



500 Barnes Road, Chesapeake, VA 23324

TERMS AND CONDITIONS FOR SHORT-TERM DOCKAGE

These Terms and Conditions for Short-Term Dockage are incorporated into and made a part of the **SHORT-TERM DOCKAGE Specifications** ("Specifications") as may from time to time be agreed to by the parties for different periods. These Terms and Conditions for Short-Term Dockage and the Specifications shall collectively be referenced and identified herein as the "Dockage Agreement".

**WITNESSETH**

**WITNESS:** The vessel subject to the Dockage Agreement is described and identified in the Specifications, hereinafter referred to as the "Vessel." Intracoastal and Owner agree Owner shall be permitted to dock the Vessel at Intracoastal's facility in accordance with the Specifications as said Specifications may from time-to-time be modified by the parties and on the terms and conditions further set forth herein below.

**NOW, THEREFORE:** In consideration of the premises and of the mutual promises and undertakings set forth in this Dockage Agreement and of the Agreed Rates provided for in the Specifications, Intracoastal agrees to allow Owner to dock the Vessel at Owner's facility upon the following terms, provisions and conditions:

1. **TERM:** The Term, and any renewals, are set forth in the Specifications.

**2. DOCKAGE FEE:**

2.1 – All sums due under this Dockage Agreement by way of Dockage Fee, if unpaid when due, shall bear interest from the date due under this Dockage Agreement until paid in full at an annual rate of twelve (12) percent. All sums due under this Dockage Agreement other than by way of Dockage Fee, if unpaid when due, shall bear interest from the date upon which Intracoastal sends written notice to Owner, setting forth the nature and amount of such unpaid sums, until such time as the same shall be fully paid at an annual rate of twelve (12) percent.

2.2 – Owner shall tender all payments due hereunder to Intracoastal for receipt at the following address or such other place as may be designated: 500 Barnes Road, Chesapeake, VA 23324. Payments of all fees and charges are due on, and must be received no later than, the fifth (5<sup>th</sup>) day of each month, with or without a billing statement. Owner further agrees to additionally pay fees, excise or other taxes that may be imposed or levied on or about the Vessel by any governmental agency, and to maintain such fees and taxes current. Non-payment of Dockage Fees by the fifth (5<sup>th</sup>) day of the month shall constitute a material breach of this Agreement, in which event Intracoastal may immediately terminate this Agreement and pursue all remedies available in admiralty, at law or in equity.

**3. WARRANTIES: OWNER PROVIDES NO WARRANTIES UNDER THIS SHORT-TERM DOCKAGE AGREEMENT.**

Intracoastal does not provide any warranty of any kind to Owner, its vessel, its agents, employees, vendors, contracts, or any other person present on Intracoastal's premise at the request or invitation Owner or its agents, employees, representatives, contractors, vendors or third parties. Without limiting the foregoing, Owner hereby waives and rejects any claim that Intracoastal has breached any warranty of any kind, including the warranty of workmanlike service, warranty of safe berth, warranty of fitness for a particular purpose, or warranty of safety.

**4. ENVIRONMENTAL MATTERS:**

4.1- Owner shall prohibit and prevent anyone from throwing, discharging or depositing from the Vessel any refuse matter, oil, spirits, inflammable liquid, oily bilge water or other contaminants or unlawful substance into the water. In the event of a discharge of oil or other contaminant, the Owner is required to immediately notify Intracoastal, the U.S. Coast Guard and all other agencies, as required by law. Owner shall also immediately take all necessary actions to

remove spilled substances from the water and from all pilings, vessels and other surfaces impacted by the spill. The Owner shall if necessary retain the services of a professional pollution response company at Owner's sole expense.

4-2 - Open containers of paints or other maintenance supplies are prohibited anywhere except on board the Vessel, and then only when in use. Liquids must be stored only in sealed containers aboard the Vessel or off Intracoastal's premises.

4-3 – Owner shall maintain a proper fire watch, consistent with applicable regulations and prudent maritime practice, in the event welding or other hot work is to be performed on or adjacent to the Vessel.

