

## ***ICB SYSTEM STANDARD TERMS AND CONDITIONS***

**Revised: June 12<sup>th</sup>, 2009**

U.S. Customs and Border Protection requires that international carriers, including participants in the Automated Manifest System (as defined below), shipping cargo to U.S. ports must obtain an ICB (as defined below).

The Applicant desires for Shoreline Insurance Managers Ltd. (referred to hereinafter as SIM) to facilitate the issuance of an ICB by the International Carrier Bond Issuer (as defined below) for certain claims against the Applicant relating to one or more of its Vessels (as defined below) by the United States Bureau of Customs and Border Protection Department, United States Treasury.

To facilitate the issuance of the ICB, the Applicant has requested that SIM provide a Credit Indemnity (as defined below) to an International Carrier Bond Issuer.

SIM requires, as a condition precedent to issuing the Credit Indemnity and to facilitate the issuance of the ICB, that the Applicant agree to the terms and conditions set forth in the Agreement, including Applicant's indemnity of SIM against all claims arising out of the Related Agreements (as defined below).

### **1. DEFINITIONS**

For all purposes of the Agreement, except as expressly provided or unless the context otherwise requires, the following terms shall have the following respective meanings:

“Agreement” means, collectively, all the Related Agreements, which are incorporated herein by this reference;

“Applicant” means the person or persons executing below in such capacity and, if more than one Applicant, any obligation of such Applicants shall be joint and several and any event which occurs with respect to any one Applicant shall be deemed to have occurred with respect to all the Applicants;

“Automated Manifest System” shall have the meaning contemplated in 19 U.S.C §1431, and shall include the associated regulations issued by the United States Bureau of Customs and Border Protection (including, but not limited to, 19 C.F.R. §113.64 and 19 C.F.R. §4.7) and any other statutes or regulations referenced or otherwise involving the same, all as may be amended from time to time;

“COFR Agreement” means any agreement or document with Shoreline Insurance Managers Ltd. relating to the issuance of a certificate of financial responsibility involving the same or related Vessels, Applicants, owners or operators;

“Commissioner” means the Commissioner of Customs, United States Bureau of Customs and Border Protection, United States Treasury;

“Costs” shall have the meaning set forth in Section 4.1;

“Credit Indemnity” means the documentation constituting the indemnity that will be provided by SIM to induce an International Carrier Bond Issuer to issue an ICB to the Commissioner, it being understood and agreed that such Credit Indemnity is actually a credit enhancement for the International Carrier Bond Issuer since the Applicant is indemnifying SIM for its obligations under such Credit Indemnity;

“CTC” shall have the meaning set forth in Section 11.3;

“ICB” means an International Carrier Bond required to meet liability under the conditions set forth in 19 C.F.R. §113.64;

“ICB Procurement Agreement” means the ICB Procurement Agreement entered into between the Applicant and SIM having that name;

“ICB Procurement Request” means the application completed and executed by the Applicant entitled ICB Procurement Request;

“ICB System Standard Terms and Conditions” means these ICB System Standard Terms and Conditions;

“International Carrier Bond Issuer” means a surety, together with any bond brokers, that SIM will use, in its sole discretion, to issue an ICB on behalf of the Applicant to Commissioner;

“LIBOR” means the London Inter-Bank Offer Rate;

“Notice of Adjustment” shall have the meaning set forth in the ICB Procurement Agreement;

“P&I Policy” shall have the meaning set forth in Section 2.2(d);

“Powers of Attorney” means the forms of Powers of Attorney executed by the Applicant for the benefit of SIM;

“Procurement Fee” shall have the meaning set forth in the ICB Procurement Agreement;

“Related Agreements” means these ICB System Standard Terms and Conditions, ICB Procurement Agreement, ICB, Credit Indemnity, ICB Procurement Request and related Powers of Attorney; and

“Vessel” or “Vessels” means the Vessel or Vessels owned or operated by the Applicant and set forth in the ICB Procurement Request for inclusion herein.

