

## **SCHEDULE 38**

### **Transfer Bareboat Charter**

#### **1 CHARTER PERIOD**

- 1.1 The Authority agrees to let and the Contractor has agreed to hire each of the Replacement Vessels with effect from and including the date on which each Replacement Vessel is taken over by the Contractor in accordance with paragraph 2.1 of this Schedule 38 (Transfer Bareboat Charter) until each Replacement Vessel is delivered to the relevant Dockyard Port Transfer Bareboat Charter in accordance with the Vessel Acceptance and Integration Plan (the "**Charter Period**" for each Replacement Vessel) on and subject to the terms of this Schedule 38 (Transfer Bareboat Charter).
- 1.2 The Parties acknowledge and agree that, without prejudice to Clause 13 (Authority Vessels) of the Contract and this Schedule 38 (Transfer Bareboat Charter), no fee shall be payable by the Contractor to the Authority for the Contractor's hire of any Replacement Vessel in connection with the Contract.

#### **2 DELIVERY**

- 2.1 Each Replacement Vessel shall be taken over by the Contractor under the terms of this Schedule 38 (Transfer Bareboat Charter) at the Delivery Port for such Replacement Vessel and at the time when title to such Replacement Vessel is transferred to the Authority in accordance with Clause 16 (Vessel Replacement Milestones) of the Contract.
- 2.2 The Contractor acknowledges and agrees that:
- (a) the Authority does not make nor has it made or given nor shall it be deemed to have made or given any term, condition, representation, warranty or covenant, express or implied (whether statutory or otherwise):
    - (i) as to the suitability, capacity, age, state, value, quality, durability, condition, appearance, finish, safety, design, construction, operation, performance, seaworthiness, manning, description, merchantability, fitness for use or purpose or any particular use or purpose or suitability of any of the Replacement Vessels;
    - (ii) as to the absence of latent or other defects, whether or not discoverable, in respect of any of the Replacement Vessels;
    - (iii) as to the absence of any infringement of any patent, trademark or copyright in relation to any of the Replacement Vessels;
    - (iv) as to title of the Replacement Vessel or any other representation or warranty whatsoever, express or implied, with respect to the Replacement Vessels,

all of which are hereby excluded, provided that the Authority acknowledges that it was responsible for defining the Key User Requirements for the design of the Replacement Vessels; and

- (b) the Contractor is taking the Replacement Vessels for the purposes of, and in connection with, the Transfer on an "as is, where is, and with all faults" basis.

### 3 RESTRICTIONS

#### 3.1 The Contractor undertakes to:

- (a) use and operate the Replacement Vessel solely for the purposes of the Transfer;
- (b) ensure that in all respects the Replacement Vessels will be operated in a manner which complies with all applicable Law and all such regulations or orders as may relate to the customs, transportation, handling, safety and labour regulations applicable in each case to the Replacement Vessels, the Contractor and/or any of its delegates in each case to the extent that non-compliance with the foregoing would expose the Authority to the risk of any liability or expose any of the Replacement Vessels to any risk of arrest, detention or sale;
- (c) operate and employ such Replacement Vessels at all times in accordance with Good Industry Practice; and
- (d) without limitation to the foregoing, maintain all such records, logs, manuals, technical data and other materials and documents which are required to be maintained in respect of each of the Replacement Vessels to comply with any applicable Laws or the requirements of the relevant classification society and keep accurate, complete and up to date logs and records of all voyages made by the Replacement Vessels and of all maintenance, repairs, modifications and additions to the Replacement Vessels and, on reasonable advance notice from the Authority, permit the Authority or its representatives at any time to examine and take copies of such logs and records and other records.

### 4 SURVEYS ON DELIVERY

4.1 Without prejudice to paragraph 2 of this Schedule 38 (Transfer Bareboat Charter) above, the Contractor and the Authority agree that each Replacement Vessel is, on the first day of its Charter Period, in the condition such Replacement Vessel is in upon its achievement of the Final Acceptance Milestone ("**Transfer Charter Required Condition**").

