

Comparison between SHIPMAN 2009 and SHIPMAN 98

The following table sets out a comparison between the text of SHIPMAN 2009 and SHIPMAN 98. The clauses of each agreement are laid out side by side to indicate where provisions from SHIPMAN 98 have been moved as part of the re-structuring of the agreement in SHIPMAN 2009. Notes accompany each clause explaining the reasoning behind any amendments and additions that appear in SHIPMAN 2009.

Part I

A comparison of the Part I box layout of SHIPMAN is not included as the format of Part I remains largely unchanged from SHIPMAN 98. However, there are several notable changes to the box layout:

Box 5 – this is a new and very important box which the parties must take great care to fill in correctly. It deals with the identity of the “Company” under the agreement for ISM/ISPS purposes. (See item on definitions below).

Boxes 10, 11 and 12 – these boxes all deal with insurances under SHIPMAN 2009 and it is essential that users make a careful reading of the agreement to ensure that the proper entries are made in these boxes when optional choices of insurance are made. Box 10 deals with crew insurances; Box 11 with general insurance arrangements under the agreement; and Box 12 provides for the parties to agree on optional additional insurances such as K&R and F, D&D.

Part II

Sections

For ease of reading, the revised SHIPMAN has been divided into five distinct sections each containing a specific “basket” of common provisions. In keeping with this structure the various optional services under SHIPMAN now appear as separate free-standing clauses within the “Services” section – to make it clear to the owners that they may choose any one or more of the management services offered. The Sections are as follows:

Section 1 – Basis of the Agreement

Section 2 – Services

Section 3 – Obligations

Section 4 – Insurance, Budgets, Income, Expenses and Fees

Section 5 – Legal, General and Duration of Agreement

Copies of this explanatory note are also available to download from BIMCO’s website at www.bimco.org.

Electronic editable copies of SHIPMAN 2009 can be obtained by subscribing to BIMCO’s online contract editing system, idea – see the products tab of www.bimco.org for more details.

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SECTION 1 – Basis of the Agreement		
<p>1. Definitions In this Agreement save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them:</p> <p>“Company” (with reference to the ISM Code and the ISPS Code) means the organization identified in Box 5 or any replacement organization appointed by the Owners from time to time (see Sub-clauses 9(b)(i) or 9(c)(ii), whichever is applicable).</p> <p>“Crew” means the personnel of the numbers, rank and nationality specified in Annex “B” hereto.</p> <p>“Crew Insurances” means insurance of liabilities in respect of crew risks which shall include but not be limited to death, permanent disability, sickness, injury, repatriation, shipwreck unemployment indemnity and loss of personal effects (see Sub-clause 5(b) (Crew Insurances) and Clause 7 (Insurance Arrangements) and Clause 10 (Insurance Policies) and Boxes 10 and 11).</p> <p>“Crew Support Costs” means all expenses of a general nature which are not particularly</p>	<p>1. Definitions In this Agreement save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them</p> <p>“Owners” means the party identified in Box 2.</p> <p>“Managers” means the party identified in Box 3.</p> <p>“Vessel” means the vessel or vessels details of which are set out in Annex “A” hereto.</p> <p>“Crew” means the Master, officers and ratings of the numbers, rank and nationality specified in Annex “B” hereto.</p> <p>“Crew Support Costs” means all expenses of a general nature which are not particularly referable to any individual vessel for the time being managed by the Managers and which are incurred by the Managers for the purpose of providing an efficient and economic management service and, without prejudice to the generality of the foregoing, shall include the cost of crew standby pay, training schemes for officers and ratings, cadet training schemes, sick pay, study pay, recruitment and interviews.</p>	<p>Comment The definitions clause contains explanations of terms that are used throughout the agreement. A number of new definitions have been added to Clause 1 as a result of the amendments to the revised form. In addition, several of the existing definitions have been amended to make their meaning more clear. The definitions are now listed in alphabetical order. Defined words that appear in various clauses throughout the agreement are listed in this clause. If used only in the context of a single clause then the word will be defined in the clause itself.</p> <p>Among the new definitions is “Company” – a term used in the agreement in relation to the ISM and ISPS Codes, the latter of which also features as a new definition. It is essential that users of SHIPMAN 2009 appreciate the importance of clearly identifying the “Company” from the outset of the agreement.</p> <p>Part I contains a new Box 5 which requires the parties to give the name and details of the “Company” for the purposes of the agreement. NOTE: this is regardless of whether the “Company” is the owners, the managers or a third party. If the Codes do not apply (e.g., due to the size of the vessel), then “Not Applicable” (or “N/A”) should be entered into the box.</p>

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<p>referable to any individual vessel for the time being managed by the Managers and which are incurred by the Managers for the purpose of providing an efficient and economic management service and, without prejudice to the generality of the foregoing, shall include the cost of crew standby pay, training schemes for officers and ratings, cadet training schemes, sick pay, study pay, recruitment and interviews.</p> <p>“Flag State” means the State whose flag the Vessel is flying.</p> <p>“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention and any amendment thereto or substitution therefor.</p> <p>“ISPS Code” means the International Code for the Security of Ships and Port Facilities and the relevant amendments to Chapter XI of SOLAS and any amendment thereto or substitution therefor.</p> <p>“Managers” means the party identified in Box 4.</p> <p>“Management Services” means the services specified in SECTION 2 - Services (Clauses 4 through 7) as indicated affirmatively in Boxes 6 through 8, 10 and 11, and all other functions performed by the Managers under the terms of this Agreement.</p> <p>“Owners” means the party identified in Box 3.</p>	<p>“Severance Costs” means the costs which the employers are legally obliged to pay to or in respect of the Crew as a result of the early termination of any employment contract for service on the Vessel.</p> <p>“Crew Insurances” means insurances against crew risks which shall include but not be limited to death, sickness, repatriation, injury, shipwreck unemployment indemnity and loss of personal effects.</p> <p>“Management Services” means the services specified in sub-clauses 3.1 to 3.8 as indicated affirmatively in Boxes 5 to 12.</p> <p>“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation (IMO) by resolution A.741(18) or any subsequent amendment thereto.</p> <p>“STCW 95” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 or any subsequent amendment thereto.</p>	<p>Should the registered owners of the vessel replace the organisation appointed as the “Company” during the course of the agreement, then any subsequently designated organisation becomes the “Company” under the agreement - bearing in mind, however, that the owners will have certain obligations under sub-clauses 9(a)(ii) and 9(b)(ii).</p> <p>The added definition of the ISPS Code is consistent with the existing definition of the ISM Code in SHIPMAN 98. This has been done to bring to agreement in line with current legislative requirements of said Codes.</p> <p>The definition of “Crew Insurances” has been amended to include “permanent disability” in addition to “death” and “injury”. Specific reference is now made to the relevant clauses and boxes related to crew insurances. For the sake of clarity the definition has also been amended to make it clear that the insurance provided is for liabilities, not benefits.</p> <p>A definition of “Flag State” has been added to the agreement – a previously undefined term. The definition is taken from the ISM Code. Sub-clause 4(a) refers to compliance with the law of the Flag State in respect of the technical management of the vessel.</p> <p>The definition of “Management Services” has been amended to include all functions performed by the managers under the agreement. This has been done because the previous definition limited the services only to those services agreed to under Clause 3 and did not take into account other services, such as</p>

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<p>“Severance Costs” means the costs which are legally required to be paid to the Crew as a result of the early termination of any contracts for service on the Vessel.</p> <p>“SMS” means the Safety Management System (as defined by the ISM Code).</p> <p>“STCW 95” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and any amendment thereto or substitution therefor.</p> <p>“Vessel” means the vessel or vessels details of which are set out in Annex “A” attached hereto.</p>		<p>general administration, provided under the standard agreement.</p> <p>“STCW 95” has had the words “or substitution therefor” added to the end of the definition. This has been done to take account of new regulations designed to run in parallel to STCW, such as the ILO Maritime Labour Convention.</p>
<p>2. Commencement and Appointment With effect from the date stated in Box 2 for the commencement of the Management Services and continuing unless and until terminated as provided herein, the Owners hereby appoint the Managers and the Managers hereby agree to act as the Managers of the Vessel in respect of the Management Services.</p>	<p>2. Appointment of Managers With effect from the day and year stated in Box 4 and continuing unless and until terminated as provided herein, the Owners hereby appoint the Managers and the Managers hereby agree to act as the Managers of the Vessel.</p>	<p>Comment The title of this Clause has been changed to reflect the fact that it deals with the time of commencement of the agreement as well as the appointment of the managers.</p> <p>In some circumstances it may not be possible to state in advance the precise day when a ship will be ready for the managers to take over – due perhaps to scheduling changes or delay in delivery of a newbuilding. To avoid this problem the reference to “day and year” has been replaced by “date”. For example, if the vessel is a newbuilding the parties can insert an agreed number of days prior to the “date of delivery”.</p>

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<p>3. Authority of the Managers Subject to the terms and conditions herein provided, during the period of this Agreement, the Managers shall carry out the Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Managers shall have authority to take such actions as they may from time to time in their absolute discretion consider to be necessary to enable them to perform the Management Services in accordance with sound ship management practice, including but not limited to compliance with all relevant rules and regulations.</p>	<p>3. Basis of Agreement Subject to the terms and conditions herein provided, during the period of this Agreement, the Managers shall carry out Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Managers shall have authority to take such actions as they may from time to time in their absolute discretion consider to be necessary to enable them to perform this Agreement in accordance with sound ship management practice.</p>	<p>Comment Due to the restructuring of the service provisions under SHIPMAN into separate clauses, the preamble to the old Clause 3 has now become a clause in its own right and has been renamed “Authority of the Managers”, which more closely describes its contents.</p> <p>The provisions of the first sentence remain unchanged from the previous edition. They establish the fundamental principle of SHIPMAN that it is an agency agreement with the managers carrying out the functions specified in the agreement as agents for and on behalf of the owners.</p> <p>It is worth noting that although SHIPMAN 2009 is designed as a multi-functional management agreement, it is more appropriately used as a full management or technical management agreement. The crewing provisions of SHIPMAN 2009, although more detailed than those of its predecessor, are not intended to replace the recommended specialist crewing agreements provided by the revised CREWMAN A and CREWMAN B contracts. This is particularly the case where the managers may wish to act as principal (and thus the crew’s employer) in providing crew – SHIPMAN 2009 is an agency only agreement and therefore not suitable for this purpose. In such cases where the managers are the crew’s employer, managers are recommended to use CREWMAN B (Lump Sum) 2009.</p> <p>The provisions of the second sentence of Clause 3 provide the managers with a right to take such action</p>

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		<p>or actions as they may in their absolute discretion consider necessary from time to time to enable them to perform the agreed Management Services, such actions to be in compliance with relevant laws and regulations. The wording of the original sentence has been amended for greater clarity to refer to the performance of the “Management Services” rather than the “Agreement”. Similarly, additional wording has been added to emphasise that managers must work within the parameters of applicable laws and regulations.</p>

