

Model Agreement to Mediate

I. Participants, Governing Rules

The mediation shall be governed by the Mediation Rules of the Society of Maritime Arbitrators (the “SMA Rules”) in force as of the date of this Agreement to Mediate (the “Agreement”). The SMA Rules are appended to this agreement. Each party stipulates that at least one person attending the mediation session/s has the authority to agree to settlement terms and to sign a binding settlement agreement on behalf of the party. Persons other than the parties and their representatives may only attend with the permission of the parties and of the Mediator. The Parties agree to participate in negotiations in good faith with the aim of reaching a settlement agreement.

II. Procedure

The mediation shall take place at a venue convenient to the parties and to the Mediator in New York City unless otherwise agreed, and in accordance with Article 6 of the SMA Rules. The Mediator shall determine whether the parties meet in joint session or in separate caucuses, in person or by telephone. The Mediator will not disclose to the other party anything stated to be confidential by one party in caucus. No transcript or other record of the mediation may be made and any notes made of the mediation shall remain the private property of the parties, their representatives, if any, and the Mediator and not be subject to disclosure to any third party or to each other. Any notes made by the Mediator may be destroyed at any time of the Mediator’s choosing.

III.

Disclosure

The Mediator, the parties and their representatives, if any, acknowledge that they have fully disclosed to the Mediator and to each other information of any past or present relationships which might reasonably be believed to influence the Mediator’s partiality. The Mediator, the parties and their representatives confirm that no conflict of interest presently exists, but agree that the obligation to disclose such information is ongoing.

IV. Confidentiality

Confidentiality is critical to promote communication and the free flow of ideas among the parties. The Mediator and all parties and their representatives, if any, to the mediation agree that mediation sessions are privileged settlement discussions and as such are made without prejudice and are inadmissible in any arbitration or litigation. All statements made and documents produced are confidential and may not be disclosed to any third party. The Mediator will not disclose to any other Party any information

given to him/her by a Party in confidence without the express consent of that Party. The parties agree that they will abide by the text and spirit of SMA Rules Article 14.

V. Mediator, Fees and Expenses

The parties agree that _____ is the Mediator. The Mediator's fee is \$_____ per day and \$_____ per half day. Any charges for meeting room, meals or other expenses shall be paid by the parties. All fees and expenses of the mediation are to be paid promptly on an equal basis, although the parties may agree among themselves to pay in unequal proportions. *The following bracketed clause is optional: [The parties agree that should the mediation fail and this dispute proceeds to arbitration under SMA Arbitration Rules, all costs of mediation including legal fees may be awarded to one party in the sole discretion of the arbitrator(s), or may be apportioned by the arbitrator(s).]*

VI. Role of the Mediator, exclusion of liability

The parties recognize that the Mediator will be independent, neutral and impartial, whose role is solely to facilitate a settlement of the dispute between the parties. The Mediator may make recommendations or proposals with regard to settlement of all or a part of the dispute but the parties may disregard them. The Mediator may not act as arbitrator, counsel or advisor to any party to this dispute, nor may the Mediator be called as a witness or be compelled to provide testimony or produce any document in connection with this dispute. The parties agree to hold harmless, indemnify and defend the Mediator from any subpoena or action by any third party. The Mediator shall not be liable to any party for any act or omission in connection with this mediation.

VII. Termination

The parties understand that mediation is voluntary and that the Mediator has no authority to force a settlement. Any party may terminate the mediation at any time up to execution of a binding written settlement agreement, by notifying in writing the other party(ies) and the Mediator of its intention to withdraw from the mediation.