1. CLAUSES, REPRESENTATIONS AND CERTIFICATIONS (OCT 2020)

1.1. The following clauses are incorporated into the Agreement by reference. The clauses so incorporated shall be the version of the clause that was in effect on the date a specific Assignment Letter is issued. Clauses will be updated prior to issuing an assignment and identified in an attachment to the assignment letter. Wherever a clause refers to "the Contractor," substitute "the General Agent." Wherever a clause refers to a "subcontractor," substitute "contractor of the General Agent."

1.2. The General Agent shall flow down the below clauses, representations and certifications, in solicitations issued by and contracts entered into by the General Agent as Agent of the Government, when applicable according to the prescription in the regulation. At a minimum, the General Agent shall insert the applicable clauses in 52.244-6 Subcontracts for Commercial Items in contracts for commercial items.

1.3. FAR Clauses. This Agreement incorporates one or more clauses in the Federal Acquisition Regulation (FAR) by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically on the Acquisition.gov website at this address: https://www.acquisition.gov/far/part-52.

Several clauses including 52.225-03, 52.232-12 and 52.232-22 will vary depending upon circumstances specific to the task assignment. The Assignment letter and Task Order will include the information required for certain clauses as well as identify any applicable Alternates.

Clause	Title	
52.202-1	Definitions	**Jun 2020**
52.203-5	Covenant Against Contingent Fees	**May 2014**
52.203-6	Restrictions On Subcontractor Sales To The Government	**Jun 2020**
52.203-7	Anti-Kickback Procedures	**Jun 2020**
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	**May 2014**
52.203-12	Limitations on Payments to Influence Certain Federal Transactions	**Jun 2020**
52.203-13	Contractor Code of Business Ethics and Conduct	**Jun 2020**
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights.	**Jun 2020**
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	**Jan 2017**
52.204-2	Security Requirements	**Aug 1996**
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	**Aug 2020**
52.204-19	Incorporation by Reference of Representations and Certifications.	**Dec 2014**
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	**Jun 2020**
52.215-2	Audit and Records--Negotiation	**Jun 2020**
52.216-7	Allowable Cost and Payment	**Aug 2018**
52.219-8	Utilization of Small Business Concerns	**Oct 2018**
52.222-1	Notice To The Government Of Labor Disputes	**Feb 1997**
52.222-3	Convict Labor	**Jun 2003**

Clause	Title	
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation	**Mar 2018**
52.222-21	Prohibition of Segregated Facilities	**Apr 2015**
52.222-26	Equal Opportunity	**Sep 2016**
52.222-35	Equal Opportunity for Veterans	**Jun 2020**
52.222-36	Equal Opportunity for Workers with Disabilities	**Jun 2020**
52.222-37	Employment Reports on Veterans	**Jun 2020**
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	**Dec 2010**
52.222-41	Service Contract Labor Standards	**Aug 2018**
52.222-42	Statement of Equivalent Rates for Federal Hires	**May 2014**
52.222-49	Service Contract Labor Standards-Place of Performance Unknown	**May 2014**
52.222-50	Combating Trafficking in Persons	**Jan 2019**
52.222-54	Employment Eligibility Verification	**Oct 2015**
52.222-55	Minimum Wages under Executive Order 13658	**Dec 2015**
52.222-62	Paid Sick Leave Under Executive Order 13706	**Jan 2017**
52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts	**Sep 2013**
52.223-6	Drug Free Workplace	**May 2001**
52.225-3	Buy American Act – Free Trade Agreement – Israeli Trade Act ($25,000 and under $191,000)	**May 2014**
52.225-5	Trade Agreements ($191,000 or over)	**Oct 2019**
52.227-1	Authorization and Consent	**Jun 2020**
52.227-2	Notice and Assistance Regarding Patent and Copy Infringement	**Jun 2020**
52.227-14	Rights in Data—General	**May 2014**
52.232-12	Advance Payments	**May 2001**
52.232-17	Interest	**May 2014**
52.232-22	Limitation of Funds	**Apr 1984**
52.232-24	Prohibition of Assignment of Claims	**May 2014**
52.232-25	Prompt Payment	**Jan 2017**
52.232-33	Payment by Electronic Funds Transfer—System for Award Management.	**Oct 2018**
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	**Dec 2013**
52.233-1	Disputes	**May 2014**
52.233-4	Applicable Law for Breach of Contract Claim	**Oct 2004**
52.242-1	Notice of Intent to Disallow Costs	**Apr 1984**
52.242-13	Bankruptcy	**Jul 1995**
52.243-1	Changes – Fixed Price	**Aug 1987**
52.243-2	Changes—Cost-Reimbursement	**Aug 1987**
52.244-2	Subcontracts (Alternate 1)	**Jun 2020**
52.244-5	Competition in Subcontracting	**Dec 1996**
52.244-6	Subcontracts for Commercial Items	**Aug 2020**
52.246-5	Inspection of Services Cost-Reimbursement	**Apr 1984**
52.247-63	Preference for U.S.-Flag Air Carriers	**Jun 2003**

Clause	Title	
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels	**Feb 2006**
52.249-14	Excusable Delays	**Apr 1984**
52.251-01	Government Supply Sources	

1.4. DOT and MARAD Clauses: This Agreement incorporates one or more clauses in the Transportation Acquisition Regulation (TAR) by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: https://www.acquisition.gov/tar/part-1252-solicitation-provisions-and-c-ontract-clauses

Clause	Title	
1252.223-71	Accident and Fire Reporting	**Apr 2005**
1252.223-73	Seat Belt Use Policies and Programs	**Apr 2005**
1252.237-70	Qualifications of Contractor Employees	**Apr 2005**
1252.242-72	Dissemination of Contract Information	**Oct 1994**

1.5 MARAD Clause MCL.I-1 DISCLOSURE OF CONFLICTS OF INTEREST – AUG 2005

It is the Department of Transportation's (DOT) policy to award contracts to only those offerors whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is

otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been know prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Contracting Officer may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the Government.

2. APPOINTMENT OF GENERAL AGENT (OCT 2020)

2.1. Having determined the General Agent named in Block 7 of this award to be eligible and qualified for appropriate assignments, the United States appoints the General Agent as its agent acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration (MARAD), Department of Transportation, pursuant to 46 CFR Part 315 Agency Agreements and Appointment of Agents, and not as an independent contractor, to manage and conduct the business of one or more Government-owned public vessels, or vessels controlled or time-chartered by the United States (herein referred to singularly or collectively as the "vessel") as may, from time to time, be assigned to the General Agent pursuant to this Agreement.

2.2. The United States, after consultation with the General Agent, will assign or delete the vessel by name and location. The assignments and deletions shall be in writing, either by letter or by cable or telegram confirmed by letter, and addressed to the General Agent as prescribed by ARTICLE 14 of this Agreement. The General Agent will execute an acceptance of the letter and return two original counterparts to the United States. Each assignment and deletion shall constitute a formal modification of this Agreement.

3. ACCEPTANCE OF APPOINTMENT (OCT 2020)

The General Agent accepts the appointment and undertakes and promises so to manage and conduct the business for the United States in accordance with such directions, orders, or regulations, not inconsistent with this Agreement as the United States has prescribed, or from time to time may prescribe, and upon the terms and conditions herein provided of the vessels as have been or may be by the United States assigned to and accepted by the General Agent for that purpose.

4. DUTIES OF THE GENERAL AGENT (OCT 2020)

4.1. For the account of the United States, in accordance with such directions, orders, regulations, forms and methods of supervision and inspection as the United States may from time to time prescribe (or in the absence of such directions, orders, regulations, forms and methods of supervision and inspection, in accordance with good and reasonable commercial practices, including the use of customary commercial forms), in an economical and efficient manner, and exercising due diligence to protect and safeguard the interest of the United States in connection with the duties prescribed in this Agreement and without prejudice to its rights under the Article entitled "Insurance and

Indemnification," the General Agent (solely as agent for the United States and not in any other capacity), shall:

4.1.1. Procure the Master of the vessel, subject to the approval of the United States. The Master shall be an agent and employee of the United States within the meaning, and only for the purposes of Section 1(a) of Public Law 17, 78th Congress, 1st Session, 57 Stat 45, March 24, 1943, as incorporated into 50 U.S.C. App. 1291. The Master shall have and exercise full control, responsibility and authority with respect to the manning, navigation and management of the vessel and shall be controlled by the United States directly or through the General Agent. The General Agent shall procure and make available to the Master for engagement, the officers and members of the crew required to fill the complement of the vessel. Such officers and members of the crew shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions of the General Agent's collective bargaining agreements (CBAs), if any. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder. If the United States shall have any reason to be dissatisfied with the conduct of any person employed by the General Agent or by the Master and assigned to operation, management, or direct support of the vessel, or the General Agent, or the Master, upon receiving particulars of the complaint, shall investigate and, if required, make a change in the assignment.

4.1.2. Equip, victual, supply and repair the vessel, or arrange therefore, including hull, machinery, boilers, tackle, apparel, furniture, equipment and spare parts, and including maintenance and voyage repairs and replacements, as may be necessary to maintain the vessel in an efficient state of repair and condition. In carrying out these functions, the General Agent shall undertake the following activities with respect to the vessel, if and as required by the United States:

4.1.2.1. Assign dedicated personnel to husband the vessel and identify the specific point of contact for program action, reports and accounting.

4.1.2.2. Identify preferred and alternative berthing spaces.

4.1.2.3. Coordinate activation specifications and routine support services with selected shipyards, port authorities and local service organizations.

4.1.2.4. Develop, maintain and revise, as necessary, a communications "alert" list for all organizations involved in retention, servicing and activations.

4.1.2.5. Submit for approval specific accounting and reporting procedures which will reflect cost and vessel status in accordance with formats prescribed by the United States.

4.1.2.6. Identify procedures to be employed to obtain and maintain the vessel's documents and certificates in accordance with regulatory requirements, standard agreements and other special requirements.

4.1.2.7. Survey, inspect, develop specifications, perform operational testing in conjunction with the American Bureau of Shipping (ABS), United States Coast Guard, Federal Communications Commission and other regulatory bodies, make recommendations as to repairs, accomplish repairs required to maintain and hold the vessel in its designated status and prepare instructions, if required, for the holding of the vessel in such status.

4.1.2.8. Periodically review the current status of shipboard equipment and systems in accordance with retention standards and reporting procedures prescribed by the United States.

4.1.2.9. Prepare listing of ship and equipment deficiencies and required repair list items for issuance to repair organizations.

4.1.2.10. Prepare and maintain current activation specifications including specific deficiency items noted. Coordinate periodic upgrade of activation specifications with designated ship repair organizations.

4.1.2.11. Develop and maintain a sequenced action plan for specific assignment of responsibilities relating to "no-notice" activation requirements.

4.1.2.12. Maintain current inventory of ship stores, supplies, spare parts and equipment in formats prescribed by the United States and prepare "pre-cut" requisitions for prompt purchase and delivery of required items.

