



**SIGCo**  
GROUP

# COFR Guaranty Terms and Conditions

The Shipowners Insurance and Guaranty Company Ltd.

Effective 7<sup>th</sup>, February 2023

STANDARD TERMS AND CONDITIONS EFFECTIVE 7<sup>th</sup> February, 2023 UPON WHICH THE SHIPOWNERS INSURANCE AND GUARANTY COMPANY LTD. (HEREINAFTER REFERRED TO AS “SIGCo”) PROVIDES AN INSURANCE GUARANTY AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER THE OIL POLLUTION ACT 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF THE UNITED STATES OF AMERICA, AS AMENDED.

## DEFINITIONS:

<b>Agreement</b>	means any current in force COFR Facility Agreement or Agreements to which at any time the Applicant and SIGCo are party;
<b>Applicant or Applicants</b>	means the person or persons so described in the Agreement or Schedule of Pertinent Information thereto;
<b>CERCLA</b>	means the Comprehensive Environmental Response, Compensation and Liability Act of the United States of America, as amended;
<b>Classification Society</b>	means the Classification Society with which each of the Vessels is classed;
<b>Club</b>	means the Protection and Indemnity Insurer(s) named in the Schedule of Pertinent Information being a part of the International Group of P&I Clubs or such other Protection and Indemnity Insurer(s) as may be accepted by SIGCo and named in the Schedule of Pertinent Information;
<b>COFR</b>	means a United States Coast Guard Certificate of Financial Responsibility required to meet liability under OPA 1990 and CERCLA;
<b>COFR Operator</b>	as defined in the Code of Federal Regulations Title 33 Part 138.30;
<b>Guaranty</b>	means the form of Guaranty set out in Appendix 1 attached hereto;
<b>SOFR</b>	means the Secured Overnight Financing Rate;
<b>Member(s)</b>	means a party covered by a Club in the manner set out in Cl. 1.1(f) of these Standard Terms and Conditions with respect to the Vessel or Vessels named in the Agreement. The Vessel or Vessels named in the Agreement or in the Schedule of Pertinent Information are required to remain covered by a Club throughout the duration of the Agreement.
<b>OPA 1990</b>	means the Oil Pollution Act 1990 of the United States of America, as amended;
<b>Premium</b>	means the premium payable to SIGCo under the Agreement;
<b>Standard Amount</b>	means a limit of cover provided by the P&I Insurer for OPA 1990 and CERCLA risks (the “Guaranteed Risks”) being no less than the maximum amount available from an International Group P&I Club to cover the Guaranteed Risks or such higher amount required in order to satisfy the Total Applicable Amount set out in the Guaranty or such other amount as SIGCo may expressly agree with the Applicant. In no event will the Standard Amount be in an amount less than \$500 million;
<b>Vessels</b>	means the Vessel or Vessels named in the Agreement.

Any reference to the singular shall (save where the context otherwise requires) include a reference to the plural (and vice versa).

## **1. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS BY THE APPLICANTS**

### **1.1 Representations and Warranties**

The Applicants represent and warrant to SIGCo that as of the date of the Agreement and at all times during the period of such Agreement:

