

CREWMAN A (COST PLUS FEE) 2009 – Explanatory Notes

The following table sets out a comparison between the text of CREWMAN A (COST PLUS FEE) 2009 and CREWMAN A (COST PLUS FEE) from 1999. The clauses of each agreement are laid out side by side to indicate where provisions from CREWMAN A have been moved as part of the re-structuring of the agreement in CREWMAN A 2009. Notes accompany each clause explaining the reasoning behind any amendments and additions that appear in CREWMAN A 2009.

Part I

A comparison of the Part I box layout of CREWMAN A is not included as the format of Part I remains largely unchanged from the previous edition of CREWMAN A. 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 CREWMAN 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 CREWMAN A 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 CREWMAN A 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 CREWMAN A 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.

CREWMAN A (COST PLUS FEE) 2009	CREWMAN A – COST PLUS FEE	NOTES
SECTION 1 – Basis of the Agreement		
<p>1. Definitions</p> <p>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-clause 7(b)).</p> <p>“Connected Person” means any person connected with the provision and the performance of the Crew Management Services.</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 Clause 5 (Crew Insurances) and Clause 8 (Insurance Policies) and Box 6).</p>	<p>1. Definitions</p> <p>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>“Crew 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” attached hereto.</p> <p>“Crew” means the Master, officers and ratings of the numbers, rank and nationality specified in Annex “B” attached hereto.</p> <p>“Connected Person” means any person connected with the provision and the performance of the Crew Management Services.</p> <p>“Crew Management Services” means the services agreed to be carried out by the Crew Managers in accordance with sub-clause 3.1 and, where indicated affirmatively in Box 6, sub-clause 3.2.</p> <p>“Severance Costs” means the costs which the Crew Managers are legally obliged to pay to the Crew as a result of the early termination of a fixed term employment contract for service on the Vessel. “Crew Support Costs” means all expenses of a general nature which are not</p>	<p>Comment</p> <p>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 CREWMAN A 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 crew 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>“Crew Managers” means the party identified in Box 4.</p> <p>“Crew Management Services” means the services specified in Clause 4 (Crew Management) and all other functions performed by the Crew Managers under the terms of this Agreement.</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 Crew Managers and which are incurred by the Crew Managers for the purpose of providing an efficient and economic Crew 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</p>	<p>particularly referable to any individual vessel for the time being managed by the Crew Managers and which are incurred by the Crew Managers for the purpose of providing an efficient and economic Crew 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>“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. “Company” means the Owner of the Vessel or any other organisation or person who has assumed the responsibility for the operation of the Vessel from the Owner and who, on assuming such responsibility, has agreed to take over all duties and responsibilities imposed 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 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-clause 7(b).</p> <p>The added definition of the ISPS Code is consistent with the existing definition of the ISM Code in CREWMAN A, the 1999 edition. 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.</p> <p>The definition of “Crew Management Services” has been amended to include all functions performed by the crew managers under the agreement. This has been done because the previous definition limited the services only to those services agreed to under Clause 4 (Crew Management) and did not take into account other services, such as general administration, provided under the standard</p>

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<p>substitution therefor.</p> <p>“Owners” means the party identified in Box 3.</p> <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>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</p> <p>With effect from the date stated in Box 2 for the commencement of the Crew Management Services and continuing unless and until terminated as provided herein, the Owners hereby appoint the Crew Managers and the Crew Managers hereby agree to act as the crew managers of the Vessel in respect of the Crew Management Services.</p>	<p>2. Appointment of Managers</p> <p>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 Crew Managers and the Crew Managers hereby agree to act as the crew managers of the Vessel.</p>	<p>Comment</p> <p>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 crew 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 crew 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</p>

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<p>3. Authority of the Crew Managers Subject to the terms and conditions herein provided, during the period of this Agreement, the Crew Managers shall carry out the Crew Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Crew 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 Crew Management Services in accordance with sound crew 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 Crew Managers shall carry out Crew Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Crew 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 crew management practice.</p>	<p>can insert an agreed number of days prior to the “date of delivery”.</p>
		<p>Comment The preamble to the old Clause 3 has been made a clause in its own right and renamed “Authority of the Crew 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 CREWMAN A 2009 that it is an agency agreement with the Crew Managers carrying out the functions specified in the agreement as agents for and on behalf of the owners.</p> <p>In contrast to the approach taken in CREWMAN B 2009 no express reference is made to the employer of the crew in CREWMAN A 2009. While the Subcommittee felt that it was essential under the lump sum version to maintain a clear statement identifying the crew managers as the employers of the crew because of the “principal” basis of the agreement such restrictions were considered of less importance in the agency version. Thus, CREWMAN A 2009 is by default an agency agreement but it has been drafted to provide the flexibility for parties to agree on the identity of the employer of the crew should local or specific laws, regulations or commercial circumstances dictate such a change.</p> <p>Should the Crew Managers wish to act as principal (and thus the crew’s employer) in providing crew –</p>

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		<p>they are recommended to use CREWMAN B (Lump Sum) 2009.</p> <p>The provisions of the second sentence of Clause 3 provide the Crew Managers with a right to take such action or actions as they may in their absolute discretion consider necessary from time to time to enable them to perform the agreed Crew Management Services, such actions to be in compliance with relevant laws and regulations. The wording of the former sentence has been amended for greater clarity to refer to the performance of the “Crew Management Services” rather than the “Agreement”. Similarly, additional wording has been added to emphasise that Crew Managers must work within the parameters of applicable laws and regulations.</p>

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SECTION 2 – Services		
<p>4. Crew Management The Crew Managers shall provide suitably qualified Crew who shall comply with the requirements of STCW 95. The provision of the Crew Management Services includes, but is not limited to the following services:</p> <p>(a) selecting, engaging and providing for the administration of the Crew, including, as applicable, payroll arrangements, pension arrangements, tax, social security contributions and other mandatory dues related to their employment payable in each Crew member's country of domicile;</p> <p>(b) 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>(c) 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</p>	<p>3.1 Crew Management The Crew 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 Vessel's Crew, including payroll arrangements, pension administration, Crew's tax, social security contributions and other dues payable in the seafarer's country of domicile;</p> <p>(ii) ensuring that the applicable requirements of the law of the flag of the Vessel stated in Box 7 are satisfied in respect of manning levels, rank, qualification and certification of the Crew and employment regulations including disciplinary 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</p>	<p>Comment The crew management services section of CREWMAN A 2009 has undergone a number of changes to refine and clarify the text.</p> <p>The wording of sub-clause 4(a) 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 4(b) the word "disciplinary" 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> <p>One of the areas in which the previous edition of CREWMAN A 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 4(c) introduces an option for the parties to agree a higher medical standard than that required by the flag state.</p>

