Agenda

Documentary Committee
Tuesday 14 May 2019 at 08:30
Athens

1. Approval of minutes of the Documentary Committee meeting held on 13 November 2018

2. Marketing, Future Work Programme and Proposed New Projects
   2.1. Marketing
   2.2. Proposals for New Projects and Future Work Programme

3. Items for Adoption
   3.1. DISMANTLECON
   3.2. Sanctions Clauses
   3.3. Hull Fouling Clause
   3.4. Cyber Security Clause

4. Items for Review
   4.1. GENCON
   4.2. LNG Bunker Purchase Contract
   4.3. Floating Hotels/Accommodation Support Vessels Charter Party
   4.4. ASBAGASVOY/LPGVOY Charter Party
   4.5. BOXLEASE Agreement
   4.6. Superyacht Management Agreement
   4.7. Conversion Contract
   4.8. SUPPLYTIME Special Tasks Annexes

5. Report Items
   5.1. BIMCO Bunker Terms 2018 - Sanctions Compliance Clause
   5.2. Arrest Clauses
   5.3. Published Contracts and Clauses
   5.4. Regulatory Matters
   5.5. CMI Judicial Sale of Ships

6. Any other Business
   6.1. Labelling BIMCO Clauses

7. Date and Place of Next Meeting
BIMCO Competition Law Policy

BIMCO is the world’s largest international shipping association, with 2,200 members globally. We provide a wide range of services to our global membership – which includes shipowners, operators, managers, brokers and agents.

BIMCO’s core objective is to facilitate the commercial operations of our members by developing standard contracts and clauses, and providing quality information, advice and education.

BIMCO promotes fair business practices, free trade and open access to markets and we are a strong advocate for the harmonisation and standardisation of all shipping related activity.

BIMCO actively promotes the application of globally agreed regulatory instruments – we are accredited as a Non-Governmental Organisation (NGO) with all relevant United Nations agencies and other regulatory entities.

It is BIMCO’s policy, as a trade association, to ensure compliance with competition laws around the world with respect to any activities carried out under its auspices.

BIMCO needs to exercise care to ensure compliance with competition law as it can be held liable in its own right for competition law infringements and be exposed to fines. In addition, BIMCO members and those who participate in BIMCO organised events can be held directly liable and subject to the same sanctions.

BIMCO will not engage in any activity or make any rule, decision, agreement or recommendation, or permit the exchange of information that could prevent, restrict or distort competition in breach of relevant competition laws.

Please read the following notice prior to attending any BIMCO meeting or event

Members and other participants at any of BIMCO’s meetings, forums, working groups, presentations, seminars or other events should be aware that they may be marketplace competitors and that any action or agreement which may potentially prevent, restrict or distort competition - such as exchanging information on issues such as pricing or terms of business, or setting standards that exclude competitors - is likely to be unlawful. Members and participants must individually exercise caution during such meetings to prevent a potential violation of competition law.

Competition compliance is the responsibility of every BIMCO member and participant at any BIMCO event. Any member or participant in doubt about their compliance with competition law should seek legal advice.

September 2016
Agenda Notes

Documentary Committee
Tuesday 14 May 2019 at 08:30
Athens

1. Approval of minutes of the Documentary Committee meeting held on 13 November 2018

2. Marketing, Future Work Programme and Proposed New Projects

2.1. Marketing

**BIMCO Bunker Terms 2018 and 2020 Bunker Clauses** – Since the last Documentary Committee (DC) meeting the secretariat has actively promoted the Bunker Terms and the 2020 Bunker Clauses at the IBIA Annual Conference in Copenhagen, SIBCON in Singapore, FUJCON in Fujairah, ARACON in Amsterdam, Maritime Week Americas in Panama, the Argus Bunker Fuels conference in Algeciras, CONFITARMA seminar in Genoa, and at the CMA Conference in Connecticut. The 2020 bunker clauses were also presented during a Lloyd’s Register Webinar broadcasted in January. A further presentation of the Bunker Terms will be made during Gibraltar Maritime Week in June. It has been agreed that this will mark the end of the marketing campaign for the Bunker Terms as they have gained good traction in the market and awareness of them seems high among bunker suppliers, traders and buyers.

The feedback on the 2020 bunker clauses has been positive and we understand that they are being readily incorporated into time charters.

**SHIPTERM and SHIPTERM S** – The standard term sheets for bilateral and syndicated ship financing were presented at two seminars held in Beijing on 26 February and Shanghai on 27 February. The seminars were well attended by banks, leasing institutions, shipowners and lawyers. The Industrial and Commercial Bank of China was represented on the panel and encouraged everyone to make use of the term sheets.

The term sheets received a lot of support from participants. Interestingly, the secretariat has been informed that leasing companies are also using the term sheets when negotiating with the banks.

Two final seminars on SHIPTERM and SHIPTERM S are planned for Hamburg and Copenhagen before the end of 2019.
**Shipmanagers’ Letter of Undertaking** – The BIMCO Bulletin will include a promotional article on the Shipmanagers’ LoU which was adopted at the DC meeting in Copenhagen in November. The LoU has been promoted at the SHIPTERM/SHIPTERM S seminars in the Far East and it will also be mentioned at the seminars to come. A webinar will be arranged during the second half of 2019.

**REPAIRCON 2018 and MINREPCON 2018** – Two well-attended webinars on the revised contracts were held on 5 March. The contracts were also presented individually to the Shipyards’ & Maritime Equipment Association (SEA Europe) in Madrid via video link. Seminars are planned for later in the year and the possible locations include Turkey, Singapore, Italy and Portugal.

**DISMANTLECON** – The secretariat presented the draft contract at a decommissioning seminar arranged by Copenhagen law firm Kammeradvokaten in early-March. Following that presentation, the secretariat has been invited to talk about the contract at a Norwegian law firm Arntzen de Besche in both Oslo and Stavanger, in end-April and early-May, respectively.

**RESPONSECON** – The secretariat gave a presentation on RESPONSECON to the operational staff of Oil Spill Response Limited (OSRL) in Singapore. OSRL is a global oil spill response cooperative funded by more than 160 oil and energy companies. They have already used RESPONSECON for a spill cleanup but were interested in learning more about the contract and its application. They are very supportive of the initiative to harmonise terms and conditions for hiring spill equipment and personnel.

### 2.2. Proposals for New Projects and Future Work Programme

A list of proposed projects compiled by the secretariat is set out below giving a summary of each suggestion. Following the meeting in Athens the secretariat will appoint subcommittees to begin work on new projects, in the order of priority shown, to replace completed ones. Should you have any other suggestions for new projects please bring them to the attention of the Committee during this section of the meeting.

Please note that work has not yet begun on the Conversion Contract or the Superyacht Management Agreement which were added to the work programme in November.

1. Revision of BARGEHIRE 2008
2. Revision of TOWCON 2008 and TOWHIRE 2008
3. Sale and Leaseback Term Sheet
4. SHIPMAN for Autonomous Ships
5. Revision of Bunker Non-Lien Clause and Bunker Quality Control Clause
6. GENCOA – General Contract of Affreightment
7. Performance Guarantee for Charter Parties
8. Refund Guarantee for Shipbuilding Contracts
9. Minor Revision of NEWBUILDCON
10. Standard Supply Purchase Contract
11. Shipboard Software Maintenance Contract
Project Background Notes

Revision of BARGEHIRE 2008

In response to a request to revise BARGEHIRE 2008 the secretariat approached several large barge owners and operators to check the demand for an update. The feedback was consistent in that many users often face difficulties with the survey and repair clauses (clauses 10 and 18). The redelivery of barges appears to create problems when the barges are not redelivered in the same condition as delivered. The current wording of BARGEHIRE 2008 does not adequately address this issue. Based on their experience, the users of the contract consulted would welcome a revision of BARGEHIRE 2008.

Revision of TOWCON 2008 and TOWHIRE 2008

Clarksons’ offshore department have reported a number of issues when using TOWCON 2008 and TOWHIRE 2008 and suggested that the forms would benefit from an update. The main issues concern a lack of clarity about the speed or performance criteria that the tugowner has used to calculate the contract price; no provision addressing a breakdown or failure of equipment on board the tug; no provision regarding bunkering during a tow in terms of responsibility for costs; an absence of reporting obligations; greater clarity needed to determine when port/at sea rates apply once freetime has expired; an obligation on the tugowner to provide a towage manual as part of the scope; and a separate “no claim for salvage” clause. The secretariat has mentioned these issues to several other companies using the towage forms and can confirm there is support for a revision.

Sale and Leaseback Term Sheet

During the consultation process on SHIPTERM S in 2017 several shipowners, banks and lawyers raised the added value of BIMCO also developing a standard term sheet for sale and leaseback transactions.

With ship financing increasingly moving away from traditional, mainly European, banks to leasing companies there might be a sweet spot here for BIMCO. The majority of sale and leaseback transactions are taking place in Asia, with China and Hong Kong being the main markets, and this is also where the newcomers in the field are emerging.

More views on the potential of a BIMCO sale and leaseback term sheet were therefore sought at the two seminars on SHIPTERM and SHIPTERM S held in Beijing and Shanghai in February, as well as at separate meetings held with a number of major ship leasing institutions.

There was a lot of support for BIMCO developing such a term sheet, which would complement the two ship financing term sheets and create a true suite of term sheets. It was considered that work on the term sheet should be undertaken sooner rather than later and many expressed an interest in being part of the project.

SHIPMAN for Autonomous Ships

Vice Chairman of the DC, Inga Frøysa, was contacted by Norwegian BIMCO member Wilhelmsen who queried whether BIMCO would be interested in developing a ship management contract specifically for autonomous ships. BIMCO’s strategy is to be at the forefront of new developments such as autonomous ships, not only from the technology perspective but also contractual. One of
the reasons for a hybrid services/shipmanagement contract is that it involves much more technical specifications and possibly needs a framework for the additional software and hardware onboard the ship.

**Revision of Bunker Non-Lien Clause and Bunker Quality Control Clause**

The effectiveness of the Bunker Non-Lien Clause has been questioned because of the difficulty that time charterers face trying to get bunker suppliers to agree that charterers are buying bunkers for their own account. The clause was originally developed to try to reduce bunker suppliers’ reliance on ship arrest for unpaid bunkers ordered by charterers. Owners were occasionally finding themselves exposed to loss of hire due to charterers’ bankruptcy which was then compounded by their ship being arrested by suppliers for non-payment of bunkers by charterers. US lawyers have suggested that the notification mechanism in the clause would not necessarily prevent a supplier from arresting a ship for unpaid bunkers.

The BIMCO Bunker Terms 2018 (BBT2018) are now gaining a growing foothold in the bunker market and are widely accepted. However, it has been noted at previous meetings that there is an inconsistency in the bunker sampling provisions between BBT2018 and the Bunker Quality Control Clause. This is an issue that has been brought to the secretariat’s attention at several recent bunker conferences. The request is to make the sampling point provision the same as found in BBT2018.

**GENCOA – General Contract of Affreightment**

BIMCO’s standard Contract of Affreightment (COA), GENCOA, was launched in 2004 as a replacement for VOLCOA. Unfortunately, very little marketing was done to promote GENCOA and few in the industry are even aware of its existence. In the light of the current revision of GENCON, the secretariat feels that it might be a good opportunity to produce an updated version of GENCOA and market it on the back of the new GENCON as a “partner” contract.

**Performance Guarantee for Charter Parties**

BIMCO’s Charter Party Guarantee is governed by English law and subject to the jurisdiction of the English Courts. The secretariat believes this can cause problems where the guarantor refuses to perform its obligations under the guarantee and the beneficiary commences legal proceedings. A revision is proposed to address this issue. The recognition or enforcement of the judgment in other countries depends on either the applicable treaties/conventions or the local interpretations of the principle of reciprocity. English judgments are not enforceable in China, which means that the beneficiary will not be able to pursue a claim should, for example, a Chinese guarantor refuse to honour the terms of the guarantee.

The terms of the BIMCO Charter Party Guarantee operate to bind the guarantor if an award under the charter party is made against the charterer. The Guarantee should contain express provisions to that effect. The absence of such a link between the original charter party and the guarantee
provision will result in a potentially difficult, or impossible, enforcement of an arbitration award under the guarantee.

**Refund Guarantee for Shipbuilding Contracts**

Several BIMCO members have suggested that BIMCO should develop a standalone refund guarantee for shipbuilding contracts. BIMCO’s shipbuilding contract, NEWBUILDCON, contains a Refund Guarantee in its annexes. The secretariat proposes that the terms of the NEWBUILDCON refund guarantee be reviewed to see if it can be used as a basis for a standalone guarantee.

**Minor Revision of NEWBUILDCON**

In March, BIMCO Deputy Secretary General, Søren Larsen, visited the China Shipbuilding Industry Corporation (CSIC) which is the leading state-owned shipbuilding and repair group in China. It builds and repairs a wide range of ship types.

The purpose of the visit was to discuss with CSIC why NEWBUILDCON is only being used to a limited extent in China compared to Europe. CSIC explained that while NEWBUILDCON is clearly a well drafted form, it is structured and written in a way radically different from existing forms used by Chinese yards. CSIC had their own form of contract largely based upon the standard shipbuilding form published by the Shipbuilders’ Association of Japan (the SAJ form). Whereas NEWBUILDCON is seen by the Chinese as a European initiative CSIC could see the benefit in yards and shipowners coming to an agreement about a standard form that both parties could lend their name to or otherwise support. It would facilitate discussions considerably and it might overcome some of the shipbuilding disputes that often end up in arbitration in London.

However, instead of rushing into a possible revision of NEWBUILDCON (if that is considered necessary for the yards to accept it) it was agreed to arrange a workshop involving yards, shipowners, brokers, lawyers and arbitrators to discuss main problems in ship building and identify to which extent these are or should be addressed in existing forms of ship building contracts. For this purpose, BIMCO would investigate which European and Chinese yards are using NEWBUILDCON so that they can join the workshop and share their experiences in using the form. The workshops may take place in Beijing and Shanghai depending on how much interest there is.

**Standard Supply Purchase Contract**

The International Shipsuppliers & Services Association (ISSA) has approached BIMCO with a request to work together to develop a standard contract for supplying ships with stores. The secretariat believes that it would benefit shipowners and suppliers to have a standard contract, as a lot of time could be saved by legal and/or procurement departments not having to go through suppliers’ individual terms.

**Shipboard Software Maintenance Contract**

Shipboard systems are increasingly becoming dependent on software and firmware. The effective maintenance of this software and firmware is essential to the safe and efficient operation of the ship. This is creating a demand for improved software maintenance service level agreements. Owners need to be secure in the knowledge that software and firmware upgrades for equipment can be “rolled-back” if they create problems in installed systems or in other integrated systems. At present there is no bench-marking of software standards for shipboard systems. Service levels and
obligations and responsibilities on software providers and system integrators vary from provider to provider. Maintenance is commonly performed on board the ship; at shore-based premises (the equipment is sent ashore for upgrade work); or remotely. BIMCO is currently working together with the Comité International Radio-Maritime (CIRM) to develop a set of standards for software maintenance. It is proposed that a standard software maintenance agreement for use between the owners and their software suppliers could be a useful tool.
3. Items for Adoption

3.1. DISMANTLECON

| Subcommittee members | Mr Kees de Looff, Van Oord Marine Contractors (Chairman)  
|                       | Mr Jens Klit Thomsen, Maersk Decom  
|                       | Ms Nicky Etherson, Bibby Offshore  
|                       | Mr Benjamin Minnee, Heerema Marine Contractors, IMCA  
|                       | Ms Gea Smid, Allseas, IMCA  
|                       | Mr Callum Sim, Shell International  
|                       | Mr Roger Evans, International Salvage Union (ISU)  
|                       | Ms Katrina Ross, UK Chamber of Shipping  
|                       | Mr Tom Walters, HFW  
|                       | Ms Sarah Wallace, The Standard Club  
|                       | Mr John Brown, Marsh |

Since the November DC meeting in Copenhagen the subcommittee has met twice and the drafting of DISMANTLECON was completed in March. A selective consultation process in April produced some useful feedback and broad support for the draft.

Having conducted an initial review of the consultation feedback the subcommittee has concluded that the draft will benefit from some relatively minor amendments. The improvements mainly concern operational matters rather than legal provisions. Overall, the feedback from the consultation has been very supportive of the draft DISMANTLECON and confirms that it meets the project’s objectives for a flexible and scalable marine services agreement that can be used as part of offshore dismantling projects worldwide.

The remaining amendments to the draft will done by the subcommittee during end April/early May. Although it may not be possible to send out the final draft prior to the DC meeting on 14 May, the subcommittee believes that, with the small number of amendments applied, no further drafting work is required. There is a lot of interest in DISMANTLECON and the contract is eagerly awaited by the industry. In view of this high level of interest the secretariat feels that it would be counterproductive to delay adoption until the next DC meeting in December 2019. We propose that in order to bring DISMANTLECON to market as soon as possible, the Committee should consider applying the “fast track” process. A copy of the final draft showing the minor amendments agreed by the subcommittee will be posted on the Discussion Forum by the end of May. We will invite DC members to review the final draft on the Forum and, if they agree with the amendments, adopt DISMANTLECON. This will enable us to publish DISMANTLECON in June.

In relation to the current version of the draft (see Enclosure Item 3.1.), during the March meeting the subcommittee undertook a lot of tidying up and reviewed the structure of the document. In addition to this, amendments have been made to the contract since it was reviewed by the DC in November. The main ones are set out below.

Box 14 – In the Copenhagen draft, there was a box qualifying what would be debris under the contract (i.e. measurements). This was originally carried over from WRECKSTAGE, but on reflection it was found that this was not appropriate in a decommissioning context.
Box XX – A new box has been inserted for the Contractor’s contractual liability. A default figure was also added where the parties fail to insert a number.

Clause 4 – Clear distinction is now made between the three types of “information” contained in the contract: Technical Information, Rely Upon Information and Assumptions. This amendment was fundamental for the entire contract, and as a result all clauses were checked and amended as appropriate.

Clause 8 – A new clause for defects and corrections of the same has been added to the contract. A new definition of “Defect” was also added to the contract. The new definition covers wrongful design and workmanship from the Contractor and the Contractor’s failure to comply with applicable laws and HSE requirements.

Clause 14 – The force majeure clause has been rethought and large parts have been amended or replaced. The subcommittee found it important that the clause dictates a clear process of who does what and when they should do it. Wording to reflect this has been added. Further to this, the new wording also gives the parties increased operational flexibility.

Clause 15 – Based on the same rationale as under clause 14 above, the suspension clause has now been replaced by a more operational clause that dictates a clear process in case of suspension.

Clause 25 – It was found by the subcommittee that it was not appropriate to use BIMCO’s standard dispute resolution clause for this particular contract and alternative wording was added. The reason for this is that in a decommissioning context parties would prefer operational solutions initially. As a consequence the new wording includes processes for “expert adjudication”.

A verbal report of the post-consultation review and the status of DISMANTLECON will be given at the DC meeting.

Members are invited to take note of the above and comment as appropriate.
3.2. Sanctions Clauses

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<th>Subcommittee members</th>
<th>Mr Alan MacKinnon, UK P&amp;I Club (Chairman)</th>
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<td>Ms Jenny Bazakas, Oldendorff</td>
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<td>Ms Ann Shazell, Cargill Ocean Transportation</td>
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<td>Mr Anders Leissner, Swedish Club</td>
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<td>Mr Mark Church, North of England P&amp;I Club</td>
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A first draft of the revised Sanctions Clause for Time Charter Parties was presented to the Committee last November. The subcommittee has since met on two occasions to review comments put forward by DC members; give further consideration to the basis and structure of the clause; and draft a parallel provision for use with voyage charter parties.

Sanctions clauses for contracts of affreightment, SHIPMAN and sale and purchase agreements will be developed separately and put forward for adoption at the next DC meeting in December.

3.2.1. Sanctions Clause for Time Charter Parties

Sanctions are often politically driven. This can make legislative obligations difficult to interpret and apply. Parties can find themselves exposed to a range of uncertainties, including the implications of extreme caution by banks resulting in their refusal to transfer payments for lawful transactions. A particular problem concerns parties’ position during a “grace period” (when a general licence allows the performance of certain transactions) before the unconditional enforcement of sanctions or where certain cargoes are permitted to be carried to states where trading is otherwise prohibited. The problem for owners is that an overrun might result in a legitimate voyage breaching sanctions. Difficulties can also be encountered as a result of competing legislation highlighted by tensions between, for example, US trading prohibitions and countermeasures in EU blocking regulations.