- a** the Applicants (if not an individual or individual persons) are and shall remain corporations duly organized and validly existing in good standing under the laws of their respective country or countries of incorporation;
- b** the Applicants have full power and authority to
  - (i) enter into the Agreement, and*
  - (ii) comply with the provisions of, and perform all of their obligations under the Agreement; all consents, licences, approvals and authorizations required for the entry into, performance, validity and enforceability of the Agreement have been obtained and are in full force and effect, and shall remain in full force and effect, and the Agreement constitutes legal, valid and binding obligations enforceable against them in accordance with its terms;*
- c** the Applicants have ensured that all statutory, regulatory and other requirements as are applicable to vessels operating in the trade in which the Vessels are engaged have been complied with, including but not limited to those requirements relating to the ownership of the Vessels and their operation, management and trade;
- d** the entry into and performance by the Applicants of the Agreement does not violate in any respect
  - (i) any applicable law or regulation of any governmental or official authority or body, or*
  - (ii) constitutional documents of the Applicants, or*
  - (iii) any agreement, contract or other undertaking to which any Applicant is a party or which is binding on any Applicant or any of its assets;*
- e** the Applicants are and shall remain members of the Club; and the Vessels are and shall remain entered in the Club for full protection and indemnity risks, as defined in and subject to the terms and conditions of the rules of the Club under law including, but not limited to, OPA 1990 and CERCLA in no less than the Standard Amount and without warranties that exclude or restrict vessels from trading, operating or transiting the United States of America's exclusive economic zone or any other place at which SIGCo may be liable under the Guaranty;
- f** Unless otherwise agreed by SIGCo in writing, all owners and operators of Vessels covered hereunder, whether or not named herein, shall be either members of the Club, or if not members, co-insured by the Club for all of the risks as required hereunder.
- g** there are no calls, or other monies, outstanding and overdue to the Club from the Applicants;
- h** each of the Vessels is fully insured for its full market value for collision liabilities, either under the terms of the Club entry or under hull and machinery policies or under a combination of both;
- i** no Applicant is 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
- j** all information (including any representation, warranty or statement made by or on behalf of the Applicants) provided by or on behalf of the Applicants to SIGCo prior to or after the date of the Agreement is true and not misleading as of the date provided.

## 1.2 Undertakings

The Applicants jointly and severally undertake at all times throughout the period of the Agreement at no expense to SIGCo:

- a** to enter and keep each of the Vessels entered in the Club for full protection and indemnity risks under law including, but not limited to, OPA 1990 and CERCLA, in no less than the Standard Amount;
- b** to keep each of the Vessels fully insured for the full market value of the Vessel for collision liabilities, either under the terms of the Club entry or under hull and machinery policies with reputable insurers or under a combination of both;
- c** for each of the Vessels that is a tank vessel, unless otherwise agreed by SIGCo in writing, to ensure that SIGCo receives copies of the quarterly U.S. Voyage Declarations, if any, at the time such Declarations are submitted to the Club, and, with respect to tank vessels that are not subject to quarterly U.S. Voyage Declarations, to ensure that SIGCo receives notice of each voyage made by such tank vessels in U.S. waters;
- d** to keep each of the Vessels in such condition as will entitle it to maintain its class with the Classification Society and to comply with all recommendations and qualifications of such Classification Society affecting class within any period specified by the Classification Society and 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;
- e** to submit each of the Vessels to such periodic surveys as may be required for classification purposes and to supply to SIGCo copies of all survey reports and confirmations of class concerning the Vessels, as may be requested by SIGCo from time to time;
- f** to comply with all statutory, regulatory and other requirements, including but not limited to such requirements established by or issued pursuant to OPA 1990 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;
- g** immediately to notify SIGCo if any of the Vessels is the source of a discharge or threatened discharge under OPA 1990 or CERCLA or the source of a release or threatened release under OPA 1990 or CERCLA;
- h** in the event of notification of a claim or threatened claim to take all such steps as are required by the Club and under OPA 1990 or CERCLA and any other applicable laws, regulations and requirements;
- i** without prejudice to any rights of SIGCo to terminate or take any other actions under the Agreement, to notify SIGCo immediately of any change in the written information, statements, representations, warranties and undertakings provided to SIGCo during the period of the Agreement that would make such previous information, statement, representation or warranty untrue or misleading, and to immediately notify SIGCo of any breach of the Agreement;
- j** to supply SIGCo with any receipts or other evidences of payment for damages or removal costs paid by the Applicants;
- k** to comply with all of the rules regulations and requirements of the Club from time to time in force;
- l** at any time and from time to time on the written request of SIGCo promptly and duly to execute and deliver to SIGCo any and all such further instruments, documents and things as SIGCo may consider desirable in obtaining the full benefit of the Agreement and of the rights and powers therein granted;
- m** to furnish, whenever requested by SIGCo, Confirmation of Entry or of renewal of entry in the Club substantially in the form contained in Appendix 2 attached hereto, maintenance of insurances required by the Vessels mortgagee, and maintenance of such other insurances as are customarily maintained by vessel owners and/or operators entering U.S. waters;
- n** to procure execution by the Club of the Letter of Undertaking and the Letter to Member substantially in the form contained in Appendix 2 attached hereto prior to the issuance of the Guaranty and to provide to SIGCo the Letter of Undertaking, and the Applicants shall maintain such Letter of Undertaking and Letter to Member in full force and effect for the period of the Agreement;
- o** to pay to SIGCo at the time and in the manner agreed such Premiums in United States dollars as have been agreed with SIGCo; and
- p** to agree that all Premiums shall be deemed fully earned by SIGCo upon the issue of the Guaranty.
- q** to cooperate fully with SIGCo, and render to it all reasonable assistance as may be requested, in the event a claim or demand is made against SIGCo under the Guaranty.

