APPENDIX C TO SUBPART C OF PART 515—OCEAN TRANSPORTATION INTERMEDIARY (OTI) GUARANTY FORM [FORM FMC-68]

Federal Maritime Commission


1. Whereas (Name of Applicant (indicate whether NVOCC or Freight Forwarder)) (hereinafter “Applicant”) is or may become an Ocean Transportation Intermediary (“OTI”) subject to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 (46 U.S.C. 40101–41309) and the rules and regulations of the Federal Maritime Commission (“FMC”), or is or may become a group or association of OTIs, and desires to establish its financial responsibility in accordance with section 19 of the 1984 Act, then, provided that the FMC has accepted, as sufficient for that purpose, the Applicant’s application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization or by documentation verifying membership in Lloyd’s, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the United States to cover all damages arising from the transportation-related activities of Applicant for the payment of any such damages, reparations or penalties described herein.

2. Now, Therefore. The condition of this obligation is that the penalty amount of this Guaranty shall be available to pay any judgment obtained or any settlement made pursuant to section 11 of the 1984 Act (46 U.S.C. 41301–41309, 41305–41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the 1984 Act (46 U.S.C. 41107–41109).

3. The undersigned Guarantor hereby consents to be sued directly in respect of any bona fide claim owed by Applicant for damages, reparations or penalties arising from Applicant’s transportation-related activities under the 1984 Act, in the event that such legal liability has not been discharged by the Applicant after any such claimant has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR §515.23(b), the FMC, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant and/or Guarantor pursuant to 46 CFR §515.23(b), whereby, upon payment of the agreed sum, the Guarantor is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant.

4. The Guarantor’s liability under this Guaranty in respect to any claimant shall not exceed the amount per OTI set forth in 46 CFR §515.21 or the amount per group or association of OTIs set forth in 46 CFR §515.21 in aggregate.

5. The Guarantor’s liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the 1984 Act, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date thirty (30) days after the date of receipt by the FMC of notice in writing that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

6. Guarantor shall not be liable for payments of any of the damages, reparations or penalties hereinbefore described which arise as the result of any transportation-related activities of Applicant after the cancellation of the Guaranty, as herein provided, but such cancellation shall not affect the liability of the Guarantor for the payment of any such damages, reparations or penalties prior to the date such cancellation becomes effective.

7. Guarantor shall pay, subject to the limit of the amount per OTI set forth in 46 CFR §515.21, directly to a claimant any sum or
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sums which Guarantor, in good faith, determines that the Applicant has failed to pay and would be held legally liable by reason of Applicant’s transportation-related activities, or its legal responsibilities under the 1984 Act and the rules and regulations of the FMC, made by Applicant while this agreement is in effect, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Applicant.

8. Applicant or Guarantor shall immediately give written notice to the FMC of all lawsuits filed, judgments rendered, and payments made under the Guaranty.

9. Applicant and Guarantor agree to handle the processing and adjudication of claims by claimants under the Guaranty established herein in the United States, unless by mutual consent of all parties and claimants another country is agreed upon. Guarantor agrees to appoint an agent for service of process in the United States.

10. This Guaranty shall be governed by the laws of the State of if the extent not inconsistent with the rules and regulations of the FMC.

11. This Guaranty is effective the day of , 12:01 a.m., standard time at the address of the Guarantor as stated herein and shall continue in force until terminated as herein provided.

12. The Guarantor hereby designates as the Guarantor’s legal agent for service of process domiciled in the United States with offices located in the United States at , for the purposes of enforcing the Guaranty described herein.

(Place and Date of Execution)

(Type Name of Guarantor)

(Type Address of Guarantor)

(By)

(Signature and Title)

[64 FR 11171, Mar. 8, 1999, as amended at 74 FR 50720, Oct. 1, 2009]

APPENDIX D TO SUBPART C OF PART 515—OCEAN TRANSPORTATION INTERMEDIARY (OTI) GROUP BOND FORM [FMC–69]

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