**THIS ESCROW AGREEMENT** dated the (this **“Agreement”**) is made by and between:

1. **A Ship Owner Company** (Address:……) (**“Owners”**)
2. **B Charterer Company**  (Address:……) (**“Charterers”**);

 and

1. **C Law Firm**(Address:……) (the **“Escrow Holder”**).

 (collectively referred to as the “**Parties**”, and individually a “**Party**”)

**WHEREAS**

1. By a clean recap dated (date, month, year) incorporating an amended NYPE 1946 Time Charter together with rider clauses (collectively, the **“Charterparty”**), A Ship Owner Company as owners (the **“Owners”**) agreed to let and B Charterer Company as charterers (the **“Charterers”**) agreed to charter the ship or vessel “(name of the vessel:……)(vessel number:……)”(the **“Vessel”**) for one time charter trip with delivery DOP (contries:……)and redelivery on DLOSP 1SP (country:……) on the terms stated therein.
2. Disputes have presently arisen between the Owners and Charterers in respect of the alleged underperformance of the Vessel between her load port (country:……) and discharge port (country:……) and the Charterers’ liability to pay or entitlement to deduct hire under the Charterparty (the **“Dispute”**), in the sum of (total amount: US$……) (the **“Disputed Amount”**).
3. Notwithstanding this Dispute between Owners and Charterers under the Charterparty, and as consideration for (i) Owners’ agreement to continue with performance under the Charterparty including berthing of the Vessel at her discharge port, discharge and delivery of all cargo from her holds; and (ii) Owners’ agreement to release and/or refrain from arresting or otherwise detaining any vessel or property in the ownership or associated ownership or management of the Charterers to secure Owners’ claims, Charterers agree to lodge the full sum of the Disputed Amount into escrow with the Escrow Holder as security for Owners’ claims in respect of the Dispute under the Charterparty, which sum is to be held and released on the terms stated in this Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1 Appointment of Escrow Holder and Acceptance**

 The Owners and Charterers hereby jointly and severally appoint C Law Firm to serve as Escrow Holder hereunder, and the Escrow Holder hereby accepts such appointment in accordance with the terms of this Agreement.

**2 Receipt of the Escrow Amount**

2.1 The Escrow Holder will receive and hold the Disputed Amount of (total amount: US$……) (the **“Escrow Amount”**) in accordance with this clause herein and will release the Escrow Amount, whether in whole or in part, in accordance with the terms of Clause 3 below.

2.2 Not later than one (1) day after this Escrow Agreement has been signed by the Parties and exchanged in original or by telefax or email and the Escrow Holder has confirmed in writing to the both the Owners and Charterers that the escrow account is opened, the Charterers shall lodge the full sum of the Escrow Amount with the Escrow Holder, by crediting the bank account of the Escrow Holder with the full sum of the Escrow Amount (without any set-off or deductions, and free of any and all bank charges whatsoever) set out in Clause 2.3 below.

2.3 The Charterers shall credit the bank account of the Escrow Holder with the Escrow Amount, as follows (the “**Escrow Account**”):

**To remit in US$ to C Law Firm. - Client A/C:**

|  |  |  |
| --- | --- | --- |
| Account Name | : | C Law Firm. – Client A/C |
| Account No. | : | …… *(Multi-Currency A/C)* |
| Beneficiary Address  | : | …… |
| Beneficiary Bank | : | …… |
| Beneficiary Bank Address | : | …… |
| Bank Code  | : | …… |
| SWIFT | : | …… |
| Reference | : | TCJ/LTH/to be advised |

 The Escrow Amount shall, upon credit of the Escrow Account by Charterers as set out hereinbefore, be referred to as the **“Escrow Funds”**.

* 1. On receipt of the Escrow Funds, the Escrow Holder shall hold and release the same in accordance with the terms of this Agreement.
	2. The Parties agree that:
		1. interest, if any, accrued on the Escrow Funds and received by the Escrow Holder from the bank shall be paid by the Escrow Holder to the Charterers; and
		2. all bank charges incurred (including any charges for early withdrawal and remittance) shall, unless otherwise stated below, be borne by the Charterers.

