



MARITIME MANAGEMENT

Conditions of Engagement

Based on:
The Institution of Engineers of Ireland Agreement RA 9101



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GENERAL CONDITIONS

1. Definitions

In construing this Agreement, the following expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

'The Client' means the person or body engaging the services of Maritime Management and shall include his or its successors and assigns.

'The Agreement' shall comprise these Conditions of Engagement and either a formal Memorandum of Agreement duly signed or a letter of acceptance of appointment confirming the use of these Conditions of Engagement and the arrangements regarding remuneration of Maritime Management.

'Maritime Management' means the person(s), partnership or body engaged to act on behalf of Berg Maritime Management Limited.

'The Task' means the work described in the Memorandum of Agreement or in the Letter of Appointment in respect of which the Client has engaged Maritime Management to provide professional services.

'Contractor' means any person or persons, firm or company under contract to the Client to perform work and/or supply goods in connection with the Task.

Notes:

Where the Client is the Contractor, then references in this agreement to the Contractor shall be construed as meaning both the Client and the Contractor and where there are references to the Contractor it shall be construed as meaning both the Contractor and the Client as defined herein.

Words importing the singular number only shall include the plural number and vice versa where the context requires.

Words importing the masculine gender shall include the feminine gender where the context requires.

Words importing persons shall include corporations where the context requires.

2. Duration of Engagement

2.1. The appointment of Maritime Management shall commence from the date stated in the Memorandum of Agreement or from the time when Maritime Management begins to perform for the Client any of the Services specified in Clause 6 and 7 of this Agreement, whichever is the earlier.

2.2. Maritime Management shall not, without the consent of the Client, assign the benefit or in any way transfer the obligations of this Agreement or any part thereof.

2.3. If at any time the Client decides to postpone or abandon the Task, he may thereupon by notice in writing to Maritime Management terminate Maritime Management's appointment under this Agreement provided that, in any case in which Maritime Management is paid for his services under Clause 6 in accordance with Clause 10.1 or Clause 10.2, the Client may, when the Task is postponed, in lieu of so terminating Maritime Management's appointment require Maritime Management in writing to suspend the carrying out of its services under this Agreement for the time being.

2.4. If the Client shall not have required Maritime Management to resume the performance of services in respect of the Task within a period of 12 months from the date of the Client's requirement to Maritime Management to suspend the carrying out of his services, the Task shall be considered to have been abandoned and this Agreement shall terminate.

2.5. In the event of the failure of the Client to comply with any of his obligations under this Agreement or upon the occurrence of any circumstances beyond the control of Maritime Management which are such as to delay for a period of more than 12 months or prevent or unreasonably impede the carrying out by Maritime Management of its services under this Agreement, Maritime Management may upon not less than 14 days notice in writing to the Client terminate its appointment under this Agreement, provided that, in lieu of so terminating its appointment, Maritime Management may:

(a) forthwith upon any such failure or the occurrence of any such circumstances suspend the carrying out of its services hereunder for a period of 60 days (provided that it shall as soon as practicable inform the Client in writing of such suspension and the reasons therefore), and

(b) at the expiry of such period of suspension either continue with the carrying out of its services under this Agreement or else, if any of the reasons for the suspension then remain, forthwith in writing to the Client terminate its appointment under this Agreement. Upon such a termination, the Client shall pay Maritime Management a sum calculated in accordance with the provisions of Clause 14.

2.6. Maritime Management shall, upon receipt of any notice or requirement in writing in accordance with Clause 2.3 or the termination by it of its appointment in pursuance of Clause 2.5, proceed in an orderly manner but with all reasonable speed and economy to take such steps as are necessary to bring to an end its services under this Agreement.

2.7. Any termination of Maritime Management's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party to this Agreement.



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3. Copyright

3.1. The copyright in all drawings, reports and other documents provided by Maritime Management in connection with the Task shall remain vested in Maritime Management, but the Client shall have a licence to use such drawings, reports and other documents for any purpose related to the Task, provided that Maritime Management has been fully remunerated in accordance with the terms of this Agreement. Save as aforesaid, the Client shall not make copies of such drawings or other documents nor shall he use same in connection with the making or improvement of any works other than those to which the Task relates without the prior written approval of Maritime Management and upon such terms as may be agreed between the client and Maritime Management.

3.2. Maritime Management may, with the consent of the Client, which consent shall not be unreasonably withheld, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Task.

