .	175
<b>12. Reduced Daily Rates of Hire</b>	176
If the Contractor fails to complete the Services and, if applicable, deliver and/or dispose of the Vessel at the place(s) indicated in <a href="#">Box 8</a> within the period or on or before the date stated in <a href="#">Box 10(iii)</a> , the Daily Rates of Hire shall be reduced in accordance with <a href="#">Box 11</a> . Delays ( <a href="#">Clause 7</a> ) shall not affect the dates or periods to be applied for the purposes of this <a href="#">Clause 12</a> .	177 178 179 180
<b>13. Extra Costs</b>	181
The following shall be paid by the Company as and when they fall due:	182
<b>(a)</b> 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 Contractor's own or hired-in craft;	183 184
<b>(b)</b> the costs of the services of any assisting tugs when reasonably deemed necessary by the Contractor or prescribed by port or other authorities;	185 186
<b>(c)</b> all costs in connection with clearance, agency fees, visas, guarantees and all other expenses of such kind;	187
<b>(d)</b> 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;	188 189 190
<b>(e)</b> all costs incurred in obtaining and maintaining licences, approvals, authorisations or permits required to undertake and complete the services in accordance with <a href="#">Clause 6</a> .	191 192
<b>(f)</b> 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;	193 194
<b>(g)</b> all reasonable costs of transportation of equipment and the travel and accommodation costs of personnel identified in Annex I, (other than the crews of craft utilised in the Services);	195 196
<b>(h)</b> all costs incurred by the Contractor in respect of portable salvage equipment, materials, or stores which are lost, damaged or consumed during the Services;	197 198
<b>(i)</b> all costs in respect of fuels and lubricants consumed during the Services, unless included in the Daily Rates. If any such costs are in fact paid by or on behalf of the Company by the Contractor, the Company shall reimburse the Contractor on the basis of the actual cost to the Contractor plus a handling charge of the percentage amount indicated in <a href="#">Box 14(i)</a> for <a href="#">Clause 13(a)</a> - <a href="#">(h)</a> costs or <a href="#">Box 14(ii)</a> for <a href="#">Clause 13(i)</a> costs, upon presentation of invoice.	199 200 201 202 203
<b>14. Extra Costs of disposal of Vessel</b>	204
All extra costs incurred resulting from the disposal of the Vessel shall be for the account of the party stated in <a href="#">Box 9(i)</a> . If the Company is the party stated in <a href="#">Box 9(i)</a> and any such costs are paid by or on behalf of the Company by the Contractor, the Company shall reimburse the Contractor on the basis of the actual cost to the Contractor plus a handling charge of the percentage amount indicated in <a href="#">Box 9(ii)</a> upon presentation of invoice.	205 206 207 208
<b>15. Security</b>	209
The Company shall provide on signing of this Agreement an irrevocable and unconditional security in a form and amount as agreed between the parties.	210 211
If required by the Contractor and also in the event that initially no security is requested, the Company shall provide security or 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 by the Contractor.	212 213 214 215
<b>16. Liabilities</b>	216

