Voluntary Tanker Agreement (VTA) Common Charter Terms & Conditions

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1. Preface

This contingency contract implements the Voluntary Tanker Agreement (VTA) as defined in the Federal Register dated 7 November 2022 and provides for sealift services that may arise in any part of the world. The general scope of services under this contract includes the provision of ocean transportation charter of clean bulk fuel product for worldwide ocean movements and as the Secretary of Defense may determine to be necessary, seeking to minimize disruption of the program participants service to commercial customers. For the purposes of this contract, as also defined in the VTA, Contingency includes, but is not limited to a "contingency operation" as defined at 10 U.S.C. section 101(a)(13), and a Joint Chiefs of Staff-directed, National Command Authority-approved action undertaken with military forces in response to: (i) natural disasters; (ii) terrorists or subversive activities; or (iii) required military operations, whether or not there is a declaration of war or national emergency." This contract also is to provide such services on a bilateral basis prior to a contingency for the purpose of testing and exercising VTA. The Contractor shall maintain the highest possible on-time performance rate.

2. VTA Capacity Enrollment Terms

A. Background

1) Contractors are offered an opportunity to enroll specific tanker capacity, for activation as the USTRANSCOM may determine to be necessary, into the VTA program. Contractors receiving certain subsidies from the Government must enroll subsidized capacity into an Emergency Preparedness Program, VTA. For example, in accordance with section 2. A. 4) of VTA, this contract obligates a contractor receiving payments under the Tanker Security Program (TSP) to make vessels covered by a TSP operating agreement available during activation of VTA to DoD. According to the Maritime Administrator, such obligation shall satisfy TSP requirements for contractor enrollment in an Emergency Preparedness Program. Enrollment in VTA involves two sequential steps: execution of the application with the Maritime Administration (MARAD) and bilateral execution of this contingency contract with USTRANSCOM.

2) Upon bilateral execution of this contingency contract, a contractor becomes a VTA "Participant" and receives a priority, as described in section III.A.3 of VTA, as a VTA "Participant" for award of DoD peacetime cargo.

3) Activation of VTA shall be in accord with section V of VTA. The decision to activate or deactivate VTA will be made by the USTRANSCOM Commander. DoD's primary goal in activating or deactivating VTA is to meet operational requirements, while facilitating the use of existing, commercial capacity and minimizing disruption to commercial operations whenever possible.

4) In furtherance of the Government's minimum requirements for a sealift emergency

preparedness program and in consideration of the Contractor's commitment of specific capacity and related resources (as detailed herein), the Contractor's receipt of Government subsidy (if applicable), and the Contractor's priority consideration for award of certain DoD contracts, the Government and the Contractor agree as follows:

B. Capacity Commitment

1) VTA defines a commitment for a participant as 100% of U.S. Flag controlled, clean product tonnage to include medium range (MR) tankers, ITBs and ATBs of over 20,000 DWT capacity, unless otherwise agreed to by MARAD and USTRANSCOM, which are useful in the transportation of refined cargoes pursuant to the requirements of associated war plans. Contractor's capacity commitment as set forth in Attachment 1 of this contract was described in terms of "militarily planning capacity", which was computed in the following manner:

   a. Tank vessels: Capacity is measured in barrels and cubic meters (m3) @ 98% full

   b. ITBs and ATBs: Capacity is measured in barrels and cubic meters (m3) @ 98% full

2) Attachment 1 of the VTA Contingency Contract lists the Contractor's U.S. Flag vessel capacity in which the Contractor hereby commits to VTA. Committed capacity is expected to be maintained for USTRANSCOM contingency planning purposes. However, if any change in the Contractor's U.S. Flag fleet is necessary during the period of this contract, a minimum 30-day advance notice shall be provided to USTRANSCOM identifying the change and a revised Attachment 1 indicating the new commitment will be issued via a contract modification.

   In calculating a participant's commitment, the Government and the Contractor used the following business rules:

   a. 100% of a participant's entire U.S. flag capacity, subsidized and unsubsidized, not engaged in domestic trade (Jones Act capacity) plus 50% of a participant's capacity that is engaged in the domestic trade (Jones Act capacity).

   b. The capacity of a vessel under charter to DoD for 180 calendar days or more will not be counted toward the contingency commitment during the period of the charter.

3. Business Rules

A. Peacetime Contracts

Existing DoD contracts executed by MSC will remain in effect during the stated contract period. These contracts will be used to move DoD cargo into a contingency theater during the volunteer stage and other delivery points outside the contingency

theater during activation as defined in peacetime contracts.

During an activation of VTA this contract shall be used to move cargo in support of a contingencies.

B. Voluntary Phase

1) Voluntary Capacity

   a. The DoD will use peacetime contracts to move contingency cargoes when they meet the capacity and delivery requirements. DoD may issue a request for volunteers to provide additional service when MSC commitments cannot satisfy contingency capacity and delivery requirements.

   b. Requests for volunteers may be issued to all potential offerors including non-participants and foreign flag operators. DoD selection of volunteers will be based on operational requirements and the Secretary of Defense approved priorities for the award of sealift contracts, which are incorporated in VTA.

   c. DoD may use the volunteer stage to obtain additional services to meet contingency operational requirements. The volunteer stage will not be used by contracting personnel to renegotiate existing peacetime or USTRANSCOM VTA contingency contract rates. VTA participants with existing MSC contracts that can satisfy DoD's requirements shall receive priority over contractors without such contracts. New offers of service will be treated as late rates that receive last priority for use provided participant services meet DoD's contingency requirements.

   d. Where appropriate, DoD may approve requests by VTA Participants to convert voluntary commitments to the USTRANSCOM VTA contingency contract rates, terms, and conditions.

C. VTA Activation

1) VTA Activation.

   a. VTA may be activated at the request of the USTRANSCOM Commander, with the approval of SecDef, as required to support contingency operations. All controlled U.S. flag capacity of a participant's commitment will be activated on a proportionate basis. The DoD and/or Tanker Requirements Committee (TRC) will exercise best efforts to proportionately activate participants' capacity to minimize commercial disruption and allow for reasonable efforts and timelines to offload commercial cargo prior to taking control of the participant's vessel.

   b. Activation shall be 100% of a participant's entire U.S. flag capacity, subsidized and unsubsidized, not engaged in domestic trade (Jones Act capacity) plus 50%

of a participant's capacity that is engaged in the domestic trade (Jones Act capacity).

c. The rate of charter hire applicable to each charter under this contract will be the prevailing market rate effective at the time of proposed loading of the vessel. The Contracting Officer will determine the prevailing market rate utilizing the price analysis techniques set forth in FAR Subpart 15.4 to determine that the rates are fair and reasonable, utilizing market or previous contract prices. To the maximum extent practicable, MSC will be consulted to determine the prevailing market rate.

d. In addition to the prevailing market rate, participants will be compensated 30% above the prevailing market rate for the duration of the activation. The VTA daily charter vessel daily rates shall be calculated by multiplying the prevailing market rate by 130%.

e. Upon activation of VTA, the voluntary commitments of Program Participants preceding such activation shall convert to the USTRANSCOM VTA contingency contract terms and conditions and pricing.

f. This Charter Party shall be for the period identified at activation, commencing upon the Charterer's acceptance of the Vessel and continuing until either the date of her redelivery or the completion of the voyage then current, at the Charterer's sole option. The charter will not exceed the 5-year limit on vessel charters imposed by 10 U.S.C. § 3671. Any option periods shall be in direct continuation; shall be without guaranty at the Charterer's sole option. Optional periods may be declared at any time prior to redelivery of the Vessel. For option periods commencing after twelve months of activation, the Contracting Officer will determine if market prices have increased or decreased to the extent practicable to update the prevailing market rate.

g. The decision to deactivate VTA and release Participants from activation commitments will be made by USTRANSCOM Commander based on the operational requirement. Deactivation considerations may also include costs to DoD and minimizing the Contractor's commercial disruption by returning commercial assets for use in peacetime business.

4. Tanker Requirements Committee (TRC)

USTRANSCOM or MARAD may request activation of the TRC to support contingency operations or training purposes. The purpose of the TRC meetings will be to conduct contingency operations planning. Participants will be invited to open TRC meetings and other joint planning forums. For selected committee meetings, attendance may be limited to designated program participants.

5. Company Command Center

A. Activation of VTA to which the participant has committed resources may require intensive specific planning and coordination between DoD and the participant. The participant shall submit points of contact who can respond to U.S. government activities on a 24/7 basis to provide expert assistance in answering questions, exchanging information, and resolving problems upon notification of activation. The participant is required to establish an unclassified company command center within 24 hours after activation of committed resources and provide planning documentation. The participants planning documentation shall include points of contact, 24-hour telephone numbers and describe with adequate specificity how the command-and-control operations will be carried out for government cargo during the activation performance period.

B. The participant shall maintain reliable communication capability between the participant and Military Sealift Command (MSC) Maritime Global Operations Center (MGOC) Battle Watch Captain at MSCHQ.BWC.fct@navy.mil / 757-443-5845. At a minimum, the means of communication shall include those facilities normally used by the participant in conducting commercial business.

