

COFR Master Agreement (2019)

At the request of the party described in the attached application or described in the attached United States Coast Guard CG-5585 form (together the “Application”), as the responsible operator, (the “Applicant”) to enter into this Agreement and on acceptance of that request by **Maritime Insurance Solutions Ltd.** (the “Issuer”) by the issuing of a Certificate of Entry, **THIS COFR MASTER AGREEMENT** (the “Agreement”) is made between the parties, as at the date of the said Certificate of Entry, as follows:

WHEREAS:

- (A) The Applicant is acting in the capacity described in the Application in relation to the vessel(s) identified in the Application (the “Vessel(s)”) and has requested cover from the Issuer on the terms set out herein (the “Request”); and
- (B) The Issuer is in the business of providing financial guaranties for the purpose of obtaining United States Coast Guard Certificates of Financial Responsibility (“COFR”) required for vessels to enter United States waters and has accepted the Request by issuing a Certificate of Entry.

IT IS AGREED AS FOLLOWS:

1. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 1.1 Representations and Warranties. By making the Request, the Applicant represents and warrants to the Issuer that as of the date of the Request and at all times during the period of the Agreement:
 - (a) the Applicant is and shall remain a corporation duly organized and validly existing in good standing under the laws of its country of incorporation;
 - (b) the Applicant has full power and authority to (i) execute and deliver this Agreement, and (ii) comply with the provisions of, and perform all of its obligations under, the Agreement; all consents, licenses, approvals and authorizations required for the entry into, performance, validity and enforceability of this Agreement have been obtained and are in full force and effect, and shall remain in full force and effect, and this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with its terms;
 - (c) the Applicant has complied, and is in compliance, with all statutory, regulatory and other requirements as are applicable to vessels operating in the trade in which the Vessel(s) are engaged concerning the ownership of the Vessel(s) and their operation, management and trade;

- (d) the entry into and performance by the Applicant of this Agreement does not violate in any respect and is in accordance with (i) any applicable law or regulation of any governmental or official authority or body, or (ii) the constitutional documents of the Applicant, or (iii) any agreement, contract or other undertaking to which the Applicant is a party or which is binding on the Applicant or any of its assets;
- (e) the Operator is either (i) a member of the Protection and Indemnity Club described in the Application (the "Club") and the Vessels are entered in the Club for full protection and indemnity insurance, as defined in and subject to the terms and conditions of the rules of the Club, or (ii) has secured insurance from a comparable "fixed cost" insurance approved by the Issuer's reinsurers, as described in the Application, ("Other Approved Insurance") in respect of liabilities arising under law including, but not limited to, OPA 90 and CERCLA (each as hereinafter defined). Such insurance shall include a "Standard Amount" for Pollution Liability Insurance as offered by the "International Group of Protection and Indemnity Clubs" (as this group is commonly known in the marine insurance market place) or other comparable "fixed cost" insurance vehicles: the Standard Amount of such Pollution Liability Insurance is currently at a limit of US\$500,000,000;
- (f) there are no calls, or other monies, outstanding from the Applicant to the Club or any insurer of Other Approved Insurance;
- (g) each of the Vessels is fully insured for its full value for collision liabilities, either under the terms of the Club entry or under hull and machinery policies or under a combination of both;
- (h) the Applicant is not subject to an application or petition filed or presented by or against it seeking relief under the provisions of any existing bankruptcy, insolvency or other similar law of the United States of America or any state thereof or of any other country or jurisdiction providing for the reorganization winding-up, liquidation or administration of companies or an arrangement, composition, extension or adjustment with creditors; and
- (i) all information (including any representation, warranty or statement made by or on behalf of the Applicant) provided by or on behalf of the Applicant to the Issuer is true and not misleading as of the date provided.

Without limiting the continuing nature of the foregoing representations and warranties, the representations and warranties contained in this Clause 1.1 shall be deemed restated at the time of each (i) Request for the issuance of a Guaranty as defined in Clause 2, (ii) issuance of a Guaranty, (iii) Request for a renewal of a Guaranty, and (iv) renewal of a Guaranty.