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**PART II**

<b>(a)</b> The Contractor will indemnify and hold the Company harmless in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death occurring during the Services hereunder to any of the following persons:	217 218 219
<b>(i)</b> any servant, agent or sub-contractor of the Contractor;	220
<b>(ii)</b> any other person at or near the site of the operations for whatever purpose on behalf or at the request of the Contractor.	221 222
<b>(b)</b> The Company will indemnify and hold the Contractor harmless in respect of any liability adjudged due or claim reasonably compromised arising from injury or death occurring during the Services hereunder to any of the following persons:	223 224 225
<b>(i)</b> any servant, agent or sub-contractor of the Company;	226
<b>(ii)</b> any other person at or near the site of the operations for whatever purpose on behalf or at the request of the Company.	227 228
<b>(c)</b> Neither the Company nor its servants, agents or sub-contractors shall have any liability to the Contractor for loss or damage of whatsoever nature sustained by the Contractor's owned or hired-in craft or equipment (excluding portable salvage equipment, materials or stores which are lost, damaged, or consumed during the Services), whether or not the same is due to breach of contract, negligence or any other fault on the part of the Company, its servants, agents or sub-contractors.	229 230 231 232 233
<b>(d)</b> Neither the Contractor nor its servants, agents or sub-contractors shall have any liability to the Company for loss or damage of whatsoever nature sustained by the Vessel, whether or not the same is due to breach of contract, negligence or any other fault on the part of the Contractor, its servants, agents or sub-contractors.	234 235 236
<b>(e)</b> Neither party shall be liable to the other party for:	237
<b>(i)</b> 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 or any other fault on the part of either party, their servants, agents or sub-contractors; or	238 239 240
<b>(ii)</b> any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either party, their servants, agents or sub-contractors.	241 242
<b>17. Himalaya Clause</b>	243
All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement for the benefit of the Contractor or the Company shall also apply to and be for the benefit of their respective sub-contractors, operators, the Vessel's owners (if the Company is the demise/bareboat charterer), masters, officers and crews and to and be for the benefit of all bodies corporate parent of, subsidiary to, affiliated with or under the same management as either of them, as well as all directors, officers, servants and agents of the same and to and be for the benefit of all parties performing Services within the scope of this Agreement for or on behalf of the Contractor or the Company as servants, agents and sub-contractors of such parties. The Contractor or the Company shall be deemed to be acting as agent or trustee of and for the benefit of all such persons, entities and Vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and Vessels.	244 245 246 247 248 249 250 251 252 253
<b>18. Lien</b>	254
Without prejudice to any other rights which the Contractor may have, whether <i>in rem</i> or <i>in personam</i> , 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.	255 256 257 258 259 260
<b>19. Time for Suit</b>	261
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.	262 263 264 265 266 267
<b>20. Expert Evaluation</b>	268
<b>(a)</b> If the parties are unable to agree the alteration to costs or rates under <a href="#">Clause 4(a)</a> or <a href="#">Clause 4(b)</a> or the adjustment to the Daily Working Rate or the time lost under <a href="#">Clauses 7(a), 7(b)</a> or <a href="#">7(c)</a> , then either party may request an expert evaluation in accordance with the following procedure:	269 270 271

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(i) The party seeking the evaluation shall propose three (3) experts from the persons currently on the Panel of Special Casualty Representatives maintained by the Salvage Arbitration Branch of the Corporation of Lloyd's to the other party in writing having checked that the proposed experts are available and willing to be appointed. The other party may select one of the proposed experts by responding in writing within twenty-four (24) hours. The party seeking the evaluation will then, as soon as possible (and in any event in less than twelve (12) hours) appoint the expert selected by the other party or, if none has been selected, one of the three (3) experts proposed (hereinafter "the Expert").	272 273 274 275 276 277 278
(ii) Both parties shall provide short written statements to the Expert setting out their arguments within 48 hours of its acceptance of instructions and shall provide copies of their statement to the other party.	279 280
(iii) The Expert shall, within seventy-two (72) hours of receipt of written statements, advise the parties in writing of the alteration to costs and/or rates or of the adjustment to the Daily Working Rate or time lost. The Expert may also provide short reasons explaining the evaluation.	281 282 283
(iv) The Expert's rate of remuneration shall be the applicable rate plus bonus as set from time to time by the SCOPIC Committee for a Salvage Master. The costs of the Expert shall be paid by the party seeking 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.	284 285 286 287
(b) If the Expert's evaluation is not agreed by both parties, 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 <a href="#">Clause 21</a> (Arbitration and Mediation).	288 289 290 291
<b>21. Arbitration and Mediation</b>	292
This <a href="#">Clause 21</a> applies to any dispute arising under this Agreement.	293
(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.	294 295 296 297
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.	298 299 300 301
The Arbitrator on appeal shall be the person currently acting as Lloyd's Appeal Arbitrator.	302
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.	303 304 305
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.	306 307 308
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (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.	309 310 311
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\$400,000.00 (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.	312 313 314 315
(b) *This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the 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, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	316 317 318 319 320 321
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (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 time when the arbitration proceedings are commenced.	322 323 324
(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	325 326