## **5. SECURING THE VESSEL:**

5.1 - Owner shall at all times be responsible for safety and securing the Vessel. Intracoastal does not provide line handling services and will not tend lines at any time. If Intracoastal determines, in its sole discretion, that the Vessel should be moved, lines added or adjusted, or any other measures must be taken to prevent injury to personnel or damage to Intracoastal's facility or Vessels moored, docked, or otherwise present at the facility and the Vessel is unmanned and the Owner is unable or unwilling to respond in a timely manner, Intracoastal may, but is not required, and in its sole discretion, take whatever steps it believes are necessary to prevent such injury or damage. Owner shall reimburse Intracoastal for any such efforts, and Owner shall indemnify and hold Intracoastal harmless from any and all claims or liabilities arising from or related to such efforts by Intracoastal or its employees.

5.2 – Intracoastal shall have no responsibility or obligation to take any action in advance of or during a storm or inclement weather of any kind, or unusual or extreme tide conditions.

## **6. INTRACOASTAL'S FACILITY:**

6.1 – Owner has, or has had the opportunity to, thoroughly investigate all aspects of Intracoastal's facility, including without limitation, parking areas, docks, walkways, and the berth to be used by the Vessel, and Owner has independently determined the facility is satisfactory for Owner's purposes. Intracoastal's facility, including berthing areas and adjacent waters, and all other areas, are provided AS IS WHERE IS, without representations or warranties of any kind. Intracoastal DOES NOT WARRANT THE BERTH OR ADJACENT WATERS TO BE SAFE FOR THE VESSEL.

6.2 – Owner will indemnify and hold Intracoastal harmless from any and all claims or liabilities for personal injury, death, and property damage, including any damage to the Vessel, suffered by Owner's agents, employees, agents, representatives, vessel crew, vendors, contractors, subcontractors or other persons arising from their presence on Intracoastal's facility at Owner's request, invitation or direction, and will reimburse Intracoastal for any and costs, including attorneys' fees and liability settlements or judgments, arising from same.

6.3 – In the normal course, a security gate for access to Intracoastal's facility will be closed and locked outside normal business hours. Security code access will be provided to Owner to allow access beyond normal business hours. However, Owner agrees Intracoastal shall have no liability to Owner, its agents, employees, representatives, vessel crew, or the Vessel arising from or related to failure to close and lock the gate or breach of the gate or fence surrounding the facility.

6.4 – Owner's contractors, subcontractors, vendors or any other person on the facility at Owner's request, direction or invitation shall at all times be supervised by Owner's employees while on Intracoastal's facility.

## **7. INSURANCE:**

7.1- Owner shall, at Owner's sole expense, obtain and keep in full force and effect throughout the life of this Dockage Agreement, in good and solvent companies, the following insurance coverages:

- a) Hull/Machinery coverage ensuring the Vessel for the full market value of the Vessel with coverage including wreck removal.
- b) Protection & Indemnity insurance with a \$5,000,000 minimum limit of liability to include Collision & Towers liability and covering injuries to or of death of masters, mates, crews and maritime employees; the policy will name Intracoastal as an additional insured with a waiver of subrogation in Intracoastal's favor.
- c) Vessel Pollution Liability coverage with a \$1,000,000 minimum limit of liability.
- d) Workers Compensation and Employers Liability coverage for claims subject to the Virginia Workers Compensation Act and claims (including occupational disease) or subject to the Longshore &

- Harbor workers (USL&H) Act. Employers Liability limit insurance with a \$1,000,000 limit of liability; the policy will provide a waiver of subrogation in Intracoastal's favor.
- e) General Liability coverage with a \$1,000,000 minimum limit of liability per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage naming Intracoastal as an additional insured with a waiver of subrogation in Intracoastal's favor; and
  - f) Automobile Liability (including all owned, leased, hired and non-owned) with a combined single limit for bodily injury and property damage of at least \$1,000,000. Policy will name Intracoastal as an additional insured with a waiver of subrogation in Intracoastal's favor.

Owner agrees to make available to Intracoastal copies of all cover notes, binders, and insurance policies and certificates thereof evidencing the insurance requested above upon request from Intracoastal. The protection and indemnity insurance or any other policy providing coverage for oil pollution shall be maintained with limits for liability not less than required by US Law. It is specifically understood and agreed the insurance coverages to be procured by Owner in accordance with the terms and provisions of this Section may contain provision for a deductible. Notwithstanding the stated minimum limits of coverage above, nor the existence of any such provisions for deductible, it is specifically understood and agreed by and between the parties that in no event shall the rights of others designated by Owner as named insureds to indemnity, defense and/or coverages as provided be diminished or impaired in any degree whatsoever.

7.2 - Owner will look solely to its insurers, but not to Intracoastal, in the event of any loss. Should any insurance coverage required by these Terms and Conditions be cancelled, revoked, denied, or fail for any reason, Owner shall be the insurer of last resort.