## 2. OBLIGATIONS OF SIGCo

Subject to the terms and conditions of the Agreement, and in reliance on the representations, warranties and undertakings of the Applicants set out herein, SIGCo shall issue the Guaranty. SIGCo shall further 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;

**SIGCo 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 SIGCo 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 for purposes of obtaining COFRs for the Vessels, the Agreement shall be terminated.

SIGCo shall have no duty to indemnify or defend the Applicants or any of them nor any owner, operator or charterer of the Vessels.

## 3. INDEMNIFICATION

**3.1** The Applicants shall on demand jointly and severally indemnify, defend and hold SIGCo harmless from and against any and all payments, claims, costs, liabilities, losses, expenses and damages arising out of or with respect to each of the items set forth in Clauses 3.1.2 (a) through (f) below and any payments under Clause 3.1.2 (g) below reimbursed to the Applicants by SIGCo, if at any time during the period of the Agreement any of the Applicants shall be in breach of any of the representations, warranties or undertakings in Clause 1.

**3.1.1** In the event there is no breach of any of the representations, warranties or undertakings in Clause 1, the Applicants shall on demand jointly and severally indemnify, defend and hold SIGCo harmless from and against any and all payments, claims, costs, liabilities, losses, expenses and damages arising out of or with respect to each of the items set forth in Clause 3.1.2 (a) through (f) below, and any payments under Clause 3.1.2 (g) below reimbursed to the Applicants by SIGCo, provided, however, that the indemnity required by this Clause 3.1.1 shall not apply to, and SIGCo undertakes to be responsible for: (i) any claims or payments under Clause 3.1.2 (a) below and (ii) any Costs and Expenses under Clause 3.1.2 (d) below and (iii) any Response Costs incurred by the Applicants under Clause 3.1.2 (g) below, for which payments under (i) – (iii) above for which any Applicant is not entitled to be indemnified pursuant to any insurance, inclusive of Club cover, which the Applicant is required to obtain under Clause 1.2 other than by reason of the application of any deductible or excess to be borne by the Applicant under the terms and conditions of such insurance.

**3.1.2** Items referred to in Clause 3.1 and Clause 3.1.1:

- a** The Guaranty;
- b** The Agreement;
- c** Interest on Guaranty Payments - interest in respect of amounts paid under the Guaranty by SIGCo, as in 3.1.2(a) above, calculated at an annual interest rate of SOFR plus 200 basis points on such amounts from the date of payment by SIGCo to the date of reimbursement by the Applicants or the Club;
- d** Costs & Expenses - all claims, demands, proceedings, liabilities, taxes, losses, costs, interest and expenses of every kind (including, but not limited to, taking or defending legal action, whether or not liability under the Guaranty was actually established on the part of SIGCo, and reasonable lawyer's fees and expenses) (hereinafter together referred to as "Liability Items") which may be made or brought against, or incurred by SIGCo in any country, in relation to
  - (i) *the issuance and performance of the Guaranty or the Agreement; or*
  - (ii) *any action taken by any person against SIGCo under or in connection with the Guaranty or the Agreement; or*
  - (iii) *any other event, matter or question which occurs or arises at any time and which has any connection with, or any bearing on, the Guaranty or the Agreement, or any transaction relating to the Guaranty or the Agreement, or any Vessel covered by the Guaranty or the Agreement, other than Liability Items which are shown to have been caused mainly and directly by the gross negligence or the dishonesty of SIGCo or its officers or employees;*

