

MARITIME ADMINISTRATION TEMPORARY
SCHOOL TRAINING VESSEL AGREEMENT

This Temporary School Training Vessel Agreement (hereinafter "Agreement") is made this 19th day of June, 2019 between the United States of America, as represented by the Department of Transportation, acting by and through the Maritime Administration, hereinafter referred to as "MARAD", and Texas A&M University, a member of the Texas A&M University System, an agency of the State of Texas, on behalf of Texas A&M Maritime Academy, Galveston, Texas, hereinafter collectively referred to as "TAMMA." TAMMA and MARAD are hereinafter collectively referred to as the "Parties."

Whereas:

- (a) TAMMA is a State Maritime Academy as defined in title 46 US Code Sec. 51102 (4). The Secretary of Transportation, acting through MARAD, is authorized to provide a training vessel to a State Maritime Academy by title 46 USC Sec. 51504 (b).
- (b) Pursuant to section 3505 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232) and the *State Maritime Academy Training Vessel Sharing Plan* MARAD submitted to Congress on November 15, 2018, the Parties agree to mutually support their separate and common missions to train and educate U.S. Coast Guard-credentialed merchant mariners to the benefit of the United States; and,
- (c) Pursuant to Article 6 of the Memorandum of Agreement between TAMMA and MARAD effective August 1, 2016 ("MOA"), as amended by Amendment No. 1 to MOA dated February 20, 2018 (collectively referred to herein as the "TAMMA MOA"), the training ship T/V GOLDEN BEAR (hereinafter referred to as the "Vessel") will be temporarily delivered to TAMMA, on the date, at the location and for the duration set forth in Annex A, for use as a training ship consistent with terms and conditions established by the TAMMA MOA, the MARAD Training Ship Custodial Care Guidance (CCG), applicable law and regulation and this Agreement.

Now therefore the Parties agree as follows:

- I. Authority: Authority to enter this Agreement is pursuant to 46 U.S.C. § 50303, 46 U.S.C. § 57100, and 46 U.S.C. § 51504 with respect to MARAD, and Texas Education Code § 87.202 with respect to TAMMA.
- II. Other Agreements: Except as specifically set forth herein, the provisions of the TAMMA MOA and the CCG shall apply to this Agreement and TAMMA's performance hereunder.
- III. Training Vessel Sharing: In consideration of the mutual promises set forth herein, MARAD, hereby allows TAMMA on a temporary training vessel sharing basis to exclusively, subject to the exclusions provided in this Agreement, have custody and control of the T/V GOLDEN BEAR on the terms and conditions set forth herein. This Agreement

shall not be construed as creating a permanent assignment of the Vessel to TAMMA. Under this Agreement, TAMMA retains operational control of the Vessel and her navigation while the Vessel is under the custody of TAMMA.

IV. TAMMA Responsibilities: For the entire period that TAMMA has custody and control of the Vessel, it shall:

- a. Agreements: Comply with the TAMMA MOA, the CCG and all applicable laws and regulations.
- b. Vessel Maintenance: Maintain the Vessel, its machinery, outfitting, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with the TAMMA MOA, CCG, and the Vessel's preventive maintenance plans in the Vessel's Nautical Systems Enterprise (NS-E) System.
- c. Financial Responsibility: At its own expense and through its own procurement, crew, victual, navigate, operate, supply, fuel and maintain the Vessel and it shall pay all charges and expenses of every kind and nature whatsoever incidental to its use and operation of the Vessel.
- d. Crew: TAMMA represents that the Vessel will at all times carry a full and efficient complement of Master, officers and crew and that all will be qualified to operate the Vessel and its equipment competently and safely and shall, at a minimum, satisfy the manning requirements of the United States Coast Guard for the operation and safety of the Vessel, including certification under the relevant provisions of the International Convention on Standards of Training Certification and Watchkeeping for Seafarers (SCTCW) as required by the United States Coast Guard. The Master, officers and crew of the Vessel shall be the servants of TAMMA for all purposes whatsoever, even if for any reason appointed by MARAD.
- e. Insurance Requirement: Insure the Vessel against Protection and Indemnity risks. Such insurances shall be procured by TAMMA to protect the interests of both the MARAD and TAMMA. The insurance shall be of a form and substance as set forth in Annex C.
- f. No Liability for MARAD: TAMMA acknowledges this Agreement is a form of federal assistance and does not create any liability for or cause of action against MARAD, the Department of Transportation, or the United States of America.
- g. Indemnity: To the extent permitted by the Constitution and laws of the State of Texas, indemnify and hold harmless MARAD the Department of Transportation and the United States of America against any claim or cause of action arising out of or in relation to the operation of the Vessel and against any lien of whatsoever nature arising out of an event occurring while the Vessel is in the control and custody of TAMMA.