1.2 **Undertakings.** By making the Request, the Applicant undertakes at all times throughout the term of this Agreement or any renewal thereof (unless otherwise specified) and at no expense to the Issuer:

- (a) to enter and keep each of the Vessels entered in the Club, or another Protection and Indemnity Club to which the Issuer has provided prior written consent, or to maintain Other Approved Insurance, for full protection and indemnity insurance in respect of liabilities arising under law including, but not limited to, the United States Oil Pollution Act of 1990 ("OPA 90") and the United States Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), in the Standard Amount;
- (b) to keep each Vessel fully insured for the full value of the Vessel for collision liabilities, either under the terms of the Club entry or under hull and machinery policies with a reputable insurer or under a combination of both;
- (c) to keep each of the Vessels in such condition as will entitle it to maintain the highest classification for vessels of its type and service with the classification society described on the Application Form (the "Classification Society") and to complete all recommendations and qualifications affecting class within any period specified by the Classification Society so as to comply with the provisions of all laws, regulations and requirements (statutory or otherwise) from time to time applicable to vessels registered under the same flag as the Vessel and engaged in the service in which the Vessel is engaged;
- (d) to submit each of the Vessels to such periodic surveys as may be required for classification purposes and to supply to the Issuer copies of all survey reports and confirmations of class concerning the Vessels, as may be requested by the Issuer from time to time;
- (e) to comply with all statutory, regulatory and other requirements, including but not limited to such requirements established by OPA 90 and CERCLA, as are applicable to vessels operating in the trade in which the Vessels are engaged concerning the ownership of the Vessels and their operation, management and trade;
- (f) to immediately notify the Issuer in the event that any of the Vessels is the source of a discharge or threatened discharge under OPA 90 or release or threatened release under CERCLA;

- (g) without prejudice to any rights of the Issuer to terminate or take any other actions under this Agreement, to notify the Issuer immediately of any change in the written information, statements, representations, warranties and undertakings provided to the Issuer during the term of this Agreement or any renewal thereof that would make such information, statement, representation or warranty untrue or misleading, and to immediately notify the Issuer of any breach of this Agreement;
- (h) to notify the Issuer immediately in the event the Vessel's P&I entry in the Club (as required by Clause 1.2(a)) or insurance by Other Approved Insurance is terminated or replaced by entry in another Club or by Other Approved Insurance and to provide a letter addressed to the Issuer, that it will provide the documentation required by Clause 3 hereof promptly after the change has taken place;
- (i) to supply the Issuer with any receipts or other evidences of payment for damages or removal costs paid by the Applicant;
- (j) to comply with all of the rules, regulations and requirements of the Club, or terms of Other Approved Insurance as amended from time to time;
- (k) to cooperate fully with the Issuer and to comply with all reasonable requests of the Issuer in the event that a claim or demand is made against the Issuer in respect of the Guaranty; and
- (l) at any time and from time to time on the request of the Issuer to promptly and duly execute and deliver to the Issuer any and all such further instruments, documents and things as the Issuer may consider desirable in obtaining the full benefit of this Agreement and of the rights and powers herein granted.

2. **ISSUER'S OBLIGATIONS**

Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and undertakings of the Applicant set out herein, the Issuer shall issue an insurance-based guaranty on a difference in conditions basis for the Vessels (the "Guaranty"). The Issuer shall use its best efforts to cause such Guaranty to be accepted by the U.S. Coast Guard for the issuance of COFRs for the Vessels, however, THE ISSUER MAKES NO REPRESENTATION OR WARRANTY NOR SHALL IT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE PRESENT OR CONTINUED ACCEPTABILITY OR SUITABILITY OF THE GUARANTY FOR PURPOSES OF THE ISSUANCE OF COFRS FOR THE VESSELS, NOR DOES THE ISSUER MAKE, NOR SHALL IT BE DEEMED TO HAVE MADE, ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, THAT COFRS WILL BE ISSUED FOR THE VESSELS, OR ANY OF THEM, OR AS TO THE CONTINUED VALIDITY OF ANY COFRS THAT ARE ISSUED FOR THE VESSELS, OR ANY OF THEM.

