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FEDERAL MARITIME COMM

**USATLAN CROSS SPACE CHARTER, SAILING,
AND COOPERATIVE WORKING AGREEMENT**

FMC AGREEMENT NO. 011872-001 (2nd Edition)

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ARTICLE 1 - Name of the Agreement - This Agreement shall be known as the USATLAN Cross Space Charter, Sailing and Cooperative Working Agreement.

ARTICLE 2 - Purpose - The purpose of this Agreement is to permit the Parties as defined in Article 3, to cross charter space on vessels and to utilize other related equipment in connection with the carriage of cargo on terms and conditions agreed to by the Parties in the trade within the geographic scope set forth in Article 4.

ARTICLE 3 - Parties to the Agreement - The Agreement is made by and between the following four (4) Parties (hereinafter "Party(ies)" or "Carriers")

1. Compania Sud Americana de Vapores, S.A. (CSAV)
Plaza Sotomayor 50
2360171 Valparaiso, Chile
2. Companhia Libra de Navegacao (Libra)
Rua Sao Bento 8-8 Andar
Rio de Janeiro RJ, Brazil
3. Montemar Maritima S.A. (Montemar)
Edificio Plaza Mayor
Plaza Independencia 831, 11th Floor
11100, Montevideo, Uruguay

ARTICLE 4 - Geographic Scope of the Agreement -

This Agreement shall cover the operation of vessels and the carriage of cargo via direct service or transshipment between ports on the East Coast of the United States (Eastport, Maine to Key West, Florida range inclusive), and inland and coastal points in the United States, served via such ports, on the one hand, and ports in Argentina, Brazil, Paraguay, Uruguay, and Venezuela, and inland and coastal points in the aforementioned countries and other Latin America and Caribbean countries served via such ports, on the other hand ("the Trade").

ARTICLE 5 - Authority

- 5.a. Vessels and Service

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The Parties are authorized to operate and share space on up to 10 vessels in the Trade, each one with a capacity not exceeding 3,000 TEUs (calculated on the basis of approximately 12 tons per TEU average). The Parties intend initially to operate six (6) vessels of approximately 2,500 TEUs capacity, able to carry about 1,950 TEUs at 12 tons average, with minimum guaranteed service speed at 20.5 knots, fully laden described at scantling draft, fitted with minimum 300 reefer plugs, and able to operate a weekly fixed day service in 42 days round voyage time. Initially, CSAV shall contribute three (3) vessels, Libra shall contribute with two (2) vessels, and Montemar shall contribute with one (1) vessel. The Parties may periodically review and agree upon the number and capacity of vessels employed, itineraries and sailing schedules and the round-trip voyage duration with the aim of providing a competitive and cost efficient service. The Parties agree that nothing in this Agreement shall prohibit any Party from providing additional vessel service or capacity to the Trade, individually or through other agreements. This Agreement covers containerized and non-containerized cargo. The vessels' declared capacity and the average gross weight/TEU rating (12) of the vessels may be reviewed from time to time subject to mutual agreement.

5.b. Designation of Parties as Slot Charterers and Vessel Providers

As used herein, the Party chartering space on the other Party's vessel shall be referred to as "Slot Charterer" and the Party providing the vessel on which space is chartered shall be referred to as "Vessel Provider." CSAV, Libra, and Montemar shall each remain individually responsible, as Vessel Providers, for the operation of their own vessels, and for any and all claims, demands, or legal actions arising out of the operation of their respective vessels in this service or of any matter related in any way to this Agreement.

5.c. Space Allocation

The Parties may allocate space on the vessels utilized by them under this Agreement as they may from time to time agree. Allocations will be based on the following overall space requirements of each Party (stated in terms of weekly TEUs based on approximately 12 tons per TEU average) and can be adjusted as by unanimous agreement. Initial allocations on dry cargo will be as follows:

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<u>Volume Allocation</u>	<u>TEUs</u>	<u>%</u>
CSAV	952	48.84
Libra	478	24.51
Montemar	520	26.65
Total	1950	100.00

<u>Reefer Allocation</u>	<u>Plugs</u>	<u>%</u>
CSAV	145	48.22
Libra	74	24.78
Montemar	81	27.00
Total	300	100.00

The Parties are authorized to buy and sell space to and from one another on such terms and conditions as they may from time to time agree in order to balance differences between the Volume Allocation and slots actually provided, to dispose of unused slots and to respond to fluctuations in cargo demand and/or space availability among the Parties. Each Vessel Provider guarantees at any point in the voyage rotation the agreed allocation to the other Party.

In the event that a Vessel Provider is able to load more than the declared capacity/deadweight of a particular vessel as a result of the conditions pertaining to an individual voyage, then the Vessel Provider may, but shall not be obliged to, offer such additional space to the other Parties. If such additional space is taken up by another Party, it shall then pay for any such additional Slots at the pre-agreed Slot Price.