- e** Other Liabilities - any other liabilities arising out of or in connection with the occurrence or continuance of any breach of any provision or other default of any Applicant under or in connection with the Agreement, including the due payment of Premiums;
  - f** Interest for Late Payment - upon any failure (for whatever reason) by the Applicants to pay any amount due under the Agreement within 10 days of the date of demand, interest shall be payable calculated at an annual interest rate of SOFR plus 400 basis points on such amounts outstanding from the demand date until receipt by SIGCo of the amount outstanding.
  - g** Response Costs – payments not exceeding US \$250,000 in total made by the Applicants to contractors responding to an Incident (as defined under the Guaranty) or conducting removal and/or clean up operations following an Incident in compliance with the Applicants’ obligations under the laws of any state of the United States, provided always, and on condition that, such payments qualify to reduce SIGCo’s obligations under the Guaranty.
- 3.2** All amounts due from the Applicants under the Agreement (including but not limited to amounts payable under Clause 3.1.2) shall be paid:
- a** without any form of set off, cross claim or condition; and
  - b** free and clear of any tax deduction except which an Applicant is required by law to make.
- 3.3** If an Applicant is required by law to make a tax deduction from any payment:
- a** such Applicant shall notify SIGCo as soon as it becomes aware of the requirements;
  - 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 SIGCo 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 SIGCo would otherwise have received.
- 3.4** Save for Response Costs incurred by the Applicants under Clause 3.1.2. (f) above for which SIGCo undertakes to be responsible under Clause 3.1.1 above, neither the Applicants nor any owner, operator or charterer of the Vessels not being a party to the Agreement, shall, under any circumstances, be entitled to claim against SIGCo 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.
- 3.5** SIGCo shall be subrogated to all of the Applicants’ rights or claims against any other person or entity (including but not limited to the Club) relating to any payment, cost or expense made under the Guaranty or under the Agreement. The Applicants shall provide SIGCo with all documentation and other evidence necessary for assertion of such rights or claims and shall execute all documents necessary to secure such rights or claims.
- 3.6** The obligations of the Applicants under this Clause 3 shall not be diminished by reason of the ability of SIGCo to obtain indemnity for any matter described in this Clause 3 from any third party (including, but not limited to, any reinsurer) or by reason of any payment made to or for the benefit of SIGCo by any such third party, and the obligation of the Applicants shall inure to the benefit of SIGCo and such third party, provided however, any recovery by SIGCo from the Club shall be treated as a recovery from the Applicants directly, and not from a third party for the purpose of this Clause 3.6.

#### **4. TERMINATION**

**4.1** The Agreement may be terminated immediately by SIGCo, with respect to any or all of the Vessels, by SIGCo giving notice of the termination of the Guaranty to the United States Coast Guard, which as specified in said Guaranty is to be effective thirty (30) days thereafter, in the event of the following:

- a** a breach of any of the representations, warranties or undertakings contained herein; or
- b** a breach of any of the Applicants' other obligations contained herein; or
- c** where Applicants have failed to pay Premiums when due, and have failed to cure such failure within forty-eight (48) hours; or
- d** at any other time for any other reason in SIGCo's sole discretion.

**4.2** The Agreement shall terminate immediately and automatically with respect to any Vessel:

- a** the moment any Applicant ceases to be the owner or operator of any Vessel for any reason, including without limitation scrapping or transferring the Vessel to a new operator; or
- b** if any Vessel shall be covered by a COFR accepted by the United States Coast Guard on the basis of evidence of financial responsibility other than that submitted by SIGCo and notice of termination of the Guaranty for such Vessel shall be given by SIGCo to the United States Coast Guard.

**4.3** The Agreement may be terminated by any of the Applicants, with respect to any or all of the Vessels, upon ninety (90) days notice to SIGCo. Such Vessel(s) shall be deleted from coverage under the Agreement and notification shall be provided by SIGCo to the United States Coast Guard of the cancellation of the Guaranty, effective at SIGCo's sole discretion, no earlier than thirty (30) days and no later than ninety (90) days after the receipt of the notice by SIGCo.

**4.4** In the event of termination under:

- a** Clause 4.1 (a), (b), or (c) or Clause 4.3, SIGCo shall be under no obligation to return any Premiums and shall be entitled to any outstanding Premiums;
- b** Clause 2, Clause 4.1 (d) or Clause 4.2 (a), SIGCo shall be entitled to retain all Premiums paid and to collect all installments of Premiums due prior to the date of cancellation, but shall not be entitled to any Premium or installment thereof due after the date of termination of the Guaranty.