After considering all the issues and consulting with lawyers specialising in international sanctions, the subcommittee has redrafted the clause as set out below. A comparison showing the changes between the November meeting version and the current version is found in Enclosure 3.2. The main changes are set out below.

Subclause (b) – The previous continuing warranty given by owners for themselves and on behalf of those in the contractual chain up to the registered owners has been replaced by a warranty that “at the date of this Charter Party”, none of the listed parties is the “subject of any Sanctions”.

Subclause (c) – Is the mirror-image of subclause (b) on behalf of charterers and those down the contractual chain of sub-charterers and cargo interests.

Subclause (d) – Provides that breach of the warranty in subclauses (b) or (c) gives the party that is not in breach the right to claim damages and/or terminate the contract.

Subclause (e) – Provides that if, during the charter party period, any of those in the owners’ group (ie, in subclause (b)) becomes the “subject of Sanctions”, charterers may terminate the contract. However, as this is not a breach of warranty, there is no right to claim damages.
**Subclause (f)** – Gives the same rights to owners to cancel the charter party if any entity in the charterers’ group subsequently becomes the subject of sanctions.

**Subclause (h)** – Addresses the position where sanctions are imposed while a vessel is performing an employment. In order to refuse to proceed, owners must show that “in their reasonable judgement” continuing the voyage would expose them, the vessel, managers, crew, insurers or their reinsurers to sanctions. This provides an objective test aimed at clarifying the intended obligation for owners’ compliance to proceed during, for example, a “grace period”. This is a more stringent test than exposure to the “risk of sanctions”. It will require owners to show that they have undertaken enquiries and made appropriate investigations to justify a refusal to proceed before demanding alternative voyage orders.

### 3.2.2. Sanctions Clause for Voyage Charter Parties

Please find the clause below. In contrast with the time charter party version where future counterparties will not be known at the time of fixing and so owners’ and charterers’ respective warranties apply only at the date of the contract, a voyage charter is often concluded for immediate or imminent performance. Appropriate enquiries can therefore be undertaken to confirm a counterparty’s status at the time of fixing with the resulting warranties given to continue for the duration of the charter party. The position is addressed in subclauses (b) and (c) where owners and charterers respectively provide a continuing warranty for themselves, and others listed in their contractual “chain”, that they are not the subject of any sanctions. According to subclause (d), a breach of the warranty will entitle the other, non-breaching, party to terminate the charter and/or claim damages.

Subclause (e) sets out the regime to be followed if owners, in their “reasonable judgement”, determine (through an objective test requiring their decision to be justified) that they, and other listed parties, will be exposed to any sanction. In this event, owners may refuse to load cargo and cancel the charter or refuse to proceed on a voyage and discharge cargo on board at any safe port subject to first requesting alternative ports.

Members are invited to take note of the above and consider the Sanctions Clauses for Time Charter Parties and Voyage Charter Parties for adoption.
DRAFT

BIMCO Sanctions Clause for Time Charter Parties 2019

(a) For the purposes of this Clause “Sanctions” shall mean any applicable sanction, prohibition, restriction or designation imposed on:

(i) any specified persons, entities, bodies, vessels or fleets; or

(ii) any goods, services, carriage, activity or trade

under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, the United Kingdom or the United States of America.

(b) Owners warrant at the date of this Charter Party that they and the registered owner and any intermediate disponent owner and the vessel or any substitute, are not the subject of any Sanctions.

(c) Charterers warrant at the date of this Charter Party that they and any subcharterers, shippers, receivers or cargo interests are not the subject of any Sanctions.

(d) If at any time either party becomes aware that the other party is in breach of subclause (b) or (c) then that party may claim damages and/or terminate this Charter Party.

(e) If any of the parties identified in subclause (b) become the subject of Sanctions, the Charterers may terminate the Charter Party forthwith.

(f) If any of the parties identified in subclause (c) become the subject of Sanctions, the Owners may terminate the Charter Party forthwith.

(g) The Charterers shall not give any orders for the employment of the Vessel in any carriage, trade or on a voyage which, in the reasonable judgement of Owners, will expose the Vessel, Owners, managers, crew, the Vessel's insurers, or their reinsurers, to any Sanctions.

(h) If the Vessel is already performing an employment upon which any Sanction is subsequently imposed that will, in the reasonable judgement of Owners, expose the Vessel, Owners, managers, crew, the Vessel's insurers or their reinsurers, to any Sanctions, the Owners shall have the right to refuse to proceed with the employment and the Charterers shall be obliged to issue alternative voyage orders within forty-eight (48) hours of receipt of Owners’ notification of their refusal to proceed. If the Charterers do not issue such alternative voyage orders the Owners may discharge any cargo already loaded at any safe port (including the port of loading). The Vessel shall remain on hire throughout and Charterers shall remain responsible for all additional costs and expenses.

(i) If in compliance with subclauses (g) and (h) anything is done or not done, such shall not be deemed a deviation.

(j) The Charterers shall indemnify the Owners against any and all claims brought by the owners of the cargo and/or the holders of Bills of Lading, waybills or other documents evidencing contracts of carriage and/or sub-charterers against the Owners by reason of the Owners’ compliance with such alternative voyage orders or delivery of the cargo in accordance with subclause (h).

(k) The Charterers shall procure that this Clause shall be incorporated into all sub-charters and Bills of Lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charter Party.
BIMCO Sanctions Clause for Voyage Charter Parties

(a) For the purposes of this Clause “Sanctions” shall mean any applicable sanction, prohibition, restriction or designation imposed on:

(i) any specified persons, entities, bodies, vessels or fleets; or

(ii) any goods, services, carriage, activity or trade

under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, the United Kingdom or the United States of America.

(b) Owners warrant at the date of this Charter Party and throughout the duration of this Charter Party that they and the registered owner and any intermediate disponent-owner, and the nominated vessel or any substitute, are not the subject of any Sanctions.

(c) Charterers warrant at the date of this Charter Party and throughout the duration of this Charter Party that they and any sub-charterers, shippers, receivers, or cargo interests are not the subject of any Sanctions.

(d) If a party is in breach of subclauses (b) or (c) then the other party may claim damages and/or terminate this Charter Party forthwith.

(e) If performance of this Charter Party will, in the reasonable judgement of Owners, expose the Vessel, Owners, managers, crew, the Vessel’s insurers or their re-insurers to any Sanctions and:

(i) if loading has not commenced, Owners may cancel this Charter Party; or

(ii) if loading or the voyage has commenced Owners may refuse to proceed and discharge any cargo already loaded at any safe port of their choice (including the port of loading) in complete fulfilment of this Charter Party,

provided always, that if this Charter Party provides that loading and/or discharging is to take place within a range of ports where the Vessel, Owners, managers, crew, the Vessel’s insurers or their re-insurers will not be exposed to any Sanctions, Owners must first request Charterers to nominate an alternative port or ports and may cancel the Charter Party or refuse to proceed on the voyage only if such nomination is not made within forty-eight (48) hours after the request.

(f) If in compliance with subclause (e) anything is done or not done, such shall not be deemed a deviation.

(g) Charterers shall indemnify Owners against any and all claims brought by the owners of the cargo and/or the holders of Bills of Lading, waybills or other documents evidencing contracts of carriage by reason of Owners acting in accordance with any of the provisions of subclause (e).

(h) Charterers shall procure that this Clause shall be incorporated into all sub-charters, bills of lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charter Party.
3.3. Hull Fouling Clause

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<th>Subcommittee members</th>
<th>Mr Peter Eckhardt, F. Laeisz (Chairman)</th>
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<td>Ms Ann Shazell, Cargill Ocean Transportation</td>
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<td>Mr Tim Howse, Gard P&amp;I Club</td>
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Having concluded that the addition of a biofouling provision is premature, the Hull Fouling Clause subgroup has continued a light revision of the existing clause to improve clarity. Please see the clause below.

The subgroup has produced an updated draft which it would like the Committee to consider for adoption.

Subclause (a) – The wording has been expanded to clarify that it is the speed and duration of a sea passage and its effect on the removal of marine growth that will impact on the counting of aggregate waiting time.

Subclause (d) – Has been amended to refer to “inspecting and cleaning” instead of just “cleaning” as both are part of the process.

Members are invited to take note of the above and consider the revised Hull Fouling Clause for adoption.
DRAFT

Revised BIMCO Hull Fouling Clause for Time Charter Parties

(a) If, in accordance with Charterers’ orders, the Vessel remains at or shifts within a place, anchorage or between waiting areas, ports, places, anchorages and/or berths, and does not in the interim undertake a sea passage with speed and duration sufficient to remove the marine growth from the Vessel’s underwater parts resulting from the Vessel’s waiting there, for an aggregated period exceeding:

(i) a period as the parties may agree in writing in a Tropical Zone or Seasonal Tropical Zone*; or

(ii) a period as the parties may agree in writing outside such Zones*

any warranties concerning speed and consumption shall be suspended pending inspection of the Vessel’s underwater parts including, but not limited to, the hull, sea chests, rudder and propeller.

*If no such periods are agreed the default periods shall be 15 days.

(b) In accordance with subclause (a), either party may call for inspection which shall be arranged jointly by Owners and Charterers and undertaken at Charterers’ risk, cost, expense and time.

(c) If, as a result of the inspection either party calls for cleaning of any of the underwater parts, such cleaning shall be undertaken by the Charterers at their risk, cost, expense and time in consultation with the Owners.

(i) Cleaning shall always be under the supervision of the Master and, in respect of the underwater hull coating, in accordance with the paint manufacturers’ recommended guidelines on cleaning, if any. Such cleaning shall be carried out without damage to the Vessel’s underwater parts or coating.

(ii) If, at the port or place of inspection, cleaning as required under this subclause (c) is not permitted or possible, or if Charterers choose to postpone cleaning, speed and consumption warranties shall remain suspended until such cleaning has been completed.

(iii) If, despite the availability of suitable facilities and equipment, Owners nevertheless refuse to permit cleaning, the speed and consumption warranties shall be reinstated from the time of such refusal.

(d) Cleaning, Inspection and/or cleaning in accordance with this clause shall always be carried out prior to redelivery. If, nevertheless, Charterers are prevented from carrying out such inspecting and/or cleaning, the parties shall, prior to but latest on redelivery, agree a lump sum payment in full and final settlement in lieu of Owners’ costs inspecting and expenses arising as a result of /or in connection with the need for cleaning pursuant to this clause.

(e) If the time limits set out in subclause (a) have been exceeded but the Charterers thereafter demonstrate that the Vessel’s performance remains within the limits of this Charter Party the Vessel’s speed and consumption warranties will be subsequently reinstated and the Charterers’ obligations in respect of inspection and/or cleaning shall no longer be applicable.
3.4. Cyber Security Clause

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<tr>
<th>Subcommittee members</th>
<th>Mrs Inga Frøysa, Klaveness (Chairman)</th>
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<td>Mr Daniel Chu, Navig8</td>
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<td>Ms Elinor Dautlich, HFW</td>
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<td>Mr William MacLachlan, HFW</td>
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<td>Mr Francesco Tundo, UK P&amp;I Club</td>
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A first draft of the Cyber Security Clause was presented at the Copenhagen DC meeting in November. Through the discussion forum and during the meeting a lot of useful comments were received which were circulated to the subcommittee. The subcommittee then met again in London on 19 February to further review the clause. Please find the latest version of the clause below.

The subcommittee decided that several amendments were either required or preferred:

**Definitions** – The definitions of “Cyber Security” and “Computer Environment” have now been separated to form two individual definitions.

In the definition of “Cyber Security Incident”, the qualifying wording was changed to reflect that the incident should not be one affecting the obligations under the contract, it should affect or be likely to affect either of the parties’ systems. This change was also done to clarify that any theft of data unrelated to the obligations under the contract, but possible due to the contract, is also covered.

**Subclause (c)** – The qualifying wording previously contained in the definitions was moved down to this subclause as it did not apply to the entire clause.

It has now been clarified in the wording of the subclause that there are two separate notifications. The first one is a prompt notification to be given if either party becomes aware of an incident, no matter which of the parties’ systems such incident occurs in. The second notification is one to be given after the party suffering from the incident has had time to assess the situation further. A continuing obligation on the parties to keep each other informed of subsequent developments has also been introduced to the clause since the Copenhagen meeting.

**Members are invited to take note of the above and consider the Cyber Security Clause for adoption.**
DRAFT BIMCO Cyber Security Clause

In this Clause the following terms shall mean:

“Cyber Security” is technologies, processes, procedures and controls that are designed to protect “Computer Environment” is information technology systems, operational technology systems, networks, internet-enabled applications or devices and the data contained within such systems (the “Computer Environment”) from Cyber Security Incidents.

“Cyber Security Incident” is the destruction, loss, alteration or unauthorised disclosure of, access to, or control of a Computer Environment, affecting or potentially affecting a Party’s ability to perform its obligations under this Contract (other than those under this Clause).

“Cyber Security” is technologies, processes, procedures and controls that are designed to protect Computer Environments from Cyber Security Incidents.

(a) Each Party shall:

(i) implement appropriate Cyber Security measures and systems and otherwise use reasonable endeavours to maintain its Cyber Security;
(ii) have in place appropriate plans and procedures to allow it to respond efficiently and effectively to a Cyber Security Incident; and
(iii) regularly review its Cyber Security arrangements to verify its application in practice and maintain and keep records evidencing the same;

(b) Each Party shall use reasonable endeavours to ensure that any third party providing services on its behalf in connection with this Contract complies with the terms of subclause (a)(i)-(iii).

(c) If a Party becomes aware of a Cyber Security Incident which affects or is likely to affect either Party’s Cyber Security, it shall promptly notify the other Party. The Party that suffers the incident within its Computer Environment shall:

(i) if the Cyber Security Incident is within the Computer Environment of one of the Parties, that Party shall:

(1) promptly take all steps reasonably necessary to mitigate and/or resolve the Cyber Security Incident; and
(2) within as soon as reasonably practicable, but no later than 12 hours thereafter after the original notification, provide the other Party with:

(1) a description of the nature and immediate impact of the Cyber Security Incident;
(2) details of how it may be contacted; and
(3) such any information as it may have available to it and which may be reasonably required to assist the other Party in mitigating and/or preventing any effects of the Cyber Security Incident.

(ii) Each Party shall share with the other Party any information that subsequently becomes available to it which may assist the other Party in mitigating and/or preventing any effects of the Cyber Security Incident.

(d) Each Party’s liability for an incident a breach or series of incidents giving rise to a claim or claims under breaches of this Clause shall never exceed a total of USD ______ (or if left blank, USD 100,000), unless same is proved to have resulted solely from the gross negligence or willful misconduct of such Party.
4. Items for Review

4.1. GENCON

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<tr>
<th>Subcommittee members</th>
<th>Mr John Weale, FEDNAV (Chairman)</th>
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<td></td>
<td>Mr Stephen Harper, BW Group</td>
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<td>Capt. Qin Ling, COSCO Shipping Co., Ltd/Capt. Lin Huoping, COSCO Shipping Bulk, Co., Ltd</td>
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<td>Mr Shotaro Aoto, Japan Shipping Exchange</td>
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<td>Mr Olaf Schroeder, Oldendorff Carriers</td>
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<td>Mr Basil Logothetis, Empros Lines</td>
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<td>Ms Ann Shazell, Cargill Ocean Transportation</td>
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<td>Mr Struan Robertson, Clarksons</td>
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<td>Mr Nigel Hawkins, ASBA</td>
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<td>Mr Fulvio Carlini, FONASBA</td>
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<td>Mr Magne Andersen, NORDISK</td>
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<td>Ms Amy Lovseth, UK Club</td>
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Since the DC meeting in Copenhagen in November 2018 the subcommittee has met in Copenhagen in December, London in January and again in Genoa in April.

The subcommittee has made good progress in updating GENCON and making improvements to the wording (see Enclosure Item 4.1.). The latest draft incorporates many of the clauses commonly added as riders by the trade. Although the result is a longer contract, well drafted clauses in the printed form will mean fewer user amendments and thus less risk of potential ambiguity and conflicts of provisions. This approach is consistent with the scopes & objectives that were set out at the very first meeting of the subcommittee and approved by the DC.

As a “check” on the revisions done so far, a selective consultation process was done in March as part of the preparation for the Genoa meeting. The consultees were mainly legal professionals. The feedback from the consultation was predominantly positive. However, a number of comments were received concerning the perceived balance of the document, where some felt the revised GENCON was now more favourable to owners than the 1994 form.

There are several issues that the subcommittee would like to draw to the attention of the Committee: Clause 13 (Ports and Berths). This is a new clause which introduces a port/berth safety regime. As an underlying principle, the charterers warrant a safe berth for loading and discharging for all ports or places, whether named or not. Where a port is named in the charter party the charterers do not warrant its safety, as it is assumed that the owners accept this risk upon the port being named.

In respect of the General Strike Clause, the subcommittee has discussed at length if the time has come to dispense with the strike clause in favour of a force majeure clause; alternatively to broaden the scope of the strike clause in the 1994 form to include other hindrances than just strikes.
The subcommittee appreciates that this is a clause that may invoke strong opinions, and it would therefore appreciate the Committee’s guidance regarding the alternative proposed approaches (A) and (B) which are set out in the note below.

Part of the revision process includes the incorporation of standard BIMCO clauses for voyage charter parties such as the Electronic Bills of Lading Clause, War Risks Clause and Piracy Clause. The Subcommittee feels that it is an important part of the development of a new GENCON and a positive signal to the industry to include as many standard BIMCO Clauses as “building blocks”.

Comments on the revised draft would be greatly appreciated by the subcommittee before their next meeting in London on 17-18 June.

Members are invited to take note of the above and comment as appropriate.
Note on the General Strike Clause

The General Strike Clause has formed an inherent part of GENCON since 1922.

The clause seems, however, to suffer from some ambiguity that can lead to unintended consequences for the contractual parties. For instance, if a strike (however short) happens before loading begins and charterers do not immediately accept the risk of delay, owners have the right to terminate the charter. On the other hand, if a strike occurs once loading has begun, charterers have the right to send the ship out on the loaded voyage for a fraction of the full freight.

Although the subcommittee is in general agreement that the sanctions need to be amended (so that, eg, charterers pay full freight if the vessel has to sail part-loaded), it has been difficult to reach consensus on the scope of the revised clause.

In broad terms, the alternative approaches are:

(A) A strike, however broadly defined, is only one of many events which may interfere with charterers’ ability to load or discharge. The problem with this is that owners are often left in a limbo because the delay has not reached the threshold of frustration and they don’t know if charterers will actually perform or are willing or able to pay. So, the argument runs, better to widen the scope of events which excuse charterers’ performance, but then require them to make owners whole regardless of when the hindrance occurs. With this approach, charterers will be required to act reasonably and in good faith and will carry the burden of proof. The automatic sanction for terminating prior to commencement of loading will be, eg, payment of half the total freight, with an express agreement that this is not a penalty.

(B) A strong argument against widening the scope of the General Strike Clause as proposed under (A): that it is too open to abuse and bad faith, eg, where unscrupulous charterers want to escape from the charter on a falling market before performance has begun. So, rather than seeking to broaden the scope of the clause, it may be better to keep the clause limited to strikes, but amend the options available to charterers so as to make owners whole in any event.

Clearly, there are credible arguments in favour of both approaches. Alternative (B) is consistent with the concept of simply revising the 1994 form and is easily drafted. Alternative (A) introduces a new and untried concept, but one which may be welcomed by the market because it responds to the sort of problem which many charterers and owners face today.

The difficulty with Alternative (A) is achieving a mix of trigger and sanctions which is strong enough to discourage abuse by charterers acting in bad faith. The difficulty with Alternative (B) is

1 Eg, tailing dam failures in Brazil, floods in Queensland.
2 In this context, the question of owners’ right to terminate if charterers fail to pay demurrage is directly relevant (Clause 7(a)).
3 It has been suggested that this might cause problems where the GENCON form is used under a contract of affreightment. But that is arguably a problem to be addressed by the draftsman of the COA, not by a standard C/P which is specifically designed for a single voyage.
that owners may be forced into making a significant decision on the basis of guesswork about the future.