5.d. Financial Arrangements

(1) Each Vessel Provider will be responsible for the fixed costs of its vessel(s), including, but not limited to, vessel charter hire, fuel costs, port charges and port agency expenses. The Vessel Providers shall be responsible for their own phase in and phase out costs unless there exist extraordinary costs that may be further considered, subject to mutual agreement.

(2) Slot cost applicable for regular and ad hoc slot sales shall be calculated based upon the following three components: vessel charter hire, fuel price and fuel consumption, and port costs. The resulting amount after applying this daily charter hire to the duration of the

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round trip, the standard port costs applicable at each port, and the standard consumption at 20.5 knots including reefers will be divided by vessel capacity at 12 tons average.

- (A) Charter Hire element - vessel's charter hire to be based on both the Hamburg and Maersk Brokers Indexes for one year charters and will be reviewed every year, as of the Agreement's anniversary of effective date (each index to bear a 50% weight on the charter hire value to be considered). The value for the initial charter hire is to be fixed not later than one month before the beginning of the service.
- (B) Port expenses element- a standard lump sum per port will be agreed by the Parties, subject to adjustment from time to time, based on actual costs in USD as may be agreed between the Parties.
- (C) Fuel Expenses element - Fuel Expenses to be estimated at the actual cost based on a estimated consumption for steaming and port, steaming and port days on pro-forma and fuel \$/ton based on Platts fuel price at agreed bunker location. Fuel to be adjusted if \$/ton increases or decreases by 10 % for three or more consecutive weeks, per plats fuel index.

5.e. No Joint Service, Pooling, Pricing

The cross chartering of space provided hereunder does not create a joint service, partnership or other unincorporated association, permit the Parties to discuss or agree on rates or terms to be offered or charged to the shipping public or permit the Parties to pool cargo or revenue except as permitted under agreements relating to United States oceanborne commerce of which the Parties are or may become members, which agreements are filed with the FMC and effective pursuant to the Shipping Act of 1984. Nothing contained herein shall authorize the Parties to jointly operate a marine terminal in the United States.

5.f. Booking and Documentation

Procedures for booking vessel capacity, documentation and other administrative matters relating to chartering and transportation provided under this Agreement as well as allocation of

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responsibilities shall be as the Carriers may from time to time agree.

5.g. Equipment

The Parties may discuss and agree upon standards for, and may interchange, purchase, pool, lease, sublease, or otherwise cooperate in connection with containers, chassis, and other equipment in the Trade as between themselves, or individually or jointly to, from or with another person, on such terms as they may from time to time agree.

5.h. Terminals

(1) The Parties will make all possible efforts to use common marine terminals / stevedores in each port.

(2) Parties may negotiate jointly with terminals / stevedores.

(3) Any change of port and /or terminal will be permissible only subject to the agreement of the other Party, which agreement will not be unreasonably withheld.

(4) In all ports of call, the Parties shall arrange for direct invoicing with the Stevedores / Terminal of their own containers and have their own individual contracts with the Stevedores.

(5) For purposes of this Agreement, Common Terminal Charges (such as but not restricted to overtime, idle time, waiting time, extra labor if any, any expenses resulting from schedule adjustment due to *force majeure* cases, etc.) will be invoiced to each Party in proportion to its share of the total throughput in each port, if identifiable; otherwise in accordance with allocation shares. Shiftings will be for the Vessel Provider's account except those attributable to specific request of the other Party.

5.i. Further Agreements

The authority of the Parties under this Agreement contemplates operations, activities and agreements interstitial to or otherwise in implementation of all such expressed authority or undertaken or entered into with a reasonable basis to conclude that such collective action is covered by this Agreement, as lawfully in effect at the time the action occurred. In accordance with 46 C.F.R. § 535.408, any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, except to the extent that such agreement concerns routine operational or administrative matters. Except as required by law,

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the terms and conditions of any interstitial agreement shall be confidential to the Parties and no details of such agreement or the contents thereof shall be divulged to any other party without the prior written approval of the other Party. The Parties may implement this Agreement by meetings, writings and other communications between them, operating manuals, financial procedures, and may act through a Steering Committee or other administrative staff, or make other arrangements as may be necessary or appropriate to effectuate the purposes and provisions of this Agreement. The Parties, in implementing this Agreement, may agree on their respective rights, liabilities, and indemnities arising under this Agreement, including matters such as failure to perform, *force majeure*, and insurance.

ARTICLE 6 - Officials and Delegations of Authority - Legal Counsel for the respective Parties are appointed as U.S. representatives of the Agreement and are authorized to file with the Governmental Authorities the Agreement and any amendments hereto, as well as to submit associated supporting materials.