**4.5** Any termination of the Agreement shall not affect the right of SIGCo to seek:

- a** indemnification under Clause 3; and/or
- b** damages or any other remedy for a breach of the Agreement occurring on or prior to the date of termination and such right shall survive such termination.

#### **5. NON-ASSIGNMENT**

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

#### **6. PERIOD OF THE AGREEMENT**

Unless otherwise terminated in accordance with the terms of the Agreement, the period of the Agreement shall be that stated in the Agreement, and the Agreement shall continue in full force for successive periods of twelve (12) months (or such other period(s) as may be agreed by the parties) following the date of expiration contained in the Agreement on such terms as to premium and otherwise as may be agreed by the parties prior to the expiration date contained in the Agreement, or later expiration date in accordance with the terms of this Clause 6, as the case may be.

## **7. VARIATIONS AND WAIVERS**

- 7.1** Subject to the following provisions of this Clause 7, the Applicants and SIGCo shall be bound by any variation, waiver or suspension of any provision of the Agreement which is evidenced by a document signed, or specifically agreed to by fax or email, by the Applicants and SIGCo.
- 7.2** No right or remedy to which SIGCo is entitled under or in connection with the Agreement shall be adversely affected by a variation, waiver or suspension made in relation to the Agreement except as specifically stated by the variation, waiver or suspension.
- 7.3** Except as set out in the previous provisions of this Clause 7, no act, course of conduct, failure or neglect to act or acquiescence on the part of SIGCo (or any person acting on its behalf) shall result in SIGCo (or any person acting on its behalf) being taken to have waived, or being precluded (permanently or temporarily) from enforcing and/or relying on:
- a** a provision of the Agreement; and/or
  - b** its rights in respect of a breach by any of the Applicants of an obligation under the Agreement or the general law; and/or
  - c** any right under the general law, including those rights arising out of a breach such as is described in paragraph (b) above.

## **8. SEVERABILITY**

If any section, subsection, clause or sentence of the Agreement shall be deemed illegal, invalid or unenforceable under any applicable law actually applied by any court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the 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 to the end that the Agreement shall be a valid and binding agreement enforceable in accordance with its terms.

## **9. GOVERNING LAW AND JURISDICTION**

- 9.1** The Agreement and these SIGCo Standard Terms and Conditions together with any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation are governed by English law.
- 9.2** The courts of England shall have exclusive jurisdiction to settle any disputes which arise out of or in connection with the Agreement and these SIGCo Standard Terms and Conditions, including a dispute relating to the existence, validity or termination of this Agreement and these SIGCo Standard Terms and Conditions or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement and these SIGCo Standard Terms and Conditions.
- 9.3** The Applicants waive any objection on the ground of inconvenient forum to any proceedings which relate to the Agreement being brought in the English courts.
- 9.4** The Applicants agree:
- a** The appointment of a process agent in the Schedule of Pertinent Information shall be irrevocable and that any process or document connected with proceedings in the English courts which relate to the Agreement shall be treated for all purposes as having been duly served on the Applicants if it is received by the process agent stated in the Schedule of Pertinent Information; and
  - b** that if, at any time the Applicants fail to name a process agent in the Schedule of Pertinent Information or fail to maintain a process agent in London authorized to receive such process and documents, SIGCo may, on the Applicants' behalf, at any time during the period of or after the termination of the Agreement, appoint any person whom it thinks appropriate to be the Applicants' process agent in London and exercise all reasonable efforts to notify the Applicants of the appointment. Such appointment shall be, in every respect, as effective as if made by the Applicants themselves.
- 9.5** Nothing in this Clause 9 shall exclude or limit any right which SIGCo may have (whether under the law of any country, an international convention or otherwise) with regard to the recognition or enforcement of any resulting judgment or any interim or conservatory measure in any jurisdiction.