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<p>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>(d) 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>(e) ensuring that the Crew, before joining the Vessel, are given proper familiarisation with their duties in relation to the ISM Code;</p> <p>(f) instructing the Crew to obey all reasonable orders of the Owners and/or the Company, including, but not limited to orders in connection with safety and navigation, avoidance of pollution and protection of the environment;</p> <p>(g) ensuring that no Connected Person shall proceed to sea on board the Vessel without the prior consent of the Owners and/or the Company (such consent not to be unreasonably withheld);</p> <p>(h) arranging transportation of the Crew, including repatriation;</p> <p>(i) training of the Crew;</p> <p>(j) conducting union negotiations; and</p>	<p>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) instructing the Crew to obey all reasonable orders of the Owners and/or the Company, including, but not limited to orders in connection with safety and navigation, avoidance of pollution and protection of the environment;</p> <p>(vi) ensuring that no Connected Person shall proceed to sea on board the Vessel without the prior consent of the Owners (such consent not to be unreasonably withheld);</p> <p>(vii) arranging transportation of the Crew, including repatriation;</p> <p>(viii) training the Crew and supervising their efficiency;</p> <p>(ix) conducting union negotiations; and</p> <p>(x) operating the Owners' drug and alcohol policy unless otherwise agreed.</p> <p>3.2 Accounting Services <i>(Only applicable if agreed according to Box 6)</i> The Crew 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>On the issue of working language on board the vessel, sub-clause 3.1(iv) (of CREWMAN A, the 1999 edition) 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 the earlier edition of CREWMAN A 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(viii) the reference to “supervising their efficiency” in respect of the crew has been deleted. This is because, strictly speaking, the crew 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> <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 4(k)) now takes account of drug and alcohol testing measures that may require the crew to be tested by the Crew Managers prior to joining the vessel.</p>

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<p>(k) in the event that the Company's drug and alcohol policy requires measures to be taken prior to the Crew joining the Vessel, implementing such measures.</p> <p>5. Crew Insurances <i>(Only applicable if agreed according to Box 6)</i> The Crew Managers shall throughout the period of this Agreement provide the following services:</p> <p>(a) 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 on board the Vessel may be separately agreed by the Owners and the Crew Managers (see Box 6);</p> <p>(b) ensuring that the Owners are aware of the terms, conditions, exceptions and limits of liability of the insurances in Sub-clause 5(a);</p> <p>(c) ensuring that all premiums or calls in respect of the insurances in Sub-clause 5(a) are paid by their due date;</p> <p>(d) if obtainable at no additional cost, ensuring that insurances in Sub-clause 5(a) 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</p>	<p>4. Crew Insurance Arrangements Subject to the terms and conditions herein provided, the Owners shall, unless otherwise agreed:</p> <p>4.1 insure the Crew and any Connected Persons proceeding to sea on board for crew risks, which shall include but not be limited to death, sickness, repatriation, injury, shipwreck unemployment indemnity and loss of personal effects, with a first class insurance company, underwriter or protection and indemnity association ('the Crew Insurances');</p> <p>4.2 ensure that all premiums or calls in respect of the Crew Insurances are paid promptly by their due date;</p> <p>4.3 ensure that Crew Insurances shall name the Crew Managers as co-assured (unless advised by the Crew Managers to the contrary); and</p> <p>4.4 provide evidence that they have complied with their obligations under sub-clauses 4.1, 4.2 and 4.3 within a reasonable time following the commencement of this Agreement and after each renewal date or payment date of the Crew Insurances, to the reasonable satisfaction of the Crew Managers.</p>	<p>Comment Clause 5 incorporates optional crew insurance provisions. It applies only if agreed in Box 6 of Part I.</p> <p>Sub-clause 5(b) requires the crew managers to make sure that the owners are aware of the terms, conditions, exceptions and limitations of liability of the crew insurances.</p> <p>This is of particular relevance where the owners rely on the P&I type crew liability cover provided by the crew managers. The crew managers' P&I type crew liability cover will normally be restricted in scope and limits of liability (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).</p> <p>Therefore it is important that when the owners procure insurance under the provisions of Clause 8 (Insurance Policies) but have not agreed crew insurance services under Clause 5, they are aware of the full extent of the crew managers' crew insurances. (This point is emphasised with a note in italic type in sub-clause 8(a)(ii)).</p>

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<p>premiums or calls arising in connection with such insurances.</p> <p>(e) providing written evidence, to the reasonable satisfaction of the Owners, of the Crew Managers' compliance with their obligations under Sub-clauses 5(b), and 5(c) 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(a).</p>		

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SECTION 3 – Obligations		
<p>6. Crew Managers' Obligations</p> <p>The Crew Managers undertake to use their best endeavours to provide the Crew Management Services as agents for and on behalf of the Owners in accordance with sound crew 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 crew management responsibilities under this Agreement, the Crew 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 Crew Managers shall be entitled to allocate available manpower in such manner as in the prevailing circumstances the Crew Managers in their absolute discretion consider to be fair and reasonable.</p>	<p>5. Crew Managers' Obligations</p> <p>The Crew Managers undertake to use their best endeavours to provide the agreed Crew Management Services specified in this Agreement to the Owners in accordance with sound crew 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 Crew 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 Crew Managers shall be entitled to allocate available manpower in such manner as in the prevailing circumstances the Crew Managers in their absolute discretion consider to be fair and reasonable.</p>	<p>Comment</p> <p>Apart from tidying up the language used, Clause 6 (Crew Manager's Obligations) remains unchanged from that found in the previous edition of CREWMAN A.</p> <p>This Clause defines the crew managers' obligations in carrying out the agreed services as crew managers. The crew managers are obliged to use "their best endeavours" to provide crew management services to the owners in accordance with "sound crew 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 crew 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 crew management practice" does not depend on what a particular crew manager may regard as sound. In the event of a dispute, acceptable standards of best crew management practice may well be heard by the testimony of each party's industry expert.</p>

