

6. INDEMNITY, INSURANCE, WAIVER OF SUBROGATION, ASSUMPTION OF RISK.

(a) Owner agrees to hold SIBY, including its affiliates, owners, officers, directors, agents, and employees, free and harmless and indemnify it from all claims, losses, damages, liabilities or expenses, including reasonable attorneys' fees incurred in the defense thereof, for death or injury to any person or persons (including employees, agents and/or invitees of Owner) or damage, loss or destruction of any property (including the Vessel and all her equipment, gear and appurtenances) and resulting directly or indirectly from the performance of this Agreement, and regardless of whether such death, injury or property damage or loss is caused in whole or in part by the negligence of SIBY, its agents or employees; this indemnification shall include without limitation all court and/or arbitration costs, attorney's fees and costs of settlement or judgment. If Owner does not wish to be bound by the above indemnity provision, it is agreed that provided he/she/it pays rates at a rate 35% higher than SIBY's usual rates, and indicates such election by initialing in this space [____], Owner shall not be bound by the above indemnity provision. Nothing herein is intended to or may be construed as limiting SIBY's liability for harm caused by its gross negligence or willful misconduct, which shall not be presumed and must be affirmatively established.

(b) Apart from repair work covered under the warranty provided herein, Owner accepts the risk of all losses hereafter occasioned by the acts or omissions of SIBY or its agents, employees, officers, directors, owners or affiliates in the performance of the work contracted for in this Work Order, whether in the nature of negligence, strict liability, or otherwise, and Owner agrees to purchase, and maintain such insurance against such risks as Owner deems prudent and shall look only to said insurance for compensation or damages related to any such loss regardless of the legal or physical responsibility hereof. As to all such policies of insurance and all claims made thereon, for himself/herself/itself and his/her/its insurers, Owner specifically waives all right of subrogation against SIBY, its subsidiaries, affiliates, agents, officers, directors and employees. Owner accepts these risks and agrees that SIBY shall not be liable under any circumstances for, any incidental, special or consequential damages of any nature whatsoever, whether such damages be predicated upon an alleged breach of this Agreement, negligence, strict liability in tort, or upon any other basis whatsoever. Nothing herein is intended to or may be construed as limiting SIBY's liability for harm caused by its gross negligence or willful misconduct, which shall not be presumed and must be affirmatively established.