



TERMS AND CONDITIONS FOR TOWING

1. Tug Hire.

- (a) INTRACOASTAL MARINE, LLC agrees to provide and CUSTOMER agrees to hire the services of the Tug for the purpose of towing the Tow as set forth in the Specifications; the term "TUG" shall include the Tug(s) identified in the Specifications as well as any towing vessel substituted for such Tug(s) and the term "TOW" shall include the Tow identified in the Specifications. The TUG shall be tight, staunch, strong, seaworthy, and in every way fit for the intended service, to tow the TOW, from the Port of Commencement of the Towing to the Port of Destination. The TUG(s) is/are built and documented under the laws of the United States of America and is/are fully qualified to engage in coast-wise trade of the United States of America as a towing vessel with a full complement of officers, seamen and engineers for a vessel of her tonnage, as required by the United States Coast Guard regulations and any other applicable governing body of the United States of America. INTRACOASTAL MARINE, LLC will make the TUG available for reasonable inspection by CUSTOMER's underwriters' surveyor prior to commencement of the tow, but INTRACOASTAL MARINE, LLC reserves the right to terminate this Towing Agreement without recourse by CUSTOMER should CUSTOMER or its underwriters' surveyors require repairs, changes, or alterations to the TUG which INTRACOASTAL MARINE, LLC, in its sole discretion, is unwilling to make. INTRACOASTAL MARINE, LLC may, with the prior written approval of CUSTOMER and its underwriters' surveyor, substitute another tug for the TUG designated herein.
- (b) INTRACOASTAL MARINE, LLC shall, at its expense, man, operate, maintain, supply, and navigate the TUG, or any substitute approved hereunder.
- (c) INTRACOASTAL MARINE, LLC shall be responsible for making up the TOW and for determining the method and position in which it shall be towed and the time of sailing. As weather permits, the TUG shall proceed forthwith with utmost dispatch on direct routes from the Port of Departure of the TUG to the Port of Commencement of Towing and with the TOW from the latter Port to the Port of Destination and return if more than one voyage is anticipated.

2. Payment.

- (a) CUSTOMER agrees to pay the Price for the towage service set forth in the Specifications. It is agreed that said Price shall be deemed to be fully earned when the TUG departs from INTRACOASTAL MARINE, LLC facility in Chesapeake, Virginia bound for the Departure Port, and shall be paid in accordance with the Payment Terms.
- (b) CUSTOMER shall have the right to cancel this Towing Agreement without payment or penalty at anytime prior to the TUG's departure from the INTRACOASTAL MARINE, LLC facility in Chesapeake, Virginia.
- (c) Invoices for towing services will be invoiced on a per trip basis. All invoices are due within 30 days of the invoice date. Payments for invoices are to be sent to:

INTRACOASTAL MARINE, LLC
500 Barnes Road
Chesapeake, VA 23324

- ### 3. Gear. INTRACOASTAL MARINE, LLC shall furnish the use of all towing hawsers and bridles necessary for this towage service which shall be in all respects fit for the intended service, but INTRACOASTAL MARINE, LLC shall be entitled, without expense, to the use of any of the TOW's gear, power, anchors, anchor chain, radio, communication and navigational equipment, or

other available gear and to the aid of her crew, to the extent that such items exist.

4. **Seaworthy Tow.**

- (a) CUSTOMER warrants the TOW will be at all times seaworthy and fit for the intended voyage and purpose. CUSTOMER agrees to use due diligence to fit out and maintain the TOW for the voyage in a proper and sufficient manner, and to comply with any reasonable requirements of the TOW's underwriters' surveyor. Upon request by INTRACOASTAL MARINE, LLC, CUSTOMER shall provide to INTRACOASTAL MARINE, LLC or the captain of the TUG upon the TUG's arrival at the place of departure an unconditional certificate of tow-worthiness for the TOW issued by CUSTOMER's underwriters' surveyors. However, the captain of the TUG shall at all times reserve the right to refuse to undertake any voyage until, in his discretion, he is satisfied that the TOW is in all respects trimmed, prepared, fit and ready for the intended voyage.
- (b) CUSTOMER agrees the TOW will be suitably trimmed and prepared and ready to be towed when the TUG arrives at the place of departure, and CUSTOMER agrees the TOW shall be fitted and equipped with such shapes, signals, navigational and other lights of a type required for the voyage.
- (c) No inspection of the TOW by INTRACOASTAL MARINE, LLC or the captain or crew of the TUG shall constitute approval of the condition of the TOW or otherwise constitute a waiver of CUSTOMER's obligation to provide a seaworthy TOW.