4.2 The Contractor shall at its expense conduct a survey of each Replacement Vessel (including all Vessel Equipment related to such vessel) at the end of the Charter Period for such Replacement Vessel to determine that the state and condition of such Replacement Vessel (including all Vessel Equipment related to such vessel) remains in the Transfer Charter Required Condition (the "**Transfer Off Hire Survey**"). The Contractor shall notify the Authority of the date and time at which the Transfer Off Hire Survey is intended to take place. The Transfer Off Hire Survey may be attended by an Authority Representative. Non-attendance of the Authority Representative shall not unduly withhold the completion of the required Transfer Off Hire Survey.

- 4.3 If a Replacement Vessel is not in its Transfer Charter Required Condition at the end of its Charter Period, the Authority and the Contractor shall agree the plan of works necessary to place such Replacement Vessel in its Transfer Charter Required Condition and the Contractor

shall at its own cost and expense have the Replacement Vessel put in the Transfer Charter Required Condition.

## **5 INSPECTION**

- 5.1 The Authority shall have the right at any time to inspect or survey any Replacement Vessel or instruct a duly authorised surveyor to carry out such survey on the Authority's behalf for any reason the Authority and/or his duly authorised surveyor consider necessary provided it does not unduly interfere with the commercial operation of the Replacement Vessel (the costs and fees for such inspection and survey shall be paid by the Authority).

- 5.2 All time used in respect of inspection, survey or repairs shall be for the Contractor's account.

- 5.3 The Contractor shall also permit the Authority to inspect any Replacement Vessel's log books whenever requested and shall whenever required by the Authority furnish them with full information regarding any casualties or other accidents or damage to any Replacement Vessel.

## **6 MAINTENANCE AND OPERATION**

### **6.1**

- (a) **Maintenance and Repairs** - During its respective Charter Period each Replacement Vessel shall be in the full possession and at the absolute disposal for all purposes of the Contractor and under its complete control in every respect, other than where the Contractor has sub-contracted its obligations under this Schedule 38 (Transfer Bareboat Charter) with the Authority's prior written consent.
- (b) **Financial Security** - The Contractor shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division or authority thereof, to enable each Replacement Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of the terms of the charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof.
- (c) The Contractor shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements specified in paragraphs (a) and (b) of this paragraph 6.1 at the Contractor's own expense and the Contractor shall indemnify the Authority from and against all consequences whatsoever (including loss of time) for all failure or inability to do so.

## **6.2 Operation of the Replacement Vessels**

- (a) The Contractor shall (subject to Clause 27 (Fuel and Utilities)) at its own expense and by its own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair each Replacement Vessel during its respective Charter Period and it shall pay all charges and expenses of every kind and nature whatsoever incidental to the use and operation of each Replacement Vessel under this Contract, including annual flag state fees and any foreign general municipality and/or state taxes. The

Master, officers and crew of each Replacement Vessel shall be the servants of the Contractor for all purposes whatsoever.

- (b) The Contractor shall operate the Replacement Vessels in accordance with all applicable MCA regulations, and to the extent applicable, all MoD regulations including without limitation regulation DSA02-DMR.
- (c) The Contractor shall keep the Authority advised of any major repairs of any Replacement Vessel during the Charter Period, as reasonably required.

## **6.3 Appearance and Name of Vessel during the Charter Period**

The Contractor may not change the name or appearance of any Replacement Vessel without the prior written consent of the Authority. Painting and re-painting, instalment and re-instalment, registration and re-registration, if required by the Authority, shall be at the Contractor's expense and time and carried out during a period or periods of scheduled maintenance and in a manner so as not to prejudice or otherwise affect the delivery of the Services.

## **6.4 Changes to the Replacement Vessel**

The Contractor shall make no structural changes in or to any Replacement Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Authority's approval thereof. If the Authority so agrees, the Contractor shall, if the Authority so require, restore any Replacement Vessel to its former condition before the termination of its Charter Period.

