

2133-001

FORM MA-355



U.S. Department of Transportation
Maritime Administration

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Contract No. _____

UNDERWRITING AGENCY AGREEMENT

This Agreement, made and entered into this _____ day of _____, 19____, by and between the UNITED STATES OF AMERICA (herein called the "United States"), acting by the Secretary of Transportation (herein called the "Secretary"), represented by the Maritime Administrator (herein called the "Administrator"), and _____ (herein called the "Underwriting Agent"), having an office for the transaction of business at _____ an association of domestic insurance companies (herein called the "Participating Members"), each of which is authorized to do a marine insurance business in a State of the United States.

W I T N E S S E T H

Whereas, pursuant to Title XII of the Merchant Marine Act, 1936, as amended, (herein called the "Act"), the Secretary is authorized under certain circumstances to provide marine insurance and reinsurance against loss or damage by the risks of war, and to employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States to act as his/her Underwriting Agent; and

Whereas, the Secretary has delegated authority to the Administrator to perform the functions vested in the Secretary by Title XII of the Act, (Section 8.01, Subsection 3 of Department Order No. 117 (Revised), published in the FEDERAL REGISTER, dated July 21, 1960, 25 FR 6934); and

Whereas, the Administrator has determined to employ the Underwriting Agent as an underwriting agent in providing war risk insurance as set forth in paragraphs (a), (c), (d), (e), and (f) of Section 1203 of the Act upon the terms and conditions herein set forth:

Now, therefore, in consideration of the premises and of the mutual covenants and agreements, and upon the terms and conditions herein set forth, the parties hereto agree as follows:

Appointment of Agent. The Administrator hereby authorizes the Underwriting Agent, as an agent acting on behalf of the Administrator and not as an independent contractor, to utilize its offices and facilities to make available the insurance which the Secretary is authorized to provide pursuant to paragraphs (a), (c), (d), (e), and (f) of Section 1203 of the Act and to perform the functions hereinafter provided for, upon the terms and conditions hereinafter set forth and in accordance with the rules, regulations and instructions which will be issued from time to time to the Underwriting Agent by the Administrator. The Underwriting Agent hereby agrees to utilize its offices and facilities to make such insurance available, as agent for the Administrator, and to perform the functions hereinafter provided for to the best of its ability. The Underwriting Agent may act through its home office, branch offices or agencies which are authorized to write insurance on its behalf.

2. **Duties of Agent.** The duties of the Underwriting Agent shall be as follows:

(a) **Receive Applications and Issue Binders and Policies.** The Underwriting Agent shall receive applications for insurance, subject to the rates and conditions specified by the Administrator upon forms prescribed by the Administrator. After determining that the applications have been submitted in complete and proper form and are accompanied by remittances in the amount of the premiums required for the insurance applied for, the Underwriting Agent shall countersign binders or policies of insurance, or both binders and policies of insurance, subject to the rules, rates, terms and conditions specified by the Administrator on forms prescribed by the Administrator. The insurer under such policies shall be the United States.

(b) **Keep Records.** The Underwriting Agent shall keep a full and complete record of all applications, binders, and policies, and shall also record all premiums, charges or deposits required by the terms of the binders and policies, so that a record may be available at all times to the Administrator, both as to all applications received and all binders and policies issued, and as to all payments made by the assured in connection with such binders and policies.

(c) **Receive Money and Reports.** The Underwriting Agent shall receive checks made payable to the order of the Maritime Adm.-Transportation for the premiums and charges involved, which checks shall be deposited by the Underwriting Agent in the Federal Reserve Bank nearest to its office, or in such other bank as may be authorized by the Administrator to receive such deposits. The Underwriting Agent shall receive from the bank in which the deposits are made receipts therefore in such number as may be prescribed in instructions to the Underwriting Agent and handle the receipts so received in accordance with such instructions.

(d) **Report Monthly.** The Underwriting Agent shall prepare a monthly report, in summary form, of all applications received, and binders and policies issued or cancelled by the Underwriting Agent on a standard form approved by the Administrator, and transmit them, together with receipts for deposits made as above provided, to the Administrator.

(e) **Other Reports.** The Underwriting Agent shall prepare and transmit such other reports as may be required by the Administrator.

(f) **Process Claims for Return Premiums.** The Underwriting Agent shall receive from holders of policies issued by such Underwriting Agent any claims for return premiums on a standard form prescribed by the Administrator and shall certify thereon, if such is the fact, that the amounts with respect to which such return is claimed were previously paid and that based upon the statements included in such application by the assured the return premium applied for is payable in accordance with the regulations of the Administrator. Such applications and certifications shall be transmitted promptly to the Administrator.