2.9 The Escrow Holder shall notify the Owners and Charterers upon the receipt of the Escrow Funds via email.

**3 Release of the Escrow Funds**

3.1 The Escrow Holder shall hold the Escrow Funds as escrow agent for both the Owners and Charterers and shall only distribute the Escrow Funds pursuant to any one of the following:

3.1.1 upon receipt of an original joint written instruction issued by a duly authorized signatory of the Owners and Charterers in the form annexed hereto as Appendix A (the **“Release Instructions Letter”**), promptly irrevocably and unconditionally remit by telegraphic transfer the full amount as stated in the joint written instruction to the Owners’ or Charterers’ nominated bank account (for the avoidance of doubt, the Owners and Charterers may issue one or more such Release Instructions Letter to the Escrow Holder, provided always that the total aggregate of the amounts to be released under the Release Instructions Letter(s) does not exceed the Escrow Funds);

3.1.2 to release the Escrow Fund either in whole or in part to the Owners or Charterers against presentation of an original or certified true copy final non-appealable arbitration award or judgment issued by a competent tribunal or court in respect of the Disputes, and in accordance with the terms of that final non-appealable arbitration award or judgment; or

3.1.3 where the Escrow Agent does not receive any Release Instructions Letter pursuant to Clause 3.1.1 or a final non-appealable arbitration award or judgment pursuant to Clause 3.1.2 within one (1) month from the date of this Agreement (the **“Longstop Date”**), to release the whole or remainder of any Escrow Funds to the Charterers.

3.2 In respect of any notification by Owners or Charterers to the Escrow Holder for the release of any part of the Escrow Funds, the Owners and Charterers shall keep each other copied in on such communications.

**4 Resignation of Escrow Holder**

 The Escrow Holder may resign from the performance of its duties or obligations hereunder any time by giving 14 days’ prior written notice to the Owners and Charterers, and the Owners and Charterers shall within the 14 days’ notice thereof issue to the Escrow Holder a joint written instruction authorising the release of the monies received hereunder to a substitute escrow agent jointly selected by the Owners and Charterers or any other person designated by the Owners and Charterers (the **“New Escrow Holder”**).

**5 The Escrow Holder**

5.1 The duties and responsibilities of the Escrow Holder hereunder shall be determined solely by the express provisions of this Agreement. The Escrow Holder shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein.

5.2 The Escrow Holder may rely upon and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and reasonably believed by it to be genuine, to have been signed or presented by the person or parties purporting to sign the same and to conform to the provisions of this Agreement. The Escrow Holder shall be under no duty to inquire into or investigate the due execution, validity, effectiveness, accuracy or content of any such document or otherwise to enquire into the circumstance surrounding requested releases of any monies received hereunder.

5.3 In the event that the Escrow Holder shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing jointly by the Owners and Charterers hereto or by a final unappealable order or judgment of a court of competent jurisdiction.

5.4 In no event shall the Escrow Holder be liable for incidental, indirect, special, consequential or punitive damages, even if the Escrow Holder has been advised of the likelihood of such loss or damage and regardless of the form of action. Further, any liability of the Escrow Holder arising under and/or in connection with this Agreement shall not under any circumstances howsoever arising exceed the amount of the Escrow Holder’s fee as defined in Clause 7 of this Agreement.

**6 Indemnification of Escrow Holder**

The Owners and Charterers hereby jointly and severally agree to indemnify and hold harmless the Escrow Holder against any loss, liability, claim, action, demand, taxes (other than income taxes) or expense (including, but not limited to, legal fees) which it may reasonably incur or which may be made against it arising out of, or in connection with, this Agreement and carrying out its duties hereunder, including the costs and expenses of defending itself against any claim of liability except where the Escrow Holder has been guilty of gross negligence or wilful misconduct, or fraud in breach of this Agreement.

**7 Fees and Expenses**

7.1 The Escrow Holder’s fee (exclusive of disbursements) for the Escrow Holder’s services hereunder is the sum of (total amount: US$……), which shall be equally paid by the Owners and Charterers free of all bank charges whatsoever. The Owners and Charterers shall pay such fee immediately upon the execution of this Agreement.

7.2 Notwithstanding any provision of this Agreement, the Owners and Charterers shall reimburse the Escrow Holder for all expenses, fees and charges reasonably incurred by it in entering into this Agreement and performing its duties and responsibilities hereunder including without limitation bank charges and money transfer charges and expenses incurred in connection with the receiving, holding or release of the monies received hereunder. If the Escrow Holder’s fees are not paid by the Owners or Charterers at any time prior to the release of the Escrow Funds, the Escrow Holder shall be entitled to set off any and all such fees, disbursements, expenses, and charges against any monies to be released to the Owners or Charterers, prior to releasing or remitting the same to the Owners or Charterers.

