

## **PILOTING SERVICES AGREEMENT**

This Piloting Services Agreement is entered into by and between Jacobsen Pilot Service, Inc. (hereinafter “Jacobsen”) and a vessel requesting piloting services and the vessel’s owners, agents charterers and operators. If the person or entity requesting piloting services is not the owner of the vessel, such person by engaging Jacobsen pilots warrants his or her authority to bind the vessel and its owners, agents, charterers and operators to the terms and conditions set forth herein, in accordance with Port of Long Beach Tariff No. 4, Item 205(e) and California Harbors & Navigation Code Sections 440-444.

Jacobsen provides piloting services exclusively under the terms and conditions set forth herein, regardless of whether the vessel is in waters of the Port of Long Beach, the Port of Los Angeles or elsewhere. Jacobsen provides piloting service solely on the agreement and understanding that all terms and conditions set forth herein apply to all movements involving Jacobsen pilots.

Jacobsen’s piloting services are performed under the Port of Long Beach Tariff, found at [www.polb.com/economics/port\\_tariff](http://www.polb.com/economics/port_tariff) and incorporated into this Agreement as though fully set forth, and the rate schedule therein on the date the piloting services under this Agreement are rendered, regardless of whether the Port of Long Beach Tariff applies by law to the movement. Jacobsen will assign and charge fees for two or more pilots to a movement based on the matrix that appears on Jacobsen’s website at [www.jacobsenpilot.com](http://www.jacobsenpilot.com) .

**Borrowed Servant Relationship.** By engaging a Jacobsen pilot, you, the vessel, and the vessel’s owners, agents, charterers and operators understand and agree that the pilot, Jacobsen and its employees are temporary employees of the vessel and its owners, agents, charterers and operators and remain so from the time of engagement of the pilot continuing through completion of performance of the requested piloting services.

As a consequence, the vessel requesting piloting services under this Piloting Services Agreement and its owners, agents, charterers and operators **covenant and agree:**

- (1) **not to assert any claims** against the pilot(s), Jacobsen, and/or any employee of Jacobsen for damages, including any rights over, arising out of or connected with, directly or indirectly any damage, loss or expense sustained by the vessel, its owners, agents, charterers, operators or crew, and by any third parties, even though resulting, in whole or in part from acts, errors, omissions, negligence (whether active, passive or sole), or breach of warranty of the pilot(s), Jacobsen, or any employee of Jacobsen; and further
- (2) **to defend, indemnify and hold harmless** the pilot(s), Jacobsen, and employees of Jacobsen with respect to liability, damage, loss or expense arising from any and all claims, demands, suits or actions, by whomsoever asserted, resulting in whole or in part from acts, errors, omissions, negligence (whether active, passive or sole), or breach of warranty of the pilot(s), Jacobsen, or any employee of Jacobsen to the fullest extent

permitted by law, notwithstanding any limitation of liability to which the vessel and its owners, agents, charterers and operators are entitled by contract, bill of lading, statute or other provision of law in force. The duty to defend shall arise immediately upon receipt of notice of a claim from Jacobsen, and no finding of negligence, fault, breach or the like is required. The duty to defend shall continue until there is no potential for liability of the pilot(s), Jacobsen or Jacobsen employees other than on the grounds of willful misconduct or gross negligence, or there is a final judicial determination of willful misconduct or gross negligence by the pilot(s), Jacobsen or Jacobsen employees.

These covenants and agreements do not apply to such liability and rights as may arise from willful misconduct or gross negligence of the pilot(s), Jacobsen, or employees of Jacobsen.

