TERMS AND CONDITIONS

These terms and conditions ("**Terms**") are incorporated by reference into any agreement with E.N. Bisso unless otherwise agreed.

1. **Defined Terms.** These Terms shall have the meanings given below:
   "**Customer**" means individually and collectively the person or entity ordering Services, the Vessel, and the Vessel's owners, operators, agents, charterers and/or managers.
   "**Dead Ship**" means a Vessel that cannot safely propel or steer itself.
   "**Rate Schedule**" means E.N. Bisso's current schedule of rates applicable to the port area in which the Services are to be provided as published on the date that the Services are performed.
   "**E.N. Bisso**" means the name of the company that has accepted Customer's request for, and has assumed responsibility to provide, the Services.
   "**E.N. Bisso Group**" means E.N. Bisso, its parent company, subsidiaries, affiliates, owners, charterers, operators, managers, employees, agents, representatives, and insurers, in addition to their Tugs, vessels, appurtenances, masters, officers, and crews.
   "Excluded Services" means Services requested, ordered by or rendered to a Vessel on behalf of Customer that are not provided for in a Rate Schedule but can be arranged upon reasonable request and by agreement with separate rates and terms.
   "**Services**" means the tug services ordered by or on behalf of Customer for which rates are provided in a Rate Schedule incorporating these Terms and any other services for which these Terms have been made applicable by E.N. Bisso and Customer.
   "**Tug(s)**" means the tug(s) operated and/or engaged by E.N. Bisso and employed to provide the Services.
   "**Vessel**" means the vessel for which Services are requested to be provided by E.N. Bisso, including, without limitation, self-propelled vessels being assisted and barges under tow.

2. **Scope of Services and Terms.**
   (a) Upon acceptance of a Customer's request for Service, E.N. Bisso will provide the Services promptly as requested, taking into account prior commitments. E.N. Bisso reserves the right, in its sole discretion, to decline any request for Services from any existing or potential Customer.
   (b) These Terms shall not apply to Excluded Services, including but not limited to rescue towing, assisting Vessels aground, damaged Vessels, Vessels with engine or steering problems or otherwise in peril, Vessels requesting or needing salvage and any other Services not specified in the Rate Schedule. Separate rates and terms and conditions for such excluded services will be provided upon request by E.N. Bisso. E.N. Bisso reserves the right, in its sole discretion, to decline to provide such Excluded Services to any Customer.
   (c) In the event a Vessel is a Dead Ship at any time while Services are being provided, the Tug shall stand by and render additional service to the Vessel or a tug/barge unit's propelling tug as determined by the Tug Master, in his or her sole discretion, to be safe and within the reasonable capabilities of the E.N. Bisso Tug. Customer shall pay E.N. Bisso for any such additional service at the Dead Ship rates set forth in the Rate Schedule. In addition, such Dead Ship Services shall be provided pursuant to these Terms, except that the limitation of liability cap set forth in Section 8(d) shall be reduced to $50,000 (fifty thousand dollars) for all purposes (including for purposes of Section 9(a)) and the indemnity provisions of Section 9 shall apply with respect to such Dead Ship Services, even if Customer had previously opted out of the liability cap pursuant to Section 8(e).
   (d) E.N. Bisso and Customer shall each use due diligence to ensure that the Tug and the Vessel, respectively, comply with all applicable laws, including any vessel escort regulations for the area in which the Services are provided.
   (e) These Terms apply to the area specified in the Rate Schedule and supersede and cancel all previous E.N. Bisso terms and conditions applicable to such area.

3. **Rates.** In consideration for the Services, Customer shall pay E.N. Bisso in accordance with the Rate Schedule. In consideration for services not covered by the Rate Schedule, Customer shall pay such rates agreed by E.N. Bisso and Customer.

4. **Unusual Conditions.** When circumstances beyond the control of E.N. Bisso, such as weather, tidal conditions, freshets or flood stages, difficult berths or slips, obstructions, port congestion, vessel size or configuration, requests by ship's or tug/barge unit's master, pilot or port agent, or any other factors require that additional Tugs be dispatched to a job, charges for Services performed by such additional Tugs shall be at the rates set forth in the Rate Schedule. When additional Tugs are dispatched and/or conditions are such that the Vessel will be delayed, E.N. Bisso shall attempt to contact the Vessel's agent, but E.N. Bisso Group shall not be held liable for failure or inability to do so or for any loss, damage or expense resulting from such delay. If any vessel assist or escort involves special or unusual risks, E.N. Bisso may require an additional agreement on modified rates and/or terms and conditions.

