

## Terms & Conditions

### What we've offered, and how you accept our offer.

**The Proposal, Acceptance, Order of Precedence.** A Proposal received from C&B contains a general description of the project to be performed by C&B ("Project"), along with an itemized list of the specific services required to complete the Project (each a "Service" and collectively, the "Services"). The corresponding scope of each of the Services is detailed under the "Scope" section of the Proposal. Each Proposal is deemed to be an offer by C&B to perform Services under certain terms, and such offer must be accepted by Client prior to C&B revoking such offer, but in any event no later than 30 days from the date of such Proposal or else the Proposal will automatically be deemed to be rejected by Client. If C&B issues a Proposal to Client for a Project and, thereafter, issues a subsequent modified Proposal for that same Project, then the immediately preceding Proposal that was issued by C&B will be deemed to be revoked by C&B. Each of the parties agrees that a Proposal (that is not expired) and these Terms & Conditions will be deemed accepted by Client upon the earliest occurrence of any of the following: (i) Client's signing of the Proposal, (ii) Client's issuance of a purchase order or substantially similar document to C&B requesting that the Services contained in the Proposal be performed, or (iii) C&B's commencement of any component of the Services upon receiving, from Client or its agent, a request to begin performance. To the extent that any of the terms in the Proposal directly conflict with any of the terms in these Terms & Conditions, the terms of the Proposal govern.

### How the two of us make changes to what we've agreed to.

**The Agreement, Change Orders, Amendments.** When used in these Terms & Conditions, the term "Agreement" means the accepted Proposal, which includes any schedules or exhibits that it specifically references and incorporates, combined with these Terms & Conditions. The Agreement supersedes all prior communications – whether written or oral, negotiations, or letters of intent entertained by the parties with respect to the subject matter of the accepted Proposal. Each party's rights and obligations with respect to the Services are governed by the Agreement. The parties each agree that any change(s) to an accepted Proposal must be documented in a Change Order that is issued by C&B and must be accepted by Client before the proposed change(s) will be deemed effective and binding on the parties. Each Change Order is deemed to be an offer by C&B to modify the accepted Proposal as provided in the Change Order, and such offer must be accepted by Client prior to C&B revoking such offer, but in any event no later than 30 days from the date of such Change Order, or else the Change Order will automatically be deemed to be rejected by Client. Time is of the essence with respect to the preceding sentence. If C&B issues a Change Order to Client for an accepted Proposal and, thereafter, issues a subsequent, modified Change Order for that same accepted Proposal, then the immediately preceding Change Order that was issued by C&B will be deemed to be revoked by C&B. Each of the parties agrees that a Change Order (that is not expired) will be deemed accepted by Client upon the earliest occurrence of any of the following: (i) Client's signing of the Change Order, (ii) Client's issuance of a purchase order or substantially similar document to C&B requesting that the changes contained in the Change Order be performed, or (iii) C&B's recognition of the effectiveness of the proposed changes upon receiving, from Client or its agent, a request to begin performing in accordance with the Change Order. The parties agree that any change to these Terms & Conditions must be made in a written amendment that expressly references these Terms & Conditions and that is signed by each of the parties for the change to be deemed accepted by and binding on the parties. The parties expressly agree that while Client's issuance of a purchase order or substantially similar document to C&B constitutes Client's acceptance of the Proposal and these Terms & Conditions, additional terms and conditions that are contained in purchase orders – or substantially similar documents – that are issued by Client will be deemed to be Client's subsequent offer to modify the Agreement. Such terms and conditions in a subsequent offer to modify the Agreement will not be enforceable by or against either of the parties with respect to the Services unless they are expressly incorporated into a separate, written amendment to the Agreement that is signed by both parties.

### When and where we do it, and what we get in return.

**Performance, Pricing, & Payment.** Upon Client accepting a Proposal, C&B shall commence performance of the Services at the services location identified in the Proposal ("Services Location") on or before the start date identified in the Proposal ("Start Date"); and, C&B shall complete performance of the Services on or before the end date identified in the Proposal ("End Date"). However, notwithstanding the preceding sentence, if C&B is unable to safely begin the Services by the Start Date and/or safely complete the Services by the End Date due to river, weather, navigation, or other conditions beyond C&B's control, it will notify Client of such delay as soon as reasonably possible; in such an event, C&B's delay will not be construed to be a breach of the Agreement. In consideration of the Services, Client shall pay C&B the price(s) indicated on the corresponding Proposal. C&B may include Services in a Proposal that have time and/or materials-based pricing ("TM"), as well as Services that are charged at a flat, fixed lump-sum rate ("LS"). C&B will indicate in each Proposal how the price of each Service is being charged. For Services requiring labor, C&B will indicate the unit of time used to determine that Service's charges if time-based (such as "HR" for hourly charges). For Services that are priced using time and/or materials-based pricing – including time-based labor charges – the parties agree that C&B's accepted C&B Daily Time and Materials Logs will serve as the sole, conclusive evidence of the time spent and/or materials purchased. C&B will provide Client with a copy of such log at the conclusion of each work day or at other mutually-agreed intervals if indicated in the Proposal, and Client will have an opportunity to contest any of the recorded time spent and/or materials used. If Client is in agreement with the log, it shall sign the log for C&B's records. If the Client is not in agreement with the log, the parties shall work in good faith to diligently resolve any disagreement. If Client fails to provide an authorized representative to review the