6. Terms and Conditions

A. Quality Control

1) The Contractor shall promptly notify the appropriate Contracting Officer Representative (COR), as specified by the Contracting Officer at time of activation, of any problems or failures that may affect performance. As directed, the Contractor shall provide the COR with a written plan of corrective action, including a proposed timeline, no later than 10 business days after such request. This plan shall describe proposed Contractor actions to correct the problem or deficiency and bring performance back in compliance with identified performance standards.

2) The CORs shall monitor Contractor performance and compliance with the terms and the conditions of the contract using standard techniques such as inspections, US Government-generated management reports, Contractor reports and customer feedback. The Contractor shall attend periodic meetings called by the COR or the Contracting Officer to discuss operations and problem areas.

3) If contamination or degradation of Government cargo occurs due to the contractor's failure to properly maintain its equipment and/or Contractor’s negligence, the contractor shall be liable to the Government for replacement costs and/or associated costs with returning the cargo to specification to include any product already in the shore tank that may have been contaminated as a result of the contaminated cargo.

B. Quality Council Meetings

The Contractor shall participate in Quality Council Meetings as requested by the Contracting Officer to review performance and discuss operational issues. Meetings shall be held as directed by the Contracting Officer but will not exceed two per year.

C. Performance Reporting

In accordance with FAR 52.212-4(c), the contract may be modified to provide additional reports that satisfactorily quantify Contractor performance under Performance Objectives. The Contracting Officer may establish the format and frequency of such reports.

D. War Risk Insurance

The most up-to-date War Risk Insurance information is contained in the current MSC Tanktime proforma for VTA application/reference.

E. Charter Hire

1) Hire Rates. Charter hire for services under this Charter Party shall be payable at the applicable rates as stipulated at the time of activation per Section 3.C. and shall be earned at the expiration of each fifteen (15) calendar days of the charter period. Except as otherwise provided herein, said hire rates shall be considered payment in full for all services of the Vessel and Associated Equipment under this Charter including all overtime, penalty time, bonuses, payments, and emoluments payable to Master, Officers, and crew for services under this Charter, irrespective of the geographic scope of said service and including the carriage of ammunition and hazardous cargoes. Said hire rates are exclusive of the costs of fuel and port charges, and additional war risk expenses, if any, and other stevedoring costs such as loading, securing and discharging cargo.

2) Loss of Vessel. Should the Vessel be either lost or missing and presumed lost, Charterer may, at its sole discretion, terminate this Charter, in which case hire shall cease to be payable at the time of the loss or, if said time is unknown, at the time of the Vessel's last received communication. Similarly, should the Vessel become a constructive total loss, Charterer may, at its sole discretion, terminate this Charter, in which case hire shall cease to be payable at the time of the casualty resulting in the constructive loss. The Vessel shall be considered missing and presumed lost when, after a reasonable lapse of time, it fails to reach its next scheduled port and reasonable efforts to contact it fail.

F. Mission

The Vessel may be employed in worldwide trade for the transportation and/or prepositioning of petroleum cargo (including, but not limited to hazardous cargoes) and military readiness, in accordance with the terms of this Charter.

G. Changes (Tailored)

Changes within the general scope of any of the terms and conditions of this Contract

may be ordered by the Contracting Officer. If any such change causes an increase or decrease in the cost of performance, such change will be the subject of a bilateral modification to the Contract. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

H. WAR

1) Voyage Instructions. Operating limits of the Vessel subject to this Contract shall be worldwide. If the Vessel is ordered under this Charter Party to any port, place, zone, or route involved in a state of war, warlike operations or hostilities, civil strife, or piracy (whether there be a declaration of war or not) where it might be reasonably expected to be subject to capture, seizure, arrest, or hostile act by a belligerent power (whether de facto or de jure), pirate, or terrorist, it shall be unreasonable for the Contractor not to prosecute said voyage if insurance against said risks is then available commercially or under a Government program, or if the Government offers the Contractor indemnification against said risks pursuant to Public Law 85-804 (72 Stat. 972, August 28, 1958).

2) The Contractor shall immediately notify the Charterer: (i) whenever any sailing orders will result in the Vessel subject to this Contract being sent beyond the limits of the War Risk Trading Warranties of insurance policies required under this contract (to include entry into a war risk exclusion zone or when the Vessel will enter, sail for, or deviate towards the territorial waters of any of the Countries or places or any other waters described in the Lloyd's Joint War Committee's current Hull War, Strikes, Terrorism and Related Perils Listed Areas); (ii) if there are any changes to the War Risk Trading Warranties of insurance policies required under this contract (including changes to the exclusion zones or the Hull War, Strikes, Terrorism and Related Perils Listed Areas) or changes to War Risk premiums, charges, or deductibles; or (iii) whenever additional premium charges or costs will be incurred as a direct result of compliance with any sailing orders issued by the Charterer under this Contract. The Contractor shall ensure that the insurers provide it relevant information in a timely manner. If the Contractor has given this required notice to the Charterer, the Charterer will reimburse the Contractor for the increase in costs (if any) of insurance premiums, charges, or deductibles which arise from the Vessel sailing beyond the applicable War Risk Trading Warranties (including changes to the war risk exclusion zones) when entry into any exclusion zone or Hull War, Strikes, Terrorism and Related Perils Listed Areas under such insurance has been approved in advance by the Charterer. The issuance of sailing orders, by itself, does not constitute approval in advance by the Charterer. The Charterer may give the Contractor notice and instructions concerning suspension of commercial War Risk insurance coverage and substitution of Government indemnity or Government War Risk insurance as detailed in the section entitled "Government War Risk Insurance/Indemnity" below.

3) Additional Wage Costs. The Charterer shall reimburse Contractor for the cost of provable additional master and crew wages (including all additional bonuses and

payments required) to the extent that such additional costs arise directly from exposure of the Vessel, and/or Vessel's master and crew, to the risks described in the paragraph entitled "Voyage Instructions" above. However, any of said wages or payments shall not exceed in amount that which would be payable, under applicable laws and regulations, to U.S. civil service mariners in the employ of the Military Sealift Command in a similar port, place, zone, or route. Contractor shall notify Charterer of all anticipated additional wage costs prior to entering any location which would trigger such additional costs; and no such costs shall be reimbursable unless Charterer, after notification of such costs, provides approval to enter such location.

4) Insurance Nonavailability. If no commercial or Governmental insurance is available for service under this Charter Party covering the risks identified in subparagraph (1) above, Vessel shall not be required to enter or remain at any port, place, zone, or route subject to said risks; Charterer in such case shall have the right to order the Vessel to other port(s) or areas consistent with Boxes 2 and 3 herein.

I. Reporting Requirements

Charterer's Instructions. The Charterer shall furnish the Master with all requisite instructions and sailing directions in writing, including COMSC "Standard Operating Manual" (SOM) COMSCINST 3121.9 Series. The Master shall exercise due diligence to observe all such orders and instructions of the Charterer with respect to the Charterer's employment of the Vessel's services. Vessel must meet all MSC requirements for reporting. Reports required of the Vessel include, without limitation, the following:

(i) Movement reports (see SOM, section 2-4-1);
(ii) Pre-arrival reports (see SOM, section 2-7-3);
(iii) Casualty reports (see SOM, section 4-3);
(iv) Tanker reports (see SOM, section 3-6); and
(v) Position Reports (see SOM, section 2-4-2)

Vessel shall provide position/status reports in-port and at-sea every six (6) hours daily at 0000, 0600, 1200, and 1800 hours local Eastern time (GMT-5 EST/GMT-4 EDT) and 72/48/24/12-hour pre-arrival notifications for all ports to Area Command and COMSC N351B, MSC Tankers. Vessel shall indicate all cargo tanks are clean, gas free, and ready for QAR inspection upon arrival delivery/first load port. Position reports shall be issued by electronic mail to the addresses designated in the cargo orders as issued by the appropriate Program Office or Area Command.

MSC Area Commands and MSCHQ may require additions or deletions to the addressees on the Position Reports and may also require additional reporting requirements.

These reports must include the Vessel's Speed of Advance, current weather, and the ETA to the next port.

J. Crew

1) Conduct of Master, Officers, and Crew. The Master, Officers, and crew shall be appointed or hired by the Contractor and shall be deemed to be the servants and agents of the Contractor at all times except as otherwise specified in this Charter. The Master of the Vessel shall be under the Charterer's direction with regard to the employment of the Vessel but shall not be under the Charterer's orders with regard to the navigation, care, and custody of the Vessel. If the Charterer shall have reason to be dissatisfied with the conduct of the Master, Officers, or crew, the Contractor shall, upon receiving the particulars of the complaint, investigate the matter and resolve the issue to the satisfaction of the charterer. Any and all additional costs including but not limited to attorney's fees incurred as a result of removal of such personnel shall be for the Contractor's account.