## 10. MISCELLANEOUS

- 10.1** The Agreement, the Schedule of Pertinent Information, these SIGCo Standard Terms and Conditions Effective 1st November, 2021 and the Appendices hereto, and any and all documents submitted to SIGCo pursuant to the Agreement, represent the entire understanding and agreement between SIGCo and the Applicants and supersede any and all prior agreements, whether written or oral, that may exist between SIGCo and the Applicants regarding same. No terms, conditions, prior course of dealings, course of performance, usage or trade, understandings, or agreements purporting to modify, vary, supplement or explain a provision of the Agreement shall be effective unless set forth in writing and signed by a representative of each party authorized to amend the Agreement.
- 10.2** None of the provisions of the Agreement shall be deemed to constitute a partnership or joint venture between the parties for any purpose.
- 10.3** Dates and Times that the COFR Facility Agreement Comes into Force and Terminates
- a The COFR Facility Agreement shall be deemed to come into force at 1201 EST on the date of the Agreement, or on the date and time the COFR Guaranty issued pursuant to the Agreement comes into force, whichever is earlier.
  - b Unless terminated immediately pursuant to Clause 4, the COFR Facility Agreement shall be deemed to terminate at 2400 EST on the date the Agreement terminates in accordance with the terms thereof, or on the date and time the COFR Guaranty issued pursuant to this Agreement terminates, whichever is later. Notwithstanding the foregoing, it is understood and agreed that certain obligations of the Agreement survive termination.
- 10.4 Electronic Signatures** - Any signature, including an electronic symbol or process attached to the Agreement adopted by a Person with the intent to sign, authenticate or accept such contract through electronic means, shall have the same legal validity and enforceability as a manually executed signature.

## 11. ADDITION OF VESSELS

Subject to the prior written consent of SIGCo, which consent may be withheld at the discretion of SIGCo, and subject to the terms and conditions of the Agreement, the Applicants may add a vessel or vessels to the Agreement upon thirty (30) days notice coupled with proof of entry with the Club together with such other forms and agreements as are required under the Agreement and payment of the required premium with respect to such vessel(s).

## 12. NOTIFICATIONS

Unless otherwise expressly provided herein, any notice, request, demand, consent or other communication to or upon the parties under or pursuant to the Agreement shall:

- a be in English and in writing; and
- b be deemed to have been duly given or made if it is:
  - (i) *delivered by hand by a third party at the address of the relevant party set out in the Agreement (or at such other address as the relevant party may hereafter specify to the other party) on the day of delivery; or*
  - (ii) *sent by facsimile to the facsimile number of the relevant party set out in the Agreement, (or to such other number as the relevant party may hereafter specify to the other party, when sent, provided that such communication is followed by a copy of such facsimile mailed via first class mail to the relevant party at the address of the relevant party which such relevant party may hereafter specify to the other party); or*
  - (iii) *sent by Internet e-mail to the e-mail address of the relevant party set out in the Agreement, (or to such other number as the relevant party may hereafter specify to the other party, when sent, provided that such communication is followed by a copy of such e-mail mailed via first class mail to the relevant party at the address of the relevant party which such relevant party may hereafter specify to the other party).*





## APPENDIX 1 FORM OF GUARANTY

**U.S. DEPARTMENT OF HOMELAND SECURITY**  
U.S. COAST GUARD CG-5586 (Rev. 10-08)

OMB Approval No.1625-0046  
(Expires 12-09) Insurance Co. Form No.

