**Memorandum of Agreement**

**For**

**Safe Maritime Transportation System (SafeMTS)**

**Between the Bureau of Transportation Statistics**

**and Participant**

**Effective Date: [TBD]**

1. **Parties**

This legally binding Memorandum of Agreement (the “MOA” or “Agreement”) is entered into by the Bureau of Transportation Statistics (“BTS”), an office within the U.S. Department of Transportation and [Participant’s Legal Name], with their primary offices at [Participant’s address] (“Participant”). These two entities are collectively defined as the “Parties” within this MOA.

This MOA is based on a voluntary and mutual interest to collect and analyze precursor information to determine statistically significant indicators of potential problems suited to risk reduction measures within the Maritime Transportation System. The Parties will work together in the spirit of cooperation and open communications, consistent with current law.

The U.S. Department of Transportation’s mission is to serve the United States by ensuring a fast, safe, efficient, accessible, and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future. BTS’ mission is to serve as the leading source of timely, accurate, and reliable information on the U.S. transportation systems used for moving people and goods, and on their impacts on the economy, society, and the environment.

[Short name for Participant] is [description of type of Participant].

1. **Legal Authorities**

49 USC Section 6302 authorizes the BTS Director to enter into agreements with Federal, State, local, or private agencies or businesses for the purposes of data collection and analysis.

The Confidential Information Protection and Statistical Efficiency Act, ("CIPSEA"), is a United States federal law enacted as Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (Public Law 115-435, 132 Stat. 5529, 44 U.S.C. Chapter 35), reauthorizing the 2002 law of the same name. CIPSEA establishes uniform confidentiality protections for information collected for statistical purposes[[1]](#footnote-2) by U.S. statistical agencies.

1. **Confidential Information Protection & Statistical Efficiency Act**

The Confidential Information Protection and Statistical Efficiency Act (“CIPSEA”) establishes uniform confidentiality provisions for information collected for statistical purposes by U.S. statistical agencies. The purposes of CIPSEA are:

1. to ensure that information supplied by individuals or organizations to an agency for statistical purposes under a pledge of confidentiality is used exclusively for statistical purposes;
2. to ensure that individuals or organizations who supply information under a pledge of confidentiality to an agency for a statistical purpose will neither have that information disclosed in identifiable form to anyone not authorized to see it nor have that information used for any purpose other than a statistical purpose; and
3. to safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for statistical purposes by controlling access to, and the uses made of, such information.

In undertaking efforts to obtain information for a statistical purpose under CIPSEA, an agency may designate agents to perform statistical activities on their behalf. Such agents must take and subscribe an oath of office or swear to observe the limitations of section 512 of the CIPSEA provisions. Further, such agents must undertake confidentiality training and sign a binding non-disclosure agreement (Appendix C). Any knowing or willful disclosure of information protected under the provisions of CIPSEA in any manner to a person or organization, including Participant, not entitled to receive such information is considered a class E felony and may result in imprisonment for not more than 5 years, a fine of not more than $250,000, or both for the disclosing party[[2]](#footnote-3).

1. **Purpose**

The purpose of this MOA is to describe cooperative efforts between the parties to support improved maritime safety through the SafeMTS (Maritime Transportation System) program; establish the authority by which BTS and industry will exchange maritime safety data; and identify the rights and responsibilities of the parties.

The SafeMTS program, established by the USDOT Maritime Administration and BTS as a joint program, aims to fill a gap in maritime safety data collection and sharing by establishing a confidential safety data system to collect and analyze voluntarily reported, safety-related data from the maritime industry to advance marine transportation safety. A broad set of existing data will be captured from industry and government partners and analyzed to identify critical safety-related trends that could prevent incidents or identify otherwise non-correlated events. BTS and MARAD have determined that it is in the public interest to collect near miss and safety event reports supplied by participants in the SafeMTS program under a pledge of confidentiality for statistical purposes only.

1. **Principles**

Participation in the SafeMTS program is predicated on a realized systemic benefit to the maritime transportation system (MTS) resulting from the exchange of safety data between the participants and the United States Department of Transportation. In the SafeMTS Data exchange program, individual industry participants provide specific data elements to the Bureau of Transportation Statistics (BTS). BTS (1) safeguards, aggregates, and processes that data into a form that is appropriate for and (2) distributes that processed data to all participating government and industry participants.

1. **Roles and Responsibilities**
	1. **Bureau of Transportation Statistics (BTS)**

BTS, within the U.S. Department of Transportation, is an objective supplier of statistically sound baseline, contextual, and trend information used to shape transportation policy and investment decisions across the United States. BTS is responsible for providing timely, accurate, and reliable information on U.S. passenger and freight transportation systems and the impact on the economy, society, and the environment. Further, BTS has experience developing and administering near-miss safety data collection programs for transportation and offshore energy sectors. As a federal statistical agency, BTS has the authority to collect data confidentially for statistical purposes under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA), which allows BTS programs to overcome legal concerns among potential industry participants about sharing sensitive near-miss and safety data.