2) Qualifications. The Master, Officers and crew shall meet all international and flag state requirements for training and experience aboard tank vessels. For US Flag, this includes meeting citizenship requirements as prescribed by law.

3) Identification Cards. In the event Government identification cards are issued to Master, Officers and crew, the Contractor shall be responsible for tracking and, upon redelivery of the Vessel, returning all cards.

4) OCONUS Contractor Conduct. Upon award of this Contract, the Contractor shall immediately notify all contractor personnel, who are or who will be employed by, or who are or who will be accompanying, United States Naval Forces outside the continental United States (OCONUS), and who are not a host country national ordinarily resident in the host country, that such personnel, and any dependents residing with such personnel, who engage in conduct OCONUS that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States as required by the Military Extraterritorial Jurisdiction Act of 2000, Pub. L. 106-523, 114 Stat. 2488, codified at 18 U.S.C. 3261 – 3267, as implemented by DoD Instruction 5525.11, "Criminal Jurisdiction over Civilians Employed by or accompanying the Armed Forces outside the United States." Reference is made to Secretary of Defense memo dated 10 March 2008; "UCMJ jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations."

K. Cadet/Midshipmen

As required by 46 U.S.C. § 51307, the Contractor/Operator shall participate in programs for Merchant Marine cadet training under the sponsorship of, and in accordance with the policies and procedures of, the United States Merchant Marine Academy (USMMA) and shall carry on this vessel at least 2 USMMA cadets, if available, on each voyage. The

USMMA will determine whether it has cadets available for cadet training. Cadet wages, berthing, training, subsistence, and transportation shall be solely the responsibility of the Contractor/Operator. If USMMA cadets are not available, the Contractor shall participate in programs for Merchant Marine cadet training under the sponsorship of, and in accordance with the policies and procedures of, accredited state academies. The state academies will determine whether they have cadets available for cadet training. Available positions shall be distributed as equally as possible among the requesting schools. Cadet wages, berthing, training, subsistence, and transportation shall be solely the responsibility of the Contractor.

L. Cargo Receipt

1) Manifest/Bill of Lading. The Charterer or consignor of the cargo shall prepare a manifest and/or bill of lading, which shall list the cargo loaded on the Vessel. The Master shall sign said cargo receipt(s) in acknowledgment of the receipt of cargo said to have been loaded by the Charterer or the consignor of the cargo, without responsibility as to quantities, mixture, mark, number of packages, weights, etc., or the apparent condition of the cargo, it being understood that it is the Charterer's or the consignor's responsibility to tally the cargo and to check the condition thereof upon loading and discharging. The Contractor shall provide a copy of the signed manifest(s) upon request by the Government.

2) Charter Paramount. Any receipt signed by or on behalf of the Master or Agent shall be without prejudice to the terms, conditions, and exceptions of this Charter and subject to all of them. The terms of this Charter Party shall apply to any shipment made by the Government whether or not bills of lading are issued.

M. Loading and Discharging

1) Detention or Standby. If by reason of the Contractor's failure to use diligence to keep the Vessel in a thoroughly efficient state of hull, machinery, equipment, personnel, and other particulars relating to the seaworthiness of the Vessel, the Charterer incurs costs of stevedoring detention or standby time in connection with the loading or discharging of cargo, such costs shall be for the account of the Contractor, provided, however, the Contractor shall not be liable for such costs unless the period of detention or standby time exceeds 20 minutes. The Charterer, within 24 hours after the period of detention or standby time commences, shall give the Contractor or its representative written notice of the detention or standby time.

2) Lighterage. Lighterage, if any, will be at the risk and expense of the Charterer, except as otherwise provided herein.

3) Injurious Cargoes. No injurious cargoes, including acids that are injurious to the Vessel, are to be shipped.

4) Carriage of Non-Clean Products. The Charterer shall have the right to carry dirty

petroleum products excluding crude oil at any time during the currency of this Charter Party and also the right to change from dirty petroleum products to clean petroleum products any time during the currency of this Charter Party, it being understood that any time and expense involved in cleaning the tanks to carry clean petroleum products after carrying dirty petroleum products shall be for the Charterer's account, except that any additional cleaning required by reason of carrying a higher grade of cargo which can normally be done by the crew and/or with the Vessel's equipment shall be for the Contractor's account. It is also understood that this paragraph does not alter the responsibilities of the parties with respect to the condition of the tanks on delivery and redelivery as contained in III(k)(4) (Description of Vessel – Cargo Tanks).

5) Oil/Water Interface Point. The Vessel shall establish, immediately upon completion of loading and immediately prior to discharge, either by manual or electronic means, the oil/water interface point in all cargo tanks and record such readings in Vessel's logs.

6) Ballast Discharge. The Vessel shall be capable of discharging ballast while loading cargo and of taking on ballast while discharging.

7) International Safety Guide for Oil Tankers and Terminals (ISGOTT). The Vessel shall be operated in compliance with guidelines detailed in ISGOTT.

N. Oil Pollution Spill

1) Pollution Damage. Where an escape or discharge of oil occurs from the Vessel and threatens to cause pollution damage to coastlines, Charterer may, at its option, and upon notice to Contractor or Master, undertake such measures as are reasonably necessary to prevent or mitigate such damage, unless Contractor promptly undertakes same. Charterer shall keep Contractor advised of the nature of the measures intended to be taken. Any of the aforementioned measures actually taken by Charterer shall be at Contractor’s expense except to the extent that any such escape or discharge or threat was caused or contributed to by Charterer. If Contractor considers such measures should be discontinued, Contractor shall so notify the Charterer and thereafter neither the Charterer nor its nominee shall have any right to continue said measures under the provisions of this paragraph and all further liability, if any, to Charterer for such escape or discharge shall thereupon cease, except that Charterer may continue such measures at Contractor’s expense if Contractor does not undertake reasonable measures to prevent or mitigate damages.

2) Reservation. The above provisions are not in derogation of such other rights as Charterer or Contractor may have under the provisions of this Charter including but not limited to Section D (War Risk Insurance) hereof, or may otherwise have or acquire by law or any international convention.

O. Pollution Prevention and Safety Compliance

Contractor warrants that the Vessel is in full compliance with the United States Oil Pollution Act of 1990 (OPA 90) and all applicable U.S. Coast Guard (USCG) regulations for safety and pollution prevention, including those regulations in 33 CFR Parts 155, 156, and 164, and amendments thereto. Contractor warrants that it has submitted a Vessel Response Plan (VRP) for the Vessel, which complies with OPA 90 and with USCG regulations. Contractor further warrants that the Vessel will be operated in full compliance with the legally applicable VRP requirements and any future VRP requirements. Contractor further warrants that the Qualified Individuals listed in the VRP of the Vessel are readily available and their contract telephone numbers can be given to Charterer immediately upon request. Contractor will provide evidence of such compliance within three working days from the date of the fixture.

P. Financial Responsibility

Contractor warrants that it has secured, and carries aboard the Vessel, a Vessel Certificate of Financial Responsibility (Water Pollution) issued by the USCG in accordance with 33 C.F.R. 138.65.

Q. Excusable Delays

1) Excepted events. Neither the Vessel, her Master, the Contractor, nor the Charterer shall, unless otherwise in this Charter Party expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from any act of God; act of public enemies, pirates, or assailing thieves; arrest or restraint of princes, rulers, or people; seizure under legal process provided bond is promptly furnished to release the Vessel; flood; fire; blockade; riot, insurrection, or civil commotion; earthquake; or explosion. The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist Vessels in distress, and to deviate for the purpose of saving life or property, or to go into dry dock or into ways with or without cargo, passengers, or other personnel, as applicable, onboard.

2) Notification. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

3) Reservation. The exceptions identified in subparagraph (1) above shall not be such as to affect the Contractor's warranties respecting the condition of the Vessel, or the Contractor's obligations respecting the services specified under this Charter. Defaults of subcontractors at any tier or the Contractor’s failure to perform due to a labor disruption, labor dispute, or strike shall not constitute excepted events under subparagraph (1).

R. Sovereign Immunity

While performing ship operations, the Contractor shall ensure the Master advises foreign authorities and husbanding agents that the vessel under this contract is a sovereign immune vessel of the United States. These privileges include immunity from arrest or search (whether in foreign internal or territorial waters, or in international waters), immunity from foreign taxation, exemption from any foreign state regulation requiring flying the flag of such foreign state either in its ports or while passing through its territorial sea, and entitlement to exercise exclusive control over persons on board such vessels with respect to acts performed on board. The Contractor shall observe all guidelines found in NAVADMIN 158/16, Sovereign Immunity Policy, ALMSC 020/06 Sovereign Immunity Guidance for MSC Masters, and ALMSC 026/09, Supplemental Sovereign Immunity Guidance, all of which shall be provided upon contract award. The Contractor shall contact the Area Command for the area of operations (AO) should any foreign authority or husbanding agent request information (submission of documents or completion of forms) contrary to the US Navy and MSC sovereign immunity policies.