### INSURANCE GUARANTY

INSURANCE GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

The undersigned insurer or insurers ("Insurer") hereby certifies that for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), (referred to collectively as the "Acts"), the vessel owners and operators ("Assured" or "Assurees") of each respective vessel named in the schedules below ("covered vessel") are insured by it against liability for costs and damages to which the Assurees may be subject under either section 1002 of OPA 90, as limited by section 1004 (a), or section 107 (a) (I) of CERCLA, as limited by sections 107 (c) (I) (A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Tables referenced at 33 CFR 138.80 (f), respecting each covered vessel. The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement, or understanding between an Assured and the Insurer. Coverage hereunder is for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time of the incident(s), release(s), or threatened release(s) giving rise to claims. (Name of Agent) with offices at (Address) is designated as the Insurer's agent in the United States for service of process for purposes of this guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds Center ("Center"), is the agent for these purposes. The Insurer consents to be sued directly with respect to any claim, including any claim by right of subrogation, for costs and damages arising under section 1002 of OPA 90, as limited by section 1004 (a), or section 107 (a) (I) of CERCLA, as limited by sections 107 (c) (I) (A) and (B), or both, against any Assured. However, in any direct action under OPA 90, the Insurer's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table referenced at 33 CFR 138.80 (f) (I) and, in any direct action under CERCLA, the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table referenced at 33 CFR 138.80(f) (2). The Insurer's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Assured under OPA 90 or CERCLA or both, as applicable, for which the Assured is liable. The Insurer hereby agrees that the Insurer shall be entitled to invoke, in any direct action, only the rights and defenses set forth in 33 CFR 138.80 (d). No more than four Insurers (including lead underwriters) may execute this guaranty. If more than one Insurer executes this guaranty, each Insurer binds itself jointly and severally for the purpose of allowing joint action or actions against any or all of the Insurers, and for all other purposes each Insurer is bound for the payment of sums only in accordance with the percentage of participation set forth opposite the name of the Insurer below. If no percentage of participation is indicated for an Insurer or Insurers, the liability of such Insurer or Insurers shall be joint and several for the total of the unspecified portions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The Coast Guard estimates that the average burden for completing this form is 30 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestion for reducing the burden to the: Commandant (NPFC), U.S. Coast Guard, 2100 2nd Street, SW, Washington, DC 20593-0001 or Office of Management and Budget, Paperwork Reduction Project (1625-0046), Washington, DC 20503.



(Name of lead guarantor) is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Insurer executes this guaranty). The insurance evidenced by this guaranty shall be applicable only in relation to each incident, release, and threatened release occurring on or after the effective date and before the termination date of this guaranty and shall be applicable only in relation to each incident, release and threatened release giving rise to claims under section 1002 of OPA 90 or section 107 (a) (I) of CERCLA, or both, with respect to any of the covered vessels. The effective date of this guaranty for each covered vessel is the date the vessel is named in or added to the schedules below. For each covered vessel, the termination date of this guaranty is 30 days after the date of receipt by the Center of written notice that the Insurer has elected to terminate the insurance evidenced by this guaranty and has so notified the vessel operator identified on the schedule below. Termination of this guaranty as to any covered vessel shall not affect the liability of the Insurer in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective. If, during the currency of this guaranty, an Assured requests that an additional vessel be made subject to this guaranty and if the Insurer accedes to that request and so notifies the Center, then that vessel is considered included in the schedules below as a covered vessel. Title 33 CFR part 138 governs this guaranty. Effective date of coverage for vessels originally named in this guaranty: (day/month/year) (Name of Insurer) (Percentage of Participation) (Mailing Address) By: (Signature of Official Signing on Behalf of Insurer) (Typed Name and Title of Signer)[Note: For each additional Insurer, provide information in the same manner as for Insurer above.]

**APPLICABLE AMOUNT TABLE (I)** Applicable Amount Under the **Oil Pollution Act of 1990** reference 33 CFR 138.80 (f) (I). **(II)** Applicable Amount Under the **Comprehensive Environmental Response, Compensation, and Liability Act, as Amended** reference 33 CFR 138.80(f) (2). **(III)** Total Applicable Amount reference 33 CFR 138.80 (f) (3) = applicable amount calculated under (I) plus applicable amount calculated under (II).



**SCHEDULE OF VESSELS**

Insurance Guaranty  
Form CG-5586 No

**VESSEL**

**GROSS TONS**

**ASSURED OPERATOR**

**SCHEDULE OF VESSELS  
ADDED TO ABOVE SCHEDULE**

Insurance Guaranty  
Form CG-5586 No



<b>VESSEL</b>	<b>GROSS TONS</b>	<b>ASSURED OPERATOR</b>	<b>DATE ADDED</b>
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## APPENDIX 2

### CONFIRMATION OF ENTRY, LETTER OF UNDERTAKING AND LETTER TO MEMBER FROM THE P&I CLUB

CONFIRMATION OF ENTRY FROM THE P&I CLUB  
(LETTER 1 OF 3)

TO BE TYPED ON THE CLUB'S LETTERHEAD

**From:** [insert name and address of Club]

**To:** [insert name and address of Club Member]

**Re:** [Name of Club Member] ("Member")  
[Vessel Name(s)] ("Named Vessels")

**Date:**

**Dear Sirs:**

We confirm that as of [insert date] the Named Vessels are entered in this Association by or on behalf of [insert name of Member] in his capacity as \_\_\_\_\_ (owner, bareboat/demise charterer, etc.), subject always to the Rules of the Association and the Member's terms of entry including all provisions as to payment of calls.