In the event that the Guaranty is not acceptable or should become unacceptable to the U.S. Coast Guard for purposes of obtaining COFRs for the Vessel(s), this Agreement shall be deemed terminated automatically.

3. **APPLICANT'S OBLIGATIONS**

In addition to the obligations under Clause 1.2, the Applicant shall:

- 3.1 furnish, whenever requested by the Issuer, confirmation of entry in the Club or insurance by Other Approved Insurance, maintenance of insurances required by the Vessel's mortgagee, and maintenance of such other insurances as are customarily maintained by vessel owners entering U.S. waters; and
- 3.2 procure execution from the Club of the Confirmation of Entry, the Letter of Undertaking and the Letter of Indemnity, or equivalent documents from the insurers of Other Approved Insurance, in such form as shall be acceptable to the Issuer and provide these to the Issuer prior to the issuance of the Guaranty, and the Applicant shall maintain such Confirmation of Entry, Letter of Undertaking and Letter of Indemnity or their equivalents in full force and effect for the term of this Agreement.

4. **PREMIUM AND COMPENSATION**

- 4.1 In consideration of the Issuer's issuance of the Guaranty, the Applicant shall pay to the Issuer compensation in U.S. dollars in the form of premium to be invoiced by the Issuer and paid timely by the Applicant as specified on the invoice ("Premium").
- 4.2 Unless otherwise agreed, all Premium shall be deemed fully earned by the Issuer upon the issuance of the Guaranty.
- 4.3 Five per cent of Premium is attributable to coverage for acts of terrorism, as defined in the United States Terrorism Risk Insurance Act.
- 4.4 At the Issuer's discretion, credits accrued pursuant to the Policyholder Dividend Program may be offset against Premium.

5. **INDEMNIFICATION**

- 5.1 The Applicant shall on demand indemnify the Issuer and hold it harmless in respect of any and all payments paid to or on behalf of the Applicant under this Agreement, or under any Guaranty issued pursuant to this Agreement, by the Issuer, if the Applicant shall be in breach of any of the representations, warranties or undertakings in Clause 1 hereof.
- 5.2 All amounts due from the Applicant under this Agreement shall be paid:
 - (a) without any form of set off, cross claim or condition; and
 - (b) free and clear of any tax deduction except that which an Applicant is required by law to make.

- 5.3 If an Applicant is required by law to make a tax deduction from any payment:
- (a) such Applicant shall notify the Issuer as soon as it becomes aware of the requirement;
 - (b) such Applicant shall pay the tax deducted to the appropriate taxation authority promptly, and in any event before any final penalty arises; and
 - (c) the amount due in respect of the payment shall be increased by the amount necessary to ensure that the Issuer receives and retains (free from any liability relating to the tax deduction) a net amount which, after the tax deduction, is equal to the full amount which the Issuer would otherwise have received.
- 5.4 Neither the Applicant nor any owner, operator or charterer of the Vessel(s) not being a party to this Agreement, shall, under any circumstances, be entitled to claim against the Issuer for any liabilities under any law, statute or regulation, whether of the United States or any other jurisdiction, including, but not limited to, OPA 1990 and CERCLA and the regulations promulgated thereunder or under any law or regulation of any other country or legal subdivision thereof.
- 5.5 The Issuer shall be subrogated to all of the Applicant's rights or claims against any other person or entity (including but not limited to the Club or insurers of Other Approved Insurance) relating to any payment made under the Guaranty to the extent of such payment. The Applicant shall provide the Issuer with all documentation and other evidence necessary for assertion of such claims, including but not limited to claims in respect of response costs incurred at the direction or approval of a Qualified Individual appointed by the Applicant, and shall execute all documents necessary to secure such rights.
- 5.6 The obligations of the Applicant hereunder shall not be diminished by reason of the ability of the Issuer to obtain indemnity for any matter described herein from any third party (including, but not limited to, any reinsurer) or by reason of any payment made to or for the benefit of the Issuer by any such third party, and the obligations of the Applicant shall inure to the benefit of the Issuer and such third party, provided however, any recovery by the Issuer from the Club or Other Approved Insurance shall be treated as a recovery from the Applicant directly.