S. Description of Vessel

1) Pumping and Stripping Capacity. The Vessel is equipped with the number of cargo and stripping pumps identified in Boxes 79 and 81 of Attachment 2 and their minimum discharge rates (against a back pressure of 100 psi at Vessel's manifold) are noted in Boxes 80 and 82, respectively. The Vessel is so equipped to drain and strip all cargo tanks of all free-flowing liquid cargo.

2) Cargo Capacity. The Vessel has the total capacity for bulk cargo identified in Box 56 after a deduction of two percent for expansion. The Vessel is constructed and equipped to carry, without admixture, the minimum number of grades of petroleum products identified in Box 54, with positive means of segregation between systems; that is, minimum double valves or effective line blinds. The Vessel is also equipped and constructed to be capable of loading and discharging the minimum number of grades of petroleum products identified in Box 55 simultaneously, using separate lines, pumps, and manifold connections.

3) Ballast Tanks. The Vessel's segregated and clean ballast tanks, as those terms are defined by applicable regulations, have the capacities noted in Box 57.

4) Cargo Tanks.

   a. Vessel must have the ability to clean, mop, dry and inert cargo tanks within three (3) calendar days during performance of the charter when required.

   b. Vessel must have the ability to carry one complete undecanted tank washing in dedicated slop tanks.

c. Vessel must hot wash all cargo spaces with water not to exceed 58 degrees centigrade prior to presenting for initial acceptance and inspection. All cargo tanks must be free of loose rust, previous cargo residues and films (including dyes), significant salt deposits and other impediments that could impact the quality of the cargo to be loaded.

d. Vessel must arrive at load port in a clean, gas-free condition, and be ready for internal tank inspection by Quality Assurance Representative (QAR). Ensure any adjacent tanks are also clean and gas free. Contractor shall provide (Contractor's account) a Certified Marine Chemist to certify tanks safe for entry for internal tank inspection by Government / Charterer representative. Contractor will provide time needed to re-inert after inspection. If a prior (last and next to last) cargo contained a percentage of benzene, Contractor's Certified Marine Chemist must also measure toxicity for Benzene content and certify safe for entry. All safe for entry / toxicity / flammability assessments will be performed in the presence if the inspecting QAR.

e. The use of copper and copper alloys (brass, bronze, etc.) in vessel compartments, pipelines, heating coils, fittings, etc. is not permitted in vessels chartered by MSC to carry petroleum products, unless vessel possesses a current Defense Logistics Agency - Energy (DLA-E) waiver.

f. If vessel cargo tanks have heating coils, provide the coil type or composition (such as stainless steel, copper, etc.), date that the heating coils were last pressure tested and the results of the test (passed or failed). Date of last pressure test cannot exceed 12 months for duration of this charter. Vessel tanks with copper or yellow metal compounds are normally not acceptable for Jet Fuel cargoes.

g. If vessel cargo tanks are internally coated, provide the coating type (epoxy, inorganic zinc, etc.). Coal tar coating is not acceptable. If tanks are not coated, then state "none." Coatings that are incompatible with the fuel to be carried will be rejected.

h. Vessel must provide Certificates of Quality for last three cargoes. These Certificates should contain all test data required by specification for the products that were previously loaded (last three). Vessel Certificates of Quality from vessel post-load samples are preferred, but if unavailable shore tank Certificates of Quality representing quality of product loaded are acceptable. The Certificates of Quality should contain the test data required by the specification for the product which were loaded. They shall be submitted for each shore tank as well as the vessel tanks after loading (composite sample). Results of "typical" are not acceptable. Additionally, the following are required for the specific products mentioned:

    i. Naphtha / Condensates: Mercaptan Sulphur, reported in "parts per million" (ppm) or "mass percent", or Doctor Test (ASTMD 4952).

Otherwise, Certificates of Quality should contain the test data required by the specification for the products which were loaded.

ii. Gasoline (Motor or Aviation): It must be stated whether the previous product was “leaded” or “unleaded”. This is needed to determine cargo tank “safe entry” testing requirements.

i. Vessel must provide documentation that certifies whether or not the last three cargoes carried contained FAME (Fatty Acid Methyl Esters). In the event any of the cargoes did contain FAME, vessel Contractors/operators must provide certification and support documentation that vessel cargo tanks were cleaned / conditioned in accordance with the guidance in Energy Institute HM50.

j. Vessel must be able to take upper, middle, lower, bottom, and all-level samples of the cargo (to include OBQ & ROB) without contaminating them from the sampling location. If unable to do so or if the sampling location is contaminated or suspected to be contaminated, Charterer will require open sampling on a tank by tank basis, consistent with safety and local terminal regulations.

T. Vessel Substitution

The Contractor may, at any time, propose to substitute a Vessel or Vessels. The nominated Vessel or Vessels shall possess the same or greater characteristics as the Vessel or Vessels being replaced. Approval of a Vessel substitution is a matter for the Charterer's sole discretion.

U. Spain-Gibraltar Prohibition

Contractor agrees as a condition of this contract that the vessel will not proceed to Gibraltar for any purpose for its next port call after departing a Spanish port, even if the vessel is off-hire or if the charter has concluded and the ship was redelivered to the Contractor in Spain. Contractor also agrees as a condition of this contract that the vessel will not proceed to Spain for any purpose for its next port call after departing Gibraltar, even if the vessel is off-hire or if the charter has concluded and the ship was redelivered to the Contractor in Gibraltar.

V. Salvage

1) All salvage moneys earned by the Vessel during the period of this Charter shall be divided equally between the Contractor and the Charterer after deducting Master's, Officers' and crew's shares, legal expense, Vessel hire lost, if any, as a result of the salvage service, value of fuel consumed (which shall be paid in full to the Charterer from the salvage award), repairs of damage, if any, and other extraordinary loss or expense sustained as a result of the salvage service. Charter hire shall continue to be paid by the Charterer during deviations for the purpose of performing salvage service.

2) When engaged in the carriage of Government cargo and if requested by the Charterer, the Contractor agrees to accept Navy salvage services. Such services may be provided using Navy personnel and resources or Navy contracted resources.

3) In providing such services, the Navy, through the Charterer, agrees to waive all claims for “pure” or “bonus” salvage. Instead, the Charterer shall be entitled to the following:

   a. In those cases, in which the salvage services are provided by Navy personnel and resources, the salvage claim shall be limited to a schedule of current per diem rates and allowable expenses as established by the Navy’s Supervisor of Salvage. In no event shall such amount exceed a maximum claim of $25,000 per day.

   b. In those situations, in which the Navy utilizes contracted resources to deliver assistance, the Contractor shall be liable for the actual daily rate charged to the Navy by the Contractor(s).

4) It is understood that this limited Supervisor of Salvage claim is asserted against the Vessel only, is solely for the Vessel's account, and does not include any amounts for the salvage of the Government's cargo. Notwithstanding any other provisions of this Contract, this limited Supervisor of Salvage claim IS NOT directly or by way of setoff chargeable in whole or in part to the Government by way of general average or otherwise.

W. Alteration

1) The Charterer shall be at liberty to make any additional alterations it may require beyond what is onboard at the commencement of this Charter, such work to be done at the Charterer's expense and on its time. The Charterer shall thereafter, during the period of this Charter, leave the Vessel in her original condition, ordinary wear and tear excepted, provided that the Contracting Officer is notified in writing within 30 calendar days of completion of any alteration that the Contractor requests such restoration or removal. The Charterer shall be at liberty to install any equipment or defensive armament (including demagnetization by installed equipment or other process, e.g., degaussing, wiping, or deperming), to install any additional gear or equipment for loading, carrying, or discharging cargoes, and to repaint the Vessel.

2) Such work shall be done at the Charterer's expense and on its time and shall not be such as to be in contravention of any applicable law of the United States or regulation made pursuant thereto. Such equipment, armament, materials, and gear so fitted are to be considered "Government Property" under the terms of FAR clause 52.245-1 at III(b)(3). The Charterer shall, during the period of this Charter, remove the same together with any alterations and additions thereto at its expense and time and shall restore the Vessel to her condition and color prior to such changes, ordinary wear and tear excepted. The Government shall have the right to abandon in

place any alteration or Government furnished property unless the Contracting Officer is notified in writing within 30 calendar days of completion of any alteration that the Contractor requests such restoration or removal.