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

## **2. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS BY THE APPLICANT**

### **2.1 Representations and Warranties**

The Applicant represents and warrants to SIM that as of the date of the Agreement and at all times during the period of such Agreement:

- (a) the Applicant has 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;
- (b) all consents, licenses, 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 the Agreement constitutes legal, valid and binding obligations enforceable against them in accordance with its terms under the laws of New York and the laws of the Applicant’s jurisdiction of organization;
- (c) the Applicant has 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 Applicant of the Agreement does not violate in any respect:
  - (i) any applicable law or regulation of any governmental or official authority or body,
  - (ii) constitutional or organizational documents of the Applicant, or
  - (iii) any agreement, contract or other undertaking to which any Applicant is a party or which is binding on the Applicant or any of its assets;

(e) 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, 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

(f) all information (including any representation, warranty, undertaking or statement made by or on behalf of the Applicant) provided by or on behalf of the Applicant to SIM prior to or after the date of the Agreement is true and not misleading as of the date provided, and no such information contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

## **2.2 Covenants**

The Applicant covenants to SIM, at all times throughout the period of the Agreement and at no expense to SIM, as follows:

(a) without prejudice to any rights of SIM to terminate or take any other actions under the Agreement, to notify SIM immediately of any change in the written information, statements, representations, warranties and undertakings provided to SIM during the period of the Agreement that would make such previous information, statement, representation or warranty untrue or misleading, and to immediately notify SIM of any breach of the Agreement;

(b) at any time and from time to time on the written request of SIM to promptly execute and deliver to SIM any and all such further instruments, documents and things as SIM may consider desirable in obtaining the full benefit of the Agreement and of the rights and powers herein granted;

(c) to comply with all statutory, regulatory and other requirements 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 (including, but not limited to, any manifest requirements under 19 U.S.C §1431 and any corresponding regulations, any arrival requirements under 19 U.S.C §1433 and any corresponding regulations, any formal entry requirements under 19 U.S.C §1434 and any corresponding regulations and any underlying requirements under 19 U.S.C §1438 and any corresponding regulations);

(d) to procure and maintain in full force and effect the Applicant's coverage of its Vessels under any Protection and Indemnity Associations' policy ("P&I Policy") including cover for customs fines, penalties and other costs covered by the ICB;

(e) to pay to SIM any amounts paid by, and to permit SIM to pursue on behalf of the Applicant any amounts which may be payable by, any P&I Policy covering the Applicant and/or its Vessels with respect to any fines, penalties, duties, taxes or other costs paid or payable by the International Carrier Bond Issuer or SIM under the ICB or Credit Indemnity, but only to the extent that SIM or the International Carrier Bond Issuer has been caused to make a payment pursuant to the Credit Indemnity or ICB, respectively;

(f) to agree that all Procurement Fees shall be deemed fully earned by SIM for the applicable period upon the issuance of the Credit Indemnity; and

(g) to keep in full force and effect all consents, licenses, approvals and authorizations required for the entry into, performance, validity and enforceability of the Agreement.

## **3. OBLIGATIONS OF SIM**

Subject to the terms and conditions of the Agreement, and in reliance on the representations, warranties and undertakings of the Applicant set out herein, SIM agrees to use all reasonable commercial efforts to facilitate the issuance of an ICB on behalf of the Applicant to the Commissioner; *provided however,*

**SIM 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 CREDIT INDEMNITY FOR PURPOSES OF THE ISSUANCE OF THE ICB FOR ANY VESSEL, AND SIM SHALL NOT MAKE, OR BE DEEMED TO HAVE MADE, ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, THAT THE ICB WILL BE ISSUED FOR ANY VESSEL, OR AS TO THE CONTINUED VALIDITY OF THE ICB THAT IS ISSUED FOR ANY VESSEL. SIM FURTHER EXPRESSLY DISCLAIMS RESPONSIBILITY FOR, THE FINANCIAL CONDITION, SOLVENCY OR ABILITY TO PAY CLAIMS OF THE INTERNATIONAL CARRIER BOND ISSUER CHOSEN BY SIM TO ISSUE THE ICB.**

In the event that the Credit Indemnity is not acceptable or should become unacceptable for purposes of obtaining the ICB for any Vessel, the Agreement shall immediately terminate without further action.

