

**AGREEMENT BY CHARTERERS**  
**TO PROVIDE PERFORMANCE BANK GUARANTEE**

To: Messrs .....  
The owners of the SS/MV " ....."

Whereas

A charter party is presently being negotiated between Messrs. .... the owners of the M.V. " ....." and Messrs. .... the charterers for a period of ..... on an ..... form.

And whereas

It is a condition precedent of the charter party that the charterers procure a bank guarantee guaranteeing charterers' performance of all of its obligations and liabilities under the charter party.

In consideration of owners entering into a charter party with Messrs. .... hereinafter referred to as "the charterers" for a period of ..... on a ..... form.

Charterers hereby irrevocably agree as follows:

1. To procure in the owners' favour a bank guarantee issued by ..... hereinafter referred to as "the bank" in an amount of ..... in the terms described hereunder.
2. It is agreed that under the said guarantee the bank and its successors and assigns, shall unconditionally and irrevocably:
  - (a) Guarantee, as primary obligor and not merely as surety, and in favour of the Owners, their successors and assigns,
    - (i) the due and punctual performance by the charterers, their servants and agents of all duties liabilities and obligations under the charter party including but not limited to the charterers' obligation to pay hire regularly and punctually in accordance with the terms of this charter party,

(ii) the due and punctual payment of all sums payable by the charterers to owners under and/or pursuant to and/or arising in connection with and/or relating to the Charter party including but not limited to the payment of any and all sums awarded ordered or adjudged to be due to owners pursuant to any arbitration award or awards and/or Court judgment or judgments under and/or pursuant to and/or arising in connection with and/or relating to the Charterparty so that if and whenever the charterers fail to make any payment when due of any such sum or sums or part thereof the Bank shall pay each and every such sum or sums or part thereof to owners upon their first written demand for payment addressed to us,

(b) Waive any and all rights as surety which may at any time be inconsistent with any of the provisions of the bank guarantee and in particular any right which the charterers may have to compel owners (prior to enforcing the bank guarantee) to take any steps to enforce owners claims against charterers.

(c) Indemnify the owners in respect of any and all liabilities which the owners may incur howsoever arising as a result of any failure on the part of the charterers to comply with any of their obligations under the charter party and to indemnify the owners in respect of any obligation contracted by the charterers which the owners may be called upon to pay and/or fulfil.

(d) Indemnify the owners in respect of any failure on the part of the charterers to pay to their servants or agents or any third party including but not limited to suppliers having rendered services or materials to the vessel for the account of the charterers any outstanding and due amounts which would create a maritime lien or other charge or claim against the vessel whether in rem or in personam.

(e) Not be discharged in part or whole by any intermediate or partial payment by charterers to owners and shall not be discharged by any amendment modification or variation of the Charter Party or rescheduling of the original obligations of charterers to make payment to owners as

aforesaid and shall be in addition to and not in substitution for or derogation of any other security which may at any time hold or obtain in respect of the obligations of charterers to owners to make payment to owners as aforesaid

- (f) Provide that their liability under the guarantee shall not be impaired or discharged by reason of any arrangements entered into or compositions accepted by charterers modifying (by operation of law or otherwise) owners rights and remedies against charterers nor shall the Bank be discharged by the liquidation of and/or bankruptcy of charterers or the petitioning for relief under or otherwise seeking the benefit of any bankruptcy reorganisation arrangement or insolvency law by or against charterers or in the event of any assignment for the benefit of creditors by the charterers.
- (g) Provide that their obligations under the guarantee shall be unconditional and irrevocable irrespective of the genuineness validity regularity or enforceability of the Charter Party or any other consideration which might constitute a legal or equitable discharge of the Bank's obligations under the guarantee.
- (h) Provide that if any monies paid to owners in reduction of the liabilities guaranteed under the guarantee (other than monies paid by the Bank direct to owners under the guarantee) are required to be repaid by owners on any ground whatsoever or howsoever arising (including but without limitation any ground relating to insolvency) and are so repaid the Bank's liability under the guarantee shall be computed as if such monies have never been paid to owners.
- (i) Provide that all payments under the guarantee shall be made without any deduction or withholding for or on account of any present or future taxes levies imposts duties or other charges. If the Bank is compelled by law to make such deduction the Bank will ensure that the amount so deducted does not exceed the minimum legal liability and the Bank will promptly pay to owners such additional amount or amounts as will result in the net amounts received by owners being equal to the full amount which would have

been receivable had there been no deduction or withholding.

- (j) Provide that the Bank represents and warrants that the Bank has full power and authority and has been duly authorised to enter into the guarantee and the Bank shall further agree that the guarantee shall be governed by and construed in accordance with English law and that any disputes arising thereunder and/or relating thereto and/or arising in connection therewith shall be referred to the exclusive jurisdiction of the High Court of Justice in London.

- (k) Maintain its guarantee throughout the period of the charter party and until all of the Charterers obligations and liabilities under the Charter party shall have been performed and discharged in full

[or for a period of 15 months after termination thereof save that if upon the expiry of the said 15 months any claim or liability as here before described has been notified or remains outstanding the guarantee shall extend to cover all and any such claim(s) or liability until discharge or payment thereof].

3. The owners shall be entitled to immediate payment under the guarantee of all and any sums due from the charterers in accordance with the provisions of the preceding paragraphs hereof providing that the charterers shall have been given 3 banking days notice prior to the owners' exercise of such rights under the guarantee.
4. Notwithstanding any failure to give notice in accordance with the preceding paragraph 3 above, upon payment of any sum whether equal to or less than the full sum guaranteed under this guarantee and upon each and any such payment the charterers shall cause the bank to and the bank shall forthwith re-establish the full amount of the guarantee to the limit agreed in clause 1 above.
5. The charterers' compliance with the provisions of this clause is a condition of this charter and any breach of this clause and/or any failure by the bank to comply with the terms of its guarantee shall entitle the owners to terminate the

charter party forthwith and to recover any damages loss costs or expense incurred by the owners in consequence of any breach by the charterers and/or in consequence of any such termination of the charter party.

6. Any rights of the owner under this clause are without prejudice to all and any other of the owners' rights under the charter party or otherwise.
7. Charterers and/or the bank shall not be entitled to assert any alleged rights of set off or counterclaim in diminution or extinction of any claim by the owners for payment under this guarantee.

Signed

Charterers Authorised signatory