log upon the conclusion of each work day, or at the other mutually-agreed intervals (if applicable), then the parties agree that the log will automatically be deemed "accepted" for purposes of this Agreement. Unless expressly provided otherwise in the accepted Proposal, and subject to the following sentence, (i) when C&B is performing Services for Client's Project, C&B shall submit one invoice to Client following the completion of each calendar month for the Services that were performed by C&B, and (ii) within 30 days of its receipt of an invoice from C&B, Client shall pay C&B for the invoiced Services; failing which, C&B may charge interest at the highest rate permitted under applicable law on any portion of the unpaid balance until it is paid in full to C&B ("Payment Terms"). If C&B obtains information that reasonably causes it to question Client's ability to pay its debts when due, then C&B may change the Payment Terms and issue invoices more frequently, and/or require that Client pay for Services prior to C&B's performance of the Services or within a shorter period of time from the issuance of an invoice. C&B shall provide Client with notice upon making changes to the Payment Terms, but notwithstanding anything to the contrary in these Terms & Conditions, C&B is not required to submit a Change Order for Client's review and acceptance.

**Miscellaneous Client Obligations.** To the extent that Client has obligations with respect to a Project that are not already covered by these Terms & Conditions, C&B shall include those in the Proposal, and once the Proposal is accepted, Client shall perform those duties accordingly.

### **When we may not do something, and what we won't do.**

**Exclusions & Conditions.** To the extent that C&B will not be performing a task that would ordinarily be included in the scope of a Service (and as such, the Proposal pricing does not include C&B's fees for performing such task(s)), C&B shall note these items under the "Exclusions" section of the Proposal. Client acknowledges and agrees that C&B is not responsible for performing and/or paying for excluded items. C&B shall include any conditions for its performance of the Services under the "Assumptions" section of the Proposal; and, once the Proposal has been accepted by Client, C&B shall perform the Services, provided that the conditions in the Proposal's Assumptions section are met.

### **Other things that the two of us are agreeing to.**

**Insurance.** Each party understands that the various insurance requirements that could be required, which are dependent upon the type of Services contemplated, are listed below. Each party shall procure and maintain the insurance coverages required of it under one or more of the below subsections, as indicated in the accepted Proposal. For example, if the insurance section of an accepted Proposal identifies "Mixed Personnel Insurance Requirements" as being applicable, then each party is obligated to procure and maintain the insurance coverages required of it under the subsection, "Mixed Personnel Insurance Requirements," below, and in accordance with such subsection. A party is not obligated to satisfy the insurance requirements of a subsection not identified in the accepted Proposal as being applicable.

#### **Mixed Personnel Insurance Requirements**

- I. C&B shall carry, or cause to be carried, throughout the term of this Agreement at its sole cost and expense the following insurance on policy forms and with insurance companies reasonably agreeable to Client:
  - a. Comprehensive General Liability Insurance including contractual liability and products and completed operations coverage.
  - b. Workers' Compensation insurance including U.S.L&H endorsement and Employer's Liability insurance. Such policy shall contain an Alternate Employer's Endorsement covering the Client Indemnified Parties (as defined in the Proposal).
  - c. Commercial Automobile Liability Insurance covering all owned, hired and non-owned vehicles.
  - d. Landing Owner's Liability and/or Ship Repairer's Liability insurance if applicable for the services provided by this Agreement.
  - e. With respect to any vessels owned or operated by C&B utilized in their performance of the services provided under this Agreement:
    - i. Hull and Machinery insurance subject to the 1953 Taylor Hull Form (Rev. 70), or its equivalent, including S.R.&C.C. coverage for the full agreed value of the vessel.
    - ii. Protection and Indemnity insurance subject to the SP-23 (Revised 1/56) or its equivalent, including crew liability, contractual liability, collision liability, tower's liability (if the vessel is a boat providing towing services) and Pollution Exclusion and Buy-Back Endorsement. Any "other than owner" and "limitation of liability" provisions shall be deleted or modified to protect the interests of the Client Indemnified Parties.
    - iii. Vessel Pollution Liability insurance subject to the Water Quality Insurance Syndicate policy form, or its equivalent, for OPA, CERCLA and other substances coverage.
  - f. Bumbershoot/Umbrella/Excess insurance providing excess coverage for Comprehensive General Liability, Employer's Liability, Commercial Automobile Liability, Landing Owner's and/or Ship Repairer's Liability, Protection and Indemnity and Vessel Pollution Liability insurance with a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the entire operations and vessel fleet of the C&B Indemnified Parties (as defined in the Proposal).