**Attorney Fees and Costs.** It is understood and agreed that the foregoing covenant and agreement of the vessel and its owners, agents, charterers and operators to defend, indemnify and hold harmless the pilot(s), Jacobsen and Jacobsen's employees includes the duty to indemnify all attorney fees, expert fees and legal costs incurred by the pilot(s) and Jacobsen to defend any claim, demand, suit or action within the scope of said covenant and agreement. In the event the pilot(s), Jacobsen or its employees become involved in such litigation or arbitration with a vessel and/or its owners, agents, charterers and operators arising out of the provision of piloting services, Jacobsen shall be entitled to recover and be fully reimbursed for its attorney fees and legal costs, including expert fees and costs, incurred in any such proceeding.

It is further understood and agreed that Jacobsen shall be entitled to recover its attorney fees and legal costs in any action or proceeding to enforce rights under this Agreement or the Port of Long Beach Tariff, including actions to enforce the foregoing covenants and agreements.

**Trip Insurance.** Jacobsen offers trip insurance for purchase prior to a movement. The coverage provided will insure the vessel and its owners, agents, charterers and operators, as their interests may appear, against losses and damage to the vessel and against legal liabilities and damages which arise from the consequences of the negligence of the pilot(s), Jacobsen, or Jacobsen's employees, subject to the terms and conditions of the policy; provided, however, that trip insurance affords primary liability coverage to the extent of the policy limits only for that portion of loss, liability and damage caused by the negligence of the pilot(s), Jacobsen or Jacobsen's employees. Trip insurance does not provide coverage for loss, liability or damage resulting from any other cause whatsoever.

The cost of trip insurance is not included in the ordinary charges for piloting services and must be purchased separately. The rates for this insurance are subject to change annually. The charge for trip insurance in 2018 is \$33.86 per movement with limits of coverage of \$1,000,000 per occurrence and excess coverage of \$5,000,000.

Purchasing trip insurance **does not relieve or discharge** you, the vessel or its owners, agents, operators or charterers from the covenants and agreements set forth above to not assert claims against and to defend and indemnify the pilot(s), Jacobsen and Jacobsen's employees.

A copy of the trip insurance policy is available on Jacobsen's website, and the steps to procure trip insurance and the necessary forms will be provided upon request. Trip insurance must be purchased when the request for piloting services is placed and before the movement begins.

**Severability.** If any provision in this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision shall be severable from the remainder of the Agreement and the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

**Governing Law and Venue.** This Agreement has been made under the laws of the United States of America and the State of California and performed in the State of California. The vessel and its owners, agents, charterers, operators agree that (1) any action arising under or in connection with this Agreement shall heard exclusively in the federal and state courts located in Los Angeles County, California and (2) to submit to personal jurisdiction of said courts respecting any such action.

**Written Amendment.** The terms of this Agreement are binding and enforceable both by law and by contract. Jacobsen relies on the terms set forth herein as a complete expression of the Agreement under which piloting services are performed in, among other things, not providing liability insurance for pilot negligence unless trip insurance, described above, is specially placed prior to a piloted movement. The terms of this Agreement therefore can only be amended, revised or modified by a writing subscribed by a principal of each party. Any other attempt to amend, revise or vary these terms is ineffective and not binding or enforceable.

**YOU UNDERSTAND AND AGREE THAT ENGAGING A JACOBSEN PILOT CONSTITUTES YOUR ACCEPTANCE AND AGREEMENT ON BEHALF OF THE VESSEL'S OWNERS, AGENTS, CHARTERERS AND OPERATORS TO BE BOUND BY THE TERMS OF THIS CONTRACT.** You acknowledge that you have read and understood this agreement and have had an opportunity to consult legal counsel respecting its terms and conditions and you agree to be legally bound; that you warrant your authority to bind the vessel and its owners, agents, charterers and operators to the terms and conditions set forth herein and to **indemnify and hold harmless** Jacobsen, the pilot(s) and employees of Jacobsen with respect to all losses, liability, damages and expenses suffered or incurred in consequence of your not having such authority; and that Jacobsen's piloting services are voluntarily requested and voluntarily rendered in reliance on and in accordance with the terms set forth in this Agreement and the Port of Long Beach Tariff.