



# NOVATION AGREEMENT

STANDARD NOVATION AGREEMENT  
FOR THE TRANSFER OF OWNERSHIP

PART I

<b>1.</b> Place and date of Novation Agreement		
<b>2.</b> Charterers  (i) Name: (ii) Address of registered office: (iii) Country of incorporation:	<b>3.</b> Original Owners  (i) Name: (ii) Address of registered office: (iii) Country of incorporation:	<b>4.</b> New Owners (i) Name: (ii) Address of registered office: (iii) Country of incorporation:
<b>5.</b> Vessel  (i) Name: (ii) IMO number: (iii) Flag State: (iv) Call sign:	<b>6.</b> Date of Time Charter Party	<b>7.</b> Date of Memorandum of Agreement
<b>8.</b> Effective Time	<b>9.</b> New Owners' Bank Account (Cl. 3)	<b>10.</b> New Owners' Vessel Details (Cl. 2)  (i) P&I Club: (ii) Managers: (iii) Name: (iv) Flag State: (v) Call sign:
<b>11.</b> Charterers' Guarantor (Cl. 6)	<b>12.</b> New Owners' Guarantor (Cl. 6)	
<b>13.</b> Notices (state full style contact details for serving notices and communication to New Owners (Cl. 10))	<b>14.</b> Effective Time Survey (Cl. 5)	
<b>15.</b> Dispute Resolution (state (a), (b) (c) or (d) of Cl. 11, as agreed; if (c) agreed also state whether Singapore or English law to apply; if (d) agreed also state the place of the law governing the Novation Agreement and place of arbitration) (Cl. 11)		

## **Background**

The Charterers, the Original Owners and the New Owners have agreed to novate the Time Charter Party and replace the Original Owners with the New Owners in accordance with the terms of this Novation Agreement. The terms used in this Novation Agreement shall have the same meaning as the terms used in the Time Charter Party.

### **1. Novation**

In consideration of the mutual promises contained herein the receipt and the sufficiency of which the Original Owners hereby acknowledge, it is agreed that on and with effect from the Effective Time as stated in Box 8 the Time Charter Party shall be novated as follows:

- (a) The New Owners shall be substituted in place of the Original Owners as a party to the Time Charter Party. The novated Time Charter Party shall be construed and treated, and the Charterers shall be bound by the novated Time Charter Party in all respects, as if the New Owners were named in the novated Time Charter Party instead of the Original Owners.
- (b) The Charterers release and discharge the Original Owners from all liabilities, claims, duties and obligations whatsoever in respect of the Time Charter Party.
- (c) The Original Owners release and discharge the Charterers from all liabilities, claims, duties and obligations whatsoever in respect of the Time Charter Party.
- (d) The New Owners shall have all the rights, title, benefits and interests under the Time Charter Party to the exclusion of the Original Owners and accordingly the Charterers undertake to perform their obligations under the novated Time Charter Party in favour of the New Owners.
- (e) The New Owners shall assume all liabilities, duties and obligations under the Time Charter Party and accordingly, the New Owners undertake to perform their obligations under the novated Time Charter Party in favour of the Charterers.
- (f) Notwithstanding the foregoing, the Original Owners and the Charterers shall remain liable to each other under the Time Charter Party after the Effective Time in respect of any obligation or liability of whatsoever nature of the Original Owners and/or the Charterers, including but not limited to any obligation or liability of whatsoever nature owed to a third party, arising out of the Time Charter Party before the Effective Time. The New Owners shall have no liability whatsoever to the Original Owners or the Charterers in respect of any such liabilities and the Original Owners and the Charterers shall jointly and severally indemnify the New Owners in relation to any obligation or liability of whatsoever nature owed to a third party arising out of the Time Charter Party before the Effective Time.

### **2. Amendments to the Time Charter Party**

From the Effective Time, all references in the Time Charter Party to the Vessel shall be deemed amended by this Novation Agreement so as to refer to the New Owners' Vessel Details as stated in Box 10.

### **3. Charter Hire**

The Original Owners shall be paid hire by the Charterers in accordance with the Time Charter Party up to the Effective Time. The New Owners shall be paid hire by the Charterers in accordance with the Time Charter Party from the Effective Time. Payment shall be made to the New Owners' bank account as stated in Box 9. The hire due in respect of the period from the Effective Time up to the date the next instalment of hire falls due under the Time Charter Party shall be paid by the Charterers to the New Owners on or before the Effective Time.

### **4. Warranties**

As at the Effective Time:

- (a) the Original Owners and the Charterers warrant to the New Owners that the Time Charter Party has not been amended, varied, cancelled, terminated, rescinded or novated, remains valid and binding and constitutes the entire agreement between the Original Owners and the Charterers relating to the subject matter of the Time Charter Party;
- (b) the Original Owners and the Charterers warrant to the New Owners that no event or circumstance has occurred or is continuing which will entitle or result in cancellation, termination or rescission of the Time Charter Party, or otherwise render it void or unenforceable; and
- (c) the Original Owners warrant that they have not assigned or transferred or granted any interest in the Time Charter Party to any other party and that they will not in the future attempt to do so.