5. **Delegation; Third-Party Performance.**
   (a) If E.N. Bisso Tugs are unavailable, or E.N. Bisso otherwise determines, in its sole discretion, that another tug would be more appropriate to provide the requested Service, E.N. Bisso may engage (as a sub-contractor of E.N. Bisso) another service provider for the affected movement or tow, with any such engagement to constitute the provision of Services hereunder by E.N. Bisso. In performance of any such delegated services, the third-party service provider shall be considered an independent contractor and not the agent or employee of E.N. Bisso.
   (b) Customer agrees that any service provider performing delegated Services shall be considered an Indemnified Party (as defined in Section 9 of these Terms) and shall have the benefit of all defenses, exemptions, limitations of liability, indemnities and other benefits provided by these Terms to the party or parties providing Services hereunder.
   (c) E.N. Bisso reserves the right to charge Customer for all out-of-pocket costs incurred by E.N. Bisso in hiring other service providers to perform work on behalf of E.N. Bisso to the extent such costs exceed the amounts payable to E.N. Bisso for such Services under the Rate Schedule or these Terms.
   (d) E.N. Bisso Group shall not be liable for damages by reason of lack of availability of any of its Tugs or inability to engage another service provider, including, without limitation, any difference between the rates contained in the Rate Schedule or these Terms and the rates or terms paid or agreed by Customer to/with a third party for provision of the Services.

6. No Warranties. E.N. Bisso endeavors to exercise reasonable care in its performance of the Services.

E.N. BISSO MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF WORKMANLIKE SERVICE OR PERFORMANCE OR FITNESS FOR ANY PARTICULAR PURPOSE.

7. Force Majeure. E.N. Bisso Group shall not be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from an event beyond its reasonable control (a "**force majeure**" event), including but not limited to act of God; act of war; peril of the seas; mechanical breakdown; fire; flood; act of public enemies or assailing thieves; terrorist actions; arrest or restraint of princes, rulers or peoples; strikes, lockouts or labor disturbances from whatever cause, either partial or general; riot or civil disorder; acts of public enemies; extremely high or low river stages; severe weather events including hurricanes and named storms; pollution events; pandemics or epidemics; port congestion; acts of military authorities; actions of government or quasi-governmental authorities, including sanctions and blockades; supply chain failures; cyber attacks or events; or any other cause whatsoever beyond the reasonable control of the party claiming the benefit of this clause.

8. LIMITATION OF LIABILITY.

(a) E.N. Bisso Group shall be entitled to the benefits of any limitation of, or exoneration from, liability under any statute or rule of law in force in the jurisdiction in which the Services are rendered. Neither the provision of such Services nor anything done in connection therewith shall be deemed to give rise to a personal contract.

(b) In no event shall E.N. Bisso Group be liable in any manner for any indirect, delay, demurrage, incidental, consequential, special, exemplary or punitive damages whatsoever, whether resulting from a breach of these Terms, proven negligence or the proven unseaworthiness of the Tug(s) or otherwise, and even if the possibility of such damage is foreseeable.

(c) Any Vessel assisted, towed or escorted pursuant to these Terms assumes all risk of any and all loss or damage sustained by it or by any other vessel, property or person resulting from the parting of any hawser, ship line or other line, by whomsoever furnished, and whether the parting was due to insufficiency, negligence, wear or other cause.

(d) Without prejudice to the immunities, defenses, exemptions, limitations and/or rights of contribution in respect of any liability that are available under these Terms or at law, E.N. Bisso, the Tugs, their respective masters, officers and crews, owners, charterers, operators, managers, employees and agents shall be liable, to the extent required by law, for no more than the first $250,000 (two hundred fifty thousand dollars) (except as such amount is adjusted per Section 2(c)) for all claims, demands, causes of action, liabilities and costs (including attorneys' fees) arising out of or resulting from a single occurrence or connected series of occurrences related to any Services provided subject to these Terms. The parties intend for this limitation of liability to apply in all instances, including but not limited to allision, collision, personal injury or death, fire, explosion, grounding and oil spill of any nature whatsoever (including, without limitation, crude oil, refined products and bunkers). Customer understands and acknowledges that the rates charged for the Services reflect the liability limitations, immunities, exemptions and indemnities specified in these Terms.