4. Settlement of Disputes

4.1. In the event of any dispute or difference arising between the parties in connection with or arising from this Agreement then either party may request conciliation/mediation. If such a request is made and is agreed to by the other party then the parties shall endeavour to agree on a conciliator/mediator and submit to him the matter in dispute. The conciliator/mediator shall discuss the matter with the parties and endeavour to resolve it by their agreement. All discussions in conciliation/mediation shall be without prejudice, and shall not be referred to in any later proceedings. Failing agreement, the conciliator/mediator may by written decision himself determine the matter. The determination of the conciliator/mediator shall be final and binding on both parties unless within 14 days following the date of the determination either party notifies the other in writing that it rejects the determination of the conciliator/mediator. In that event the matter shall proceed to arbitration as in Clause 4.2 below. Each party shall bear his own costs in the conciliation/mediation and shall each pay half the costs of the conciliator/mediator.

4.2. In the event of any dispute or difference arising between the parties in connection with or arising from this Agreement then either party may require that the matter be referred to the arbitration of a person to be agreed upon between the parties or, if the parties fail to appoint an arbitrator within one calendar month of either party serving on the other party a written notice to concur in the appointment of an arbitrator, a person to be appointed on the application of either party by the President for the time being of the Institution of Engineers of Ireland. If the arbitrator declines the appointment or after appointment is removed by the order of a competent court or is incapable of acting and the parties do not within one calendar month of the vacancy arising fill the vacancy, then the President for the time being of the Institution of Engineers of Ireland

shall on the application of either party appoint an arbitrator to fill the vacancy.

The award of the arbitrator shall be final and binding on the parties and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1954-1980 or any statutory re-enactment or amendment thereof for the time being in force.

OBLIGATIONS OF MARITIME MANAGEMENT

5. Care and Diligence

5.1. Maritime Management will act in all professional matters as faithful advisor to its Client. Maritime Management shall discharge the services described in Clause 6 and/or as otherwise agreed in writing to be provided by him and he shall do so exercising all reasonable skill, care and diligence.

If in the performance of its services, Maritime Management has discretion exercisable as between the Client and the Contractor, Maritime Management shall exercise his discretion fairly.

6. Normal Services

6.1. The services to be provided by Maritime Management shall comprise:

- (a) all or any of the services stated in the Memorandum of Agreement or the letter of appointment and
- (b) advising the Client as to the need for the Client to be provided with additional services in accordance with Clause 7.

Where the Client has employed a Naval Architect, Project Manager or other agent, Maritime Management will report and advise through the agent unless otherwise agreed.

7. Additional Services not included in Normal Services

7.1. Unless specifically stated to be part of the normal services in accordance with Clause 6, services such as those stated in Clause 7.2 and Clause 7.3 shall be additional services. If so agreed with the Client, Maritime Management shall provide, as services additional to those specified in Clause 6, any of the services specified in Clause 7.2 and provide or take all reasonable steps to arrange for the provision of any of the services specified in Clause 7.3.

7.2.

(a) Carrying out work in connection with any application by the Client for any order, sanction, licence permit or other consent, approval or authorisation necessary to enable the Task to proceed.

(b) Carrying out work arising from the failure of the Client to award a contract in due time.



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(c) Carrying out work consequent upon any assignment of a contract by the Contractor or upon the failure of the Contractor properly to perform any contract or upon delay by the Client in fulfilling his obligations under Clause 9 or in taking any other step necessary for the due performance of the Task.

(d) Advising the Client upon and carrying out work following the taking of any step in or towards any litigation or arbitration relating to the Task.

(e) Carrying out work in conjunction with others employed to provide any of the services specified in Clause 7.3.

7.3.

(a) Specialist technical advice on any abnormal aspects of the Task.

(b) Specialist advice in regard to environmental impact assessment.

(c) Naval architectural, legal, financial and other professional services.

(d) Services in connection with the valuation, purchase, sale or leasing of lands and the obtaining of wayleaves.

(e) The carrying out of marine, air and land surveys, and the making of model tests or special investigations.

7.4. Maritime Management shall obtain the prior approval of the Client to the arrangements which it proposes to make on the Client's behalf for the provision of any of the services specified in Clause 7.3. The Client shall be responsible to any person or persons providing such services for the cost thereof.

8. Liability of Maritime Management

8.1. Maritime Management shall be liable to its Client for the consequences of any negligent act, omission or statement on its part or on the part of its employees to the extent and subject to the limitations set out in Clauses 8.2 to 8.10.