Generally, the existing clause ignores the multitude of other contingencies, some of which now confront owners with problems far more pressing than strikes or lock-outs.

GENCON 94 General Strike Clause

(a) If there is a strike or lock-out affecting or preventing the actual loading of the cargo, or any part of it, when the Vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, the Master or the Owners may ask the Charterers to declare, that they agree to reckon the laydays as if there were no strike or lock-out. Unless the Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, the Owners shall have the option of cancelling this Charter Party. If part cargo has already been loaded, the Owners must proceed with same, (freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.

(b) If there is a strike or lock-out affecting or preventing the actual discharging of the cargo on or after the Vessel’s arrival at or off port of discharge and same has not been settled within 48 hours, the Charterers shall have the option of keeping the Vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging until the strike or lock-out terminates and thereafter full demurrage shall be payable until the completion of discharging, or of ordering the Vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this Charter Party and of the Bill of Lading shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance to the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

(c) Except for the obligations described above, neither the Charterers nor the Owners shall be responsible for the consequences of any strikes or lock-outs preventing or affecting the actual loading or discharging of the cargo.
## 4.2. LNG Bunker Purchase Contract

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<tr>
<th>Subcommittee members</th>
<th>Mr Pierre Giudici, CMA-CGM (Chairman)</th>
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<td>Mr Mark Tamsitt, World Fuel Supplies</td>
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<td>Mr Chris Lu Feng, Pavilion Gas</td>
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<td>Ms Misato Oka, NYK</td>
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<td>Ms Li Yan, COSCO Shipping</td>
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<td>Mr Vincent Xu, Stephenson Harwood</td>
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<td>Mr Steve Simms, Sea-LNG</td>
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Following the adoption of the BIMCO Bunker Terms 2018 (BBT2018) at the DC meeting in New York in May 2018, it was agreed to develop a parallel agreement for purchasing LNG as an “alternative” fuel.

To encourage greater engagement with our Asian membership, this project is being coordinated by BIMCO’s Shanghai office with support from the Contracts and Clauses department in Copenhagen. The subcommittee mainly consists of members based in Asia and all meetings will be held in the region.

A first meeting of the subcommittee took place in Singapore on 14 February 2019. Although there are many common provisions for LNG bunkers, there are also aspects of BBT2018 that do not apply in an LNG context. Sampling, quality and quantity issues are not significant. LNG is sold on a volume and energy content basis. It is a pure fuel and so contaminants are not a risk and sampling is unnecessary.

Drafting is at a preliminary stage, but the project has been mentioned at several bunker conferences, drawing positive interest.

The next meeting of the subcommittee will take place at COSCO’s offices in Shanghai on 21 May 2019. The subcommittee aims to have a first draft ready for the Committee to review at the December DC meeting.

**Members are invited to take note of the above and comment as appropriate.**
4.3. Floating Hotels/Accommodation Support Vessels Charter Party

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<tr>
<th>Subcommittee members</th>
<th>Mr Edwin de Vries, Wagenborg Projects &amp; Logistics</th>
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<td>Mr Anders Fjord, North Sea Shipbrokers</td>
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<td>Ms Dorota Chmielewska, Siemens Gamesa</td>
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<td>Mr Johan de Haan, Noord Nederlandsche P&amp;I Club</td>
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<td>Mr Michael Junker, A2Sea</td>
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<td>Mr Per Marzelius, Floatel International</td>
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<td>Ms Sine Rosenborg, Ørsted</td>
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At the DC meeting in Copenhagen in November 2018 approval was given for a subcommittee to be established to develop a standard “floating hotels” charter party. The first meeting of the subcommittee was held on 19 March in Copenhagen.

At the meeting, the subcommittee agreed that the scope of the charter party should be accommodation support vessels (“ASV”) engaged in the offshore sector, including the wind, oil and gas industries. This was sufficiently specific to comprise the most commonly used vessels in the sector and, at the same time, was broad enough to also encompass other accommodation vessels as the case might be. Additionally, this scope avoided the employment of the term “floating hotel” which is used somewhat inconsistently. The subcommittee has been renamed accordingly (“Accommodation Support Vessel Charter Party subcommittee”).

At its first meeting, the subcommittee agreed it would be useful to also involve an oil major in the subcommittee, if possible. When putting together the subcommittee, the secretariat had been in touch with Shell and they were interested in joining the sounding board but not the subcommittee. Some of the subcommittee members have connections with Equinor (formerly Statoil) and will explore if they are willing to join the project.

It was agreed that the best basis for creating the ASV charter party would be SUPPLYTIME 2017. The subcommittee had a first review of Part II of the contract to identify areas which would have to be adapted. It was also agreed that consistency should be ensured between the ASV charter and work taking place in the context of the subcommittee developing special tasks annexes for SUPPLYTIME 2017 (cf. agenda item 4.9.).

The second meeting of the subcommittee will be held on 28 May in Delfzijl, The Netherlands.

Members are invited to take note of the above and comment as appropriate.
4.4. ASBAGASVOY/LPGVOY Charter Party

| Subcommittee members         | Mr Stephen Harper, BW Group                             |
|                             | Mr Søren Wolmar, ASBA and Quincannon                   |
|                             | Mr Elwin Taylor, Petredec                               |
|                             | Mr Magne Andersen, NORDISK                              |
|                             | Tommy Baggio, Clarksons                                 |
|                             | Sumit Madhu, Thomas Miller P&I (Europe) Ltd.            |

Following the DC meeting in November 2018, the secretariat discussed with ASBA the possibility for BIMCO to be involved in ASBA’s development of a gas tanker voyage charter party, ASBAGASVOY.

ASBA had developed a draft version of ASBAGASVOY as a modified version of ASBATANKVOY and was planning to publish the new form early 2019. Based on consultations with BW Group and NORDISK, it was suggested to ASBA that it might be a futile exercise if ASBA were to produce ASBAGASVOY while BIMCO was at the same time to produce its own voyage charter party for LPG. It was proposed that BIMCO and ASBA should join forces in the process.

On 31 January 2019, ASBA’s Board gave its full support to the joint development with BIMCO of ASBAGASVOY. As a second step, ASBA will be undertaking a full revision of ASBATANKVOY and ASBACHEMVOY and, although ASBA’s Board has not as such endorsed working jointly with BIMCO on these revisions, it is hoped that this will be possible.

A joint BIMCO/ASBA subcommittee has now been formed and the subcommittee will hold its first meeting on 25 June.

Members are invited to take note of the above information and comment as appropriate.
4.5. BOXLEASE Agreement

| Subcommittee members | N/A |

At the DC meeting in Copenhagen in November 2018 approval was given for a subcommittee to review BIMCO’s standard container leasing agreement, BOXLEASE.

When BOXLEASE was last revised in 2006 (at the time it was named CONLEASE, originally published in 1997) it was not possible to convince any lessor representatives to join. Unfortunately, the same has been the case this time around. The secretariat has been in contact with the Institute of International Container Lessors and the Container Owners Association, each representing all the major container leasing companies, and they have declined to be part of the revision. Seaco Global had originally expressed willingness to join the project but decided not to. No reasons for the container lessors’ refusal to join have been provided.

BOXLEASE would appear to enjoy very limited use on IDEA and SmartCon, and only by a few shipping companies. The revision was meant to increase awareness and usage of the agreement amongst shipowners and leasing companies. Without the support of the container lessors, it is doubtful whether a revision of BOXLEASE will broaden the appeal of the agreement and it is therefore considered a futile exercise to undertake the revision.

It is suggested that the project should be put on hold for now and that it could be reactivated at a later stage if the lessors were to show interest in the development of an updated container leasing agreement.

Members are invited to take note of the above and comment as appropriate.
4.6. Superyacht Management Agreement

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The secretariat has been in touch with LYBRA – the Large Yacht Brokers Association. They have expressed an interest in the possible development of a superyacht management agreement but need to discuss it with their members. Some of BIMCO’s largest shipmanagement members are involved in this growing market and support such an agreement to replace the current practice of heavily amending SHIPMAN. LYBRA will be having a meeting on 8 May where they will discuss this proposal.

The secretariat has also spoken to SYBAss – the Superyacht Builders Association – about a possible hybrid version of NEWBUILDCon for superyachts. Although SYBAss have agreed to consider the proposal they have advised that they have a greater interest in developing a standard contract regulating the relationship between a yacht broker and a yard.

A verbal report on any update received from these organisations will be given in Athens.

**Members are invited to take note of the above and comment as appropriate.**

4.7. Conversion Contract

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A project to develop a ship conversion contract was approved at the DC meeting in Copenhagen in November. Work on this project will begin after Athens.

Should the Members of the DC have any suggestions for individuals to join this subcommittee then kindly advise the secretariat.

**Members are invited to take note of the above and comment as appropriate.**
### 4.8. SUPPLYTIME Special Tasks Annexes

| Subcommittee members          | Mr Ian Perrott, Independent Offshore Marine Consultant  |
|                             | Mr Fredrik Olsson, Maersk Supply Service            |
|                             | Mr Hendrik Drossmann, SeaRenergy                    |
| Walk-to-work specialists    | Ms Annette Lilja, Maersk Supply Service             |
|                             | Mr Alf Magnar Liknes, Uptime                         |
|                             | Ms Boukje Heil, Ampelmann Operations                 |

The development of a series of task-related annexes for SUPPLYTIME 2017 is an ongoing process. The subcommittee will meet on 29 April to develop a walk-to-work annex (for motion compensated gangways) to accompany the two annexes which were adopted at the Copenhagen meeting (Extended Offshore Operations and Additional Crew Qualifications) as well as the annex that was adopted in New York (Helicopter and Helideck Operations). Representatives from walk-to-work gangway manufacturers are joining the meeting.

The International Marine Contractors Association (IMCA) has been invited to join the meetings of the subcommittee.

None of the annexes developed thus far have been published, as we would like IMCA to review them from a technical perspective beforehand.

The development of annexes will continue after the May DC meeting in Athens. Further annexes will cover:

1. Charterers’ personnel on board
2. ROV support – remotely operated underwater vehicles
3. Crane operations – surface and subsea
4. Use of dynamic positioning (DP) systems
5. Cable laying
6. Use of diving systems

**Members are invited to take note of the above and comment as appropriate.**
5. Report Items

5.1. BIMCO Bunker Terms 2018 - Sanctions Compliance Clause

The Sanctions Clauses Subcommittee has reviewed the Sanctions Compliance Clause in the BIMCO Bunker Terms 2018 as part of the overall review of BIMCO sanctions clauses. They have concluded that no amendments are required as the wording functions well even in circumstances where extra-territorial sanctions are imposed. This is because under a bunker supply contract the obligations and transactions are limited to supply and payment and the current wording of the clause should cover all scenarios when either the buyers or the sellers are sanctioned.

Members are invited to take note of the above information.

5.2. Arrest Clauses

At the November DC meeting the Arrest Clauses for Charter Parties were adopted subject to “fine tuning”. Subsequent to the DC meeting comments were received concerning a potential conflict between the cancellation provisions in the voyage charter party version of the clause and the underlying cancellation provisions commonly found in voyage charters. The Chairman of the subcommittee agreed in the light of these comments that it would be a useful safeguard for these important clauses to seek the opinion of an English and a US lawyer.

A verbal report on the findings of the two independent lawyers will be provided at the meeting in Athens.

5.3. Published Contracts and Clauses

Following November’s DC meeting the following contracts and clauses have been published:

- 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties
- 2020 Fuel Transition Clause for Time Charter Parties
- REPAIRCON 2018 Standard Ship Repair Contract
- MINREPCON 2018 Standard Minor Repair Work Contract
- Sea Traffic Management (STM) Clause for Voyage Charter Parties
- Shipmanagers’ Letter of Undertaking
- INTERTANKO Terminal Conditions of Use Clause

A set of Q&A/Guidelines on contractual issues related to chartering scrubber fitted ships has been jointly produced by BIMCO and INTERTANKO.

5.4. Regulatory Matters

5.4.1. CMI Unmanned Ships Project

CMI has set up an International Working Group (IWG) to look at the challenges to legislative and regulatory instruments arising from the operation of unmanned and autonomous ships. A position paper, summarising the views of constituent Maritime Law Associations, has highlighted three main areas of investigation. The first relates to jurisdictional rules, particularly under UNCLOS, setting out the rights and obligations of flag states, port states and coastal states to take measures with respect to ships. The second area concerns technical rules covering wide-ranging aspects of SOLAS, COLREGs and STCW. The third area covers international rules established in the field of private law to harmonise issues such as shipowners’ civil liability for pollution, collisions or cargo-
related losses and how such claims may be enforced. Consideration will also be given to the new challenges created by unmanned ships including remote controllers’ liability and the position of IT programmers and manufacturers of the technology that will be installed and used.

BIMCO will be represented on the CMI IWG.

5.4.2. Developments at IMO

Inter-governmental work on Maritime Autonomous Surface Ships (MASS) is being carried out at IMO where a regulatory scoping exercise is being undertaken by the Maritime Safety Committee. The purpose is to determine how safe, secure and environmentally sound MASS operations can be addressed in technical instruments including SOLAS, STCW, COLREGs and the 1969 Tonnage Convention.

A parallel exercise is being undertaken by IMO’s Legal Committee. The emphasis is on the extent to which MASS operations might impact IMO legislative and compensation instruments including the Bunkers Convention, CLC and Fund Convention, HNS Convention and the 1999 Arrest Convention. However, at this stage UNCLOS and MLC (which are not IMO instruments) are not included in the review. It has also been decided that the Hague Visby Rules and Rotterdam Rules will not be considered as they are also not IMO instruments.

Members are invited to take note of the position.

5.5. CMI Judicial Sale of Ships

At the DC meeting in New York in May 2018 it was decided to support a project initiated by the CMI to develop a model instrument for the recognition of foreign judicial sales of ships. Following the meeting, BIMCO was in dialogue with the International Chamber of Shipping (ICS) and encouraged ICS to engage in the matter.

The United Nations Commission on International Trade Law (UNCITRAL) decided, at its 51st session taking place from 25 June to 13 July 2018, to study the subject of cross-border issues related to the Judicial Sale of Ships. The UNCITRAL discussions on judicial sale of ships will take place in the context of Working Group VI, which will hold its 35th session in New York from 13 to 17 May 2019. ICS will be represented at the session by DC member Peter Laurijssen of CMB who will participate in the work also on behalf of BIMCO.

The ICS will be invited to report any developments concerning work in UNCITRAL.

Members are invited to take note of the above information.

6. Any other Business

6.1. Labelling BIMCO Clauses

The Committee’s current policy for labelling revised versions of BIMCO clauses is to add the year in which the revised edition was adopted at the end of the title. The title of an original clause, however, does not show the year in which it was adopted. Some parties simply refer to the generic name of the BIMCO clause in their contracts as a means of incorporation. This has in some
cases led to uncertainty as to which edition of the clause applies – is it the original edition which does not have a year of adoption, or is it meant to incorporate the latest edition on the basis that BIMCO has only one “standard” version. With the current labelling method, the common conclusion is that without the addition of the year of adoption, the parties must have intended to incorporate the original version of the clause.

Although it will not entirely solve the problem, the secretariat believes that by adding the year of adoption to the titles of all new clauses as well as revised versions will help. The same should apply to our contracts for the sake of consistency.

Members are invited to take note of the above information and approve the change to the labelling process.

7. Date and Place of Next Meeting
The next meeting of the DC will take place in Copenhagen on 5 December 2019.
1. Place and Date of Agreement

<table>
<thead>
<tr>
<th>2. Contractor/Place of Business (Cl. 1)</th>
<th>3. Company/Place of Business (Cl. 1)</th>
</tr>
</thead>
</table>

4. Facility (Cl. 1 and Annex A (Details of Facility))

   (i) Name of Facility
   (ii) Flag (if applicable)
   (iii) IMO Number (if applicable)
   (iv) Place of Registry (if applicable)
   (v) Position of Facility (Latitude/Longitude)
   (vi) Field name and details (if applicable)

5. Condition of Facility (Cl. 1 and Annex B (Technical Information, Rely Upon Information and Assumptions))

6. Nature of the Services (Cl. 1 and Annex C (Services))

7. Date of commencement of Services

8. Date of completion of Services

9. Place of Delivery shall be at the following location or locations (Cl. 17) (state (i), (ii) or (iii) below – failing which, (i) shall apply)

   (i) on or at the quayside on a vessel or barge (state location of quayside)
   (ii) on a vessel or barge at the Worksite; or
   (iii) ashore (state name and location)
   (iv) or as otherwise designated

10. Contract Price

Lump sum (state amount and currency in figures and words):
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Delay due to Force Majeure (Cl. 14) (state maximum period)</td>
<td>12. Suspension period in days (Cl. 15)</td>
</tr>
<tr>
<td>13. Early termination fee (Cl. 16 (Termination))</td>
<td>14. Delay rate (per day)</td>
</tr>
<tr>
<td>15. Contractor’s Payment Details (Cl. 18)</td>
<td>16. Security (Cl. 21)</td>
</tr>
<tr>
<td>(i) Currency</td>
<td>(i) Security provided by Contractor: [YES/NO]</td>
</tr>
<tr>
<td>(ii) Bank</td>
<td>Amount:</td>
</tr>
<tr>
<td>(iii) Address</td>
<td>Parent company guarantee issued by:</td>
</tr>
<tr>
<td>(iv) Account Number</td>
<td>(ii) Security provided by Company: [YES/NO]</td>
</tr>
<tr>
<td>(v) Account Name</td>
<td>Amount:</td>
</tr>
<tr>
<td></td>
<td>Parent company guarantee issued by:</td>
</tr>
<tr>
<td>17. Time of Payment and Interest (state period within which sums must be received by the Contractor and rate of interest per month) (Cl. 18 (Payment))</td>
<td></td>
</tr>
<tr>
<td>18. Contractor’s liability for loss of or damage to any Third Party fixed property within the Worksite Area/Pollution (state amount) (Cl. 22).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If not appropriately filled in, US$250,000 shall apply by default.</td>
</tr>
<tr>
<td>19. Contractor’s contractual limitation of liability (state amount) (Cl. 33).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If not appropriately filled in, the Contractor’s limitation of liability shall be twice the Contract Price stated in Box 10 above.</td>
</tr>
<tr>
<td>20. Dispute Resolution (state (b), (c) or (d) of Cl. 25 (Dispute Resolution) as agreed; if (c) agreed also state if English or Singapore law to apply; if (d) agreed, also state place of arbitration) (Cl. 25). If not appropriately completed, Cl. (b) shall apply by default.</td>
<td></td>
</tr>
<tr>
<td>21. Number of Additional Clauses covering special provisions, if agreed</td>
<td></td>
</tr>
</tbody>
</table>
It is agreed that this Agreement shall be performed subject to the Terms and Conditions which consist of PART I including Additional Clauses, and PART II, as well as Annex A (Details of Facility), Annex B (Technical Information, Rely Upon Information and Assumptions), Annex C (Services), Annex D (Milestone Payment), Annex E (Daily Progress Reports), Annex F (Variation Order), Annex G (Security), Annex H (Insurances), Annex I (Programme), Annex J (Completion Certificate), Annex K (Key Subcontracts) and Annex L (HSE) 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 and Annex B (Technical Information, Rely Upon Information and Assumptions) 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 for and on behalf of the parties that they represent.

| Signature (for and on behalf of Contractor) | Signature (for and on behalf of Company) |
PART II

1. Definitions

“Affiliates” means any 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
as amended from time to time relating to a person, property or circumstance.

“Assumptions” means the assumptions agreed between the parties and set out in Annex B (Technical Information, Rely Upon Information and Assumptions).

“Company” means the party stated in Box 3.

“Company Group” means any of the following:

(i) Any owners of all or part of the Facility or Remaining Property; and
(ii) Company; and
(iii) co-venturers of any of the foregoing; and
(iv) Affiliates of any of the foregoing; and
(v) Company’s other contractors and their sub-contractors (of any tier) (excluding members of the Contractor Group); and
(vi) Personnel of any of the foregoing;
but always related to the Services, the Facility or the Remaining Property.

“Confidential Information” means any confidential information provided by on or behalf of either party.