X. Crew Immunization

1) PROPHYLACTIC AND MEDICAL COUNTERMEASURES, INCLUDING IMMUNIZATIONS: U.S.-flag time-chartered vessel(s) services are considered essential Contractor services to the Department of Defense in support of military and associated support missions. As a result, Masters, officers, crewmembers, and other individuals who are embarked on such vessels for Contractor's purposes, including but not limited to subcontractors, are considered Contractor personnel performing mission essential services under DODI 3020.37, November 6, 1990, (Change 1, January 26, 1996), and are subject to the following:

   a. Masters, officers, crewmembers, and other individuals, as described above, who are embarked on any vessel(s) subject to this Charter shall be medically pre-screened, and issued or given prophylactic and medical countermeasures, including immunizations, in accordance with COMSC policy. Contractor shall ensure that all Masters, Officers, crewmembers, and other individuals embarked on any vessel(s) subject to this charter comply with all such prophylactic and medical countermeasures, including all immunization requirements in effect or made during the period of this Charter, including any options or extensions. Notification of the requirements pursuant to this section shall be provided to Contractor by the Contracting Officer.

   b. When prophylactic and medical countermeasures, including immunizations are required pursuant to this clause, Contractor shall provide notification, as directed by the Contracting Officer, of the immunization status of all embarked personnel within 24 hours of fixture or award. Further, at any time during the contract period, the immunization status of any relief personnel scheduled to board the vessel(s) is required no later than 96 hours prior to the personnel change, unless authorized otherwise by the Contracting Officer.

   c. Any Master, officer, crewmember or other individual who refuses to comply with any prophylactic or medical countermeasure requirement, including any immunization requirement, or any policy concerning the use of said prophylactic or medical countermeasure, or who for medical, personal, religious or any other reason declines or is ineligible to take or use a particular required immunization or other prophylactic or medical countermeasure, shall be removed by Contractor from the Vessel as soon as possible, but not later than the next port call, and replaced, with an individual of equal or better qualifications who has, as applicable, the required immunization(s) or is eligible and willing to comply with the requirement. Any removal and replacement of personnel pursuant to this clause shall be solely at Contractor's expense, including, but not limited to, travel, per diem, wages and associated administrative expenses.

d. Crew shortages resulting from the application of this section may subject the vessel(s) to being placed off-hire.

Y. Investigation

The Contractor agrees to cooperate in any investigation conducted by the Charterer. Such cooperation shall include, but not be limited to, the production of documents and logs and making the Contractor's employees available for interview.

Z. Contract Notice Regarding Litigation

The Contractor shall provide the Contracting Officer with immediate notice of any legal action, or claim against the Government, the Vessel, the Contractor, or the Contractor's underwriters that arises from or is related to this contract. The Contractor shall also provide the Contracting Officer with immediate notice of any legal action brought by the Contractor that arises from or is related to this contract.

7. U.S. Cargo Preference Act

In compliance with the U.S. Cargo Preference Act of 1904 (10 U.S.C. 2631), U.S. flag Carriers have been given preference for award of this contract. Carriers will not employ other than U.S. flag vessels for service under this contract unless the Contracting Officer has provided written exception.

8. Maritime Clauses

A. Regulatory Compliance/Applicable Documents

1) Regulatory compliance. The Contractor warrants that the Vessel and all Associated Equipment shall be in full compliance with all applicable international conventions and all applicable laws, regulations, and other requirements of the nation of registry and of the nation(s) and local jurisdictions to whose port(s) and/or place(s) it is contemplated that the Vessel will be ordered hereunder. The Vessel shall additionally operate in compliance with the International Maritime Dangerous Goods Code. The Vessel shall be delivered and maintained in the highest class of a recognized classification society and be in compliance with all current safety, health, and pollution regulations promulgated by appropriate authorities, including the latest applicable ISO/IMO regulations. The Contractor further warrants that the Vessel shall have onboard all certificates, records, or other documents required by the aforesaid conventions, laws, regulations, and requirements, including a Certificate of Financial Responsibility meeting the requirements of the U.S. Coast Guard and promulgated pursuant to the U.S. Federal Water Pollution Control Act, as amended, and/or the Oil Pollution Act of 1990.

B. Off-hire

1) General. In the event of the loss of time resulting from deficiency and/or default of men including but not limited to misconduct, illness, injury, strikes, labor disruptions, lockouts, deficiency of stores; fire; breakdown of or damages to hull, machinery, or equipment; collision; stranding; grounding; detention by authorities; average accidents to Vessel or cargo unless resulting from inherent vice, quality, or defect of the cargo; repairs; inspections; dry docking for the purpose of examination or painting bottom; or deviation for the purpose of landing any ill or injured person onboard other than any passenger, supercargo, or military personnel who may be carried at the Charterer's request; or by any other cause whatsoever preventing the full working of the Vessel; the payment of hire shall cease for all time lost until the Vessel is again ready and in a fully efficient state to resume her service from a position not less favorable to the Charterer than that at which such loss of time commenced. Should the Vessel deviate or put back during a voyage contrary to the orders or directions of the Charterer for any reason, the hire is to be suspended from the time of her deviating or putting back until she is again ready and in a fully efficient state to resume her service from a position not less favorable to the Charterer than that at which such loss of time commenced. When the period of time lost to the Charterer on any one occasion is less than four (4) consecutive hours (or twelve (12) consecutive hours while in prepositioning service), the hire shall not be reduced for such period.

2) Costs for Contractor. The cost of fuel consumed while the Vessel is off-hire, as well as all port charges, pilotages, and other expenses incurred during such period and consequent upon the putting into any port or place other than that to which the Vessel is bound, shall be borne by the Contractor. All fuel used by the Vessel being driven into port or to shallow harbors or to rivers or ports with bars, the delay of the Vessel and/or expenses resulting there from shall be for the Charterer's account.

C. Liens

1) Seizure of Cargo. The Contractor agrees that it will not assert any type of lien, including a maritime lien, on any cargo shipped by the U.S. Government under this Contract. The Contractor further agrees that it will not take any action to seize, arrest, hold, or otherwise detain such cargo through any judicial process in the U.S. or any foreign country. The Contractor agrees to insert this requirement in all subcontracts at any level and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

2) Charter. There shall be no liens, including maritime liens, asserted on any hire payable by the U.S. Government under this contract. The Contractor agrees to insert this requirement in all subcontracts at any level and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

9. Security (Physical, Personnel, Information, Antiterrorism/Force Protection and Industrial)

A. General Security Information

The majority of daily work associated with this PWS/SOW is at the unclassified level, but contractor personnel may be required to access classified information/systems at the SECRET level, and/or classified areas at the SECRECT level, during the performance of this contract/task order. Specific security requirements are identified in this section of the PWS/SOW and the DD Form 254 (DoD Contractor Security Classification Specification). A completed/signed DD Form 254 will be attached to the contract. ~~Contractor personnel may be required to access SECRET information during performance of this contract.~~

B. Citizenship and Clearance Requirements

The Contractor's, subcontractors, and/or partner's personnel performing ~~classified~~ services under this contract ~~for national security determinations (security clearances),~~ shall be citizens of the United States of America. ~~as a clearance requirement.~~ Overall, all Contractor personnel shall possess the appropriate personnel security investigation for the position(s) occupied. Contractor personnel shall be required to have a background investigation that corresponds with the sensitivity level of the tasks to be performed. Neither dual citizens nor non-US citizens are eligible for Common Access Cards (CACs) unless they meet the parameters stated in DoDM 1000.13, volume 1.

C. Additional Security Requirements (Transportation Security)

Carriers transporting sensitive or classified shipments will comply with DTR, Part II, Section 205. Only carriers with a valid Facility Clearance Level (FCL) at the SECRET level are authorized to transport classified materials. The FCL can be an interim, but whether an interim or final FCL, it must be valid at the time of award and granted by the Defense Counterintelligence and Security Agency (DCSA).~~Defense Security Service.~~

D. Security Clearance Requirements

All positions on this contract/task order, require a minimum of either an interim SECRET granted by the DCSA Vetting Risk Operations (VRO), or a completed adjudication of SECRET granted by the DCSA Consolidated Adjudication Services (CAS). Only Contractor employees with a personnel security clearance working for contractor companies with a facility clearance granted by DCSA are eligible for access to classified information. The Contractor must have a valid FCL at the SECRET level. Interim FCLs are acceptable provided they are not expired. The Contractor shall submit, in a timely manner, information requests for clearances to ensure that corporate officers and at least the Master, Chief Mate, and one additional officer (deck or engineering) of the Vessel are cleared to receive information up to and including SECRET.

~~The Contractor warrants that the Vessel shall comply with all administrative requirements, including the necessary investigative actions required by the Government to obtain a Government facility clearance for the Vessel and any other facilities necessary to carry out the terms of the Contract. The Contractor shall submit, in a timely manner, information requests for clearances to ensure that corporate officers and at least the Master, Chief Mate, and one additional officer (deck or engineering) of the Vessel are cleared to receive information up to and including SECRET.~~

~~Contractor Facility Clearance. The Contractor shall submit for a SECRET facility clearance at time of VTA application and maintain the facility clearance for the duration of the contract.~~

E. Facilities Clearance Level (FCL)

The contractor must have a valid FCL at the SECRET level. FCL procedures and security guidelines for adjudicative requirements are outlined in 32 CFR, 117. FCLs and interim FCLs must be awarded by DCSA Facility Clearance Branch. The Contractor warrants that the Vessel shall comply with all administrative requirements, including the necessary investigative actions required by the Government to obtain a Government facility clearance for the Vessel and any other facilities necessary to carry out the terms of the Contract.