5. **Hazardous Cargo.** CUSTOMER shall take all steps necessary to prevent incorporation of any hazardous or noxious substances into cargo to be towed by INTRACOASTAL MARINE, LLC, and shall comply with all local, state and federal laws and regulations pertaining to the carriage of hazardous or noxious substances ("Hazardous Materials"). CUSTOMER shall arrange at its own cost to provide INTRACOASTAL MARINE, LLC and the TUG with all necessary licenses, permits, authorizations and permits required by the TUG and the TOW to undertake and complete any voyage under this Agreement, together with all necessary certification for the TOW to enter or leave all or any ports of call or refuge. CUSTOMER shall comply with all regulations or requirements of the United States Government and governing state law, as appropriate, and shall bear and pay all taxes, fines, expenses or losses incurred or suffered by reason of any failure to so comply. CUSTOMER further agrees to protect, defend, indemnify and hold harmless INTRACOASTAL MARINE, LLC, its TUG(s), and its captain/master and crew against the results of any breach of such obligations by CUSTOMER.

6. **Repairs / Loss of Tow.**

- (a) The TUG, during the course of this towage service, may put into port if, after consultation with CUSTOMER, it is determined that repairs or alterations to, or additional equipment for, the TOW are required to permit the TOW to be towed safely to destination. INTRACOASTAL MARINE, LLC shall be entitled to receive, and CUSTOMER shall pay, additional compensation for this delay at the TUG's running and standby rates of hire unless otherwise provided in the Specifications.
- (b) If the TUG and TOW should become separated during the course of the voyage, the TUG shall exert best efforts to stand by and render service in saving the TOW, without any claim for additional compensation or salvage for the time so spent or the services so rendered during such efforts.

7. **Safe Berth.** CUSTOMER warrants it will at all times provide a safe berth for the TUG at the Departure Port and the Destination Port.

8. **Liberties and Salvage.**

- (a) At any time during the towage service, the TUG shall have the liberty to sail with or without pilots, or to go to the assistance of vessels in distress for the purpose of saving life or property, to call at any port for fuel, or to land disabled seamen; provided, however, that the TOW shall be left in a position of safety and, at the completion of such diversion, the TUG shall return to the TOW and resume the voyage. In all cases, INTRACOASTAL MARINE, LLC shall notify CUSTOMER of any diversions, including the estimated length of time to complete the diversion, and the place, if any, at which the TOW has been left, but time lost by the TUG under such circumstances shall not entitle INTRACOASTAL MARINE, LLC to additional compensation from CUSTOMER.
- (b) INTRACOASTAL MARINE, LLC shall be entitled, in its sole discretion, to perform the towage and all services related thereto in any reasonable manner and by any reasonable means, methods and routes. The TUG's captain/master shall at all times be in command of the TUG and TOW while underway and shall at his discretion deviate from the course without liability for any purpose including saving life or property or to offer assistance to those in distress. In the event the captain/master

reasonably determines that it is unsafe to perform the services contemplated herein due to condition of weather or ice, INTRACOASTAL MARINE, LLC shall not be held liable for delay or consequential damages. INTRACOASTAL MARINE, LLC and the captain/master of the TUG shall have liberty to comply with the order and direction of any pilot or of any person acting or purporting to act under government, local or port authority, without liability.

