

**AGREEMENT
GOVERNING THE DELEGATION OF STATUTORY
CERTIFICATION SERVICES FOR SHIPS REGISTERED
IN FINLAND
between
THE FINNISH TRANSPORT AND COMMUNICATIONS AGENCY
and
RO**

1 GENERAL

- 1.1. This Agreement is concluded between the Recognized Organisation "NAME OF THE RO", hereinafter referred to as "the RO", and The Finnish Transport and Communications Agency, hereinafter referred to as "Traficom", and covers the performance of marine statutory surveys and the issuance of the relevant certificates.
- 1.2. In this Agreement the term 'RO' shall also be understood as the Recognised Security Organisation (RSO).
- 1.3. This Agreement is concluded by virtue of section 124 of the Constitution of Finland, Chapter 5 and 6 of the Act on the Technical Safety and Safe Operation of Ships (1686/2009), Chapter 3 of the Act on Ships' Crews and the Safety Management of Ships (1687/2009), Chapter 2 and 2a and 4 and 5 and 6 and 7 and 7a of the Act on Environmental Protection in Maritime Transport (1672/2009) and Chapter 14 of the Pressure Equipment Act (1144/2016) of Finland and their respective amendments.
- 1.4. The Act on the Technical Safety and Safe Operation of Ships (1686/2009) includes legal provisions implementing Directive 2009/15/EC as amended on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.
- 1.5. This Agreement is governed by the Act on the Technical Safety and Safe Operation of Ships (1686/2009), Regulation (EC) No 391/2009 as amended on common rules and standards for ship inspection and survey organisations and the Guidelines for the authorization of organisations acting on behalf of the Administration and the Resolutions MEPC.237(65) and MSC.349(92) Code for Recognized Organisations (RO Code) as amended.
- 1.6. When carrying out the public administrative tasks referred to in this Agreement, the RO shall comply with the provisions of the Act on the Openness of Government Activities (621/1999), the Act on Electronic Services and Communication in the Public Sector (13/2003), the Administrative Procedure Act (434/2003), the Tort Liability Act (412/1974), and the Language Act (423/2003).

2 PURPOSE

- 2.1 The purpose of this Agreement is to delegate authority to the RO to perform statutory surveys and certification of vessels flying the Finnish flag and ship management companies managing Finnish flagged ships on behalf of Traficom, to the extent specified in Appendix 1 to this Agreement.
- 2.2 The purpose of this Agreement is also to define the scope, terms, conditions, requirements and co-operation between the RO and Traficom with respect to the delegation of authority.

3 STATUTORY SERVICES

- 3.1 Statutory certification services comprise the assessment of vessels flying the Finnish flag and ship management companies managing Finnish flagged ships in order to determine their compliance with the applicable requirements of the international conventions and codes, EU legal provisions and national legal provisions, specific national regulations and additional instructions (hereinafter referred to as "applicable instruments") and the issue of relevant certificates, documents or endorsement of certificates, within the limits of the applicable instruments as set out in Appendix 1 to this Agreement.
- 3.2 Statutory services rendered and statutory certificates issued by the RO in accordance with this Agreement will be accepted as services rendered or certificates issued by Traficom if the RO maintains compliance with the provisions referred to in sub-clauses 1.2, 1.3, 1.4, 1.5 and 4.1.
- 3.3 Deviation from Appendix 1 to this Agreement will be dealt with, as mutually agreed in writing, on a case-by-case basis.

4 GENERAL CONDITIONS

- 4.1 The RO shall comply with the requirements of Regulation (EC) No 391/2009 as amended.
- 4.2 The RO, its employees and others acting on behalf of the RO are obliged to follow the instructions issued by Traficom for execution of authority under this Agreement.
- 4.3 The RO shall avoid undertaking activities, which may result in a conflict of interest.

5 SPECIAL MEASURES

- 5.1 When a port State authority, ship owner, management company, agent or master notifies the RO of an accident or a port State intervention on a vessel flying the Finnish flag and classed by the RO, the matter shall be dealt with immediately.
- 5.2 In so far as the certification services covered by this Agreement are concerned, the RO agrees to co-operate with Port State Control Officers to facilitate the rectification of reported deficiencies and discrepancies when so requested by Traficom, and notify Traficom thereof.