Contractor Facility Clearance. The Contractor shall submit for a SECRET facility clearance at time of VTA application and maintain the facility clearance for the duration of the contract.
~~Only Contractor employees with a personnel security clearance working for contractor companies with a facility clearance granted by the Defense Counterintelligence and Security Agency (DCSA) are eligible for access to classified information. The Contractor must have a valid FCL at the SECRET level. Interim FCLs are acceptable provided they are not expired.~~

F. Visits by Non-Assigned Contractors to USTRANSCOM/MSC Buildings

Any visit(s) by Contractor personnel not permanently assigned to this contract (i.e., company presidents, company security managers, Contractor personnel not permanently assigned at SAFB, etc.) require an electronic visit access request be submitted using the DoD personnel security system of record. The DoD personnel security system visits can be forwarded to the Security Management Office (SMO) code: USTC-S-USTC-SDDC-1. The visit access request shall annotate the contract/task order number in the POC block of the visit access request and the name/phone number of either the functional, COR or CO in the phone number block. ~~Defense Information Systems for Security (DISS). DISS visits can be forwarded to the Security Management Office (SMO) code: USTC-CONT. The visit request shall annotate Cage Code, company name, contract number, dates of contract (start and end), and visit access level (unclassified/secret/TS). The visit request shall also annotate POC/sponsor (name, phone number, and email) and visit date(s).~~ Entrance into USTRANSCOM building 1900 will be via the breezeway

between 1900E and 1900W. The Contractor visitors must come to the Protection Services Center for validation of their clearance and visit access request. Temporary badges or escort required badges will be issued based on access eligibility.

G. Supplemental Notes Regarding Visit Information in the DoD Personnel Security System of Record

Personnel requiring access to Government facilities will properly complete the "Visit Information" block in the DoD personnel security system of record. Otherwise, contractor employees will be denied access to the facility and classified and/or sensitive information. Also, prime contractors will annotate their contract number and subcontractors will provide the name of their Company, with the prime contract number they are assigned to by the Prime, in the "additional information" block of the Visit table. A valid "Reason for the Visit" must be stated and the "visit access" must not exceed that of the contract.

H. Accessing NATO Information

No contractor employee will access NATO information without first being indoctrinated on NATO and having that access recorded in the DoD personnel security system of record. Any NATO information accessed will be only on SIPRNet. Senders of NATO information will ensure the receiving network is accredited and the receiving point is a Sub-Registry or authorized Control Point. No NATO information will be stored with US classified information. Access to NATO information will be based on need-to-know, appropriate access level, and training. NATO information will not be disseminated to unauthorized users. NATO information will not be printed unless authorized by a USTRANSCOM NATO – Sub-Registry person in TCCS-PR. All printed NATO classified information must be strictly controlled and tracked in a NATO registry. Contact the USTRANSCOM Sub-Registry for additional control measures. In accordance with 32 CFR, 117, NATO briefed personnel will be re-briefed on an annual basis. USTRANSCOM will indoctrinate all on-site contractor employees and document in the DoD personnel security system of record. Contractor personnel assigned to USTRANSCOM facilities will be NATO briefed and debriefed by USTRANSCOM, with appropriate annotations to the DoD personnel security system of record. Company FSOs may take responsibility for all NATO refresher briefings per 32 CFR, 117 and record the date of the annual briefings in the DoD personnel security system of record.

~~G.~~I. Classified Information at Contractor Headquarters

No classified information obtained by Contractor visitors at USTRANSCOM can be taken from USTRANSCOM back to the Contractor company headquarters unless that specific CAGE code location has been granted safeguarding by DCSA~~DSS~~. No Contractor employee will hand-carry classified information from USTRANSCOM back to the Contractor's location without written approval from USTRANSCOM/TCCS-PR~~TCJ34~~. If authorized, the Contractor courier must be briefed on responsibilities to safeguard the information and have a signed USTRANSCOM courier letter in his or her

possession.

~~H.~~J. Classified Meetings

Visitors are required to follow the USTRANSCOM guidelines for attending classified meetings.

K. Derogatory Information

If the Government notifies the contractor that the employment or the continued employment of any contractor personnel is prejudicial to the interests or endangers the security of the United States of America, that employee shall be removed and barred from the worksite. This includes security deviations / incidents and credible derogatory information on contractor personnel during the course of the contractor/task order's PoP as noted in the DoD personnel security system of record. Personnel who have incident reports posted in the DoD personnel security system of record will be denied the ability to support the contract/task order until the issues have been resolved and the incident has been removed in the DoD personnel security system of record. The contractor shall make any changes necessary in the appointment(s), at no additional cost to the Government. If any incident involves or may involve the mishandling of classified information or a potential Negligent Discharge of Classified Information, the USTRANSCOM Office of Protection and Response (TCCS-PR) (618-817-6554) will be notified within 24 hours during the normal work week and within 72 hours if the incident occurs over the weekend.

L. Antiterrorism/Force Protection

Contractor employees will comply with antiterrorism Force Protection conditions (FPCONs) at the location they are performing work, whether it is CONUS or OCONUS.

~~I.~~M. Defense Transportation Regulation

In addition to the NISPOM Rule (CFR 32, 117~~DoDI 5220.22~~), contractors are required to be familiar with the Defense Transportation Regulations (DoD 4500.9.R, Part II, Appendix E).

~~J.~~N. Security Regulation Compliance

Department of Defense (DoD):

- ~~O-2000.16 (DoDI Antiterrorism (AT) Standards), Vol 1, 17 November 2016~~
- CFR 32, 117, National Industrial Security Program Operating Manual (NISPOM)
- DoD 5200.02, Personnel Security Program, 17 April 2017
- DoD 5200.08-R, Change-1, DoD Physical Security Program, May 27, 2009
- DoD O 2000.16, DoD Antiterrorism (AT) Standards, Vol. 1, November 17, 2016
- DoDI 5200.02 DoDM Procedures for the DoD Personnel Security Program
- DoDI 8500.01, Cybersecurity, March 13, 2014

~~• DoDI 5220.22, National Industrial Security Program Operating Manual (NISPOM), 18 May 2016~~
• DoDI 8500.01, Cybersecurity, March 13, 2014
• DoDM 5200.01 VOL. 1, DoD Information Security Program: Overview, Classification, and Declassification, 24 February 2012
• DoDM 5200.01 VOL. 2, DoD Information Security Program: Marking of Classified Information Summary of Changes, CH 2, 19 March 2013
• DoDM 5200.01 VOL. 3, DoD Information Security Program: Protection of Classified Information Summary of Changes, CH 2, 19 March 2013
• DoDM 5200.01 VOL. 4, 2/24/2012 DoD Information Security Program: Controlled Unclassified Information (CUI) Summary of Changes, 24 February 2012
• DTM 08-027, Change-1, Security of Unclassified DoD Information on Non-DoD Information Systems, September 16, 2010
• DoD 4500.9.R, Part II, Appendix E, Defense Transportation Regulations
DoD: (DoD issuances found at: http://www.dtic.mil/whs/directives/corres/pub1.html)

USTRANSCOM:
USTRANSCOM Instruction 31-02 (USTRANSCOM Security Classification Guide), 6 April 2018~~9 October 2015~~
USTRANSCOM Instruction 5200.08~~31-12~~ (Operations Security - OPSEC), 18 June 2021~~19 February 15~~

FORMS:
• DD Form 254, DoD, Contract Security Classification Specification
• FD Form 258, Fingerprint Card

Contractor Facility Security Officer (FSO):
The prime Contractor will forward the name, address, email address and telephone number of the Company FSO and backup to the USTRANSCOM Office of Force Protection and Response (TCCS-PR) ~~(Industrial Security), TCCS-PR, Attn:~~ at transcom.scott.tccs.mbx.industrial-security@mail.mil at time of award and if any changes occur.

USTRANSCOM Force Protection (Industrial Security) Point of Contact:

USTRANSCOM
Attn: TCCS-~~-~~PR (Industrial Security Specialist)
508 Scott Drive
Scott AFB IL 62225
Commercial: 618-817-6550
Email: transcom.scott.tccs.mbx.industrial-security@mail.mil

USTRANSCOM TCCS-PR Approval:
Andrew Daub, Chief, USTRANSCOM Office of Protection and Response

USTRANSCOM TCCS-PR Tracking #: TCCS-PR-044-2023

MSC Maritime Global Operations Center (MGOC) Point of Contact:

Battle Watch Captain
Commercial: 757-443-5845
Email at MSCHQ.BWC.fct@navy.mil

10. Cyber Security

A. General Cyber Security Requirements

1) Handling and Protection of Non-Public Information

a. In performance of this contract, the Contractor may have access to DoD Transactional Information (DTI), which for the purposes of this section shall mean any information developed or received in the course of planning, ordering, shipping, tracking, and invoicing in support of the requirements of this contract. To adequately protect this DTI, contractor information systems (IS) involved in the performance of this contract shall comply with the security requirements in the current version of the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations." Compliance with NIST SP 800-171 measures is required at the prime Contractor level and does not apply to subcontractors and other entities that the prime Contractor engages with in order to meet the requirements of this contract unless the CUI is identified in the contract.

b. Additionally, the Contractor agrees to use such information only for the purposes of fulfilling the contracted requirements and to protect such information from unauthorized release or disclosure. Protection of the DTI does not abrogate any responsibilities of the Contractor to comply with or implement additional cyber security requirements as part of generally accepted system security principles or as required by other categories of information that may be co-resident with the DTI on the Contractor's IS.

c. The services designated under this contract are "operationally critical support" as defined in DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting.