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<p>7. Owners' Obligations The Owners shall:</p> <p>(a) pay all sums due to the Crew Managers punctually in accordance with the terms of this Agreement. In the event of payment after the due date of any outstanding sums the Crew Manager shall be entitled to charge interest at the rate stated in Box 8.</p> <p>(b) procure that the requirements of the law of the Vessel's Flag State are satisfied and that they, or such other entity as may be appointed by them, are identified to the Crew Managers as the Company as required to comply with the ISM and ISPS Codes. If the Company changes at any time during this Agreement, the Owners shall notify the Crew Managers in a timely manner of the name and contact details of the new organization;</p>	<p>6. Owners' Obligations The Owners shall:</p> <p>6.1 pay all sums due to the Crew Managers punctually in accordance with the terms of this Agreement;</p> <p>6.2 procure that the requirements of the law of the Vessel's flag State are satisfied and that they, or such other entity as may be appointed by them, are identified to the Crew Managers as the Company;</p> <p>6.3 inform the Crew Managers prior to ordering the Vessel to any area excluded by war risks underwriters by virtue of the current London market war risks trading warranties and pay whatever additional costs may properly be incurred by the Crew Managers as a consequence of such orders including, if necessary, the costs of replacing the Crew. Any delays resulting from the negotiation with or replacement of the Crew as a result of the</p>	<p>Crew managers may simultaneously act as crew managers for other vessels on behalf of other owners. The second paragraph of Clause 6 defines the overall responsibility of the crew managers in relation to all vessels entrusted to their management. This important provision permits crew managers who are acting on behalf of a number of different owners to allocate manpower in a fair and reasonable manner. In the absence of such provisions the crew managers would be faced with the impracticability of trying to give priority to all owners.</p> <p>Comment The preamble to Clause 7 (Owners' Obligations) contains the same important opening sentence as found in CREWMAN A, the 1999 edition, emphasising the importance to the crew managers of the timely payment of all sums by the owners. CREWMAN A 2009, however, introduces a new feature 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 8 of Part I. If the late payment is caused by a force majeure event (see sub-clause 14(a)), then the owners' prompt payment following the expiry of the event will still be punctual within the meaning of this sub-clause.</p> <p>Sub-clause 7(b) places an obligation on the owners to provide the crew managers with contact details of the organisation designated as the "Company".</p>

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<p>(c) inform the Crew 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 Crew 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 additional premium area the above provisions relating to cost and delay shall apply;</p> <p>(d) agree with the Crew Managers prior to any change of flag of the Vessel and pay whatever additional costs may properly be incurred by the Crew Managers as a consequence of such change. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 18(e);</p> <p>(e) provide, at no cost to the Crew 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>(f) ensure that the Crew, on joining the Vessel, are given properly familiarisation with their</p>	<p>Vessel being ordered to a war zone shall be for the Owners' account;</p> <p>6.4 agree with the Crew Managers prior to any change of flag of the Vessel and pay whatever additional costs may properly be incurred by the Crew Managers as a consequence of such change;</p> <p>6.5 provide, at no cost to the Crew Managers, in accordance with the requirements of the law of the flag of the Vessel stated in Box 7, or higher standard, as mutually agreed, adequate Crew accommodation and living standards;</p> <p>6.6 unless otherwise agreed, arrange for the supply of provisions, at their own expense;</p> <p>6.7 where the Crew Managers provide provisions, reimburse the Crew Managers for any food consumed on board other than by the Crew or any Connected Person and compensate the Crew Managers or provide replacement for any losses of foodstuffs caused exclusively by the breakdown of the refrigeration plant and machinery; and</p> <p>6.8 procure that throughout the period of this Agreement:</p> <p>(i) 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>(a) usual hull and machinery marine risks (including crew negligence) and excess liabilities;</p> <p>(b) protection and indemnity risks, including pollution risks, diversion expenses and also including crew risks in accordance with sub-</p>	<p>These details need to be provided to the crew managers on execution of the agreement and must be completed in Box 5 of Part I.</p> <p>Should there be a change in the "Company" during the period of the agreement the crew 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> <p>Sub-clause 7(c) places an obligation on the owners to not only inform the crew 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 7(d) 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 crew 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 7(e) deals with the standard of accommodation and living standards that the owner is obliged to provide the crew.</p> <p>Sub-clause 7(f) obliges the owners to ensure that the crew are familiarised with the vessel's SMS and their respective duties.</p> <p>Sub-clause 7(g) states the default position that the</p>

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<p>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>(g) unless otherwise agreed, arrange for the supply of provisions, at their own expense.</p>	<p>clause 4(i), unless separately insured by the Crew Managers; and</p> <p>(c) 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>(ii) all premiums and calls on the Owners' Insurances are paid promptly by their due date;</p> <p>(iii) the Owners' Insurances name the Crew Managers and, subject to underwriters' agreement, any third party designated by the Crew Managers as a joint assured, with full cover, with the Owners obtaining cover in respect of each of the insurances specified in sub-clause 6.8(i) above*:</p> <p>(a) on terms whereby the Crew Managers and any such third party are liable in respect of premiums or calls arising in connection with the Owners' Insurances; or</p> <p>(b) if reasonably obtainable, on terms such that neither the Crew 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>(c) on such terms as may be agreed in writing.</p> <p><i>*indicate alternative (a), (b) or (c) in Box 8. If Box 8 is left blank then (a) applies.</i></p> <p>(iv) written evidence is provided, to the reasonable satisfaction of the Crew Managers, of their compliance with their obligations under this Clause within a reasonable time of the commencement of the Agreement, and of each</p>	<p>owners should, at their own expense, organise the supplying of provisions.</p>

CREWMAN A (COST PLUS FEE) 2009 – EXPLANATORY NOTES

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	renewal date and, if specifically requested, of each payment date of the Owners' Insurances.	