8.2. Unless otherwise agreed between the Client and Maritime Management, Maritime Management shall maintain professional indemnity insurance provided always that such insurance is available at commercially reasonable rates. Maritime Management shall immediately inform the Client if such insurance ceases to be available on the terms required by this condition at commercially reasonable rates in order that the Client and Maritime Management can consider means of best protecting their respective positions in the absence of such insurance. Unless otherwise agreed between the Client and the Engineer, the Professional Indemnity Insurance cover required to be maintained by Maritime Management under this Agreement shall be for an amount and period of time necessary to cover liability arising under Clauses 8.9 and 8.10 respectively.

8.3. Where requested in writing by the Client, Maritime Management shall maintain public liability insurance covering Maritime Management, its employees and agents from the effective date of this Agreement until

the completion of the services, provided always that such insurance is available at commercially reasonable rates.

8.4. The liability of Maritime Management shall extend to only direct loss or damage suffered by the Client in respect of matters arising directly from within the scope of Maritime Management's commission.

8.5. Maritime Management shall not be liable for any loss or damage sustained by the Client in relation to any negligent or fraudulent act, omission or statement of any Resident Engineer, Superintending Engineer, Clerk of Works, Inspector or other person employed by the Client or by any Contractor or Subcontractor or by any other person not being an employee of Maritime Management.

8.6. In relation to specialist trades and/or goods or services incorporated in the Works, Subcontractors or Suppliers may be appointed on the recommendation of or with the concurrence of Maritime Management. Where such Subcontractors or Suppliers design any part of the Works, the said Subcontractors or Suppliers and not Maritime Management shall be responsible for such design.

8.7. The Client and Maritime Management may agree the sum to which, notwithstanding anything to the contrary contained in this Agreement, the liability of Maritime Management under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall be limited. In the absence of such agreement, such sum shall be deemed to be €500,000 or ten times the total fee due under this Agreement, whichever is the lesser. The said limit shall be in respect of any single act, omission or statement, other than with regard to claims in respect of pollution or contamination where the said limit shall be an annual aggregate limit. In regard to pollution or contamination, liability as determined by the aggregate or balance thereof shall be further limited to the lesser of:

(i) the direct costs reasonably incurred by the Client in cleaning up the site of the Project or the Works as the case may be or any part thereof, or

(ii) the amount, if any, recoverable by Maritime Management under any professional indemnity insurance policy taken out by Maritime Management.

8.8. The liability of Maritime Management to the Client expires after the expiration of such period of time as is stated in the Agreement from the issue of the Certificate of Practical Completion to the Contractor or, where there is no such certificate, from the issue of such other record stating or indicating that the Works are substantially complete unless in the meantime the Client has made claim in writing upon Maritime Management, specifying the negligent act, omission or statement said to have caused the alleged loss or damage sustained or sustainable. If no such period of time is stated elsewhere in the Agreement it shall be deemed to be 2 years.



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OBLIGATIONS OF THE CLIENT

9. Information to be supplied to Maritime Management

9.1. The Client shall supply to Maritime Management without charge and within a reasonable time all necessary and relevant data and information in the possession of the Client and shall give such assistance as shall reasonably be required by Maritime Management in the performance of the Task.

9.2. The Client shall give his decision on all sketches, drawings, reports, recommendations, tender documents and other matters properly referred to him for decision by Maritime Management in such reasonable time as not to delay or disrupt the performance by Maritime Management of the Task.

9.3. Liability of Maritime Management shall be limited to such sum as Maritime Management ought reasonably to pay having regard to his responsibility for the loss or damage suffered as a result of the occurrence or series of occurrences in question, on the basis that all other Consultants and all Contractors and Subcontractors shall be deemed to have provided similar contractual undertakings to the Client (whether or not they shall have been so provided to the Client) in respect of the carrying out of their obligations and shall be deemed to have paid to the Client such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility.

9.4. Maritime Management makes no warranty, promise or representation as to the performance, suitability or competence of any Contractor, Subcontractor or other person employed or retained in the undertaking in which Maritime Management is commissioned but not being an employee of Maritime Management, nor does he offer or give any indemnity in relation to the matters referred to in this sub-clause.

10. Payment for Services

Three different methods of payment for services carried out under Clause 6 are detailed in the three succeeding Clauses 10.1, 10.2 and 10.3. In the event of there being no agreement on the method of payment, the basis specified in Clause 10.1 shall be adopted.