- g. C&B shall cause its insurers to name the Client Indemnified Parties as an additional insured on all policies except the Workers' Compensation, Commercial Automobile Liability and Hull and Machinery insurance, and C&B shall cause its insurers to provide the Client Indemnified Parties with a waiver of subrogation on all policies to the extent of the risks and liabilities assumed by C&B under this Agreement. C&B shall provide or shall cause its insurers to provide Client with a Certificate of Insurance as evidence of the required insurance and shall provide Client with prior written notice of cancellation in accordance with the cancellation provisions of each applicable policy.
  - h. Client shall not utilize any insurance policy provided by C&B on which any Client Indemnified Party is named as an additional insured to satisfy any indemnity obligation owed to C&B or a third party.
  - i. All deductibles and self-insured retentions are for the sole account of C&B.
- II. Client shall carry throughout the term of this Agreement at its sole cost and expense the following insurance on policy forms and with insurance companies reasonably agreeable to C&B:
- a. Comprehensive General Liability Insurance including contractual liability and products and completed operations coverage. Client shall cause the "watercraft exclusion" to be deleted unless Client provides Protection and Indemnity insurance specified in e. ii. below.
  - b. Workers' Compensation insurance including U.S.L&H endorsement and Employer's Liability insurance. Client shall cause such policy to contain an Alternate Employer's Endorsement covering the C&B Indemnified Parties. If Client employees are working on or from a vessel, then Client shall procure and maintain Maritime Employer's Liability coverage; however, this requirement is waived if Client provides Protection and Indemnity insurance specified in e. ii. below.
  - c. Commercial Automobile Liability Insurance covering all owned, hired and non-owned vehicles.
  - d. Landing Owner's Liability insurance if applicable for the operations contemplated by this Agreement.
  - e. With respect to any vessels owned or operated by Client and utilized for the operations contemplated by this Agreement:
    - i. Hull and Machinery insurance subject to the 1953 Taylor Hull Form (Rev. 70), or its equivalent, including S.R.&C.C. coverage for the full agreed value of the vessel.
    - ii. Protection and Indemnity insurance subject to the SP-23 (Revised 1/56) or its equivalent, including crew liability, contractual liability, collision liability, tower's liability (if the vessel is a boat providing towing services) and Pollution Exclusion and Buy-Back Endorsement. Client shall cause the "other than owner" and "limitation of liability" provisions to be deleted or modified to protect the interests of the C&B Indemnified Parties.
    - iii. Vessel Pollution Liability insurance subject to the Water Quality Insurance Syndicate policy form, or its equivalent, for OPA, CERCLA and other substances coverage.
  - f. Bumpershoot/Umbrella/Excess insurance providing excess coverage for Comprehensive General Liability, Employer's Liability, Commercial Automobile Liability, Landing Owner's Liability, Protection and Indemnity and Vessel Pollution Liability insurance with a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the entire operations and vessel fleet of the Client Indemnified Parties.
  - g. Client shall cause its insurers to name the C&B Indemnified Parties as an additional insured on all policies except the Workers' Compensation, Commercial Automobile Liability and Hull and Machinery insurance, and Client shall cause its insurers to provide the C&B Indemnified Parties with a waiver of subrogation on all policies to the extent of the risks and liabilities assumed by Client under this Agreement. Client shall provide or shall cause its insurers to provide C&B with a Certificate of Insurance as evidence of the required insurance and shall provide C&B with prior written notice of cancellation in accordance with the cancellation provisions of each applicable policy.
  - h. C&B shall not utilize any insurance policy provided by Client on which any C&B Indemnified Party is named as an additional insured to satisfy any indemnity obligation owed to Client or a third party.
  - i. All deductibles and self-insured retentions are for the sole account of Client.

**C&B Personnel Insurance Requirements**

- I. C&B shall carry, or cause to be carried, throughout the term of this Agreement at its sole cost and expense the following insurance on policy forms and with insurance companies reasonably agreeable to Client:
- a. Comprehensive General Liability Insurance including contractual liability and products and completed operations coverage.
  - b. Workers' Compensation insurance including U.S.L&H endorsement and Employer's Liability insurance.
  - c. Commercial Automobile Liability Insurance covering all owned, hired and non-owned vehicles.
  - d. Landing Owner's Liability and/or Ship Repairer's Liability insurance if applicable for the services provided by this Agreement.
  - e. With respect to any vessels owned or operated by C&B utilized in their performance of the services provided under this Agreement:

- i. Hull and Machinery insurance subject to the 1953 Taylor Hull Form (Rev. 70), or its equivalent, including S.R.&C.C. coverage for the full agreed value of the vessel.
    - ii. Protection and Indemnity insurance subject to the SP-23 (Revised 1/56) or its equivalent, including crew liability, contractual liability, collision liability, tower's liability (if the vessel is a boat providing towing services) and Pollution Exclusion and Buy-Back Endorsement. C&B shall cause any "other than owner" and "limitation of liability" provisions to be deleted or modified to protect the interests of the Client Indemnified Parties.
    - iii. Vessel Pollution Liability insurance subject to the Water Quality Insurance Syndicate policy form, or its equivalent, for OPA, CERCLA and other substances coverage.
  - f. Bumbershoot/Umbrella/Excess insurance providing excess coverage for Comprehensive General Liability, Employer's Liability, Commercial Automobile Liability, Landing Owner's and/or Ship Repairer's Liability, Protection and Indemnity and Vessel Pollution Liability insurance with a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the entire operations and vessel fleet of the C&B Indemnified Parties.
  - g. C&B shall cause its insurers to name the Client Indemnified Parties as an additional insured on all policies except the Workers' Compensation, Commercial Automobile Liability and Hull and Machinery insurance, and C&B shall cause its insurers to provide the Client Indemnified Parties with a waiver of subrogation on all policies to the extent of the risks and liabilities assumed by C&B under this Agreement. C&B shall provide or shall cause its insurers to provide Client with a Certificate of Insurance as evidence of the required insurance and shall provide Client with prior written notice of cancellation in accordance with the cancellation provisions of each applicable policy.
  - h. Client shall not utilize any insurance policy provided by C&B on which any Client Indemnified Party is named as an additional insured to satisfy any indemnity obligation owed to C&B or a third party.
  - i. All deductibles and self-insured retentions are for the sole account of C&B.
- II. Client shall carry throughout the term of this Agreement at its sole cost and expense the following insurance on policy forms and with insurance companies reasonably agreeable to C&B:
  - a. Comprehensive General Liability Insurance including contractual liability and products and completed operations coverage.
  - b. Landing Owner's Liability insurance if applicable for the operations contemplated by this Agreement.
  - c. Bumbershoot/Umbrella/Excess insurance providing excess coverage for Comprehensive General Liability and Landing Owner's Liability (if applicable) insurance with a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the entire operations of the Client Indemnified Parties.
  - d. Client shall cause its insurers to name the C&B Indemnified Parties as an additional insured on all policies, and Client shall cause its insurers to provide the C&B Indemnified Parties with a waiver of subrogation to the extent of the risks and liabilities assumed by Client under this Agreement. Client shall provide or shall cause its insurers to provide C&B with a Certificate of Insurance as evidence of the required insurance and shall provide C&B with prior written notice of cancellation in accordance with the cancellation provisions of each applicable policy.
  - e. C&B shall not utilize any insurance policy provided by Client on which any C&B Indemnified Party is named as an additional insured to satisfy any indemnity obligation owed to Client or a third party.
  - f. All deductibles and self-insured retentions are for the sole account of Client.

**Salvage Insurance Requirements**

- I. C&B shall carry, or cause to be carried, throughout the term of this Agreement at its sole cost and expense the following insurance on policy forms and with insurance companies reasonably agreeable to Client:
  - a. Comprehensive General Liability Insurance including contractual liability and products and completed operations coverage.
  - b. Workers' Compensation insurance including U.S.L&H endorsement and Employer's Liability insurance.
  - c. With respect to any vessels owned or operated by C&B utilized in their performance of the services provided under this Agreement:
    - i. Hull and Machinery insurance subject to the 1953 Taylor Hull Form (Rev. 70), or its equivalent, including S.R.&C.C. coverage for the full agreed value of the vessel.
    - ii. Protection and Indemnity insurance subject to the SP-23 (Revised 1/56) or its equivalent, including crew liability, contractual liability, collision liability, tower's liability (if the vessel is a boat providing towing services) and Pollution Exclusion and Buy-Back Endorsement. C&B shall cause any "other than owner" and "limitation of liability" provisions to be deleted or modified to protect the interests of the Client Indemnified Parties.

- iii. Vessel Pollution Liability insurance subject to the Water Quality Insurance Syndicate policy form, or its equivalent, for OPA, CERCLA and other substances coverage.
  - d. Bumpershoot/Umbrella/Excess insurance providing excess coverage for Comprehensive General Liability, Employer's Liability, Protection and Indemnity and Vessel Pollution Liability insurance with a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the entire operations and vessel fleet of the C&B Indemnified Parties.
  - e. C&B shall cause its insurers to name the Client Indemnified Parties as an additional insured on all policies except the Workers' Compensation and Hull and Machinery insurance, and C&B shall cause its insurers to provide the Client Indemnified Parties with a waiver of subrogation on all policies to the extent of the risks and liabilities assumed by C&B under this Agreement. C&B shall provide Client with a Certificate of Insurance as evidence of the required insurance and shall provide or shall cause its insurers to provide Client with prior written notice of cancellation in accordance with the cancellation provisions of each applicable policy.
  - f. Client shall not utilize any insurance policy provided by C&B on which any Client Indemnified Party is named as an additional insured to satisfy any indemnity obligation owed to C&B or a third party.
  - g. All deductibles and self-insured retentions are for the sole account of C&B.
- II. Client shall carry throughout the term of this Agreement at its sole cost and expense the following insurance on policy forms and with insurance companies reasonably agreeable to C&B:
  - a. Comprehensive General Liability Insurance including contractual liability and products and completed operations coverage.
  - b. Workers' Compensation insurance including U.S.L&H endorsement and Employer's Liability insurance.
  - c. With respect to any vessels owned or operated by Client utilized in the salvage operations and including the vessel to be salvaged under this Agreement:
    - i. Hull and Machinery insurance subject to the 1953 Taylor Hull Form (Rev. 70), or its equivalent, including S.R.&C.C. coverage for the full agreed value of the vessel.
    - ii. Protection and Indemnity insurance subject to the SP-23 (Revised 1/56) or its equivalent, including crew liability, contractual liability, collision liability, tower's liability (if the vessel is a boat providing towing services) and Pollution Exclusion and Buy-Back Endorsement. Client shall cause the "other than owner" and "limitation of liability" provisions to be deleted or modified to protect the interests of the C&B Indemnified Parties.
    - iii. Vessel Pollution Liability insurance subject to the Water Quality Insurance Syndicate policy form, or its equivalent, for OPA, CERCLA and other substances coverage.
  - d. Bumpershoot/Umbrella/Excess insurance providing excess coverage for Comprehensive General Liability, Employer's Liability, Protection and Indemnity and Vessel Pollution Liability insurance with a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the entire operations and vessel fleet of the Client Indemnified Parties.
  - e. Client shall cause its insurer to name the C&B Indemnified Parties as an additional insured on all policies except the Workers' Compensation and Hull and Machinery insurance, and Client shall cause its insurers to provide the C&B Indemnified Parties with a waiver of subrogation to the extent of the risks and liabilities assumed by Client under this Agreement. Client shall provide or shall cause its insurers to provide C&B with a Certificate of Insurance as evidence of the required insurance and shall provide C&B with prior written notice of cancellation in accordance with the cancellation provisions of each applicable policy.
  - f. C&B shall not utilize any insurance policy provided by Client on which any C&B Indemnified Party is named as an additional insured to satisfy any indemnity obligation owed to Client or a third party.
  - g. All deductibles and self-insured retentions are for the sole account of Client.