**8 Termination of Escrow**

 Upon the release and remittance of the entire Escrow Funds (including any interest earned thereon) in full as set forth in Clause 3 hereof, this Agreement shall terminate (subject to Clauses 5, 6, 7 above, and 12 and 13 below which provisions shall survive such termination) and the Escrow Holder shall have no further duties hereunder.

**9 Notices**

9.1 Save as otherwise provided in this Agreement, all notices and communications hereunder shall be in writing and shall be deemed to be duly given if sent by electronic mail, or when transmitted by facsimile (when a transmission report confirming full and proper transmission thereof is received), to the relevant Party at the addresses/contact numbers specified on the signature pages of this Agreement (or at such other addresses/contact numbers as shall be specified by a Party hereto by notice to the other Parties). In the event the Escrow Holder determines that an emergency exists, the Escrow Holder may use such other means of communications as the Escrow Holder deems advisable.

9.2 For any written instructions that are given in connection with the release of monies under Clause 3 herein, the Owners and Charterers will be required to provide the Escrow Holder with accurate, complete and acceptable identification and authority for execution of any Release Instructions Letter.

**10 Entire Agreement**

 This Agreement constitutes the entire agreement as between the Parties relating to the matters described herein and shall be binding upon the respective Parties and their respective successors and assigns.

**11 Observance of Applicable Law**

 Nothing in this Agreement shall oblige the Escrow Holder to perform any act or function or receive or make any payment which would in the Escrow Holder’s sole opinion constitute a breach of any law or regulation binding upon it (whether deriving from statute, common law, statutory instrument, directive or otherwise).

**12 Governing Law**

This Agreement, as to which time shall be of the essence, shall be governed by and construed in accordance with the laws of Hong Kong.

**13 Arbitration**

13.1 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Hong Kong.

13.2 The Tribunal shall consist of one (1) arbitrator to be agreed between the Parties and failing agreement to be appointed by the Chairman of the Hong Kong International Arbitration Centre.

13.3 The language of the arbitration shall be English.

*[ The remainder of this page has been intentionally left blank ]*

The Parties to this Agreement have signed this agreement on the date and year first written.

For and on behalf of **A Ship Owner Company**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

As duly authorised signatory of **A Ship Owner Company**

Title:

Address:

Tel No:

Email for all notices under this Agreement:

For and on behalf of **B Charterer Company**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

As duly authorised signatory of **B Charterer Company**

Title:

Address:

Tel No:

Email for all notices under this Agreement:

For and on behalf of **C Law Firm/ the Escrow Holder**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: ……

Title: ……

Address: ……

Tel No: ……

Fax No: ……

Email for all notices under this Agreement:……

**APPENDIX A**

**C Law Firm.**

(Address:……)

Attention: (to whom it may concern)

 [• date •]

Dear Sirs,

**INSTRUCTIONS LETTER – M/V “(name of the vessel:……)” – ESCROW FUNDS**

1. We refer to the Escrow Agreement dated [•](the “**Escrow Agreement**”).
2. Words and phrases defined in the Escrow Agreement have the same meaning when used in this Instructions Letter.
3. We hereby irrevocably and unconditionally instruct you in respect of the Escrow Fund to promptly remit the full sum in the amount of **[ (United States Dollars)]**, less any bank charges to [ ] at the following account: -

|  |  |  |
| --- | --- | --- |
| **Beneficiary Name** | : |  |
| **Beneficiary Address** | : |  |
| **Account No.** | : |  |
| **Beneficiary Bank** | : |  |
| **Beneficiary Bank Address** | : |  |
| **SWIFT (Beneficiary Bank)** | : |  |
| **Correspondent Bank** | : |  |
| **SWIFT (Correspondent)** | : |  |

1. Any interest earned on the Escrow Fund, less any deductions on account of payment to [ ] as aforesaid and any bank charges, shall be released to [ ] at the following account:

|  |  |  |
| --- | --- | --- |
| **Beneficiary Name** | : |  |
| **Beneficiary Address** | : |  |
| **Account No.** | : |  |
| **Beneficiary Bank** | : |  |
| **Beneficiary Bank Address** | : |  |
| **SWIFT (Beneficiary Bank)** | : |  |
| **Correspondent Bank** | : |  |
| **SWIFT (Correspondent)** | : |  |

Thank you.

Yours faithfully,

…………………………………………

[•], as duly authorized signatory for **A Ship Owner Company**

…………………………………………

[•], as duly authorized signatory for **B Charterer Company**