10.1. Payment at hourly rates

In respect of services provided by Maritime Management under Clause 6 and 7 the Client shall pay Maritime Management in accordance with the following unless otherwise agreed between the Client and Maritime Management,

(a) For time spent by Partners and Staff, including time spent in travelling in connection with the Task, at an agreed hourly rate or at rates in accordance with the Memorandum of Agreement or the Letter of Appointment.

(b) A charge for the use of special equipment which charge shall be agreed between the Client and Maritime Management before the work is put in hand.

(c) For time spent by technical and supporting staff in connection with the use of a computer or other special equipment, including the development and writing of programmes and the operation of the computer in trial and final runs, in accordance with Clause 10.1 (a) above.

Unless otherwise agreed between the Client and Maritime Management, Maritime Management shall not be entitled to any payment in respect of time spent by secretarial staff or by staff engaged on general accountancy or administration duties in Maritime Management's office.

10.2. Payment at Hourly Rates plus a fixed fee

(a) In respect of services provided by Maritime Management under Clause 6, the Client shall pay Maritime Management in accordance with Clause 10.1 except that in lieu of charging Partners at hourly rates the Client shall pay Maritime Management a fee stated in the Memorandum of Agreement or in the Letter of Appointment.

(b) In respect of all other services provided by Maritime Management, the Client shall pay Maritime Management on the basis specified in Clause 10.1

10.3. Payment of a fixed sum

(a) The sum payable by the Client to Maritime Management for its services under Clause 6 shall be the sum stated in the Memorandum of Agreement or in the Letter of Appointment.

(b) In respect of all other services provided by Maritime Management, the Client shall pay Maritime Management on the basis specified in Clause 10.1.

11. Payment for field staff facilities

11.1. The Client shall be responsible for the cost of providing such field office accommodation, furniture, telephones, equipment and transport as shall be necessary for the use of field staff and for the reasonable running costs of such necessary field office accommodation and other facilities, including those of stationery, telephone calls, facsimile and postage. Unless otherwise agreed between the Client and Maritime Management, Maritime Management shall arrange for the provision of field office accommodation and facilities for the use of field staff.

12. Disbursements

12.1. The Client shall reimburse Maritime Management in respect of all Maritime Management's disbursements properly made in connection with:

(a) Printing, reproduction and purchase of all documents, drawings, maps, records and photographs.

(b) Facsimile, telephone calls, tele-conferencing etc.



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- (c) Postage, courier and similar delivery charges.
- (d) Travelling, hotel expenses and other similar disbursements at the current rates agreed within the Public Service or as otherwise agreed.
- (e) Advertising for tenders and for field staff.
- (f) The provision of additional services to the Client pursuant to Clause 7.4.

The Client, by agreement with Maritime Management and in satisfaction of his liability to Maritime Management in respect of these disbursements, may make to Maritime Management a lump sum payment as specified in the Memorandum of Agreement or the Letter of Appointment-

13. Payment following termination or suspension by the Client

13.1. Upon a termination or suspension by the Client in pursuance of Clause 2.3 or in the event of a de facto termination or suspension of the Task by the Client, the Client shall pay to Maritime Management the sums specified in (a), (b) and (c) of this Clause less the amount of payments previously made to Maritime Management under the terms of this Agreement.

(a) All amounts due to Maritime Management at hourly rates in accordance with Clause 10 in respect of services rendered up to the date of termination or suspension together with a sum calculated in accordance with Clause 10 in respect of time worked by Maritime Management's staff in complying with Clause 2.6.

(b) A fair and reasonable proportion of any agreed lump sum payments. In the assessment of such proportion, the services carried out by Maritime Management up to the date of termination or suspension and in pursuance of Clause 2.6 shall be compared with a reasonable assessment of the services which Maritime Management would have carried out but for the termination or suspension.

(c) Amounts due to Maritime Management under any other clauses of this Agreement.

13.2. In any case in which the Client has required Maritime Management to suspend the carrying out of Maritime Management's services in pursuance of the power conferred by Clause 2.3, the Client may, at any time within the period of 12 months from the date of his requirement in writing to Maritime Management to suspend the carrying out of Maritime Management's services, require Maritime Management in writing to resume the performance of such services. In such event Maritime Management shall, within a reasonable time of receipt by it of the Client's said requirement in writing, resume the performance of its services in accordance with this agreement. Upon such a resumption, the amount of any payment made to Maritime Management under Clause 13.1(b) shall rank as a payment made on account of the total sum payable to Maritime Management under this Agreement, but no adjustment shall be made of any

other sum paid or payable to Maritime Management upon suspension.