(e) Notwithstanding the above, Customer may request an increase in the liability cap set forth in Section 8(d) above with respect to one or more movements pursuant to the following procedure. Customer shall give E.N. Bisso written notice of such request at least seven days before the commencement of Services in relation to the first such movement. Upon receipt of such notice, E.N. Bisso will use commercially reasonable efforts to obtain a quote for the additional insurance necessary to cover the increased liability limits and offer Customer, in writing, rates reflecting those increased liability limits. Customer must accept such offer in writing by at least one U.S. business day before commencement of the subject Services, failing which the rates and liability cap otherwise provided herein shall apply to the movement(s) or Services in question.

9. Indemnity.

(a) Customer will release, defend, indemnify and hold harmless E.N. Bisso, its directors, officers, agents, employees, insurers, shareholders, representatives, affiliated companies, subcontractors, the Tug(s) and other vessels and their respective masters, officers and crews, owners, charterers, operators, managers, employees and agents (each individually an "**Indemnified Party**" and collectively the "**Indemnified Parties**") from and against all claims, lawsuits, liabilities, penalties, fines, costs (including reasonable attorneys' fees) and damages whatsoever (including claims of third parties) in excess of the cap specified in Section 8(d) or as adjusted per Section 8(e), regardless of any alleged or proven negligence, breach of duty (whether statutory, contractual or otherwise) or strict liability of such Indemnified Party(ies) or the unseaworthiness of the Tug(s), in any way arising out of or related to the provision of the Services.

(b) The parties intend for this indemnity to apply in all instances, including but not limited to allision, collision, property damage, personal injury, illness, and death, fire, explosion, grounding and oil spill of any nature whatsoever (including, without limitation, crude oil, refined products and bunkers).

(c) An Indemnified Party shall give notice (a "**Claim Notice**") to Customer as soon as practicable after the Indemnified Party becomes aware of any fact, condition or event that may give rise to a claim for indemnification under this Section 9; however, the failure to give timely notice shall not affect rights to indemnification hereunder, except to the extent Customer is actually prejudiced by such failure.

(d) After receipt of a Claim Notice, Customer shall have the right to defend the Indemnified Party with counsel of its choice satisfactory to the Indemnified Party unless the nature of the claim creates an ethical conflict or otherwise makes it inadvisable for the same counsel to represent the Indemnified Party and Customer; provided that (i) Customer notifies the Indemnified Party in writing that Customer will indemnify the Indemnified Party from and against the entirety of any losses the Indemnified Party may suffer, (ii) Customer provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that Customer has the financial resources to fulfill its defense and indemnification obligations hereunder, (iii) the claim involves only a claim for money damages and no other relief, and (iv) Customer conducts the defense of the claim actively and diligently. Customer shall not compromise or settle any claim without the written consent of the Indemnified Party. The Indemnified Party may, at its own cost, participate in the investigation, trial and defense of any claim defended by Customer and any appeal arising therefrom.

(e) If Customer fails to assume the defense promptly and diligently after

receipt of a Claim Notice hereunder, the Indemnified Party shall (upon delivering notice to such effect to Customer) have the right to undertake the defense, compromise or settlement of the claim with counsel of its own choosing at the expense of Customer.

10. Insurance. Customer warrants that it possesses sufficient and adequate coverage with a P&I club that is a member of the International Group of P&I Clubs or otherwise has sufficient and adequate insurance on the Vessel(s), including, without limitation, hull and machinery, P&I, and cargo and pollution coverage, to comply with applicable laws, to satisfy its obligations under these Terms, and to respond for any losses arising out of or connected in any way with the Services to be provided hereunder, with all rights of subrogation for losses under said insurances waived as to E.N. Bisso Group and with E.N. Bisso Group entitled to all benefits under said insurances of additional or co-assureds, as applicable.

11. Notice of Damage and Claim. Notice of any alleged damage or injury caused by any Tug or the provision of the Services must be given to E.N. Bisso within a reasonable time (not to exceed 48 hours) after the alleged occurrence. If a claim will be made upon E.N. Bisso based on such alleged damage or injury, written notice of such intention must be given within thirty (30) days of such occurrence. In the absence of either one or both notices provided for above, no claim arising out of such occurrence shall be valid, and no suit may be maintained in respect thereof. In any event, E.N. Bisso Group shall be discharged from any liability of any nature whatsoever unless suit is brought within one year after the occurrence for which a claim is made. In addition to the foregoing requirements, no such claim shall be valid and no suit may be maintained on account of any such damage or injury unless E.N. Bisso is given a reasonable opportunity to inspect and survey the damage for which a claim is made prior to the commencement of any repairs.