“Contract Price” means the lump sum price for the Services set out in Box 10 as may be amended by any agreed variation in accordance with Clause 6 (Variations).

“Contractor” means the party stated in Box 2.

“Contractor Group” means:
(i) Contractor; and

(ii) Contractors’ Affiliates; and

(iii) Contractors’ sub-contractors (of any tier); and

(iv) Personnel of any of the foregoing

but always related to the Services, the Facility or the Remaining Property.

“Debris” means the whole or any part of the Facility or Remaining Property that has become unintentionally separated from the original structure or lost overboard.

“Defect” means (a) any defects in the Contractor’s design, materials or workmanship; and (b) any other failure by the Contractor to comply with the terms of this Agreement relating to Clause 9 (Changes to Applicable Law) and Clause 13 (Health, Safety and Environment).

“Facility” means all the assets, equipment and materials described in Annex A (Details of Facility) or any part thereof whether fixed or floating and includes any incorporated material not originally part of the Facility prior to commencement of the Services but which has been added to the Facility as part of the Services pursuant to this Agreement and which are subject to the Services set out in Annex C (Services).

“Inconsistency” means any deficiency, omission, contradiction, inconsistency or ambiguity between the Assumptions and/or the Technical Information set out in Annex B on the one hand, and the actual state of the Facility and/or the Worksite Area on the other hand which is discovered after the date of this Agreement that impairs the performance of the Services and which has an impact on the cost, programme or methodology.

“Indirect Taxes” means any of the following: (a) value added tax; (b) goods and services tax; or (c) sales tax or a similar levy.

“Intellectual Property” means any work product or tangible item including but not limited to software, documentation, designs, visual materials in whatever form, database, know-how and sound recordings produced or generated in the course of performing the Services capable of protection and/or registration by patent, copyright, designs, trade or service mark.

“Personnel” means employees, agency personnel, directors, officers, servants, agents or invitees.

“Programme” means the programme set out in Annex I (Programme) as may be revised from time to time.

“Rely Upon Information” means any Technical Information set out in Annex B (Technical Information, Rely Upon Information and Assumptions) provided by the Company to the Contractor that the Company has confirmed in the Agreement or otherwise in writing as being information or data that may be regarded by the Contractor as being accurate and reliable.

“Remaining Property” means any property which is not to be removed by the Contractor from the Worksite pursuant to this Agreement in accordance with Annex C (Services), at the request of the Company or by operation of any Applicable Law and/or any incorporated material not originally part of the Facility prior to commencement of the Services but which has been added to the Facility as part of the Services pursuant to this Agreement.

“Services” means the services set out in Annex C (Services). Annex C shall include a schedule of key dates and all relevant operational details of the proposed craft, equipment and employees to be used, method of work, estimated time schedule and schedule of key dates.
“Taxes” means all taxes, duties, levies, import, export, customs, stamp or excise duties (including clearing and brokerage charges), charges, surcharges, withholdings, deductions, or contributions that are imposed or assessed by any competent authority of the country where the Services are performed or any other country in accordance with the applicable law.

“Technical Information” means any information as set out in Annex B (Technical Information, Rely Upon Information and Assumptions) as may be amended or supplemented by or on behalf of the Company at any time.

"Variation" means:

(i) any modification of the Services which may include additions, substitutions, deletions and alterations in quality, form, character, kind, position, dimension, level or line on which the Services, method, resources and price of the Services are based; and/or

(ii) any modification of any part of the Services already completed in accordance with this Agreement; and/or

(iii) any re-programming or rescheduling of the Services requiring the Contractor to adjust its resources in order to complete the Services or any part thereof in accordance with any instruction by the Company and/or

(iv) any modification of the Services as a result of any Inconsistency.

and documented in a Variation Order

“Variation Order” means a variation order in the form referred to in Annex F (Variation Order)

“Worksite” means the position of the Facility stated in Box 4 and anywhere Services under this Agreement will be undertaken.

“Worksite Area” means a perimeter measured by a 500-metre radius from the centre point of the original position of the Facility or, in the case of a pipeline, 100 metres either side of the centre line of the pipeline.

2. Contractor’s performance of the Services

(a) The Company and the Contractor acknowledge that the Services are based on the Assumptions and Technical Information as set out in Annex B (Technical Information, Rely Upon Information and Assumptions).

(b) The Contractor will perform the Services with due care and shall carry out all its obligations in accordance with this Agreement, the Annexes hereto, any Applicable Law and in accordance with good industry practice.

(c) The Contractor shall provide the Company or the Company Representative with daily reports in accordance with Annex E (Daily Progress Reports).

(d) The Contractor shall comply with all lawful instructions and notices issued in accordance with this Agreement and the Contractor shall be entitled to claim for a Variation in accordance with Clause 6 (Variations); however, if such performance:

(i) endangers the Contractor’s or the Company’s own craft, equipment and employees and/or

(ii) creates a threat to the environment, and/or

(iii) is physically impossible,

then, the Contractor shall be entitled to take steps that may be reasonable in the circumstances to avoid or mitigate such risks.
3. Access to the Facility

(a) The Company shall have the right to access or require access to the Facility for any Personnel nominated by the Company at its entire discretion, such access not to be unreasonably refused by the Contractor and shall be subject to the provisions below.

(i) The Company shall ensure that the attendance of such Personnel shall not interfere with the Services contemplated under this Agreement and the Contractor shall co-operate fully with any such Personnel provided always that it is safe to do so.

(ii) The Company shall give the Contractor notice of any Personnel to be granted access to the Facility at least twelve (12) hours before the Personnel arrive at the Facility.

(iii) Any Personnel attending at the request of the Company shall adhere to the Contractor’s health and safety instructions in force at the Worksite.

(b) Where applicable and if requested by Contractor in writing, the Company shall make available to the Contractor details of its other contractors to be present at the Worksite.

4. Technical Information, Rely Upon Information and Assumptions

(a) The Company shall provide Technical Information, which may include Rely Upon Information, at the outset or during the performance of this Agreement.

(b) The Contractor shall take full consideration of the Technical Information in performing the Services. The Contractor shall obtain the Company’s consent in writing before amending and deviating from the agreed Services. If the Contractor deviates or amends the agreed Services without obtaining the Company’s consent, any consequences of such deviation, amendment and correction thereof will be for the Contractor’s account.

(c) The Company makes no guarantee or warranty, express or implied, as to the correctness, adequacy, sufficiency and consistency of the Technical Information, excluding Rely Upon Information.

(d) Notwithstanding Clause 4(c), with regard to Technical Information, excluding Rely Upon Information, provided by the Company, where:

(i) such Technical Information is provided before the date of signing this Agreement, the Contractor shall verify the correctness, adequacy and sufficiency of the Technical information provided by the Company for performance of the Services and its consistency with other parts of the Technical Information;

(ii) such Technical Information is provided after the date of signing this Agreement, the Contractor shall notify the Company, no later than fourteen (14) days (or such longer period as may be agreed between the parties in writing) following receipt of any Technical Information if any such Technical Information is incorrect, inadequate, insufficient, or inconsistent. Contractor’s notice will state any incorrectness, inadequacy, insufficiency or inconsistency identified.

(e) The Company may, at its sole discretion, correct and supplement the Technical Information, excluding Rely Upon Information, if that information is incorrect, inadequate insufficient or inconsistent and provide such corrections and supplements to the Contractor.
(f) The Contractor shall not be entitled to a Variation Order in connection with any corrected or additional Technical Information, excluding Rely Upon Information, provided by the Company unless the Contractor provides notice in accordance with Clause 4(d)(ii).

(g) With regard to Rely Upon Information provided by the Company, where:

(i) the Rely Upon Information is provided before the date of signing this Agreement, the Contractor confirms that it has reviewed such Rely Upon Information and has determined that it is adequate and sufficient for performance of the Services;

(ii) the Rely Upon Information is provided after the date of signing this Agreement, the Contractor will notify the Company in writing no later than fourteen (14) days (or such longer period as may be agreed between the parties in writing) in the event that any such Reply Upon Information is inadequate or insufficient for the performance of the Services, or inconsistent with other parts of Technical Information.

(h) If the Rely Upon Information is incorrect and has an impact on the Services, the Contractor shall be entitled to submit a Variation Order in accordance with Clause 6 (Variations).

(j) If any Assumption is incorrect and has an impact on the Services, the Contractor shall be entitled to submit a Variation Order in accordance with Clause 6 (Variations).

5. Company and Contractor Representatives

(a) The Company and Contractor shall each appoint a representative to represent their respective interests in all matters under this Agreement (the “Company Representative” or “Contractor Representative”). Either party may change their representative at any time by giving notice in writing to the other. Either party’s representative may delegate any of their responsibilities to a nominated deputy and will notify the other party in writing of such delegation.

(b) The Company may also appoint a marine warranty surveyor (“Marine Warranty Surveyor”) to review and advise the Company on the technical marine procedures and operations, including safety and seaworthiness of the craft and marine activities involved. Any instructions and recommendations issued by the Marine Warranty Surveyor shall be communicated through the Company Representative to the Contractor. The Contractor shall provide all reasonable information to satisfy the Marine Warranty Surveyor’s requests for information including design detail, calculations, procedures, transportation and lifting criteria, detailed tow routes and cargo barge surveys.

(c) All information, instructions and decisions of Company Representative or the Contractor Representative or their nominated deputy will be given in writing and will be deemed to have been given by the relevant party and will commit the Company or Contractor accordingly. Only the representative, or their nominated deputy, shall be authorised to receive such information, instructions and decisions on behalf of the Company or Contractor.

(c) Unless otherwise agreed, neither the Company Representative or the Contractor Representative shall have any power to amend this Agreement nor relieve the Company or Contractor from any of their obligations.

(d) The Contractor shall provide unrestricted access to the Contractor’s craft and equipment (within that craft’s limitations relative to boarding and lodging) or the Worksite where the Services are being performed.

6. Variations

(a) Variations to the Services may be requested in writing by either party. Before such Variations are carried out, the parties shall use reasonable endeavours to first agree in writing any adjustment in the Contract Price or other terms and conditions of this Agreement or the Services occasioned by or resulting from such Variations without undue delay, failing which, within fourteen (14) days of the issue first being notified. Approval of the Variations
shall not unduly delay the performance of the Services and the Contractor shall continue to perform the Services in accordance with the Programme and Schedule of Works in so far as they are practically able to do so and provided always that any Variations or an accumulation of such Variations will not adversely affect the Contractor’s other commitments and are within the Contractors’ capabilities.

(b) Variations shall be effected by a Variation Order signed on behalf of the Company by the Company Representative and on behalf of the Contractor by the Contractor Representative. Such Variation Orders shall constitute an amendment of the Services and shall be incorporated into this Agreement.

(c) Variation Orders shall describe the agreed changes to the Services, the increase or decrease, if any, in the Contract Price for the Services, and any changes to payment milestones, together with an agreement as to any extension or reduction in the time for completion of the Services, or any other alterations in this Agreement.

7. Inspections and Testing

The Contractor shall carry out all inspections (and testing, if appropriate) expressly detailed in the Services and shall supply the Company with copies of all inspection reports (and test records, if appropriate) as soon as they become available. All tests and inspections shall comply as a minimum with Lloyd’s Register Rules for the Manufacture, Testing and Certification of Materials or equivalent or as otherwise specified in Annex C (Services) currently in force at the date of this Agreement.

The Company shall have the right to witness any test or inspection carried out by the Contractor but shall be under no obligation to attend. In the event that the Company does not attend and witness any test or inspection, the Contractor shall not be relieved from any liability or obligation under the Agreement.

The Contractor shall give the Company a minimum of twenty-four (24) hours’ notice of the date of any test or inspection and the Company shall confirm in writing as soon as practically possible afterwards whether it intends to attend the test or inspection.

Where the Contractor is required to undertake any testing and inspection not included in the Services, the Contractor shall be entitled to raise a Variation in accordance with Clause 6 (Variations).

8. Defects and Corrections

(a) In the event that the Company notifies the Contractor of any Defects in any part of the Services and requests a correction, the Contractor shall:

(i) make good, re-do, replace, or amend any item; and/or

(ii) deliver any item set out in the Services not already provided; and/or

(iii) correct any Defect so that the resulting Services will satisfy the requirements of this Agreement.

(b) The Contractor shall minimise any downtime or delay to the Services or the Company’s operations and any corrections shall be carried out promptly and diligently within a period of time agreed between the parties in accordance with the procedure below.

(i) If requested by the Company, the Contractor agrees to investigate the cause of any Defect and shall make available to the Company the details of its findings following the investigation.

(ii) Upon completion of the Contractor’s investigation, if the Services do not comply with the terms of this Agreement, the Contractor will perform additional inspections or testing in accordance with Clause 7 (Inspections and Testing) as may reasonably be required by the Company to ensure that there are no similar Defects.
(iii) If the Contractor is unable to, or does not promptly correct any Defect, then the Company may, after giving notice to the Contractor, correct the Defect itself or arrange for a third party to remedy the Defect at the Contractor’s risk and expense. The Company shall be entitled to recover from the Contractor all reasonable costs incurred by the Company related to the remedy the Defect in accordance with Clause 18 (Payment).

(iv) The Contractor shall be responsible for additional cost and time of all investigations and work required to rectify any Defect, save where the Contractor can demonstrate that the Defect is due to:

1. incorrect Rely Upon Information, unless the Company has agreed a Variation Order to correct the relevant Rely Upon Information;
2. latent defects that could not have reasonably been discovered by the Contractor prior to occurrence of the defect.

9. Changes in Applicable Law

If, after the date of signing this Agreement, any Applicable Law connected with the obligations of either party under this Agreement are altered or changed (including interpretation or enforcement thereof), or become effective, by the regulatory bodies authorised to make such alterations or changes, either of the parties hereto shall advise the other party in writing if such alterations or changes shall give rise to a Variation Order in accordance with Clause 6 (Variations).

10. Right to substitute Craft, Equipment or Personnel

The Contractor shall have the right to rotate and replace any craft, equipment and Personnel with other suitable replacement craft, equipment and Personnel at any time subject to the prior written approval of the Company, which shall not be unreasonably withheld or delayed, provided always that such substitution does not interrupt the provision of the Services.

The Company may instruct the Contractor to remove any of the Contractor Group Personnel who in the reasonable opinion of the Company have:

(a) acted in an incompetent or negligent manner during the performance of their duties in relation to the Services; and/or
(b) engaged in activities which are illegal or contrary to the applicable local law; and/or
(c) engaged in activities that are likely to or have caused damage to the Company’s reputation; and/or
(d) not conformed to the relevant health and safety procedure in force at the time.

Where any Personnel are removed at the request of the Company, they shall not be entitled to perform any further part of the Services without the Company’s prior written approval. The Contractor shall use its reasonable endeavours to find a suitable replacement within forty-eight (48) hours, or within such other time as may be agreed between the Contractor and the Company.

11. Use of and Title to the Facility

(a) Title to the Facility shall not pass to the Contractor at any time.
(b) The Company shall arrange and pay for any maintenance and marking of the Facility and cautioning required and arrange and maintain safe access for the Contractor. The Contractor shall arrange and pay for any marking or cautioning required in respect of the Contractor Group equipment during the performance of the Services.
(c) The Contractor, with the prior written approval of the Company, such approval not to be unreasonably withheld or delayed, may make reasonable use of the Facility or Remaining Property machinery, gear, equipment, anchors, chains, stores and other fixtures and fittings during and for the purposes of these Services free of expense. All items of Company property used by the Contractor shall be suitably marked or clearly identified as Company property and shall be returned to the Company.

(d) Any material provided by the Contractor and incorporated into the Facility during the performance of the Services shall become the property of the Company upon delivery to the Worksite.

12. Permits

(a) The Contractor shall arrange and maintain at its own cost all necessary licences, approvals, authorisations or permits that can only be obtained by the Contractor to perform the Services. The Company shall provide the Contractor with all reasonable assistance in connection with the obtaining of such licences, approvals, authorisations or permits.

(b) The Company shall arrange and maintain at its own cost all necessary licences, approvals, authorisations or permits that are required in connection with the Facility or Services other than as set out in subclause 12(a). The Contractor shall provide the Company with all reasonable assistance in connection with the obtaining of such licences, approvals, authorisations or permits.

13. Health, Safety and Environment

(a) In performing the Services, the parties and their respective Personnel shall comply with the HSE requirements set out in Annex L (HSE).

(b) The Contractor shall be responsible for the adequacy, stability, and safety of all its operations and methodology used in the performance of the Services and for managing those risks.

(c) Where the performance of any part of the Services requires HSE accreditation, the Contractor will satisfy all the requirements for the accreditation prior to commencing the Services and will maintain the accreditation for as long as may be necessary.

14. Force Majeure

(a) Neither party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions to the extent the party invoking force majeure is prevented or hindered from performing any or all of their obligations under this Agreement, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions:

(i) acts of God;

(ii) any government requisition, control, intervention, requirement or interference;

(iii) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;

(iv) riots, civil commotion, blockades or embargoes;

(v) earthquakes, landslides, floods or other extraordinary weather conditions;

(vi) strikes, lockouts or other industrial action, unless such strike, lockout of other industrial action is being undertaken by the Personnel of the party seeking to invoke force majeure;
Enclosure Item 3.1.
DC Meeting 14 May 2019

(vii) fire, accident, explosion except where caused by negligence of the party seeking to invoke force majeure;

(viii) any other similar cause beyond the reasonable control of either party.

(b) In the event of a force majeure occurrence, the party that is or may be delayed in performing the Agreement shall notify the other party without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.

(c) If either party is delayed in performing the Agreement by a force majeure occurrence, the Programme and the Contract Price, except as otherwise expressly provided in the Agreement, shall be revised in accordance with Clause 6 (Variations) and Clause 14(e).

(d) Following notification of a force majeure occurrence in accordance with Clause 14(b), the Company and the Contractor shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence and shall thereafter meet and discuss at such intervals as the parties may agree. Subject to the provisions of this Clause and always subject to the Contractor agreeing that it is safe and practical in the circumstances of the force majeure occurrence to do so, the Company may instruct the Contractor to remain on stand-by at the Worksite in which event the Contractor shall be entitled to payment at the relevant delay rates set out in Box 14. In the event that the Company does not elect to retain the Contractor on stand-by at the Worksite or, having elected to retain the Contractor, the delay due to force majeure exceeds the time period specified in Box 11, then, subject to Clause 14(e), the Contractor shall be allowed to leave the Worksite in order to fulfil any obligations it may have under other contracts. Any intermediate demobilisation and mobilisation fees shall be for the Company’s account.

(e) Upon cessation of any force majeure occurrence the Contractor shall prepare a revised Programme to include for rescheduling of the Work so as to minimise the effects of the delay. Providing however that if, in accordance with Clause 14(d), the Contractor has left the Worksite as a result of such occurrence, the Contractor may allow in such revised Programme any necessary time for completion of any operations on which it was engaged at the date of cessation of the force majeure occurrence.

15. Suspension

(a) The Company shall have the right, by notice to the Contractor, to suspend the Services or any part thereof to the extent detailed in the notice, for any of the following reasons:

(i) subject only to Clause 15(d), in the event of default on the part of the Contractor; or

(ii) in the event that suspension is necessary for the proper execution or safety of the Services or persons or the environment; or

(iii) to suit the convenience of the Company.

(b) The Contractor shall have the right to suspend the Services or any part thereof in the event of non-payment by the Company in accordance with Clause 18(f)(ii).

(c) Upon receipt of any notice under Clause 15(a) or if it exercises its rights referred to in Clause 14(b), the Contractor shall:

(i) suspend the Services or the part of the Services detailed in the notice, on the date and to the extent specified; and

(ii) properly protect and secure the Services as required by the Company.
In the event of default on the part of the Contractor and before the issue by the Company of a notice to suspend the Services or any part thereof, the Company shall give notice of default to the Contractor giving details of such default. If the Contractor, upon receipt of such notice, does not commence and thereafter continuously proceed with action satisfactory to the Company to remedy such default, the Company may issue a notice of suspension in accordance with the provisions of Clause 15(a).

In the event of any suspension under Clause 15(a):

(i) the Company may, by further notice, instruct the Contractor to resume the Services to the extent specified. If the suspension was made under Clause 15(a)(ii) or 15(b)(iii), such resumption of Services will be subject to the Contractor’s other existing contractual commitments; and

(ii) the Company and the Contractor shall meet at not more than seven (7) day intervals with a view to agreeing a mutually acceptable course of action during the suspension.