## **6.5 Use of the Vessel Equipment**

The Contractor shall have the use of all Vessel Equipment on board each Replacement Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Authority on redelivery in the same good order and condition as when received, fair wear and tear not affecting class and/or flag excepted. The Contractor shall from time to time in respect of each Replacement Vessel during its respective Charter Period replace at its expense and time such items of equipment as shall be so damaged or worn as to be unfit for use. The Contractor shall procure that all repairs to or replacement of any damaged, worn or lost parts or equipment in any Replacement Vessel be effected at its expense and time in such manner (both as regards workmanship and quality of materials) as not to diminish the value of such Replacement Vessel. The Contractor has the right to fit additional equipment at its expense and risk, but the Contractor shall remove such equipment at the end of the Charter Period if requested by the Authority.

## 7 REPAIR AND TOTAL LOSS

7.1 The Contractor shall remain responsible for, and shall effect, repairs and settlement of costs and expenses incurred thereby, in respect of all repairs whether covered or not covered by the Required Insurances and/or not exceeding any possible franchise(s) or deductibles provided for in such insurances.

7.2 All time used for repairs under the provisions of paragraph 7.1 of this Schedule 38 (Transfer Bareboat Charter) and for repairs of latent defects, including any deviation, shall be for the Contractor's account.

7.3 Where a claim is made or proceeds of insurance are received or are receivable under any insurance policy in respect of a single event (or a series of related events) in relation to any of the Replacement Vessels the Contractor shall deliver to the Authority's Authorised Representative as soon as practicable and in any event within twenty (20) days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary to repair, reinstate or replace the relevant asset(s) which is or are the subject of the relevant claim or claims (the **"Reinstatement Works"**). Such plan (the **"Reinstatement Plan"**) shall set out:

- (a) the identity of any entity proposed to effect the Reinstatement Works; and
- (b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the relevant asset(s) shall become fully operational).

7.4 The Authority shall, within ten (10) Business Days after its receipt of the proposed Reinstatement Plan, notify the Contractor's Authorised Representative as to whether the Authority:

- (a) approves or rejects the identity of the person set out in the proposed Reinstatement Plan to be appointed to effect the Reinstatement Works; and
- (b) approves or rejects or approves subject to incorporation of the Authority's comments the terms and timetable in the proposed Reinstatement Plan.

7.5 If the Authority does not approve, or makes comments on, any part of the proposed Reinstatement Plan, it shall set out in the notice given pursuant to paragraph 7.4 of this Schedule 38 (Transfer Bareboat Charter) its reasons or comments, in sufficient detail so as to enable the Contractor to understand the nature and extent of the non-approval or comments and to assess whether the Authority's approval has been unreasonably withheld. The Contractor shall amend and re-submit the proposed Reinstatement Plan to the Authority's Authorised Representative for its reconsideration in accordance with paragraph 7.3 of this Schedule 38 (Transfer Bareboat Charter).

7.6 As soon as the Authority notifies the Contractor that the Authority approved the proposed Reinstatement Plan submitted by the Contractor pursuant to this paragraph 7:

- (a) the Reinstatement Plan shall be adopted; and

- (b) the Contractor shall effect the Reinstatement Works or, as the case may be, procure that the Reinstatement Works are effected by the person identified in the Reinstatement Plan approved by the Authority's Authorised Representative.

7.7 Should any Replacement Vessel become an actual, constructive, compromised or agreed total loss under the Required Insurances, all insurance payments for such loss shall be paid to the Authority who shall distribute the moneys between the Parties according to their respective interests. The Contractor undertakes to notify the Authority of any occurrences in consequence of which any Replacement Vessel is likely to become a total loss as defined in this paragraph

7.7. If any Replacement Vessel is an actual, constructive, compromised or agreed total loss the hiring of it shall terminate on it being so designated. For the purpose of this paragraph 7.7, a Replacement Vessel shall not be deemed to be lost unless she has either 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 adjusted by a competent tribunal that a constructive loss of such Replacement Vessel has occurred.

7.8 The Authority shall upon the request of the Contractor promptly execute such documents as may be required to enable the Contractor to abandon a Replacement Vessel to insurers and claim a constructive total loss.