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SECTION 2 – Services		
<p>4. Technical Management <i>(only applicable if agreed according to Box 6).</i> The Managers shall provide technical management which includes, but is not limited to, the following services:</p> <p>(a) ensuring that the Vessel complies with the requirements of the law of the Flag State;</p> <p>(b) ensuring compliance with the ISM Code;</p> <p>(c) ensuring compliance with the ISPS Code;</p> <p>(d) providing competent personnel to supervise the maintenance and general efficiency of the Vessel;</p> <p>(e) arranging and supervising dry dockings, repairs, alterations and the maintenance of the Vessel to the standards agreed with the Owners provided that the Managers shall be entitled to incur the necessary expenditure to ensure that the Vessel will comply with all requirements and recommendations of the classification society, and with the law of the Flag State and of the places where the Vessel is required to trade;</p> <p>(f) arranging the supply of necessary stores, spares and lubricating oil;</p>	<p>3.2. Technical Management <i>(only applicable if agreed according to Box 6).</i> The Managers shall provide technical management which includes, but is not limited to, the following functions:</p> <p>(i) provision of competent personnel to supervise the maintenance and general efficiency of the Vessel;</p> <p>(ii) arrangement and supervision of dry dockings, repairs, alterations and the upkeep of the Vessel to the standards required by the Owners provided that the Managers shall be entitled to incur the necessary expenditure to ensure that the Vessel will comply with all requirements and recommendations of the classification society, and with the law of the flag of the Vessel and of the places where she trades;</p> <p>(iii) arrangement of the supply of necessary stores, spares and lubricating oil;</p> <p>(iv) appointment of surveyors and technical consultants as the Managers may consider from time to time to be necessary;</p>	<p>Comment One of the most noticeable changes to SHIPMAN 2009 is that the provisions for optional services under the agreement have been re-structured to form individual free-standing clauses. The order of the first two services offered under the agreement has been reversed. This has been done chiefly for presentational reasons as the primary (and most commonly used) optional service offered under the agreement is technical management and should therefore be listed first.</p> <p>Sub-clause 4(a) is taken from the old Sub-clause 4.2 dealing with the managers' obligations. As 4.2 only applies if the managers are providing technical management services it was felt that it was more appropriate to include the wording in the technical management services clause.</p> <p>Similarly, sub-clauses 4(b) and 4(c) emphasise the focus of SHIPMAN 2009 on the ISM and ISPS Codes by requiring the technical managers to ensure compliance. Sub-clause (b) replaces the former sub-clause 3.2(v) as ISM is now considered to be an integral part of industry working practice so that almost all vessels will now have the appropriate systems in place.</p> <p>Sub-clause 4(h) is new to the technical management services clause. It was felt that the technical</p>

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<p>(g) appointing surveyors and technical consultants as the Managers may consider from time to time to be necessary;</p> <p>(h) in accordance with the Owners' instructions, supervising the sale and physical delivery of the Vessel under the sale agreement. However services under this Sub-clause 4(h) shall not include negotiation of the sale agreement or transfer of ownership of the Vessel;</p> <p>(i) arranging for the supply of provisions unless provided by the Owners; and</p> <p>(j) arranging for the sampling and testing of bunkers.</p>	<p>(v) development, implementation and maintenance of a Safety Management System (SMS) in accordance with the ISM Code (see sub-clauses 4.2 and 5.3).</p> <p>3.6. Sale or Purchase of the Vessel <i>(only applicable if agreed according to Box 10).</i> The Managers shall, in accordance with the Owners' instructions, supervise the sale or purchase of the Vessel, including the performance of any sale or purchase agreement, but not negotiation of the same.</p> <p>3.7. Provisions <i>(only applicable if agreed according to Box 11).</i> The Managers shall arrange for the supply of provisions.</p>	<p>managers' role encompassed the supervision of the sale and delivery of the vessel, rather than being a separate optional service as in the previous sub-clause 3.6 (Sale and Purchase of the Vessel). However, the sub-clause retains the exception that the role of the technical managers in the sale of the vessel does not extend to negotiations or transfer of ownership.</p> <p>The former sub-clause 3.7 (Provisions) has been incorporated into the technical management services as this reflects actual practice whereby the managers will arrange for victualling on behalf of the owners.</p> <p>Finally, sub-clause 4(j) requires the technical managers to arrange for the sampling and testing of bunkers. Arranging for the supply of bunkers for the vessel by the managers is dealt with in sub-clause 6(b) (Commercial Management). (See comments on sub-clause 6(b) below).</p>
<p>5. Crew Management and Crew Insurances</p> <p>(a) Crew Management <i>(only applicable if agreed according to Box 7)</i> The Managers shall provide suitably qualified Crew who shall comply with the requirements of STCW 95. The provision of such crew management services includes, but is not limited to, the following services:</p> <p>(i) selecting, engaging and providing for the administration of the Crew, including, as applicable, payroll arrangements, pension arrangements, tax, social</p>	<p>3.1. Crew Management <i>(only applicable if agreed according to Box 5)</i> The Managers shall provide suitably qualified Crew for the Vessel as required by the Owners in accordance with the STCW 95 requirements, provision of which includes but is not limited to the following functions:</p> <p>(i) selecting and engaging the Crew of the Vessel, including payroll arrangements, pension administration, and insurances for the crew other than those mentioned in Clause 6;</p>	<p>Comment The crew management services section of SHIPMAN 2009 has perhaps undergone the most noticeable changes to the agreement. The main changes have been made to strengthen the crew management provisions consistent with the CREWMAN A and B agreements. BIMCO recognises that some parties prefer to use SHIPMAN even when the agreement is only for crew management purposes, even though BIMCO recommends the use of the specialist standard crew management agreement, CREWMAN A (on an agency basis). To assist in this and also to make SHIPMAN's crewing provisions more</p>

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<p>security contributions and other mandatory dues related to their employment payable in each Crew member’s country of domicile;</p> <p>(ii) ensuring that the applicable requirements of the law of the Flag State in respect of rank, qualification and certification of the Crew and employment regulations, such as Crew’s tax and social insurance, are satisfied;</p> <p>(iii) ensuring that all Crew have passed a medical examination with a qualified doctor certifying that they are fit for the duties for which they are engaged and are in possession of valid medical certificates issued in accordance with appropriate Flag State requirements or such higher standard of medical examination as may be agreed with the Owners. In the absence of applicable Flag State requirements the medical certificate shall be valid at the time when the respective Crew member arrives on board the Vessel and shall be maintained for the duration of the service on board the Vessel;</p> <p>(iv) ensuring that the Crew shall have a common working language and a command of the English language of a sufficient standard to enable them to perform their duties safely;</p>	<p>(ii) ensuring that the applicable requirements of the law of the flag of the Vessel are satisfied in respect of manning levels, rank, qualification and certification of the Crew and employment regulations including Crew’s tax, social insurance, discipline and other requirements;</p> <p>(iii) ensuring that all members of the Crew have passed a medical examination with a qualified doctor certifying that they are fit for the duties for which they are engaged and are in possession of valid medical certificates issued in accordance with appropriate flag State requirements. In the absence of applicable flag State requirements the medical certificate shall be dated not more than three months prior to the respective Crew members leaving their country of domicile and maintained for the duration of their service on board the Vessel;</p> <p>(iv) ensuring that the Crew shall have a command of the English language of a sufficient standard to enable them to perform their duties safely;</p> <p>(v) arranging transportation of the Crew, including repatriation;</p> <p>(vi) training of the Crew and supervising</p>	<p>comprehensive for when it is used for crew management purposes together with other management services, we have harmonised the crewing provisions more comprehensive by streamlining the crewing provisions of SHIPMAN 2009 with those of CREWMAN A (Cost Plus Fee) 2009.</p> <p>The crew services clause consolidates the crew management services provisions (Cl. 3.1) of SHIPMAN 98 with the crew insurances provisions taken from Clause 4 (Crew Insurance Arrangements) of CREWMAN A (the 1999 edition). The latter insurance services are optional but can only apply if crew management services have been agreed, with one exception for “persons proceeding to sea onboard” (see sub-clause 5(b)(i) and Box 10).</p> <p>Sub-clause (a) has been re-written to split the provision into two sentences. This has been done purely to add greater clarity.</p> <p>The wording of sub-clause 5(a)(i) has been expanded to make clearer the obligations on the crew managers to administer on behalf of the crew, tax, social security payments and other mandatory dues related to employment payable in the crew’s country of residence.</p> <p>In sub-clause 5(a)(ii) the word “discipline” has been deleted. This is because it is not clear whether the word related to grievance policies or employee disciplinary procedures – both of which would most likely be dealt with on board the vessel by the Master.</p>

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<p>(v) arranging transportation of the Crew, including repatriation;</p> <p>(vi) training of the Crew;</p> <p>(vii) conducting union negotiations; and</p> <p>(viii) if the Managers are the Company, ensuring that the Crew, on joining the Vessel, are given proper familiarisation with their duties in relation to the Vessel’s SMS and that instructions which are essential to the SMS are identified, documented and given to the Crew prior to sailing.</p> <p>(ix) if the Managers are not the Company:</p> <p>(1) ensuring that the Crew, before joining the Vessel, are given proper familiarisation with their duties in relation to the ISM Code; and</p> <p>(2) instructing the Crew to obey all reasonable orders of the Company in connection with the operation of the SMS.</p> <p>(x) Where Managers are not providing technical management services in accordance with Clause 4 (Technical Management):</p> <p>(1) ensuring that no person connected to the provision and the performance of the</p>	<p>their efficiency;</p> <p>(vii) conducting union negotiations;</p> <p>(viii) operating the Managers’ drug and alcohol policy unless otherwise agreed</p>	<p>One of the areas in which SHIPMAN 98 was felt to no longer reflect current practice concerns the validity of medical certificates. The previous three month validity requirement in sub-clause 3.1(iii) has been replaced with a requirement that crew medical certificates should be valid at the time the crew member joins the vessel and remain valid for the period of service. In addition, sub-clause 5(a)(iii) introduces an option for the parties to agree a higher medical standard than that required by the flag state.</p> <p>On the issue of working language on board the vessel, sub-clause 3.1(iv) (of SHIPMAN 98) has been amended to emphasise that a command of the English language for every crew member is not a strict requirement (which was not the intention in SHIPMAN 98 either). The provision now clarifies that there should be a common working language on board the vessel, which need not be English. However, this is qualified by a requirement for that crew to have a sufficient command of the English language to enable them to perform their duties safely, e.g., those who are involved in ship to ship and/or ship to shore communications. The same would apply when more than one party provides crew members for the vessel.</p> <p>In sub-clause 3.1(vi) the reference to “supervising their efficiency” in respect of the crew has been deleted. This is because, strictly speaking, the managers will not be present on board the vessel to actually supervise the crew and that that responsibility rests with the Master and officers on board.</p>

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<p>crew management services shall proceed to sea on board the Vessel without the prior consent of the Owners (such consent not to be unreasonably withheld); and</p> <p>(2) ensuring that in the event that the Owners' drug and alcohol policy requires measures to be taken prior to the Crew joining the Vessel, implementing such measures;</p> <p>(b) Crew Insurances <i>(only applicable if Sub-clause 5(a) applies and if agreed according to Box 10)</i> The Managers shall throughout the period of this Agreement provide the following services:</p> <p>(i) arranging Crew Insurances in accordance with the best practice of prudent managers of vessels of a similar type to the Vessel, with sound and reputable insurance companies, underwriters or associations. Insurances for any other persons proceeding to sea onboard the Vessel may be separately agreed by the Owners and the Managers (see Box 10);</p> <p>(ii) ensuring that the Owners are aware of the terms, conditions, exceptions and limits of liability of the insurances in Sub-clause 5(b)(i);</p> <p>(iii) ensuring that all premiums or calls in</p>		<p>The balance of Clause 5(a) from (viii) through to (x) deals with the responsibilities of the managers depending on whether they are or are not the "Company" for ISM purposes under the agreement or are not providing technical management services. A distinction is made between the provision of technical management services and the "Company" because there may be circumstances where the ISM/ISPS Codes are not mandatory and thus do not apply (for example due to the size of the vessel). In such circumstances BIMCO wants to ensure that managers are not caught by ISM/ISPS related provisions by which are not be bound by law. If one or both Codes are not mandatory, then the parties will have to agree to implement one or both by amending the standard wording accordingly.</p> <p>Where the managers are the "Company" they are obliged by sub-clause 5(a)(viii) to ensure that the crew on joining the vessel are given proper familiarisation consistent with the requirements of the vessel's safety management system (SMS) prior to sailing.</p> <p>Where the managers are not the "Company" but are providing crewing services (see sub-clause 5(a)(ix)), they are obliged to instruct the crew to obey the orders of the "Company" in relation to the SMS and to ensure that the crew are given familiarisation training in respect of their ISM related duties prior to embarkation on the vessel.</p> <p>Sub-clause 5(a)(x)(1) applies where the managers are not providing technical management services and whether or not the ISM/ISPS Codes apply, and sub-</p>