In the event of any suspension under Clause 15(a)(i) the Contractor shall not entitled to any Variation. In the event of any suspension other than under clause 15(a)(i):

(i) Contract Price shall be adjusted in accordance with the delay rates set out in Box 14, plus reasonable documented costs directly attributable to the incident and other costs allowed for in this Clause 15; and

(ii) The Programme shall be revised in accordance with Clause 6 (Variations) taking into account any time permitted under Clauses 15(e) or 15(f); and

(iii) If the period of suspension exceeds the period stated in Box 12 the Contractor may serve a notice on the Company requiring permission within fourteen (14) days from the receipt of such notice to proceed with the Services or that part thereof subject to suspension. If within the said fourteen (14) days the Company does not grant such permission the Contractor, by a further notice, may (but is not bound to) elect to treat the suspension as either:

(1) where it affects part only of the Services, an omission of such part under Clause 6 (Variations); or

(2) where it affects the whole of the Services, termination in accordance with Clause 16(a).

(iv) Notwithstanding the above, if suspension under clause 15(a)(ii) or (iii) cumulatively exceeds or is anticipated to exceed the number of days specified in Box 12, the Contractor shall have the right to demobilise its equipment. The Company and the Contractor shall discuss a mutually acceptable remobilisation schedule, taking into account the Contractor’s other commitments and the Company’s schedule requirements into consideration. Any intermediate demobilisation and remobilisation fees shall be for the Company’s account.

Upon cessation of any suspension period the Contractor shall prepare a revised Programme to include for rescheduling of the Services so as to minimise the effects of the suspension. Providing however that if, in accordance with Clause 15(f)(iv), the Contractor has left the Worksite as a result of suspension, the Contractor may allow in such revised Programme any necessary time for completion of any operations on which it is engaged at the date of cessation of the suspension occurrence. Except for suspension in accordance with Clause 15(a)(i), the Company shall agree a Variation.

16. Termination

(a) At the Company’s Convenience - The Company may terminate this Agreement at any time by giving the Contractor written notice of termination. Upon such termination, the Company shall pay the Contractor:
(i) all sums due and deemed earned in accordance with Annex D (Milestone Payment), any Variations or declared options, and any other work done in partial performance or completion of a Milestone; and

(ii) any reasonably unavoidable termination costs including but not limited to demobilisation, subcontractor termination fees and Worksite preservation; and

(iii) the termination fee as set out in Box 13.

(b) For cause

If any of the events listed in subclauses (i)-(iii) ("Termination Event") occur, either party in respect of the events listed in subclauses (i)-(iii), may give written notice of its intention to terminate this Agreement unless the Termination Event is remedied within the number of days stated below for the applicable event. If the Termination Event has not been so remedied, then the notifying party may terminate this Agreement with immediate effect upon giving written notice of termination latest within three (3) days of expiry of the initial notice given above.

(i) For the purpose of this subclause, "Insolvency Event" means if either party:

(1) stops or suspends, or threatens to stop or suspend, payment of all or a material part of its debts, or is unable to pay its debts as they fall due;

(2) ceases or threatens to cease to carry on all or a substantial part of its business;

(3) begins negotiations for, starts any proceedings concerning, proposes or makes any agreement for the reorganisation, compromise, deferral, or general assignment of, all or substantially all of its debts;

(4) makes or proposes an arrangement for the benefit of some or all of its creditors of all or substantially all of its debts;

(5) takes any step with a view to the administration, winding up, or bankruptcy of that party;

(6) is subject to an event in which all or substantially all of its assets are subject to any steps taken to enforce security over those assets or to levy execution or similar process, including the appointment of a receiver, trustee in bankruptcy, or similar officer; or

(7) is subject to any event under the law of any relevant jurisdiction that has an analogous or equivalent effect to any of the Insolvency Event listed above.

If the Company has an Insolvency Event, the Contractor may give notice of its intention to suspend performance of some or all of its obligations under this Agreement unless the Company within seventy-two (72) hours enters into discussions with the Contractor how the situation may be resolved. If the financial issue has not been resolved within seven (7) days after receipt of the Contractor’s notice, the Contractor shall have the right to redeploy resources. If the issue remains unresolved after thirty (30) days from receipt of the Contractor’s notice, or such longer period as may be agreed by the parties, the Contractor shall have the right to terminate this Agreement with immediate effect by giving notice in writing to the Company.

If the Contractor has an Insolvency Event, the Company may give written notice requiring the Contractor to enter into discussions with the Company within seventy-two (72) hours on how the situation may be resolved. If the financial issue has not been resolved within thirty (30) days from receipt of the Company’s notice, or such longer period as may be agreed by the parties, the Company shall have the right to terminate this Agreement with immediate effect by giving notice in writing to the Contractor.
(ii) Force Majeure - If a force majeure condition as set out in Clause 14 (Force Majeure) prevents or hinders the performance of the Agreement for a period exceeding one hundred and eighty (180) days, either party shall have the right to terminate this Agreement with immediate effect by giving notice in writing to the other party.

(iii) Material Breach by the Contractor

The Company may terminate this Agreement for cause where the Company determines the Contractor breached a term or condition of this Agreement and the effect of the breach, or culmination of a series of breaches, is material. In such cases, termination will be effected as follows:

1. Where the Company determines that the breach is not capable of remedy, the Company may terminate this Agreement by written notice with immediate effect.

2. Where the Company determines that the breach is capable of remedy, the Company shall serve notice on the Contractor specifying the breach and requiring it to be remedied promptly and within the period determined by the Company as set out in the notice. If the Contractor then fails to diligently work to remedy the breach or fails to promptly remedy the breach within the period set out in the notice, the Company may terminate this Agreement by subsequent written notice with immediate effect.

(c) In the event that the either party issues the other party with a notice of termination of this Agreement, such notice shall become effective on the date specified in the notice, or in the absence of any specified date, the date of receipt of the notice by the other party. Thereafter, the Contractor shall immediately:

(i) cease performance of the Services in accordance with Company instructions and shall secure the Worksite;

(ii) allow the Company or its nominee full rights of access to take over and perform the Services (with the exception of Contractors’ employees and equipment) or the relevant part;

(iii) at the Company’s request, transfer to the Company, or its nominee, the documentation, relevant rights, titles, liabilities under “key nominated” Subcontracts (as stated in Annex K (Key Subcontracts)).

Termination as a result of any of the above-mentioned causes shall not relieve the Company of any obligation to pay the Contractor any sums due under this Agreement up to the date of termination.

17. Completion and delivery

(a) Unless terminated earlier in accordance with Clause 16 (Termination), the Contractor’s obligations under this Agreement shall cease upon delivery of the Facility, or the final part thereof, at the Place of Delivery.

The Company shall ensure that the Place of Delivery shall:

(i) always be safe and accessible for the Contractor’s own or hired-in craft and the Facility to enter and operate such that the Contractor can deliver the Facility; and

(ii) be a place where the Contractor is permitted by governmental or other authorities to deliver the Facility and where the Company or its nominee can take physical possession.

(b) When the Contractor considers that all requirements set out in this Agreement in respect of delivery of the Facility have been met, the Contractor shall request in writing that the Company issue the completion certificate for the Facility (see Annex J (Completion Certificate)).

The Company shall, within twelve (12) hours of receipt of such request, either:

(i) issue the Contractor with the relevant certificate, specifying the date on which the Contractor has met the relevant requirements; or
(ii) reject the request and notify the Contractor of the reasons for the rejection. The parties shall consult each other as soon as practically possible after notification of rejection to discuss and agree the impact to the Services.

If the Company fails to respond within that period by issuing or rejecting the certificate, the matter shall be dealt with in accordance with Clause 25 (Dispute Resolution).

(c) In the event the delivery off the Facility 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 the account of the Company. These costs shall be in addition to any delay payment as set out in Box 14.

18. Payment

(a) The Company shall pay the Contractor the Contract Price, which amount shall be due and payable as set out in Annex D (Milestone Payments), as adjusted by any agreed Variation Orders in accordance with Clause 6 (Variations).

(b) Each instalment of the Contract Price shall be fully and irrevocably earned at the moment it is due as set out in Annex D (Milestone Payments). Any other monies due under this Agreement shall be fully and irrevocably earned on a daily basis or pro rata.

(c) All monies 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 15. The bank account shall be held in the name of the Contractor.

(e) The Contractor shall invoice the Company for all sums payable under this Agreement in accordance with Annex D (Milestone Payments). If the Company reasonably believes an incorrect invoice has been issued, they shall notify the Contractor promptly, but in no event no later than the due date, specifying the reason for disputing the invoice. The Company shall pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed amount. The Contractor shall be entitled to charge interest at the rate stated in subclause (g) on such disputed amounts where resolved in favour of the Contractor. The balance payment (together with any applicable interest) shall be received by the Contractor within five (5) days after the dispute is resolved. Should the Company’s claim be valid, a corrected invoice shall be issued by the Contractor.

(f) (i) Where there is a failure to make punctual payment of sums due and payable by the Company to the Contractor, the Contractor shall promptly notify the Company in writing of such failure and require payment within five (5) days.

(ii) At any time after five (5) days of the written notification above, while sums due and payable by the Company to the Contractor remain outstanding, subject to subclause (e), the Contractor shall be entitled to suspend the performance of any or all of their obligations under this Agreement until such time as all the sums due to the Contractor under this Agreement have been received by the Contractor.

(iii) If after fourteen (14) days of the written notification the sums referred to have still not been received, the Contractor may at any time while such sums remain outstanding terminate this Agreement. The right to terminate is to be exercised promptly and in writing and is not dependent upon the Contractor first exercising the right to suspend performance of their obligations under this Agreement. The receipt by the Contractor of all sums due from the Company after the fourteen (14) day period has expired but prior to the notice of termination shall be deemed a waiver of the Contractors’ right to terminate this Agreement. The Contractor’s right to terminate under this Clause shall be without prejudice to any other rights they may have under this Agreement.

(iv) Where the Contractor chooses not to exercise any of the rights afforded to them by this Clause in respect of any particular late payment of sums due and payable, or a series of late payments of sums due and payable, by
the Company to the Contractor under this Agreement, this shall not be construed as a waiver of their right either to suspend performance or to terminate this Agreement in respect of any subsequent late payment under this Agreement.

(g) If any sums which become due and payable are not actually received by the Contractor in accordance with this Clause 18 (Payment), they shall attract interest at the rate stated in Box 17. If Box 17 is not filled in then the rate of interest shall be eight per cent (8%) above the twelve (12) month Inter-Bank Offered Rates (IBOR) relevant to the contract currency at the date at which the debt is due.

(h) The Contract Price in Box 10 includes all costs, expenses and Taxes in connection with the Services except for Indirect Taxes.

(i) If the Company at any time incurs costs which, under the provisions of this Agreement, the Company is entitled to recover from the Contractor, the Company may invoice the Contractor for such costs, provided always that the Company may deduct the amount of such costs from any amount due, or that may become due to the Contractor under this Agreement.

The Contractor shall pay the Company any sums outstanding after such deductions within thirty (30) days of receipt of invoice.

19. Taxes

(a) Taxes payable by the Contractor

(i) The Contractor will be responsible for payments of all Taxes, and any interest, fines, or penalties for which Contractor Group is liable for including but not limited to:

(1) income, profits, assumed profits, capital gains, turnover, or supply arising directly or indirectly from the performance of the Services;

(2) wages, salaries, and all other remuneration or compensation paid directly or indirectly to the Contractor personnel in performance of the Services in the country where work is performed or any other country; and

(3) import or export of Contractor equipment, or the movement of Contractor personnel across national or territorial boundaries (for example, visa or passport fees) related to performance of the Services.

(ii) The Contractor will ensure that any subcontractor has terms and conditions relating to Taxes as those provide in this Clause.

(b) Indirect Taxes

(i) The Contractor will add to the invoice as a separate item, and the Company will pay in addition to the Contract Price in Box 10, any Indirect Taxes that may be applicable.

(ii) The Company will not pay Taxes or any interest, fines, or penalties for which the Contractor Group is liable that relate to purchases by the Contractor or its subcontractors.

(iii) Where available, the Contractor will apply a tax exemption, zero percent rate, or any other tax facility legally possible to any Indirect Taxes. The Company will provide documentation that the Contractor reasonably requests to assist the Contractor in applying exemptions upon request. The Contractor will provide documentation and other evidence necessary for the Company to claim any credits for Indirect Taxes.

(iv) The Contractor will provide all necessary documents to the Company to be able to reclaim any Indirect Taxes on the Company’s request and within a reasonable time period.
Withholding Taxes

(i) Where required under Applicable Law, the Company will withhold, or deduct and pay over to relevant authorities, Taxes from amounts payable to the Contractor. The Contractor acknowledges that any sum withheld or deducted will, for the purpose of this Agreement be deemed to have been paid to the Contractor and that the sum is a corresponding discharge of Company’s liability to the Contractor under this Agreement.

(ii) Where the Company makes a withholding or deduction, the Company will provide the Contractor with official written receipts or other evidence. If the Company does not provide receipts or evidence and the Contractor is required to pay any Taxes or any interest, fines, or penalties, the Company will reimburse the Contractor for those amounts on demand.

(iii) Where the Contractor demonstrates that it is exempt from any withholding or deductions under Applicable Law, it will inform the Company and provide the Company with a valid certificate of exemption or immunity from the relevant authority.

20. Programme

(a) The Services shall be conducted in accordance with the Programme contained within Annex I (Programme). The Contractor shall update the Programme to show the original scheduled timeline for the completion for the Services and any deviation from the critical path as a result of any adjustments to the Programme.

(b) A copy of the updated Programme is to be provided to the Company on a monthly basis and to include the previous month’s activities.

21. Security

(a) Within ten (10) days after the date of this Agreement;

(i) if stated in Box 16 the Contractor will provide the Company with security in the form set out in Annex G (Security) or other such wording as may be agreed between the parties provided by a first class bank or financial institution for an amount set out in Box 16 together with a parent company guarantee issued by the party identified in Box 16 (being the ultimate shareholder or significant affiliate of the Contractor) in the form set out in Annex G (Security).

(ii) if stated in Box 16 the Company will provide the Contractor with security in the form set out in Annex G (Security) or other such wording as be agreed between the parties provided by a first class bank or financial institution for an amount set out in Box 16 together with a parent company guarantee issued by the party identified in Box 16 (being the ultimate shareholder or significant affiliate of the Company) in the form set out in Annex G (Security).

(b) The security shall be maintained until the termination of the Services (including any extensions) and each party will renew or extend any security provided at least thirty (30) days prior to its expiry date, so that it will remain in force until all the obligations of the respective party have been complied with under this Agreement. If either party fails to extend or renew the security at least thirty (30) days before the expiry date, then the other party may make a written demand to the party in breach of this Clause to issue a new or amended letter of security or make other satisfactory arrangements in accordance with subclause 21(a). If the party in breach fails to comply with the notice, then the party not in breach may terminate this Agreement in accordance with Clause 16 (Termination).

22. Liabilities and Indemnities

(a) The Contractor shall be responsible for and shall save, indemnify, defend and hold harmless the Company Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
(i) loss of or damage to property of the Contractor Group whether owned, hired, leased or otherwise provided by the Contractor Group arising from, relating to or in connection with the performance or non-performance of the Agreement; and

(ii) personal injury, death or disease suffered by any Personnel of the Contractor Group arising from, relating to or in connection with the performance or non-performance of the Agreement; and

(iii) subject to any other express provisions of the Agreement, personal injury, death or disease or loss of or damage to the property of any Third Party to the extent that any such injury, death or disease or loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Contractor Group.

(iv) Except as provided by subclause 22(b)(i) and subclause 22(b)(ii), the Contractor shall save, indemnify, defend and hold harmless the Company Group from and against any claim of whatsoever nature arising from pollution or hazardous waste occurring on the premises of the Contractor Group or emanating from the property and equipment of the Contractor Group (including but not limited to marine vessels) arising from, relating to or in connection with the performance or non-performance of the Agreement.

(b) The Company shall be responsible for and shall save, indemnify, defend and hold harmless the Contractor Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

(i) loss of or damage to the Facility and/or Remaining Property or any other property of the Company Group which is or was located at a Worksite or the Worksite Area; and

(ii) personal injury, death or disease suffered by any Personnel of the Company Group arising from, relating to or in connection with the performance or non-performance of the Agreement; and

(iii) subject to any other express provisions of the Agreement, personal injury, death or disease or loss of or damage to the property of any Third Party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of a member of the Company Group.

(iv) loss of or damage to any Third Party fixed property within the Worksite Area or any pollution emanating therefrom and including any consequential losses arising therefrom. The provisions of this subclause 22(b)(iv) shall apply notwithstanding the provisions of subclause 22(a)(iii). Notwithstanding the foregoing, the Contractor shall pay up to the amount stated in Box 18 (or if Box 18 is left blank, then up to USD 250,000) per occurrence if the loss or damage is caused by the negligence of any member of the Contractor Group.

(v) Except as provided by subclauses 22(a)(i), 22(a)(ii) and 22(d), pollution or hazardous waste emanating or originating from the reservoir or from the property of the Company Group.

(c) All exclusions and indemnities given under Clauses 22 and 23 (save for those under subclauses 22(a)(iii), 22(b)(iii) and 23(a)(iii)) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

(d) Excluded losses – Notwithstanding anything else contained in this Agreement neither party shall be liable to the other for:

(i) any loss of use (including, without limitation, loss of use or the cost of use of property, equipment, materials and services), loss of profits or anticipated profits; loss of product; loss of business; business interruption; loss of reputation; loss of goodwill; loss of or deferral of drilling rights; loss, restriction or forfeiture of licences, concession or field interest; loss of revenue, shut in, loss of production, deferral of production, increased cost of working; cost of insurance; or any other similar losses whether direct or indirect; and

(ii) any consequential or indirect loss whatsoever
arising out of or in connection with the performance or non-performance of this Agreement and the Contractor shall indemnify, protect, defend and hold harmless the Company Group from such losses suffered by the Contractor Group and the Company shall indemnify, protect, defend and hold harmless the Contractor Group from such losses suffered by the Company Group.

(e) Nothing contained in this Agreement shall be construed or held to deprive the Contractor or the Company, as against any person or party, including as against each other, of any right to claim limitation of liability provided by any Applicable Law, statute or convention. Where the Contractor or the Company may seek an indemnity under the provisions of this Agreement or against each other in respect of a claim brought by a third party, the Contractor or the Company shall seek to limit their liability against such third party.

(f) For the purposes of this Clause "Third Party" shall mean any party which is not a member of the Contractor Group or the Company Group.

23. Debris and Wreck Removal

(a) The Contractor shall be responsible for and shall save, indemnify, defend and hold harmless the Company Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities for Debris removal, to the extent caused by the negligence of any member of the Contractor Group in so far as:

(i) the Debris is required to be removed in accordance with any lawful authority having jurisdiction over the location of the Debris; and/or

(ii) the Company may reasonably require if the Debris is interfering with the Company's operations.

Notwithstanding the foregoing, the Contractor’s liability under this subclause 23(a) shall be limited to the amount stated in Box 18 (or if Box 18 is left blank, then USD 250,000) per occurrence and the Company shall save, indemnify, defend and hold harmless the Contractor for sums in excess of this limitation per occurrence.

(b) If any property belonging to the Contractor Group becomes a wreck or debris, the Contractor shall be liable for any and all expenses in connection with the lighting, marking, raising, removal, and disposal of the property when:

(i) required to be removed in accordance with any lawful authority having jurisdiction over the location of the property, and/or,

(ii) as the Company may reasonably require if the property is interfering with the Company's operations.

24. 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 of the Services or termination of the Agreement 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.

25. Dispute Resolution

(a) (i) Any dispute between the parties in connection with or arising out of this Agreement or the Services shall be resolved in accordance with the procedure set out in this Clause, save that any disputed Variation Order requests shall be referred to an expert for Expert Adjudication in accordance with Clause 25(a)(vi) below.