9. **Cargo Value.** CUSTOMER represents and warrants to INTRACOASTAL MARINE, LLC that any cargo on board the TOW has no commercial value, or if it has any such value, it is so small as to be incapable of precise or accurate quantification. CUSTOMER therefore stipulates and agrees that in the event of any loss or damage to cargo, the value of said cargo will be assessed at not more than \$0.10 per gross ton. CUSTOMER further stipulates and agrees that if cargo is to be carried by barge, one barge load shall be considered to be a single package or customary freight unit. CUSTOMER understands and agrees that the rates, terms and conditions under which INTRACOASTAL MARINE, LLC is willing to provide its services hereunder are predicated on these stipulations, and that if any greater value were assignable to the Cargo than referenced above, INTRACOASTAL MARINE, LLC would charge higher rates and would impose different terms and conditions for towage to reflect INTRACOASTAL MARINE, LLC's increased burden and risk.
10. **Load and Stow.** CUSTOMER is uniquely qualified to determine that that Cargo on the TOW is loaded, towed and unloaded in accordance with applicable environmental and disposal laws and regulations, and CUSTOMER further understands and agrees that INTRACOASTAL MARINE, LLC and the captain/master of the TUG have no skill, qualification or expertise with respect to determining whether cargo may lawfully be towed, loaded, or unloaded at the point of departure or the point of destination. INTRACOASTAL MARINE, LLC and the captain/master of the TUG have no responsibility to inspect the cargo on the TOW and are entitled to rely on CUSTOMER's undertaking and on any documents provided to INTRACOASTAL MARINE, LLC by CUSTOMER. Any inspection undertaken by INTRACOASTAL MARINE, LLC or the captain/master of the TUG shall be solely for their own purposes and shall not shift to INTRACOASTAL MARINE, LLC or the TUG any of CUSTOMER's responsibilities hereunder.
11. **Pollution Penalties.** CUSTOMER shall indemnify and hold INTRACOASTAL MARINE, LLC and TUG, and its captain/master or crew, harmless from and against any and all fines, penalties, attorneys fees, expenses or charges claimed or assessed against INTRACOASTAL MARINE, LLC, the TUG, and /or the captain/master or crew of the TUG by any competent authority or third party attributable to pollution, contamination or other violation of law caused or in any way contributed to by cargo on the TOW.
12. **No Warranties.** INTRACOASTAL MARINE, LLC will exercise reasonable care in the performance of its duties hereunder, but INTRACOASTAL MARINE, LLC specifically disclaims any warranties express or implied, including the warranty of workmanlike service.
13. **Charges.**
 - (a) All port charges, pilotages, agencies, taxes (including Federal Transportation Tax, where applicable), dues, duties, and other expenses upon or in connection with the TUG, shall be for CUSTOMER'S account and all such charges incurred in connection with the TOW shall likewise be for the account of CUSTOMER. Services of any assisting tugs at the Ports of Commencement and Destination shall be for CUSTOMER's account unless due to mechanical breakdown of the TUG, in which case services of any assist tugs shall be for the account of INTRACOASTAL MARINE, LLC.
 - (b) All costs and expenses associated with loading, unloading, and preparing the TOW for towing (including casting off or making fast any moorings, raising and lowering anchors, etc.) shall be for CUSTOMER's account.
14. **Insurance.**
 - (a) INTRACOASTAL MARINE, LLC agrees to obtain at its expense and keep in full force and effect throughout the life of this Towing Agreement, in good and solvent companies, full form hull and machinery insurance, protection and indemnity insurance, INTRACOASTAL MARINE, LLC's liability insurance, and oil pollution insurance, on the TUG, or any substitute tug. Hull and machinery insurance shall be maintained to the full insurable values thereof. Protection and indemnity insurance, issued on Form SP23 or equivalent, shall be maintained in an amount not less than U.S. Five Million Dollars (\$5,000,000.00). INTRACOASTAL MARINE, LLC liability insurance shall be maintained in an amount not less than U.S. Five Million Dollars (\$5,000,000.00). All pollution insurance policies required hereunder shall be in an amount required by all applicable federal, state, or local laws. Deductibles shall not exceed \$75,000.00. All insurance policies required hereunder shall provide for thirty (30) calendar days written notice to CUSTOMER and to INTRACOASTAL MARINE, LLC prior to cancellation, modification, or expiration of such insurance policies. INTRACOASTAL MARINE, LLC further agrees to make available to CUSTOMER copies of all cover notes, binders, and insurance policies (or certificates thereof) evidencing the insurance required above upon request from CUSTOMER.