4.1.2.13. Prepare a dock trial and sea trial procedure to be accomplished in advance of vessel being tendered for operation at the completion of activation.

4.1.2.14. Develop and maintain a deactivation plan and specifications in accordance with retention standards prescribed by the United States.

4.1.3. Hire tugboats and pilots and pay canal tolls, either directly or through port agents approved by the United States.

4.1.4. Appoint port agents at all ports for the purpose of husbanding the vessel, as required and subject to prior approval by the United States, except when in the judgment of the General Agent conditions are such that prompt action must be taken and obtaining approval of the United States would be impracticable. In port areas where the General Agent has an office, husbanding may be performed by that office with reimbursement for services at the customary commercial rates subject to the Article entitled "Related Company Services" of this Agreement as applicable.

4.1.5. Investigate accidents and preserve evidence in accordance with the latest MARAD ship management guidelines:

- J.3a Processing Seafarers' Personal Injury/Illness Claims (Supplement A), and
- J.3b Incidents Involving Third Party Personal Injury, Illness, Property Damage Loss (Supplement B)

J.3a, J.3b and forms listed in the J.3a Appendix are maintained on the MARAD Ship Manager Contract Common Documents website. A link to access the site is provided below at 7.4.2.2.

4.1.6. Assist the United States in the handling, adjustment, settlement, or litigation of all claims of any nature whatsoever for or against the United States relating to the vessel. In the event of any claims being presented after this Agreement terminates, the United States may request the General Agent to assist in the handling, adjustment, settlement, or litigation and will compensate the General Agent for out-of-pocket costs. Notwithstanding this clause or any other clauses in this agreement if the actions, decisions or procedures of the General Agent prevent the United States from asserting exclusivity under the Suits In Admiralty Act costs shall not be reimbursed

and any additional costs to the government shall be subject to the Indemnity provisions found in section 7.3.

4.1.7. Abide by and conform to all government laws, rules and regulations applicable to the vessel and to its personnel, and make all reports and returns required by any government body with respect to the vessel.

4.1.8. Exercise diligence, in accordance with good commercial practices, to maintain the vessel in the highest classification of the American Bureau of Shipping for its type, and to keep the vessel in a thoroughly efficient state in hull, machinery, equipment, personnel and other particulars relating to the seaworthiness of the vessel, and to keep the vessel working to prevent the loss of time. Except in cases of emergency, no alterations in hull, machinery, or equipment shall be made by the General Agent without first securing the authorization of the United States.

4.1.9. Furnish to the United States prompt notice and full information including copies of all pertinent papers, documents and records regarding casualties, accidents or damage to the vessel, suits, libels, actions and claims, and all problems of importance relating to the vessel.

4.1.10. Assist the United States in obtaining and maintaining all appropriate and applicable certification and documentation for the vessel; handle or process all shipping documents necessary to the management and conduct of the business of the vessel; and obtain all port and harbor information necessary for the vessel.

4.1.11. Relay voyage instructions from the United States directly to the master of the vessel.

4.1.12. If required by the United States, furnish and maintain during the duration of the Agreement, a bond with sufficient surety and in such form and amount as shall be approved by the United States, conditioned upon the due and faithful performance of each covenant and agreement of the General Agent contained in this Agreement, including, but not limited to, the obligation to faithfully account for and be responsible to the United States for all funds collected and disbursed and property received by the General Agent or its subagents. No monies of the United States shall be advanced or entrusted by the General Agent to a Master, purser, or any other member of the vessel's personnel, unless such person is under bond indemnifying the United States against loss of such monies or property caused solely or in part by the dishonesty or lack or care of any such person in the performance of the duties of any position covered by the bond. Cost of such indemnification bond or bonds under this Paragraph 4.k shall be for the account of the United States.

4.1.13. Keep books, records and accounts (which shall be the property of the United States) relating to the activities, maintenance and business of the vessel in such form and under such regulation as may be prescribed by the United States.

4.1.14. File, upon notice from the United States, balance sheets, profit and loss statements and such other statements of activities, special reports and memoranda of any facts and transactions, which, in the opinion of the United States, affect the results of the performance of transactions or activities under this Agreement, and whenever the General Agent employs any related, affiliated, or holding company of the General Agent to render any service or to furnish any stores, supplies, equipment, provisions, materials, or facilities which are for the account of the United States under the terms of this Agreement, the General Agent shall also, as a condition of such employment, obtain from such related or affiliated, or holding company its agreement to comply

with the requirements aforesaid and to make available to the United States for examination and audit, its books, records and accounts, to the extent that such services affect the results or the performance of transactions or activities under this Agreement.

4.1.15. Exercise due diligence in the selection of contractors, subcontractors or vendors. The fees and expenses of contractors or subcontractors utilized to aid in the performance of services and functions required herein shall be included in the costs to be reimbursed by the United States. The General Agent shall promptly terminate any subcontractor or vendor not satisfactory to the United States upon, or confirmed by, written instructions from the United States.

4.1.16. In each and every contract, as well as any other activities, in which the General Agent is acting as an agent as of the United States, the General Agent must clearly identify itself as an agent acting on behalf of the United States in the contract, its correspondence, and in other forms of communications. Such communications are necessary in order for third parties dealing with the General Agent to know that the legal status in which the General Agent is acting and that the Federal Government's relationship to these transactions.

4.1.17. To ensure that anyone acting for the General Agent is considered to be part of the General Agent, when acting within the scope of its authority as a General Agent for the Federal Government acting through MARAD, the General Agent must ensure that those acting for the General Agent are agents, servants or employees of the General Agent even if they are normally employees of either a parent or an affiliated company. The General Agent shall also ensure that such agents, servants, or employees clearly represent their status as agents, servants, or employees of the General Agent, when interacting with any other individuals or entities.

4.1.18. It is assumed by the parties hereto that no suit may be filed against the General Agent for admiralty torts arising within the scope of its duties as General Agent due the Exclusivity provisions relating to the waiver of sovereign immunity applicable to the admiralty operations of the Federal Government. Such assumption shall not apply to third party entities working with the General Agent.

4.1.19. When directed by the United States or upon termination of this Agreement, turn over to the United States at time and place to be fixed by the United States, the vessel and other property of whatsoever kind then in the custody of the General Agent pursuant to this Agreement, and upon such action the United States may collect directly, or by such agent or agents as it may appoint, all monies or other debts remaining unpaid; provided, that the General Agent shall, if required by the United States, adjust, settle and liquidate the business of the vessel.

4.1.20. Conduct the business of the vessel including but not limited to all matters with respect to voyages, cargoes, mail, passengers, persons to be carried, charter rates of freight and charges, and procure or provide all services incident thereto but not limited to stevedoring and other cargo handling port activities, wharfage and dockage, pilotage, canal transits, and services of subagents, brokers and consulates.

4.1.21. Collect, deposit, remit, disburse, and account for all monies due to the United States arising in connection with activities under or pursuant to this Agreement, and to the extent disbursements made by the General Agent pursuant to this Agreement are recoverable from insurance, the General Agent shall take such steps as may be appropriate to affect such recovery for the account of the United States.

4.1.22. To the maximum extent practicable existing MARAD contracting methods and agreements shall be utilized.

4.1.23. Abide by and conform to Governmental laws, rules and regulations applicable to the vessel and the conduct of all activities under this Agreement.

4.1.24. If in support of the vessel, equipment, materials, or commodities must be transported to the vessel, the General Agent shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage required to be transported in accordance with the procedures set forth in FAR 52.247-64.

4.2. The General Agent shall submit one legible copy of a rated onboard ocean bill of lading for each shipment to both (I) the Contracting Officer, and (ii) the Division of Military Cargoes, Office of Cargo Preference, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor. The Contractor shall furnish copies of these bills of lading (I) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

4.2.1. Sponsoring U.S. Government agency.

4.2.2. Name of Vessel.

4.2.3. Vessel flag of registry.

4.2.4. Date of loading.

4.2.5. Port of loading.

4.2.6. Port of final discharge.

4.2.7. Description of commodity.

4.2.8. Gross weight in pounds and cubic feet if available.

4.2.9. Total ocean freight revenue in U.S. dollars.

4.3. For General Agent assignments that involve mariner crews, the General Agent shall ensure a safe workplace free of discrimination, sexual harassment, intimidation, and coercion at all sites and in all facilities where the General Agent's mariner crews are assigned to work.

4.3.1. EVERY MARINER BUILDS A RESPECTFUL CULTURE (EMBARC)

General Agents as operators of vessels for the MARAD support the training of Maritime Academy Cadets when cadet billets are available during ROS and FOS. Recently developed standards have been adopted by the agency to ensure that effective Sexual Assault and Sexual Harassment prevention measures are being followed. The EMBARC Standards and Self-Assessment Checklist are hereby incorporated by Attachment EVERY MARINER BUILDS A RESPECTFUL CULTURE (EMBARC).

4.3.2. DELIVERABLES

Deliverable: EMBARC Standards Self-Assessment Checklist & SASH Policies
Reference: GAA Clause 4.3.1 EVERY MARINER BUILDS A RESPECTFUL CULTURE (EMBARC)
Required by: Within 15 days of award of GAA
Delivery Method: Email
Format: Electronic

Frequency: Annually on anniversary of implementation
Distribution: MAR610 - Sealift Programs Business Manager

5. COMPENSATION (OCT 2020)

5.1. At any time while this Agreement is in effect, the General Agent may be requested to perform any or all of the functions outlined in the Article entitled "Duties of the General Agent" above. The vessel will, at all times, be in one of the following phases:

5.2. Phase I - ACQUISITION

5.3. Phase II - UPGRADE

5.4. Phase III – DEACTIVATION

5.5. Phase IV – MAINTENANCE

5.6. Phase V – EXERCISE

5.7. Phase VI – SEALIFT ENHANCEMENT

5.8. Phase O – OPERATION

5.9. Phase E – ENVIRONMENTAL COMPLIANCE

5.10. The United States will assign the vessel to the particular Phase. The initial assignment and any subsequent change shall be in writing, either by letter or by email, and addressed to the General Agent as prescribed in the Article entitled "Notices, Communications" of this Agreement.

5.11. During the period when the vessel is in Phase I Acquisition (that is, being acquired by the Government), the United States shall pay to the General Agent, compensation for the General Agent's services with respect to the vessel once a month. The United States shall pay the General Agent's out-of-pocket expenses, including pro-rata compensation plus fringe benefits and taxes for the personnel assigned at the request of the United States to oversee, observe, survey, inspect, develop specifications, perform operational testing, or to perform any other duties or tasks as may be specifically assigned plus a Management Fee of $486.03 per diem, per vessel.

5.12. During the period when the vessel is in Phase II - Upgrade (that is, being upgraded to meet prescribed Government standards), the United States shall pay to the General Agent compensation for the General Agent's services with respect to the vessel once a month. The United States shall pay the General Agent's out-of-pocket expenses including pro-rata compensation plus fringe benefits and taxes for the personnel assigned at the request of the United States to oversee, observe, survey, inspect, develop specifications, perform operational testing, or to perform any other duties or tasks as may be specifically assigned plus a Management Fee of $486.03 per diem, per vessel.