BTS shall:

* Develop and implement a system and a secure hosting environment to support and manage a database of information provided by participants and others.
* Collect confidential data submitted by Participant, other companies, and individuals solely for statistical analysis as detailed in this MOA.
* Protect the confidentiality of the data submitted under its own confidentiality statute (49 U.S.C. 6307(b)), and CIPSEA.
* Develop user interface tools to provide each Participant secure access to its own data.
* Develop online analytical tools to allow each Participant to conduct its own analysis of all data residing in the secure database, without disclosing data contributor identifiable information.
* Provide each Participant with specifications, communications protocols, equipment requirements, interface requirements, standards, message formats, and other relevant technical information and support as necessary to transmit, receive, interpret, and analyze SafeMTS Data.
* Provide a point of contact for technical support.
* Encrypt processed SafeMTS Data in accordance with the current industry standard.
* Provide each Participant with physical access to the encrypted SafeMTS Data.
* In coordination with MARAD, provide support and guidance to participants for the improvement of data quality for the benefit of individual participants, all participants as a group, and the maritime industry in general.
* Provide aggregate SafeMTS Data consistent with the accuracy, reliability, maintainability, and availability of processing and communications capabilities.
* Have the sole right to relocate, upgrade, and/or update SafeMTS Data products in order to take advantage of advances in technology or for other reasons.
* Have the right to identify participants not in compliance with this agreement and may restrict access to SafeMTS Data products until such time that compliance is demonstrated to the satisfaction of BTS.
* Have the right, with timely and appropriate advance notification and coordination, to modify and amend this agreement if it is in the interest of the United States Government, the maritime industry, or the general public.
	1. **Participant**

Each Participant shall:

* On a voluntary basis, submit near-miss and other safety data to BTS for statistical analysis through a secure hosting environment. The manner and format for such submissions by Participant shall be consistent with the guidance stipulated in the BTS SafeMTS Data Users Guide.
* To the extent practical, the Participant shall attest to the quality and accuracy of the data provided.
* Provide industry-generated safety data to BTS consistent with the data elements and quality standards as specified in Appendix A of this Agreement; and consistent with the accuracy, reliability, maintainability, and availability of the Participant’s operational system and/or other processing and communications capabilities.
* In the event that SafeMTS Data Products are relocated, upgraded, updated, and/or modified, the Participant shall be responsible for providing and maintaining the hardware, software, communications, facilities, and any and all other resources needed to continue to transmit, receive, and interpret SafeMTS Data.
* Ensure any third-party accessing SafeMTS Data or Products for research, development, analyses, conclusions, or other capabilities commissioned by the Participant abides by the terms of this Agreement. Third party access must be limited to a specific period of performance and is not allowed for a long-term pass-through of SafeMTS Data that circumvents this Agreement or BTS data release processes. **BTS MUST APPROVE ALL THIRD-PARTY ACCESS TO SafeMTS DATA PER CIPSEA REQUIREMENTS THROUGH THE STANDARD APPLICATION PROCESS (SAP).** The Participant and/or third party must clearly indicate on all outcomes based on SafeMTS Data that these Products and results are not guaranteed, sponsored, warranted, or endorsed by the USDOT.
1. **Financial Responsibilities**

This Agreement is not a financial or funding obligation document or any commitment of funding by either party. Each party will directly fund its own participation under this Agreement and this effort. Any activity that involves payment for services related to this Agreement will be reflected in an appropriate funding document according to applicable rules and regulations of the party providing the funds. All activities by BTS under or pursuant to this Agreement are subject to the availability of federally appropriated funds, and the parties intend that no provision of this Agreement will be interpreted to require obligation or payment of funds by any party.

1. **Disputes**

In the event of any dispute, question, or disagreement arising out of or relating to this Agreement or the breach thereof, the parties hereto shall first use their best efforts to settle such disputes, claims, questions, or disagreement. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. The parties agree and stipulate that this binding Memorandum of Agreement shall be governed by and construed under the laws of the United States.

1. **Terms of Agreement and Right of Termination**

This Agreement will take effect at the time of execution and will remain in effect until either party gives written notice to terminate this Agreement or until this Agreement is expressly superseded with another agreement signed by both parties. Both parties to this Agreement shall comply with all applicable laws and regulations in its performance.

1. **Data Transfer Protocol**

Participant will transmit their data file to the Bureau of Transportation Statistics (BTS) via the secure data portal located on the SafeMTS web site ([www.bts.gov/SafeMTS](http://www.bts.gov/flow)). Participant may submit data via other secure means, such as secure file transfer protocol, as mutually agreed by the Parties.