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<p>respect of the insurances in Sub-clause 5(b)(i) are paid by their due date;</p> <p>(iv) if obtainable at no additional cost, ensuring that insurances in Sub-clause 5(b)(i) name the Owners as a joint assured with full cover and, unless otherwise agreed, on terms such that Owners shall be under no liability in respect of premiums or calls arising in connection with such insurances.</p> <p>(v) providing written evidence, to the reasonable satisfaction of the Owners, of the Managers' compliance with their obligations under Sub-clauses 5(b)(ii), and 5(b)(iii) within a reasonable time of the commencement of this Agreement, and of each renewal date and, if specifically requested, of each payment date of the insurances in Sub-clause 5(b)(i).</p>		<p>clause (1) requires the managers to get the owners' prior consent in writing (see sub-clause 24(a)) for persons other than crew (such as superintendents, trainers or family members of the crew) to proceed to sea on board.</p> <p>The drug and alcohol policy provision has been amended to reflect the fact that such policies fall under the ISM Code and are therefore obligatory. The revised wording (see sub-clause 5(a)(x)(2)) now takes account of drug and alcohol testing measures that may require the crew to be tested by the managers prior to joining the vessel.</p> <p>The second section of Clause 5 incorporates the optional crew insurance provisions. This sub-clause 5(b) is derived from the insurance arrangement provisions of the 1999 edition of CREWMAN A and provides an overall more comprehensive set of crew management provisions. Sub-clause 5(b) applies only if crew management services have been agreed and the parties have also agreed that the crew insurance option should apply, with one exception related to insurance "for persons proceeding to sea onboard" (see Box 10 alternative (ii) and the comments to Clause 4 of SHIPMAN 98 above.</p> <p>Sub-clause 5(b)(ii) requires the managers to make sure that the owners are aware of the terms, conditions, exceptions and limitations of liability of the crew insurances. This is of particular relevance where the owners rely on the P&I type crew liability cover provided by the managers acting as crew managers. The managers' P&I type crew liability cover will normally be restricted in scope and limits of liability</p>

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<p>6. Commercial Management <i>(only applicable if agreed according to Box 8).</i> The Managers shall provide the following services for the Vessel in accordance with the Owners' instructions, which shall include but not be limited to:</p> <p>(a) seeking and negotiating employment for the Vessel and the conclusion (including the execution thereof) of charter parties or other contracts relating to the employment of the Vessel. If such a contract exceeds the period stated in Box 9, consent thereto in writing shall first be obtained from the Owners;</p>	<p>3.3. Commercial Management <i>(only applicable if agreed according to Box 7).</i> The Managers shall provide the commercial operation of the Vessel, as required by the Owners, which includes but is not limited to the following functions:</p> <p>(i) in accordance with the Owners' instructions, providing chartering services which include but are not limited to seeking and negotiating employment for the Vessel and the conclusion (including the execution thereof) of charter parties or other contracts relating to the employment of</p>	<p>(whereas an owners' P&I crew liability cover will be incorporated in the owners' normal P&I cover therefore enjoying not only a wider scope of cover but also the maximum limit of liability that P&I clubs usually provide). Therefore it is important that when the owners procure insurance under the provisions of Clause 10 (Insurance Policies) but have not agreed crew management and/or crew insurance services under Clause 5, they are aware of the full extent of the managers' crew insurances. (This point is emphasised in SHIPMAN 2009 with a note in italic type in sub-clause 10(a)).</p> <p>Sub-clause 5(b)(v) is taken from the previous Insurances Clause because it is intended to be an option that applies only if crew management has also been agreed. This is felt by BIMCO to be a less complex approach than in SHIPMAN 98.</p> <p>Comment The preamble text to this clause has been amended to say that the provision of commercial management services by the managers is to be in accordance with the owners' instructions. Because the list of services in Clause 6 is not exhaustive, the actual services provided by the managers will be determined by what the owners instruct the managers to do within the provisions of what is otherwise agreed.</p> <p>A new sub-clause 6(b) now incorporates the arrangement of the supply of bunkers for the vessel by the managers, formally an optional service under sub-clause 3.8 of SHIPMAN 98.</p>

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<p>(b) arranging for the provision of bunker fuels of the quality specified by the Owners as required for the Vessel's trade;</p> <p>(c) voyage estimating and accounting and calculation of hire, freights, demurrage and/or despatch monies due from or due to the charterers of the Vessel; assisting in the collection of any sums due to the Owners related to the commercial operation of the Vessel in accordance with Clause 11 (Income Collected and Expenses Paid on Behalf of Owners);</p> <p><i>If any of the services under Sub-clauses 6(a), 6(b) and 6(c) are to be excluded from the Management Fee, remuneration for these services must be stated in Annex E (Fee Schedule). (See Sub-clause 12(e)).</i></p> <p>(d) issuing voyage instructions;</p> <p>(e) appointing agents;</p> <p>(f) appointing stevedores; and</p> <p>(g) arranging surveys associated with the commercial operation of the Vessel.</p>	<p>the Vessel. If such a contract exceeds the period stated in Box 13, consent thereto in writing shall first be obtained from the Owners.</p> <p>(ii) arranging of the proper payment to Owners or their nominees of all hire and/or freight revenues or other moneys of whatsoever kind to which Owners may be entitled arising out of the employment of or otherwise in connection with the Vessel.</p> <p>(iii) providing voyage estimates and accounts and calculating of hire, freights, demurrage and/or despatch moneys due from or due to the charterers of the Vessel;</p> <p>(iv) issuing of voyage instructions;</p> <p>(v) appointing agents;</p> <p>(vi) appointing stevedores;</p> <p>(vii) arranging surveys associated with the commercial operation of the Vessel.</p> <p>3.8. Bunkering <i>(only applicable if agreed according to Box 12).</i> The Managers shall arrange for the provision of bunker fuel of the quality specified by the Owners as required for the Vessel's trade.</p>	<p>For the sake of clarification in respect of the managers assisting the owners to recover unpaid hire, freight or other monies, the wording in sub-clause 6(c) has been amended from "arrangement of the proper payment" to "assisting in the collection of any sums due".</p> <p>The reason for stating that remuneration for the services under sub-clauses 6(a), 6(b) and 6(c) can only be excluded from the management fee if expressly stated is to avoid the risk of hidden commissions, which an agent such as the manager under SHIPMAN is not permitted to earn (see sub-clause 12(e)). The parties have the choice of making remuneration for these services additional to the management fee by stating so in a new Annex "E" (Fee Schedule).</p>

SHIPMAN 2009	SHIPMAN 98	NOTES
<p>7. Insurance Arrangements <i>(only applicable if agreed according to Box 11).</i> The Managers shall arrange insurances in accordance with Clause 10 (Insurance Policies), on such terms as the Owners shall have instructed or agreed, in particular regarding conditions, insured values, deductibles, franchises and limits of liability.</p>	<p>3.4. Insurance Arrangements <i>(only applicable if agreed according to Box 8).</i> The Managers shall arrange insurances in accordance with Clause 6, on such terms as the Owners shall have instructed or agreed, in particular regarding conditions, insured values, deductibles and franchises.</p>	<p>Comment This clause remains the same as found in SHIPMAN 98 and provides the owners with the option for the managers to arrange insurances on behalf of the owners in accordance with the insurance provisions of Clause 10 (Insurance Policies).</p>

SHIPMAN 2009	SHIPMAN 98	NOTES
SECTION 3 – Obligations		
<p>8. Managers’ Obligations (a) The Managers undertake to use their best endeavours to provide the Management Services as agents for and on behalf of the Owners in accordance with sound ship management practice and to protect and promote the interests of the Owners in all matters relating to the provision of services hereunder.</p> <p>Provided however, that in the performance of their management responsibilities under this Agreement, the Managers shall be entitled to have regard to their overall responsibility in relation to all vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the Managers shall be entitled to allocate available supplies, manpower and services in such manner as in the prevailing circumstances the Managers in their absolute discretion consider to be fair and reasonable.</p> <p>(b) Where the Managers are providing technical management services in accordance with Clause 4 (Technical Management), they shall procure that the requirements of the Flag State are satisfied and they shall agree to be appointed as the Company, assuming the</p>	<p>4. Managers’ Obligations 4.1. The Managers undertake to use their best endeavours to provide the agreed Management Services as agents for and on behalf of the Owners in accordance with sound ship management practice and to protect and promote the interests of the Owners in all matters relating to the provision of services hereunder.</p> <p>Provided however that the Managers in the performance of their management responsibilities under this Agreement shall be entitled to have regard to their overall responsibility in relation to all vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the Managers shall be entitled to allocate available supplies, manpower and services in such manner as in the prevailing circumstances the Managers in their absolute discretion consider to be fair and reasonable.</p> <p>4.2. Where the Managers are providing Technical Management in accordance with sub-clause 3.2(v), they shall procure that the requirements of the law of the flag of the Vessel are satisfied and they shall in particular be deemed to be the “Company” as defined by</p>	<p>Comment With the exception of a reference to the ISPS Code in sub-clause 8(b) and a general tidying up of the language used, the provisions of Clause 8 (Manager’s Obligations) remain unchanged from those found in SHIPMAN 98.</p> <p>The provisions of this Clause define the managers’ obligations in carrying out the agreed services as managers. The managers are obliged to use “their best endeavours” to provide management services to the owners in accordance with “sound management practice” and to protect and promote the interests of the owners in all matters related to the provision of the services under the agreement.</p> <p>The managers’ general obligation to use “their best endeavours” should not to be taken lightly. Courts often take a fairly strict view as to what constitutes “best endeavours” and it has been said that the phrase does not mean “second best endeavours”.</p> <p>“Sound management practice” does not depend on what a particular manager may regard as sound. In the event of a dispute, acceptable standards of best management practice may well be heard by the testimony of each party’s industry expert.</p> <p>Managers may simultaneously act as managers for other vessels on behalf of other owners. The second</p>

SHIPMAN 2009	SHIPMAN 98	NOTES
<p>responsibility for the operation of the Vessel and taking over the duties and responsibilities imposed by the ISM Code and the ISPS Code, if applicable.</p> <p>9. Owners' Obligations The Owners shall pay all sums due to the Managers punctually in accordance with the terms of this Agreement. In the event of payment after the due date of any outstanding sums the Manager shall be entitled to charge interest at the rate stated in Box 13.</p> <p>(b) Where the Managers are providing technical management services in accordance with Clause 4 (Technical Management), the Owners shall:</p>	<p>the ISM Code, assuming the responsibility for the operation of the Vessel and taking over the duties and responsibilities imposed by the ISM Code when applicable.</p> <p>5. Owners' Obligations 5.1. The Owners shall pay all sums due to the Managers punctually in accordance with the terms of this Agreement.</p> <p>5.2. Where the Managers are providing Technical Management in accordance with sub-clause 3.2(v), the Owners shall:</p> <p>(i) procure that any officers and ratings supplied by them or on their behalf comply with the requirements of STCW 95;</p>	<p>paragraph of sub-clause 8(a) defines the overall responsibility of the managers in relation to all vessels entrusted to their management. This important provision permits managers who are acting on behalf of a number of different owners to allocate manpower and services in a fair and reasonable manner. In the absence of such provisions the managers would be faced with the impracticability of trying to give priority to all owners.</p> <p>In sub-clause 8(b) the managers are obliged to comply with applicable flag state law in the provision of services and, if they are providing technical management services, they must also agree to being designated as the "Company" for ISM/ISPS purposes. The phrase "deemed to be the Company" in SHIPMAN 98 has been replaced by "they shall agree to be appointed as the Company" as this is considered to be more appropriate language since it indicates a mutual agreement between two parties.</p> <p>Comment The preamble to Clause 9 (Owners' Obligations) contains the same important opening sentence as found in SHIPMAN 98 emphasising the importance to the managers of the timely payment of all sums by the owners. SHIPMAN 2009, however, introduces a new feature for SHIPMAN in the form of an interest charge mechanism for payments made beyond their due date. The level of interest charged is to be determined by the parties and inserted into Box 12 of Part I. If the late payment is caused by a force majeure event (see sub-clause 17(a)), then the owners' prompt payment following the expiry of the</p>