(ii) Performance of the Services under the Agreement shall continue during any dispute resolution process referred to in this Clause.
(iii) The dispute shall initially be referred to the Company and Contractor Representatives who shall discuss the
matter in dispute and make all reasonable efforts to reach an agreement. The party seeking resolution of the
dispute shall set out in writing and give notice of the dispute (the "Dispute Notice") to the other providing the
following information:

1. a factual summary of the claim or counter claim; and

2. the basis upon which the claim or counter claim is made setting out the contractual terms or Applicable
Law relied upon; and

3. the amount of the claim or counter claim or other remedy being sought.

(iv) If no agreement is reached under Clause 25(a)(iii) above within fourteen (14) days of receipt of the Dispute
Notice, the matter shall be referred to the Executive Directors of the parties. The Executive Directors shall meet
within fourteen (14) days of the date of the referral and shall discuss the matter in dispute and make all
reasonable efforts to reach an agreement.

(v) If the parties have not settled the dispute within fourteen (14) days of the meeting of the Executive Directors
(i.e. within twenty eight (28) days of the Dispute Notice), or if for any reason the meeting of the Executive
Directors has not taken place, either Party may give notice in writing of its intention to refer the dispute to
adjudication ("Notice of Adjudication").

(vi) The adjudication provisions in the Schedule to The Scheme for Construction Contracts (England and Wales)
Regulations 1998 (as amended) shall apply to this Agreement. For the purposes of Clause 25(a) only, the
reference in The Scheme for Construction Contracts (England and Wales) Regulations 1998 to “the construction
contract” shall be a reference to and read "this Agreement".

(vi) The Adjudicator shall be agreed between the parties within fourteen (14) days of the Notice of Adjudication
being issued, failing which the Adjudicator shall be appointed from time to time by the chairman of the
Technology and Construction Solicitors Association (TeCSA).

(vii) Unless the parties otherwise agree, the Adjudicator shall give reasons for his/her decision in writing.

(viii) The decision of the Adjudicator shall become binding on the parties, and they shall comply with it until the
dispute (other than a failure to give effect to a decision of an Adjudicator) is finally determined by the courts in
accordance with Clause 25(b), (c), (d) or (e) below.

*Subclauses (b), (c), (d) and (e) are alternatives; indicate alternative agreed in Box 20.

(b)* 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 arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA)
Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its
arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint
its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator
as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within
the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has
done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of the sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 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 USD 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.

(c)* This Agreement shall be governed by U.S. maritime law or, if this Agreement is not a maritime contract under U.S. law, by the laws of the State of New York. Any dispute arising out of or in connection with this Agreement shall be referred to three (3) persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen. The decision of the arbitrators or 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 SMA Rules current as of the date of this Agreement.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the SMA Rules for Shortened Arbitration Procedure current as of the date of this Agreement.

(d)* This Agreement shall be governed by and construed in accordance with Singapore**/English** law.

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are commenced.

The reference to arbitration of disputes under this Clause shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
In cases where neither the claim nor any counterclaim exceeds the sum of USD 150,000 (or such other sum as the parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

**Delete whichever does not apply. If neither or both are deleted, then English law shall apply by default.**

(e)* 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.

(f) 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 any dispute in respect of which arbitration has been commenced under subclause (b), (d) or (e), 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 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 Arbitration Tribunal (“the Tribunal”) or such person as the Tribunal 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 Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal 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 Tribunal 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.)

(g) If Box 20 in PART I is not appropriately filled in, subclause (b) of this Clause shall apply. Subclauses (a) and (f) shall apply in all cases.

26. Notices and Instructions

(a) All notices, instructions, authorisations, approvals or acknowledgements 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 be in the English language.
(b) Unless specifically provided in this Agreement to the contrary, all notices shall 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, facsimile, electronically or delivered by hand in accordance with subclause (c).

(c) 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 by facsimile or 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.

(d) If it is necessary for the Company or the Company Representative to issue any instruction, authorisation, approval or acknowledgement to the Contractor orally, the Contractor shall comply with any such reasonable request by the Company or Company Representative but shall be entitled to receive written confirmation as soon as is practicably possible. Provided that the Company confirms the instruction, authorisation, approval or acknowledgement in writing and it does not contradict the earlier oral instruction, it shall be deemed to be an instruction in writing by the Company. If such instruction results in a Variation of the Services, the Contractor shall be entitled to a Variation Order (see Clause 6 (Variations)).

(e) If it is necessary for the Contractor to take immediate action to avoid or prevent risk or damage to any employees, craft or equipment at the Worksite or to prevent or minimise damage to the environment in order to mitigate the Company’s liability, save where it is caused by the Contractor’s own negligence the Contractor shall be entitled to receive written confirmation as soon as is practicably possible. If such instruction results in a Variation of the Services, the Contractor shall be entitled to a Variation Order (see Clause 6 (Variations)).

27. Insurance

(a) The parties shall obtain and maintain in effect for the duration of this Agreement, with reputable insurers, suitable insurances as set out in Annex H (Insurance). Such insurances shall provide that the other party shall be given not less than thirty (30) days’ notice of cancellation of or material change to cover. Policy limits shall not be less than those indicated.

(b) The Company shall be named as co-insured on the insurance policies to be obtained and maintained by the Contractor. The Contractor shall cause insurers to waive subrogation rights against the Company Group. Co-insurance and/or waivers of subrogation shall be given only insofar as these relate to liabilities which are properly the responsibility of the Contractor under the terms of this Agreement.

(c) The Contractor shall furnish the Company with certificates of insurance which provide sufficient information to verify that the Contractor has complied with the insurance requirements of this Agreement.

(d) The Contractor Group shall be named as additional assured on the insurance policies obtained and maintained by the Company. The Company shall cause insurers to waive subrogation rights against the Contractor Group.

(e) The Company shall furnish the Contractor with certificates of insurance with provide sufficient information to verify that Company has complied with the insurance requirement of this Agreement.
28. **Intellectual Property Rights**

(a) Any developments by either party giving rise to any registerable Intellectual Property rights based wholly on data, equipment, processes or methodologies and otherwise generated by one party for the purposes of performing the Services shall vest in the party responsible for developing or inventing the Intellectual Property unless it is agreed in writing that the Intellectual Property has been developed jointly by the parties.

(b) Where any registerable Intellectual Property vests solely in one party, such party may grant the other party, at its sole discretion, a non-exclusive, non-transferable, world-wide licence to use the Intellectual Property. The party responsible for developing the Intellectual Property shall bear the costs for protecting and/or registering the Intellectual Property rights.

(c) Where any registerable Intellectual Property vests jointly with both parties, the parties shall bear the costs for protecting and/or registering the Intellectual Property rights equally.

(d) The parties warrant that they shall not infringe or cause to be infringed any Intellectual Property rights arising out of or in connection with the performance of the Services.

29. **Document and Data Management**

The Contractor shall maintain a complete set of all relevant documents and drawings in either electronic or hard copy format provided by the Company and/or prepared by the Contractor during the performance of the Services. Such database shall be maintained in more than one relevant location and shall be accessible by the Company, the Company Representative or any other person with written authorisation from the Company. The costs of maintaining the database shall be paid for equally by the parties.

30. **Confidentiality**

All information or data provided or obtained in connection with the performance of this Agreement is and shall remain confidential and not be disclosed without the prior written consent of the other party, provided however that each party may disclose confidential information to its Affiliates, subcontractors, and its/their respective auditors and Personnel to the extent required for the performance of this Agreement or for legal or compliance purposes. The parties shall use their best efforts to ensure that such information shall not be disclosed to any third party by any of their Affiliates, sub-contractors, Personnel and agents. This Clause shall not apply to any information or data that has already been published or is in the public domain. All information and data provided by a party is and shall remain the property of that party. The parties shall undertake to keep the Confidential Information confidential for a period of 3 (three) years after the date of the issue of the completion certificate set out in Annex J (Completion Certificate) or the date of termination.

31. **Anti-Corruption**

(a) The parties agree that in connection with the performance of this Agreement they shall each:

(i) comply at all times with all applicable anti-corruption legislation and have procedures in place that are, to the best of its knowledge and belief, designed to prevent the commission of any offence under such legislation by any member of its organisation or by any person providing services for it or on its behalf; and

(ii) make and keep books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions in connection with this Agreement.

(b) If a demand for payment, goods or any other thing of value ("Demand") is made to the Contractor or the Contractor Group by any official, any contractor or sub-contractor engaged by or acting on behalf of Company or the Company Group or any other person not employed by the Company and it appears that meeting such
Demand would breach any applicable anti-corruption legislation, then the Contractors shall notify the Company as soon as practicable and the parties shall cooperate in taking reasonable steps to resist the Demand.

(c) If either party fails to comply with any applicable anti-corruption legislation it shall defend and indemnify the other party against any fine, penalty, liability, loss or damage and for any related costs (including, without limitation, court costs and legal fees) arising from such breach.

(d) Without prejudice to any of its other rights under this Agreement, either party may terminate this Agreement without incurring any liability to the other party if:

(i) at any time the other party or any member of its organisation has committed a breach of any applicable anti-corruption legislation in connection with this Agreement; and

(ii) such breach causes the non-breaching party to be in breach of any applicable anti-corruption legislation.

Any such right to terminate must be exercised without undue delay.

(e) Each party represents and warrants that in connection with the negotiation of this Agreement neither it nor any member of its organisation (including the Contractor Group and Company Group) has committed any breach of applicable anti-corruption legislation. Breach of this subclause (e) shall entitle the other party to terminate the Agreement without incurring any liability to the other.

32. Status of the Company

The Company enters into this Agreement for itself and as agent for and on behalf of the Company Group. Without prejudice to the provisions of Clause 22 and notwithstanding the above:

(a) the Contractor agrees to look only to the Company for the due performance of this Agreement and nothing contained in this Agreement will impose any liability upon, or entitle the Contractor to commence any proceedings against any member of the Company Group other than the Company; and

(b) the Company is entitled to enforce this Agreement on behalf of the Company Group as well as for itself. For that purpose, the Company may commence proceedings in its own name to enforce all obligations and liabilities of the Contractor and to make any claim which any member of the Company Group may have against the Contractor; and

(c) all losses, damages, costs (including legal costs) and expenses recoverable by the Company pursuant to the Agreement or otherwise shall include the losses, damages, costs (including legal costs) and expenses of the Company Group except that such losses, damages, costs (including legal costs) and expenses shall be subject to the same limitations or exclusions of liability as are applicable to the Company or the Contractor under the Agreement. For the avoidance of doubt any and all limitations of the Contractor’s liability set out in the Agreement shall represent the aggregate cumulative limitation of liability of the Contractor to the Company Group.

33. Limitation of liability

(a) Subject to the provisions in Clause 33(b) below, the liability of the Contractor for damages claims by the Company for breach of contract or for negligence will not exceed an amount equal to the amount set out in Box 19 of this Agreement.

(b) For the avoidance of doubt, any liability by the Contractor for payment of the following shall not count in assessing whether the Contractor has reached its limitation of liability:

(i) taxes, see Clause 19 (Taxes);
(iii) any sums due to the Company for Defects, see Clause 8 (Defects and Corrections);

(iv) sums allocated by the indemnity provisions for the Contractor’s own people, property, pollution, consequential losses, fines, penalties or any indemnities for third parties, see Clause 22 (Liabilities and Indemnities);

(v) insurances, see Clause 27 (Insurance);

(vi) any sum due by way of compliance with Clause 9 (Changes in Applicable Law), Clause 13 (Health, Safety and Environment), Clause 28 (Intellectual Property Rights), Clause 30 (Confidentiality) and Clause 31 (Anti-Corruption);

(vii) liability arising from the Contractor’s failure to follow or deviate from any instructions issued by the Company’s appointed Marine Warranty Surveyor via the Company Representative, see Clause 5 (Company and Contractor Representatives);

(viii) Reimbursement for any overpayments made by the Company.

34. General Provisions

(a) Severability

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) Assignment

The Company may assign this Agreement or any part of it or any benefit or interest to any subsidiary or parent or holding company or co-venturer of the Company as defined under this Agreement.

Neither the Company nor the Contractor shall assign the benefit of this Agreement to any third party without prior written agreement of the other, such agreement shall not be unreasonably delayed or withheld.

(c) Subcontracting

Unless otherwise stated in Annex C (Services) or agreed as a Variation Order, the Contractor shall not subcontract the Services or any material part thereof without the prior written approval of the Company, such approval shall not be unreasonably delayed or withheld. The Contractor shall ensure that key subcontracts listed in Annex K (Key Subcontracts) contain a right of assignment to the Company.

Where the Company approves the use of a subcontractor, the Company shall be entitled to review the terms and conditions of the subcontract and comment on the same.

The Contractor shall ensure that the subcontract terms and conditions shall be no less favourable than the terms contained in this Agreement in so far as they apply to the subcontract.

The Contractor shall remain responsible for the subcontracted work as if such work was conducted by the Contractor and nothing contained in this subclause (c) shall be deemed as relieving the Contractor of its obligations under this Agreement.
(d) Entire Agreement

This Agreement, including all Annexes referenced herein and attached hereto, is the entire agreement of the parties, which supersedes all prior negotiations, representations or agreements related to this Agreement either written or oral. No amendments to this Agreement shall be effective unless evidenced in writing and signed by the parties.

(e) 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.

(f) 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.

(g) Warranty of Authority

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

(h) Singular/Plural

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

(i) Headings

The headings to the clauses and appendices to this Agreement are for convenience only and shall not affect its construction or interpretation.
ANNEX A (DETAILS OF FACILITY)

Dated:

Facility:

Details of the Facility (Box 4, Cl. 1)

<table>
<thead>
<tr>
<th>General Description</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Design</td>
<td>Moon pool dimensions</td>
</tr>
<tr>
<td>Year entered service</td>
<td>Variable deck load</td>
</tr>
<tr>
<td>Classification</td>
<td>Transit speed</td>
</tr>
<tr>
<td>Latitude / Longitude</td>
<td>Water depth</td>
</tr>
<tr>
<td>Length / width / depth</td>
<td>Drilling depth</td>
</tr>
<tr>
<td>Draft</td>
<td>Accommodation</td>
</tr>
<tr>
<td>Displacement</td>
<td>Helideck</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Storage Capacities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquid mud</td>
<td>Potable water</td>
</tr>
<tr>
<td>Base oil</td>
<td>Bulk storage</td>
</tr>
<tr>
<td>Brine</td>
<td>Sack storage</td>
</tr>
<tr>
<td>Drill water</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Power Generation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Main power</td>
<td>Emergency generators</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Drilling Equipment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Derrick</td>
<td>Tubular handling</td>
</tr>
<tr>
<td>Drawworks</td>
<td>Mud pumps</td>
</tr>
<tr>
<td>Rotary table</td>
<td></td>
</tr>
<tr>
<td>Top drive</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cranes</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>In board</td>
<td>Over board</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subsea equipment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Diverter</td>
<td>Flow lines</td>
</tr>
<tr>
<td>BOP stack</td>
<td>Choke &amp; kill manifold</td>
</tr>
<tr>
<td>Marine riser</td>
<td>Tensioners</td>
</tr>
<tr>
<td>Heave compensation</td>
<td></td>
</tr>
</tbody>
</table>
ANNEX B (TECHNICAL INFORMATION, RELY UPON INFORMATION AND ASSUMPTIONS)

Dated:

Facility:

Technical Information and Rely Upon Information (Cl. 1, 2, 4 and 6)

List: technical information

[TABLE]

List: rely upon information

[TABLE]

List: assumptions

[TABLE]
ANNEX C (SERVICES)

Dated:

Facility:

Services (Box 6, Cl. 1 and 2 and 9)

[Obligation of Contractor to give Company right of assignment in subcontracts]

Agreed testing standards (see Clause 7):
ANNEX D (MILESTONE PAYMENTS)

Dated:

Facility:

Milestones Payment Schedule (Box 10, Cl. 1, 2, 6 and 15)

Lump Sum amount:

[The schedule below is provided for indicative purposes only]

<table>
<thead>
<tr>
<th>Event</th>
<th>Percentage of Lump Sum</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signing the contract</td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td>Mobilisation</td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td>First lift</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Second lift</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Third lift</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Completion</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>Handover to the Company</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Demobilisation</td>
<td>5%</td>
<td></td>
</tr>
</tbody>
</table>
ANNEX E (DAILY PROGRESS REPORTS)

Dated:
Facility:

Daily Progress Report (Cl. 2)

<table>
<thead>
<tr>
<th>Date</th>
<th>Report no</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Status of Facility: Type here

Status of site:
Type here

Weather on location:

<table>
<thead>
<tr>
<th>Wind direction &amp; speed (Bft)</th>
<th>1200</th>
<th>2400</th>
<th>Forecast next 24 hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type here</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Swell direction &amp; height (m)</th>
<th>1200</th>
<th>2400</th>
<th>Forecast next 24 hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type here</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Wave Height &amp; max wave height (m)</th>
<th>1200</th>
<th>2400</th>
<th>Forecast next 24 hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type here</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Long range forecast (5 days):
Type here

Services:

- performed in last 24 hours:
  Type here

- planned for next 24 hours:
  Type here

Areas of concern:

Health & safety
Type here

Environmental
Type here
<table>
<thead>
<tr>
<th>Other</th>
<th>Type here</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Comments:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor’s Representative</td>
<td>Type here</td>
</tr>
<tr>
<td>Company’s Representative</td>
<td>Type here</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signed:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Company’s Representative</td>
<td>Type here</td>
</tr>
<tr>
<td>Contractor’s Representative</td>
<td>Type here</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Signature</th>
</tr>
</thead>
</table>
ANNEX F (VARIATION ORDER)

Dated:

Facility:

Variation Order (Cl. 2, 6, 8, 14, 17 and 24)

<table>
<thead>
<tr>
<th>PROJECT NAME</th>
<th>V/O NO.</th>
<th>[NUMBER]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PROJECT NO.</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>[REF NUMBER]</td>
<td>[DATE]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONTRACT FORM</th>
</tr>
</thead>
<tbody>
<tr>
<td>DISMANTLECON</td>
</tr>
</tbody>
</table>

CONTACT INFORMATION

[INSERT NAME AND ADDRESS OF PARTY RAISING THE VARIATION ORDER]

DETAILS OF THE V/O

[DETAILS / PURPOSE OF THE VARIATION ORDER]

E.g. Variation to the removal and cutting operations for:

a) loose debris lying on well guide at El -36 m
b) Diagonal braces between jacket legs A1 and B1 (El -36 to -15 m)
c) J-tubes (El -15 m to seabed)
d) Riser (El -15 m to seabed)

RELEVANT CORRESPONDENCE AND CONTRACT REFERENCES

The attached documentation is relevant to this order:

[List documentation]

The attached correspondence about this subject is also relevant to this variation order:

[List other contemporaneous correspondence]

E.g. surveys
The following exchanges:

Email [DATED] between [NAME] and [NAME] re [SUBJECT].

The minutes of the meeting dated [DATE].

DESCRIPTION OF THE REVISED SERVICES

[SET OUT DETAILS OF THE ADDITIONAL COSTS]

The cost included in this Variation Order due to the change in methodology is calculated on the following basis using the Delay Rate of [AMOUNT] per day as set out in Part I, Box 14 of the Agreement.

[SET OUT DETAILS OF THE TIME]

The additional remuneration is based upon the [NO.] days of delay to the operation as result of the change in methodology for the Services as a direct result from the change in condition of the worksite and the change in diving operations.

This Variation Order covers the change in methodology as set out below:

[LIST DETAILS OF THE CHANGE IN METHODOLOGY OR REFERENCE DOCUMENT]

E.g. The cutting and recovery of these structures is expected to approximately seven days.

The Contractor will submit further cutting and recovery plans for the remaining structure after survey.

For and on behalf of the Company:

Date

For and on behalf of the Contractor:

Date
ANNEX G (SECURITY)

SECURITY PROVIDED BY CONTRACTOR

Dated:

Facility:

To:  [NAME AND ADDRESS OF THE CONTRACTOR] (referred to as the "Contractor")

Dear Sirs,

"[PROJECT REF]" – BIMCO [CODE NAME] dated [DATE]

IN CONSIDERATION of your entering into a BIMCO DISMANTLECON contract dated [DATE] (the “Agreement”) with [COMPANY NAME], and of you refraining from arresting or otherwise detaining any other property owned by the Company or the Company Group in connection with your claim for remuneration for Services rendered under the terms of the Agreement (save as may be necessary to obtain additional security as referred to below), we hereby undertake to pay to you within 28 days of your first written demand, such sums (inclusive of interest and costs) which may be due to you from [COMPANY NAME] (the "Company"), as may be agreed in writing between you and us or otherwise adjudged as being due to you pursuant to an award from the Arbitrator or Appeal Arbitrator or final and unappealable judgment of the English High Court pursuant to Clause 23 of the Agreement.