12. Taxes. E.N. Bisso shall not be responsible for any transportation, use, sales or any similar federal, state or local taxes due from the operation or use of any Tug to provide the Services, and any such taxes shall be for Customer's account; provided, however, E.N. Bisso shall pay all taxes applicable to its ownership of any Tug.

13. Pilotage. E.N. Bisso does not provide pilots or pilotage services. Compliance with all state and federal pilotage rules and regulations and vessel manning requirements with respect to the Vessel(s) is the responsibility of Customer. In the event a pilot, whether compulsory or voluntary, is aboard the Vessel to assist in the movement or docking/undocking of the Vessel, the pilot is deemed to be acting on behalf of the master of the Vessel, the Vessel and Customer. Customer assumes all risk of loss for personal injury or death of any person or damage to or destruction of any property to the extent arising out of or in connection with the acts, errors or omissions of the pilot. Customer also agrees to indemnify, defend and hold the Indemnified Parties harmless from and against all claims, liabilities, penalties, fines, costs (including reasonable attorneys' fees) and damages whatsoever (including claims of third parties) arising out of or resulting from any act or omission of the pilot and the terms of Section 9 hereof shall apply to such indemnity obligation, provided that the indemnity obligation shall begin with the first dollar of any such claim, liability, penalty, fine, cost or damage.

14. Customer Due Diligence. Prior to the commencement of the Services hereunder, Customer shall have exercised due diligence to ensure that the subject Vessel is ready and, in all respects, fit for movement, assist or the requested Services.

15. Customer Authority. Any person (corporate or individual) ordering Services for a Vessel not owned by such person hereby warrants its authority to bind the Vessel and its owners, operators, agents, charterers and managers to all the provisions of the Rate Schedule and these Terms. Such person or entity agrees to indemnify, defend and hold the Indemnified Parties harmless from and against all losses, damages and/or expenses (including costs and attorneys' fees) that may be suffered or incurred by any Indemnified Party due to the absence of such authority.

16. Severability. If any of these Terms is held to be invalid by a court of competent jurisdiction or agency having authority over the subject matter of these Terms (or, in the case of an agreed arbitration or mediation, any arbitrator or mediator), the remaining provisions of these Terms shall be unaffected and continue in full force and effect.

17. Entire Agreement; Waiver. These Terms, the Rate Schedule and any additional written amendments, modifications or additions constitute the entire agreement between E.N. Bisso and Customer with respect to the Services and shall supersede the terms of any purchase order or other document issued by Customer to E.N. Bisso in connection with the Services. No failure by E.N. Bisso to demand the strict and literal performance of or compliance with any provision, condition, or requirement herein shall be deemed to be a waiver thereof, or of strict and literal performance of and compliance with any other provision, condition, or requirement herein, nor to be a waiver of, or in any manner release Customer or the Vessel(s) from, strict compliance with any provision, condition, or requirement in the future. No waiver by E.N. Bisso hereunder shall be enforceable unless in writing signed by an authorized employee from E.N. Bisso.

18. Choice of Law and Forum; WAIVER OF JURY TRIAL.

(a) These Terms shall be governed by the federal general maritime laws of the United States of America and, to the extent those laws are not applicable, the laws of the State of Louisiana, excluding the conflicts of law provisions thereof that would direct the substantive laws of another state to apply.

(b) Any and all disputes arising out of or in connection with the Services or otherwise arising out of these Terms shall be brought exclusively in the United States District Court for the Eastern District of Louisiana, to which jurisdiction and venue irrevocably Customer agrees. In the event, and only in the event, the aforesaid District Court lacks jurisdiction, the aforesaid disputes shall be brought in the state court located in New Orleans, Louisiana.

(c) IT IS MUTUALLY AGREED BY AND AMONG E.N. BISSO GROUP AND CUSTOMER THAT EACH OF THEM HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY PURSUANT TO THESE TERMS.

(d) In the event E.N. Bisso Group initiates any legal claims and/or proceedings to enforce any provision of this document, E.N. Bisso Group shall be entitled to recover all reasonable expenses incurred, including attorneys' fees and costs.