(b) CUSTOMER shall obtain, at its expense, and keep in full force and effect throughout the life of this Towing Agreement, in good and solvent companies, full form hull and machinery insurance, protection and indemnity insurance, and where appropriate, oil pollution insurance, on the TOW and on all floating equipment towed hereunder, and at its option, full form marine cargo insurance on all cargoes to be carried in or transported on the TOW. Hull and machinery insurance and cargo shall be maintained to the full insurable values thereof. Protection and indemnity insurance shall be maintained in an amount not less than U.S. Five Million Dollars (\$5,000,000.00). All pollution insurance policies required hereunder shall be in an amount required by all applicable federal, state, or local laws. Deductibles shall not exceed \$75,000.00. All insurance policies required hereunder shall provide for thirty (30) calendar days written notice to INTRACOASTAL MARINE, LLC and to CUSTOMER prior to cancellation, modification, or expiration of such insurance policies. CUSTOMER agrees to make available to INTRACOASTAL MARINE, LLC copies of all cover notes, binders, and insurance policies (or certificates thereof) evidencing the insurance requested above upon request from INTRACOASTAL MARINE, LLC.

15. **Liability and Indemnity.**

(a) CUSTOMER hereby releases INTRACOASTAL MARINE, LLC, its officers, directors, agents, employees, affiliated parent and subsidiary companies, and vessels (collectively, "Intracoastal Marine, LLC Indemnitees") from any liability for, and CUSTOMER will defend, indemnify and hold Intracoastal Marine, LLC Indemnitees harmless from and against all suits, actions, claims, liabilities and demands *in personam* or *in rem*, and all loss and expense, including reasonable attorney's fees, based on bodily injury or death or property damage, whenever occurring, suffered or incurred by INTRACOASTAL MARINE, LLC, its affiliates, its personnel, and their officers and employees, arising from or relating in any way to the performance or services hereunder, regardless of how bodily injury or death or property damage is caused, excluding claims arising from the negligence or willful misconduct of Intracoastal Marine, LLC Indemnitees. CUSTOMER agrees it has procured sufficient insurance coverage to protect itself from all such losses, and it will look solely to its own insurers for indemnity, coverage, or reimbursement. CUSTOMER further agrees to obtain a waiver of subrogation against Intracoastal Marine, LLC Indemnities in the event of such loss or expense. In any event, should there be a failure or denial of insurance coverage, or a finding of gross negligence or wanton and willful conduct, or for any other reason, Intracoastal Marine, LLC Indemnitees shall have no liability to CUSTOMER, its agents, employees or representatives in an amount in excess of \$250,000.

(b) INTRACOASTAL MARINE, LLC hereby releases CUSTOMER, its officers, directors, agents, employees, affiliated parent and subsidiary companies, and vessels (collectively, "Customer Indemnitees") from any liability for, and INTRACOASTAL MARINE, LLC will defend, indemnify and hold harmless Customer Indemnitees from and against all suits, actions, claims, liabilities and demands *in personam* or *in rem*, and all loss and expense, including reasonable attorney's fees, based on bodily injury or death or property damage, whenever occurring, suffered or incurred by INTRACOASTAL MARINE, LLC its affiliates, its personnel, and their officers and employees, arising from or relating in any way to the performance or services hereunder, regardless of how bodily injury or death or property damage is caused, excluding claims arising from the negligence or willful misconduct of Customer Indemnitees. INTRACOASTAL MARINE, LLC agrees it has procured sufficient insurance coverage to protect itself from all such losses, and it will look solely to its own insurers for indemnity, coverage, or reimbursement. INTRACOASTAL MARINE, LLC further agrees to obtain a waiver of subrogation against Customer Indemnities in the event of such loss or expense. In any event, should there be a failure or denial of insurance coverage a finding of gross negligence or wanton and willful conduct, or for any other reason, Customer Indemnitees shall have no liability to INTRACOASTAL MARINE, LLC, its agents, employees, or representatives in an amount in excess of \$250,000.

16. **No General Average.** Notwithstanding Rule B of the York-Antwerp Rules 1994, the Tug and Tow, and INTRACOASTAL MARINE, LLC and CUSTOMER, shall be deemed separate interests not engaged in a common adventure.