- 5.3 Where, in a matter within the RO's scope of authority under this Agreement, the general condition of a vessel, its equipment or operation, or the state of the company in important respects does not correspond substantially with the particulars of any of the certificates, or if the condition of the vessel is found to be such that it is not fit to proceed to sea without danger to the ship or persons on board or presents an unreasonable threat to the marine environment or to third parties, the RO concerned shall inform Traficom immediately, whereupon Traficom and the RO will use their best endeavours to ensure necessary corrective actions to be taken by the owner or any other relevant party to rectify the defects.
- 5.4 If such corrective actions are not taken to the satisfaction of the RO, the RO shall withdraw the relevant certificates and notify Traficom immediately. If the ship is in a foreign port, the appropriate authorities of the Port State shall be notified immediately by shipmaster. In the event that deficiencies or discrepancies prove to be beyond the scope of the authorization set out in Appendix 1, the RO surveyor concerned shall inform Traficom immediately, whereupon Traficom shall determine what further action the RO shall take on behalf of Traficom.
- 5.5 In instances where, temporarily, the requirements of an applicable instrument cannot be met under particular circumstances, the RO will, after consultation with Traficom, specify such measures or supplementary equipment as may be available to permit the ship to proceed to a suitable port where permanent repairs or rectifications can be effected or replacement equipment fitted.
- 5.6 In the event that deficiencies or discrepancies prove to be beyond the scope of authorization of this Agreement, further action of the RO shall be determined in an authorization given by Traficom.
- 5.7 The RO shall, not issue certificates to a ship declassified before consulting Traficom. Traficom shall determine whether a full inspection is necessary or not.

6 INTERPRETATIONS, EQUIVALENTS AND EXEMPTIONS

- 6.1 While interpretations of the applicable instruments, as well as the determination of equivalents, or the acceptance of substitutes to the requirements of the applicable instruments, are the prerogative of Traficom, the RO will cooperate in their establishment as necessary.
- 6.2 Exemptions from the requirements of the applicable instruments are the prerogative of Traficom and must be approved by Traficom prior to issuance.

7 INFORMATION AND LIAISON

- 7.1 The RO shall, in the event of transfer of class, comply with the provisions on the obligations and co-operation of the gaining and losing organizations in Article 10(6) of Regulation (EC) No 391/2009 as amended.
- 7.2 Traficom will provide the RO with all necessary documentation for the purpose of the RO's provision of statutory certification services.
- 7.3 The RO and Traficom, recognizing the importance of technical liaison, agree to co-operate toward this end and maintain an effective dialogue.
- 7.4 The RO will report to Traficom such information at such frequency as agreed between the RO and Traficom, as delineated in Appendix 2 to this Agreement.

- 7.5 Regulations, rules, instructions and report forms of the RO shall be available in English.
- 7.6 Traficom provides the RO with information about Finnish legal provisions, regulations, interpretations and circulars and as far as possible, publishes the regulations, also in English. The only authentic version of any Finnish legal provisions, regulations, interpretations or circulars is the Finnish or Swedish version of the documents. Traficom will inform the RO of any changes to their national requirements prior to their implementation date.
- 7.7 Finnish rules and regulations and interpretations thereof are not published in this document, but may be accessed on the website www.traficom.fi.

8 SUPERVISION

- 8.1 Traficom is entitled to satisfy itself that the RO carries out its functions under this Agreement effectively.
- 8.2 Traficom may choose to recognize monitoring of the RO performed by an independent audit group effectively representing the interests of Traficom. Traficom shall make sure that such a group is bound by confidentiality obligations.
- 8.3 Traficom has the right to perform inspections of Finnish ships to review the work of the RO.
- 8.4 Traficom reserves the right to suspend, cancel or revoke any statutory document or approval issued by the RO on behalf of Traficom pursuant to this Agreement. Traficom will inform the RO accordingly stating the reasons for its decision.
- 8.5 Traficom is entitled to report the results of the monitoring of the RO and other relevant information to the Commission and the other EU Member States in accordance with Article 9(2) of Directive 2009/15/EC as amended.
- 8.6 The monitoring report shall be submitted to the RO. If the RO makes comments on it without undue delay, Traficom shall consider the comments prior to the submission of the report to the Commission and the other Member States.
- 8.7 The RO shall ensure that the European Commission has access to the information necessary for the purposes of the assessment referred to in Article 8(1) of Regulation (EC) No 391/2009 as amended. No contractual clauses may be invoked to restrict this access.