SHIPMAN 2009	SHIPMAN 98	NOTES
<p>(i) report (or where the Owners are not the registered owners of the Vessel procure that the registered owners report) to the Flag State administration the details of the Managers as the Company as required to comply with the ISM and ISPS Codes;</p> <p>(ii) procure that any officers and ratings supplied by them or on their behalf comply with the requirements of STCW 95; and</p> <p>(iii) instruct such officers and ratings to obey all reasonable orders of the Managers (in their capacity as the Company) in connection with the operation of the Managers' safety management system.</p> <p>(c) Where the Managers are not providing technical management services in accordance with Clause 4 (Technical Management), the Owners shall:</p> <p>(i) procure that the requirements of the Flag State are satisfied and notify the Managers upon execution of this Agreement of the name and contact details of the organization that will be the Company by completing Box 5;</p> <p>(ii) if the Company changes at any time during this Agreement, notify the Managers in a timely manner of the name and contact details of the new</p>	<p>(ii) instruct such officers and ratings to obey all reasonable orders of the Managers in connection with the operation of the Managers' safety management system.</p> <p>5.3. Where the Managers are not providing Technical Management in accordance with sub-clause 3.2(v), the Owners shall procure that the requirements of the law of the flag of the Vessel are satisfied and they, or such other entity as may be appointed by them and identified to the Managers shall be deemed to be the "Company" as defined by the ISM Code assuming the responsibility for the operation of the Vessel and taking over the duties and responsibilities imposed by the ISM Code when applicable.</p>	<p>event will still be punctual within the meaning of this sub-clause.</p> <p>Sub-clause 9(b) contains a new sub-clause 9(b)(i) refining the ISM/ISPS requirements under the agreement. It requires the owners to report to the flag state administration the details of the technical managers to designate them as the "Company". Should the owners not be the registered owners of the vessel (e.g., the bareboat charters and therefore not the correct party to report to the flag state under the ISM/ISPS Codes) they are nevertheless obliged (under this agreement) to ensure that the registered owners make the necessary/required report to the flag state administration to ensure compliance with said Codes.</p> <p>Sub-clauses 9(c)(i)-(iv) deal with the owners' obligations when the managers are not providing technical management services. It is much more extensive than the original sub-clause 5.3.</p> <p>Sub-clause 9(c)(i) places an obligation on the owners to provide the managers with contact details of the organisation designated as the "Company". These details need to be provided to the managers on execution of the agreement and <u>must</u> be completed in Box 5 of Part I.</p> <p>Any change in the "Company" during the period of the agreement is dealt with by the provisions of sub-clause 9(c)(ii) – again the managers need to be notified of the identity and contact details of the new "Company" as soon as possible after the change is made.</p>

SHIPMAN 2009	SHIPMAN 98	NOTES
<p>organization;</p> <p>(iii) procure that the details of the Company, including any change thereof, are reported to the Flag State administration as required to comply with the ISM and ISPS Codes. The Owners shall advise the Managers in a timely manner when the Flag State administration has approved the Company; and</p> <p>(iv) unless otherwise agreed, arrange for the supply of provisions, at their own expense.</p> <p>(d) Where the Managers are providing crew management services in accordance with Sub-clause 5(a) the Owners shall:</p> <p>(i) inform the Managers prior to ordering the Vessel to any excluded or additional premium area under any of the Owners' Insurances by reason of war risks and/or piracy or like perils and pay whatever additional costs may properly be incurred by the Managers as a consequence of such orders including, if necessary, the costs of replacing any member of the Crew. Any delays resulting from the negotiation with or replacement of any member of the Crew as a result of the Vessel being ordered to such an area shall be for the Owners' account. Should the Vessel be within an area which becomes an excluded or</p>		<p>Sub-clause 9(c)(iii) is the second limb of the change of "Company" process and requires the owners to notify the flag state's administration and then tell the managers when approval of the new "Company" by said authority has been granted.</p> <p>Sub-clause 9(c)(iv) is the reciprocal to sub-clause 4(i) (Technical Management) (of SHIPMAN 2009) requiring the owners to arrange their own supply of provisions for the vessel.</p> <p>As part of the expansion of the crewing provisions of SHIPMAN 2009, sub-clause 9(d) is introduced to cover the owners' obligations when the managers are providing crew management services.</p> <p>Sub-clause 9(d)(i) places an obligation on the owners to not only inform the managers if the vessel is to pass through a high risk area, but also to meet any associated costs including crew replacement costs.</p> <p>Sub-clause 9(d)(ii) provides for the mutual agreement of the parties to a change of flag of the vessel and the consequences of such a change to the crew managers (should they be required to make any change of personnel due to the change of flag). If the change of flag places the managers as providers of crew in such a position that they can no longer fulfil their obligations under the agreement then either party has the right to terminate on not less than one month's notice.</p> <p>Sub-clause 9(d)(iii) deals with the standard of accommodation and living standards that the owner</p>

SHIPMAN 2009	SHIPMAN 98	NOTES
<p>additional premium area the above provisions relating to cost and delay shall apply;</p> <p>(ii) agree with the Managers prior to any change of flag of the Vessel and pay whatever additional costs may properly be incurred by the Managers as a consequence of such change. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 22(e); and</p> <p>(iii) provide, at no cost to the Managers, in accordance with the requirements of the law of the Flag State, or higher standard, as mutually agreed, adequate Crew accommodation and living standards.</p> <p>(e) Where the Managers are not the Company, the Owners shall ensure that Crew are properly familiarised with their duties in accordance with the Vessel's SMS and that instructions which are essential to the SMS are identified, documented and given to the Crew prior to sailing.</p>		<p>is obliged to provide the crew. This provision has been added as part of the harmonising process with CREWMAN A (Cost Plus Fee) 2009.</p> <p>Sub-clause 9(e) deals with the situation where the managers are not the Company, obliging the owners to ensure that the crew are familiarised with the vessel's SMS and their respective duties.</p>

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SECTION 4 – Insurance, Budgets, Income, Expenses and Fees		
<p>10. Insurance Policies The Owners shall procure, whether by instructing the Managers under Clause 7 (Insurance Arrangements) or otherwise, that throughout the period of this Agreement:</p> <p>(a) at the Owners’ expense, the Vessel is insured for not less than its sound market value or entered for its full gross tonnage, as the case may be for:</p> <p>(i) hull and machinery marine risks (including but not limited to crew negligence) and excess liabilities;</p> <p>(ii) protection and indemnity risks (including but not limited to pollution risks, diversion expenses and, except to the extent insured separately by the Managers in accordance with Sub-clause 5(b)(i), Crew Insurances;</p> <p><i>NOTE: If the Managers are not providing crew management services under Sub-clause 5(a) (Crew Management) or have agreed not to provide Crew Insurances separately in accordance with Sub-clause 5(b)(i), then such insurances must be included in the protection and indemnity risks cover for the Vessel (see Sub-clause 10(a)(ii) above).</i></p>	<p>6. Insurance Policies The Owners shall procure, whether by instructing the Managers under sub-clause 3.4 or otherwise, that throughout the period of this Agreement:</p> <p>6.1. at the Owners’ expense, the Vessel is insured for not less than her sound market value or entered for her full gross tonnage, as the case may be for:</p> <p>(i) usual hull and machinery marine risks (including crew negligence) and excess liabilities;</p> <p>(ii) protection and indemnity risks (including pollution risks and Crew Insurances); and</p> <p>(iii) war risks (including protection and indemnity and crew risks)</p> <p>in accordance with the best practice of prudent owners of vessels of a similar type to the Vessel, with first class insurance companies, underwriters or associations (“the Owners’ Insurances”);</p> <p>6.2. all premiums and calls on the Owners’ Insurances are paid promptly by their due date,</p>	<p>Comment The insurance provisions are central to the whole operation of SHIPMAN and great care has been taken in reviewing the existing wording.</p> <p>In sub-clause 10(a)(i) the reference to “usual” in respect of hull and machinery marine risks has been removed because it is already covered by the phrase “best practice of prudent owners” at the end of sub-clause 10(a). In sub-clauses 10(a)(ii) and 10(a)(iii) dealing with P&I risks and war risks, the list of risks is no longer limited to the examples given in the text because such insurances are rarely uniformly described by insurers.</p> <p>In sub-clause 10(a)(ii) new wording has been added to qualify the owners’ requirement to provide crew insurances. A practice has developed in ship-management whereby owners make use of the managers’ P&I type cover for crew liabilities when the manager is providing crew management services. However, the crew liability cover that the manager can obtain may not be as wide in scope and limits of liability as the crew liability cover that owners can obtain through their P&I club entry. If the managers are providing crew and crew insurances in accordance with sub-clauses 5(a) (Crew Management) and 5(b) (Crew Insurances) then the owners need to provide cover for crew liabilities through their P&I club cover over and above the</p>

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<p>(iii) war risks (including but not limited to blocking and trapping, protection and indemnity, terrorism and crew risks); and</p> <p>(iv) such optional insurances as may be agreed (such as piracy, kidnap and ransom, loss of hire and FD & D) (see Box 12)</p> <p>Sub-clauses 10(a)(i) through 10(a)(iv) all in accordance with the best practice of prudent owners of vessels of a similar type to the Vessel, with sound and reputable insurance companies, underwriters or associations (“the Owners’ Insurances”);</p> <p>(b) all premiums and calls on the Owners’ Insurances are paid by their due date;</p> <p>(c) the Owners’ Insurances name the Managers and, subject to underwriters’ agreement, any third party designated by the Managers as a joint assured, with full cover. It is understood that in some cases, such as protection and indemnity, the normal terms for such cover may impose on the Managers and any such third party a liability in respect of premiums or calls arising in connection with the Owners’ Insurances.</p> <p>If obtainable at no additional cost, however, the Owners shall procure such insurances on terms such that neither the Managers nor any such third party shall be under any liability in</p>	<p>6.3. the Owners’ Insurances name the Managers and, subject to underwriters’ agreement, any third party designated by the Managers as a joint assured, with full cover, with the Owners obtaining cover in respect of each of the insurances specified in (i) above:</p> <p>(i) on terms whereby the Managers and any such third party are liable in respect of premiums or calls arising in connection with the Owners’ Insurances; or</p> <p>(ii) if obtainable, on terms such that neither the Managers nor any such third party shall be under any liability in respect of premiums or calls arising in connection with the Owners’ Insurances; or</p> <p>(iii) on such other terms as may be agreed in writing.</p> <p><i>Indicate alternative (i), (ii) or (iii) in Box 14 If Box 14 is left blank then (i) applies.</i></p> <p>6.4. written evidence is provided, to the reasonable satisfaction of the Managers, of their compliance with their obligations under this clause within a reasonable time of the commencement of the Agreement, and of each renewal date and, if specifically requested, of each payment date of the Owners’ Insurances.</p>	<p>cover provided by the crew managers’ liability cover (please also see comment re sub-clause 5(b)(ii) above). To emphasise this point a note in italic type has been added under sub-clause 10(a)(ii) to clarify that crew insurances cannot be agreed separately unless crew management services have been agreed and therefore the owners’ P&I crew liability cover must be able to respond fully to crew liability risks.</p> <p>A reference to “blocking and trapping” in sub-clause 10(a)(iii) has been added as this feature does not normally form part of an owners’ war risks insurances.</p> <p>A new sub-clause 10(a)(iv) has been added to deal with additional optional insurances that the owners may want included, such as kidnap and ransom insurance and FD&D (Freight, Demurrage and Defence) cover.</p> <p>During the revision of SHIPMAN consideration was given to requiring the owners to have in place FD&D insurance. Although it is considered a good insurance for the owners to have, by including it in the agreement the managers would be named as co-assured. This would preclude using the insurance for any claims by the owners against the managers as such claims between co-assureds would be excluded by the insurers. In such circumstances it would be preferable for the owners and managers to have separate FD&D cover. Consequently, if the parties wish to benefit from the protection offered by FD&D cover they should agree it as a separate insurance under the provisions of sub-clause 10(a)(iv) and by clearly stating their chosen optional insurance in Box 12.</p>