6. **TERMINATION**

- 6.1 This Agreement may be terminated by the Issuer, with respect to any or all of the Vessels, immediately, by giving immediate notice of the termination of the Guaranty to the United States Coast Guard to be effective thirty (30) days thereafter, in the event of the following:
- (a) a breach by the Applicant of any of the representations, warranties or undertakings contained herein;
 - (b) a breach of the Applicant's other obligations contained herein;

- (c) where the Applicant has failed to pay Premium when due, and has failed to cure such failure within forty-eight (48) hours of the notice of non-payment being issued; or
 - (d) at the Issuer's absolute discretion for any reason not otherwise specified in Clause 6.1(a)-(c) or Clauses 6.2 or 6.3.
- 6.2 Immediately upon an Applicant ceasing to be the owner or operator of any Vessel for any reason, including scrapping or transferring the Vessel to a new operator, this Agreement shall terminate forthwith with respect to such Vessel, and notice of termination of the Guaranty for such Vessel shall be given to the United States Coast Guard.
- 6.3 This Agreement may be terminated by an Applicant with respect to any or all of the Vessels, upon ninety (90) days' notice to the Issuer. Such Vessel(s) shall be deleted from coverage under this Agreement and notification shall be provided to the U.S. Coast Guard of the cancellation of the Guaranty, effective at the Issuer's sole discretion, not earlier than thirty (30) days after the notice and no later than ninety (90) days after the notice.
- 6.4 In the event of termination under:
 - (a) Clause 6.1(a), (b) or (c) or Clause 6.3, the Issuer shall be under no obligation to return any Premium paid to the Issuer by or on behalf of the Applicant nor does it prevent the Issuer from collecting any outstanding Premium owed to it by the Applicant; or
 - (b) Clause 2, Clause 6.1 (d) or Clause 6.2, the Issuer shall retain all Premium paid on account and which is due and owing at the time of the termination.
- 6.5 Any termination of this Agreement shall be without prejudice to the right of the Issuer to seek: (i) indemnification under clause 5 or (ii) damages or any other remedy for breach of this Agreement occurring on or prior to the date of termination, and such right shall survive such termination.

7. **NON-ASSIGNMENT**

This Agreement is personal to the parties, and neither the rights nor the obligations hereunder may be assigned by any of the parties without the prior written consent of the other party.

8. **TERM**

Unless earlier terminated pursuant to Clause 2, 6.1, 6.2, or 6.3, this Agreement shall continue in full force and effect until the parties agree otherwise in writing.

9. **VARIATIONS AND WAIVERS**

- 9.1 Subject to the following provisions of this Clause 9, the Applicant and the Issuer shall be bound by any variation, waiver or suspension of any provision of this Agreement which is evidenced by a document signed by, or by an exchange of emails between, the Applicant and the Issuer.
- 9.2 No right or remedy to which the Issuer is entitled under or in connection with this Agreement shall be adversely affected by a variation, waiver or suspension made in relation to this Agreement except as specifically stated by the variation, waiver or suspension.
- 9.3 Issuer may from time to time vary the terms of this Agreement by written amendment, and the Agreement, as so amended, shall be substituted for the original and become the operative and binding Agreement without the need for further action by Applicant or Issuer with immediate effect, or such other effective date as may be stated in such amendment.
- 9.4 Except as set out in the previous provisions of this Clause 9, no act, course of conduct, failure or neglect to act or acquiescence on the part of the Issuer (or any person acting on behalf of the Issuer) shall result in the Issuer (or any person acting on behalf of the Issuer) being taken to have waived, or being precluded (permanently or temporarily) from enforcing or relying on:
- (a) a provision of this Agreement; or
 - (b) its rights in respect of a breach by the Applicant of an obligation under this Agreement or the general law; or
 - (c) any right under the general law, including any right arising out of a breach such as is described in paragraph (b) above.

10. **SEVERABILITY**

If any section, subsection, clause or sentence of this Agreement shall be deemed illegal, invalid or unenforceable under any applicable law applied by any court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of this Agreement or any other section, subsection, clause or sentence thereof. Where, however, the provisions of any applicable law may be waived, they are hereby waived by the parties to the full extent permitted by such law such that this Agreement shall be a valid and binding agreement enforceable in accordance with its terms.