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SECTION 4 – Insurance, Budgets, Income, Expenses and Fees		
<p>8. Insurance Policies The Owners shall procure 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 Crew Managers in accordance with Clause 5 (Crew Insurances));</p> <p><i>NOTE: If the Crew Managers have not agreed to provide Crew Insurances separately in accordance with Clause 5 (Crew Insurances), then such insurances must be included in the protection and indemnity risks cover for the Vessel (see Sub-clause 8(a)(ii) above).</i></p> <p>(iii) war risks (including but not limited to blocking and trapping, protection and indemnity, terrorism and crew risks); and</p>	Not in CREWMAN A.	<p>Comment As a part of the streamlining of the provisions of SHIPMAN 2009 with CREWMAN A and B 2009 this clause, originating from SHIPMAN 98, has been added to CREWMAN.</p> <p>In sub-clause 8(a)(ii) the owners' requirement to provide crew insurances is qualified. A practice has developed in crew-management whereby owners make use of the crew managers' P&I type cover for crew liabilities. However, the crew liability cover that the crew 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 crew managers are providing crew and crew insurances in accordance with Clauses 4 (Crew Management) and 5 (Crew Insurances) then the owners need to provide cover for crew liabilities through their P&I club cover over and above the cover provided by the crew managers' liability cover (please also see comment re sub-clause 5 above). To emphasise this point a note in italic type has been added under sub-clause 8(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</p>

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<p>(iv) such other optional insurances as may be agreed (such as piracy, kidnap and ransom, loss of hire and FD & D) (see Box 7).</p> <p>Sub-clauses 8(a)(i) to 8(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 Crew Managers and, subject to underwriters’ agreement, any third party designated by the Crew 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 Crew Managers and any such third party a liability in respect of premiums or calls arising in connection with the Owners’ Insurances;</p> <p>(d) If obtainable at no additional cost, however, the Owners shall procure such insurances on terms such that neither the Crew Managers nor any such third party shall be under any liability in respect of premiums or calls arising in connection with the Owners’ Insurances. In any event, on termination of this Agreement in accordance with Clauses 17 (Duration of the Agreement) and 18 (Termination), the Owners</p>		<p>8(a)(iii) is made as this feature does not normally form part of an owners’ war risks insurances.</p> <p>Sub-clause 8(a)(iv) deals 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 CREWMAN A and B 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 crew managers would be named as co-assured. This would preclude using the insurance for any claims by the owners against the crew managers as such claims between co-assureds would be excluded by the insurers. In such circumstances it would be preferable for the owners and crew 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 8(a)(iv) and by clearly stating their chosen optional insurance in Box 7.</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 8(a)(iv).</p>

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<p>shall procure that the Crew Managers and any third party designated by the Crew 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>(e) written evidence is provided, to the reasonable satisfaction of the Crew 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>The insurance companies, underwriters or association used by the owners to obtain the required insurances have to be "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 8(c) deals with naming the crew managers as a joint assured, with full cover, on the owners' insurance policies.</p> <p>By way of a warning, the second sentence of 8(c) emphasises that by being named as a joint assured on the owners' P&I cover the crew managers are likely be exposed to liability for premiums or calls on the owners' insurances.</p> <p>Sub-clause 8(d) attempts to counter the crew managers' potential liability for premiums and calls under sub-clause 8(c) by requiring the owners to arrange with their insurers that no such liability will arise for the crew 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 crew managers to the contrary.</p> <p>Another issue that has been given careful consideration by BIMCO is the risk to the crew managers of having to pay release calls on an owners' insurance after the termination of the</p>

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		<p>agreement, due to the owners' default. The particular scenario considered was that a crew manager named as joint assured on owners' insurance could be liable for calls even after a crew 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 crew 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 crew managers being exposed to liability for premiums or calls, it is recognised that such insurance can be prohibitively expensive. In terms of liability for premiums and calls after the termination of the agreement, sub-clause 8(c) refers to the owners getting the underwriters to release the crew 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 requires the owners to release the crew 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 crew manager when concluding an agreement with an owner then BIMCO strongly recommends that the crew managers make appropriate arrangements to cover the potential risk.</p>

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<p>9. Crew Management Fee and Expenses</p> <p>(a) The Owners shall pay the Crew Managers for their services as crew managers under this Agreement a monthly fee in the amount stated in Box 9 which shall be payable in advance, the first monthly fee (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 crew management fee shall be payable to the Crew Managers' nominated account stated in Box 10.</p> <p>(b) The crew management fee shall be subject to an annual review and the proposed fee shall be presented in the annual budget referred to in Sub-clause 10(a).</p> <p>(c) The Crew 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 Clause 9 (Crew Management Fee and Expenses) the Owners shall reimburse the Crew Managers for postage and communication expenses, travelling expenses, and other out of pocket expenses properly incurred by the Crew Managers in pursuance of the Crew Management Services. Any days used by any Connected Person travelling to or from or attending on</p>	<p>7. Crew Management Fee</p> <p>7.1 The Owners shall pay the Crew Managers for their services as crew managers under this Agreement a monthly fee in the amount stated in Box 9 which shall be payable in advance, the first monthly fee being payable on the commencement of this Agreement.</p> <p>7.2 (i) The fee shall be renegotiated annually. Not less than three (3) months before the anniversary date of the commencement of this Agreement specified in Box 4, the Crew Managers shall submit to the Owners a proposed fee figure to be applicable for the forthcoming year.</p> <p>(ii) The Owners shall indicate to the Crew Managers their acceptance or rejection of the proposed revised fee within one month of presentation, failing which the Crew Managers shall be entitled to assume that the Owners have accepted the said fee.</p> <p>7.3 The Crew Managers shall, at no extra costs to the Owners, provide their own office accommodation, office staff, facilities and stationery. The Owners shall reimburse the Crew Managers for postage and communication expenses, travelling expenses, and other out of pocket expenses properly incurred by the Crew Managers in the pursuance of the Crew Management Services.</p> <p>7.4 In the event of lay up or extensive repairs to the Vessel that last for more than the number of months stated in Box 10, the parties shall mutually agree the extent of down-manning required, together with the revision of</p>	<p>Comment</p> <p>The title of this Clause has been changed to "Crew Management Fee and Expenses" to more closely reflect its content.</p> <p>Sub-clause 9(a) now clarifies that if the first instalment under the crew 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 9(a) requires the details of the crew managers' bank account into which the monthly fee should be paid, to be stated in Box 10.</p> <p>In sub-clause 9(b) it has been clarified that the crew 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 9(c) introduces a new feature dealing with travelling days used by the crew managers' personnel in relation to the provision of services. The new final sentence places no limit on the number of days spent by the crew 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 crew managers' personnel are not committed to one vessel for excessively lengthy periods of time.</p>