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<p>respect of premiums or calls arising in connection with the Owners' Insurances. In any event, on termination of this Agreement in accordance with Clause 21 (Duration of the Agreement) and Clause 22 (Termination), the Owners shall procure that the Managers and any third party designated by the Managers as joint assured shall cease to be joint assured and, if reasonably achievable, that they shall be released from any and all liability for premiums and calls that may arise in relation to the period of this Agreement; and</p> <p>(d) written evidence is provided, to the reasonable satisfaction of the Managers, of the Owners' compliance with their obligations under this Clause within a reasonable time of the commencement of the Agreement, and of each renewal date and, if specifically requested, of each payment date of the Owners' Insurances.</p>		<p>BIMCO also discussed the issue of the criminalisation of seafarers. Although P&I Clubs often take care of matters arising out of the detention and prosecution of seafarers, this is not always the case. However, separate insurance is available on the market to cover this risk and BIMCO recommends that if the parties feel that such optional insurance is required they should agree to its inclusion under sub-clause 10(a)(iv).</p> <p>One particular issue that BIMCO has addressed is the use at the end of sub-clause 10(a) of the phrase "first class" in respect of the insurance companies, underwriters or association used by the owners to obtain the required insurances. In practice, it has proven very difficult to define what constitutes "first class". The phrase chosen to replace "first class" is "sound and reputable". In most countries "sound" means that the company has a good financial standing. "Reputable" could be taken to mean that the company appears on sound broker's approval lists.</p> <p>Sub-clause 10(c) deals with naming the managers as a joint assured, with full cover, on the owners' insurance policies. The terms of cover are no longer listed as three options and it is recommended that users carefully read the revised clause in this respect. The provision now consolidates the previous sub-clause 6.3 to reflect current industry practice in terms of what is practically achievable in respect of insurance.</p> <p>By way of a warning, the second sentence of 10(c)</p>

SHIPMAN 2009	SHIPMAN 98	NOTES
		<p>now emphasises that by being named as a joint assured on the owners' P&I cover the managers are likely be exposed to liability for premiums or calls on the owners' insurances.</p> <p>Sub-clause 10(d) attempts to counter the managers' potential liability for premiums and calls under sub-clause 10(c) by requiring the owners to arrange with their insurers that no such liability will arise for the managers – provided this can be done at no additional cost to the owners. The practical reality, certainly as far as P&I clubs (within the International Group) are concerned, is that they reserve the right to demand premiums or calls from joint assureds and will not take into account any contractual arrangement between owners and managers to the contrary.</p> <p>Another issue that has been given careful consideration by BIMCO is the risk to the managers of having to pay release calls on an owners' insurance after the termination of the agreement, due to the owners' default. The particular scenario considered was that a manager named as joint assured on owners' insurance could be liable for calls even after a management agreement has ended if the owner subsequently leaves the P&I Club but is unable or refuses to pay the release call. As release calls cannot be quantified until the vessel is released from the Club, the managers have a potential open ended exposure until the policy year is closed.</p> <p>While it is possible to insure against the risk of the managers being exposed to liability for premiums or calls, it is recognised that such insurance can be</p>

SHIPMAN 2009	SHIPMAN 98	NOTES
<p>11. Income Collected and Expenses Paid on Behalf of Owners Except as provided in Sub-clause 11(c) all monies collected by the Managers under the terms of this Agreement (other than monies payable by the Owners to the Managers) and any interest thereon shall be held to the credit of the Owners in a separate bank account.</p> <p>(b) All expenses incurred by the Managers under the terms of this Agreement on behalf of the Owners (including expenses as provided in Clause 12(c)) may be debited against the Owners in the account referred to under Sub-</p>	<p>7. Income Collected and Expenses Paid on Behalf of Owners</p> <p>7.1. All moneys collected by the Managers under the terms of this Agreement (other than moneys payable by the Owners to the Managers) and any interest thereon shall be held to the credit of the Owners in a separate bank account.</p> <p>7.2. All expenses incurred by the Managers under the terms of this Agreement on behalf of the Owners (including expenses as provided in Clause 8) may be debited against the Owners in the account referred to under sub-clause 7.1</p>	<p>prohibitively expensive. In terms of liability for premiums and calls after the termination of the agreement, sub-clause 10(c) no longer refers to the owners getting the underwriters to release the managers from future liability for premiums and calls since it is recognised that it is not possible for the owners to get underwriters to agree such a release. However, recognising that some mechanism may be available to achieve this result under certain circumstances, the clause has been amended to require the owners to release the managers from future liability “if reasonably achievable”. This is intended to avoid the owners having to achieve what may be impossible or prohibitively expensive.</p> <p>If this is an area of real concern to a manager when concluding an agreement with an owner then BIMCO strongly recommends that the managers make appropriate arrangements to cover the potential risk.</p> <p>Comment A new Sub-clause 11(c) has been added to this provision to clearly identify the bank account in to which the managers should pay monies collected under the optional commercial management provisions of Clause 6.</p>

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<p>clause 11(a) but shall in any event remain payable by the Owners to the Managers on demand.</p> <p>(c) All monies collected by the Managers under Clause 6 (Commercial Management) shall be paid into a bank account in the name of the Owners or as may be otherwise advised by the Owners in writing.</p>	<p>but shall in any event remain payable by the Owners to the Managers on demand.</p>	
<p>12. Management Fee and Expenses</p> <p>(a) The Owners shall pay to the Managers an annual management fee as stated in Box 14 for their services as Managers under this Agreement, which shall be payable in equal monthly instalments in advance, the first instalment (pro rata if appropriate) being payable on the commencement of this Agreement (see Clause 2 (Commencement and Appointment) and Box 2) and subsequent instalments being payable at the beginning of every calendar month. The management fee shall be payable to the Managers' nominated account stated in Box 15.</p> <p>(b) The management fee shall be subject to an annual review and the proposed fee shall be presented in the annual budget in accordance with Sub-clause 13(a).</p> <p>(c) The Managers shall, at no extra cost to the Owners, provide their own office accommodation, office staff, facilities and stationery. Without limiting the generality of this</p>	<p>8. Management Fee</p> <p>8.1. The Owners shall pay to the Managers for their services as Managers under this Agreement an annual management fee as stated in Box 15 which shall be payable by equal monthly instalments in advance, the first instalment being payable on the commencement of this Agreement (see Clause 2 and Box 4) and subsequent instalments being payable every month.</p> <p>8.2. The management fee shall be subject to an annual review on the anniversary date of the Agreement and the proposed fee shall be presented in the annual budget referred to in sub-clause 9.1.</p> <p>8.3. The Managers shall, at no extra cost to the Owners, provide their own office accommodation, office staff, facilities and stationery. Without limiting the generality of Clause 7 the Owners shall reimburse the Managers for postage and communication expenses, travelling expenses, and other out</p>	<p>Comment</p> <p>The title of this Clause has been changed to “Management Fee and Expenses” to more closely reflect its content.</p> <p>Sub-clause 12(a) now clarifies that if the first instalment under the management agreement is not for a full month then a pro rata payment may be required.</p> <p>Further clarity is added by reference to the requirement by the owners to pay instalments at the “beginning” of each month. Finally, a new last sentence in sub-clause 12(a) requires the details of the managers' bank account into which the monthly fee should be paid, to be stated in Box 15.</p> <p>In sub-clause 12(b) it has been clarified that the management fee is to be reviewed annually but not necessarily on the anniversary date as in practice such reviews actually take place either at the end of the calendar or fiscal year</p> <p>Sub-clause 12(c) introduces a new feature dealing</p>

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<p>Clause 12 (Management Fee and Expenses) the Owners shall reimburse the Managers for postage and communication expenses, travelling expenses, and other out of pocket expenses properly incurred by the Managers in pursuance of the Management Services. Any days used by the Manager's personnel travelling to or from or attending on the Vessel or otherwise used in connection with the Management Services in excess of those agreed in the budget shall be charged at the daily rate stated in Box 15.</p> <p>(d) If the Owners decide to lay-up the Vessel and such lay-up lasts for more than the number of months stated in Box 16, an appropriate reduction of the Management Fee for the period exceeding such period until one month before the Vessel is again put into service shall be mutually agreed between the parties. If the Managers are providing crew management services in accordance with Sub-clause 5(a), consequential costs of reduction and reinstatement of the Crew shall be for the Owners' account. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 22(e).</p> <p>(e) Save as otherwise provided in this Agreement, all discounts and commissions obtained by the Managers in the course of the performance of the Management Services shall be credited to the Owners.</p>	<p>of pocket expenses properly incurred by the Managers in pursuance of the Management Services.</p> <p>8.4. In the event of the appointment of the Managers being terminated by the Owners or the Managers in accordance with the provisions of Clauses 17 and 18 other than by reason of default by the Managers, or if the Vessel is lost, sold or otherwise disposed of, the Management Fee payable to the Managers according to the provisions of sub-clause 8.1, shall continue to be payable for a further period of three calendar months as from the termination date. In addition, provided that the Managers provide Crew for the Vessel in accordance with sub-clause 3.1:</p> <p>(i) the Owners shall continue to pay Crew Support Costs during the said further period of three calendar months and</p> <p>(ii) the Owners shall pay an equitable proportion of any Severance Costs which may materialize, not exceeding the amount stated in Box 16.</p> <p>8.5. Whilst this Agreement remains in force, if the Owners decide to lay-up the Vessel and such lay-up lasts for more than three months, an appropriate reduction of the Management Fee for the period exceeding three months until one month before the Vessel is again put into service shall be mutually agreed between the parties.</p>	<p>with travelling days used by the managers' personnel in relation to the provision of services. The new final sentence places no limit on the number of days spent by the manager's personnel visiting the vessel, but applies an agreed daily rate to any days used in excess of those agreed in the budget. The daily rate feature is designed to ensure that the managers' personnel are not committed to one vessel for excessively lengthy periods of time.</p> <p>The termination provision formerly in sub-clause 8.4 has been moved to Clause 22 (Termination) as part of the consolidation of all the termination provisions of the agreement into one clause.</p> <p>The lay-up provisions of sub-clause 12(d) have been amended to make them consistent with CREWMAN. The number of months before a reduction in the management fee has to be discussed is now to be stated in Box 17 (previously it was fixed at 3 months). It is therefore important that the parties agree on a number of months for the layup period and enter it into Box 17.</p> <p>The second sentence of sub-clause 12(d) is new and provides each party with the right to terminate the agreement if they cannot agree on costs related to the reduction and re-instatement of the crew (if provided by the managers).</p> <p>Sub-clause 12(e) dealing with discounts and commissions obtained by the managers remains unchanged from the original SHIPMAN 98, sub-clause 8.6.</p>