5.13. During the period when the vessel is in Phase III-Maintenance (that is, undergoing initial Deactivation after completion of Phases I & II), the United States shall pay to the General Agent compensation for the General Agent's services with respect to the vessel once a month. The United States shall pay the General Agent's out-of-pocket expenses, including pro-rata compensation plus fringe benefits and taxes for the personnel assigned at the request of the United States to oversee, observe, survey, inspect, develop specifications, perform operational testing, or to perform any other duties or tasks as may be specifically assigned plus a Management Fee of $486.03 per diem per vessel.

5.14. During the period when the vessel is in Phase IV - Maintenance (that is, being held in a National Defense Reserve Fleet (NDRF) site or other place, port, dock, or wharf at the direction of the United States for the purpose of preserving and maintaining the assigned readiness level), the United States shall pay to the General Agent compensation for the General Agent's services with respect to the vessel once a month. The United States shall pay the General Agent out-of-pocket expenses, including pro-rata compensation plus fringe benefits and taxes for the personnel assigned at the request of the United States to oversee, observe, survey, inspect develop specifications, perform operational testing, or to perform any other duties or tasks as may be specifically assigned plus a Management Fee of $486.03 per diem per vessel.

5.15. During the period when the vessel is in Phase V - Exercise (that is breakout and activation for sustained operations under Phase-O and lay up after completion of Phase-O), the United States shall pay to the General Agent compensation for the General Agent's services with respect to the vessel once a month. The United States shall pay all the costs incurred by the General Agent, including, but not limited to, yard facilities, crew costs, fuel, subsistence, lodging of personnel, outfitting, crew and activation personnel, travel, towage, etc., plus a Management Fee of $1,040.14 per diem, per vessel.

5.16. During the period when the vessel is in Phase - VI Sealift Enhancement (this is, undergoing the installation of sealift enhancement features in order to meet National Defense Mission Requirements), the United States shall pay to the General Agent compensation for the General Agent's services with respect to the General Agent's out-of-pocket expenses, including pro-rata compensation plus fringe benefits and taxes for the personnel assigned at the request of the United States to oversee, observe, survey, inspect, develop specifications, perform operational testing, or to perform any other duties or tasks as may be specifically assigned plus a Management Fee of $486.03 per diem, per vessel.

5.17. During the period when the vessel is in Phase O - Operation (that is, active operational status commencing with readiness to lift cargo and terminating with reentry into Phase V - Exercise for lay up), the United States shall pay to the General Agent compensation for the General Agent's services with respect to the vessel once a month. The United States shall pay all costs incurred in the operation of the vessel, as outlined in ARTICLE 4 of the Agreement, plus a Management Fee of $1,040.14 per diem, per vessel.

5.18. During the period when the vessel is in Phase E – Environmental Compliance (that is, a vessel in the NDRF without an assigned Ship Manager requires urgent action to address a condition that may risk harm to the environment or human health and/or to ensure compliance with applicable Federal, State, and local laws, regulations, and permits), the United States shall pay to the General Agent compensation for the General Agent's services with respect to the vessel once a month. The United States shall pay the General Agent out-of-pocket expenses, including pro-rata compensation plus fringe benefits and taxes for the personnel assigned at the request of the United States to oversee, observe, survey, inspect develop specifications, perform operational testing, or to perform any other duties or tasks as may be specifically assigned plus a Management Fee of $486.03 per diem per vessel.

5.19. Clarifications:

5.19.1. Whenever and wherever the term "Management Fee" is used in this Agreement, the parties agree that it means compensation to cover all of the General Agent's administrative and general expenses as such expenses are recognized under generally accepted accounting principles as defined in 46 CFR Part 232. The United States shall fully and directly reimburse the General Agent

for those costs incurred directly related to the performance of work under this Agreement which are listed and described in Exhibit A to this Agreement (See 5.21 Exclusions from Management Fee). The "Management Fees" enumerated by Phase in this Article shall be in effect for the duration of this Agreement.

5.19.2. The General Agent is encouraged to devise means of reducing expenses of the vessel while maintaining the level of scheduled services and readiness. The General Agent shall submit such proposals to the United States which shall have sole discretion to adopt and implement them.

5.19.3. In the execution of the General Agent's responsibilities, a representative of the United States will be designated in writing to the General Agent at its address set forth in the Article entitled "Notices, Communications" of this Agreement to inspect, investigate, observe and report on the General Agent's activities, but without hindering the General Agent in the performance of such activities. The General Agent shall furnish the representative with information on a frequent basis, along with progress and time of completion estimates. During the designation period, the representative will be responsible for passing of information between the General Agent and the United States.

5.20. Economic Price Adjustment for Management Fee Rates for All Phases:

5.20.1. Adjustments to General Agent Management Fee Rates will coincide with the start of each successive fiscal year beginning with FY21 on October 01, 2020. Adjustments to the rates will be based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) published monthly by the Bureau of Labor Statistics, U.S. Department of Labor. CPI-W data tables may be obtained by first following the link, http://data.bls.gov/cgi-bin/surveymost?cw, checking the first checkbox, U.S. All items, 1982-84=100 - CWUR0000SA0, at the top of the selection list, and then using the “Retrieve data” button below the selection list.

5.20.2. Two 12-month averages will be used to calculate the General Agent Management Fee Rate adjustment for all phases. The adjustment is the percent change between the two averages. The first 12-month average is the average of the CPI-W index values for the twelve months ending one full month before the beginning of the Fiscal Year (September of previous year thru August of current year); the second is the average of the CPI-W index values for the twelve months preceding the twelve months included in calculating the first average.

5.20.3. General Agent Management Fee Rates in effect at the time a General Agent assignment is initially made will apply through the end of that specific General Agent assignment without adjustment.

5.21. Exhibit A – Exclusions from Management Fee:

The following expenses are not included in the Management Fee, but shall be fully credited by the United States.

Title	Definition
Salaries and wages of employees	This account shall include the compensation of all employees, other than officers and directors, who perform administrative and service functions directly related to performance of work under this Agreement.
Fringe benefits	This account shall include the costs of all fringe benefits of the foregoing personnel, such as: (1) vacation pay (2) sick leave

	(3) payroll taxes (employers portion) (4) workman's compensation (5) group insurance (6) pension and retirement (7) health and welfare (8) profit sharing (9) other costs must be justified by the General Agent and approved by the United States.
Communications expenses	This account shall include all communication expenses such as the cost of internet based email, text and/or voice, telephone, satellite, and postage directly related to performance of work under this Agreement.
Travel expenses	This account shall include all travel expenses of officers and employees (but not directors) on business directly related to performance of work under this Agreement (Notes Per diem allowance, modes of class of travel, etc., shall not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulation (FTR) as referenced for contractor costs in FAR 31.205-46 Travel costs.
Freight brokerage	This account shall include all commissions paid to brokers for procuring cargo if so instructed by the United States.
Agency fees and commissions	Agency fees, attendance fees and commissions for services performed by agents in all out ports for husbanding the Vessel, provided that appointment of such agent has been approved in advance by the United States. (Note: This account shall not include reimbursements to agents for those expenses incurred in the administration and supervision of port activities. Such expenses shall be charged to the appropriate port expense account.)

5.22. Task Orders (TO) will be used to fund specific performance under an assignment. Separate task orders shall be issued to segregate the authorization of Management Fees (see 5.11 thru 5.18) from Cost Reimbursable expenses not included in the Management Fee (see 5.21).

5.22.1. Task Orders authorizing Management Fees must be issued in writing and signed by the Contracting Officer. If circumstances arise where performance must start before the task order is issued, the Contracting Officer may verbally authorize performance (typically via email) with the understanding that a written task order will be issued as soon as possible confirming the verbal direction as of the start date of performance. The Management Fee task order will state the authorized period of performance (start and end dates), indicate the agreement Item Number for the type of management fee, the per diem rate of compensation, and the total amount authorized for services. Payment for authorized services cannot be approved prior to issuance of the written task order document.

5.22.2. Task Orders authorizing other expenses not included in the Management Fees are referred to as a cost reimbursable task order. Cost reimbursable task orders authorize performance of services normally described in an attached Statement of Work. The task order will state the authorized period of performance (start and end dates), indicate the applicable Agreement Item Number, and the total amount authorized for services. Payment for authorized services cannot be approved prior to issuance of the written task order document.

6. DISBURSEMENTS (OCT 2020)

6.1. General Agent Invoice Instructions

6.1.1. The U.S. Department of Transportation (DOT) utilizes the Delphi eInvoicing web portal for processing invoices. Access to Delphi eInvoicing web portal is granted with electronic authentication of credentials (name & valid email address) utilizing the GSA credentialing platform login.gov. General Agents are required to submit invoices via the Delphi eInvoicing web portal which is authenticated via www.login.gov.

6.1.2. General Agents must meet the following minimum requirements to submit invoices through the Delphi eInvoicing web-portal:

6.1.2.1. General Agents shall have electronic internet access to register in the U.S. General Services Administration's (GSA) Login.gov and to the Delphi eInvoicing web portal.

6.1.2.2. The identity of system users will be verified prior to receiving access to the Delphi eInvoicing web-portal via registration with login.gov. Information required for Login.gov includes his/her email address, full name, phone number, and password.

6.1.2.3. Once notified by contracting office agency point of contact (POC), system users shall register with and create an account with GSA Login.gov. General Agent system users will provide his/her email address and receive an email back to confirm. System users will be required to create a password and input a telephone number and opt to receive either a personal call from Login.gov or text message with an authentication code.

6.1.2.4. Once the user is authenticated in Login.gov, he/she shall work with contracting office agency POC to request access to the Delphi eInvoicing web portal. The POC will complete a Delphi eInvoicing web portal User Access Request (UAR) to include the users full name, contact phone number, work e-mail address. Additionally, the agency POC will include the General Agent's name and as applicable, purchase order number, contract number, and task order number (or supplier number) and agency doing business with to complete and electronically submit the UAR for processing.

6.1.2.5. Once the UAR is submitted, it will be electronically approved by the Access Control Officer (ACO) assigned to Operating Administration (OA) associated with the contract award or grant and then forwarded to the Delphi eInvoicing helpdesk to create the account. Once the account is created, an email will be generated to the user with instruction on accessing their Delphi eInvoicing web portal account. An e-mail will also be sent to the agency POC who initiated the UAR.

6.1.3. Click on the following link for instructions on establishing a login.gov account: https://login.gov/help/get-started/overview/

6.1.4. Contents of a proper invoice must include the following:

6.1.4.1. Name and address of the contractor.

6.1.4.2. Invoice date and invoice number. (Date invoices as close as possible to the date of mailing or transmission.)

6.1.4.3. Contract number or other authorization for supplies delivered or services performed (including order number and contract line-item number).

6.1.4.4. Description, quantity, unit of measure, unit price and extended price of supplies delivered, or services performed.

6.1.4.5. Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

6.1.4.6. 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).