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<p>the Vessel or otherwise used in connection with the Crew Management Services in excess of those agreed in the budget shall be charged at the daily rate stated in Box 11.</p> <p>(d) If the Owners decide to layup the Vessel and such layup lasts for more than the number of months stated in Box 12, an appropriate reduction of the Crew 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. 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 18(e).</p> <p>(e) Save as otherwise provided in this Agreement, all discounts and commissions obtained by the Crew Managers in the course of their performance of the Crew Management Services shall be credited to the Owners.</p>	<p>the fee and re-manning arrangements for the period exceeding the number of months stated in Box 10 until one month before the Vessel is again put into service. Consequential costs of reduction and reinstatement of the Crew shall be for the Owners' account. In the event that the parties cannot agree, the Agreement shall be terminated in accordance with Clause 17.</p>	<p>The termination provision formerly in sub-clause 7.4 has been moved to Clause 18 (Termination) as part of the consolidation of all the termination provisions of the agreement into one clause.</p> <p>The number of months before a reduction in the management fee in the event the owners decide to layup the vessel has to be discussed and stated in Box 12.</p> <p>The second sentence of sub-clause 9(d) provides each party with the right to terminate the agreement (cross referenced to Clause 18) 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 9(e) states the default position that any discounts and commissions obtained by the crew managers should be credited to the owners.</p>
<p>10. Budgets and Management of Funds</p> <p>(a) The Crew Managers' initial budget is set out in Annex "C" hereto. Subsequent budgets shall be for twelve month periods and shall be prepared by the Crew Managers and submitted</p>	<p>8. Budgets and Management of Funds</p> <p>8.1 The Crew 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</p>	<p>Comment</p> <p>In sub-clause 10(a) the wording has been revised in respect of submission of budgets. To avoid problems with crew management agreements starting late in the calendar year the submission requirement has</p>

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<p>to the Owners not less than three months before the end of the budget year.</p> <p>(b) The Owners shall state to the Crew 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 crew management fee, either party shall have the right to terminate this Agreement in accordance with Sub-clause 18(e).</p> <p>(c) Following the agreement of the budget, the Crew Managers shall prepare and present to the Owners their estimate of the Crew costs and shall each month request the Owners in writing to pay the funds required to crew the Vessel for the ensuing month. Such funds shall be received by the Crew Managers within ten running days after the receipt by the Owners of the Crew Managers' written request and shall be held to the credit of the Owners in a separate bank account.</p> <p>(d) The Crew Managers shall at all times maintain and keep true and correct accounts in respect of the Crew 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 in such</p>	<p>set out in Annex "C" hereto. Subsequent annual budgets shall be prepared by the Crew 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>8.2 The Owners shall indicate to the Crew Managers their acceptance and approval of the annual budget within one month of presentation and in the absence of any such indication the Crew Managers shall be entitled to assume that the Owners have accepted the proposed budget.</p> <p>8.3 Following the agreement of the budget, the Crew Managers shall prepare and present to the Owners their estimate of the Crew Costs and the Crew Managers shall each month update this estimate. Based thereon, the Crew Managers shall each month request the Owners in writing for the funds required to crew the Vessel for the ensuing month. Such funds shall be received by the Crew Managers within ten running days after the receipt by the Owners of the Crew Managers' written request and shall be held to the credit of the Owners in a separate bank account.</p> <p>8.4 The Crew Managers shall produce a monthly comparison between budgeted and actual income and expenditure of the Vessel in such form as required by the Owners.</p> <p>8.5 Unless otherwise agreed, all discounts and commissions obtained by the Crew Managers in the course of the Crew Management of the Vessel shall be credited to the Owners.</p>	<p>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 10(b) has been amended to require the owners "in a timely manner" to advise the crew managers if they accept the proposed budget, including the crew 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 crew 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 10(d) incorporates the auditing provisions of Clause 15 of CREWMAN. The standard of accounting to which the crew 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 10(d) provides the owners with access to the crew managers' accounts electronically as well as being available for physical inspection in the managers' offices.</p> <p>The wording of sub-clause 10(e) remains unchanged from the former edition of CREWMAN A.</p>

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<p>form and at such intervals as shall be mutually agreed.</p> <p>The Crew Managers shall make such accounts available for inspection and auditing by the Owners and/or their representatives in the Crew Manager's offices or by electronic means, provided reasonable notice is given by the Owners.</p> <p>(e) Notwithstanding anything contained herein, the Crew Managers shall in no circumstances be required to use or commit their own funds to finance the provision of the Crew Management Services.</p>	<p>8.6 Notwithstanding anything contained herein, the Crew Managers shall in no circumstances be required to use or commit their own funds to finance the provision of the Crew Management Services.</p>	

CREWMAN A (COST PLUS FEE) 2009	CREWMAN A (COST PLUS FEE)	NOTES
SECTION 5 – Legal, General and Duration of Agreement		
<p>11. Trading Restrictions The Owners and the Crew 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>	<p>9. Trading Restrictions The Owners and the Crew 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>	<p>Comment This clause remains unchanged from the previous edition of CREWMAN A. 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>12. Replacement The Owners shall have the right to 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 Crew Managers have failed to fulfil their obligations in providing suitable qualified Crew within the meaning of Clause 4 (Crew Management), then such replacement shall be at the Crew Managers' expense.</p>	<p>10. Replacement The Owners shall have the right to 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 Crew Managers have failed to fulfil their obligations in providing suitable qualified Crew within the meaning of sub-clause 3.1, then such replacement shall be at the Crew Managers' expense.</p>	<p>Comment This clause covers situations where the owners are dissatisfied with any member of the crew and want them replaced (always subject to the crew being found unsuitable on reasonable grounds). The replacement of unsuitable crew is only done at the crew managers' expense where they have failed in their obligations to provide suitably qualified crew. This is to ensure that the crew managers are not exposed to replacement costs even though they have fulfilled their obligations in this respect in accordance with the agreement.</p>