1. **Communication**

USDOT will recognize Participant as a “Stakeholder” for this effort by crediting Participant by name in any press or publicity that is related to the effort, and which mentions all other participants in this effort. The Parties will collectively coordinate all publicity and press during this effort. Both parties to this Agreement will exert their best efforts to obtain prior approval from the other party for the use of any descriptive language describing the other party in a press release or other written public statement.

All official communications (i.e., notices, communications, and coordination), including inquiries regarding the transfer of SafeMTS Data, technical issues with the transfer of SafeMTS Data, and the analysis of SafeMTS Data shall be directed as follows:

Bureau of Transportation Statistics

United States Department of Transportation

Attn: Director, Office of Safety Data and Analysis

1200 New Jersey Avenue SE, Washington, DC 20590

safemts@dot.gov

All communication to Participant shall be directed as follows:

Participant: [Name of Participant Company]

Attn: [Participant POC Name]

[Participant Address]

[Participant Telephone number]

[Participant email address]

**12.0 Signatory Authority, Modification, and Relationship of Parties**

The signatories to this Agreement represent that they have the authority to enter into this Agreement on behalf of their respective organization.

Changes and/or modifications to this Agreement shall be in writing and signed by the original signatory or his representative, designee, or successor. The modification shall cite the subject Agreement and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

This Agreement does not give either party any authority to act on behalf of or to obligate any funds to be expended by the other party. This Agreement may not be assigned by either party. The parties do not intend this Agreement to establish a partnership or other type of legal entity and this Agreement does not create any rights in any third party. Nothing in this Agreement shall be construed as superseding or interfering in any way with other agreements or contracts entered into, either prior to or subsequent to the signing of this Agreement, nor prevent either party from entering into similar agreements or contracts with other companies or organizations.

By entering into this legally binding Memorandum of Agreement, BTS is confirming that Participant’s involvement under this Agreement is not a gift from Participant to BTS or the United States Department of Transportation, and BTS’ participation in this effort is not an endorsement of Participant by BTS, the United States Department of Transportation or its employees. Participant acknowledges that it has no expectation of favorable treatment in pending or future matters, or expectation of other improper benefits from either BTS or the United States Department of Transportation because of its participation in this effort.

Executed by:

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Patricia Hu Date

Director, Bureau of Transportation Statistics

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[Participant Company Name] Date

[Participant Signatory Name]

[Participant Signatory Title]

**APPENDIX A**

**Data Elements and Metadata**

[Participant’s Name] will submit near-miss and safety event data including the data elements as listed below.

**Notes:**

1. If your company’s database does not include all of the core data fields noted below, please ensure (to the extent practicable) that this information is addressed in the event description.
2. Relevant data fields not listed below may be submitted if they are already captured in your company’s database; there is no need to delete or redact those fields since all data transmitted to BTS is subject to CIPSEA protections.
3. Please note that all specific event identifier data are subject to CIPSEA protection and will not be shared with anyone outside of BTS or its agents.

**Minimum Expected Core Data Elements**

While submission of safety data to SafeMTS is voluntary, each participant is expected to provide (as a minimum) the following core data fields to allow more effective data aggregation and analysis. This is especially important for events where multiple vessels may submit information on the same event (e.g., a tug and barge), as it will allow BTS to identify those incidences and generate a more comprehensive event record.

* Unique Event Identifier
* Event Date and Time
* Event Description
* Incident Type/Category (e.g., near miss, hazard recognition)
* Near Miss Classification (i.e., describing the most salient potential consequence, such as fire, injury, etc.)
* Geographic Location (e.g., in port, at sea, shipyard)
* Vessel(s) Identification (i.e., vessel name or number)
* Location on Vessel (e.g., engine space, galley, bridge)
* Operations/Activity Ongoing (e.g., deck maintenance, inspection, loading cargo)
* System/Equipment Involved (e.g., anchoring machinery, fuel tank, crane, ROV)
* Corrective Action
* Potential Consequence
* Actual Consequence
* Causal/Contributing Factors

**Additional Core Data Elements**

* Business Segment (e.g., blue water, brown water)
* Observing Personnel Type (e.g., crew, contractor, passenger)
* Immediate Corrective Action (e.g., operation stopped, equipment shutdown)
* Systemic Corrective Action
* Potential Severity Level
* Factor Preventing Worse Incident
* Root Cause
1. 44 U.S.C. § 3561(12) states: The term “statistical purpose”— (A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and (B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A). [↑](#footnote-ref-2)
2. 44 U.S.C. § 3572(f). [↑](#footnote-ref-3)