- h. Logs: Maintain onboard the Vessel all logs required by applicable laws and regulations, true copies of which shall be made available to MARAD at any time upon request. Logs shall be legible and in English. The logs shall be retained onboard as part of the Vessel's official record and included with redelivery of the Vessel.
- i. Sexual harassment: Be responsible to provide appropriate training to the Master, crew, faculty, students and all other personnel aboard the Vessel to prevent sexual assault and sexual harassment. The training provided shall facilitate an environment of zero tolerance for sexual assault, sexual harassment, and retaliation against those reporting such incidents, and be comparable in scope to the expectations promulgated through the Best Practices Guide on Prevention of Sexual Assault and Sexual Harassment in the U.S. Merchant Marine and the companion Computer Based Training Program, downloadable from the SOCP (Ship Operators Cooperative Program website <http://www.socp.us/>).
- j. Ship's Hospital: Be responsible for outfitting the ship's hospital with the appropriate medicines and supplies. TAMMA, or a qualified designee, shall be signatory for all controlled substances included in the hospital inventory. TAMMA shall employ a "ship's doctor" (MD, Nurse Practitioner, or Corpsman) to be available for the faculty, students, crew, and others aboard the Vessel. The "ship's doctor" shall maintain a Medical Log, with illness or injury complaints recorded therein, along with the date of occurrence. Recorded entries shall describe the symptoms of the reported illness and/or explain the events causing the injury. A description of any medical treatment rendered shall be recorded. If it is necessary to relieve someone of his/her duties in order to have him/her seek medical attention ashore, this shall also be noted. The Medical Log and any other associated documents shall remain the property of TAMMA. However, TAMMA shall provide documentation to MARAD should it be required in the event of a claim. Upon the completion of the training voyage, TAMMA shall remove all medical supplies and properly dispose of all medicines in accordance with federal, state, and local regulations.
- k. Illegal Drugs and Alcohol: In addition to any such policies and regulations TAMMA may have regarding illegal drugs and alcohol, TAMMA shall ensure compliance with the illegal drug and alcohol policies and regulations of MARAD and the U.S. Coast Guard.
- l. Firearm Prohibition: TAMMA shall ensure that the Master, crew, faculty, students and all other personnel aboard the Vessel comply with MARAD Office of Ship Operations Policy Directive 16-01 (Weapons Policy for Maritime Administration Vessels) dated November 17, 2016, prohibiting firearms and other dangerous weapons onboard the Vessel.
- m. California State University Maritime Academy (CMA) Property: TAMMA shall ensure the protection of all CMA property on board the Vessel. CMA property

shall be reasonably and jointly inventoried, secured in mutually agreed upon location upon delivery in accordance with Annex A, and documented. CMA will be responsible for properly packing and securing for sea all CMA property. The Master shall have access to these locations in the event of fire or other cause for gaining access to protect the safety of the Vessel and personnel aboard. Where other property cannot be secured, a material condition assessment will be conducted and documented between MARAD and TAMMA. Upon delivery and redelivery of the Vessel, the other property shall be inventoried or assessed during a Joint Survey attended by MARAD, CMA and TAMMA as set forth in Annex D. Person/persons conducting the joint survey shall be mutually acceptable by all Parties. TAMMA will be responsible for correcting any deficiencies identified at redelivery. Photographic evidence of inventories and the material condition of equipment will be acceptable.

- n. Redelivery: In the event of a delay in redelivery of the Vessel, TAMMA's Vessel Master shall promptly notify the assigned MARAD surveyor and the MARAD Coordination Center (MCC) by telephone and follow up in writing via electronic mail, fax, or express mail as soon as reasonably possible about such delay and the particulars in connection therewith.
- V. Training Vessel Sharing Period, Delivery, and Redelivery. The Training Vessel Sharing period, and the date and location of delivery and redelivery of the Vessel is set forth in Annex A.
- VI. Status of the Vessel. Nothing in this Agreement affects, detracts from or alters the status of the Vessel as a public vessel of the United States.
- VII. As Is Condition, No Warranties Regarding Performance, No Liability for Delays, Emergency and Priority Use:
 - a. MARAD shall deliver the Vessel at the location specified in Annex A in condition found to be in class by the American Bureau of Shipping (ABS) and with a valid USCG Certificate of Inspection as a public nautical school ship, pursuant to the provisions of 46 CFR Part 167 – Public Nautical School Ships.
 - b. To the extent permitted by applicable law, neither the Vessel nor MARAD shall be responsible for any special, indirect, consequential, punitive, or exemplary loss or damage or delay or failure in performing hereunder arising or resulting from problems arising from the failure of the Vessel to perform regardless of the cause.
 - c. In accordance with the TAMMA MOA, the Vessel shall be available for emergency and other priority uses whenever deemed necessary by MARAD without liability by the United States to TAMMA for such emergency and priority use.