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arbitration at a mutually agreed place, subject to the procedures applicable there.	327
<b>(d)</b> Notwithstanding 21(a), 21(b) or 21(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 21(a), 21(b) or 21(c) above, the following shall apply:	328 329 330
<b>(i)</b> 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.	331 332 333
<b>(ii)</b> The other party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree 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.	334 335 336 337 338 339
<b>(iii)</b> 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.	340 341
<b>(iv)</b> 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.	342 343
<b>(v)</b> 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.	344 345 346
<b>(vi)</b> 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.	347 348
<b>(vii)</b> 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.	349 350 351
<i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i>	352
<b>(e)</b> If <a href="#">Box 15</a> in PART I is not appropriately filled in, <a href="#">Sub-clause 21(a)</a> of this Clause shall apply. <a href="#">Sub-clause 21(d)</a> shall apply in all cases.	353 354 355
<i>*<a href="#">Sub-clauses 21(a)</a>, <a href="#">21(b)</a> and <a href="#">21(c)</a> are alternatives; indicate alternative agreed in <a href="#">Box 15</a>.</i>	356
<b>22. Notices Clause</b>	357
<b>(a)</b> 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 <a href="#">Boxes 2</a> and <a href="#">3</a> or as appropriate or to such other address as the other party may designate in writing.	358 359 360 361
A notice may be sent by registered or recorded mail, facsimile, electronically or delivered by hand in accordance with this <a href="#">Sub-clause 22(a)</a> .	362 363
<b>(b)</b> Any notice given under this Agreement shall take effect on receipt by the other party and shall be deemed to have been received:	364 365
<b>(i)</b> if posted, on the seventh (7 <sup>th</sup> ) day after posting;	366
<b>(ii)</b> if sent by facsimile or electronically, on the day of transmission; or	367
<b>(iii)</b> if delivered by hand, on the day of delivery.	368
And in each case proof of posting, handing in or transmission shall be proof that notice has been given, unless proven to the contrary.	369 370
<b>23. Insurance</b>	371
<b>(a)</b> 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.	372 373 374
<b>(b)</b> The Company warrants that throughout the period of this Agreement it will maintain full cover against normal P&I risks for the Vessel as evidenced by a Certificate of Entry issued by a P&I Club or insurer stated	375 376

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in <a href="#">Box 4(ix)</a> and shall comply with all the requirements of the policy.	377
<b>24. Pollution</b>	378
<b>(a)</b> 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 Representative. The Contractor shall provide the Company with a copy of the pollution response plan on request by the Company.	379 380 381 382 383
<b>(b)</b> The Company shall indemnify and hold the Contractor harmless in respect of any and all consequences of any pollution which results from any discharge or escape of any pollutant from the Vessel except where such pollution arises as a consequence of the negligence of the Contractor, its sub-contractors, its agents and/or servants.	384 385 386 387
<b>(c)</b> The Contractor shall indemnify and hold the Company harmless in respect of any and all consequences of any pollution which results from any discharge or escape of any pollutant from its own or from hired-in craft.	388 389
<b>25. Rotation and Replacement of Craft, Equipment and Personnel</b>	390
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 Representative, which shall not be unreasonably withheld.	391 392 393
<b>26. General Provisions</b>	394
<b>(a) Severability.</b> 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.	395 396 397 398 399 400
<b>(b) Third Party Beneficiaries.</b> 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.	401 402 403 404
<b>(c) Waiver.</b> 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 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.	405 406 407 408 409 410
<b>(d) Warranty of Authority.</b> 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 authorized to execute this Agreement as a binding commitment of such party.	411 412 413 414
<b>(e) Singular/Plural</b> The singular includes the plural and vice versa as the context admits or requires.	415 416
<b>(f) Headings</b> The index and headings to the clauses and appendices to this Agreement are for convenience only and shall not affect its construction or interpretation.	417 418 419