(g) **Process Claims for Losses.** The Underwriting Agent shall receive reports of losses on vessels and disbursements (insured pursuant to paragraphs (a) and (c), Section 1203 of the Act), assemble all pertinent documents and facts relating thereto required to determine the validity of the claims, including the amounts thereof, and submit the same to the Administrator with its recommendation as to payment.

(h) **Help Establish Advisory Committee.** The Underwriting Agent shall, if requested by the Administrator, cooperate with the Administrator to establish and maintain an advisory underwriting committee to consult with and advise the Administrator in connection with specific underwriting problems, subject to the rules, regulations and instructions of the Administrator, and to establish and maintain such other advisory committees as may be deemed necessary from time to time to safeguard the interests of the Administrator, including a loss committee to act as a recipient for information concerning losses and to pass upon any recommendations made by the Underwriting Agent as to losses and payments of claims arising therefrom in excess of an amount to be fixed by the Administrator.

3. Compensation.

(a) Fair and Reasonable. The Underwriting Agent shall receive for its services such amount as the Administrator and the Underwriting Agent may, from time to time, agree to be fair and reasonable compensation. In addition to such fair and reasonable compensation, the Underwriting Agent shall receive reimbursement for out-of-pocket expenditures reasonably incurred, meaning payments to persons not regularly employed by the Underwriting Agent but excluding payments to attorneys unless such employment has been authorized by the Administrator: Provided, however, That all such expenditures shall be subject to the review of the Administrator, and further provided that, except as authorized by Section 1209(d) of the Act, such expenditures shall not include any fee or other consideration paid to an insurance broker or any person acting in a similar intermediary capacity for services by virtue of his/her participation in arranging any of such insurance nor include any payment on account of solicitation for or stimulation of such insurance.

(b) Paid Monthly. A statement of the compensation due to the Underwriting Agent (including reimbursement for out-of-pocket expenses as herein provided) shall be submitted by the Underwriting Agent to the Administrator monthly or at such other intervals as the Administrator may direct, with an appropriate voucher, and the amount of such compensation, if approved, shall be promptly paid to the Underwriting Agent.

4. Standard of Performance. In the discharge of its duties and obligations pursuant to this Agreement, the Underwriting Agent shall conform to a standard of performance and accuracy reasonably to be expected of an insurance company in the administration of its own business and consistent with the highest degree of good faith. It is agreed, however, that the Underwriting Agent shall not be responsible for errors or omissions of agents or employees in whose selection and supervision it has exercised reasonable care, provided, however, that the Underwriting Agent, in any such case, shall have conformed to the standards of performance required hereunder, and provided further, that the Underwriting Agent assumes full and complete responsibility for the disposition of any funds received by it or its agents or employees under and pursuant to this Agreement. The exercise of reasonable care in the selection of agents and employees by the Underwriting Agent shall be deemed to include a determination by the Underwriting Agent that the agents or employees so selected are experienced in the transaction of such phases of the marine insurance business as may be delegated to such agents or employees by the Underwriting Agent.

5. **Writing Insurance for Own Account.** It is understood that the Participating Members of the Association constituting the Underwriting Agent are or may be engaged in writing for their own account war risk insurance, as well as other types of insurance, for the benefit of holders of policies issued by the Underwriting Agent hereunder and of other parties; and it is agreed that such insurance may be written notwithstanding the activities of the Underwriting Agent hereunder on behalf of the Administrator, pursuant to this Agreement.

6. **Books and Records.**

(a) **Maintained Subject to Audit.** The Underwriting Agent shall keep books, records and accounts covering the operations and activities under this Agreement which shall be the property of the United States represented by the Administrator and shall be kept separate from those relating to other business of the Underwriting Agent or of the Participating Members thereof, in accordance with regulations made from time to time by the Administrator, and shall at all times be subject to audit and inspection by the Administrator.

(b) **Comptroller General May Examine.** The Comptroller General of the United States or any of his/her duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Underwriting Agent or of the Participating Members thereof in the performance of and involving transactions related to this Agreement.

7. **Act Only as Agent.** The Underwriting Agent shall act only in the capacity of agent for the Administrator as principal, in the performance of the functions provided for hereunder. The Underwriting Agent shall have no authority other than as provided in this Agreement and in the rules, regulations and instructions issued to it by the Administrator under and pursuant to this Agreement. The Underwriting Agent may accompany its signature in all binders and policies countersigned by it hereunder with a statement that, in countersigning such binders and policies, it acts solely under the powers conveyed to it by the Administrator and that it does not thereby warrant its authority to accept applications for insurance or its authority to countersign, nor the authority of the Administrator to issue such binders and policies.