ARTICLE 7 - Membership and Withdrawal -

7.a. New Parties to this Agreement may be added only upon unanimous consent. The addition of any new Party to this Agreement shall become effective after an amendment noticing its admission has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984.

7.b Notwithstanding any other provision of this Agreement, any Party may withdraw from this Agreement at any time with ninety (90) days prior written notice to the other Parties, subject to the following terms and conditions:

7.b.(i) Any withdrawal shall be without prejudice to the Parties' respective accrued obligations to one another as of the date of withdrawal. In no event shall any Party be liable to another for consequential damages arising from withdrawal from this Agreement;

7.b.(ii) The withdrawing Party will promptly notify the Federal Maritime Commission of its withdrawal pursuant to this Article; and

7.b.(iii) Notwithstanding the foregoing provisions of this Article 7:

(A) if at any time during the term of this Agreement there shall be a change in the control or a substantial material change in the ownership of any Party and if the other Parties are unanimously of

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the opinion, arrived at in good faith, that such change in ownership is likely materially to prejudice the cohesion or viability of this Agreement, then any of such other Parties may, within one (1) year of becoming aware of such change, give not less than ninety (90) days written notice of its withdrawal from this Agreement; and

- (B) if at any time any Party is dissolved or becomes insolvent, or fails to pay its debts as they may become due or makes a general assignment, arrangement or composition with or for the benefit of its creditors or has a winding-up order made against it or enters into liquidation, whether voluntarily or compulsorily, or seeks or becomes subject to the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, or is affected by any event or similar act or which under the applicable law of the jurisdiction where it is constituted has an analogous effect or takes any action in furtherance of any of the foregoing acts (other than for the purpose of a consolidation, reconstruction or amalgamation previously approved in writing by the other Parties), and the other Parties are of the unanimous opinion that such event or occurrence is or may be materially detrimental to this Agreement, or that, as a result of such event or occurrence, sums that may be owed other than those that would be disputed in good faith may not be paid in full or that their payment may be delayed, then any of such other Parties may give notice in writing of its immediate withdrawal from this Agreement.

ARTICLE 8 - Voting - All exercise of authority under the Agreement shall be by the unanimous consent of the Parties.

ARTICLE 9 - Duration and Termination -

9.a This Agreement shall continue in effect unless the Agreement is terminated by the unanimous agreement of the Parties, or by the withdrawal of all Parties but one.

9.b. The termination of this Agreement shall be without prejudice to the Parties' respective accrued obligations to one another as of the effective date of the termination.

9.c. In the event of the following Events of Default occurring, the Party(ies) for which the Events of Default do not occur (in this clause referred to as the "Non-defaulting

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Party(ies)”) may immediately terminate this Agreement in relation to the Party(ies) in default (“Defaulting Party(ies)”) failing to perform or observe any covenant, undertaking, condition or provision contained in this Agreement (including but not limited to failure to make any payment due under this Agreement) and such failure continuing for a period of thirty (30) days following the service in accordance with Article 12 hereof by the Non-Defaulting Party to the Defaulting Party of notice requiring such failure to be remedied; or

9.d. In the event of termination of this Agreement under Article 9.c., subject to the limitation of subclause 9.b above, the Defaulting Party shall be liable to the Non-Defaulting Party for compensating any and all losses, damage, costs and expenses, including reasonable legal fees and disbursements, arising out of or in connection with such termination.

ARTICLE 10 - Compliance with United States Regulations - The provisions and implementation of this Agreement will fully comply with the U.S. Maritime Regulations, and such other national regulation as may apply, including but not limited to the statutes administered by the Federal Maritime Commission of the United States.

ARTICLE 11 - Arbitration and Governing Law -

a) Applicable Law. The interpretation, construction and enforcement of this Agreement shall be governed by the laws of the United States of America and the substantive laws of the State of New York.

b) Arbitration.

Except as otherwise provided herein, any dispute or claim arising hereunder which is not amicably settled by the Parties shall be settled by arbitration. Arbitration shall be held in New York, New York, by a panel of three arbitrators familiar with ocean container shipping, unless the Parties can agree on a single arbitrator, none of which shall have any interest in or with any Party. Upon agreement of the Parties, arbitration may be held in any other place. Arbitration shall be conducted in accordance with the arbitration rules of the New York Society of Maritime Arbitrators, Inc. (the "SMA").