6.1.4.7. Name (where practicable), title, phone number and mailing address of person to notify in the event of a defective invoice.

7. CLAIMS AND LIABILITY (OCT 2020)

7.1. THIRD PARTY TORT ACTIONS AND CONTRACT DISPUTES

It is the recognition and assumption of this Agreement, subject to the exceptions contained in paragraphs 7.1.5.1, 7.1.5.2, 7.1.5.3 and 7.1.5.4, below, that by operation of law the United States, either directly or through its ownership of the vessels involved, that the United States, not the General Agent that is subject to suit for all actions covered by this Article, for which the vessel, the United States, or the General Agent are liable, provided that the liability arose out of the General Agent's performance of this Agreement and the General Agent was acting within the scope of this Agreement.

7.1.1. The General Agent is an agent of the United States under the Suits in Admiralty Act (SIAA), the Public Vessels Act, the Federal Tort Claims Act, and the Admiralty Extension Act for all third-party tort actions in admiralty and common law, to the extent the General Agent is acting within the scope of the assignment.

7.1.2. The General Agent is an agent of the United States for the purposes of contract law when acting as a disclosed agent for the United States. Therefore, when third-party contracts with the General Agent, acting within the scope of this Agreement, that party is in privity of contract with the United States and disputes under that contract are governed by the Contract Disputes Act (CDA). As set forth in 4.1.16, the General Agent, when acting with the scope of its authority as General Agents, shall set forth that it's acting as general agent for the United States in all its communications to such third-parties.

7.1.2.1.1. Under the CDA, the third-party contractor may pursue its rights under the contract directly against the United States. By operation of law, the General Agent should not be contractually liable for contracts where it contracts as a disclosed agent for a principal, the United States. For this reason, when contracting, the General Agent must disclose that it is acting as general agent for the United States, acting by and through MARAD.

7.1.2.1.2. The General Agent shall work with the MARAD to ensure that such claims are handled and resolved in accordance with the CDA and other applicable federal laws.

7.1.3. Admiralty actions covered by subparagraphs 7.1.1 and 7.1.2 above, should be brought exclusively against the United States. See e.g. the Suits in Admiralty Act (SIAA), 46 U.S.C.A. § 30901, et seq., which makes the United States the exclusive defendant for all admiralty cases relating to the activities of its agents.

7.1.4. The General Agent shall at all times act in a manner consistent with its role as agent for the United States. This includes, but is not limited to: clearly disclosing that it is an agent of the United States to all contractors; Contracting only in the its name as the General Agent and not a parent or subsidiary of the General Agent; using only forms, letterhead etc. that reference the General Agent; clearly identifying when employees are working for the General Agent.

7.1.5. Subject to paragraphs 7.1.5.1, 7.1.5.2, 7.1.5.3 and 7.1.5.4 below, the United States will seek to dismiss the General Agent from all actions covered by subparagraphs 7.1.1 and 7.1.2, above.

7.1.5.1. Where such dismissal is not possible, the United States will defend such suits at its own expense consistent with section 7.2 below.

7.1.5.2. Such defense will usually be provided, although not necessarily always, through the United States Department of Justice.

7.1.5.3. By entering into this agreement, the General Agent hereby agrees to accept the representation of the United States Department of Justice in such legal proceedings or such other legal representation as the United States shall provide and agrees to fully cooperate in the defense of such matters. See paragraph 7.1.5.4., below. The United States will have the sole discretion to determine whether to settle such suits and the United States will control the conduct of the litigation.

7.1.5.4. The General Agent may, at its own expense, retain legal counsel to work with the counsel provided by the United States in defending any such claim or suit.

7.2. THIRD PARTY ACTIONS NOT COVERED

7.2.1. Unless otherwise approved by the Contracting Officer, all liability not mentioned in paragraph a above shall be the sole responsibility of the General Agent, including, but not limited to, all fines, judgments, penalties and cost of legal representation. Examples of third party actions that are the sole responsibility of the General Agent:

7.2.1.1. All employer/employee claims or suits brought by employees (other than seamen aboard public vessels) of the General Agent, or by their union, either via arbitration or in court, regarding:

7.2.1.1.1. Allegations of discrimination, including sexual harassment. Discrimination claims include, but are not limited to, those claims arising under Title VII of the Civil Rights Act, as amended (42 U.S.C. sections 2000e et seq.), the Age Discrimination in Employment Act, as amended (29 U.S.C. sections 621 et seq.), and the Americans with Disabilities Act, as amended, (42 U.S.C. sections 12117 et seq.); or

7.2.1.1.2. Employment disputes such as disciplinary action undertaken by the General Agent against its employees; or

7.2.1.2. Disputes regarding the terms of the CBAs between the General Agent and its unions and other disputes involving a union.

7.2.1.3. Liability created by the General Agent's failure to adhere to section 7.1.4 as determined in the sole discretion of the Contracting Officer.

7.2.2. Actions by Governmental Entities. Unless otherwise approved by the Contracting Officer, all lawsuits brought by federal, state or local authorities alleging the General Agent violated federal, state or local laws or regulations shall be the sole responsibility of the general agent, not the United States, its agents, servants, and employees, nor the vessels owned by the United States. Such liability includes, but is not limited to, all costs of legal representation. Examples include, but are not limited to, actions alleging criminal violations of OSHA or environmental laws and regulations.

7.3. INDEMNIFICATION

7.3.1. Notwithstanding anything in this contract to the contrary, particularly this ARTICLE 7, the General Agent agrees to indemnify and hold the United States, MARAD, and its employees and agents harmless from any damages, loss, or injury resulting either directly or indirectly from:

7.3.1.1. Acts of Gross Negligence, Willful Misconduct or Violations of Law or Regulations by the Senior Management of the General Agent; or

7.3.1.2. Acts of Gross Negligence, Willful Misconduct or Violations of Law or Regulations performed by employees, servants, contractors, subcontractors, suppliers or agents of the General Agent and which occurred with the Knowledge of Senior Management of the General Agent; or

7.3.1.3. Damage caused by a contractor, subcontractor or their agents or employees during the performance of their work which is reimbursable by insurance, an indemnification clause, or other similar provision.

7.3.1.4. Costs incurred due to General Agent’s failure to adhere to section 7.1.4 as determined in the sole discretion of the Contracting Officer.

7.3.2. Such indemnification shall be provided upon MARAD's request or, if necessary, the United States may bring a legal action, either directly or in a third-party action, against the General Agent and/or individuals working for the General Agent, for damages, loss, or injury to the United States.

7.3.3. The General Agent shall be under no responsibility or liability to the United States for loss or damage to the vessel arising out of any negligence on the part of any of the General Agent's officers, employees, agents, or otherwise, except as provided in subparagraph 1 of this paragraph.

7.3.4. Definitions (for purposes of this section):

7.3.4.1. Senior Management means those individuals responsible for senior management of the General Agent's organization with respect to major components of any of its operations relating to the NDRF or Ready Reserve Force (RRF) vessels. Senior Management will include the chief executive officer, president, vice president(s), and head(s) of vessel operations for the General Agent.

7.3.4.2. Knowledge means that the relevant individuals had personal cognizance of the circumstances which either caused or contributed to the claim.

7.3.4.3. Third Party means all persons who are not parties to this contract.

7.3.4.4. Violation of Law or Regulation means instances where civil or criminal liability results from a violation of a law or regulation that falls on the vessel, the United States and/or the General Agent. A Violation of Law or Regulation will not be deemed to occur for purposes of this definition when liability occurs without fault on the part of the General Agent.

7.4. DUTY OF COOPERATION

7.4.1. The General Agent has a duty to fully cooperate in the defense of any claim or action for which the United States bears a financial risk or a responsibility to defend.

7.4.2. Upon the occurrence of an injury or accident the General Agent shall comply with the latest MARAD ship management guidelines:

7.4.2.1. J.3a Processing Seafarers' Personal Injury/Illness Claims (Supplement A), and

7.4.2.2. J.3b Incidents Involving Third Party Personal Injury, Illness, Property Damage Loss (Supplement B)

J.3a, J.3b and forms listed in the J.3a Appendix are maintained on the MARAD Ship Manager Contract Common Documents website. Access to the site may be obtained from the PCO, Robert J. McDermott, email robert.mcdermott@dot.gov. After having been granted access, the General Agent may use the following link to obtain a copy of these guidelines as well as forms referenced in the J.3a Appendix:
https://usdot.sharepoint.com/teams/MAR-Ext-SMCommonDocs/

7.4.3. As soon as practicable after the occurrence of any claim or suit, or any loss or damage for which the General Agent believes the United States is at risk under this contract; the General Agent shall immediately furnish the assigned Administrative Contracting Officer (ACO), with a copy to the assigned Contracting Officer's Representative (COR), detailed written notice of such claim, suit, loss, and/or damage as well as a copy of every demand, notice, summons, complaint, or other process received by the General Agent or its employees or representatives.

7.4.3.1. The General Agent will cooperate with the Government and, upon request, will assist in effecting settlements, securing and giving evidence and documentation, technical advice, and obtaining the attendance of witnesses for consultation, depositions, and trials. Such information, advice, evidence and documentation will be given by the General Agent to the United States in the manner and form the United States requires.

7.4.4. Any material failure of the General Agent to cooperate can negate the duty of the United States to provide or pay for a defense and to pay for a judgment against the General Agent.

8. GENERAL AVERAGE (OCT 2020)

8.1. In the event of general average involving the vessel, the General Agent shall comply fully with all instructions as to appointing an adjuster, obtaining general average security and asserting liens for that purpose unless otherwise instructed, and supplying the adjuster with all disbursements, accounts, documents and data required in the adjustment, statement and settlement of the general average. Reasonable compensation for any general average allowances to the General Agent in such cases shall be fixed by the adjuster, subject to approval by the United States, and paid to and retained by the General Agent.

9. SALVAGE (OCT 2020)

9.1. Salvage claims for services rendered to vessels other than vessels owned or controlled by the United States shall be handled by, and be under the control of, the United States. Salvage awards for services rendered to other vessels owned or controlled by the United States, including the Vessel, shall be made by the United States. The General Agent shall furnish the United States with full reports and information on all salvage services rendered.

10. RELATED COMPANY SERVICES (OCT 2020)

10.1. Agreement or arrangements with an interested or related company to render service or to furnish any stores, supplies, equipment, materials, repairs, or facilities under this Agreement shall be submitted to the United States for approval. Unless and until such agreements or arrangements have been approved by the United States, compensation paid to any interested or related company shall be subject to review and readjustment by the United States. The United States may deny credit hereunder of any portion of such compensation. The United States may also deny credit, in whole or in part, of compensation related company which it deems to be exorbitant, extortionate, or fraudulent. The term "interested company" means any person, firm, or corporation in which the General Agent or any related company of the General Agent, or any officer or director of the General Agent, or any employee of the General Agent who is charged with executive or supervisory duties, or any member of the immediate family or any such officer, director, or employee, or any officer or director or any related company if the General Agent, owns any substantial pecuniary interest directly or indirectly. The term "related company" means any person or concerns that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the General Agent. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the General Agent (or interested or related company) whether through ownership or control of voting securities by contract or otherwise.