#### **5. Effective Time Survey**

If agreed and stated in Box 14 and as soon as practicably possible after the last discharge port prior to the Effective Time or before the first loading port after the Effective Time, the parties shall each appoint surveyors, for their respective accounts, to conduct a joint Effective Time Survey to ascertain the condition of the Vessel. A single report shall be prepared and signed by each surveyor, without prejudice to their right to file a separate report setting forth items upon which the surveyors cannot agree.

If any party fails to have a representative attend the Effective Time Survey and sign the joint survey report, such party shall nevertheless be bound for all purposes by the findings agreed by the other parties.

Any time lost as a result of the Effective Time Survey shall be shared equally between the Original Owners and the New Owners.

If Box 14 is not filled in this Clause 5 (Effective Time Survey) shall not apply.

#### **6. Mutual Renewal of Guarantees**

It shall be a condition precedent to the effectiveness of this Novation that on or before the Effective Time the Charterers and New Owners shall each provide in favour of the other guarantees issued by the Guarantors stated in Boxes 11 and 12 substantially in the same form and substance as previously provided by the Charterers and the Original Owners in respect of the Time Charter Party.

#### **7. Assurances**

- (a) Each party shall do all things and execute all further documents necessary to give full effect to this Novation Agreement.
- (b) Each party represents and warrants to the other parties that they have full power and authority to become a party to this Novation Agreement and have taken all necessary actions and have obtained all consents, licences, and approvals required in connection with the entry into and performance of this Novation Agreement.

#### **8. Costs and Expenses**

Each party shall pay its own costs, charges and expenses in relation to the negotiation and execution of this Novation Agreement.

#### **9. Third Party Rights**

No third parties may enforce any term of this Novation Agreement.

#### **10. Notices**

All notices, requests and other communications required or permitted to be given by the Charterers to the New Owners under the Time Charter Party shall be given to the address as stated in Box 13.

**11. Dispute Resolution Clause**

- (a)\* This Novation Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Novation Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if the arbitrator had been appointed by agreement. In the event that there are more than two parties to the arbitration, then all three arbitrators shall be appointed by agreement between the parties. In the event that the parties cannot agree on the three arbitrators within 14 days of one party giving notice to the other parties calling for arbitration, any party to the dispute shall be entitled to apply to the President of the LMAA who shall then appoint all three arbitrators.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (b)\* This Novation Agreement shall be governed by U.S. maritime law or, if this Novation Agreement is not a maritime contract under U.S. law, by the laws of the State of New York and any dispute arising out of or in connection with this Novation Agreement shall be referred to three (3) persons at New York. If there are two parties to the dispute, each shall appoint an arbitrator and the two so chosen shall appoint a third. If there are three parties to the dispute, then each party shall appoint an arbitrator. If any party fails to nominate an arbitrator within 20 days of receiving a demand for arbitration, the President of the Society of Maritime Arbitrators, Inc. (SMA) or in the event of a conflict, the SMA's Vice-President, shall appoint an arbitrator on behalf of that party at the request of any other party. The decision of the arbitrators or any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the SMA Rules current as of the date of this Novation Agreement.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the SMA Rules for Shortened Arbitration Procedure current as of the date of this Novation Agreement.

- (c)\* This Novation Agreement shall be governed by and construed in accordance with Singapore\*\*/English\*\* law. Any dispute arising out of or in connection with this Novation Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are commenced. The reference to arbitration of disputes under this clause shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator and give notice that it has done so within 14 calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if the arbitrator had been appointed by agreement. In the event that there are more than two parties to the arbitration, then all three arbitrators shall be appointed by agreement between the parties. In the event that the parties cannot agree on the three

arbitrators within 14 days of one party giving notice to the other parties calling for arbitration, any party to the dispute shall be entitled to apply to the President of the SCMA who shall then appoint all three arbitrators.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 75,000 (or such other sum as the parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (d)\* This Novation Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Novation Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.
- (e) The parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement. In the case of any dispute in respect of which arbitration has been commenced under Sub-clause (a), (c) or (d), the following shall apply:
- (i) A party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party (or parties) of a written notice (the "Mediation Notice") calling on the other party (or parties) to agree to mediation.
  - (ii) The other party (or parties) shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party (or parties) a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.
  - (iii) If the other party (or parties) does (do) not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.
  - (iv) The mediation shall not affect the right of either party (or parties) to seek such relief or take such steps as it (they) considers (consider) necessary to protect its (their) interest.
  - (v) A party (or parties) may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.
  - (vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.
  - (vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

\*Sub-clauses (a), (b), (c) and (d) are alternatives; indicate alternative agreed in Box 15. Sub-clause (e) shall apply to Sub-clauses (a), (c) and (d) only. If Box 15 is not filled in, Sub-clause (a) of this Clause shall apply.

\*\* Singapore and English law are alternatives; if Sub-clause (c) agreed also indicate choice of Singapore or English law. If neither or both are indicated, then English law shall apply by default.

BIMCO Standard Novation Agreement for the the Transfer of Ownership

IN WITNESS whereof this Novation Agreement has been executed as of the date stated in Box 1:

SIGNED by: \_\_\_\_\_

For and on behalf of the Charterers

SIGNED by: \_\_\_\_\_

For and on behalf of the Original Owners

SIGNED by: \_\_\_\_\_

For and on behalf of the New Owners

Sample copy