11.b.(i) Any Party may call for such arbitration by service upon the Party with whom it has the dispute of a notice specifying the name and address of the arbitrator chosen by the first moving Party and a brief description of the disputes or differences which such Party desires to put to arbitration. If the other Party shall not, by notice to first moving Party within thirty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, the arbitrator appointed by the first moving Party shall act as

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the sole arbitrator, with full power to act hereunder. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either Party may petition the President of the SMA for the appointment of the third arbitrator, whereupon the third arbitrator shall be appointed by such President. In the event that the President of the SMA fails to appoint the third arbitrator within twenty days of the date on which such President receives the petition, either party may apply to a Judge of any court of competent jurisdiction in New York, New York (or, the alternate location for the arbitration agreed to by the Parties) for the appointment of a third arbitrator, and the appointment of such arbitrator by such President or Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings, either Party shall have the right by written notice served on the arbitrators and on the other Party to specify further disputes or differences under this Space Charter Agreement for hearing and determination.

11.b.(ii) If there are more than two Parties to the arbitration, and the Parties do not agree on arbitrators, the complaining Party or Parties shall submit a written request, in which the Party or Parties complained against shall be given the opportunity to join, to the President of SMA for a list of arbitrators, the number of which shall be three times the number of Parties to the arbitration plus an additional three, and all of which shall be former or current officers or directors of SMA. Upon receipt of such list, the Parties to the arbitration shall confer and, acting, in alphabetical order, shall seriatim strike one arbitrator from the list until there remain only three arbitrators, who shall arbitrate the dispute. The list and the identities of arbitrators stricken from the list shall be maintained in confidence by the Parties, except where disclosure is required pursuant to legal process or in connection with any proceeding challenging the appointment or qualification of the arbitrators. Until such time as the arbitrators finally close the hearings, either Party shall have the right by written notice served on the arbitrators and on the other Party to specify further disputes or differences under this Space Charter Agreement for hearing and determination.

11.b.(iii) The arbitrators, by majority vote in writing, may award damages and expenses which they deem proper. In addition, the arbitrators shall assess the costs of the arbitration including interest, pre-judgment interest, their fees and reasonable attorney's fees against either Party, or both, in such manner as they shall set forth in their written findings of facts and conclusions. Such decision shall be final and conclusive, shall be rendered within 90 days of the final submissions of the Parties, including briefs, and may be enforced in a court of competent jurisdiction. The arbitrators may not award exemplary or punitive damages nor may they order specific performance. A copy of such decision shall be served by the arbitrators on the Parties.

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c) Notwithstanding anything to the contrary in the Agreement or in law, any Party shall have the right to apply to any Court of competent jurisdiction to obtain any pre-judgment remedy to which it may be entitled against another.

d) Notwithstanding anything to the contrary in this Agreement, the parties agree that any arbitration where neither the claim nor any counterclaim exceeds the sum of USD 25,000.00 shall be conducted according to the SMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

ARTICLE 12 - Notices

All notices and other communications pertaining to the Agreement, except as the Parties may otherwise provide, shall be sent by (1) fax or e-mail to the contact designated by each Party from time to time; and (2) by certified airmail, postage prepaid and addressed to the addresses set forth in Article 3 of this Agreement, and shall be effective when dispatched.

ARTICLE 13 - Assignment, Exclusivity and Subchartering

a. Assignment - Parties may not assign their rights and obligations under this Agreement in whole or in part, without the written consent of all the other Parties.

b. Exclusivity - This Agreement is non-exclusive, and the Parties may load cargo or containers in other ships not belonging to this Agreement within the Trade.

c. Sub-chartering – Parties may not sub-charter space within their own allocation to third parties, without having obtained the prior written consent of the other Parties. In addition, before any space may be subchartered to third parties, the Party wishing to subcharter space must first offer those slots to the other Parties on the same terms and conditions as offered to any third party. Notwithstanding the foregoing, the Parties may sub-charter space to their fully or partly owned affiliate, subsidiaries or related companies without prior approval and without any requirement to first offer the slots to the other Parties. Any such sub-charters are subject to compliance with all applicable laws and the Federal Maritime Commission regulations regarding such charters.

ARTICLE 14 - Enforceability

If at any time during the performance of any transportation under the provisions of the

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Agreement, any term, covenant, condition or proviso contained in the Agreement or the application thereto to any person or circumstances shall be held to be invalid, illegal or unenforceable, the remainder of the Agreement or the application or such term, covenant, condition or proviso to persons or circumstances other than those to which it is invalid, illegal or unenforceable shall not be affected thereby and each term, covenant, proviso or condition of the Agreement shall be valid and be enforceable to the full extent permitted by law.

Signature - This Agreement may be executed and delivered by exchange of facsimile copies showing the signatures of each Party, and the original signatures need not be affixed to the same copy. The facsimile copies showing the signature of each Party will constitute original signed copies of the same Agreement requiring no further execution.

Dated: June 17, 2005

COMPANIA SUD AMERICANA DE VAPORES S.A.

By: Walter H. Lion
Name: Walter H. Lion
Title: Attorney

MONTEMAR MARITIMA S.A.

By: Walter H. Lion
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COMPANHIA LIBRA DE NAVEGACAO

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