SIM shall have no duty to indemnify or defend the Applicant or its affiliates, officers, agents or employees or any of them, or any owner, operator or charterer of the Vessels.

#### **4. INDEMNIFICATION**

**4.1** From and at all times after the date of the Agreement, and in addition to all of SIM's other rights and remedies against the Applicant, the Applicant agrees to indemnify, defend and hold harmless SIM, and each director, officer, employee, agent, successor, assign, and affiliate of SIM from and against the following (collectively, "Costs"):

(a) *Payments under the Credit Indemnity.* The amount, or the aggregate of all amounts, paid by SIM under the terms of the Credit Indemnity to any International Carrier Bond Issuer with respect to the ICB or any other party making a claim under the ICB.

(b) *Interest on Credit Indemnity Payments.* Interest in respect of amounts paid under the Credit Indemnity by SIM (calculated at an annual interest rate of LIBOR plus 200 basis points on such amounts from the date of payment by SIM to the date of reimbursement by the Applicant).

(c) *Costs and Expenses.* Any and all claims (whether valid or not), losses damages, actions suits, inquiries, investigations, administrative proceedings, judgments, liens, liabilities, taxes, proceedings, damages, penalties, fines, amounts paid in settlement, requirements of any governmental authorities, punitive damages, interest, damages to natural resources and other costs and expenses of any kind or nature whatsoever (including, but not limited to, taking or defending legal action, whether or not the Credit Indemnity or such other Related Agreements was actually established on the part of SIM and reasonable attorneys' fees and expenses, court costs and fees, and consultant and expert witness fees and expenses) arising in any manner, directly or indirectly, out of or by reason of:

- (i) the issue and performance of the Credit Indemnity or ICB;
- (ii) any action taken by any person against SIM under or in connection with the Credit Indemnity or ICB; 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 Agreement or any transaction relating to or arising out of the Agreement.

(d) *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 the Applicant or the International Carrier Bond Issuer under or in connection with the Agreement, including the due payment of Procurement Fees to SIM.

(e) *Interest for Late Payment.* Upon any failure (for whatever reason) by the Applicant to pay any amount due under the Agreement within ten (10) days of the date of demand, interest shall be payable calculated at an annual interest rate of LIBOR plus 400 basis points on such amounts outstanding from the demand date until receipt by SIM of the amount outstanding.

**4.2** All amounts due from the Applicant under the Agreement (including but not limited to amounts payable for the Procurement Fee) shall be paid:

- (a) without any form of set off, cross claim or condition; and
- (b) free and clear of any tax withholdings or deduction except which the Applicant is required by law to make.

**4.3** If the Applicant is required by law to make a tax withholdings or deduction from any payment:

- (a) the Applicant shall notify SIM as soon as it becomes aware of the requirements;
- (b) the Applicant shall pay the tax withheld or 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 (the “Gross-up Amount”) necessary to ensure that SIM receives and retains (after any tax withholding or deduction that required the payment of the Gross-up Amount as well as any withholding or deduction on or from the Gross-up Amount) an amount that is equal to the full amount which SIM would otherwise have received.

**4.4** Neither the Applicant nor any other owner, operator or charterer of the Vessels not being a party to the Agreement, shall, under any circumstances, be entitled to claim against SIM for any liabilities under any law, statute or regulation, whether of the United States or any other jurisdiction, including, but not limited to, any customs laws or the regulations promulgated thereunder or under any law or regulation of any other country or legal subdivision thereof.

**4.5** SIM shall be subrogated to all the Applicant’s rights or claims against any other person or entity relating to any payment made under the Related Agreements to the extent of such payment. The Applicant shall provide SIM with all documentation and other evidence necessary for assertion of such claims and shall execute all documents necessary to secure such rights.