**Heavy Lift Insurance Requirements**

- I. C&B shall carry, or cause to be carried, throughout the term of this Agreement at its sole cost and expense the following insurance on policy forms and with insurance companies reasonably agreeable to Client:
  - a. Comprehensive General Liability Insurance including contractual liability and products and completed operations coverage.
  - b. Workers' Compensation insurance including U.S.L&H endorsement and Employer's Liability insurance.
  - c. With respect to any vessels owned or operated by C&B utilized in their performance of the services provided under this Agreement:
    - i. Hull and Machinery insurance subject to the 1953 Taylor Hull Form (Rev. 70), or its equivalent, including S.R.&C.C. coverage for the full agreed value of the vessel.
    - ii. Protection and Indemnity insurance subject to the SP-23 (Revised 1/56) or its equivalent, including crew liability, contractual liability, collision liability, tower's liability (if the vessel is a boat providing towing services) and Pollution Exclusion and Buy-Back Endorsement. C&B shall cause any "other

- than owner" and "limitation of liability" provisions to be deleted or modified to protect the interests of the Client Indemnified Parties.
- iii. Vessel Pollution Liability insurance subject to the Water Quality Insurance Syndicate policy form, or its equivalent, for OPA, CERCLA and other substances coverage.
  - d. Bumbershoot/Umbrella/Excess insurance providing excess coverage for Comprehensive General Liability, Employer's Liability, Protection and Indemnity and Vessel Pollution Liability insurance with a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the entire operations and vessel fleet of the C&B Indemnified Parties.
  - e. C&B shall cause its insurers to name the Client Indemnified Parties as an additional insured on all policies except the Workers' Compensation and Hull and Machinery insurance, and C&B shall cause its insurers to provide the Client Indemnified Parties with a waiver of subrogation on all policies to the extent of the risks and liabilities assumed by C&B under this Agreement. C&B shall provide Client with a Certificate of Insurance as evidence of the required insurance and shall provide or shall cause its insurers to provide Client with prior written notice of cancellation in accordance with the cancellation provisions of each applicable policy.
  - f. Client shall not utilize any insurance policy provided by C&B on which any Client Indemnified Party is named as an additional insured to satisfy any indemnity obligation owed to C&B or a third party.
  - g. All deductibles and self-insured retentions are for the sole account of C&B.
- II. Client shall carry throughout the term of this Agreement at its sole cost and expense the following insurance on policy forms and with insurance companies reasonably agreeable to C&B:
- a. Comprehensive General Liability Insurance including contractual liability and products and completed operations coverage.
  - b. Workers' Compensation insurance including U.S.L&H endorsement and Employer's Liability insurance.
  - c. With respect to any vessels owned or operated by Client utilized in the salvage operations and including the vessel to be salvaged under this Agreement:
    - i. Hull and Machinery insurance subject to the 1953 Taylor Hull Form (Rev. 70), or its equivalent, including S.R.&C.C. coverage for the full agreed value of the vessel.
    - ii. Protection and Indemnity insurance subject to the SP-23 (Revised 1/56) or its equivalent, including crew liability, contractual liability, collision liability, tower's liability (if the vessel is a boat providing towing services) and Pollution Exclusion and Buy-Back Endorsement. Client shall cause the "other than owner" and "limitation of liability" provisions to be deleted or modified to protect the interests of the C&B Indemnified Parties.
    - iii. Vessel Pollution Liability insurance subject to the Water Quality Insurance Syndicate policy form, or its equivalent, for OPA, CERCLA and other substances coverage.
  - d. Property insurance for the full value of the item to be lifted providing customary "all risks" coverage.
  - e. Bumbershoot/Umbrella/Excess insurance providing excess coverage for Comprehensive General Liability, Employer's Liability, Protection and Indemnity and Vessel Pollution Liability insurance with a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the entire operations and vessel fleet of the Client Indemnified Parties.
  - f. Client shall cause its insurer to name the C&B Indemnified Parties as an additional insured on all policies except the Workers' Compensation and Hull and Machinery insurance, and Client shall cause its insurers to provide the C&B Indemnified Parties with a waiver of subrogation to the extent of the risks and liabilities assumed by Client under this Agreement. Client shall provide or shall cause its insurers to provide C&B with a Certificate of Insurance as evidence of the required insurance and shall provide C&B with prior written notice of cancellation in accordance with the cancellation provisions of each applicable policy.
  - g. C&B shall not utilize any insurance policy provided by Client on which any C&B Indemnified Party is named as an additional insured to satisfy any indemnity obligation owed to Client or a third party.
  - h. All deductibles and self-insured retentions are for the sole account of Client.