9 REMUNERATION

- 9.1 Remuneration for statutory certification services carried out by the RO on behalf of Traficom will be charged by the RO directly to the party requesting such services.
- 9.2 Traficom and the RO do not invoice each other for the costs caused by this Agreement, except as provided in clause 14.

10 CONFIDENTIALITY

- 10.1 Traficom and the RO and its officers, employees and agents shall, when acting on behalf of Traficom, be subject to the general provisions of Finnish law on confidentiality (Act on the Openness of Government Activities, 621/1999). However, any document or other information may be released by the RO if required by applicable legislation, court order or legal proceedings.
- 10.2 This Agreement is a public document.

11 SURVEYORS

- 11.1 Surveys and inspections shall be carried out only by surveyors working exclusively for the RO or affiliated and subsidiary entities in the RO group of companies. If, in exceptional and duly justified cases, the RO finds that its own exclusive surveyor is not available, the RO shall inform Traficom who may then, on the basis of a proposal made by that RO, nominate an exclusive surveyor of one of the other recognized organizations authorized by Traficom.
- 11.2 The RO may use subcontractors and other suppliers of support services approved in accordance with the quality procedures of the RO and/or Traficom to assist the exclusive surveyors. The RO is responsible to Traficom for the actions of its subcontractors and suppliers.

12 AMENDMENTS

- 12.1 Amendments to this Agreement and its appendices will become effective only after consultation and written agreement between Traficom and the RO.
- 12.2 Traficom and the RO shall enter into consultations on any amendments to this Agreement necessitated by amendments to the relevant EU legislation early enough to match the coming into effect of the said amendments.
- 12.3 The contents of this Agreement and its appendices shall be reviewed or when necessary.

13 GOVERNING LAW AND SETTLEMENT OF DISPUTES

- 13.1 The Agreement shall be governed by and construed in accordance with Finnish law. Any dispute arising in connection with this Agreement, which cannot be settled by private negotiations between the parties, shall be settled finally by the decision of the Helsinki District Court.
- 13.2 In the performance of statutory certification services hereunder, the RO, its officers, employees and others acting on its behalf are entitled to all the protection of law and the same defences and/or counterclaims as would be available to Traficom and its own staff surveyors or employees, if the latter had conducted the statutory certification services in question.

14 LIABILITY

- 14.1 In performing statutory certification services the RO carries out a public administrative task under Chapter 6, sections 36(1) and 39 of the Act on the Technical Safety and Safe Operation of Ships and this Agreement.
- 14.2 According to Chapter 10, section 81a of the Act on the Technical Safety and Safe Operation of Ships, criminal liability for acts in office applies to officers of recognized classification societies whenever they carry out a public administrative task referred to in the Act.
- 14.3 The RO is liable for damages and injuries in accordance with Chapter 3 section 2 of the Tort Liability Act (412/1974) and its liability is limited as mentioned in sub-clause 14.4 under the above-mentioned legal provisions.
- 14.4 If a liability arising out of any marine casualty is finally and definitively imposed on the Government of Finland by a court of law together with a requirement to compensate the injured parties:
- 1) for loss or damage to property or personal injury or death which is proved in a court of law to have been caused by a wilful act or omission or gross negligence by the RO, its bodies, officers, employees, agents or others who act on behalf of the RO under this Agreement, Traficom is, on behalf of the Government of Finland, entitled to full compensation from the RO to the extent that the said loss, damage, injury or death is, as decided by that court, caused by the RO;
 - 2) for personal injury or death, which is proved in a court of law to have been caused by any negligent or reckless act or omission by the RO, its bodies, officers, employees, agents or others who act on behalf of the RO under this Agreement, Traficom is, on behalf of the Government of Finland, entitled to a financial compensation from the RO to the extent that the said personal injury or death is, as decided by that court, caused by the RO up to but not exceeding an amount of €5 million; or
 - 3) for loss or damage to property, which is proved in a court of law, to have been caused by any negligent or reckless act or omission by the RO, its bodies, officers, employees, agents or others who act on behalf of the RO under this Agreement, Traficom is, on behalf of the Government of Finland, entitled to a financial compensation from the RO to the extent that the said loss or damage is, as decided by that court, caused by the RO up to but not exceeding an amount of €2.5 million.
- 14.5 While acting on behalf of Traficom under this Agreement the RO shall be free to conclude contracts directly with its clients and such contracts may contain normal contractual conditions of the RO for limiting its legal liability. Such contracts may not limit the liability stipulated in sub-clauses 14.3 and 14.4.
- 14.6 Neither party shall be liable to the other for any special, indirect or consequential losses or damages resulting from or arising out of services performed under this Agreement, including, without limitation, loss of profit, loss of production, loss of contract, loss of use, business, interruption or any other special, indirect or consequential losses suffered or incurred by any party, howsoever caused.