**4.6** The obligations of the Applicant under this Section 4 shall not be diminished by reason of the ability of SIM to obtain indemnity for any matter described in this Section 4 from any third party or by reason of any payment made to or for the benefit of SIM by any such third party, and the obligation of the Applicant shall inure to the benefit of SIM and such third party.

## **5. PRINCIPAL**

The Applicant understands and agrees that the Applicant will be considered the “principal,” as contemplated in 19 C.F.R. §113.31, in all documents executed by SIM on behalf of the Applicant pursuant to the Powers of Attorney and otherwise.

## **6. 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.

## **7. 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 hereof.

## **8. TERMINATION**

**8.1** By SIM. The Agreement (including all the Related Agreements) may be terminated by SIM, as follows:

(a) immediately, in the event of a breach by the Applicant of any representation, warranty, covenant, undertaking or any other provision of the Agreement (including all the Related Agreements) or of any other obligations of the Applicant to SIM, whether under any COFR Agreement or otherwise;

(b) immediately, in the event the Applicant has failed to pay any Costs when due or Procurement Fees when due, and has failed to cure such failure within forty-eight (48) hours;

(c) immediately, in the event the International Carrier Bond Issuer withdraws the ICB for any or no reason; or

(d) upon fifteen (15) days notice, at any other time for any other reason.

**8.2 By Applicant.** The Agreement may be terminated by the Applicant, with respect to any or all of the Vessels, upon ninety (90) days notice to SIM. Such Vessel(s) shall be deleted from coverage under the Agreement and SIM shall provide notification to the International Carrier Bond Issuer.

**8.3 Vessel Related.** The Agreement shall terminate automatically with respect to any Vessel the moment the Applicant ceases to be the owner or operator of any Vessel for any reason, including scrapping or transferring the Vessel to a new operator.

**8.4 Termination Obligations.** In the event of termination, (a) SIM shall be under no obligation to return any Costs or Procurement Fees and shall be entitled to any Costs or Procurement Fees owed by the Applicant, and (b) SIM shall have no liability with respect to the Applicant in the event termination hereunder.

**8.5 Rights after Termination.** In the event of termination of the Agreement pursuant to this Section 8, written notice thereof will forthwith be given by the terminating party to the other party (and the terminating party shall have the right, but not the obligation, to provide a similar notice to any other party in connection with the Agreement), and, to the extent permitted by the terms of each of the Related Agreements, each Related Agreement will thereupon terminate and become void and have no effect, and the transactions contemplated hereby will be abandoned without further action by the parties, except that the provisions relating to the payment of the Costs or the Procurement Fees, as well as Section 4, this Section 8 and Section 10 of the ICB System Standard Terms and Conditions will survive the termination of the Agreement; provided that such termination will not relieve any party of any liability for any material breach of any covenant or agreement contained in the Agreement prior to the date of termination; and provided further that neither the timing of the notice nor the failure to so notify shall affect the validity or the timing of any such termination as set forth in Section 8.1 (other than with respect to any revocation of the Powers of Attorney of which SIM must receive notice as contemplated therein). In the event of a termination contemplated under this Section 8.5, the Applicant agrees to designate SIM under the terms of the applicable Power of Attorney to act on behalf of the Applicant in terminating the ICB, and the Applicant further agrees to take any and all such actions or execute such other documents as may be necessary to terminate the ICB in the event of such termination.

**8.6 Cross-Termination.** In the event SIM terminates either (a) the Agreement (in accordance with this Section 8), or (b) any COFR Agreement (as permitted thereunder), SIM shall have the right to terminate the other such agreement which may then be in force with respect to the same or related Vessels, Applicant, owners or operators. SIM also reserves the right, due to the Applicant's violation of its representations, warranties and undertakings hereto, to invoke Rule 40 by virtue of the implied threat of a potential incident.