**Bareboat Charter Insurance Requirements**

Client shall, at its own cost and expense, procure and maintain in full force and effect throughout the term of this Agreement, with underwriters and on policy forms reasonably acceptable to C&B, the following insurance:

- a. Hull and Machinery Insurance subject to the terms of the 1953 Taylor Hull Form (Rev. 70), or its equivalent, including S.R. & C.C. and liner negligence coverage providing navigation limits covering the scope of operations contemplated by Client. Such policy shall provide for breach of warranty coverage in favor of the C&B Indemnified Parties and any mortgagee maintaining an interest in the vessel. This policy shall provide for an agreed insured value of not less than the amount identified in the applicable accepted Proposal. Client shall cause its insurers to name the C&B Indemnified Parties, and any mortgagee designated by C&B, as additional loss payees, as their respective interest may appear. In the event of a

- total or constructive total loss, Client shall cause the C&B Indemnified Parties, and any mortgagee designated by C&B, to be the sole loss payees as their interest may appear.
- b. Protection and Indemnity Insurance, on form SP-23 (Revised 1/56), or its equivalent, including crew liability, contractual liability, collision liability, tower's liability (if chartered vessel is a boat) and Pollution Exclusion and Buy-Back Endorsement. Client shall cause any "other than owner" and "limitation of liability" policy provisions to be deleted or amended so as to fully protect the interests of the C&B Indemnified Parties.
  - c. Vessel Pollution Liability Insurance subject to not less than the full conditions available through the Water Quality Insurance Syndicate, or its equivalent, for OPA, CERCLA and other substances coverage.
  - d. Excess/Umbrella/Bumbershoot Insurance in excess of the aforesaid Protection and Indemnity and Vessel Pollution Insurance providing a minimum limit of liability of not less than \$25,000,000 per occurrence. Such limit may be in any combination of primary and excess insurance and may apply to the Client Indemnified Parties' entire operations and fleet of vessels.
  - e. Either Cargo Legal Liability or "all risks" Cargo Insurance, as may be required in order to comply with each applicable agreement governing the carriage of cargo aboard the vessel, providing a limit of liability of not less than the value of the cargo aboard the vessel.

Client shall cause its insurers to name the C&B Indemnified Parties, and any mortgagee designated by C&B, as additional insureds with a full waiver of subrogation on all insurance required under this Agreement. Client shall cause all policies to further provide as follows:

- i. that there is no recourse against the C&B Indemnified Parties, or any mortgagee designated by C&B, for the payment of premiums, commissions or deductibles;
- ii. that the policies are primary to and without any right of combination from any other insurance maintained by the C&B Indemnified Parties;
- iii. that prior written notice of cancellation will be provided to C&B in accordance with the cancellation provisions applicable to each policy;
- iv. that the policy deductible will not exceed \$25,000 unless approved in writing by C&B.

Client shall provide or shall cause its insurers to provide C&B with a Certificate of Insurance upon C&B's request for evidence of all insurance including the special conditions required under the insurance requirements.

#### **Equipment Lease Insurance Requirements**

Client shall, at its own cost and expense, procure and maintain in full force and effect throughout the term of this Agreement, with underwriters and on policy forms reasonably acceptable to C&B, the following insurance:

- a. Comprehensive General Liability insurance including contractual liability and products and completed operations coverage.
- b. Commercial Automobile insurance on all owner, hired and non-owned vehicles.
- c. Workers' Compensation insurance including USL&H (if applicable) and Employer's Liability coverage. Client shall cause its insurers to provide the C&B Indemnified Parties with a full waiver of subrogation on such policy.
- d. Excess/Umbrella insurance in excess of the aforesaid Comprehensive General Liability, Commercial Automobile and Employer's Liability coverage providing a minimum limit of liability of \$10,000,000 per occurrence or in the aggregate as may be applicable. Such limit may be in any combination of primary and excess coverage and may apply to the Client Indemnified Parties' entire operation.
- e. Property or Contractor's Equipment insurance covering the equipment for the fair market value leased under this Agreement. Client shall cause its insurers to name the C&B Indemnified Parties as an additional insured on such policy with a full waiver of subrogation.