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<p>13. Crew Managers' Right to Sub-Contract The Crew Managers shall not have the right to 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 Crew Managers shall remain fully liable for the due performance of their obligations under this Agreement.</p>	<p>11. Crew Managers' Right to Sub-Contract The Crew Managers shall not have the right to 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 Crew 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 Crew Manager's Right to Sub-Contract Clause. The clause provides that any sub-contracting by the crew managers to a third party cannot be done without the owners' prior written consent. It should be noted that even if such consent has been obtained the crew managers still remain fully liable for all their obligations under the agreement.</p>
<p>14. 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, minimise 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>12. Responsibilities 12.1 Force Majeure. Neither the Owners nor the Crew 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. 12.2 Crew Managers' liability to Owners. Without prejudice to sub-clause 12.1 the Crew 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 Crew Management Services UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Crew Managers or any of their employees or agents,</p>	<p>Comment This clause is absolutely central to the successful operation of the CREWMAN agreements and great efforts were made in the previous editions of the agreements to provide equitable solutions which strike a fair balance between the owners and the crew 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 14(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-</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) Crew Managers' liability to Owners. Without prejudice to sub-clause 14(a) the Crew 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 Crew Management Services UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Crew Managers or their employees or agents, or</p>	<p>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 Crew 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 Crew 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 fee payable hereunder.</p> <p>12.3 Acts or omissions of the Crew. Notwithstanding anything that may appear to the contrary in this Agreement, the Crew Managers shall not be liable for any act or omission 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 Crew Managers to discharge their obligations under Clause 5, in which case their liability shall be limited in accordance with the terms of this Clause 12.</p> <p>12.4 Indemnity. Except to the extent and solely for the amount therein set out that the Crew Managers would be liable under sub-clause 12.2 the Owners hereby undertake to keep the Crew 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</p>	<p>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, 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 the former edition of CREWMAN A. However, given the importance of these provisions to the operation of CREWMAN A 2009, the original explanatory notes for these clauses are set out below:</p> <p><i>Sub-clause 14(b) Crew Managers' Liability to Owners.</i> The reasoning behind this sub-clause is that the crew 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 ten times the annual crew management fee in order to strike a reasonable balance between the funds received by the crew 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 crew 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>Sub-clause 14(b) operates as follows. It begins by excluding the crew managers' liability generally and then limits that exclusion in order to make the crew managers liable for negligence, gross negligence and wilful default by the crew managers themselves, their</p>

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<p>sub-contractors employed by them in connection with the Vessel, in which case (save where loss, damage, delay or expense has resulted from the Crew 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 Crew 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 crew management fee payable hereunder.</p> <p>(c) Acts or omissions of the Crew. Notwithstanding anything that may appear to the contrary in this Agreement, the Crew 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 Crew Managers to discharge their obligations under Clause 6 (Crew Manager's Obligations), in which case their liability shall be limited in accordance with the terms of this Clause 14 (Responsibilities).</p> <p>(d) Indemnity. Except to the extent and solely for the amount therein set out that the Crew Managers would be liable under Sub-clause 14(a) the Owners hereby undertake to keep the Crew Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions,</p>	<p>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 Crew Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.</p> <p>12.5 "Himalaya". It is hereby expressly agreed that no employee or agent of the Crew Managers (including every sub-contractor from time to time employed by the Crew 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, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Crew Managers or to which the Crew Managers are entitled hereunder shall also be available and shall extend to protect every such employee or agent of the Crew Managers acting as aforesaid and for the purpose of all the foregoing provisions of this Clause the Crew 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</p>	<p>employees, agents or sub-contractors.</p> <p>In the event of negligent action by the crew, the crew managers shall not be responsible for any loss, damage, delay or expense incurred as a result thereof, unless the crew managers have acted negligently in discharging their obligations in accordance with Clause 6 (Crew Managers' Obligations).</p> <p>However the limitation in the exclusion of the crew 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 crew managers shall not be responsible for any loss, damage, delay or expenses incurred as a result thereof unless the crew 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 a competent crew always remains the responsibility of the managers. CREWMAN A 2009 now makes this position entirely clear in sub-clause 11(c).</p> <p>The crew managers' liability in such circumstances is limited to a total of ten times the annual crew 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 crew 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</p>

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<p>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 Crew Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.</p> <p>(e) “Himalaya”. It is hereby expressly agreed that no employee or agent of the Crew Managers (including every sub-contractor from time to time employed by the Crew 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 14 (Responsibilities), every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Crew Managers or to which the Crew Managers are entitled hereunder shall also be available and shall extend to protect every such employee or agent of the Crew Managers acting as aforesaid and for the purpose of all the foregoing provisions of this Clause 14</p>	<p>be parties to this Agreement.</p>	<p>crew 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 crew management fee.</p> <p><i>Sub-clause 14(c). Acts or omissions of the Crew.</i> This sub-clause excludes the crew managers’ liability for acts or omissions of the crew, unless it can be demonstrated that such acts or omissions resulted from the crew managers’ failure to discharge their obligations under Clause 6 (Crew Managers’ Obligations). This sub-clause makes it clear that the selection of competent crew always remains the responsibility of the crew managers.</p> <p><i>Sub-clause 14(d) Indemnity.</i> This is an indemnity clause which is intended to make the reciprocal provision to sub-clause 14(b). Under Scandinavian and Continental systems of law, sub-clause 14(d) is probably unnecessary because the courts will imply an obligation on the part of the owners to indemnify the crew managers for anything for which the crew managers are not liable under 14(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 crew managers. Sub-clause 14(d) sets out the extent of that indemnity by excluding from it any claim for which the crew managers would themselves be liable under sub-clause 14(b).</p> <p><i>Sub-clause 14(e) Himalaya.</i> In order to protect the interests of employees, agents or sub-contractors of</p>