7.3 - Should Intracoastal satisfy and discharge or become liable to satisfy and discharge, any liability or claim in respect of which protection and indemnity, USL&H, or other form of liability insurance shall afford coverage, Intracoastal shall be entitled to receive directly from the insurer such sum as shall be or become payable by virtue of such insurance coverage, and Owner shall deliver to such insurer such order or other document as may be necessary to such direct payment.

**8. LIABILITY AND INDEMNITY:** Owner hereby releases Intracoastal, its officers, directors, agents, employees, affiliated parent and subsidiary companies, and vessels (collectively, "Intracoastal Indemnitees") from any liability for, and Owner will defend, indemnify and hold Intracoastal Indemnitees harmless from and against all suits, actions, claims, liabilities and demands *in personam* or *in rem*, and all loss and expense, including attorney's fees, based on bodily injury or death or property damage, whenever or howsoever occurring, suffered or incurred by Owner, its affiliates, its personnel, contractors, subcontractors, vendors and any other person on Intracoastal's facility at Owners request, direction or invitation, or the Vessel, regardless of how bodily injury or death or property damage is caused, and regardless of whether caused in whole or in part, either directly or indirectly, by the sole or concurrent negligence or fault or wrongful acts, or failures to act, on the part of Intracoastal indemnities or any other vessel on or adjacent to Intracoastal's facility. Owner agrees it has procured sufficient insurance coverage to protect itself from all such losses, and it will look solely to its own insurers for indemnity, coverage, or reimbursement. Owner further agrees to obtain a waiver of subrogation against Intracoastal Indemnitees in the event of such loss or expense. In any event, should there be a failure or denial of insurance coverage, or a finding of gross negligence or wanton and willful conduct, or for any other reason, Intracoastal Indemnitees shall have no liability in excess of \$100,000. This Section 8 shall supersede any other indemnity language herein to the extent it conflicts with this Section.

**9. LIMITATION ACT:** Notwithstanding any provisions in this Short-Term Dockage Agreement to the contrary, Owner agrees it will not assert the benefits of the Limitation of Liability Act, 46 U.S.C. 30501 *et seq.* to avoid or limit any obligations it would otherwise have to Intracoastal.

**10. INTRACOSTAL'S REMEDIES:**

10.1 - If Owner does not timely pay any portion of the Dockage Fee on or before the due date, or if within ten (10) days after written notice to Owner demanding that Owner effect performance of any material obligation (other than the obligation to pay the dockage fee) under this Dockage Agreement, or if Owner fails to fully do and perform any other material obligation then Intracoastal, in addition to any and all other rights and remedies in equity, admiralty, or at law which it might have, shall have the right at its option to terminate this Dockage Agreement. In such case, and without in any manner or to any degree whatsoever limiting, diminishing or otherwise affecting its rights or remedies otherwise

provided for by law or elsewhere in this Dockage Agreement, Intracoastal shall have the right to demand and at once recover from Owner, and Owner hereby agrees to pay to Intracoastal on receipt of such demand, all reasonable costs and expenses incurred by Intracoastal, including attorneys' fees.

10.2 - In addition to all other remedies Intracoastal shall have a maritime lien upon all machinery, equipment, tackle, tools, accessories and other property placed, or carried in or upon the Vessel to secure full payment and satisfaction of all and any sums due or claimed by Intracoastal, from Owner pursuant to the terms and provisions of this Dockage Agreement or any breach or default by Owner.

**11. DAMAGES:** Intracoastal shall not in any event be responsible for special, consequential, incidental, exemplary or punitive damages, including, without limitation, extra expense, loss of profits, loss of use, whether resulting from negligence, breach of this Dockage Agreement, or otherwise by Intracoastal, its agents, employees or representatives.

**12. CHOICE OF LAW:** This Dockage Agreement shall be governed by and construed in accordance with the admiralty and maritime law of the United States or, where the maritime law is silent, the law of the Commonwealth of Virginia.