VIII. Turnover Procedure:

- a. MARAD will notify USCG and ABS of the planned operation of the Vessel by TAMMA. TAMMA, assisted as may be required by MARAD, shall be responsible for the re-assignment or development of all applicable certificates, plans, and other required documents citing TAMMA as the operator of the Vessel prior to departure under TAMMA control. A list of applicable certificates is included in Annex E.
- b. MARAD will arrange and pay for marine surveyor to conduct a Joint Survey, as set forth in Annex D, attended by MARAD, TAMMA and CMA, at delivery and redelivery of the Vessel. The survey will include but not be limited to a typical On-Hire/Off-Hire Survey, Vessel Condition Survey and Bunker Survey. This survey may require embarking the Vessel prior to arrival at the delivery and redelivery ports. The surveyor shall submit the report to MARAD with copy to TAMMA and CMA. The decision of MARAD's Director, Office of Ship Operations regarding any differences of opinion between the Parties regarding the findings of the Joint Survey shall be final and accepted by all Parties.

IX. Fuel and other Consumables:

- a. Delivery: Upon delivery of the Vessel, an Independent Joint Survey attended by MARAD, CMA and TAMMA shall be conducted to determine the amount of fuel and other consumables aboard the Vessel. In case of any differences of opinion, the determination by MARAD shall be final. MARAD shall present to TAMMA a statement showing the amount and grade of fuel and the other consumables on board at the time of delivery. The list of such other consumables shall be set forth in Annex B.
- b. Use During Training Vessel Sharing: TAMMA shall be responsible for the cost to replenish the fuel and other consumables used during the Training Vessel Sharing. Alternatively, TAMMA, at their expense, may elect to replenish the fuel and other consumables aboard the Vessel to ensure that the amount of fuel and other consumables at redelivery is not less than the amounts at time of delivery.
- c. Redelivery: Upon redelivery of the Vessel, a Joint Survey as set forth in Annex D, attended by MARAD, CMA and TAMMA shall be conducted to determine the amount of fuel and other consumables aboard the Vessel. In case of any differences of opinion, the determination by MARAD shall be final. Based on the Joint Survey, MARAD shall present to TAMMA and CMA a statement showing the amount and grade of fuel and the amount of other consumables on board at the time of redelivery and the amounts thereof used during the Training Vessel Sharing.

X. Obligations of MARAD:

- a. Delivery and Redelivery of Vessel: MARAD shall use reasonable efforts to deliver the Vessel to TAMMA and accept redelivery of the Vessel from TAMMA at the location(s) and on the dates identified in Annex A.
- b. Maintenance and Repair: TAMMA will be responsible for the maintenance and repair of the Vessel in accordance with the TAMMA MOA and CCG. MARAD shall be responsible for conducting any major repair actions beyond the scope of the TAMMA operating crew in accordance with the TAMMA MOA and the CCG. In accordance with the TAMMA MOA and the CCG, MARAD will provide TAMMA a purchase order of \$25,000 to accomplish any necessary emergency repairs identified during the training cruise. TAMMA shall be afforded access to all onboard spares, manuals, drawings, tools, equipment, and other such material to support the maintenance and repair of the Vessel including access to NS-E. TAMMA shall document all maintenance and repair activities in the MARAD provided system terms and in accordance with the MARAD Logistics Training Vessel Sharing Guidelines, Annex D.
- c. Familiarization: MARAD will promote safe and efficient turnover of the Vessel and ensure that key TAMMA operating crew will have ample opportunities for familiarization with the Vessel and her systems prior to delivery and while CMA is operating the Vessel. This will include placing TAMMA key operating crew aboard the Vessel for 1) certificate of inspection and other inspections, 2) the Vessel's passage from Vallejo to Los Angeles and Balboa, 3) the Vessel's passage from any port-of-call to Galveston, and 4) any other time that may be beneficial and help to ensure safe and efficient operations. Key TAMMA operating crew will be treated as officers and provided appropriate accommodations.
- d. Information Technology: MARAD will ensure that TAMMA has access to critical communications and information technology networks aboard the Vessel.

XI. Government Cost for Training Vessel Sharing: In accordance with P.L. 116-6: Consolidated Appropriations Act, 2019, Div. G, Title 1, pg. 425 (Feb. 15, 2019) (P.L. 116-6), MARAD shall reimburse TAMMA only for those costs that are above the routine costs for conducting a training cruise. Permissible costs are given in Annex F.

- a. Routine Cost are those costs that TAMMA would be expected to pay if an appropriate capacity training vessel were assigned to TAMMA.
- b. TAMMA shall submit a detailed estimate of costs above their routine training cruise expenses based upon the number of cadets gaining sea service aboard the Vessel and enrolled at TAMMA no less than 30 days prior to delivery of the Vessel. TAMMA shall identify the cost element in Annex F justifying each line item. MARAD will review the estimate and determine the agreed cost elements

and approximate costs. MARAD will reimburse TAMMA for these additional expenses based on the agreed elements and actual expenses incurred.

- c. MARAD recognizes that TAMMA is only submitting an estimate. The estimate is not binding and final and additional costs may be incurred. TAMMA shall notify MARAD when identified and submit the updated estimate.
- d. In the event of a dispute, the decision of the MARAD Associate Administrator for Strategic Sealift will be final and binding.
- e. This Agreement does not obligate the United States, Department of Transportation or MARAD to spend funds not specifically appropriated or allocated for actions described herein. No provision of this Agreement shall be interpreted as or constitute to be a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341.