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<p>13. Budgets and Management of Funds</p> <p>(a) The Managers' initial budget is set out in Annex "C" hereto. Subsequent budgets shall be for twelve month periods and shall be prepared by the Managers and presented to the Owners not less than three months before the end of the budget year.</p> <p>(b) The Owners shall state to the Managers in a timely manner but in any event within one month of presentation whether or not they agree to each proposed annual budget. The parties shall negotiate in good faith and if they fail to agree on the annual budget, including the management fee, either party may terminate this Agreement in accordance with Sub-clause 22(e).</p> <p>(c) Following the agreement of the budget, the Managers shall prepare and present to the Owners their estimate of the working capital requirement for the Vessel and shall each month request the Owners in writing to pay the funds required to run the Vessel for the ensuing month, including the payment of any occasional or extraordinary item of expenditure, such as emergency repair costs, additional insurance premiums, bunkers or</p>	<p>8.6. Unless otherwise agreed in writing all discounts and commissions obtained by the Managers in the course of the management of the Vessel shall be credited to the Owners.</p> <p>9. Budgets and Management of Funds</p> <p>9.1. The Managers shall present to the Owners annually a budget for the following twelve months in such form as the Owners require. The budget for the first year hereof is set out in Annex "C" hereto. Subsequent annual budgets shall be prepared by the Managers and submitted to the Owners not less than three months before the anniversary date of the commencement of this Agreement (see Clause 2 and Box 4).</p> <p>9.2. The Owners shall indicate to the Managers their acceptance and approval of the annual budget within one month of presentation and in the absence of any such indication the Managers shall be entitled to assume that the Owners have accepted the proposed budget.</p> <p>9.3. Following the agreement of the budget, the Managers shall prepare and present to the Owners their estimate of the working capital requirement of the Vessel and the Managers shall each month up-date this estimate. Based thereon, the Managers shall each month request in writing the Owners for the funds required to run the Vessel for the ensuing</p>	<p>Comment</p> <p>In sub-clause 13(a) the wording has been revised in respect of submission of budgets. To avoid problems with management agreements starting late in the calendar year the submission requirement has been changed to three months before the end of the "budget year".</p> <p>The concept of the owners being "deemed to accept" a proposed budget by virtue of their silence was not felt to be particularly sound. To provide a more balanced approach sub-clause 13(b) has been amended to require the owners "in a timely manner" to advise the managers if they accept the proposed budget, including the management fee. The parties are required to negotiate in good faith – recognising that it may only be one part of the proposed budget that may be of concern. If the parties fail to agree on the budget then either party may terminate the agreement. While recognising that at present some owners do not respond to a managers' proposed annual budget, this amendment is felt to introduce a good business practice that is in the best interest of both parties since it will remove any uncertainty as to future budgets.</p> <p>Sub-clause 13(d) incorporates the auditing provisions of Clause 14 of SHIPMAN. The standard of</p>

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<p>provisions. Such funds shall be received by the Managers within ten running days after the receipt by the Owners of the Managers' written request and shall be held to the credit of the Owners in a separate bank account.</p> <p>(d) The Managers shall at all times maintain and keep true and correct accounts in respect of the Management Services in accordance with the relevant International Financial Reporting Standards or such other standard as the parties may agree, including records of all costs and expenditure incurred, and produce a comparison between budgeted and actual income and expenditure of the Vessel in such form and at such intervals as shall be mutually agreed.</p> <p>The Managers shall make such accounts available for inspection and auditing by the Owners and/or their representatives in the Manager's offices or by electronic means, provided reasonable notice is given by the Owners.</p> <p>(e) Notwithstanding anything contained herein, the Managers shall in no circumstances be required to use or commit their own funds to finance the provision of the Management Services.</p>	<p>month, including the payment of any occasional or extraordinary item of expenditure, such as emergency repair costs, additional insurance premiums, bunkers or provisions. Such funds shall be received by the Managers within ten running days after the receipt by the Owners of the Managers' written request and shall be held to the credit of the Owners in a separate bank account.</p> <p>9.4. The Managers shall produce a comparison between budgeted and actual income and expenditure of the Vessel in such form as required by the Owners monthly or at such other intervals as mutually agreed.</p> <p>9.5. Notwithstanding anything contained herein, the Managers shall in no circumstances be required to use or commit their own funds to finance the provision of the Management Services.</p> <p>3.5. Accounting Services <i>(only applicable if agreed according to Box 9).</i> The Managers shall:</p> <p>(i) establish an accounting system which meets the requirements of the Owners and provide regular accounting services, supply regular reports and records, and;</p> <p>(ii) maintain the records of all costs and expenditure incurred as well as data necessary or proper for the settlement of accounts between the parties.</p>	<p>accounting to which the managers must keep accounts is by reference to the International Financial Reporting Standards but permits the parties to agree alternative standards.</p> <p>The second paragraph of sub-clause 13(d) provides the owners with access to the managers' accounts electronically as well as being available for physical inspection in the managers' offices.</p> <p>The wording of sub-clause 13(e) remains unchanged from SHIPMAN 98.</p>

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	<p>14. Auditing The Managers shall at all times maintain and keep true and correct accounts and shall make the same available for inspection and auditing by the Owners at such times as may be mutually agreed. On the termination, for whatever reasons, of this Agreement, the Managers shall release to the Owners, if so requested, the originals where possible, or otherwise certified copies, of all such accounts and all documents specifically relating to the Vessel and her operation.</p>	

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SECTION 5 – Legal, General and Duration of Agreement		
<p>14. Trading Restrictions If the Managers are providing crew management services in accordance with Sub-clause 5(a) (Crew Management), the Owners and the Managers will, prior to the commencement of this Agreement, agree on any trading restrictions to the Vessel that may result from the terms and conditions of the Crew's employment.</p>	Not in SHIPMAN 98	<p>Comment This clause has been taken from CREWMAN A (Cost Plus Fee) as it is felt that it should equally apply to SHIPMAN in instances where the managers are providing crew management services. It is important that the parties note that before entering into this agreement they should agree on the terms and conditions under which the crew is to be employed and that the owners are made fully aware of the implications of these terms and conditions. It is equally important that the parties agree on a re-apportionment of the costs in the event that the terms and conditions under which the crew is employed should be changed.</p>
<p>15. Replacement If the Managers are providing crew management services in accordance with Sub-clause 5(a) (Crew Management), the Owners may require the replacement, at their own expense, at the next reasonable opportunity, of any member of the Crew found on reasonable grounds to be unsuitable for service. If the Managers have failed to fulfil their obligations in providing suitable qualified Crew within the meaning of Sub-clause 5(a) (Crew Management), then such replacement shall be at the Managers' expense.</p>	Not in SHIPMAN 98	<p>Comment As with Clause 14 (Trading Restrictions) the clause has been taken from CREWMAN to cover situations where the managers are providing crew and the owners are dissatisfied (always subject to the crew being found unsuitable on reasonable grounds) with any member of the crew and want them replaced.</p>

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<p>16. Managers' Right to Sub-Contract The Managers shall not sub-contract any of their obligations hereunder without the prior written consent of the Owners which shall not be unreasonably withheld. In the event of such a sub-contract the Managers shall remain fully liable for the due performance of their obligations under this Agreement.</p>	<p>10. Managers' Right to Sub-Contract The Managers shall not have the right to sub-contract any of their obligations hereunder, including those mentioned in sub-clause 3.1, without the prior written consent of the Owners which shall not be unreasonably withheld. In the event of such a sub-contract the Managers shall remain fully liable for the due performance of their obligations under this Agreement.</p>	<p>Comment Apart from tidying up the language used in this provision, there are no notable amendments to the Manager's Right to Sub-Contract Clause.</p>
<p>17. Responsibilities (a) Force Majeure. - Neither party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions to the extent that the party invoking force majeure is prevented or hindered from performing any or all of their obligations under this Agreement, provided they have made all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions:</p> <ul style="list-style-type: none"> (i) acts of God; (ii) any Government requisition, control, intervention, requirement or interference; (iii) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof; 	<p>11. Responsibilities 11.1. Force Majeure. - Neither the Owners nor the Managers shall be under any liability for any failure to perform any of their obligations hereunder by reason of any cause whatsoever of any nature or kind beyond their reasonable control.</p> <p>11.2. Liability to Owners. –</p> <ul style="list-style-type: none"> (i) Without prejudice to sub-clause 11.1, the Managers shall be under no liability whatsoever to the Owners for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit arising out of or in connection with detention of or delay to the Vessel) and howsoever arising in the course of performance of the Management Services UNLESS same is proved to have resulted solely from the 	<p>Comment This clause is absolutely central to the successful operation of SHIPMAN and great efforts were made in SHIPMAN 98 to provide equitable solutions which strike a fair balance between the owners and the managers. This clause is not known to have caused problems in practice and BIMCO has therefore, with the exception of the Force Majeure provisions, made very few and then only modest amendments to the texts so that the fundamental principles of the Responsibilities are maintained in full.</p> <p>Sub-clause 17(a) is more extensive but is based on the ICC (International Chamber of Commerce) model Force Majeure Clause 2003 that BIMCO has previously used to create a “standard” force majeure provision for other contracts such as the SUPPLYTIME 2005 Time Charter Party for Offshore Service Vessels. Unlike the previous wording in sub-clause 11.1, the new clause requires the parties affected by a force majeure situation to make reasonable efforts to minimise the effect of the event,</p>

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<p>(iv) riots, civil commotion, blockades or embargoes;</p> <p>(v) epidemics;</p> <p>(vi) earthquakes, landslides, floods or other extraordinary weather conditions;</p> <p>(vii) strikes, lockouts or other industrial action, unless limited to the employees (which shall not include the Crew) of the party seeking to invoke force majeure;</p> <p>(viii) fire, accident, explosion except where caused by negligence of the party seeking to invoke force majeure; and</p> <p>(ix) any other similar cause beyond the reasonable control of either party.</p> <p>(b) <i>Liability to Owners</i></p> <p>(i) Without prejudice to Sub-clause 17(a), the Managers shall be under no liability whatsoever to the Owners for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit arising out of or in connection with detention of or delay to the Vessel) and howsoever arising in the course of performance of the Management Services UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Managers or their</p>	<p>negligence, gross negligence or wilful default of the Managers or their employees or agents, or sub-contractors employed by them in connection with the Vessel, in which case (save where loss, damage, delay or expense has resulted from the Managers' personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result) the Managers' liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of ten times the annual management fee payable hereunder.</p> <p>(ii) Notwithstanding anything that may appear to the contrary in this Agreement, the Managers shall not be liable for any of the actions of the Crew, even if such actions are negligent, grossly negligent or wilful, except only to the extent that they are shown to have resulted from a failure by the Managers to discharge their obligations under sub-clause 3.1, in which case their liability shall be limited in accordance with the terms of this Clause 11.</p> <p>11.3. Indemnity. - Except to the extent and solely for the amount therein set out that the Managers would be liable under sub-clause 11.2. the Owners hereby undertake to keep the Managers and their employees, agents and</p>	<p>failing which they cannot rely on the force majeure defence.</p> <p>The remaining sub-clauses in the Responsibilities Clause are unchanged from those found in SHIPMAN 98. However, given the importance of these provisions to the operation of SHIPMAN 2009, the original explanatory notes for these clauses are set out below:</p> <p><i>Sub-clause 17(b) Liability to Owners.</i> The thinking behind this clause is that the managers should be able to limit their liability, so that they can insure it, except in particularly culpable situations. The limit of liability has been related to the level of the annual management fee in order to strike a reasonable balance between the funds received by the managers on the one hand, and their exposure for insurance purposes (and therefore level of insurance premiums) on the other. The circumstances in which the managers should have unlimited liability have been related to the wording in the 1976 Convention on Limitation of Liability for Maritime Claims, which is an internationally recognised formula.</p> <p>However the limitation in the exclusion of the managers' liability does not apply as regards the crew in the event that crewing services are provided by the managers. In the event of negligent action by the crew the managers shall not be responsible for any loss, damage, delay or expenses incurred as a result thereof unless the managers have acted negligently in selecting a competent crew for the vessel in accordance with Clause 5 (Crew Management and Crew Insurances). The selection of</p>