17. **Force Majeure.** Neither INTRACOASTAL MARINE, LLC, the TUG, CUSTOMER, nor the TOW shall be responsible for any loss or damage or delay or failure in performing hereunder arising from an Act of God; saving or attempting to save life or property at sea; act of war; act of public enemies, pirates, or thieves; arrest or restraint of princes, rulers, dictators, or people, or seizure of the TUG or TOW under legal process (provided bond, if required, is promptly furnished to release the TUG or TOW); strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general (whether involving CUSTOMER or not); quarantine or other restriction on the ability of the TUG to sail, including illness of the crew or other circumstance arising from or related to Covid-19, flu or other pandemic; an order of civil authorities, or protest, riot or other civil commotion; breakdown or latent defect involving vessel hull, machinery, equipment, lines, etc. not discoverable by due diligence; and/or, any other cause arising without the actual fault and privity of a party and over which that party does not have direct control.

18. **Agreement to Arbitrate.** Should any dispute arise out of this Towing Agreement or any matter implicated by this Towing Agreement or performance of the tow, the matter in dispute shall be referred to three persons, one to be appointed by

each of the parties hereto, and the third by the two so chosen who shall be the chairman of the panel of arbitrators; their decision or that of any two of them shall be final and for the purpose of enforcing any award, this Towing Agreement may be made a rule of a court of competent jurisdiction. The proceedings shall be conducted in accordance with the Rules of the Society of Maritime Arbitrators, Inc (SMA). The arbitrators shall be members of the SMA. Any proceedings shall take place in Norfolk, Virginia unless the parties otherwise agree. The party whom the arbitrators declare to be the substantially prevailing party shall recover its costs and attorneys fees from the opposing party, in an amount to be determined by the arbitrators as being fair and reasonable. Should the sum claimed by each party not exceed U.S. \$75,000.00 (exclusive of interest, costs and legal fees), the dispute is to be governed by the 'Shortened Arbitration Procedure' of the SMA, as defined in the Society's current Rules for such procedure.

19. **Choice of Law.** This Towing Agreement shall be governed by and construed in accordance with the general maritime law of the United States or, where the maritime law is silent, the law of the Commonwealth of Virginia. INTRACOASTAL MARINE, LLC and CUSTOMER hereby consent and submit to the personal jurisdiction of the United States District Court for the Eastern District of Virginia for any proceedings in aid of arbitration in connection with any disputes arising out of or related to this Towing Agreement or the work performed hereunder or arising herefrom, and each hereby agrees that service of process may be made upon them by first class mail addressed to the office of each as set forth in the Specifications, or by any other method permitted by the Federal Rules of Civil Procedure.
20. **Integration and Construction.** If any term, condition, or provision of this Towing Agreement is held to be invalid, void, prohibited or unenforceable for any reason whatsoever, such term, condition, or provision shall be ineffective to the extent of such invalidity, prohibition, or unenforceability and shall not invalidate the remaining provisions of this Towing Agreement, which shall remain in full force and effect. This Towing Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing the Towing Agreement to be drafted.
21. **Limitation Act.** Notwithstanding any provisions of this Towing Agreement to the contrary, the parties agree they have not entered into a personal contract and INTRACOASTAL MARINE, LLC, its owners, officers and directors and any TUG providing towage services hereunder shall have the benefit of all limitations of, and exemptions from, liability available to it under the general maritime law and the Limitation of Liability Statutes of the United States.
22. **Certain Damages Excluded.** Notwithstanding anything to the contrary in this Towing Agreement, CUSTOMER understands and agrees that the rates charged hereunder are predicated on CUSTOMER's agreement that INTRACOASTAL MARINE, LLC shall have no liability for any consequential, punitive, exemplary or special damages of any kind howsoever arising.
23. **No Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Towing Agreement.
24. **Amendment, Counterparts.** These Terms and Conditions may not be supplemented, altered, amended, modified or changed by oral representations or agreements. When combined with the Specifications, this document constitutes the entire agreement between the parties. Neither party is relying upon or may rely upon any written or oral collateral, prior, or contemporaneous agreement, assurance, representation or warranty. This Towing Agreement may be executed in one or more counterparts, and each counterpart, when so executed, shall be deemed to be an original. Such counterparts shall together constitute but one and the same instrument. However, no alteration, amendment, change, or addition to this Towing Agreement shall be binding upon either party hereto unless and until reduced to writing and signed by the party to be charged with such alteration, amendment, change, or addition.

END OF DOCUMENT