XII. Vessel Sharing: TAMMA may accept cadets from other SMA's and the U.S. Merchant Marine Academy (USMMA). The cost TAMMA can charge for those cadets shall be comparable to what TAMMA charges for its own cadets for TAMMA's summer training cruise on the Vessel. Coordination of these Sharing arrangements shall be directly between TAMMA and the other institution. TAMMA shall provide copies of all such written agreements with other institutions to MARAD.

XIII. Termination: TAMMA may terminate this Agreement upon 5 business days' written notice to MARAD subject to retaining safe control of the Vessel until proper turnover. MARAD may terminate this Agreement to utilize the Vessel for emergency or other priority uses upon such reasonable notice to TAMMA as the circumstances may reasonably permit. In the event of the termination of the use of the Vessel by TAMMA or by MARAD, MARAD shall return the Vessel to the Redelivery Point. TAMMA shall be liable for reasonable costs related to the return of the Vessel to the Redelivery Point, except that MARAD shall bear the costs of the return of the Vessel to the Redelivery Point if MARAD terminates the cruise to utilize the Vessel for emergency or other priority uses. All property whatsoever owned by MARAD or CMA shall remain the property of MARAD or CMA respectively. Title to all additions, replacements, and renewals made by TAMMA shall vest in the Federal Government without charge. TAMMA-owned equipment and consumable property purchased by TAMMA as controlled property, not considered part of the ship's outfit, remains the property of TAMMA. TAMMA's obligation to maintain insurance and indemnify and hold harmless MARAD, the Department of Transportation and the United States shall survive the termination of this Agreement.

XIV. General Agent: MARAD, at its own discretion, may assign a General Agent to the Vessel for all or any part of the period that TAMMA has custody of the Vessel. The General agent may be employed to assist with repairs or assume operation of the Vessel should it be required for emergency or other operations.

XV. Observers: MARAD, in accordance with the TAMMA MOA, may elect to have government observers aboard the Vessel for all or any part of the period that TAMMA has custody of the Vessel. The observers will be employees of MARAD and funded by MARAD. TAMMA shall make available berths and meals for the observers. The observers are to be considered officer equivalent. TAMMA may request reasonable reimbursement for costs associated to berthing the observers.

XVI. Amendment: This Agreement, including the Annexes, may be amended at any time by mutual written consent of the Parties. All amendments shall be in writing and effective upon the date both Parties have executed the Agreement.

XVII. Contacts:

For MARAD:

Paul Gilmour (Administrative POC)
Training Ship Coordinator
Maritime Administration
Department of Transportation
1200 N.J. Ave. S.E.
Washington, D.C. 20590

Brad Birkett (Technical POC)
Marine Surveyor / Port Engineer
Maritime Administration
Department of Transportation
1301 Clay Street, Oakland CA 94612

Stephen Ng (Financial POC)
Deputy CFO
Maritime Administration
Department of Transportation
1200 N.J. Ave. S.E.
Washington, D.C. 20590

Doug Harrington (Operations POC)
Acting Director, Office of Ship Operations
Maritime Administration
Department of Transportation
1200 New Jersey Ave. SE
Washington, D.C. 20590

For TAMMA:

Lindy Beasley (Administrative POC)
Executive Director
Department of Contract Administration

Texas A&M University
1182 TAMU
College Station, TX 77843-1182

Susan H. Lee (Financial POC)
Associate Vice President for Finance
Texas A&M University at Galveston
P.O. Box 1675
Galveston, TX 77553

RADM Michael J. Rodriguez, USMS (Technical POC)
Superintendent
Texas A&M Maritime Academy
Texas A&M University at Galveston
P.O. Box 1675
Galveston, TX 77553

XVIII. Law and Third-Party Rights: This Agreement shall in all respects be governed by federal law, including the General Maritime Law of the United States, and for any matters not governed by federal law, by the laws of the State of Texas. Nothing contained herein is intended to inure to the benefit of any third parties to this Agreement.

XIX. Relationship of the Parties: This Agreement is not intended to create a partnership or joint venture between MARAD and TAMMA. Neither Party may bind the other or otherwise act in any way as the representative of the other, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization.

XX. Force Majeure:

- a. For purposes of this Agreement, "Force Majeure Event" means, with respect to a Party, any event or circumstance, whether or not foreseeable, that was not caused by that Party (other than a strike or other labor unrest that affects only that Party, an increase in prices or other change in general economic conditions, a change in law, and any consequences of that event or circumstance.
- b. If a Force Majeure Event prevents a Party from complying with any one or more obligations under this Agreement, that inability to comply will not constitute breach if (1) that Party uses reasonable efforts to perform those obligations, (2) that Party's inability to perform those obligations is not due to its failure to (a) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (b) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations set out below.
- c. If a Force Majeure Event occurs, the noncomplying Party shall promptly notify the other Party of occurrence of that Force Majeure Event, its effect on performance, and

how long the noncomplying Party expects it to last. Thereafter the noncomplying Party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other Party and to resume its performance under this Agreement.