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<p>(Responsibilities) the Crew 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>15. General Administration (a) The Crew Managers shall keep the Owners and, if appropriate, the Company informed in a timely manner of any incident of which the Crew 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 Crew Managers shall handle and settle all claims and disputes arising out of the Crew Management Services hereunder, unless the Owners instruct the Crew Managers otherwise. The Crew Managers shall keep the Owners appropriately informed in a timely manner throughout the handling of such claims and disputes.</p>	<p>13. Documentation For the purpose of demonstrating compliance with the requirements of STCW 95 to the Flag State Administration and other third parties, the Crew Managers shall provide the Owners with full and ready access to documentation and data relevant to the Crew. Such information shall be maintained and be readily accessible and include, without being limited to, documentation and data on Crew experience, training, medical fitness and competence in assigned duties.</p> <p>14. General Administration 14.1 The Crew Managers shall handle and settle all claims arising out of the Crew</p>	<p>the crew managers a “Himalaya” clause is incorporated. The clause is designed to afford such employees, agents or sub-contractors at least the same protection as the crew managers have under the Crew Management Agreement and will thus remove the necessity to ensure the contractual chain of indemnities from sub-contractors, etc., to the crew managers.</p> <p>As a concluding observation it may be mentioned that the original Responsibilities Clause (of CREWMAN A 1994) 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 CREWMAN A 2009 the position is perceived to be the same.</p> <p>Comment Sub-clause 15(a) is new and obliges the crew managers to keep the owners (and the Company if the crew 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 15(b) clarifies the extent of the crew managers’ authority to handle and settle claims on behalf of the owners under this agreement. Depending on the instructions provided by the owners the crew managers may handle and settle claims arising out of the crew management services.</p>

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<p>(c) The Owners may request the Crew Managers to bring or defend other actions, suits or proceedings related to the Crew Management Services, on terms to be agreed.</p> <p>(d) The Crew Managers shall have power to obtain appropriate legal or technical or other outside expert advice in relation to the handling and settlement of claims and disputes in relation to Sub-clauses 15(b) and 15(c).</p> <p>(e) On giving reasonable notice, the Owners may request, and the Crew 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 Crew Managers may request, and the Owners shall in a timely manner make available, all documentation, information and records reasonably required by the Crew Managers to enable them to perform the Crew Management Services.</p> <p>(f) The Owners shall arrange for the provision of any necessary guarantee bond or other security.</p>	<p>Management Services hereunder and keep the Owners informed regarding any incident of which the Crew Managers become aware which gives or may give rise to claims or disputes involving third parties.</p> <p>14.2 The Crew Managers shall, as instructed by the Owners, bring or defend actions, suits or proceedings, in connection with matters entrusted to the Crew Managers according to this Agreement.</p> <p>14.3 The Crew 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.</p> <p>14.4 The Owners shall arrange for the provision of any necessary guarantee bond or other security, in the first instance.</p> <p>14.5 Any costs incurred by the Crew Managers in carrying out their obligations according to Clause 14 shall be reimbursed by the Owners.</p>	<p>The crew managers are obliged to keep the owners fully advised during the processing and handling of claims.</p> <p>When performing their responsibilities under the agreement it is logical that the crew managers handle all the relevant disputes and claims. Additionally, if it comes to litigation, the crew managers may also take action by obtaining expert advice. Some owners would perhaps feel more comfortable by having specific procedures detailing the circumstances under which the crew managers are able to obtain expert advice for the owners' account. However, it should not be overlooked that the circumstances may require urgent action from the crew managers without them being able to consult with the owners beforehand. In such cases it will often appear to be in the owners' best interests that the crew managers have a discretionary right to take such action as the circumstances may dictate.</p> <p>In sub-clause 15(e) the crew managers are required on request from the owners to provide documentation, etc., related to the crew management agreement to the owners without delay. This provision replaces the old Clause 13 (Documentation). Furthermore, the wording of the sub-clause has been widened to cover 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 crew managers their reasons for wanting access to documentation.</p> <p>The second paragraph of sub-clause 15(e), regarding</p>

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<p>(g) Any costs incurred by the Crew Managers in carrying out their obligations according to this Clause 15 (General Administration) shall be reimbursed by the Owners.</p>		the crew managers' request for documentation, has been widened consistent with the owners' equivalent request in the first paragraph.
	<p>15. Auditing The Crew 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 Crew Managers shall release to the Owners, if so requested, the originals where possible, or otherwise certified copies, of all such accounts.</p>	<p>Comment The auditing provision has been incorporated into Clause 10 (Budgets and Management of Funds). For comment please see under that clause.</p>
	<p>16. 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>Comment This clause has been amended so that it now applies mutually to both owners and crew managers rather than to the crew managers alone as in the former edition of CREWMAN A.</p>
	<p>17. 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</p>	<p>Comment The Duration of Agreement provision has frequently been the source of misunderstanding in the former editions of the CREWMAN agreements. The</p>

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<p>to the other; in which event this Agreement shall terminate upon the expiration of the later of the number of months stated in Box 13 or a period of two (2) months from the date on which such notice is received, unless terminated earlier in accordance with Clause 18 (Termination).</p> <p>(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 subsequent arrival of the Vessel at the next mutually convenient port or place.</p>	<p>Thereafter, unless notice of termination is given two (2) months prior to the date stated in Box 5, the Agreement shall continue until terminated by either party giving to the other notice in writing, in which event it shall terminate upon expiration of a period of two (2) months from the date upon which such notice was given.</p>	<p>agreements are intended to be evergreen agreements that run until one party brings them 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 CREWMAN A 2009 contains (in sub-clause 17(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> <p>A new second sub-clause 17(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 previous CREWMAN agreements were silent on how it should be handled. The new sub-clause 17(b) provides for termination to take effect under such circumstances “at the next mutually convenient port or place”.</p>
<p>18. Termination (a) Owners’ or Crew 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</p>	<p>18. Termination 18.1 Owners’ Default (i) The Crew Managers shall be entitled to terminate the Agreement with immediate effect by notice in writing if any sum payable by the Owners under this Agreement shall not have been received in the Crew Managers’ nominated account within ten running days of receipt by the Owners of the Crew Managers’ written request in accordance with Clause 7 or</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 CREWMAN A 2009 for ease of reading.</p> <p>A notable change to the first sub-clause of the termination provisions is that sub-clause 18(a) now incorporates the previous sub-clause 18.2 (Crew Manager’s default) to make the provision mutual to</p>