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<p>employees or agents, or sub-contractors employed by them in connection with the Vessel, in which case (save where loss, damage, delay or expense has resulted from the Managers' personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result) the Managers' liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of ten (10) times the annual management fee payable hereunder.</p> <p>(ii) Acts or omissions of the Crew. - Notwithstanding anything that may appear to the contrary in this Agreement, the Managers shall not be liable for any acts or omissions of the Crew, even if such acts or omissions are negligent, grossly negligent or wilful, except only to the extent that they are shown to have resulted from a failure by the Managers to discharge their obligations under Clause 5(a) (Crew Management), in which case their liability shall be limited in accordance with the terms of this Clause 17 (Responsibilities).</p> <p>(c) Indemnity. - Except to the extent and solely for the amount therein set out that the Managers would be liable under Sub-clause 17(b). the Owners hereby undertake to keep</p>	<p>sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of the Agreement, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.</p> <p>11.4. "Himalaya". - It is hereby expressly agreed that no employee or agent of the Managers (including every sub-contractor from time to time employed by the Managers) shall in any circumstances whatsoever be under any liability whatsoever to the Owners for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions in this Clause 11, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Managers or to which the Managers are entitled hereunder shall also be available and shall extend to protect every such employee or agent of the Managers acting as aforesaid and for the purpose of all the foregoing provisions</p>	<p>a competent crew always remains the responsibility of the managers. SHIPMAN 2009 now makes this position entirely clear in sub-clause 11(b)(ii).</p> <p>The managers' liability in such circumstances is limited to a total of ten times the annual management fee, except where the loss, damage, delay or expense has resulted from the managers' personal act or omission, etc. (in accordance with the concept underlying the 1976 Convention).</p> <p>In practical terms, therefore, the managers will carry unlimited liability in circumstances where they have deliberately or recklessly acted contrary to the owners' interests, although this is restricted to the managers' personal acts or omissions. In other words, acts or omissions of this nature by employees, agents or sub-contractors are still subject to a limitation of ten times the annual management fee.</p> <p><i>Sub-clause 17(c) Indemnity.</i> This is an indemnity clause which is intended to make the reciprocal provision to sub-clause 17(b). Under Scandinavian and Continental systems of law, sub-clause 17(c) is probably unnecessary because the courts will imply an obligation on the part of the owners to indemnify the managers for anything for which the managers are not liable under 17(b). Unfortunately, under the English and United States of America systems, this is not the case and it is necessary to incorporate a specific indemnity setting out the extent to which owners will have to indemnify the managers. Sub-clause 17(c) sets out the extent of that indemnity by excluding from it any claim for which the managers would themselves be liable under sub-clause 17(b).</p>

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<p>the Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of the Agreement, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.</p> <p>(d) "Himalaya". - It is hereby expressly agreed that no employee or agent of the Managers (including every sub-contractor from time to time employed by the Managers) shall in any circumstances whatsoever be under any liability whatsoever to the Owners for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions in this Clause 17 (Responsibilities), every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Managers or to which the Managers are entitled hereunder shall also be available and shall extend to protect every such employee or agent of the Managers acting as aforesaid and</p>	<p>of this Clause 11 the Managers are or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this Agreement.</p>	<p><i>Sub-clause 17(d) Himalaya.</i> In order to protect the interests of employees, agents or sub-contractors of the managers it has been found necessary to incorporate in Clause 17 a so-called "Himalaya" Clause. The clause is designed to afford such employees, agents or sub-contractors at least the same protection as the managers have under the Management Agreement and will thus remove the necessity to ensure the contractual chain of indemnities from sub-contractors, etc., to the managers.</p> <p>As a concluding observation it may be mentioned that the original Responsibilities Clause (of SHIPMAN 1988) was reviewed by Queen's Counsel and found to be in compliance with the English Unfair Contract Terms Act 1977. Since no fundamental changes have been made to this clause under SHIPMAN 2009 the position is perceived to be the same.</p>

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<p>for the purpose of all the foregoing provisions of this Clause 17 (Responsibilities) the Managers are or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this Agreement.</p> <p>18. General Administration</p> <p>(a) The Managers shall keep the Owners and, if appropriate, the Company informed in a timely manner of any incident of which the Managers become aware which gives or may give rise to delay to the Vessel or claims or disputes involving third parties.</p> <p>(b) The Managers shall handle and settle all claims and disputes arising out of the Management Services hereunder, unless the Owners instruct the Managers otherwise. The Managers shall keep the Owners appropriately informed in a timely manner throughout the handling of such claims and disputes.</p> <p>(c) The Owners may request the Managers to bring or defend other actions, suits or proceedings related to the Management Services, on terms to be agreed.</p> <p>(d) The Managers shall have power to obtain appropriate legal or technical or other outside expert advice in relation to the handling and</p>	<p>13. General Administration</p> <p>13.1. The Managers shall handle and settle all claims arising out of the Management Services hereunder and keep the Owners informed regarding any incident of which the Managers become aware which gives or may give rise to claims or disputes involving third parties.</p> <p>13.2. The Managers shall, as instructed by the Owners, bring or defend actions, suits or proceedings in connection with matters entrusted to the Managers according to this Agreement.</p> <p>13.3. The Managers shall also have power to obtain legal or technical or other outside expert advice in relation to the handling and settlement of claims and disputes or all other matters affecting the interests of the Owners in respect of the Vessel.</p> <p>13.4. The Owners shall arrange for the provision of any necessary guarantee bond or other security.</p>	<p>Comment</p> <p>Sub-clause 18(a) is new and obliges the managers to keep the owners (and the Company if the managers are not so designated) informed of incidents that may result in delays to the vessel or third party claims. It is important that under all circumstances the owners are kept fully aware of events which may have a bearing on the vessel or give rise to claims.</p> <p>Sub-clause 18(b) clarifies the extent of the managers' authority to handle and settle claims on behalf of the owners under this agreement. Depending on the instructions provided by the owners the managers may handle and settle claims arising out of the management services. The managers are obliged to keep the owners fully advised during the processing and handling of claims.</p> <p>In sub-clause 18(e) the managers are required on request from the owners to provide documentation, etc., related to the management agreement to the owners without delay. This provision replaces the old Clause 12 (Documentation). Furthermore, the wording of the sub-clause has been widened to cover</p>

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<p>settlement of claims in relation to Sub-clauses 18.2 and 18.3 and disputes and any other matters affecting the interests of the Owners in respect of the Vessel, unless the Owners instruct the Managers otherwise.</p> <p>(e) On giving reasonable notice, the Owners may request, and the Managers shall in a timely manner make available, all documentation, information and records in respect of the matters covered by this Agreement either related to mandatory rules or regulations or other obligations applying to the Owners in respect of the Vessel (including but not limited to STCW 95, the ISM Code and ISPS Code) to the extent permitted by relevant legislation.</p> <p>On giving reasonable notice, the Managers may request, and the Owners shall in a timely manner make available, all documentation, information and records reasonably required by the Managers to enable them to perform the Management Services.</p> <p>(f) The Owners shall arrange for the provision of any necessary guarantee bond or other security.</p> <p>(g) Any costs incurred by the Managers in carrying out their obligations according to this Clause 18 (General Administration) shall be reimbursed by the Owners.</p>	<p>13.5. Any costs incurred by the Managers in carrying out their obligations according to Clause 13 shall be reimbursed by the Owners.</p> <p>12. Documentation Where the Managers are providing Technical Management in accordance with sub-clause 3.2 and/or Crew Management in accordance with sub-clause 3.1, they shall make available, upon Owners' request, all documentation and records related to the Safety Management System (SMS) and/or the Crew which the Owners need in order to demonstrate compliance with the ISM Code, STCW 95 or defend a claim against a third party.</p>	<p>any mandatory rules or obligations applying to the owners in respect of the vessel and not just the rule of the vessel's flag state. The owners are not obliged to give the managers their reasons for wanting access to documentation.</p> <p>The second paragraph of sub-clause 18(e), regarding the managers' request for documentation, has been widened consistent with the owners' equivalent request in the first paragraph.</p>

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<p>19. Inspection of Vessel The Owners may at any time after giving reasonable notice to the Managers to inspect the Vessel for any reason they consider necessary.</p>	<p>15. Inspection of Vessel The Owners shall have the right at any time after giving reasonable notice to the Managers to inspect the Vessel for any reason they consider necessary.</p>	<p>Comment This clause is unchanged from SHIPMAN 98. Although the owners have the right to inspect their own vessel, to ensure the smooth and uninterrupted management services as agreed, there should be an element of professional courtesy extended by the owners in providing the managers with prior warning of any intended inspection or visit unless special circumstances require otherwise.</p>
<p>20. Compliance with Laws and Regulations The Parties will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the Flag State, or of the places where the Vessel trades.</p>	<p>16. Compliance with Law and Regulations The Managers will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the Vessel's flag, or of the places where she trades.</p>	<p>Comment This clause has been amended so that it now applies mutually to both owners and managers rather than to the managers alone as in SHIPMAN 98.</p>
<p>21. Duration of the Agreement (a) This Agreement shall come into effect at the date stated in Box 2 and shall continue until terminated by either party by giving notice to the other; in which event this Agreement shall terminate upon the expiration of the later of the number of months stated in Box 18 or a period of two (2) months from the date on which such notice is received, unless terminated earlier in accordance with Clause 22 (Termination). (b) Where the Vessel is not at a mutually convenient port or place on the expiry of such period, this Agreement shall terminate on the</p>	<p>17. Duration of the Agreement This Agreement shall come into effect on the day and year stated in Box 4 and shall continue until the date stated in Box 17. Thereafter it shall continue until terminated by either party giving to the other notice in writing, in which event the Agreement shall terminate upon the expiration of a period of two months from the date upon which such notice was given.</p>	<p>Comment The Duration of Agreement provision has frequently been the source of misunderstanding in SHIPMAN 98. SHIPMAN is intended to be an evergreen agreement that runs until one party brings it to an end by giving notice. To make the provision clearer, the reference to the agreement continuing until a date stated in Part I, has been deleted. To avoid the potential scenario of the owners terminating an agreement within a very short period of time after commencement, the revised SHIPMAN 2009 contains (in sub-clause 21(a)) a minimum period requirement of an agreed number of months or until two months after one party has given notice to terminate, whichever is the later.</p>

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<p>subsequent arrival of the Vessel at the next mutually convenient port or place.</p> <p>22. Termination (a) Owners’ or Managers’ default. If either party fails to meet their obligations under this Agreement, the other party may give notice to the party in default requiring them to remedy it. In the event that the party in default fails to remedy it within a reasonable time to the reasonable satisfaction of the other party, that party shall be entitled to terminate this Agreement with immediate effect by giving notice to the party in default.</p> <p>(b) Notwithstanding Sub-clause 22(a):</p> <p>(i) The Managers shall be entitled to terminate the Agreement with immediate effect by giving notice to the Owners if any monies payable by the Owners and/or the owners of any associated vessel, details of which are listed in Annex “D”, shall not have been received in the Managers’ nominated account within ten days of receipt by the Owners</p>	<p>18. Termination 18.1. Owners’ default.</p> <p>(i) The Managers shall be entitled to terminate the Agreement with immediate effect by notice in writing if any moneys payable by the Owners and/or the owners of any associated vessel, details of which are listed in Annex “D”, shall not have been received in the Managers’ nominated account within ten running days of receipt by the Owners of the Managers written request or if the Vessel is repossessed by the Mortgagees.</p> <p>(ii) If the Owners: (a) fail to meet their obligations under Clause 5 of this Agreement for any reason within their control, or (b) proceed with the employment of or continue to employ the Vessel in the carriage of contraband, blockade</p>	<p>A new second sub-clause 21(b) has been added to address what should happen if at the date of termination of the agreement the vessel is at sea or in a port where handover is not possible. Although this situation must arise fairly frequently, the current SHIPMAN is silent on how it should be handled. The new sub-clause 21(b) provides for termination to take effect under such circumstances “at the next mutually convenient port or place”.</p> <p>Comments All of the termination provisions previously scattered among various clauses in the agreement have now been consolidated into the termination clause of SHIPMAN 2009 for ease of reading.</p> <p>A notable change to the first sub-clause of the termination provisions is that sub-clause 22(a) now incorporates the previous sub-clause 18.2 (Manager’s default) to make the provision mutual to both owners and managers in the event of the persistent failure of either to meet their obligations under the agreement.</p> <p>There is a new sub-clause 22(b)(iii) which provides a right to terminate in respect of a failure to meet insurance obligations. The clause provides 10 days grace in which to rectify the situation failing which the other party can terminate immediately by giving notice.</p> <p>Sub-clause 22(c) (Extraordinary Termination) now includes a reference to bareboat charters coming to</p>

