

NOVATION AGREEMENT

STANDARD NOVATION AGREEMENT FOR SHIPBUILDING CONTRACTS

PART I

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| 1. Place and date of Novation Agreement | |
| 2. Builders (i) Name: (ii) Address: (iii) Country: (iv) Phone: (v) Email: (vi) Company registration number: Additional names (i) Name: (ii) Address: (iii) Country: (iv) Phone: (v) Email: (vi) Company registration number: | 3. Original Buyers (i) Name: (ii) Address: (iii) Country: (iv) Phone: (v) Email: (vi) Company registration number: Additional names (i) Name: (ii) Address: (iii) Country: (iv) Phone: (v) Email: (vi) Company registration number: |
| 4. New Buyers (i) Name: (ii) Address: (iii) Country: (iv) Phone: (v) Email: (vi) Company registration number: Additional names (i) Name: (ii) Address: (iii) Country: (iv) Phone: (v) Email: (vi) Company registration number: | 5. Shipyard(s) (i) Name: (ii) Address: (iii) Country: (iv) Phone: (v) Email: (vi) Company registration number: Additional names (i) Name: (ii) Address: (iii) Country: (iv) Phone: (v) Email: (vi) Company registration number: |

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| 6. Vessel description/type (i) Builder's Hull Number: (ii) IMO number: (iii) Flag State: (iv) Type: | 7. Date of Shipbuilding Contract | 8. Effective Time |
| 9. Builders' Guarantor (Cl. 2) | 10. Original Buyers' Guarantor (Cl. 2) | 11. New Buyers' Guarantor (Cl. 2) |
| (i) Name: | (i) Name: | (i) Name: |
| (ii) Address: | (ii) Address: | (ii) Address: |
| (iii) Country: | (iii) Country: | (iii) Country: |
| (iv) Phone: | (iv) Phone: | (iv) Phone: |
| (v) Email: | (v) Email: | (v) Email: |
| 12. Instalments Paid (state amount(s) and date(s) paid) (Cl. 3(b)(vi)) | 13. Supervisor (Cl. 4) | |
| 14. Notices (state contact details for serving notices and communication to New Buyers if different from Box 4) (Cl. 7) | | |
| 15. Dispute Resolution (state (a), (b), (c) or (d) of Cl. 8, 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. 8) Choose an item | | |

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Background

The Builders, the Original Buyers and the New Buyers have agreed to novate the Shipbuilding Contract (which shall include all documentation comprising the entire Shipbuilding Contract as stated in Box 7) and replace the Original Buyers with the New Buyers 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 Shipbuilding Contract.

1. Novation

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

- (a) The New Buyers shall be substituted in place of the Original Buyers as a party to the Shipbuilding Contract. The novated Shipbuilding Contract shall be construed and treated, and the Builders shall be bound by the novated Shipbuilding Contract in all respects, as if the New Buyers were named in the novated Shipbuilding Contract instead of the Original Buyers.
- (b) The Builders release and discharge the Original Buyers from all liabilities, claims, duties and obligations whatsoever in respect of the Shipbuilding Contract.
- (c) The Original Buyers release and discharge the Builders from all liabilities, claims, duties and obligations whatsoever in respect of the Shipbuilding Contract.
- (d) The New Buyers shall have all the rights, benefits and interests under the Shipbuilding Contract to the exclusion of the Original Buyers and accordingly the Builders undertake to perform their obligations under the novated Shipbuilding Contract in favour of the New Buyers as if the New Buyers were and had at all times been named therein instead of the Original Buyers.
- (e) The New Buyers shall assume all liabilities, duties and obligations under the Shipbuilding Contract and accordingly the New Buyers undertake to perform their obligations under the novated Shipbuilding Contract in favour of the Builders as if the New Buyers were and had at all times been named therein instead of the Original Buyers.

2. Guarantees

- (a) It shall be a condition precedent to the effectiveness of this Novation Agreement that on or before the Effective Time the New Buyers and the Builders shall each provide in favour of the other new guarantees issued by the Guarantors stated in Boxes 11 and 9 substantially in the form and substance as set out in Annexes A (New Buyers' Guarantee) and B (Builders' Guarantee).
- (b) Upon provision of the new guarantees under Sub-clause (a), the Builders and the Original Buyers shall each release the Original Buyers' Guarantor as stated in Box 10 and the Builders' Guarantor as stated in Box 9 respectively from their obligations under the guarantees previously given in respect of the Shipbuilding Contract.

3. Representations and Warranties

- (a) As at the Effective Time each party represents and warrants to the other parties that:
 - (i) they are duly incorporated and validly existing in good standing under the laws of their respective countries as stated in Boxes 2, 3 and 4 and have power to carry on their businesses as they are now being conducted and to own their property and other assets;
 - (ii) 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;
 - (iii) every aforesaid consent, licence or approval is in full force and effect and there has been no default in the observance of any of the conditions or restrictions imposed therewith; and that
 - (iv) this Novation Agreement constitutes or will, upon execution thereof, constitute valid, legally binding and enforceable obligations of themselves.
- (b) As at the Effective Time the Original Buyers and the Builders warrant to the New Buyers that:
 - (i) the copy of the Shipbuilding Contract delivered to the New Buyers is a true and complete copy of the document;
 - (ii) save as provided in this Novation Agreement, the Shipbuilding Contract has not been amended, varied, cancelled, terminated, rescinded or novated, remains valid and binding and constitutes the entire agreement between the Original Buyers and the Builders relating to the subject matter of the Shipbuilding Contract;
 - (iii) save as provided in this Novation Agreement, there has been no breach of any of the terms and conditions of the Shipbuilding Contract and no dispute exists between the Builders and the Original Buyers with respect to any of the terms of the Shipbuilding Contract;
 - (iv) save as provided in Annex C (Claimed Adjustments to the Shipbuilding Contract), the Builders have not notified the Original Buyers of any delays which under the terms of the Shipbuilding Contract permit adjustment of the delivery date, contract price or other terms of the

Shipbuilding Contract;

(v) Annex D (Agreed Adjustments to the Shipbuilding Contract) is a complete and accurate list of the agreed or determined adjustments of the delivery date, contract price or other terms of the Shipbuilding Contract; and that

(vi) the Original Buyers have paid or caused to be paid to the Builders the instalments as stated in Box 12.

- (c) As at the Effective Time the Original Buyers warrant that they have not assigned or transferred or granted any interest in the Shipbuilding Contract to any other party and that it will not in the future attempt to do so.
- (d) Each party shall do all things and execute all further documents necessary to give full effect to this Novation Agreement.

4. Supervision

With effect from the Effective Time, the New Buyer appoints the person stated in Box 13 as its representative under the Shipbuilding Contract to exercise the powers and discretions and give the notifications, consents and agreements required under the Shipbuilding Contract.

5. Costs and Expenses

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

6. Third Party Rights

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

7. Notices

All notices, requests and other communications required or permitted to be given by the Builders to the New Buyers under the Shipbuilding Contract shall be given to the address as stated in Box 14.

8. 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.

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 Builders

SIGNED by: _____

For and on behalf of the Original Buyers

SIGNED by: _____

For and on behalf of the New Buyers

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Annex A – New Buyers' Guarantee

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Annex B – Builders' Guarantee

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Annex C – Claimed Adjustments to the Shipbuilding Contract

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Annex D – Agreed Adjustments to the Shipbuilding Contract

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