13.3. If Maritime Management shall need to perform any additional services in connection with the resumption of its services in accordance with Clause 13.2, the Client shall pay Maritime Management in respect of the performance of such additional services in accordance with Clause 10.1 and any appropriate reimbursements in accordance with Clause 12.

14. Payment following termination by Maritime Management

14.1. Upon a termination by Maritime Management in pursuance of Clause 2.5, the Client shall pay to Maritime Management the sums specified in Clause 13.1(a), (b) and (c) less the amount of payments previously made to Maritime Management under the terms of this Agreement. Upon payment of such sums, Maritime Management shall deliver to the Client such completed drawings and other similar documents relevant to the Task as are in its possession. Maritime Management shall be permitted to retain copies of any documents so delivered to the Client. The provisions of this Clause are without prejudice to any other rights and remedies which Maritime Management may possess.

15. Payment of Accounts

15.1. Unless otherwise agreed between the Client and Maritime Management from time to time, all sums due to Maritime Management shall be paid by the Client on accounts rendered monthly by Maritime Management.

15.2. Maritime Management shall submit to the Client at the time of submission of the monthly account such supporting data as may have been agreed between the Client and Maritime Management.

15.3. All sums due from the Client to Maritime Management in accordance with the terms of this Agreement shall be paid within 30 days of the submission by Maritime Management of its accounts to the Client, and any sums remaining unpaid at the expiry of such period of 30 days shall bear interest thereafter; such interest to accrue from day to day at the rate of 27% per annum above the current bank rates for AA one year term loan borrowers.

15.4. If any item or part of an item of an account rendered by Maritime Management is disputed or subject to question by the Client, the payment by the Client of the remainder of that account shall not be withheld on those grounds and the provisions of Clause 15.3 shall apply to such remainder and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to Maritime Management.

15.5. Unless otherwise agreed, between Maritime Management and Client, all fees shall be subject to Value Added Tax, the amount of which, at the rate and in the manner prescribed by law, shall be paid by the Client to Maritime Management.



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MEMORANDUM OF AGREEMENT (MODEL)

BETWEEN THE CLIENT AND MARITIME MANAGEMENT FOR REPORT AND ADVISORY WORK

MEMORANDUM OF AGREEMENT made the _____ day of _____ 2008
BETWEEN _____

_____ (hereinafter called, "the Client")

of the one part and **Maritime Management**, the other part.

WHEREAS the Client has requested **Maritime Management** to provide professional services as described in the Addendum hereto in connection with _____

_____ (referred in this Agreement as "The Task")

and the following terms of remuneration of **Maritime Management** having been agreed:

NOW IT IS HEREBY AGREED as follows:

1. The Client agrees to engage **Maritime Management** subject to and in accordance with the Conditions of Engagement attached hereto and **Maritime Management** agrees to provide professional services subject to and in accordance with the said Conditions of Engagement.
2. The Memorandum of Agreement and the said Conditions of Engagement shall together constitute the Agreement between the Client and **Maritime Management**.
3. In the said Conditions of Engagement:

- (a) the hourly rates referred to in Clause 10.1 (a) shall be: _____
- (b) the fee referred to in Clause 10.2 (a) shall be: _____
- (c) the sum referred to in Clause 10.3 (a) shall be: _____
- (d) the lump sum referred to in Clause 12 shall be: _____

payable in _____ equal monthly instalments

4. The method of payment for services under Clause 6 of the said Conditions of Engagement shall be as described in Clause 10.1* / 10.2* / 10.3* thereof. (*delete as appropriate)

AS WITNESS whereof:

Duly Authorised Representative
of the Client

Maritime Management

Witness

Witness



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ADDENDUM TO THE MEMORANDUM OF AGREEMENT

The services to be provided by **Maritime Management** shall be as follows:

Note:

The Appendix to the Form of Agreement should be a concise but comprehensive description of the services to be provided by **Maritime Management** including, for example, reference where appropriate to:

Objective, Scope, Timing;

Surveys, Engineering/Nautical/Commercial Investigation, Field Staff;

Participation by Client or other parties;

Budget, Cost control;

Style of report to suit Client's needs;

Number of copies of report or method of submitting data to client.