PROVIDED ALWAYS that our total liability hereunder inclusive of interest and costs shall not in any circumstances exceed the sum of US$[AMOUNT] ([AMOUNT IN WORDS]) less any payments made in accordance with the Milestone Payment Schedule in Annex D and EXCLUDING any unpaid Variation Orders (the "Guarantee Amount").

The Guarantee Amount shall be automatically reduced by an amount equal to each of the Milestone Payments once the same is received by the Contractor into the account detailed at Box 15 of the Agreement.

In the event that the Contractor issues any Variation Orders in accordance with Clause 6 of the Contract which cumulatively exceed the Guarantee Amount, the Contractor shall be entitled to seek additional security which will be provided by way of a further letter of undertaking within 14 days of the Contractors request in writing.

This letter of undertaking shall be returned to us for cancellation within 21 days of either:

(i) Termination of the Services under Clause [15] and payment of all sums due under the Agreement; or

(ii) Completion of the Services, and receipt of all Milestone Payments, any sums due for any Variation Orders issued (if any) and any other sums due to the Contractor in accordance with the Agreement.

THIS UNDERTAKING shall be governed by and construed in accordance with English law and we irrevocably agree to submit to the exclusive jurisdiction of the High Court of Justice in London for the purposes of the enforcement hereof or the resolution of any dispute hereunder.

WE AGREE that service of proceedings issued by you in connection with or otherwise for the purpose of enforcing this undertaking shall be made upon [NAME] of [ADDRESS] who are irrevocably instructed to accept service of such proceedings.

Signed this……………..day of [DATE]

By………………………………………………

Authorised signatory of ………………………..
SECURITY PROVIDED BY COMPANY

Dated:

Facility:

To:  [NAME AND ADDRESS OF THE COMPANY] (referred to as the “Company”)

Dear Sirs,

"[PROJECT REF] – BIMCO [CODE NAME] dated [DATE]"

IN CONSIDERATION of your entering into a BIMCO DISMANTLECON contract dated [DATE] (the “Agreement”) with [COMPANY NAME], ........................................(text to be added here)
ANNEX H (INSURANCE)

Insurance policies (as applicable) to be obtained and maintained by the Contractor under Clause 27:

(1) Marine Hull Insurance - Hull and Machinery Insurance shall be provided with limits equal to those normally carried by the owners for the Vessel.

(2) Protection and Indemnity (Marine Liability) Insurance - Protection and Indemnity (P&I) or Marine Liability Insurance with coverage equivalent to the cover provided by members of the International Group of Protection and Indemnity Associations with a limit of cover no less than USD [...], for any one event. The cover shall include liability for collision and damage to fixed and floating objects to the extent not covered by the insurance in (1) above.

(3) General Third Party Liability Insurance - To the extent not covered by the insurance in (2) ABOVE, Coverage shall be for:
   - Bodily Injury ______ per person
   - Property Damage _____ per occurrence.

   Where the General Third Party Liability Insurance excludes professional negligence, there shall be no exclusion for resultant damage or injury arising from professional negligence.

(4) Workmen’s Compensation and Employer’s Liability Insurance for Personnel - To the extent not covered in the insurance in (2) above, covering Contractor’s employees and other persons for whom Contractor is liable as employer pursuant to Applicable Law for statutory benefits as set out and required by local law in area of operation or area in which the Contractor may become legally obliged to pay benefits.

(5) Air Transportation Insurance - Covering all owned, hired and non-owned aircraft, coverage shall be for:
   - Bodily Injury as defined by local law.
   - Property Damage in an amount equivalent to _____ single limit per occurrence.

(6) Such other insurances as may be agreed

   [To be inserted by the parties]

Insurance policies (as applicable) to be obtained and maintained by the Company under Clause 27:

   (general wording needed)
ANNEX I (PROGRAMME)
ANNEX J (COMPLETION CERTIFICATE)

To: [NAME]

Re: "[FACILITY]" – Completion Certificate

1. This certificate is issued by [NAME] (the "Company") to [CONTRACTOR] (the "Contractor") to certify that the Contractor has achieved Completion of the Services effective as of [DATE] pursuant to Clause [XX] of the Agreement dated [DATE]. Capitalised terms used and not otherwise defined herein shall have the respective meanings as assigned to them in the Agreement or the Addendum.

2. The Company duly certifies as follows:

2.1 The close out report and all other documentation and data required to be submitted by the Contractor pursuant to the Agreement has been delivered to the Company and received Company Representatives’ approval.

2.2 All matters required to be fulfilled in order to close out the Agreement have been discharged.

2.3 The Contractor certifies that it has fully performed the Services as required by the Agreement to be performed prior to or as a condition of the completion certificate.

Company: Contractor:

By: ____________________________ By: ____________________________

Name: Name:

Title: Title:

Date: Date:
ANNEX K (KEY SUBCONTRACTS)
BIMCO Sanctions Clause for Time Charter Parties 2019

(a) The Owners shall not be obliged to comply with For the purposes of this Clause “Sanctions” shall mean any applicable sanction, prohibition, restriction or designation imposed on:

(i) any specified persons, entities, bodies, vessels or fleets; or

(ii) any goods, services, carriage, activity or trade

under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, the United Kingdom or the United States of America.

(b) Owners warrant at the date of this Charter Party that they and the registered owner and any intermediate disponent owner and the vessel or any substitute, are not the subject of any Sanctions.

(c) Charterers warrant at the date of this Charter Party that they and any subcharterers, shippers, receivers or cargo interests are not the subject of any Sanctions.

(d) If at any time either party becomes aware that the other party is in breach of subclause (b) or (c) then that party may claim damages and/or terminate this Charter Party.

(e) If any of the parties identified in subclause (b) become the subject of Sanctions, the Charterers may terminate the Charter Party forthwith.

(f) If any of the parties identified in subclause (c) become the subject of Sanctions, the Owners may terminate the Charter Party forthwith.

(g) The Charterers shall not give any orders for the employment of the Vessel in any carriage, trade or on a voyage which, in the reasonable judgement of the Owners, will expose the Vessel, Owners, managers, crew, the Vessel’s insurers, or their re-insurers, to any sanction or prohibition imposed by any State, Supranational or International Governmental Organisation.

(bh) If the Vessel is already performing an employment upon which any Sanction is subsequently applied/ imposed that will, in the reasonable judgement of Owners, expose the Vessel, Owners, managers, crew, the Vessel’s insurers or their re-insurers, to any Sanctions, the Owners shall have the right to refuse to proceed with the employment and the Charterers shall be obliged to issue alternative voyage orders within forty-eight (48) hours of receipt of Owners’ notification of their refusal to proceed. If the Charterers do not issue such alternative voyage orders the Owners may discharge any cargo already loaded at any safe port (including the port of loading). The Vessel shall remain on hire pending completion of Charterers’ alternative voyage orders or delivery of cargo by the Owners throughout and Charterers shall remain responsible for all additional costs and expenses incurred in connection with such orders/delivery of cargo. If in compliance with this Sub-clause (b) anything is done or not done, such shall not be deemed a deviation.

(ei) If in compliance with subclauses (g) and (h) anything is done or not done, such shall not be deemed a deviation.
(j) The Charterers shall indemnify the Owners against any and all claims whatsoever brought by the owners of the cargo and/or the holders of Bills of Lading, **waybills or other documents evidencing contracts of carriage** and/or sub-charterers against the Owners by reason of the Owners’ compliance with such alternative voyage orders or delivery of the cargo in accordance with subclause (bh).

(k) The Charterers shall procure that this Clause shall be incorporated into all sub-charters and Bills of Lading, **waybills or other documents evidencing contracts of carriage** issued pursuant to this Charter Party.
1. In this Charter Party:

"Charterers" means the party stated in Box 4.

"Owners" means the party stated in Box 3.

"Vessel" means the vessel named and described in Boxes 5, 6 and 7 and Schedule A, as attached and forming part of this Charter Party.

It is agreed between Owners and Charterers that the Vessel now in the position stated in Box 8 and expected ready to load under this Charter Party on or about the date stated in Box 9 shall, as soon as its prior commitments have been completed, proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as it may safely get and lie always afloat, and there load the cargo stated in Box 13, which Charterers bind themselves to ship, and being so loaded the Vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 as ordered on signing Bills of Lading, or so near thereto as it may safely get and lie always afloat, and there discharge the cargo.

2. Owners’ Responsibility

(a) Owners shall be bound before and at the beginning of the voyage to exercise due diligence to ensure that:

(i) the Vessel is in all respects seaworthy;

(ii) the Vessel is properly manned, equipped and supplied for the intended voyage; and

(iii) the holds and all other parts of the Vessel in which cargo will be carried are fit and safe for the reception, carriage and preservation of the cargo specified in Box 13.

(b) Notwithstanding anything to the contrary contained in this Charter Party, Owners shall as from the date hereof be entitled to rely on the rights, immunities and defences of Article IV, rules 1 and 2, of the Hague-Visby Rules, which rules 1 and 2 shall be deemed incorporated as though here written out in full, with the expressions “carrier” and “shipper” being agreed to mean Owners and Charterers respectively.

(c) Subject to subclause (b) above, Owners shall properly and carefully carry the cargo loaded under this Charter Party: provided that Owners shall in no case be responsible for loss of or damage to cargo arising prior to loading on, or after discharging from, the Vessel.

3. Cargo

(a) Charterers warrant that:

(i) no dangerous, hazardous or injurious cargo will be shipped unless properly and clearly described, and (as appropriate) packed, loaded, stowed, trimmed and/or secured strictly in accordance with all applicable laws, regulations and conventions (including any relevant recommendations or circulars), with any special requirements to be provided or complied with by Charterers at their risk, responsibility and expense;

(ii) the shipment, export, transportation and import of the cargo (including any underlying sale transaction(s)) is and will remain lawful in all respects; and

(iii) the cargo (including any strapping, packing, or internal securing) will be in all respects fit and suitable for loading, carriage and discharge.

(b) **Deck Cargo:** The Vessel shall not be required to load or carry deck cargo.
(c) Bulk Cargo:

(i) Where bulk cargo is shipped and stowed other than in accordance with the Vessel’s natural segregation, Charterers shall be responsible for any resulting claim for contamination, spoiling, deterioration in quality or loss of cargo.

(ii) Where bulk cargo is to be delivered to more than one receiver or discharged at more than one port or place, other than in accordance with the Vessel’s natural segregation, Charterers shall be responsible for any resulting claim for short delivery or over-landing, including any fines or legal costs.

(d) Part Cargo: Unless stated otherwise in Box 13, where the cargo to be shipped under this Charter Party is less than a full cargo for the Vessel, Owners shall be entitled to load additional or top-off cargo within the Vessel’s natural segregation for their own account or that of other charterers, and such additional or top-off cargo may be loaded and/or discharged before or after Charterers’ cargo, in or out of geographical rotation, all as part of the contract voyage.

(e) HME Cargo: If the cargo is such as may be harmful to the marine environment according to the criteria of the relevant provisions of MARPOL Annex V, as amended from time to time, the removal, custody, storage and disposal of all cargo residues (including hold washing water) shall be at the risk, responsibility and expense of Charterers, and any resulting loss of time shall be compensated by Charterers at the demurrage rate stated in Box 20.

(f) Lighterage: Charterers may require the Vessel to load and/or discharge cargo from/into barges or lighters. Such transfer operations shall be at Charterers’ risk, and responsibility, and Charterers shall provide and pay for adequate fendering and any other necessary equipment, all to the reasonable satisfaction of the Master. If, at any time, in the Master’s reasonable judgement the transfer operations are, or may become, unsafe, the Master may order them to be suspended or discontinued. In such event the Master shall have the right to order the barges or lighters away from the Vessel or to remove the Vessel. Any stoppages or additional time solely attributable to such transfer operations shall be for Charterers’ account.

(g) Fumigation: Charterers shall be entitled to arrange for on-board fumigation of the cargo at their risk responsibility and expense and always in strict compliance with the requirements and recommendations of IMO and any requirements of the Vessel’s flag state or of the states and/or ports or places of loading and discharge. Charterers shall be responsible for ensuring that: (i) the Master and officers are properly instructed as to the characteristics of the fumigant, including all applicable precautions; (ii) all interested third parties (including authorities at the port(s) or place(s) of discharge) are provided in good time with details of the fumigation/type of fumigant and any necessary safety precautions; and (iii) fumigation is not commenced without written confirmation from the Master that loading (including trimming and/or securing) is complete. Any resulting loss of time shall be compensated by Charterers at the demurrage rate stated in Box 20.

(h) Packing and securing materials: All packing, stowing, lashing and securing materials (including pallets, crates and dunnage) will be properly treated in accordance with all applicable laws and regulations, duly marked, and accompanied by all proper certification, with all handling and disposal to be at Charterers’ risk, responsibility and expense.

(i) [Storage: Charterers shall not use the Vessel for purposes of cargo storage.]

4. Freight

(a) The freight shall be paid as stated in Boxes 14 and 15 and calculated on the bill of lading quantity. Freight shall be paid in full, without discount or deduction except as expressly permitted under this Charter Party, in readily available and transferable funds and free of bank charges except as imposed by Owners’ bank.

(b) Freight shall be deemed earned in full on shipment, and non-returnable, Vessel and/or cargo lost or not lost.

(c) Neither Owners nor the Master shall be required to sign or endorse bills of lading showing freight prepaid unless the freight has been received in full by Owners.
5. Loading/Discharging

(a) Costs/Risks: The cargo shall be loaded, tallied, stowed and/or trimmed, lashed and/or secured and taken from the holds and discharged by stevedores appointed and employed by Charterers at their risk, responsibility and expense. Charterers shall provide, pay for and install all dunnage and any other materials as required for the proper stowage and protection of the cargo on board and shall be responsible and pay for removing the same after discharge of the cargo, with laytime/demurrage continuing to count.

(b) Seaworthy Trim: Charterers shall ensure that the Vessel is left in safe and seaworthy trim, with cargo on board safely stowed and secured, all to the Master’s reasonable satisfaction, for the laden voyage and also for any shifting between loading berths/ports/places, and so too with discharging berths/ports/places, and any related expenses shall be for Charterers’ account and laytime/demurrage shall continue to count. In the event that the Vessel has to vacate the berth during cargo operations for reasons of safety, Charterers shall be responsible for ensuring that any cargo then on board is safely stowed and secured.

(c) Cargo Handling Gear/Lighting: Unless the Vessel is gearless, or it is stated in Box 16 that the Vessel’s gear shall not be used, Owners shall provide free use of the Vessel’s cargo-handling gear and sufficient motive power to operate the same. All such equipment shall be in good working order. Unless caused or contributed to by negligence or lack of skill of the stevedores, time actually lost by breakdown of the Vessel’s cargo-handling gear or lack of sufficient power shall not count as laytime or time on demurrage. Owners shall provide free use of lighting as on board.

(d) Stevedore Damage to Vessel: The Master shall notify stevedores and Charterers of any damage caused to the Vessel by stevedores without unreasonable delay following its discovery. Subject to compliance with this requirement, Charterers shall be responsible for such damage (fair wear and tear excepted). Any such damage affecting the Vessel’s seaworthiness, class or trading capabilities shall be repaired before the Vessel’s departure, failing which Charterers shall be responsible for any resulting losses. All expenses for the repair of stevedore damage shall be for the account of Charterers and any related loss of time shall be compensated by Charterers at the demurrage rate stated in Box 20.

6. Laytime

(a) The BIMCO Laytime Definitions for Charter Parties 2013 shall be deemed incorporated and form part of this Charter Party, except where inconsistent with its terms.

The expression “SHINC” shall mean that laytime is to run continuously and without interruption for public holidays or customary days of rest at the port or place in question, whether or not work is done at overtime rates.

The expression “SHEX” shall mean “excluding public holidays and customary days of rest at the port or place in question (‘non-working days’), unless used”.

The expression “weather permitting” shall mean “weather not preventing”.

(b) (i)* Separate laytime for loading and discharging:

The cargo shall be loaded either within the number of running days or at the average rate stated in Box 17, weather permitting, SHINC (unless SHEX terms apply as stated in Box 17).

The cargo shall be discharged either within the number of running days or at the average rate stated in Box 17, weather permitting, SHINC (unless SHEX terms apply as stated in Box 17).

Laytime for loading and discharging shall be non-reversible; but Charterers shall be entitled to apply time saved at one loading port or place to off-set time lost at any other loading port or place, and Charterers shall have the same right to off-set time between discharging ports or places.

(ii)* Total laytime for loading and discharging:
The cargo shall be loaded and discharged either within the total number of running days or at the average rate stated in Box 17, weather permitting, SHINC (unless SHEX terms apply as stated in Box 17).

* Indicate alternative (i) or (ii) as agreed in Box 17.

(c) **Commencement of laytime (loading and discharging):**

(i) Notice of Readiness may be tendered at any time, day or night.

(ii) Notice of Readiness at the first or sole port or place of loading may be tendered prior to 00.01 hours on the date first stated in Box 21, provided that laytime shall not begin before that time unless cargo operations are sooner commenced.

(iii) Subject to subclause (c)(ii) above, laytime at each port or place of loading and discharging shall commence at the earlier of:

1. commencement of cargo operations; and
2. either:
   
   (A) where SHINC terms apply, 1300 hours if Notice of Readiness is tendered up to and including noon, and 0600 hours on the next day if Notice of Readiness is tendered after noon but during office hours; or
   
   (B) where SHEX terms apply (as per Box 17), 1300 hours if Notice of Readiness is tendered up to and including noon on a working day, and 0600 hours on the next working day if Notice of Readiness is tendered on a non-working day or after noon on the day preceding a non-working day.

(d) **Notice of Readiness:**

(i) At each port or place of loading or discharging, Notice of Readiness shall be tendered in writing to the party(ies) identified in Box 18 and Box 19 respectively: provided that if such recipient(s) is not clearly and fully identified, and Charterers have given no clear and timely written instruction, Notice of Readiness may be tendered to Charterers regardless of time zone.

(ii) In the event that at any port or place of loading or discharging more than one Notice of Readiness is tendered, each such Notice of Readiness shall be deemed to have been tendered without prejudice to any preceding or subsequent Notice of Readiness.

(iii) If the loading/discharging berth is not available and/or accessible on the Vessel’s arrival at or off the port or place in question, the Vessel shall be entitled to tender Notice of Readiness from any recognised waiting place or any waiting place that may be ordered by any relevant authority, whether in free pratique or not, whether customs cleared or not. Laytime or time on demurrage shall then count as if the Vessel were in berth and in all respects ready for loading/discharging; but time used in actually moving from such waiting place to the loading/discharging berth shall in any event not count as laytime or time on demurrage.

(iv) Any delay waiting for the tide shall be for the account of Owners, unless such delay would not have occurred but for the failure of Charterers to provide an available and accessible berth on arrival, in which case such delay shall count as laytime or time on demurrage.

(e) **Hold inspection:** If, after the commencement of laytime, the Vessel is inspected and held not to be ready in all respects to load/discharge, time actually lost after the discovery thereof until the Vessel is held ready to load shall not count as laytime or time on demurrage, always provided that such inspection shall have been carried out impartially and in good faith.

(f) **Completion of Cargo Operations:** Laytime/demurrage shall run continuously until all stevedores’ equipment has been removed from the Vessel. Where a draught survey is required by Charterers or cargo interests for the
verification of the quantity of cargo loaded or discharged, such survey shall be deemed to be an integral part of the loading or discharging operation, with time continuing to count until its completion.

(g) **Delayed Departure:** In the event that the Vessel is prevented from departing from any loading or discharging port(s) or place(s) without undue delay upon completion of cargo operations for any reason within the control of Charterers or their agents (including shippers and receivers), such delay shall be compensated by Charterers at the demurrage rate stated in Box 20.