Client shall provide or shall cause its insurers to provide C&B with a Certificate of Insurance upon C&B's request for evidence of all insurance including the special conditions required under these insurance requirements. Client shall provide or shall cause its insurers to provide C&B with prior written notice of cancellation on all policies in accordance with the cancellation provisions of each applicable policy.

**Government Imposition.** If either party determines that any enacted Government Imposition, as defined below, effective as of the date of the accepted Proposal or later, would have a significant adverse effect on its performance under these Terms & Conditions or any Proposal, the affected party shall notify the other party noting such adverse effect. The parties shall have 60 days from the date the non-affected party receives such notification to negotiate any changes or amendments to these Terms & Conditions or the applicable Proposal that may be necessary or appropriate to allow such party to realize the original benefit of its bargain with the other party. If the parties fail to reach such agreement, after the 60-day period, the affected party may, upon subsequent notice, terminate these Terms & Conditions or Proposal, as applicable, after 120 days after receipt of such subsequent notice. Each party shall bear its own cost relating to termination. For purposes of this section, "Government Imposition" means any changes in laws, rules or regulations which adversely affects either party's cost or ability to economically operate under these Terms & Conditions or any Proposal, including but not limited to, new or increased taxes (excluding income taxes), tolls, levies or user fees, new or

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increased equipment requirements, compliance with Homeland Security regulations, environmental or manning requirements, or any interventionary action on the part of a governmental agency or bureau having jurisdiction.

**Limitation of Liability.** NEITHER C&B NOR ANY AFFILIATE SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES, OR COSTS OF REPLACEMENT PRODUCTS OR SERVICES, HOWEVER CAUSED, ARISING OUT OF THIS AGREEMENT, ANY PROPOSAL OR ANY DOCUMENTATION, PRODUCTS OR SERVICES PROVIDED IN CONNECTION THEREWITH, EVEN IF C&B HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Waiver of Jury Trial.** THE PARTIES HERETO HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, ANY PROPOSAL OR CHANGE ORDER, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Force Majeure.** With the exception of payment, indemnification, and insurance obligations, each of the parties will be excused from performance to the extent that its performance is prevented by any of the following: an act of God, an act of a public enemy, epidemic, quarantine, embargo, restraint of any governments, rulers or people, extreme weather events, declared or undeclared war, fire, flood, storm, slide, earthquake, power failure, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labor disputes, navigation issues, river conditions that may cause navigation issues (including, but not limited to, low water, high water, thunderstorms, wind or ice) or other similar events (except unanticipated changes in market conditions) that are beyond the control and without the fault of the party claiming force majeure and that may prevent or delay performance. The party claiming force majeure shall promptly notify the other as to the commencement, cause, and estimated duration of the force majeure condition and shall make reasonable efforts to eliminate such condition as soon as possible. If the force majeure condition continues for more than 30 days, then the party that has not claimed force majeure may terminate the applicable Proposal immediately without penalty by providing the other with notice of termination. The party declaring force majeure is not required to prepare and submit a Change Order to the other party for review and signature.

**Compliance with Applicable Law.** Each of the parties shall comply with all applicable law during the performance of this Agreement.

**Confidentiality.** Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, technology, services, and products ("Confidential Information"). Each party agrees that it will not use in any way, for its own account or for the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information without first receiving written consent from the other party and will take reasonable precautions to protect the confidentiality of such information. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; (iv) is independently developed by the receiving party; or (v) is required to be released by law or regulation. The contents and provisions of this Agreement are considered the Confidential Information of C&B.

**Termination.** Either party may terminate the Agreement ("Terminating Party") upon the breach of any term of this Agreement by the other party ("Breaching Party") if the Breaching Party fails to cure such breach within 30 days of receiving notice of the breach from the Terminating Party, or within a reasonable amount of time after such 30-day cure period if the breach is of a nature that cannot be cured within 30 days. Either party may terminate the Agreement immediately by providing written notice to the other party for any of the following reasons: (a) in the event such other party becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against such party, or has a receiver or trustee appointed for substantially all of its assets, or (b) if such other party has violated any applicable law or regulation (notwithstanding any cure period(s) for breach). In the event of the termination of an accepted Proposal, Client shall, within 30 days of the date of termination, pay C&B all unpaid amounts for (i) services rendered, as provided under the Proposal, and (ii) inventory purchased or ordered in connection with a service that has not yet been rendered under the Proposal (if the inventory cannot be canceled or returned at full refund).

**No Assignment.** Excluding assignments pursuant to a sale or transfer of all or substantially all of its assets, whether by sale, merger, or change on control, each of the parties shall not assign any part of this Agreement to any third-party without first obtaining the prior written consent of the other party, such consent not to be unreasonably withheld. C&B may subcontract.

**Affiliates.** The parties agree that references to "C&B" in this Agreement refer only to the C&B entity that has executed the applicable Proposal and that such C&B entity is the only party responsible for providing the Service(s) under the applicable Proposal. Notwithstanding anything contained in this Agreement to the contrary, C&B may, without the consent of Client, obtain from its affiliates any such services, personnel, equipment and any other items that C&B desires in order to perform the Services.