**13. ARBITRATION:** Should Owner assert any claim against Intracoastal, including its owners, employees, agents or representatives, arising out of this Agreement or any matter implicated by this Agreement or dockage of the Vessel, including any question of arbitrability of any issue, the matter in dispute shall be referred to three persons, one to be appointed by each of the parties hereto, and the third by the two so chosen who shall be the chairman of the panel of arbitrators; their decision or that of any two of them shall be final and for the purpose of enforcing any award, this Agreement may be made a rule of a court of competent jurisdiction. The proceedings shall be conducted in accordance with the Rules of the Society of Maritime Arbitrators, Inc. (SMA). The chairman shall be a member of the SMA. Any proceedings shall take place in Norfolk, Virginia unless the parties otherwise agree. The party whom the arbitrators declare to be the substantially prevailing party shall recover its costs and attorneys' fees from the opposing party, along with the fees and expenses of the arbitrators, in an amount to be determined by the arbitrators as being fair and reasonable. Should the sum claimed by Owner not exceed U.S. \$100,000.00 (exclusive of interest, costs and legal fees), the dispute is to be governed by the 'Shortened Arbitration Procedure' of the SMA, as defined in the Society's current Rules for such procedure, and the arbitrator under the shortened rules shall be selected by the SMA.

**14. NOTICES/NOTIFICATION:** Owner shall immediately notify Intracoastal if the Vessel is involved in a pollution incident, grounding, mechanical failure affecting safety or other incident causing or likely to cause damage to any part of Intracoastal's facility or any vessel docked, moored, or otherwise present at the facility, including any collision or allision. Owner shall remain liable to make all necessary notifications, including notifications to the Coast Guard and other government agencies, and Owner shall immediately and without delay provide notice to Intracoastal.

**15. TOTAL AGREEMENT; MODIFICATIONS; SEVERABILITY; PARTIES; CAPTIONS; COUNTERPARTS:**

15.1 - This instrument, in conjunction with the Specifications, constitutes the entire agreement of the parties with respect to all matters and things mentioned and supersedes all prior Dockage Agreement agreements for the Vessel.

15.2 - It is expressly acknowledged and agreed by and between the parties that neither party has, nor is now, relying upon any collateral, prior or contemporaneous agreement, written or oral, assurance, representation or warranty, of any kind or nature as to or respecting the condition or capabilities of the Vessel and the other matters and things, rights or responsibilities fixed and described.

15.3 - No modification, waiver or discharge or any term or provision of this Dockage Agreement shall be implied in law, or equity, nor shall any alteration or modification of any term or provision be effective for any purpose, unless in writing signed by the party charged.

15.4 - If any term of this Dockage Agreement is rendered or declared invalid or unenforceable by reason of any existing legislation or by decree or judgment of any court which shall have or acquire jurisdiction over the parties or jurisdiction In Rem of the Vessel, the invalidation or unenforceability of such term of this Dockage Agreement shall not invalidate the remaining terms.

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6.3 – In the normal course, a security gate for access to Intracoastal's facility will be closed and locked outside normal business hours. Security code access will be provided to Owner to allow access beyond normal business hours. However, Owner agrees Intracoastal shall have no liability to Owner, its agents, employees, representatives, vessel crew, or the Vessel arising from or related to failure to close and lock the gate or breach of the gate or fence surrounding the facility.

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- b) Protection & Indemnity insurance with a \$5,000,000 minimum limit of liability to include Collision & Towers liability and covering injuries to or of death of masters, mates, crews and maritime employees; the policy will name Intracoastal as an additional insured with a waiver of subrogation in Intracoastal's favor.
- c) Vessel Pollution Liability coverage with a \$1,000,000 minimum limit of liability.
- d) Workers Compensation and Employers Liability coverage for claims subject to the Virginia Workers Compensation Act and claims (including occupational disease) or subject to the Longshore &

- Harbor workers (USL&H) Act. Employers Liability limit insurance with a \$1,000,000 limit of liability; the policy will provide a waiver of subrogation in Intracoastal's favor.
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  - f) Automobile Liability (including all owned, leased, hired and non-owned) with a combined single limit for bodily injury and property damage of at least \$1,000,000. Policy will name Intracoastal as an additional insured with a waiver of subrogation in Intracoastal's favor.

Owner agrees to make available to Intracoastal copies of all cover notes, binders, and insurance policies and certificates thereof evidencing the insurance requested above upon request from Intracoastal. The protection and indemnity insurance or any other policy providing coverage for oil pollution shall be maintained with limits for liability not less than required by US Law. It is specifically understood and agreed the insurance coverages to be procured by Owner in accordance with the terms and provisions of this Section may contain provision for a deductible. Notwithstanding the stated minimum limits of coverage above, nor the existence of any such provisions for deductible, it is specifically understood and agreed by and between the parties that in no event shall the rights of others designated by Owner as named insureds to indemnity, defense and/or coverages as provided be diminished or impaired in any degree whatsoever.