2) Cyber Security Assessments and Mitigation Plans

a. The Contractor shall provide a Self-Assessment of its compliance with NIST SP 800-171 and present a Plan of Action that identifies any deviations, non-compliance, or proposed alternative means of compliance as well as plans for correcting non-compliant requirements to the contracting officer within 60

calendar days of contract award and then annually thereafter on 1 September each year. The Self-Assessment and Plan of Action shall address all of the requirements in NIST SP 800-171. The NIST SP 800-171 Requirements Table below provides modified requirements of CUI/CDI specific controls from NIST SP 800-171 that will be used to evaluate compliance in a non-CUI/CDI environment. Additionally, at any time during the period of performance, when a contractor determines it is non-compliant with a NIST SP 800-171 requirement or an approved alternate means of compliance resulting in a High or Moderate Potential Impact as defined in Federal Information Processing Standards Publication (FIPS PUB) 199, "Standards for Security Categorization of Federal Information and Information Systems," the Contractor shall submit a Plan of Action within 15 calendar days of the determination of non-compliance.

b. Plans of Action and any requests to vary from NIST SP 800-171 shall be submitted to the contracting officer for consideration and approval by USTRANSCOM. The Contractor need not implement any security requirement determined by USTRANSCOM to be non-applicable or to have an equally effective alternative security measure implemented in its place. The Plan of Action shall follow the template provided. Alternate formats for the Plan of Action may be proposed and must be approved by USTRANSCOM.

c. USTRANSCOM may conduct an on-site visit to a contractor's facility or request a third-party assessment (U.S. Government agency or U.S. Government funded commercial entity) to review progress towards meeting their Plan of Action, evaluate any proposed variances to NIST SP 800-171 requirements, and to assess residual risk to the DTI resulting from the non-compliance. Date and time of on-site visits will be mutually agreed-upon by USTRANSCOM and the Contractor in advance.

NIST SP 800-171 Requirements		
Req #	NIST SP 800-171 Requirement	USTRANSCOM Modified Requirement
3.1.3	Control the flow of CUI in accordance with approved authorizations.	Limit the flow of DoD information to organizations or individuals necessary for the performance of the operationally critical requirements of this contract.
3.1.9	Provide privacy and security notices consistent with applicable CUI rules.	Provide privacy and security notices consistent with U.S. Government and/or local governmental regulations.
3.1.19	Encrypt CUI on mobile devices and mobile computing platforms.	Provide adequate technical protections on mobile devices and computing platforms that process and/or store contractual information.
3.1.22	Control CUI posted or processed on publicly accessible systems.	Control DoD information posted or processed on publicly accessible systems.
3.7.3	Ensure equipment removed for off-site	Ensure equipment removed for off-site

	maintenance is sanitized of any CUI.	maintenance is sanitized of DoD information.
3.8.1	Protect (i.e., physically control and securely store) system media containing CUI, both paper and digital.	Protect (i.e., physically control and securely store) system media containing DoD information, both paper and digital.
3.8.2	Limit access to CUI on system media to authorized users.	Limit access to DoD information on system media to authorized users.
3.8.3	Sanitize or destroy system media containing CUI before disposal or release for reuse.	Sanitize or destroy system media containing DoD information before disposal or release for reuse.
3.8.4	Mark media with necessary CUI markings and distribution limitations.	Mark media with privacy and security notices consistent with U.S. Government and/or local government regulations.
3.8.5	Control access to media containing CUI and maintain accountability for media during transport outside of controlled areas.	Control access to and maintain accountability for media containing DoD information.
3.8.9	Protect the confidentiality of backup CUI at storage locations.	Provide information backup procedures (frequency, timeframe for storage, etc.) for DoD data located on contractor systems. Protect the confidentiality of backup materials containing DoD information.
3.9.1	Screen individuals prior to authorizing access to organizational systems containing CUI.	Screen individuals prior to authorizing access to organizational systems containing DoD information.
3.9.2	Ensure that CUI and organizational systems containing CUI are protected during and after personnel actions such as terminations and transfers.	Ensure that DoD information and organizational systems containing DoD information are protected during and after personnel actions such as terminations and transfers.
3.10.6	Enforce safeguarding measures for CUI at alternate work sites (e.g., telework sites).	Enforce safeguarding measures for DoD Information at alternate work sites (e.g., telework sites).
3.11.1	Periodically assess the risk to organizational operations (including mission, functions, image, or reputation), organizational assets, and individuals, resulting from the operation of organizational systems and the associated processing, storage, or transmission of CUI.	Periodically assess the risk to organizational operations (including mission, functions, image, or reputation), organizational assets, and individuals, resulting from the operation of organizational systems and the associated processing, storage, or transmission of DoD information.
3.13.8	Implement cryptographic mechanisms to prevent unauthorized disclosure of	Implement cryptographic mechanisms to prevent unauthorized disclosure of

	CUI during transmission unless otherwise protected by alternative physical safeguards.	DoD information during transmission when possible unless otherwise protected by alternate physical safeguards.
3.13.11	Employ FIPS-validated cryptography when used to protect the confidentiality of CUI.	Employ FIPS-validated cryptography when used to protect the confidentiality of DoD information within the organization's systems and when possible when transmitting to external entities.
3.13.16	Protect the confidentiality of CUI at rest.	Protect the confidentiality of DoD information at rest.

3) Cybersecurity Incident Reporting

a. In addition to the DFARS 252.204-7012 reporting requirements for unclassified systems and DoD Manual (DoDM) 5220.22, National Industrial Security Program Operating Manual (NISPOM) for classified systems, reportable cyber-incidents include, regardless of whether the IT system contains CUI or there is an impact to the delivery schedule, but are not limited to, the following:

Cyber incidents as defined in Table 1.

Notifications by a federal, state, or local law enforcement agency or cyber-center (i.e., National Cyber Investigative Joint Task Force (NCIJTF), National Cybersecurity & Communications Integration Center (NCCIC)) of being a victim of a successful or unsuccessful cyber-event, anomaly, incident, insider threat, breach, intrusion, or exfiltration.

Table 1

Incident Category	**Description**
Root Level Intrusion	Unauthorized privileged access to an IS. Privileged access, often referred to as administrative or root access, provides unrestricted access to the IS. This category includes unauthorized access to information or unauthorized access to account credentials that could be used to perform administrative functions (e.g., domain administrator). If the IS is compromised with malicious code that provides remote interactive control, it will be reported in this category.
User Level Intrusion	Unauthorized non-privileged access to an IS. Non-privileged access, often referred to as user level access, provides restricted access to the IS based on the privileges granted to the user. This includes unauthorized access to information or unauthorized access to account credentials that could be used to perform user functions such as accessing Web applications, Web portals, or other similar

	information resources. If the IS is compromised with malicious code that provides remote interactive control, it will be reported in this category.
Denial of Service	Denial of Service (Incident)—Activity that denies, degrades, or disrupts normal functionality of an IS or DoD information network.
Malicious Logic	Installation of software designed and/or deployed by adversaries with malicious intentions for the purpose of gaining access to resources or information without the consent or knowledge of the user. This only includes malicious code that does not provide remote interactive control of the compromised IS. Malicious code that has allowed interactive access should be categorized as Root or User Level Intrusion incidents. Interactive active access may include automated tools that establish an open channel of communications to and/or from an IS.
Ransomware	Malware designed to encrypt files on a device, rendering any files and the systems that rely on them unusable. Malicious actors then demand ransom in exchange for decryption. Ransomware actors often target and threaten to sell or leak exfiltrated data or authentication information if the ransom is not paid. Ransomware is a reportable incident that may be associated with multiple incident categories depending on the attack vector and execution.

If the cyber-incident affects a classified system, vulnerabilities associated with the incident will be classified per the current version of USTRANSCOM Instruction 31-02, Security Classification Guide.

4) Cybersecurity Incident Reporting Timelines

In addition to providing the notification required by DFARS 252.204-7012, the Contractor is required to notify USTRANSCOM as soon as practicable, but no later than 72 hours after discovering a reportable cyber-incident. The reporting timeline begins when the incident is discovered or reported to the company, its employees, contractors, or cybersecurity firm responsible for providing cybersecurity and response for the company. The Contractor shall contact the USTRANSCOM Cyber Operations Center (CyOC) via phone at 618-817-4222. If the Contractor does not immediately reach the CyOC via phone, the Contractor shall send an email notification to transcom.scott.tcj6.mbx.cyoc-dodin-operations@mail.mil.