(h) **[Regular Turn: At each port or place of loading or discharge, the Vessel shall be berthed in regular turn.]**

(j) **Shifting:** In the event that the Vessel is required to load or discharge at a second or subsequent berth within the same port, shifting time between the berths shall count as laytime/time on demurrage and tug and pilot expenses shall be for the account of Charterers.

(k) **Environmental:** Any delay in loading or discharging arising out of environmental concerns relating to the cargo, shall count as laytime or time on demurrage, and all related expenses, including measures for dust suppression, shall be for the account of Charterers.

(l) **Short-loading:** Where laytime is to be calculated as a function of the quantity of cargo shipped and Charterers have paid full freight in respect of any short-shipment, the laytime shall be based on the bill of lading quantity plus the quantity of such short-shipment.

7. **Demurrage/Despatch**

(a) Demurrage for loading and/or discharging shall be payable by Charterers at the rate stated in Box 20. Except as provided otherwise, demurrage shall accrue continuously and without interruption save where, and then only to the extent that, time is actually lost to the Charterers by the Vessel not being available to perform the service immediately required. Accrued demurrage shall fall due for payment every seven (7) days.

(b) Owners shall pay despatch at half the demurrage rate on all laytime saved.

8. **Lien**

(a) Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo for any and all sums due and payable to Owners under this Charter Party including freight, deadfreight, demurrage, security for general average contributions, claims for damages and any other amounts due under this Charter Party, including costs of recovering same, of exercising any such lien whether on board or ashore, and of storage and insurance for the cargo.

(b) Without prejudice to subclause (a) above, if upon the Vessel’s arrival at or off the port(s) or place(s) of discharge freight has not been received by Owners in whole or in part, Owners shall be entitled to hold the Vessel at a safe place outside or inside territorial waters until such payment has been received in full, and any resulting loss of time shall be compensated by Charterers at the demurrage rate stated in Box 20. Charterers shall reimburse Owners for the cost of any additional insurance, and shall indemnify Owners against any claim raised by any third party (including the costs of defending the same), and promptly provide appropriate security or substitute security to obtain the Vessel’s unimpeded departure in the event of its actual or threatened arrest or detention.

9. **Cancelling**

(a) Should the Vessel not have tendered Notice of Readiness by midnight on the cancelling date stated in Box 21, Charterers shall have the option of cancelling this Charter Party, such right to be exercised not later than twelve (12) running hours after the tendering of the Vessel’s Notice of Readiness. Such right of cancellation shall be without prejudice to any other rights which Charterers may have.

(b) Should Owners anticipate that the Vessel will not arrive at the first or sole port or place of loading by the cancelling date, they shall notify Charterers thereof without delay, stating the expected date of the Vessel’s arrival and asking whether Charterers will exercise their option of cancelling the Charter Party, or agree to a
new cancelling date. Such option must be declared by Charterers within forty-eight (48) running hours after the receipt of Owners’ notice. If Charterers do not exercise their option of cancelling, then this Charter Party shall be deemed to be amended such that the seventh day after the new arrival date stated in Owners’ notification to Charterers shall become the new cancelling date. The provisions of this subclause (b) shall operate only once, and if the Vessel shall not have tendered Notice of Readiness by midnight on such new cancelling date as amended by this subclause, Charterers shall have the option of cancelling this Charter Party as per subclause (a) above.

10. Bills of Lading/Waybills

(a) Bills of lading/waybills shall be presented to and signed by the Master, or by the Vessel’s agents where written authority has been given by Owners or the Master, all without prejudice to this charter, and shall be in terms no less favourable to the carrier than CONGENBILL 2016 or GENWAYBILL 2016, as attached: provided that approval by Owners or the Master of the terms or contents of any draft bill of lading/waybill or the signature of any bill of lading/waybill presented under this Charter Party shall not constitute any variation or waiver of Owners’ rights hereunder. Charterers shall indemnify Owners against all consequences or liabilities that may arise from the signing of a bill(s) of lading/waybill(s) as presented to the extent that the terms or contents of such bill(s) of lading/waybill(s) impose or result in any increase in the responsibilities and/or obligations of, or reduction in the rights, immunities and/or defences (including time bar) available to, the carrier as against those assumed by Owners under this clause or any other provision of this Charter Party.

(b) Where this Charter Party is, or is deemed to be, the contract of carriage of any cargo, the immunities, defences and rights available to Owners (including any right of limitation and time bar) shall be no less than if the contract of carriage for such cargo were a bill of lading properly issued hereunder.

11. BIMCO Electronic Bills of Lading Clause

(a) At Charterers’ option, bills of lading, waybills and delivery orders referred to in this Charter Party shall be issued, signed and transmitted in electronic form with the same effect as their paper equivalent.

(b) For the purpose of subclause (a) Owners shall subscribe to and use Electronic (Paperless) Trading Systems as directed by Charterers, provided such systems are approved by the International Group of P&I Clubs. Any fees incurred in subscribing to or for using such systems shall be for Charterers’ account.

(c) Charterers agree to hold Owners harmless in respect of any additional liability arising from the use of the systems referred to in subclause (b), to the extent that such liability does not arise from Owners’ negligence.

12. Classification and Insurance

(a) Owners warrant that:

(i) the Vessel’s classification is as stated in Box 5; and

(ii) the Vessel is insured for third party liabilities with the Protection & Indemnity Club or liability underwriter stated in Box 5;

and undertake that it will be so maintained throughout the term of this charter.

(b) Charterers warrant that they have insurance for charterer’s liabilities (including damage to hull) in an amount and with the entity as stated in Box 23 and that such insurance will be maintained throughout the term of this charter.

13. Ports and Berths

(a) Subject to any specific agreement between the parties:
(i) Charterers warrant that all berths, moorings, anchorages or other locations at which the Vessel is required to load or discharge or lay by (including any waiting place that may be ordered by any relevant authority) will be safe;

(ii) where the Vessel is required to load or discharge at a port(s) or place(s) which is specifically identified by name in this Charter Party (including any port or place identified by name as part of a range of ports), Owners shall be deemed to have accepted that such port(s) or place(s) is safe and no warranty of safety shall be implied; and

(iii) where the Vessel is required to load or discharge at a port(s) or place(s) to be nominated or declared, whether under this Charter Party or under bill(s) of lading or sea waybills or otherwise, Charterers warrant that such port(s) or place(s) will be safe.

(b) If the berth is such that Owners may be obliged to incur additional and/or unusual costs to ensure the continuing safety of the Vessel, including temporarily shifting away from the berth or hiring standby tugs or pilots, any such additional disbursements shall be for the account of Charterers. For avoidance of doubt, this provision shall not affect the computation of laytime or demurrage.

(c) Except as expressly provided otherwise, the rotation of loading and discharging ports or places respectively shall be at Owners’ absolute discretion.

14. **Liberty and Deviation**

The Vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress, to deviate for the purpose of saving life or property and generally for any other reasonable purpose, including calling at any place for bunkers, taking on spares, stores or supplies, repairs to the Vessel necessary for the safe continuation of the voyage, crew changes, landing of stowaways, medical emergencies and ballast water exchange.

15. **Substitution**

With the prior consent of Charterers, such consent not to be unreasonably withheld, Owners shall be entitled to nominate and provide a substitute vessel of materially similar characteristics within the laydays/cancelling spread stated in Box 21, provided that Owners shall always remain responsible for the due performance of this Charter Party.

16. **Sub-let/Assignment**

With the prior consent of Owners, such consent not to be unreasonably withheld, Charterers shall be entitled to sub-let or assign this Charter Party to any individual or company, but Charterers shall always remain responsible for the due performance of this Charter Party.

17. **Protective Clauses**

The New Jason Clause, Both-to-Blame Collision Clause and International Group of P&I Clubs/BIMCO Himalaya Clause 2014 as contained in CONGENBILL 2016 shall be deemed incorporated and form part of this Charter Party.

18. **General Average**

General Average shall be adjusted, stated and settled in London unless otherwise stated in Box 22 according to York-Antwerp Rules 2016. Proprietors of cargo shall be responsible for costs of storage and custody of their cargo at the port or place of discharge.

19. **Taxes and Dues**

(a) **On Vessel:** Owners shall pay all dues, charges and taxes customarily levied on the Vessel, howsoever the amount thereof may be assessed.
(b) **On cargo**: Charterers shall pay all dues, charges, duties and taxes customarily levied on the cargo, howsoever the amount thereof may be assessed.

(c) **On freight**: Unless otherwise agreed in Box 24, taxes levied on the freight shall be for the Charterers’ account.

20. **Agency**

(a) Unless agreed otherwise, the Vessel will be consigned to agents to be nominated by Charterers and appointed and paid by Owners at the ports or places of loading and discharge: provided that in any and all matters relating to or arising out of or in connection with the cargo and its loading, discharge and delivery (including the preparation and presentation of bills of lading) such agents shall be deemed to be the agents of Charterers.

(b) Always subject to the terms of this Charter Party, the parties shall each be responsible for the act, neglect or default of their respective servants, agents and sub-contractors. Shippers and receivers shall be deemed to be the agents of Charterers in the performance of any function which is the responsibility of Charterers under this Charter Party.

21. **Limitation of Liability**

(a) Nothing contained in, or done or not done pursuant to, this Charter Party shall constitute a surrender or waiver of any right of limitation which might otherwise be available as a matter of law to the Vessel, its registered or disponent owners, or Owners.

[[b) Without prejudice to the generality of subclause (a) above, Charterers shall ensure that the terms and conditions of access and use at any berth (whether or not identified hereunder) shall have no such effect.]

22. **Brokerage**

A brokerage commission at the rate(s) stated in Box 25 on the freight, dead-freight and demurrage received by Owners pursuant to this Charter Party shall be paid by Owners to the party(ies) stated in Box 25.

23. **Strikes etc.**

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24. **BIMCO War Risks Clause for Voyage Chartering (VOYWAR 2013)**

(a) For the purpose of this Clause, the words:

(i) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and

(ii) "War Risks" shall include any actual, threatened or reported:

War, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy and/or violent robbery and/or capture/seizure (hereinafter “Piracy”); acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the government of any state or territory whether recognised or not, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or may become dangerous to the Vessel, cargo, crew or other persons on board the Vessel.

(b) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Contract of Carriage, or any part of it, may expose the Vessel, cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose the Vessel, cargo, crew or other persons on board the Vessel to War Risks; provided always that if this Contract of Carriage provides that loading or discharging is to take place within a range of ports, and at the port or ports nominated by the
Charterers the Vessel, cargo, crew, or other persons on board the Vessel may be exposed to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies within the range for loading or discharging, and may only cancel this Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

(c) The Owners shall not be required to continue to load cargo for any voyage, or to sign bills of lading, waybills or other documents evidencing contracts of carriage for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, cargo, crew or other persons on board the Vessel may be exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Contract of Carriage. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.

(d) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, cargo, crew or other persons on board the Vessel may be exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.

(e) (i) The Owners may effect War Risks insurance in respect of the Vessel and any additional insurances that Owners reasonably require in connection with War Risks and the premiums therefor shall be for their account.

(ii) If, pursuant to the Charterers’ orders, or in order to fulfil the Owners’ obligation under this Charter Party, the Vessel proceeds to or through any area or areas exposed to War Risks, the Charterers shall reimburse to the Owners any additional premiums required by the Owners’ insurers. If the Vessel discharges all of her cargo within an area subject to additional premiums as herein set forth, the Charterers shall further reimburse the Owners for the actual additional premiums paid from completion of discharge until the Vessel leaves such area or areas. The Owners shall leave the area or areas as soon as possible after completion of discharge.

(iii) All payments arising under this Sub-clause (e) shall be settled within fifteen (15) days of receipt of Owners’ supported invoices.

(f) The Vessel shall have liberty:

(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the government of the nation under whose flag the Vessel sails, or other government to whose laws the Owners are subject, or any other government of any state or territory whether recognised or not, body or group whatsoever acting with the power to compel compliance with their orders or directions;

(ii) to comply with the requirements of the Owners’ insurers under the terms of the Vessel’s insurance(s);

(iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;
(iv) to discharge at any alternative port any cargo or part thereof which may expose the Vessel to being held liable as a contraband carrier;

(v) to call at any alternative port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment, detention or similar measures;

(vi) where cargo has not been loaded or has been discharged by the Owners under any provisions of this Clause, to load other cargo for the Owners’ own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.

(g) The Charterers shall indemnify the Owners for claims arising out of the Vessel proceeding in accordance with any of the provisions of Sub-clauses (b) to (f) which are made under any bills of lading, waybills or other documents evidencing contracts of carriage.

(h) When acting in accordance with any of the provisions of Sub-clauses (b) to (f) of this Clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage.

25. **BIMCO Ice Clause for Voyage Charter Parties**

The Vessel shall not be obliged to force ice but, subject to the Owners’ approval having due regard to its size, construction and class, may follow ice-breakers.

(a) **Port of Loading:**

(i) If at any time after setting out on the approach voyage the Vessel’s passage is impeded by ice, or if on arrival the loading port is inaccessible by reason of ice, the Master or Owners shall notify the Charterers thereof and request them to nominate a safe and accessible alternative port.

If the Charterers fail within 48 running hours, Sundays and holidays included, to make such nomination or agree to reckon laytime as if the port named in the contract were accessible or declare that they cancel the Charter Party, the Owners shall have the option of cancelling the Charter Party. In the event of cancellation by either party, the Charterers shall compensate the Owners for all proven loss of earnings under this Charter Party.

(ii) If at any loading port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo loaded on board and proceed to the nearest safe and ice free place and there await the Charterers’ nomination of a safe and accessible alternative port within 24 running hours, Sundays and holidays excluded, of the Master’s or Owners’ notification. If the Charterers fail to nominate such alternative port, the vessel may proceed to any port(s), whether or not on the customary route for the chartered voyage, to complete with cargo for the Owners’ account.

(b) **Port of Discharge:**

(i) If the voyage to the discharging port is impeded by ice, or if on arrival the discharging port is inaccessible by reason of ice, the Master or Owners shall notify the Charterers thereof. In such case, the Charterers shall have the option of keeping the Vessel waiting until the port is accessible against paying compensation in an amount equivalent to the rate of demurrage or of ordering the Vessel to a safe and accessible alternative port.

If the Charterers fail to make such declaration within 48 running hours, Sundays and holidays included, of the Master or Owners having given notice to the Charterers, the Master may proceed without further notice to the nearest safe and accessible port and there discharge the cargo.

(ii) If at any discharging port the Master considers that there is a danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo remaining on board and proceed to the nearest safe and ice free place and there await the Charterers’ nomination of a safe and accessible alternative port within 24 running hours, Sundays and holidays excluded,
Enclosure Item 4.1.
DC Meeting 14 May 2019

of the Master’s or Owners’ notification. If the Charterers fail to nominate such alternative port, the vessel may proceed to the nearest safe and accessible port and there discharge the remaining cargo.

(iii) On delivery of the cargo other than at the port(s) named in the contract, all conditions of the Bill of Lading shall apply and the Vessel shall receive the same freight as if discharge had been at the original port(s) of destination, except that if the distance of the substituted port(s) exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port(s) shall be increased proportionately.

26. Notices

(a) Subject to Clause 6(d), any notice delivered to the address stated in Box 27 or Box 28 as appropriate shall be deemed to be valid.

(b) Without prejudice to the specific requirements of Box 9, Owners/the Master shall keep Charterers duly informed of the Vessel’s ETA at each port of loading and discharge.

27. Construction

(a) Clause and subclause headings are included for convenience only and shall not affect the construction of the provision in question.

(b) Except as stated otherwise, all times are local times at the relevant port or place.

(c) Terms such as “in writing” and “written” shall apply to any form of written communication, including email.

(d) “Hague-Visby Rules” shall have the meaning stated in CONGENBILL 2016.

(e) “Including” means “including, but not limited to.”

(f) In the event of inconsistency between the recapitulation of fixture (“Recap”) and the terms of this Charter Party, the Recap shall to that extent prevail unless there exists clear written evidence (other than this Charter Party itself) of a mutual intent so to vary the terms of the Recap.

28. BIMCO ISPS/MTSA Clause for Voyage Charter Parties 2005

(a) (i) The Owners shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and “the Company” (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the “Owner” (as defined by the MTSA).

(ii) Upon request the Owners shall provide the Charterers with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).

(iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owners or “the Company”/”Owner” to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners’ account, except as otherwise provided in this Charter Party.

(b) (i) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA.

(ii) Loss, damages or expense (excluding consequential loss, damages or expense) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers’ account, except as otherwise provided in this Charter Party, and any delay caused by such failure shall count as laytime or time on demurrage.

(c) Provided that the delay is not caused by the Owners’ failure to comply with their obligations under the ISPS Code/MTSA, the following shall apply:
(i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code/MTSA.

(ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code/MTSA shall count as laytime or time on demurrage, unless such measures result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners’ managers.

(d) Notwithstanding anything to the contrary provided in this Charter Party, any costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Charterers’ account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew or the previous trading of the Vessel, the nationality of the crew or the identity of the Owners’ managers. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners’ account.

(e) If either party makes any payment which is for the other party’s account according to this Clause, the other party shall indemnify the paying party.

29. Dispute Resolution

Any dispute or difference arising out of or in connection with this Charter Party or any bill of lading or sea waybill or other document of title or document containing or evidencing a contract of carriage issued hereunder shall be referred exclusively to arbitration in accordance with the BIMCO Standard Dispute Resolution Clause 2017 as set out below at the place stated in Box 26 as the seat of the arbitration, to which the procedural law of that place shall apply, and neither party shall bring any proceedings otherwise against the other party or its servants, agents or sub-contractors:

“BIMCO Standard Dispute Resolution Clause 2017

*If this Clause has been incorporated into the Charter Party without an express choice of law and arbitration forum chosen from Subclauses (a), (b), (c) and (d), then Subclause (a) of this Clause shall apply. Subclause (e) shall apply in all cases except for alternative (b).”

(a)* This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract 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 arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of the sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.

Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
In cases where neither the claim nor any counterclaim exceeds the sum of USD 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 USD 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.

(b)* This Contract shall be governed by U.S. maritime law or, if this Contract is not a maritime contract under U.S. law, by the laws of the State of New York. Any dispute arising out of or in connection with this Contract shall be referred to three (3) persons at New York, one to be appointed by each of the Parties hereto, and the third by the two so chosen. The decision of the arbitrators or 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 SMA Rules current as of the date of this Contract.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the Parties may agree) the arbitration shall be conducted in accordance with the SMA Rules for Shortened Arbitration Procedure current as of the date of this Contract.

(c)* This Contract shall be governed by and construed in accordance with Singapore**/English** law.

Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are commenced.

The reference to arbitration of disputes under this Clause shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.

Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 150,000 (or such other sum as the Parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

**Delete whichever does not apply. If neither or both are deleted, then English law shall apply by default.

(d)* This Contract 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 Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.
(e) The Parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract. In the case of any dispute in respect of which arbitration has been commenced under Subclause (a), (c) or (d), 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 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 Arbitration Tribunal (“the Tribunal”) or such person as the Tribunal 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 Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal 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 Tribunal 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.)

30. **BIMCO Piracy Clause for Single Voyage Charter Parties 2013**

(a) If, after entering into this Charter Party, in the reasonable judgement of the Master and/or the Owners, any port, place, area or zone, or any waterway or canal (hereinafter “Area”) on any part of the route which is normally and customarily used on a voyage of the nature contracted for becomes dangerous, or the level of danger increases, to the Vessel, cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter “Piracy”), the Owners shall be entitled to take a reasonable alternative route to the discharging port and, if they so decide, immediately give notice to the Charterers that such route will be taken. Should the Vessel be within any such place as aforesaid which only becomes dangerous, after entry, it shall be at liberty to leave it.

(b) In any event, if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:

(i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation);

(ii) to comply with the requirements of the Owners’ insurers under the terms of the Vessel’s insurance(s);
(iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and

(iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.

(c) This Clause shall be incorporated into any bill of lading, waybills or other documents evidencing contracts of carriage (hereinafter “Contracts of Carriage”) issued pursuant to this Charter Party. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the Master signing Contracts of Carriage as presented to the extent that the terms of such Contracts of Carriage impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Clause.

(d) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail.

31. Sanctions

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32. Original Charter Party

Upon demand, each party shall promptly provide to the other a duly executed original of this Charter Party.