8. **Special Circumstances.**

(a) **Reimbursement of Taxes and Fees.** In the event that the Underwriting Agent or any Participating Member or Members thereof, after giving notice to the Administrator, shall be compelled to pay to the United

States, its territories or possessions, or to any State of the United States or political subdivision thereof, or to any foreign country or political subdivision thereof, any tax (excepting income taxes of every nature) or fee or interest or penalty relating thereto claimed to be due by reason of the business transacted pursuant to this Agreement and which would not have been payable except for the activities of the Underwriting Agent or any Member or Members thereof hereunder, the Administrator shall reimburse the Underwriting Agent and any Participating Member or Members therefor and for any special expenses necessarily incurred in connection therewith.

(b) **Indemnification.** If any legal suit or proceeding (whether or not based on negligence) is brought against the Underwriting Agent or any Participating Member or Members thereof on account of anything done or not done, by the Underwriting Agent or any Participating Member or Members thereof or the Administrator, in connection with the issuance or non-issuance or cancellation of insurance or the acceptance or denial of applications for binders or policies of insurance on behalf of the Administrator or the payment or non-payment of claims for loss or return premium arising hereunder (including, without in any way limiting the foregoing, anything done or not done pursuant to any rules, regulations or instructions of the Administrator or anything done or not done in conflict with or because of any limitation on the powers of the Administrator), the Administrator shall, upon due notice and at the expense of the United States, defend any such proceeding. If, in or as a result of any such legal suit or proceeding, the Underwriting Agent or any Participating Member or Members thereof be compelled or required to make any payment or incur any expense, the Administrator shall reimburse the Underwriting Agent or any Participating Member or Members thereof for the amount thereof; provided always that the Administrator shall not be obligated to make any such reimbursement unless, in connection with the action complained of, the Underwriting Agent shall have complied with the standard of performance required thereunder. In any of the foregoing cases, the Underwriting Agent shall render to the Administrator such reasonable cooperation and assistance as the Administrator may require.

9. **Effective Date, Amendment, Termination.** This Agreement shall become effective as of the date of its execution by the Administrator and shall continue in force until terminated. This Agreement may be terminated, modified or amended at any time by mutual written consent. Once this Agreement becomes effective, it shall continue in force until terminated by mutual written consent or by either party, giving at least thirty (30) days' written notice by registered mail to the other party, stating the effective date and time on which this Agreement shall terminate. Such termination shall not affect the obligations of the parties hereto with respect to any binders or policies of insurance issued or expenditures incurred prior to the effective date of such termination.

10. **No Commission or Contingent Fee.** The Underwriting Agent warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Underwriting Agent for the purpose of securing business. For breach or violation of this warranty the Administrator shall have the right to annul this contract without liability or in his/her discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

11. **No Discrimination.** In connection with the performance of work under this contract, the Underwriting Agent agrees not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

12. **No Member or Delegate.** No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

13. **Renegotiation.** This contract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation of said contract and shall be deemed to contain all of the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this contract) shall insert the provisions of this article in each subcontract and purchase order made or issued in carrying out the contract.

Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

14. Participating Members

(a) Indebted to United States The Participating Members of the association constituting the Underwriting Agent, severally but not jointly and limited each to its participation therein, shall be indebted to the United States for such amounts as the Secretary is entitled to recover from the Underwriting Agent in accordance with the foregoing provisions and, in the event of failure to pay on demand, the Secretary may bring an action or actions in any court in the United States to recover such amount or amounts from the Participating Members severally but not jointly, on behalf of the United States.

(b) Change of Shares. Without cancelling this Agreement, the Participating Members of the association constituting the Underwriting Agent may, upon not less than ten (10) days' prior written notice to the Administrator, change their share of participation by agreement among themselves, including the termination of the interests of one Participating Member and the assumption of its share by one or more of the other Participating Members or by the admission of other eligible domestic insurance companies to membership in the association. Any such change of apportionment or termination of participation shall not relieve any Participating Member of its obligations in respect to matters which occurred prior to any change or termination of its interest. Unless the Underwriting Agent is notified in writing by the Administrator, within ten (10) days after receipt of notice from the Underwriting Agent, that the proposed change in participation or termination or assumption is disapproved, such change shall be understood to be acceptable to the Administrator.

In witness whereof, the parties hereto have duly executed this Agreement in quadruplicate as of the day and year first above written.

UNITED STATES OF AMERICA
SECRETARY OF TRANSPORTATION
BY: MARITIME ADMINISTRATOR

Attest:

(Maritime Administrator)

Attest:

(Underwriting Agent)

BY: _____

Approved as to form:

(Assistant Chief Counsel,
Maritime Administration)

_____ certify that I am the duly chosen, qualified, and acting Secretary of _____ a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that _____, who signed this Agreement on behalf of said association, was then the duly qualified _____ of said association; that said officer affixed his/her manual signature to said Agreement in his/her official capacity as said officer for and on behalf of said association by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the lawful powers of this association.

Dated: _____

Seal