- XXI. Dispute Resolution: Any dispute arising under this Agreement will be decided in accordance with the procedures described in the TAMMA MOA.
- XXII. Severability and Headings: Each of the Parts or any portion thereof of this Agreement shall be deemed severable, and should any Part or any portion thereof be held invalid, illegal, or unenforceable, the remaining Parts and portions thereof shall continue in full force and effect and unaffected to the fullest extent permitted by law and regulation. The headings herein are for the sake of convenience and reference only, and shall not affect the interpretation of this Agreement.
- XXIII. No Waiver of Sovereign Immunity: Nothing in this Agreement waives the privileges or requirements associated with the sovereign immunity of the United States or the State of Texas.
- XXIV. Assignment: TAMMA may not assign their rights under this Agreement to anyone without the written consent of MARAD.
- XXV. Entire Agreement: This Agreement, additional terms and conditions, and any rider(s), annexes, or addendums attached thereto and the *State Maritime Academy Training Vessel Sharing Plan* MARAD submitted to Congress on November 15, 2018 represent a complete and final expression of the Parties' agreement. It is the sole and complete agreement between the Parties with respect to the services to be performed.
- XXVI. Execution and Effect: This Agreement shall be executed in duplicate each of which shall be considered an original. This Agreement shall be binding upon the successors of the Parties. This Agreement is not binding upon MARAD and TAMMA until signed by and authorized representative of each entity.


IN WITNESS HEREOF, the Parties hereto have set their hands and seals.

United States of America
Department of Transportation
Maritime Administration


Mark H. Buzby
Maritime Administrator

Date: 18 Jun 2019

Texas A&M University
On Behalf of Texas Maritime Academy


Michael K. Young
President

Date: 6/19/19

Annex A

TRAINING VESSEL SHARING DETAILS AND PORTS OF CALL

1. Training Vessel Sharing Period, Delivery, and Redelivery: The Training Vessel Sharing Period will be 62 days. The Vessel shall be delivered on July 1, 2019 at a safe berth mutually agreed between TAMMA and MARAD ("Delivery Point"). The Vessel shall be redelivered on - August 31, 2019 at a safe berth provided by the CMA at CMA or such other safe berth as determined by MARAD ("Redelivery Point").
2. Operational Range and Destinations:
The following itinerary is subject to change upon agreement between the Parties.

ARRIVE	PORT	DEPART
6/30/2019	Galveston, TX	7/1/2019 CMA Disembarks
7/1/2019 Embark TAMMA	Galveston, TX	7/5/2019
7/11/2019	Ponce, Puerto Rico	7/14/2019
7/19/2019	Cristobal, Panama	7/20/2019
7/20/2019	Balboa, Panama	7/24/2019
8/10/2019	Honolulu, HI	8/13/2019
8/22/2019	Seattle, WA	8/25/2019
8/29/2019	Vallejo, CA	8/31/2019 TAMMA Disembarks

Annex B

CONSUMABLES

Consumables include supplies that are part of the Vessel's outfitting which when once used are not recoverable or have no further value. Examples of consumable items include: cleaning gear, paint, packaged petroleum products and lubricants, rags, bulk lube oil, and general hardware.

TAMMA representatives, California State University Maritime Academy (CMA), and MARAD shall jointly take a reasonable inventory of consumables by photo, video, or actual count. The Parties shall validate said inventories prior to the start of the TAMMA training cruise. Upon acceptance of the inventories, those inventories shall be provided to MARAD, CMA, and TAMMA. Throughout operation of the Vessel for the training cruise, TAMMA shall monitor and track the usage of consumables. Any replenishment of consumables during the training cruise that was the property of CMA shall be at the expense of TAMMA. Any replenishment of consumables during the training cruise that was the property of MARAD shall be at the expense of MARAD.

Upon completion of the training cruise and deactivation of the Vessel, a second inventory shall be jointly conducted with representatives of MARAD, TAMMA, and CMA. Additions and subtractions shall be noted.

For items that were the property of CMA, TAMMA, at its discretion, may directly re-provision the consumed items or reimburse CMA for the cost of those items. Any consumable item that was the property of MARAD will be considered to be at MARAD's expense.