## **9. VARIATIONS AND WAIVERS; MODIFICATIONS OF STANDARD TERMS AND CONDITIONS**

**9.1** Subject to the following provisions of this Section 9, the Applicant and SIM shall be bound by any variation, waiver or suspension of any provision of the Agreement which is evidenced by a document signed by the Applicant and SIM.

**9.2** No right or remedy to which SIM 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.

**9.3** Except as set out in the previous provisions of this Section 9, no act, course of conduct, failure or neglect to act or acquiescence on the part of SIM (or any person acting on its behalf) shall result in SIM (or any person acting on its behalf) being taken to have waived, or being precluded (permanently or temporarily) from enforcing or relying on:

- (a) a provision of the Agreement;
- (b) its rights in respect of a breach by any of the Applicant of an obligation under the Agreement or any applicable law; or
- (c) any right under any applicable law, including those rights arising out of a breach such as is described in paragraph (b) above.

## **10. SEVERABILITY**

If any clause, subsection, Section 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 clause, subsection, Section 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.

## **11. GOVERNING LAW AND JURISDICTION**

**11.1** The Agreement will be governed by and construed in accordance with the laws of the State of New York without reference to the choice of law principles thereof.

**11.2** The parties agree that the appropriate and exclusive forum for any disputes between the parties arising out of the Agreement or the transactions contemplated hereby will be any state or federal court in the State of New York. The parties further agree that neither party will bring suit with respect to any disputes arising out of the Agreement or the transactions contemplated hereby, except as expressly set forth below for the execution or enforcement of judgment, in any court or jurisdiction other than the above specified courts. The foregoing will not limit the rights of either party to obtain execution of judgment in any other jurisdiction. The parties further agree, to the extent permitted by law, that a final and nonappealable judgment against any of them in any action or proceeding contemplated above will be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified or exemplified copy of which will be conclusive evidence of the fact and amount of such judgment.

**11.3** By the execution and delivery of the Agreement, each party (a) irrevocably designates and appoints The Corporation Trust Company (“CTC”) in care of CT Corporation System at its offices in the City of New York, County of New York, State of New York, as its authorized agent upon which process may be served in any action or proceeding arising out of or relating to the Agreement; (b) submits to the personal jurisdiction of any state or federal court in the State of New York in any such action or proceeding; and (c) agrees that service of process upon CTC will be deemed in every respect effective service of process upon such party in any such action or proceeding. Each party further agrees to take any and all actions, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of CTC in full force and effect so long as the Agreement is in effect. The foregoing will not limit the rights of either party to serve process in any other manner permitted by law.

**11.4** To the extent that any party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, such person hereby irrevocably waives such immunity in respect of its obligations with respect to the Agreement. Each party hereby irrevocably waives any claim to a trial by jury in any action respecting matters arising out of the Agreement and any objection to the laying of venue of any action or proceeding in the courts specified in Section 11.2 above.

## **12. MISCELLANEOUS**

**12.1** The Agreement (including all the Related Agreements) represents the entire understanding and agreement between SIM and the Applicant and supersedes any and all prior agreements, whether written or oral, that may exist between SIM and the Applicant regarding the 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.

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

**12.3** The section and other headings contained in the Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of the Agreement. All references to sections contained herein mean Sections of the Agreement unless otherwise stated.

**12.4** The obligations of the Applicant under the Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms hereof, under all circumstances whatsoever, irrespective of any of the following circumstances:

- (a) any lack of validity or enforceability of the Agreement;
- (b) any amendment or waiver of or any consent to departure from the Agreement (except to the extent such amendment or waiver is given by SIM in writing and expressly relieves the Applicant of an obligation under the Agreement);
- (c) any statement or any other document presented under the Agreement proves to be forged, fraudulent or invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever (absent gross negligence or willful misconduct of SIM); and
- (d) any other circumstance or happening whatsoever whether or not similar to any of the foregoing.

## **13. ADDITION OF VESSELS**

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

## **14. NOTICES**

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 be in English and in writing; and be deemed to have been duly given or made if it is:

- (a) 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;
- (b) 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
- (c) 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).