10.2. The United States shall, when it may legally do so, have the advantage of any existing or future contracts of the General Agent for the purchase or rental of materials, fuel, supplies, facilities, services, or equipment, if this may be done without unreasonably interfering with requirements of other vessels owned or operated by the General Agent; provided, that any financial loss or disadvantage to the General Agent shall be compensated for in such amount as may be determined by the United States.

10.3. Notwithstanding any other provisions of this Agreement, the United States, by separate agreement, may contract with the General Agent to perform stevedoring, terminal, ship repair, or similar services to the vessel, in which event the General Agent shall have the rights, benefits, obligations and responsibilities provided in such separate agreement.

11. DELEGATION OF AUTHORITY (OCT 2020)

11.1. Wherever and whenever in this Agreement any right, power, or authority is granted or given to the United States, such right, power, or authority may be exercised in all cases by the National Shipping Authority or such agent or agents as the United States may appoint, and the act or acts of such agent or agents when taken shall constitute the act or acts of the United States hereunder. In performing services under this Agreement, the General Agent may rely upon the instructions and directions of the Director, National Shipping Authority, his officers and responsible employees, or any person or agency authorized by the Director. No directions, orders or regulations shall have retroactive effect without the written consent of the General Agent. Whenever practicable, instructions and directions to the General Agent shall be in writing, and oral instructions or directions shall be confirmed promptly in writing. a. In the event of general average involving the vessel, the General Agent shall comply fully with all instructions as to appointing an adjuster, obtaining general average security and asserting liens for that purpose unless otherwise instructed, and supplying the adjuster with all disbursements, accounts, documents and data required in the adjustment, statement and settlement of the general average. Reasonable compensation for any general average allowances

to the General Agent in such cases shall be fixed by the adjuster, subject to approval by the United States, and paid to and retained by the General Agent.

12. REPRESENTATIONS AND CERTIFICATIONS AND AFFIDAVIT OF U.S. CITIZENSHIP (OCT 2020)

12.1. All representations and certifications made in the Application for this Agreement or otherwise provided to MARAD shall be kept current by the agent and are herein incorporated by reference.

12.2. This Agreement incorporates one or more provisions in the Federal Acquisition Regulation (FAR) by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a provision may be accessed electronically at this/these address(es): https://www.acquisition.gov/tar/part-1252-solicitation-provisions-and-c-ontract-clauses

12.3. **Affidavit of United States Citizenship**

(a) As part of this process, General Agent must annually submit to the Contracting Officer evidence of continuing U.S. citizenship status, including a current Affidavit of United States Citizenship and any changes to other documents previously submitted to establish the U.S. citizenship of the ship manager like amendments to Articles or Certificate and Bylaws. This annual submission should be filed within thirty (30) days after the annual meeting of the stockholders or annually, within thirty (30) days after the original affidavit if there has been no meeting of the stockholders prior to that time.

(b) The General Agent shall submit promptly to the Contracting Officer any changes in the information set forth in its current Affidavit of U. S. Citizenship and other documents submitted to establish the U. S. Citizenship of the ship manager.

AFFIDAVIT OF UNITED STATES CITIZENSHIP

State of County of SS:

I, _____, (Name) of_____, (Residence address)

being duly sworn, depose and say:

1. That I am the _____(Title of office(s) held) of_____, (Name of corporation) a corporation organized and existing under the laws of the State of (hereinafter called the "Corporation"), with offices at _____, (Business address) in evidence of which incorporation a certified copy of the Articles or Certificate of Incorporation (or Association) is filed herewith (or has been filed) together with a certified copy of the corporate Bylaws. [Evidence of continuing U.S. citizenship status, including amendments to said Articles or Certificate and Bylaws.];
2. That I am authorized by and in behalf of the Corporation to execute and deliver this Affidavit of U.S. Citizenship;
3. That the names of the President or other Chief Executive Officer, Vice Presidents or other individuals who are authorized to act in the absence or disability of the President or other Chief Executive Officer, the Chairman of the Board of Directors, and the Directors of the Corporation are as follows:

Name	Title	Date and place of birth
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ _____ _____

_____ _____ _____

(The foregoing list should include the officers, whether or not they are also directors, and all directors, whether or not they are also officers.)

and that each of said individuals is a citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law, except (give name and nationality of alien directors, if any); however, the Bylaws of the Corporation provide that _____ (Number) of the directors are necessary to constitute a quorum; therefore, the alien directors named represent no more than a minority of the number necessary to constitute a quorum.

4. Information as to stock, where Corporation has 30 or more stockholders:

That I have access to the stock books and records of the Corporation; that said stock books and records have been examined and disclose (a) that, as of _____, (Date) the Corporation had issued and outstanding _____ (Number) shares of _____, (Class or series) the only class or series of stock of the Corporation issued and outstanding [if such is the case], owned of record by _____ (Number) stockholders, said number of stockholders representing the ownership of the entire issued and outstanding stock of the Corporation, and (b) that no stockholder of record owned as of said date five per centum (5%) or more of the issued and outstanding stock of the Corporation of any class or series. [If different classes or series of stock exist, give the same data for each class or series issued and outstanding, showing the monetary value and voting rights per share in each class or series. If there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class or series of stock owned should be stated.]

That the registered addresses of ___ owners of record of shares of the issued and outstanding _____ (Class or series) stock of the Corporation are shown on the stock books and records of the Corporation as being within the United States, said _____ shares being per centum (___ %) of the total number of shares of said stock (each class or series). [The exact figure as disclosed by the stock books of the corporation must be given and the per centum figure must not be less than 65 per centum. This per centum figure applies to corporate stockholders as well as to the primary corporation.]

(The same statement should be made with reference to each class or series of stock, if there is more than one class or series.)

5. Information as to stock, where Corporation has less than 30 stockholders:

That the information as to stock ownership, upon which the Corporation relies to establish that the required percentage of stock ownership is vested in citizens of the United States, is as follows:

Name of stockholder (each class or series)	Number of shares owned (each class or series)	Percentage of shares owned
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ _____ _____

_____ _____ _____

and that each of said individual stockholders is a citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law.

Note: If a corporate stockholder, give information with respect to State of incorporation, the names of the officers, directors, and stockholders in the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5 percent or more of any class or series of stock and the beneficial owners thereof should be named and their U.S. citizenship affirmed.

6. That the controlling interest in (each) said Corporation, as established by the data hereinbefore set forth, is owned by citizens of the United States; that the title to a majority of the stock of (each) said Corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in citizens of the United States; that through no contract or understanding is it so arranged that the majority of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; and that by no means whatsoever, is control of (each) said Corporation conferred upon or permitted to be exercised by any person who is not a citizen of the United States; and
7. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

Dated: _____

_____(Name of affiant)

_____(Title)

Subscribed and sworn to before me, a Notary Public in and for the State and County aforesaid, this __ day of ___ year _____.

(Notary Public)

My Commission expires:

Penalty for False Statement: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. 1001 (see also 18 U.S.C. 286, 287).

13. CONTRACTING OFFICER (OCT 2020)

13.1. Changes of the Contracting Officer and any Contracting Officer's Representative (COR) shall be designated by means of a modification to this Agreement. Initial assignment or COR shall be in accordance with the article entitled "Delegation of Authority."

14. NOTICES, COMMUNICATIONS (OCT 2020)

14.1. All notices and communications provided for or permitted under this Agreement shall be in writing, by letter, telex, cable, telegram, or facsimile confirmed by letter, as follows:

To the United States:

DOT/Maritime Administration
Director, Office of Ship Operations,
MAR-610,
1200 New Jersey Avenue,
Washington, D.C. 20590

To the General Agent:

Address:
Telex:
Facsimile:

15. EXPIRATION, TERMINATION (OCT 2020)

15.1. This Agreement shall expire at midnight on September 30, 2025.

15.2. The United States shall have the right to terminate this Agreement at any time and to assume control forthwith of the vessel assigned to the General Agent upon thirty (30) calendar days written or telegraphic notice unless action is required at an earlier date to protect the interest of the United States.

15.3. Upon giving to the United States thirty (30) calendar days written or telegraphic notice, the General Agent shall have the right to terminate this Agreement; provided that unless otherwise agreed, termination by the General Agent shall not become effective until the vessel arrives and discharges at a Continental United States port.

15.4. No such termination of this Agreement shall relieve either party of liability to the other in respect to matters arising prior to the date of such termination or of any obligation hereunder to indemnify the other party in respect to any claim or demand thereafter asserted, arising out of any matter done or omitted prior to the date of such termination.

15.5. This Agreement may be terminated, modified, or amended at any time by mutual consent.

16. ASSIGNMENT OR TRANSFER (OCT 2020)

16.1. Without the consent of the United States, the General Agent shall not sell, assign, or transfer, either directly or indirectly or through any reorganization or merger or consolidation, this Agreement or any interest therein, nor make any agreement or arrangement whereby the services to be performed hereunder are to be performed by any other person, whether an agent or otherwise, except as provided in ARTICLE 4 of this Agreement.

17. ADDITIONAL OR SUBSTITUTE COMPENSATION AND REIMBURSEMENT (OCT 2020)

17.1. The General Agent may be entitled to payment or credit for any service, loss, cost, or expense, whether or not specifically provided for or excepted herein, if and to the extent such payment or credit is found to be fair and equitable and in accordance with the disputes clause referenced herein.

18. HEADNOTES (OCT 2020)

18.1. The use of head notes at the beginning of the articles of this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

19. **RENEGOTIATION (OCT 2020)**

19.1. To the extent required by law, this Agreement is subject to any subsequent law of like substance to the Renegotiations Act of 1951.

19.2. The General Agent agrees to insert the provisions of this article in all contracts under this Agreement.

ATTACHMENT
EVERY MARINER BUILDS A RESPECTFUL CULTURE (EMBARC)

SEXUAL ASSAULT AND SEXUAL HARASSMENT (SASH) PREVENTION MANDATORY STANDARDS

FOR VESSEL OPERATOR PARTICIPATION IN THE USMMA SEAYEAR PROGRAM

DECEMBER 15, 2021

VISION STATEMENT: Every mariner deserves to work in a safe and inclusive environment where everyone is welcome and supported, and their dignity is fully respected.

Purpose

The United States Merchant Marine Academy (USMMA) educates and graduates leaders of exemplary character who are inspired to serve the national security, marine transportation, and economic needs of the United States. Realizing these goals depends on fostering a community of mutual respect, support, and accountability. Accordingly, the U.S. Department of Transportation (DOT), the Maritime Administration (MARAD), and USMMA require all U.S.-flag vessel commercial operators to adopt and follow the Every Mariner Builds a Respectful Culture (EMBARC) Sexual Assault and Sexual Harassment (SASH) Prevention Mandatory Standards (EMBARC Standards)—a set of policies, programs, procedures, and practices to help strengthen a culture of SASH prevention and support appropriate responses to incidents of sexual violence and sexual harassment and other forms of misconduct. Accession into EMBARC must be completed as a prerequisite before U.S.-flag vessel commercial operators will be authorized to employ USMMA students as cadets aboard their vessels.