ANNEX C

INSURANCE REQUIREMENTS SCHEDULE

Insurance. Without prejudice to, or otherwise diminishing MARAD and TAMMA's duties stated herein, TAMMA agrees to procure insurance which covers the following during the duration of TAMMA's training cruise:

- a. Prior to the effective date of this Agreement, and at all times during its term, TAMMA shall procure and maintain insurance, and require each of TAMMA's contractors and subcontractors (of any tier) performing activities hereunder to procure and maintain insurance which shall protect the Maritime Administration, United States Department of Transportation, the United States of America, and its contractors, including general agents and ship managers, their officers, agents, employees, invitees, successors, and assigns from claims which may arise out of or as a result of TAMMA's activities under this Agreement.
- b. In furtherance of these obligations, and not in limitation thereof, TAMMA shall procure and maintain at least the following minimum levels of insurance coverage as set forth below:
 - 1) Protection and Indemnity (P&I) marine insurance coverage (including full four-fourths (4/4s) collision liability and pollution liability coverage), Passenger and Crew, Passenger, and coverage on the Vessel. The P&I insurance shall cover all liabilities (other than liability for loss of or damage to Government cargo carried onboard the Vessel) in an amount no less than \$500,000,000 per incident. If, at any time during the duration of this Agreement, TAMMA's insurer is NOT prepared to guarantee coverage in the amount of \$500,000,000, TAMMA shall provide written evidence of coverage from another insurer(s) whereby they agree to provide coverage up to this limit. Notwithstanding this overall coverage, the limit for Passenger & Crew liabilities shall be no less than \$500,000,000 per incident; the limit for Passenger liabilities shall be no less than \$500,000,000 per incident; the limit for pollution from oil and hazardous substances shall be no less than \$500,000,000 per incident (or provide evidence satisfactory to MARAD of TAMMA's financial ability to cover the amount of the deductible under MARAD's oil pollution policy).
 - 2) MARAD shall add the Vessel to its oil pollution policy and TAMMA shall be responsible for the \$1,000,000 deductible for such coverage on the Vessel (or shall procure and maintain oil pollution coverage in an amount satisfactory to MARAD) should an oil spill occur that is caused by the actions or fault of TAMMA.

- c. Except as provided herein, TAMMA shall be responsible for the cost of such insurance, including deductibles, premiums, additional premiums, calls, commissions, advancements, assessments, and overspill claims where applicable.
- d. As evidence of the above insurance, TAMMA shall, prior to the delivery of *Golden Bear* to TAMMA, file with the Director, Office of Marine Insurance (MAR-770), Maritime Administration (hereinafter called the "Director of Insurance"), duly executed Certificates of Insurance issued by the insurer(s) of all insurance required herein, including special endorsements, and any other documents that MARAD may require as evidence of compliance with these insurance requirements. Each such Certificate shall be in a form reasonably satisfactory to MARAD; shall list the various coverage types and limits; and shall indicate that the policy has been endorsed as described above. All certificates or policies shall state that the coverage applies to this Agreement, described as use of the Vessel. All insurance shall be placed and maintained with insurers licensed and authorized to do business and who have an A.M. Best rating of "A" or better, unless otherwise approved by MARAD. MARAD's approval or failure to disapprove insurance furnished by TAMMA shall not diminish or release TAMMA from full responsibility for liability as set forth herein. TAMMA shall also provide the Director of Insurance with a current copy of all insurance cover notes, policies and binders, a current paper copy of the P&I Club rule book if using a P&I Club or the equivalent from a fixed-premium provider, and such other documentation covering the Vessel as is necessary to establish that the required insurance coverage is in full force and effect. TAMMA shall provide the Director of Insurance with a timely copy of any revised or reissued cover notes, policies, or binders.
- e. The cover note MUST name the United States as an Assured or Additional Assured under the insurance policies, and indicate the risks insured (including full four-fourths (4/4s) running down clause-collision liability coverage and fixed and moveable objects coverage). The cover note must state the amount of coverage, insurance deductibles (if any), and exclusions (if any) for basic P&I, pollution coverage, War Risk, Passenger and Crew, Passenger, and Wreck Removal.
- f. The cover note must also contain the following statement from the insurance provider:

"The terms or conditions of insurance contained in this cover note or document shall govern and shall be controlling in the event that there are any inconsistent terms or conditions in the applicable insurance provider rules or insurance policy. Underwriters agree to waive any rights of subrogation against the United States in all cases, regardless of cause. The United States shall not be liable for (and there shall be no recourse against the United States for) deductibles, premiums, additional premiums, calls, commissions, advancements, assessments, or overspill claims. It is understood that the Vessel does not have Hull & Machinery insurance. It is understood that any disputes between the insurer and the United States will be governed by U.S. law, and will be adjudicated in a U.S. Federal Court. The United States has not consented to the arbitration (either domestic or

foreign) of any disputes. It is understood that the insurer is not granted a lien on the covered Vessel under any circumstances.”