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<p>notice to the party in default.</p> <p>(b) Notwithstanding Sub-clause 18(a):</p> <p>(i) The Crew 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 Crew Managers’ nominated account within ten days of receipt by the Owners of the Crew Managers’ written request, or if the Vessel is repossessed by the Mortgagee(s).</p> <p>(ii) If either party fails to meet their respective obligations under Clause 5 (Crew Insurances) and Clause 8 (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 shall have the right to terminate this Agreement with immediate effect by giving notice to the party in default.</p> <p>(iii) 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 Crew Managers is unduly hazardous or improper, the Crew Managers may give notice of the default to the Owners, requiring them to remedy it as soon as practically possible. In</p>	<p>if the Vessel is repossessed by the Mortgagees.</p> <p>(ii) If the Owners:</p> <p>(a) fail to meet their obligations under Clause 6 of this Agreement for any reason within their control, or</p> <p>(b) 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 Crew Managers, is unduly hazardous or improper, the Crew Managers may give notice in writing 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 Crew Managers, the Crew Managers shall be entitled to terminate the Agreement with immediate effect by notice in writing.</p> <p>18.2 Crew Managers' Default. If the Crew Managers fail to meet their obligations under Clause 5 of this Agreement for any reason within the control of the Crew Managers, the Owners may give notice in writing to the Crew Managers of the default requiring them to remedy it as soon as practically possible. In the event that the Crew 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</p>	<p>both owners and crew 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 18(b)(ii) 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 18(c) (Extraordinary Termination) now includes a reference to bareboat charters coming to an end to accommodate situations where the owners are not the registered owners of the vessel.</p> <p>A new sub-clause 18(e) has been added to address the amended budget provisions of Clause 10 (Budgets and Managements of Funds) 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.</p> <p>In sub-clause 18(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>Sub-clause 18(g) allows the parties to agree a number of months additional payment period during which there is an additional payment of the crew management fee upon termination (unless due to crew managers' default)). If they fail to agree then 90 days applies by default. The owners are obliged to</p>

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<p>the event that the Owners fail to remedy it within a reasonable time to the satisfaction of the Crew Managers, the Crew Managers shall be entitled to terminate the Agreement with immediate effect by giving notice.</p> <p>(c) 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 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 18(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>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 or has been declared missing.</p> <p>18.4 For the purpose of sub-clause 18.3 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; and</p> <p>(iii) the date upon which the Vessel is to be treated as missing shall be ten (10) days after the Vessel was last reported or when the Vessel is posted as missing by Lloyd's. A missing vessel shall be deemed lost in accordance with the provisions of sub-clause 18.4(ii).</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</p>	<p>continue to pay the crew 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 the earlier CREWMAN agreements.</p> <p>In relation to severance costs, sub-clause 18(h)(ii) requires 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 crew managers are also now required to try to limit severance costs wherever possible.</p>

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<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 18(d)(ii).</p> <p>(e) In the event the parties fail to agree the annual budget in accordance with Sub-clause 10(b) or to agree a change of flag in accordance with Sub-clause 7(d), or to agree to a reduction in the Crew Management Fee in accordance with Sub-clause 9(d), 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</p>	<p>payment, ceases to carry on business or makes any special arrangement or composition with its creditors.</p> <p>18.6 In the event of this Agreement being terminated by either party in accordance with sub-clauses 18.1 or 18.3, the fee and the Crew Support Costs shall continue to be payable from the date on which the Crew leave the Vessel for the number of months stated in Box 11. The Owners shall also pay an equitable proportion of such reasonable Severance Costs as the Crew Managers can prove that they have incurred. The Crew Managers shall use their best endeavours to minimise such Severance Costs which, in any event, shall not exceed a maximum sum equivalent to the Crew's basic wages for the number of months stated in Box 11.</p> <p>18.7 The termination of this Agreement shall be without prejudice to all rights accrued due between the parties prior to the date of termination.</p>	

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<p>by the Crew Managers the crew management fee payable to the Crew Managers according to the provisions of Clause 9 (Crew Management Fee and Expenses), shall continue to be payable for a further period of the number of months stated in Box 14 as from the effective date of termination. If Box 14 is left blank then ninety (90) days shall apply.</p> <p>(h) In addition:</p> <p>(i) the Owners shall continue to pay Crew Support Costs during the said further period of the number of months stated in Box 14; 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 15. The Crew Managers shall use their reasonable endeavours to minimise such Severance Costs.</p> <p>(i) 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>19. 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</p>	<p>19. Law and Arbitration</p> <p>19.1 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</p>	<p>Comment</p> <p>As with all recently developed and revised BIMCO documents, CREWMAN A 2009 incorporates the latest edition of the BIMCO Dispute Resolution Clause. The provisions relating to arbitration in this</p>

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<p>in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent 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</p>	<p>referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent 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. In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000</p>	<p>clause are the same as those of the Law and Arbitration Clause of the former edition of CREWMAN A. The difference is that the Dispute Resolution Clause incorporates a mediation provision 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>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 (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>(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 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>19.3 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 Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there. 19.4If Box 12 in</p>	

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<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 Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.</p> <p>(d) Notwithstanding Sub-clauses 19(a), 19(b) or 19(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 19(a), 19(b) or 19(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</p>	<p>Part I is not appropriately filled in, sub-clause 19.1 of this Clause shall apply.</p> <p>Note: 19.1, 19.2 and 19.3 are alternatives; indicate alternative agreed in Box 12</p>	

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<p>designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on 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 except to the</p>		

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<p>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 16 in Part I is not appropriately filled in, Sub-clause 19(a) of this Clause shall apply.</p> <p><i>Note: Sub-clauses 19(a), 19(b) and 19(c) are alternatives; indicate alternative agreed in Box 16. Sub-clause 19(d) shall apply in all cases.</i></p> <p>20. Notices</p> <p>(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 Box 17 and 18 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 20(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</p> <p>20.1 Any notices 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 13 and 14 respectively.</p>	<p></p> <p>Comment</p> <p>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>21. 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>22. Third Party Rights Except to the extent provided in Sub-clauses 14(d) (Indemnity) and 14(e) (Himalaya), no third parties may enforce any term of this Agreement.</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>Comment This new clause clarifies that only third parties who are expressly identified in the Contract can benefit from it.</p>

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<p>23. Partial Validity If any provision of this Agreement is or becomes or is held by any arbitrator or other 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>24. 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>Comment The purpose of the Partial Validity Clause introduced into CREWMAN A 2009 is an attempt to avoid a potential 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>