7.2 - Owner will look solely to its insurers, but not to Intracoastal, in the event of any loss. Should any insurance coverage required by these Terms and Conditions be cancelled, revoked, denied, or fail for any reason, Owner shall be the insurer of last resort.

7.3 - Should Intracoastal satisfy and discharge or become liable to satisfy and discharge, any liability or claim in respect of which protection and indemnity, USL&H, or other form of liability insurance shall afford coverage, Intracoastal shall be entitled to receive directly from the insurer such sum as shall be or become payable by virtue of such insurance coverage, and Owner shall deliver to such insurer such order or other document as may be necessary to such direct payment.

**8. LIABILITY AND INDEMNITY:** Owner hereby releases Intracoastal, its officers, directors, agents, employees, affiliated parent and subsidiary companies, and vessels (collectively, "Intracoastal Indemnitees") from any liability for, and Owner will defend, indemnify and hold Intracoastal Indemnitees harmless from and against all suits, actions, claims, liabilities and demands *in personam* or *in rem*, and all loss and expense, including attorney's fees, based on bodily injury or death or property damage, whenever or howsoever occurring, suffered or incurred by Owner, its affiliates, its personnel, contractors, subcontractors, vendors and any other person on Intracoastal's facility at Owners request, direction or invitation, or the Vessel, regardless of how bodily injury or death or property damage is caused, and regardless of whether caused in whole or in part, either directly or indirectly, by the sole or concurrent negligence or fault or wrongful acts, or failures to act, on the part of Intracoastal indemnities or any other vessel on or adjacent to Intracoastal's facility. Owner agrees it has procured sufficient insurance coverage to protect itself from all such losses, and it will look solely to its own insurers for indemnity, coverage, or reimbursement. Owner further agrees to obtain a waiver of subrogation against Intracoastal Indemnitees in the event of such loss or expense. In any event, should there be a failure or denial of insurance coverage, or a finding of gross negligence or wanton and willful conduct, or for any other reason, Intracoastal Indemnitees shall have no liability in excess of \$100,000. This Section 8 shall supersede any other indemnity language herein to the extent it conflicts with this Section.

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**13. ARBITRATION:** Should Owner assert any claim against Intracoastal, including its owners, employees, agents or representatives, arising out of this Agreement or any matter implicated by this Agreement or dockage of the Vessel, including any question of arbitrability of any issue, the matter in dispute shall be referred to three persons, one to be appointed by each of the parties hereto, and the third by the two so chosen who shall be the chairman of the panel of arbitrators; their decision or that of any two of them shall be final and for the purpose of enforcing any award, this Agreement may be made a rule of a court of competent jurisdiction. The proceedings shall be conducted in accordance with the Rules of the Society of Maritime Arbitrators, Inc. (SMA). The chairman shall be a member of the SMA. Any proceedings shall take place in Norfolk, Virginia unless the parties otherwise agree. The party whom the arbitrators declare to be the substantially prevailing party shall recover its costs and attorneys' fees from the opposing party, along with the fees and expenses of the arbitrators, in an amount to be determined by the arbitrators as being fair and reasonable. Should the sum claimed by Owner not exceed U.S. \$100,000.00 (exclusive of interest, costs and legal fees), the dispute is to be governed by the 'Shortened Arbitration Procedure' of the SMA, as defined in the Society's current Rules for such procedure, and the arbitrator under the shortened rules shall be selected by the SMA.

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**15. TOTAL AGREEMENT; MODIFICATIONS; SEVERABILITY; PARTIES; CAPTIONS; COUNTERPARTS:**

15.1 - This instrument, in conjunction with the Specifications, constitutes the entire agreement of the parties with respect to all matters and things mentioned and supersedes all prior Dockage Agreement agreements for the Vessel.

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15.3 - No modification, waiver or discharge or any term or provision of this Dockage Agreement shall be implied in law, or equity, nor shall any alteration or modification of any term or provision be effective for any purpose, unless in writing signed by the party charged.

15.4 - If any term of this Dockage Agreement is rendered or declared invalid or unenforceable by reason of any existing legislation or by decree or judgment of any court which shall have or acquire jurisdiction over the parties or jurisdiction In Rem of the Vessel, the invalidation or unenforceability of such term of this Dockage Agreement shall not invalidate the remaining terms.

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