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<p>of the Managers' written request, or if the Vessel is repossessed by the Mortgagee(s).</p> <p>(ii) If the Owners proceed with the employment of or continue to employ the Vessel in the carriage of contraband, blockade running, or in an unlawful trade, or on a voyage which in the reasonable opinion of the Managers, is unduly hazardous or improper, the Managers may give notice of the default to the Owners, requiring them to remedy it as soon as practically possible. In the event that the Owners fail to remedy it within a reasonable time to the satisfaction of the Managers, the Managers shall be entitled to terminate the Agreement with immediate effect by notice.</p> <p>(iii) If either party fails to meet their respective obligations under Sub-clause 5(b) (Crew Insurances) and Clause 10 (Insurance Policies), the other party may give notice to the party in default requiring them to remedy it within ten (10) days, failing which the other party may terminate this Agreement with immediate effect by giving notice to the party in default.</p> <p>(c) <i>Extraordinary Termination</i> This Agreement shall be deemed to be terminated in the case of the sale of the Vessel</p>	<p>running, or in an unlawful trade, or on a voyage which in the reasonable opinion of the Managers is unduly hazardous or improper,</p> <p>the Managers may give notice of the default to the Owners, requiring them to remedy it as soon as practically possible. In the event that the Owners fail to remedy it within a reasonable time to the satisfaction of the Managers, the Managers shall be entitled to terminate the Agreement with immediate effect by notice in writing.</p> <p>18.2. Managers' Default If the Managers fail to meet their obligations under Clauses 3 and 4 of this Agreement for any reason within the control of the Managers, the Owners may give notice to the Managers of the default requiring them to remedy it as soon as practically possible. In the event that the Managers fail to remedy it within a reasonable time to the satisfaction of the Owners, the Owners shall be entitled to terminate the Agreement with immediate effect by notice in writing.</p> <p>18.3. Extraordinary Termination This Agreement shall be deemed to be terminated in the case of the sale of the Vessel or if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss or is requisitioned.</p>	<p>an end to accommodate situations where the owners are not the registered owners of the vessel.</p> <p>A new sub-clause 22(e) has been added to address the amended budget provisions of Clause 13 whereby if the parties cannot agree to the proposed (subsequent) annual budget then either party may give a month's notice to terminate the agreement at the end of the current budget period. Sub-clause 22(e) also introduces a termination right if the parties cannot agree to a change of flag in accordance with sub-clause 9(d)(ii).</p> <p>In sub-clause 22(f) the phrase "or administrator" has been added to distinguish between the various ways in which a liquidated company may be handled in different jurisdictions.</p> <p>To be consistent with the approach taken in CREWMAN, sub-clause 22(g) has been amended to remove the specified 90 days period (during which there is an additional payment of the management fee upon termination (unless due to managers' default)). The clause now allows the parties to agree a number of months additional payment period. If they fail to agree then 90 days applies by default. The owners are obliged to continue to pay the managers for the agreed additional payment period (or 90 days if not agreed) <u>after</u> the date of termination (and not the date of giving notice of termination as had been interpreted by some users of SHIPMAN 98.</p> <p>In relation to severance costs, sub-clause 22(h)(ii) (taken from sub-clause 8.4 of SHIPMAN 98) has been made consistent with CREWMAN in respect of</p>

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<p>or, if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss or is requisitioned or has been declared missing or, if bareboat chartered, unless otherwise agreed, when the bareboat charter comes to an end.</p> <p>(d) For the purpose of Sub-clause 22(c) hereof</p> <p>(i) the date upon which the Vessel is to be treated as having been sold or otherwise disposed of shall be the date on which the Vessel's owners cease to be the registered owners of the Vessel;</p> <p>(ii) the Vessel shall be deemed to be lost either when it has become an actual total loss or agreement has been reached with the Vessel's underwriters in respect of its constructive total loss or if such agreement with the Vessel's underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred; and</p> <p>(iii) the date upon which the Vessel is to be treated as declared missing shall be ten (10) days after the Vessel was last reported or when the Vessel is recorded as missing by the Vessel's underwriters, whichever occurs first. A missing vessel shall be deemed lost in accordance with the provisions of Sub-clause 22(d)(ii).</p>	<p>18.4. For the purpose of sub-clause 18.3(i) hereof</p> <p>(i) the date upon which the Vessel is to be treated as having been sold or otherwise disposed of shall be the date on which the Owners cease to be registered as Owners of the Vessel;</p> <p>(ii) the Vessel shall not be deemed to be lost unless either she has become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred.</p> <p>18.5. This Agreement shall terminate forthwith in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.</p> <p>18.6. The termination of this Agreement shall be without prejudice to all rights accrued due between the parties prior to the date of termination.</p>	<p>requiring the owners to pay an "equitable proportion" of severance costs – i.e., in proportion to the amount of time they have used the services of a member of the crew. The managers are also now required to try to limit severance costs wherever possible.</p> <p>Sub-clause 22(i) is taken from the auditing provision of Clause 14 of SHIPMAN 98.</p>

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<p>(e) In the event the parties fail to agree the annual budget in accordance with Sub-clause 13(b), or to agree a change of flag in accordance with Sub-clause 9(d)(ii), either party may terminate this Agreement by giving the other party not less than one month's notice, the result of which will be the expiry of the Agreement at the end of the current budget period or on expiry of the notice period, whichever is the later.</p> <p>(f) This Agreement shall terminate forthwith in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.</p> <p>(g) In the event of the termination of this Agreement for any reason other than default by the Managers the management fee payable to the Managers according to the provisions of Clause 12 (Management Fee and Expenses), shall continue to be payable for a further period of the number of months stated in Box 19 as from the effective date of termination. If Box 19 is left blank then ninety (90) days shall apply.</p> <p>(h) In addition, where the Managers provide Crew for the Vessel in accordance with Clause 5(a) (Crew Management):</p>		

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<p>(i) the Owners shall continue to pay Crew Support Costs during the said further period of the number of months stated in Box 19; and</p> <p>(ii) the Owners shall pay an equitable proportion of any Severance Costs which may be incurred, not exceeding the amount stated in Box 20. The Managers shall use their reasonable endeavours to minimise such Severance Costs.</p> <p>(i) On the termination, for whatever reason, of this Agreement, the Managers shall release to the Owners, if so requested, the originals where possible, or otherwise certified copies, of all accounts and all documents specifically relating to the Vessel and its operation.</p> <p>(j) The termination of this Agreement shall be without prejudice to all rights accrued due between the parties prior to the date of termination.</p>		
<p>23. BIMCO Dispute Resolution Clause</p> <p>(a) This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent</p>	<p>19. Law and Arbitration</p> <p>19.1. This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent</p>	<p>Comment</p> <p>As with all recently developed and revised BIMCO documents, SHIPMAN 2009 incorporates the latest edition of the BIMCO Dispute Resolution Clause. The provisions relating to arbitration in this clause are the same as those of the Law and Arbitration Clause of SHIPMAN 98. The difference is that the Dispute Resolution Clause incorporates a mediation provision</p>

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<p>necessary to give effect to the provisions of this Clause.</p> <p>The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.</p> <p>The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.</p> <p>Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.</p> <p>In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000</p>	<p>necessary to give effect to the provisions of this Clause.</p> <p>The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.</p> <p>The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.</p> <p>Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.</p> <p>In cases where neither the claim nor any</p>	<p>that cannot be used to interrupt or delay the arbitration process but offers an increasingly popular alternative means of resolving part or all of a dispute.</p> <p>The mediation provision is designed to function in conjunction with the chosen arbitration option. In order to encourage the Parties to mediate, the Arbitration Tribunal is empowered to take into account the failure of a Party to participate when allocating the costs of the arbitration.</p> <p>Mediation is a technique that is recognised as offering savings in costs and time over traditional methods of dispute resolution and is a method that is gaining use in the shipping industry. BIMCO's mediation provision is only triggered once arbitration proceedings have commenced and then runs in parallel with those proceedings, if the parties so choose. This has been done to ensure that one party cannot invoke mediation as a delaying tactic. It also provides for the parties to mediate on all or just some of the issues being arbitrated.</p> <p>For a fuller description of the BIMCO Dispute Resolution Clause see Special Circular No. 1, 16 January 2002 available to download from the Documentary section of www.bimco.org.</p>

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<p>(or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.</p> <p>(b) This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.</p> <p>In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.</p> <p>(c) This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this</p>	<p>counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.</p> <p>19.2. This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.</p> <p>In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.</p> <p>19.3. This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any</p>	

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<p>Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.</p> <p>(d) Notwithstanding Sub-clauses 23(a), 23(b) or 23(c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.</p> <p>(i) In the case of a dispute in respect of which arbitration has been commenced under Sub-clauses 23(a), 23(b) or 23(c) above, the following shall apply:</p> <p>(ii) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.</p> <p>(iii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on</p>	<p>dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.</p> <p>19.4. If Box 18 in Part I is not appropriately filled in, sub-clause 19.1 of this Clause shall apply.</p> <p><i>Note: 19.1, 19.2 and 19.3 are alternatives; indicate alternative agreed in Box 18</i></p>	

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<p>such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.</p> <p>(iv) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.</p> <p>(v) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.</p> <p>(vi) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.</p> <p>(vii) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.</p> <p>(viii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal</p>		

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<p>except to the extent that they are disclosable under the law and procedure governing the arbitration.</p> <p><i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i></p> <p>(e) If Box 21 in Part I is not appropriately filled in, Sub-clause 23(a) of this Clause shall apply.</p> <p><i>Note: Sub-clauses 23(a), 23(b) and 23(c) are alternatives; indicate alternative agreed in Box 21. Sub-clause 23(d) shall apply in all cases.</i></p> <p>24. Notices (a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing and shall, unless specifically provided in this Agreement to the contrary, be sent to the address for that other party as set out in Boxes 22 and 23 or as appropriate or to such other address as the other party may designate in writing.</p> <p>A notice may be sent by registered or recorded mail, facsimile, electronically or delivered by hand in accordance with this Sub-clause 24(a).</p> <p>(b) Any notice given under this Agreement shall take effect on receipt by the other party and shall be deemed to have been received:</p>	<p>20. Notices 20.1. Any notice to be given by either party to the other party shall be in writing and may be sent by fax, telex, registered or recorded mail or by personal service.</p> <p>20.2. The address of the Parties for service of such communication shall be as stated in Boxes 20 and 21, respectively.</p>	<p>Comment This clause anticipates that the parties will wish to send notices and documents between them by electronic means, although from the point of view of evidence it would still be necessary to prove that the message had been transmitted.</p>

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<p>(i) if posted, on the seventh (7th) day after posting;</p> <p>(ii) if sent by facsimile or electronically, on the day of transmission; and</p> <p>(iii) if delivered by hand, on the day of delivery.</p> <p>And in each case proof of posting, handing in or transmission shall be proof that notice has been given, unless proven to the contrary.</p>		
<p>25. Entire Agreement This Agreement constitutes the entire agreement between the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date stated in Box 2 shall affect this Agreement. Any modification of this Agreement shall not be of any effect unless in writing signed by or on behalf of the parties.</p>		<p>Comment This is a normal provision in English Law contracts to avoid disputes arising as to whether any other terms (for instance in accompanying correspondence, or verbal discussions) form part of the Agreement.</p>
<p>26. Third Party Rights Except to the extent provided in Sub-clauses 17(c) (Indemnity) and 17(d) (Himalaya), no third parties may enforce any term of this Agreement.</p>		<p>Comment This new clause clarifies that only third parties who are expressly identified in the Contract can benefit from it.</p>
<p>27. Partial Validity If any provision of this Agreement is or becomes or is held by any arbitrator or other</p>		<p>Comment The purpose of the Partial Validity Clause introduced into SHIPMAN 2009 is an attempt to avoid a potential</p>

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<p>competent body to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from this Agreement to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.</p> <p>28. Interpretation In this Agreement:</p> <p>(a) Singular/Plural The singular includes the plural and vice versa as the context admits or requires.</p> <p>(b) Headings The index and headings to the clauses and appendices to this Agreement are for convenience only and shall not affect its construction or interpretation.</p> <p>(c) Day “Day” means a calendar day unless expressly stated to the contrary.</p>		<p>situation where the entire agreement is adjudged to be invalid simply because a particular provision in the agreement is deemed by an arbitrator or other competent authority to be illegal, unenforceable or invalid.</p> <p>Comment This new clause is largely self-explanatory and has been included to make the interpretation of the text easier and to avoid having to include plurals and singulars throughout the text.</p>