- 14.7 If one Party to this Agreement is summoned or is expected to be summoned to answer for such a liability as mentioned in sub-clauses 14.3 and 14.4, the other party shall be informed without undue delay. The former Party shall, for information purposes, send all claims, documents and other relevant material to the latter Party.
- 14.8 Traficom shall not enter into conciliation, which involves acceptance of such a liability as is mentioned in sub-clauses 14.3 and 14.4 without prior written consent of the RO.

15 REPRESENTATION

- 15.1 The RO is responsible to Traficom for the actions of its local representatives (i.e. branches, subsidiaries or other companies of the RO Group) that perform the tasks specified in this Agreement in the name of and on behalf of the RO.
- 15.2 The RO shall have a local representation of a legal nature on the territory of Finland to ensure legal personality under Finnish law and the competence of Finnish national courts.
- 15.3 The primary line of communication between Traficom and the RO is through the RO local representation in Finland, unless otherwise agreed between Traficom and the RO.
- 15.4 The RO shall provide Traficom with an official e-mail address and phone number for the purpose of this communication and keep it updated accordingly.
- 15.5 Contact information of Traficom is given in Appendix 2.

16 TERMINATION

- 16.1 Traficom is entitled to withdraw or suspend its authorization to the RO, if the latter substantially or repeatedly fails to fulfil the obligations of this Agreement.
- 16.2 Before a withdrawal or suspension, Traficom shall give the RO opportunity to respond in time to the alleged poor performance and, if necessary, to undertake the necessary preventive and remedial action to ensure full compliance.
- 16.3 This Agreement may be terminated by either party by giving the other party 12 months' written notice.
- 16.4 If this Agreement is breached substantially or repeatedly by one of the parties, the other party will notify the violating party of its breach in writing to give the notified party the opportunity to remedy the breach. The latter shall within 30 days inform the former about the steps it intends to take, and remedy the breach within 90 days, failing which the notifying party has the right to terminate the Agreement immediately.
- 16.5 In the event that the EU Commission withdraws recognition of the RO in accordance with Article 7 of Regulation (EC) No 391/2009 as amended, Traficom may immediately terminate this Agreement in writing without notice. Traficom and the RO will meet and discuss the consequences of the withdrawal as soon as reasonably practicable.

16.6 If the EU Commission decides to withdraw the recognition of the RO, the RO is not allowed to issue any certificate to Finnish ships or to renew such a certificate; however, certificates issued or renewed before the withdrawal remain valid.

17 SIGNATURE

17.1 This Agreement is prepared and signed in two original copies, one for each party.

18 THIS AGREEMENT COMMENCES ON THE 1st OF DECEMBER 2021.

IN WITNESS WHEREOF, the undersigned, duly authorized by the parties, have signed this Agreement.

Date . 2021

Date . 2021

On behalf of the RO, by:

On behalf of the Finnish Transport and Communications Agency, by:

RO

Jarkko Saarimäki
Deputy Director General, Transport System Services

Appendix 1 Degree of authorization
Appendix 2 Exchange of information