These EMBARC Standards replace earlier commitments made by vessel operators to comply with sea-year eligibility requirements previously established by MARAD's Shipboard Climate Compliance Team (SCCT) incident to their employment of USMMA students as cadets aboard their vessels.

The standards set forth below apply to vessels to which the International Convention for Safety of Life at Sea 1974 applies. MARAD will amend the EMBARC Standards as soon as practicable to include standards that apply the principles and equivalent procedures of EMBARC to vessels to which the International Convention for the Safety of Life at Sea 1974 does not apply.

DOT, MARAD, and USMMA are committed to ongoing evaluation and improvement of these standards and will incorporate emerging best practices and engage closely and regularly with all stakeholders, including cadets from USMMA, to assess implementation and discuss options to further strengthen the EMBARC program.

I. Core Tenets

The EMBARC Standards outline policies and procedures that seek to prevent, respond to, and redress incidents of SASH and foster a safe and supportive environment. The following core tenets frame the EMBARC Standards, which call on U.S.-flag shipping companies as well as educational institutions, labor, and mariners to:

1. Build and maintain a shipboard culture of inclusion and respect.
2. Establish *zero tolerance* policies for SASH, harassment, and hostile work environment, *zero tolerance* for retaliation against anyone who reports assault or harassment, and proportionate responses to policy infractions.
3. Eliminate the barriers that survivors, witnesses, and bystanders face in reporting SASH incidents.
4. Support survivors, witnesses, and bystanders who report SASH incidents.
5. Promptly address any report of behavior that is inconsistent with EMBARC Standards, using every available resource.
6. Review all company and vessel policies and procedures to ensure such policies fully support a work environment in which assault, harassment, and retaliation against those who report assault or harassment is not tolerated.
7. Implement SASH best practices and commit to adopting updates when such practices are promulgated by MARAD.[1]
8. Incorporate SASH prevention, response, and reporting procedures into the Company and Vessel Safety Management Systems.

II. Compliance with EMBARC Standards for Sea Year Eligibility

1. Each Vessel Operator agrees to comply with the EMBARC Standards, which replace the SCCT Sea Year Eligibility Requirements (dated March 16, 2020), by confirming completion of the immediate actions (set forth in Section III, below) on the EMBARC Accession checklist and submitting the checklist to MARAD. Vessel operators shall submit copies of their SASH policies together with the accession checklist and statement of compliance document.

2. Each Vessel Operator agrees to conduct self-assessments of its compliance with the EMBARC Standards annually thereafter and to submit confirmation of such self-assessments and any resultant changes from the annual self-assessments to MARAD. Vessel Operators shall submit copies of their SASH policies together with assessment results.

3. Each Vessel Operator agrees to permit MARAD—including third parties engaged by MARAD—to conduct recurring assessments of its compliance with the EMBARC Standards.

[1] Current best practices may be found at: Best Practices Guide on Prevention of Sexual Harassment & Sexual Assault in the U.S. Merchant Marine (SOCP BPG); Ship Operations Cooperative Program (SOCP), June 2017.

III. Immediate Actions by each Vessel Operator

Before accepting cadets on board, each operator shall take the following actions:

1. Safety Management System.

Affirm that SASH reporting policies and procedures that ensure compliance with the Standards of the EMBARC program will be operational upon enrollment and will be documented within the Safety Management System (SMS) within 90 days of enrollment.

2. Designated SASH Contact.

Designate a person ashore who will be the primary contact for all SASH issues (SASH Contact). The SASH Contact must have completed the free 40-hour Victim Assistance Training Online provided by the Office for Victims of Crime Training & Technical Assistance Center, and received the Certificate of Completion, or have completed an equivalent training program.

3. Meetings Between the SASH Contact and Cadet.

Confirm that cadets will have (1) a virtual or in-person meeting with the SASH Contact before joining a ship; or (2) if there is inadequate time between a cadet's assignment to a vessel and the cadet's embarkation, the SASH Contact shall have contact with the cadet within 48 hours of the cadet's embarkation.

4. Communication Measures.

Implement measures to—

a. Confirm that SASH Contacts and cadets can communicate as needed once a cadet is on board, including adopting measures to require that the SASH Contact initiate contact with each assigned cadet within the first 7 days of vessel onboarding;
b. Confirm that the SASH Contact shall respond to cadet outreach no later than the next business day;
c. Ensure that whenever a cadet is aboard a vessel for more than 30 days, the SASH Contact shall initiate contact, via email, with the cadet at least every 14 days;
d. Require the SASH Contact to encourage and honor requests from cadets for increased frequency of check-ins; and
e. Ensure the SASH Contact makes a record of any possible violations and ensures prompt and thorough investigation and corrective action, where appropriate, and/or referral to proper authorities.

5. Safety practices.

Reinforce Vessel Operator safety practices (including SASH prevention, bystander intervention, reporting procedures, and alcohol prohibitions) frequently with every cadet and crew member

through onboard or virtual meetings in accordance with company procedures to strengthen a culture of prevention and build industry-wide understanding and accountability.

6. Crew-Cadet Interaction.

Adopt policies that prohibit cadets from entering the stateroom of any other crew member; prohibit ship's crew members from entering cadets' private staterooms for any reason other than official maintenance or housekeeping duties during appropriate working hours and with adequate notice; and provide functional door locks for all cadet staterooms. Vessel Operator SASH policies shall include a list of all master key holders with access to cadet staterooms identified by position. Vessel Operator policies shall also establish and maintain open-door office or workspace interaction between cadets and other ship's employees, except when impractical due to vessel compartment configuration or safety procedures.

7. Vessel Operator training requirements.

a. Safety Management Systems shall establish quarterly training requirements on SASH prevention, bystander intervention, reporting, and response procedures for all shipboard personnel (regardless of whether cadets are onboard). Cadets shall participate in, but shall not have any role in managing, this training.

b. All officers and crew shall be required to complete the *Maritime Sexual Assault and Sexual Harassment Prevention Training* before a cadet is embarked and to repeat the training annually.[2]

c. Incorporate SASH discussions in periodic Vessel Safety Meetings using materials similar to those in the Facilitator's Guide and Student Workbook in the SOCP SASH Tool Kit.[3]

d. Provide copies of vessel operator's SASH prevention policies and reporting procedures to each cadet upon boarding the vessel.

e. Display company policies prohibiting SASH, retaliation, drug and alcohol usage, and cadet presence in crew member staterooms/crew member presence in cadet staterooms on board.

f. Display posters and guides that support a respectful and inclusive workplace culture. Display SASH prevention, reporting, and response posters prominently in common areas of the vessel. Vessel Operators shall also display such posters in shoreside facilities to which cadets have access.

g. Distribute the quick reference guide brochures in the SOCP SASH Tool Kit or other comparable materials to all crew, officers, cadets, and all shore-based personnel who interact with, or have responsibilities related to, officers, crew and cadets. Tips for

[2] This interactive Computer Based Training (CBT) is available at no charge from SOCP.
[3] This SOCP SASH Tool Kit is available at no charge from SOCP.

prevention of, and response to, SASH behaviors shall be provided as appropriate for each intended audience.

h. Vessel operators agree to reinforce training, by specifically:

   i. Requiring Vessel Masters to introduce cadets to ship's company employees as soon as practicable after boarding to foster an open, welcoming environment for Sea Year students.

   ii. Requiring Vessel Masters to ensure that cadets are familiarized with the ship during onboarding in accordance with the Safety Management System.

i. Reporting procedures provided to officers, crew, cadets, and posted on the vessel shall include:

   i. Contact information for the Vessel Operator's SASH Contact(s).

   ii. Point of contact information for notifications to the Coast Guard. Notifications can be made to the Coast Guard National Command Center at +1 (202) 372-2100, or through the CG Tips, a web-based and mobile alternative to submit either attributed or anonymous reports about crimes witnessed or experienced aboard a vessel directly to a Coast Guard criminal investigator.

   The CG Tips App can be downloaded from a mobile provider's marketplace using the following QR code:

   For more information about CGIS, or to submit a tip via the web, visit: https://www.uscg.mil/Units/Coast-Guard-Investigative-Service/.

8. Reporting.

a. When cadets are embarked, Vessel Operators shall immediately (within 24 hours after learning of an allegation) notify USMMA of an allegation of SASH-involved behavior, regardless of whether the behavior involves a cadet. If the incident involves a cadet, operators shall provide a complete report of investigation to USMMA when concluded. Vessel Operator policies shall require that: (1) thorough investigation of alleged violations of the SASH policy meet best practices for investigations of sexual assaults and sexual harassments; and, (2) interviews be conducted using trauma-informed interview methods.

b. The Vessel Operator's company policies shall require that all shipboard complaints of a sexual offense prohibited under current law must be immediately reported to the Coast Guard. These notifications can be made to the Coast Guard National Command Center at +1 (202) 372-2100, or as an attributed report through CG Tips—a web-based and mobile alternative to submit reports about crimes witnessed or experienced aboard a vessel directly to a Coast Guard criminal investigator. The CG Tips App can be downloaded from a mobile provider's marketplace using the following QR code:

For more information about CGIS, or to submit a tip via the web, visit: https://www.uscg.mil/Units/Coast-Guard-Investigative-Service/.

c. Vessel Operator company leadership should inform the Coast Guard of adverse or disciplinary actions that result in termination or a probationary status of any crewmember for harassment or SASH. Reports of mariner misconduct should be made to nearest Coast Guard Officer In Charge, Marine Inspection which can be found at the following website: https://www.uscg.mil/contact/.

9. Best Practices.

Each Vessel Operator shall review company policies within the Safety Management System to determine if they are at least as comprehensive as those listed in the current version of the SOCP Best Practices Guide and revise as necessary, including but not limited to the following policies:

a. Employee Best Practices:
   i. Best Practice #1: Reporting of Sexual Harassment & Sexual Assault
   ii. Best Practice #2: Basic Do's and Don'ts
   iii. Best Practice #3: Safety on Shore Leave
   iv. Best Practice #4: Response to Sexual Harassment & Sexual Assault
   v. Drugs & Alcohol
   vi. Company Investigation Process
   vii. Victim Advocacy
   viii. "Did You Know?"

b. Vessel Operator Company Best Practices:
   i. Best Practice #1: Defining Sexual Harassment & Sexual Assault
   ii. Best Practice #2: Nurturing a Culture Free of Sexual Harassment & Sexual Assault
   iii. Best Practice #3: Development of Prevention Policies
   iv. Best Practice #4: Effective Training on Sexual Harassment & Sexual Assault Prevention and Response

v. Best Practice #5: Establishing Reporting Options
vi. Best Practice #6: Response to Sexual Harassment & Sexual Assault

Note: Vessel operators shall comply with the reporting procedures listed herein under section III.7.i and section 8, instead of any obsolete reporting procedures in the SOCP Best Practices Guide.