11. **GOVERNING LAW AND JURISDICTION**

- 11.1 This Agreement is governed by Bermuda law.
- 11.2 The courts of Bermuda shall have exclusive jurisdiction to adjudicate any disputes which arise out of or in connection with this Agreement; but this provision is for the sole benefit of the Issuer.
- 11.3 The Applicant waives any objection on the ground of inconvenient forum to any proceedings which relate to this Agreement being brought in the Bermuda courts.

The Applicant agrees:

- (a) that any process or document connected with proceedings in the Bermuda courts which relate to this Agreement shall be treated for all purposes as having been duly served on the Applicant if it is received by the process agent identified in the Application Form.
 - (b) that if, at any time during the period of this Agreement, the Applicant fails to maintain a process agent authorized to receive such process and documents, the Issuer may, on the Applicant's behalf, appoint any person whom the Issuer thinks appropriate to be the Applicant's process agent and that appointment shall be, in every respect, as effective as if made by the Applicant itself.
- 11.4 Nothing in this Clause 11 shall exclude or limit any right which the Issuer may have (whether under the law of any jurisdiction, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.
- 11.5 If the Issuer commences proceedings in connection with this Agreement, that shall not preclude the Issuer from commencing proceedings (whether concurrently or not) with respect to this Agreement in another jurisdiction.

12. **MISCELLANEOUS**

12.1 This Agreement, the Schedules to this Agreement, and any and all documents submitted to the Issuer pursuant to this Agreement, represent the entire understanding and agreement between the Issuer and the Applicant and supersede any and all prior agreements, whether written or oral, that may exist between the Issuer and the Applicant regarding same. No terms, conditions, prior course of dealings, course of performance, usage of trade, understandings or agreements purporting to modify, vary, supplement or explain a provision of this Agreement shall be effective unless set forth in writing and signed by a representative of each party authorized to amend this Agreement, evidenced by an exchange of emails between the Applicant and the Issuer, or set forth in an amendment issued by Issuer in accordance with Clause 9.3.

12.2 None of the provisions of this Agreement shall be deemed to constitute a partnership or joint venture between the parties for any purpose.

13. **ADDITION OF VESSELS**

Subject to the prior written consent of the Issuer, which consent may be withheld at the discretion of the Issuer, the Applicant may include a vessel for cover under this Agreement upon thirty (30) days' notice coupled with proof of Club entry together with such other forms and agreements as required under this Agreement and payment of the required Premium with respect to such vessel.

14. **NOTICES**

14.1 Unless otherwise expressly provided herein, all notices, requests, demands, consents or other communications to or upon the parties under or pursuant to this Agreement shall:

- (a) be in English and in writing
- (b) be deemed to have been duly given or made if they are:
 - (i) delivered by hand to the Issuer at Mintflower Place, 8 Par-la-Ville Road, Hamilton, HM08, Bermuda and or by transmitting it by electronic means (including facsimile and electronic mail, but not telephone) in accordance with such directions as may be given by the Issuer to the Applicant for such purpose, in which case the notice shall be deemed to have been served at the time that it would in the ordinary course be transmitted;

- (ii) delivered by hand at the address of the Applicant set out in the Application or by transmitting it by electronic means (including facsimile and electronic mail, but not telephone) in accordance with such directions as may be given by the Applicant to the Issuer for such purpose, in which case the notice shall be deemed to have been served at the time that it would in the ordinary course be transmitted.

15. DISCLOSURE NOTICE ON TERRORISM INSURANCE COVERAGE

- 15.1 Coverage for acts of terrorism, as defined in the U S Terrorism Risk Insurance Act (TRIA), where those acts precipitate a claim for a covered liability on the Guarantor under OPA90 or CERCLA is already included within this Agreement.

Pursuant to TRIA, effective 26th November, 2002 any losses in connection with the COFR Guaranty issued under this Agreement, and caused by certified acts of terrorism, will be partially reimbursed by the United States under a formula established by United States Federal Law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.