This confirmation of entry is not an indemnity or evidence of any undertaking on the part of the Association, whether financial or otherwise, to any party and shall not be construed as such.

In the event that the Member or anyone acting on his behalf uses this confirmation as evidence of insurance or of financial responsibility under any applicable law relating to financial responsibility, or otherwise shows or offers it to any other party as evidence of insurance, it must be clearly understood that this confirmation relates only to the date set out in the first paragraph hereof and that such insurance is subject to the Rules of the Association and terms of entry as provided in that paragraph. Such use of this confirmation of entry by the Member is not to be taken as any indication that the Association thereby consents to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Association does not so consent.

*Signed by an authorised signatory  
for and on behalf of [insert name of Club]*

LETTER OF UNDERTAKING FROM THE P&I CLUB  
(LETTER 2 OF 3)

TO BE TYPED ON THE CLUB'S LETTERHEAD

**From:** [insert name and address of Club]  
**To:** The Shipowners Insurance and Guaranty Company Ltd.  
P.O. Box HM 3398, Hamilton HM PX, Bermuda  
**Re:** [Name of Club Member] ("Member")  
[Vessel Name(s)] ("Named Vessels")

**Date:**

**Dear Sirs:**

At the request of the Member, the Association undertakes:

(a) to inform you if the Directors give the Member notice under Rule \_\_\_\_\_ (the "expiry of cover" rule) that his insurance in the Association in respect of any of the Named Vessels is to cease at the end of the then current policy year;

(b) to give you \_\_\_\_\_ days notice of the Association's intention to cancel the insurance of the Member in respect of any of the Named Vessels pursuant to Rule \_\_\_\_\_ by reason of his failure to pay, when due and demanded, any sum due from him to the Association. It is a condition of this undertaking that this letter shall not form part of any application to the United States Coast Guard or be used in support of any application for the purposes of demonstrating evidence of insurance under any applicable law relating to financial responsibility.

*Signed by an authorised signatory  
for and on behalf of [insert name of Club]*

LETTER TO MEMBER FROM THE P&I CLUB  
(LETTER 3 OF 3)

TO BE TYPED ON THE CLUB'S LETTERHEAD

**From:** [insert name and address of Club]

**To:** [insert name and address of Club Member]

**Re:** [Name of Club Member] ("Member")  
[Vessel Name(s)] ("Named Vessels")

**Date:**

**Dear Sirs:**

If the Guarantor provides a guaranty to enable the Member to obtain Certificate of Financial Responsibility from the United States Coast Guard using Coast Guard Form CG-5586 (Rev. 10-08) (the "Guaranty"), we confirm that neither the provision of the Guaranty by the Guarantor, nor the entering into such agreement with the Guarantor by the Member constitutes double insurance for the purpose of Rule \_\_\_\_\_ (the "double insurance" rule).

We acknowledge your instruction that payments made under the Guaranty by the Guarantor are made on your behalf and we confirm that, under this circumstance, payment by the Guarantor shall be considered to be payment by the Member for the purposes of Rule \_\_\_\_\_ (the "pay-to-be-paid" rule).

For the avoidance of doubt, we confirm that insofar as the Member may be required to give an indemnity to the Guarantor in relation to the provision of the Guaranty, the Managers do not approve the terms of such indemnity for the purpose of Rule \_\_\_\_\_ (the "contracts, indemnities and guarantees" rule). The Member shall nevertheless remain entitled to recover from the Association in accordance with the Rules of the Association and the terms of entry such liabilities, costs and expenses as would have been recoverable by the Member from the Association if he had been sued directly as the responsible party.

Other than as provided above, the Member's cover remains in all respects governed by the Rules of the Association and the terms of entry of the ships concerned.

It is a condition of this confirmation that neither this letter, nor the fact that the Member is a member of this Club that may be covered for certain pollution risks, shall form part of any application to the United States Coast Guard or any other governmental agency or be used in support of any application for the purposes of demonstrating evidence of insurance or evidence of financial responsibility under any applicable law relating to environmental pollution or financial responsibility.

*Signed by an authorised signatory  
for and on behalf of [insert name of Club]*