10. Compliance Review.

Vessel Operators shall meet with DOT, MARAD, USMMA and other invited government and industry participants quarterly, or as called by DOT/MARAD/USMMA, to assess compliance with SASH policies and implement any necessary adjustments and/or corrections.

IV. Intermediate Actions to be taken by Vessel Operators, to be completed within the times noted below after adoption of these EMBARC Standards.

1. Within one year, implement vessel master key control systems, manual or electronic.

2. Within one year, develop and implement recommended SASH Contact training and annual refresher training for designated SASH contacts to include survivor advocacy and instruction in training and education principles. Each Vessel Operator shall designate and train an appropriate number of designated SASH Contacts to ensure that an adequate number (a minimum of one primary and one alternate) are always available.

3. Within one year, work with other Vessel Operators, labor, academies, SOCP and/or other industry organizations, SASH subject matter experts, MARAD and other stakeholders to review and enhance SASH policies used by vessel operators. MARAD will initiate revisions of the SOCP SASH Best Practices Guide. Such revisions will include, among other things updates to best practices and templates to support incorporation of SASH prevention, reporting, and response as well as internal audit and external audit procedures into Company and Vessel Safety Management Systems.

4. Within one year, work with other Vessel Operators, labor, academies, industry organizations, SASH subject matter experts, MARAD and other stakeholders to develop and implement enhanced policies and training pertaining to bystander reporting requirements and bystander duty to intervene in SASH incidents.

5. Within eighteen months, collaborate with other Vessel Operators, mariner unions, Academies, union training schools, SASH subject matter experts, MARAD, USCG and other stakeholders to develop and implement expanded mandatory annual SASH training for all crew members including, but not limited to:

   a. SASH (including bystander intervention);
   b. Micro aggression consciousness;

c. Cadet relationships;
d. Creating and maintaining a respectful work environment; and
e. Training regimens and methods that enable effective crew awareness of SASH prevention principles.

6. As soon as practicable, but not later than two years, work with other Vessel Operators, labor, Academies, industry organizations, SASH subject matter experts, MARAD, USCG, and other stakeholders, to develop, establish and participate in, to the extent permissible under law, the maintenance and operation of a SASH perpetrator information exchange. The exchange shall contain the names of all merchant mariners who are the subjects of substantiated reports of discriminatory, SASH-related, violent, or other violative behavior, or who were terminated in related proceedings; the incident dates; the bases of substantiation; and the disposition of each circumstance shall be recorded and accessible to all operators of U.S.-flag vessels.

V. Long-Term Actions to be taken by Vessel Operators. These will be developed in coordination with the MARAD and other Government and maritime industry participants and may include:

1. Consideration of a range of possible measures to address accountability for the SASH climate onboard Vessel Operator ships that could include:

   a. training on records maintenance;
   b. identified perpetrator tracking and record keeping, to the extent permissible by law;
   c. recorded video monitoring of, at a minimum, passageways immediately adjacent to cadet staterooms;
   d. enhanced Diversity, Equity, and Inclusion (DEI) initiatives and practices in the mariner workforce; and
   e. training and credentialing of officers at the Provisional level by the National Advocate Credentialing Program.

2. Collaboration with the U.S. Coast Guard, other Vessel Operators, mariner unions, and industry organizations to develop the requirements of a merchant mariner credential that satisfies training requirements for SASH Contacts and designated onboard officers or other persons ashore to attain and maintain respective Basic and Provisional NACP training levels.

ADDENDUM: Definitions

The following definitions and examples are derived from the 2017 Best Practices Guide on Prevention of Sexual Assault and Sexual Harassment in the U.S. Merchant Marine (SOCP BPG), published by the Ship Operations Cooperative Program with support from the U.S. Department of Transportation Maritime Administration under Agreement No. DTMA 91H1600008 and the U.S. Merchant Marine Academy's 2018 Sexual Assault, Sexual or Gender-Based Harassment, Relationship Violence, Stalking, and Retaliation Policy.

B. **Sexual Assault** is a crime of violence defined as intentional touching of a sexual nature against the will (by use of force, physical threat, coercive conduct, or abuse of authority), or without the consent of another person, or where that person is incapacitated (e.g., "passed out," sleeping, or impaired due to the use of alcohol or drugs, including prescription medications) or otherwise incapable of giving consent. The other person can be male or female and the perpetrator of the sexual assault can be of the same or opposite sex. Sexual assault includes, but is not limited to, the following:

1. Sexual intercourse, including anal, oral, or vaginal penetration, however slight, with a body part (e.g., penis, finger, hand or tongue) or an object;

2. Kissing, touching, groping, fondling, or other intentional contact with the breasts, buttocks, groin, or genitals (over or under an individual's clothing) for purposes of sexual gratification or when such private body parts are otherwise touched in a sexual manner;

3. Sexual contact with someone who is unable to say "no" and/or change their mind due to the presence of coercion or intimidation; or

4. Sexual contact with someone who is under the age of consent in the jurisdiction in which the sexual assault occurs.

C. **Sexual Harassment and Gender-Based Harassment: Sexual harassment** is any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal, non-verbal, graphic or physical conduct of a sexual nature, including, but not limited to the following:

1. Submission to or rejection of such conduct is either an explicit or implicit term or condition of an individual's employment or advancement in employment, evaluation of academic work or advancement in an academic program, or basis for participation in any aspect of an Academy program or activity, including shipboard training *(quid pro quo)*;

2. Submission to or rejection of such conduct by an individual is used as a basis for decisions affecting the individual (*quid pro quo)*; or

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's learning, working, or living environment; in other words, it is sufficiently severe, pervasive, or persistent as to create an intimidating, hostile, or offensive learning, working, or living environment under both an objective—a reasonable person's view—and subjective—the Complainant's view—standard (hostile environment).

   Examples of Sexual Harassment include, but are not limited to, the following behaviors:

   - Verbal conduct such as epithets, derogatory or off-color jokes or comments of a sexual nature, slurs or unwanted sexual advances, invitations, or comments, discussing sexual activities, commenting on physical attributes, using demeaning names, or using crude language;
   - Visual conduct such as derogatory or sexually oriented posters, photography, cartoons, drawings, or gestures, or exposing oneself;
   - Physical conduct such as unwanted or unnecessary touching, the blocking of voluntary movement, or interfering with a person's work due to the refusal of sexual advances or a person's sexual orientation;
   - Threats and demands to submit to sexual requests as a condition of continued employment or to avoid discipline; and
   - Rewards and offers of employment benefits in return for sexual favors.

4. **Gender-Based Harassment** includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature. Examples of sexual or gender-based harassment include, but are not 1imited to, the following:

   a) Unwanted flirtation, advances or propositions of a sexual nature;
   b) Verbal conduct, including lewd or sexually suggestive comments, jokes, or innuendos, or unwelcome comments about an individual's sexual orientation or gender identity;
   c) Written conduct, including letters, notes, or electronic communications containing comments, words, jokes, or images that are lewd or sexually suggestive, or relate in an unwelcome manner to an individual's sexual orientation or gender identity.

D. **Relationship Violence** refers to controlling, abusive behavior, including any act of violence or threatened act of violence, against a person who is, or has been involved, in a sexual, dating, domestic, cohabiting or married relationship with that person. Relationship violence can take place in heterosexual or same-sex relationships, and sometimes also involves violence against the children in the family. Relationship violence can take a number of forms including physical, verbal, emotional, economic, and sexual abuse, or any combination thereof.

1. **Domestic violence:** The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the applicable jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the applicable jurisdiction.

2. Dating violence: The term "dating violence" means violence committed by a person (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

E. **Stalking** is a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Such conduct includes, but is not limited to, unwelcome acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property. It includes cyber-stalking, in which electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used. Stalking can occur in a dating relationship, friendship, or past relationship, or can be perpetrated by a stranger.

F. **Harassment** is the act of systematic and/or continued unwanted and annoying actions of one party or a group, including threats and demands. The purpose may vary, including racial prejudice, personal malice, and attempt to force someone to quit a job or grant sexual favors, or merely gain sadistic pleasure from making someone fearful or anxious.

F. **Bullying** is the use of force, threat, or coercion to abuse, intimidate or aggressively dominate others. The behavior is often repeated and habitual. One essential prerequisite is the perception, by the bully or by others, of an imbalance of social or physical power, which distinguishes bullying from conflict.

G. **Consent** means clear words or overt acts by a competent person indicating freely given agreement to engage in mutually agreed upon sexual conduct. An expression of refusal through words or conduct means there is no consent. Consent may not be inferred from silence, passivity or lack of resistance alone. Consent to one form of sexual activity does not imply consent to other forms of sexual activity, and the existence of a current or previous dating or sexual relationship is not sufficient to constitute consent to additional sexual activity. Consent may be initially given but can be withdrawn at any time.

Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness, being asleep, being involuntarily restrained, or being coerced or intimidated. Depending on the degree of intoxication, an individual who is under the influence of alcohol, drugs, or other intoxicants, may be incapacitated and, therefore, unable to consent.

H. **Sexual Exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another person for their own advantage or benefit or for the advantage or benefit of anyone else. Examples of sexual exploitation include but are not limited to the following:

1. Voyeurism (such as watching or taking pictures, videos, or audio recordings of another person engaging in a sexual act, in a state of undress, or in a place and time where such person has the reasonable expectation of privacy, such as a changing room, toilet, bathroom, or shower, each without the affirmative consent of all parties);
2. Disseminating, streaming, or posting pictures or video of another in a state of undress or of a sexual nature without the person's affirmative consent;
3. Exposing one's genitals to another person without affirmative consent; or
4. Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge.

I. **Retaliation** (sometimes referred to as reprisal) means taking or threatening to take any adverse action taken against an individual for making a good faith report of conduct prohibited under the organization's Policy, or for participating in any investigation or proceeding resulting from such a report. Retaliation includes threatening, intimidating, harassing, or any other conduct that would discourage a reasonable person from making a report, or from participating in proceedings related to such a report. Examples of retaliation include, but are not limited, to the following:

1. Disadvantaging or restricting a person in their status as an employee or cadet, or in their ability to gain benefits or opportunities available at the organization or the USMMA;
2. Precluding a person from filing a report of prohibited conduct;
3. Pressuring someone to drop or not support a complaint, or to provide incomplete, false, or misleading information; or
4. Adversely altering the educational or work environment of someone who has complained or participated in the complaint process.