## **8 REDELIVERY**

8.1 The Contractor shall be responsible for, and shall release and indemnify the Authority on demand from and against, any costs incurred by the Authority:

- (a) in storing each Replacement Vessel (including the costs of employing any watch keepers and engineers) where the Authority (being under no obligation to do so) agrees to accept redelivery of the Replacement Vessel prior to the end of the Charter Period, provided further that such agreement by the Authority shall not relieve the Contractor from performance of its continuing obligations under this Contract;
- (b) in moving a Replacement Vessel (including costs of crewing, insurance, towage and relevant port charges):
  - (i) where redelivery is made but such Replacement Vessel is not delivered to a port as the Authority may direct; or
  - (ii) (in any case where such Replacement Vessel (including any Vessel Equipment) is not redelivered in the Transfer Charter Required Condition) to a shipyard or repair facility reasonably selected by the Authority to effect any necessary work, having regard to the location of such Replacement Vessel immediately prior to redelivery, the type of work needed to be effected and the capabilities of the shipyard; and/or
- (c) in any case where such Replacement Vessel (including all Vessel Equipment related to such vessel) is not redelivered in the Transfer Charter Required Condition, in effecting

any work to such Replacement Vessel and/or carrying out repairs and/or reinstatement to bring such vessel and/or any of its Vessel Equipment into such condition.

8.2 For the avoidance of doubt, the Contractor shall not be considered to have complied with paragraph 8.1 of this Schedule 38 (Transfer Bareboat Charter) unless all amounts payable to the Authority by the Contractor under paragraph 8.1 of this Schedule 38 (Transfer Bareboat Charter) have been paid in full on or prior to date of redelivery of any or all of the Replacement Vessels under this Contract.

## **9 NOTICE OF OWNERSHIP**

9.1 The Contractor further agrees to fasten to each Replacement Vessel in a conspicuous place at such Replacement Vessel's bridge and to keep so fastened during the Charter Period a notice reading as follows:

*"This vessel is the property of the Ministry of Defence. It is under bareboat charter to [\*\*] and neither [\*\*] nor the Master have any right, power or authority to create, incur or permit to be imposed on this vessel any mortgage, charge or other encumbrance whatsoever."*

## **10 INDEMNITY**

10.1 Without limitation to its other liabilities under, or identified in, this Contract, the Contractor shall indemnify the Authority against any loss, damage or expense incurred by the Authority arising out of or in relation to the operation of each Replacement Vessel by the Contractor, and against any Maritime Encumbrance of whatsoever nature arising out of an event occurring during its respective Charter Period.

10.2 If any Replacement Vessel is arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Contractor, the Contractor shall at their own expense take all reasonable steps to secure that within a reasonable time any such Replacement Vessel is released, including the provision of bail.

## **11 SALVAGE**

All salvage and towage performed by any Replacement Vessel shall be in accordance with Clause 60 (Salvage) of the Contract.

## **12 WRECK REMOVAL**

In the event of any Replacement Vessel becoming a wreck or obstruction to navigation the Contractor shall indemnify the Authority against any sums whatsoever which the Authority shall become liable to pay and shall pay in consequence of such Replacement Vessel becoming a wreck or obstruction to navigation.

## **13 GENERAL AVERAGE**

The Authority shall not contribute to general average.

#### **14 REQUISITION/ACQUISITION/DISPOSAL/WAR**

For the avoidance of doubt, the provisions of Clause 56 (Measures in a Crisis) of the Contract shall apply to any Replacement Vessel that is subject to this Schedule 38 (Transfer Bareboat Charter).

#### **15 REPOSSESSION**

15.1 In the event of the termination of the charter of any Replacement Vessel the Authority shall have the right to repossess such Replacement Vessel from the Contractor (save where such Replacement Vessel has been subject to an actual total loss) at her current or next port of call, or at a port or place convenient to them without hindrance or interference by the Contractor, courts or local authorities. Pending physical repossession of a Replacement Vessel, the Contractor shall hold such Replacement Vessel as gratuitous bailee only to the Authority. The Authority shall arrange for an authorised representative to board such Replacement Vessel as soon as reasonably practicable following the termination of this charter. Such Replacement Vessel shall be deemed to be repossessed by the Authority from the Contractor upon the boarding of such Replacement Vessel by the Authority's representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Master, officers and crew shall be the sole responsibility of the Contractor.