**Notice.** Each of the parties agrees that any notice provided under this Agreement will be deemed fully given only if it is in writing, addressed to the notice addresses stated in the Proposal or such other addresses as a party may designate in writing ("Notice Address"), and sent by either (i) registered or certified mail, postage prepaid, or (ii) via email. Any notice sent via registered or certified mail, postage prepaid, will be considered effective three calendar days after the date sent. Any notice sent via email will be considered effective upon the recipient's receipt of the email. For purposes of this Agreement, "receipt" of an email includes opening, reading, forwarding, replying, deleting, ignoring (whether intentional or unintentional), or sending a read receipt or



automatic email reply in response to the email. Any other form of notice is effective upon receipt or refusal of the recipient at the applicable Notice Address. Notices may also be transmitted by facsimile provided that a hard copy of such transmittal is deposited with a reputable commercial courier or express service for overnight delivery at the applicable Notice Address within one business day following such transmittal.

**Modification.** If any provision of this Agreement, or the application of such provision to any person or circumstance, is held invalid, illegal, or unenforceable for any reason ("Unenforceable Provision"), then the remaining provisions of this Agreement and their application as between the parties, as well as the application of the Unenforceable Provision to other persons or circumstances, will not be affected; and, to the fullest extent possible, the court finding such provision invalid, illegal, or unenforceable must modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to the party or parties affected within the bounds of validity, legality, and enforceability.

**Disclaimer of Warranties.** C&B PROVIDES ALL PRODUCTS AND SERVICES ON AN "AS IS" BASIS, AND CLIENT'S USE OF THE PRODUCTS AND SERVICES IS AT ITS OWN RISK. C&B DOES NOT MAKE AND EXPLICITLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AS WELL AS ANY WARRANTIES THAT MAY ARISE FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. C&B FURTHER EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY DIFFERENCE BETWEEN ANY CONDITION EXPECTED BY CLIENT AND ANY CONDITION ENCOUNTERED BY CLIENT. CLIENT IS HEREBY REQUIRED TO SATISFY ITSELF AS TO THE ACCURACY OF ANY OF C&B'S SPECIFICATIONS AND STATEMENTS CONTAINED HEREIN OR CONTAINED IN ANY PROPOSAL OR CHANGE ORDER RATHER THAN RELYING ON SUCH SPECIFICATION OR STATEMENT.

**Indemnification.** The parties are governed by the Indemnification section of the corresponding accepted Proposal.

**Governing Law.** To the extent not preempted by general maritime law, this Agreement and the rights and obligations of the parties hereto are governed by and construed and interpreted in accordance with the laws of the Commonwealth of Kentucky, without regard to its principles of conflicts of law. The parties irrevocably consent and voluntarily submit to the exclusive jurisdiction and venue of the state and federal courts located in Kenton County, Kentucky and agree that all claims arising out of or related to this Agreement will be exclusively heard and determined in such courts. Each of the parties represents and warrants that the intent of this Agreement is for the provision of, predominantly, Services; and, as such, it is not subject to the Uniform Commercial Code ("UCC") or any state's adoption or version – in whole or in part - of the UCC and waives any such argument. Each of the parties agrees that all claims arising under this Agreement must be brought within two years of C&B ceasing performance of the Service(s) that allegedly contributed to any claimed loss or liability; failing which, the party bringing the claim will be deemed to have waived its rights under this Agreement.

**Interpretation.** Each of the parties represents and warrants that it has had a full and fair opportunity to negotiate the Agreement at arm's-length and to have legal counsel of its respective choice review the Agreement's terms and conditions. Accordingly, each of the parties hereby waives any argument or claim based on one or the other being considered the draftsman of the Agreement, and/or any argument or claim that ambiguity should be preferentially interpreted against the other party.

**No Third-Party Beneficiaries.** The parties each agree that nothing in this Agreement, express or implied, is intended to or will confer upon any third-party any benefits, rights, or remedies.

**Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the heirs, assigns, and successors in interest of the parties.

**No Waiver.** Except as expressly provided otherwise in the Agreement, delay or failure to exercise any right or remedy under this Agreement will not impair such right or remedy or be construed as a waiver thereof or as acquiescence in a breach of this Agreement. Any single or partial exercise of any right or remedy will not preclude any other or future exercise thereof or the exercise of any other right or remedy. A waiver must be in writing and signed by the party waiving its right(s) to be deemed validly given and enforceable.

**Survival.** Any accrued rights to payment, any remedies, and all sections of this Agreement that by their nature would survive expiration or termination of this Agreement, including, without limitation, confidentiality, indemnification, remedies, warranty disclaimers, and limitations of liability, shall survive any expiration or termination of this Agreement.

**Headings.** Headings are for convenience only and do not affect the interpretation of this Agreement.

**Authorization.** Each party represents and warrants to the other party as follows: (a) that it, through the representative agreeing to this Agreement, has the requisite authority to enter into and perform the obligations of this Agreement; (b) this Agreement constitutes the legally binding obligation of each party; and, (c) that its execution and performance under this Agreement will not result in a breach of any obligation to any third-party or infringe or otherwise violate any third-party's rights. A signed copy of – or an electronic signature on – this Agreement is as valid as a signed original.