- g. TAMMA shall notify the Director of Insurance of all incidents within the scope of insurance coverage by the most expeditious means as soon as reasonably practicable upon the discovery of the incident, and shall provide amplifying information when required.
- h. Whenever either Party becomes aware of any claim, injury, death, damage, or loss of any kind to persons or property arising out of or connected with this Agreement, that Party shall have the right to fully investigate the claim. Each Party shall reasonably cooperate with the other in any such investigation. Absent a written agreement to the contrary, each Party shall be responsible for its own costs and expenses incurred in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement, including pro-rated salaries or wages of full-time that Party’s agents or employees, including full-time attorneys, engaged directly or indirectly in such work.
- i. TAMMA may become involved in litigation maintainable against the United States under the Public Vessels Act, 46 U.S.C. §§ 31101-31113. Section 31103 of the Act incorporates the “not inconsistent” provisions of the Suits in Admiralty Act, 46 U.S.C. §§ 30901-30918. It is understood that under this Agreement, and by law (28 U.S.C. §§ 501-530), the Attorney General of the United States and designated U.S. Department of Justice Attorneys have ultimate control over any resulting litigation on behalf of the United States.
- j. TAMMA shall provide the Government with prompt notice of any legal action, libel in admiralty, or claim of any nature whatsoever, brought against the Government, the Vessel, TAMMA, or TAMMA's underwriters arising during the performance of, or as a result of this Agreement. TAMMA shall also provide the Government with prompt notice of any legal action brought by TAMMA that arises from, or is related to the performance of this Agreement. Such notice shall include copies of any summons and complaint or of any notice to show cause, notice of motion, or notice of petition which may be brought, made, or filed in any District Court of the United States or in any other court purporting to have jurisdiction thereof; and such notice shall be sent by the fastest mail service provided by the United States Postal Service to:

Director, Torts Branch - Civil Division
Aviation & Admiralty Office
U.S. Department of Justice
P.O. Box 14271
Washington, D.C. 20044-4271

And

Office of Chief Counsel (MAR-220)
Maritime Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Thereafter, TAMMA will at its own expense refer claims, notices of legal action, or libels in admiralty, brought against the Government, the Vessel, or TAMMA, arising during the performance of, or as a result of this Agreement, to the insurer for adjudication and defense. Subject to the consent of the Attorney General of the State of Texas, TAMMA will at its own expense reasonably cooperate with and support the insurer with information and necessary assistance during the adjudication of claims and the defense of any legal actions. TAMMA shall ensure that its underwriters and its attorneys cooperate with Government counsel in maintaining the defense of any such action or application for relief. TAMMA shall not terminate the insurance without the Director of Insurance's prior written approval and shall promptly notify the Director of Insurance of any pending change or potential cancellation of the insurance.

- k. Should a change in circumstances occur after the execution of this Agreement that materially changes the risks involved with the activities to be conducted, the Government shall have the right to request that TAMMA secure additional insurance to cover different types of risks, or change the dollar amount of existing insurance coverage. In such event, TAMMA shall exercise its best efforts to investigate the availability and cost of such additional insurance coverage and consider in good faith obtaining such additional insurance coverage at reasonable rates and in any event, the Director of Insurance's approval is required prior to final placement of the insurance. The cost of such additional risk coverage shall be for the Government's account.
- l. If at any time the above-required insurance policies should be canceled, terminated or modified so that the insurance is not in full force and effect as required herein, MARAD may, at its sole option:
 - 1) suspend TAMMA from all use of the Vessel until such time as replacement coverage satisfactory to MARAD has been obtained and is in force; or
 - 2) terminate this Agreement for default.
- m. Each policy referenced herein above, by endorsement, shall include the following required clauses:
 - 1) This insurance coverage shall not be canceled by this Insurance Company, nor shall any changes be made which alter, restrict or reduce the insurance coverage so provided or change the names of the Insured(s), without first having given thirty (30) days written notice to the Director, Office of Marine Insurance (MAR-770), Maritime Administration, all as evidenced by receipt of registered letter;
 - 2) Such insurance as afforded by this policy for the benefit of the United States of America, Maritime Administration, Department of Transportation (collectively, "Government"), shall be primary, and any other insurance shall be excess and non-contributing with insurance afforded by this policy;
 - 3) In the event of any occurrence, accident or claim made under this policy, this Insurance Company shall not contend that Maritime Administration, Department of Transportation and the United States of America is (are) not liable in tort by virtue of being a governmental instrumentality or public or quasi-public, body; and

- 4) This Insurance Company releases the Maritime Administration, Department of Transportation, the United States of America, and their contractors and their officers, agents, employees, invitees, successors, and assigns from any liability arising from or through this contract of any subrogation clause in this policy of insurance, and in the event of any occurrence, accident or claim made under this policy, this Insurance Company shall not claim or contend that any of those entities is liable as the result of subrogation.
- n. Neither TAMMA nor the Government shall claim for, or contribute in, General Average under this Agreement.