5) Mandatory Reporting Data

The Contractor shall work with the USTRANSCOM CyOC through resolution of the incident. Within 72 hours of becoming aware of a reportable cyber-incident, the Contractor shall provide an initial notification of the incident, even if some details are not yet available, which includes, but is not limited to, the following information:

a. Company Name

b. Who will be the POC with contact information
c. Contracting Officer POC (name, telephone, email)
d. Overall Assessment –Description of incident, data at risk, mitigations applied
e. Indicators of compromise
f. Vector of attack (if known)
g. Estimated time of attack (if known)

The Contractor shall provide a follow-on cyber-incident report to the USTRANSCOM CyOC within 5 calendar days of becoming aware of a reportable cyber-incident, which includes, but is not limited to, the following information:

a. Contractor unique Commercial and Government Entity (CAGE) code
b. Contract numbers affected
c. Facility CAGE code where the incident occurred if different than the prime Contractor location
d. POC if different than the POC recorded in the System for Award Management (name, address, position, telephone, email)
e. Contracting Officer POC (name, telephone, email)
f. Contract clearance level
g. DoD programs, platforms, systems, or information involved
h. Location(s) of compromise
i. Date incident discovered
j. Type of compromise (e.g., unauthorized access, inadvertent release, other)
k. Description of technical information compromised
l. Any additional information relevant to the information compromise

6) Incident Reporting Coordination

a. In the event of a cyber-incident, USTRANSCOM may conduct an on-site review of network or information systems where DoD information is resident on or transiting to assist the Contractor in evaluating the extent of the incident and to share information in an effort to minimize the impact to both parties. Date and time of on-site visits will be mutually agreed upon by USTRANSCOM and the Contractor in advance.

b. The Contractor agrees to allow follow-on actions by the Government (e.g., USTRANSCOM, Federal Bureau of Investigation, Department of Homeland Security, DC3, etc.) to further characterize and evaluate the suspect activity. The Contractor acknowledges that damage assessments might be necessary to ascertain an incident methodology and identify systems compromised as a result of the incident. Once an incident is identified, the Contractor agrees to take all reasonable and appropriate steps to preserve any and all evidence, information, data, logs, electronic files, and similar type information (reference NIST Special Publication 800-61: Computer Security Incident Handling Guide, (current version)) related to the incident for subsequent forensic analysis so that an

accurate and complete damage assessment can be accomplished by the Government.

c. The Contractor is not required to maintain an organic forensic capability, but must ensure data is preserved (e.g., remove an affected system, while still powered on, from the network) and all actions documented until forensic analysis can be performed by the Government or, if the Government is unable to conduct the forensic analysis, a mutually agreed upon third party (e.g., Federally Funded Research and Development Center (FFRDC), commercial security contractor, etc.). Any follow-on actions shall be coordinated with the Contractor via the Contracting Officer.

d. The Contractor agrees to indemnify and hold the government harmless for following any recommendations to remedy or mitigate the cyber-incident following the actions under 10.A.6) a. and 10.A.6) b.

7) Confidentiality and Non-Attribution Statement

The Government may use and disclose reported information as authorized by law and will only provide attribution information on a need-to-know basis to authorized persons for cybersecurity and related purposes (e.g., in support of forensic analysis, incident response, compromise or damage assessments, law enforcement, counterintelligence, threat reporting, and trend analysis). The Government may share threat information with other USTRANSCOM industry partners without attributing or identifying the affected contractor.

11. Agreement

Prior to or upon activation of VTA, any relevant performance requirement and/or contract term, condition or provision not identified and/or out-date within this VTA Contingency Contract will be bi-laterally agreed upon utilizing existing peacetime charter contract terms, conditions, provisions, and performance requirements as a basis for contract/task order inclusion.

12. Invoicing and Payment

A. Invoices shall be submitted in accordance with the invoicing instructions stated in the task order upon VTA activation only after services included on the invoice have been satisfactorily performed (Ref FAR 32.905). Invoices shall be submitted within the timeframe requested under the established billing procedures stated in the task order upon VTA activation.

B. In accordance with the Prompt Payment Act, payment terms are net 30 calendar days from receipt of a proper invoice. Exception will be made for small businesses – the US Government's goal is to pay within 15 calendar days from receipt of a proper invoice for the entities properly identified in the Central Contractor Registration (CCR) database as

small businesses.

C. All invoices, requests for equitable adjustment, or similar requests for payment under this contract must be submitted not later than six months after the end of the relevant period of service. All invoices, requests for equitable adjustment, or similar requests for payment not submitted shall be deemed waived by the Contractor.

D. The US Government and Contractor will resolve any differences between the invoice amount and the validated amount for reconciliation purposes. Upon completion of the reconciliation, US Government will make final payment on the invoice or the contractor will reimburse the US Government for any charges paid above the reconciled amount.

E. A proper invoice contains the following information:

- Contractor Name and Address
- Invoice Date and Invoice Number
- Contract Number
- Taxpayer Identification Number
- Dollar amount of invoice
- Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)
- Any additional information as requested under the billing procedure
- Certification Statement signed by authorized contractor representative: “I hereby certify that the above bill is correct and just, and services were performed.”

13. Abbreviations and Definitions

“CFR” — Code of Federal Regulations

“Commander” — Commander, United States Transportation Command

“CONOPS” — Concept of Operations

“DLA” — Defense Logistics Agency

“DoD” — United States Department of Defense

“DOJ” — United States Department of Justice

“DOT” — United States Department of Transportation

“DPA” — Defense Production Act of 1950, as amended (50 U.S.C. Chapter 55)

“FAR” — Federal Acquisition Regulations (as codified at Title 48, CFR)

“FTC” — Federal Trade Commission

“JCS” — Joint Chiefs of Staff

“MARAD” — Maritime Administration, DOT

“NCA” — National Command Authorities “POL” — Petroleum, Oil, and Lubricants

“SecDef” — United States Secretary of Defense

“Secretary” — United States Secretary of Transportation

“TRC” — Tanker Requirements Committee

“TSP” — Tanker Security Program “U.S.C.” — United States Code

“USTRANSCOM” — United States Transportation Command (including its component units Air Mobility Command, Military Sealift Command, Military Surface Deployment and Distribution Command, Joint Operational Support Airlift Center, and Joint Enabling Capabilities Command)

“VTA” — Voluntary Tanker Agreement

Definitions - For purposes of this agreement, the following definitions apply:

Administrator — Maritime Administrator.

Attorney General — Attorney General of the United States.

Broker — A person who arranges for transportation of cargo for a fee.

Chair - FTC — Chairperson of the Federal Trade Commission (FTC).

Charter — Any agreement or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel.

Clean Tankers or Clean Tonnage — Product tankers that are inspected and approved by DLA Energy Quality Assurance Representatives (QAR), capable of meeting DoD quality standards, and able to carry refined petroleum products.

Commercial — Transportation service provided for profit by privately owned (not government owned) vessels to a private or government shipper. The type of service may be either common carrier or contract carriage.

Contingency — Includes but is not limited to a “contingency operation” as defined at 10 U.S.C. § 101(a)(13), and a JCS-directed, NCA-approved action undertaken with military forces in response to: (i) natural disasters; (ii) terrorists or subversive activities; or (iii)

required military operations, whether or not there is a declaration of war or national emergency.

Contingency contracts — DoD contracts in which Participants implement advance commitments of capacity and services to be provided in the event of a Contingency.

Controlling interest — More than a 50-percent interest by stock Contractorship.

Foreign-flag vessel — A vessel registered or documented under the law of a country other than the United States of America.

Non-participant — An operator, as defined under this section, that is not subject to a VTA.

Operator — A person that either owns and controls an eligible vessel or that charters and operates an eligible vessel through a demise charter that transfers virtually all the rights and obligations of the vessel Contractor to the demise charterer, such as that of crewing, supplying, maintaining, insuring, and navigating the vessel.

Program participant — An operator, as defined under this section, and signatory party to a current VTA or an operator that voluntarily remains subject to the terms of their expired VTA as provided for in 46 U.S.C. § 53407(c), and otherwise as defined within Section VII of this document.

Person — Includes individuals and corporations, partnerships, and associations existing under or authorized by the laws of the United States or any state, territory, district, or possession thereof, or of a foreign country.

Product Tanker — A double-hulled self-propelled tank vessel, within the meaning of 46 U.S.C.§§ 2101(32), (48), and (49), that is capable of simultaneously carrying two or more separated grades of refined petroleum products, including POL.

U.S.-Flag Vessel — A vessel registered or documented under the laws of the United States of America.

Voluntary Tanker Agreement (VTA) — The MARAD emergency preparedness agreement establishing the terms and conditions for VTA Program participants.

Volunteers — Any vessel Contractor/operator who is an ocean carrier and who offers to make capacity, resources, or systems available to support requirements.

14. List of Attachments

A. Attachment 1 – Capacity Commitment
B. Attachment 2 – Tanker Information Sheet
C. Attachment 3 – DD254
D. Attachment 4 – NIST.SP.800-171 POAM Template
E. Attachment 5 – Applicable Federal Registers