EVERY MARINER BUILDS A RESPECTFUL CULTURE (EMBARC)

Vessel Operator's Compliance with EMBARC Standards for Sea Year Eligibility
SELF-ASSESSMENT CHECKLIST

Item No.	EMBARC Section	EMBARC REQUIREMENT	STATUS Completed or ETC Date	COMMENTS
Immediate Actions:				
1	II.1	Agreed to comply with the EMBARC Standards and confirming completion of the immediate action items. Submitted copies of SASH policies with the completed checklist and compliance document.		
2	II.2	Agreed to conduct self-assessments of compliance with the EMBARC Standards annually, to submit confirmation of self-assessments to MARAD, any resultant changes from the self-assessments, and copies of SASH policies together with assessment results.		
3	II.3	Agreed to permit MARAD—including third parties engaged by MARAD—to conduct recurring assessments of compliance with the EMBARC Standards.		
4	III.1	Agreed that SASH reporting policies and procedures that ensure compliance with the EMBARC Standards will be operational upon enrollment in EMBARC.		
4.1	III.1	Completed SMS revision within 90 days.		
4.2	III.1	SMS Revision approved by SMS approval authority (e.g., ABS).		
5	III.2	Designate a person ashore who will be the primary contact for all SASH issues (SASH Contact). The SASH Contact must have completed the free 40-hour Victim Assistance Training Online provided by the Office for Victims of Crime Training & Technical Assistance Center, and received the Certificate of Completion, or have completed an equivalent training program.		

6	III.3	Established process to confirm that cadets will have (1) a virtual or in-person meeting with the SASH Contact before joining a ship; or (2) if there is inadequate time between a cadet's assignment to a vessel and the cadet's embarkation, the SASH Contact shall make contact with the cadet within 48 hours of the cadet's embarkation (via the cadet's satellite phone if the cadet is equipped with such a device).		
7.a	III.4.a	Implemented measures to confirm that SASH Contacts and cadets can communicate as needed once a cadet is on board, including measures to require that the SASH Contact initiate contact with each assigned cadet within the first 7 days of vessel onboarding.		
7.b	III.4.b	Implemented process to confirm that the SASH Contact shall respond to cadet outreach no later than the next business day.		
7.c	III.4.c	Established policies that ensure that whenever a cadet is aboard a vessel for more than 30 days, the SASH Contact shall initiate contact, via email, with the cadet at least every 14 days.		
7.d	III.4.d	Established policies that require the SASH Contact to encourage and honor requests from cadets for increased frequency of check-ins.		
7.e	III.4.e	Established policies that ensure the SASH Contact makes a record of any possible violations and ensures prompt and thorough investigation and corrective action, where appropriate, and/or referral to proper authorities.		
8	III.5	Established process to reinforce safety practices (including SASH prevention, bystander intervention, reporting procedures, and alcohol prohibitions) frequently with every cadet and crew member through onboard or virtual meetings in accordance with company procedures.		
9	III.6	Established policies that prohibit cadets from entering the stateroom of any other		

		crew member; prohibit ship's crew members from entering cadets' private staterooms for any reason other than official maintenance or housekeeping duties during appropriate working hours and with adequate notice.		
9.1	III.6	Provided and checked functional door locks for all cadet staterooms.		
9.2	III.6	Established a list of all master key holders with access to cadet staterooms identified by position.		
9.3	III.6	Implemented policies to establish and maintain open-door office or workspace interaction between cadets and other ship employees, except when impractical due to vessel compartment configuration or safety procedures.		
10	III.7.a	SMS established quarterly training requirements on SASH prevention, bystander intervention, reporting, and response procedures for all shipboard personnel (regardless of whether cadets are onboard).		
10.1	III.7.a	Established procedure to ensure that cadets shall attend, but shall not have any role in managing, this training.		
11	III.7.b	Established procedure to ensure that all officers and crew shall be required to complete the *Maritime Sexual Assault and Sexual Harassment Prevention Training* before a cadet is embarked and to repeat the training annually.[1]		
12	III.7.c	Established process to incorporate SASH discussions in periodic Vessel Safety Meetings using materials similar to those in the Facilitator's Guide and Student Workbook in the SOCP SASH Tool Kit.		
13	III.7.d	Provide copies of vessel operator's SASH prevention policies and reporting procedures to each cadet upon boarding the vessel.		
14	III.7.e	Displayed company policies prohibiting SASH, retaliation, drug and alcohol usage, and cadet presence in crew member		

[1] This interactive Computer Based Training (CBT) is available at no charge from SOCP.

		staterooms/crew member presence in cadet staterooms on board.		
15	III.7.f	Displayed posters and guides that support a respectful and inclusive workplace culture. Displayed SASH prevention, reporting, and response posters prominently in common areas of the vessel.		
15.1	III.7.f	Displayed such posters in shoreside facilities to which cadets have access.		
16	III.7.g	Distributed the quick reference guide brochures in the SOCP SASH Tool Kit[2] or other comparable materials to all crew, officers, cadets, and all shore-based personnel who interact with or have responsibilities related to officers, crew and cadets. Provided tips for prevention of and response to SASH behaviors as appropriate for each intended audience.		
17	III.7.h.i	Established procedure to require Vessel Masters to introduce cadets to ship's company employees as soon as practicable after boarding to foster an open, welcoming environment for Sea Year students.		
18	III.7.h.ii	Established procedure to require Vessel Masters to ensure that cadets are familiarized with the ship during onboarding in accordance with the SMS.		
19	III.7.i	Established process to ensure that reporting procedures provided to officers, crew, cadets, and posted on the vessel shall include: i. Contact information for the Vessel Operator's SASH Contacts. ii. Point of contact information for notifications to the Coast Guard.		
20	III.8.a	Established procedure to ensure that when cadets are embarked, vessel Operator shall immediately (within 24 hours after learning of an allegation) notify USMMA of an allegation of SASH-involved		

[2] This SOCP SASH Tool Kit is available at no charge from SOCP.

		behavior, regardless of whether the behavior involves a cadet.		
20.1	III.8.a	Established procedure to ensure that, for incidents involving a cadet, Operator shall provide a complete report of investigation to USMMA when concluded.		
20.2	III.8.a	Established policies that require (1) thorough investigation of alleged violations of the SASH policy that meet best practices for investigations of sexual assaults and sexual harassments; and that (2) interviews be conducted using trauma-informed interview methods.		
21	III.8.b	Established company policies that require all shipboard complaints of a sexual offense prohibited under current law to be immediately reported to the Coast Guard. These notifications can be made to the Coast Guard National Command Center at +1 (202) 372-2100, or an attributed report through CG Tips.		
22	III.8.c	Established procedure that encourages company leadership to inform the Coast Guard of adverse or disciplinary actions that result in termination or a probationary status of any crewmember for harassment or SASH. Reports of mariner misconduct should be made to nearest Coast Guard Officer In Charge, Marine Inspection which can be found at the following website: https://www.uscg.mil/contact/.		
23	III.9	Reviewed company policies within the SMS to determine if they are at least as comprehensive as those listed in the SOCP Best Practices Guide[3] and revised as necessary, including but not limited to the following policies:		
23.1	III.9.a	a. Employee Best Practices: i. Best Practice #1: Reporting of Sexual Harassment & Sexual Assault ii. Best Practice #2: Basic Do's and Don'ts		

[3] The SOCP Best Practices Guide is available at no charge from SOCP.

		iii. Best Practice #3: Safety on Shore Leave iv. Best Practice #4: Response to Sexual Harassment & Sexual Assault v. Drugs & Alcohol vi. Company Investigation Process vii. Victim Advocacy viii. "Did You Know?"		
23.2	III.9.b	b. Vessel Operator Company Best Practices: i. Best Practice #1: Defining Sexual Harassment & Sexual Assault ii. Best Practice #2: Nurturing a Culture Free of Sexual Harassment & Sexual Assault iii. Best Practice #3: Development of Prevention Policies iv. Best Practice #4: Effective Training on Sexual Harassment & Sexual Assault Prevention and Response v. Best Practice #5: Establishing Reporting Options vi. Best Practice #6: Response to Sexual Harassment & Sexual Assault		
24	III. 10	Agreed to meet with MARAD, USMMA and other invited government and industry participants quarterly, or as called by DOT/MARAD/USMMA, to assess compliance with SASH policies and implement any necessary adjustments and/or corrections.		
Intermediate Actions: Commits to implementing the following intermediate actions:				
25	IV.1	Within one year, implement master key control systems, manual or electronic, for the vessel.		
26	IV.2	Within one year, develop and implement recommended SASH Contact training and annual refresher training for designated SASH contacts to include survivor		

		advocacy and instruction in training and education principles.		
26.1	IV.2	Within one year, appoint and train an appropriate number of designated SASH contacts to ensure that an adequate number (minimum one primary and one alternate) are always available.		
27	IV.3	Within one year, work with other Vessel Operators, labor, academies, SOCP and/or other industry organizations, SASH subject matter experts, MARAD and other stakeholders to review and enhance SASH policies used by vessel operators.		
27.1	IV.3	Within one year, participate and provide input—with other Vessel Operators, labor, academies, other industry organizations, SASH subject matter experts, MARAD and other stakeholders—in the revision of the SOCP SASH Best Practices Guide, including: Development of best practices and templates to support incorporation of SASH prevention, reporting, and response as well as internal audit and external audit procedures into Company and Vessel Safety Management Systems.		
28	IV.4	Within one year, work with other Vessel Operators, labor, academies, industry organizations, SASH subject matter experts, MARAD, and other stakeholders to develop enhanced policies and training pertaining to bystander reporting requirements and bystander duty to intervene in SASH incidents.		
29	IV.5	Within eighteen months, collaborate with other Vessel Operators, maritime labor unions, academies, union training schools, SASH subject matter experts, MARAD and USCG to develop and implement expanded mandatory annual SASH training for all crew members including, but not limited to: a. SASH (including bystander intervention); b. Micro aggression consciousness; c. Cadet relationships; d. Creating and maintaining a respectful work environment; and		

		e. Training regimens and methods that enable effective crew awareness of SASH prevention principles.		
30	IV.6	As soon as practicable, but not later than two years, work with other Vessel Operators, labor, Academies, industry organizations, SASH subject matter experts, MARAD, USCG, and other stakeholders to develop, establish and participate, to the extent permissible under law, in the maintenance and operation of a SASH perpetrator information exchange. The exchange shall contain the names of all merchant mariners who are the subjects of substantiated reports of discriminatory, SASH-related, violent, or other violative behavior, or who were terminated in related proceedings; the incident dates; the bases of substantiation; and the disposition of each circumstance shall be recorded and accessible to all operators of U.S.-flag vessels.		
Long-Term Actions: Commits to work together to develop, in coordination with the MARAD and other Government and maritime industry participants, long-term actions, as soon as feasible, which may include:				
31	V.1	Consideration of a range of possible measures to address accountability for the SASH climate onboard Vessel Operator ships, including: a. training records maintenance; b. identified perpetrator tracking and record keeping, to the extent permissible by law; c. recorded video monitoring of, at a minimum, passageways immediately adjacent to cadet staterooms. d. enhanced Diversity, Equity, and Inclusion (DEI) initiatives and practices in the mariner workforce; e. training and credentialing of officers at the Provisional level by the National Advocate Credentialing Program.		
32	V.3	Collaboration with the U.S. Coast Guard, other vessel operators, mariner unions and		

		industry organizations to develop the requirements of a merchant mariner credential that satisfies training requirements for SASH Contacts and designated onboard officers or other persons ashore to attain and maintain respective Basic and Provisional NACP training levels.		