ANNEX D

MARAD Logistics Training Vessel Sharing Guidelines

Vessel Logistics Preparations Prior to Turnover to TAMMA

1. Joint survey procedures:
 - a. The Parties agree that a joint marine survey of the TS GOLDEN BEAR will be held by CMA, MARAD, and TAMMA upon arrival at the Delivery Point in Galveston, Texas when the ship is delivered from the custody of CMA to MARAD and upon redelivery of the ship at the Redelivery Point in California from TAMMA to MARAD at the completion of the training cruise.
 - b. The joint surveyor or surveyors will be designated at the exclusive discretion of the Associate Administrator for Strategic Sealift and may, at his exclusive discretion, be a marine surveyor employed by MARAD or a third party marine surveyor appoint by MARAD.
 - c. At each joint survey, the designated surveyor will carry out an inspection of the condition of the ship, inventory its stores and consumables, and gauge all tanks.
 - d. At each joint survey, the designated surveyor will note any missing items and damages to the condition of the ship, including its appurtenances, engines, simulators, and tackle.
 - e. At each joint survey, the designated surveyor will carry out a bunker survey.
 - f. After each joint survey, within 3 business days, the surveyor will issue a written survey report, including photographs, inventories, and measurements. Copies will be provided to TAMMA, CMA, and MARAD.
 - g. The date and time of the joint survey will be communicated in writing to MARAD, TAMMA, and CMA and each, may have a representative attend each joint survey.
 - h. The joint survey is final and binding upon TAMMA and CMA, including any findings with respect to inventories, bunkers, and damages.
 - i. The costs of performing the joint surveys are considered training vessel sharing expenses under the applicable statute (P.L. 116-6).
2. Accountable Property -100% Inventory of MARAD & CMA Accountable Property within Thirty (30) Days of departure from California Maritime:

Spare Parts – CMA will review Planned Maintenance scheduled during both the CMA and TAMMA Cruises and ensure sufficient Planned Maintenance and Spare Parts are onboard prior to departure from CMA.

Technical Manuals & Drawings – All Tech Manuals and Drawings checked out will be returned prior to ship's arrival in Galveston.

3. Vessel Logistics Turnover to TAMMA:

- a. Accountable Property -100% Inventory of MARAD & CMA Accountable Property.

Spare Parts – 100% Joint Inventory of Temporarily Sealed Locations & Joint Inventory of Parts in Not Normally Sealed Locations worth \$1K+.

- b. DGO Logistics will provide Red colored Temporary Seals for TAMMA use.
- c. Technical Manuals – 100% Inventory of all Tech Manuals.
- d. Drawings – 10% Random Inventory.

4. TAMMA Logistics Procedures During Cruise:

- a. Accountable Property Lost – Perform NS-E Reconciliation with full explanation.
- b. Spare Parts Usage – Document usage by NS-E Work Order or NS-E Reconciliation;
- c. Reconciliation will list the Equipment & whether work was Planned or Corrective.
- d. Apply Temporary Seal and update NS-E Seal Log.
- e. TAMMA is not responsible for initiating Stock Replenishment requisitions.
- f. Tech Manuals – Cadets & Crew must use Check Out Log to remove Tech Library TMs.
- g. Drawings – Drawings with only One (1) Copy cannot be removed from the Tech Library;
- h. Drawings removed from the Tech Library must be documented in the Check Out Log.

5. Vessel Logistics Turnover back to CMA:

- a. Accountable Property -100% Inventory of MARAD & CMA Accountable Property; document Accountable Property Losses using Reports of Survey and report Total Dollar Value Lost.
- b. Spare Parts – 100% Joint Inventory of Temporarily Sealed Locations &
- c. Joint Inventory of Parts in Not Normally Sealed Locations worth \$1K+,
- d. Plus 100% Inventory of all other parts listed in the NS-E Inventory Adjustment Report.
- e. Report Total Dollar Value of all Spare Parts Consumed.
- f. Technical Manuals – 100% Inventory of all Tech Manuals.
- g. Drawings – All Drawings to be returned prior to Turnover & 10% Random Inventory.

ANNEX E

Vessel Documents Requiring Operator Change

The following documents are required to have Texas A&M Maritime Academy notated as the vessel operator:

United States Coast Guard Issued Documents:

- Certificate of Inspection
- Stability Book
- Stability Letter
- International Oil Pollution Prevention Certificate
- Vessel Security Plan
- Vessel Security Plan Approval Letter
- Continuous Synopsis Record Statement of Voluntary Compliance
- International Ship Security Statement of Voluntary Compliance
- MARPOL Annex IV Certificate of Equivalency
- Sewage Equivalency Statement of Voluntary Compliance

American Bureau of Shipping Documents:

- ISM – Safety Management Certificate (voluntary)
- ISM – Document of Compliance (voluntary)
- SOLAS Cargo Ship Safety Radio Certificate
- Tonnage Certificate, International

ANNEX F

Ship Sharing Cost Elements

The general cost categories for the ship-sharing include, but may not be limited to:

1. Travel costs from/to homeport to/from ship for students, faculty, and crew;
2. Incremental fuel;
3. Incremental crew costs;
4. Canal transits, if required to deliver the ship from the school it is normally assigned to the school borrowing it and any other operational fees;
5. Incremental consumables (i.e., oils, chemicals, and supplies) and spare parts;
6. Ship preparation and modifications, if required, to accommodate the school borrowing the ship (removal and/or installation of equipment and training materials for the respective schools, berthing modifications, etc.);
7. Crew training;
8. General Agent fees;
9. Insurance; and
10. Travel costs related to ship checks for crew members of the borrowing school to become familiar with the ship being shared
11. Shipment of TAMMA property to Galveston, Texas.