# MARINE TERMINAL SERVICES AGREEMENT
# PORT OF HOUSTON AUTHORITY and
# MEDITERRANEAN SHIPPING CO. S.A.

**FEDERAL MARITIME COMMISSION AGREEMENT NUMBER:**
201252

**EFFECTIVE DATE:**

**EXPIRATION DATE: TEN YEARS AFTER EFFECTIVE DATE**
**OPTION TO RENEW FOR FIVE YEARS**

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**MARINE TERMINAL SERVICES AGREEMENT**
**PORT OF HOUSTON AUTHORITY AND**
**MEDITERRANEAN SHIPPING CO. S.A.**

This Marine Terminal Services Agreement (the "*Agreement*") is entered into, by and between the Port of Houston Authority of Harris County, Texas, a governmental subdivision of the State of Texas ("*PHA*"), and Mediterranean Shipping Co. S.A. (the "*Carrier*") with reference to the following:

A. PHA owns and operates Fentress Bracewell Barbours Cut Container Terminal ("*Barbours Cut Terminal*"), and Bayport Container Terminal ("*Bayport Terminal*"), and in connection therewith is a Marine Terminal Operator, as provided for in the Shipping Act of 1984 (46 U.S.C. §40101 et seq.) (the "*Shipping Act*"). Barbours Cut Terminal and Bayport Terminal are collectively referred to herein as the "Terminals," and may be individually referred to as a Terminal.

B. Carrier is a Common Carrier, as provided for in the Shipping Act, that presently calls at Barbours Cut Terminal and/or Bayport Terminal and may call at any other terminal owned or operated by PHA in the future.

C. PHA anticipates undertaking continued development of Bayport Terminal, and improvement of existing facilities at Barbours Cut Terminal, in order to better serve Carrier.

D. In order to permit PHA to properly plan the capital investment program and appropriately and prudently commit and spend public funds, as are required over future years to undertake such development and improvement of the Terminals, PHA has requested that Carrier commit to handle a certain portion of its cargo over the term of this Agreement at the Terminals, and Carrier intends to do so, on the terms provided herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PHA and Carrier agree as follows:

1. Term.

The term of this Agreement shall commence on the date received by the Federal Maritime Commission (the "*FMC*"), as evidenced by the file stamp affixed to the first page of this Agreement (the "*Effective Date*") and (subject to earlier termination as herein provided) shall expire ten (10) years following the Effective Date (the "*Initial Term*"). The parties shall have the option, exercisable jointly in writing no later than ninety (90) days prior to the expiration of the Initial Term, to extend this Agreement for an additional five (5) years (subject to earlier termination as provided herein).



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2. Applicability of Tariffs.

Except as provided herein, Carrier remains subject to the terms and conditions provided in those certain "Port of Houston Authority Tariff No. 14 Additional Rates, Rules and Regulations Governing the Barbours Cut Container Terminal" ("*Tariff No. 14*"), "Port of Houston Authority Tariff No. 15 Additional Rates, Rules and Regulations Governing the Bayport Container Terminal" ("*Tariff No. 15*"), and "Port of Houston Authority Tariff No. 8 Rates, Rules and Regulations Governing the Houston Ship Channel and the Public Owned Wharves," as applicable, currently issued January 1, 2018, and their successive tariffs (collectively, the "*Tariffs*"); provided, however, that in the case of any conflict between the provisions of this Agreement and the Tariffs, this Agreement shall take precedence.

3. Throughput and Empty Handling Charges.

a. Commitment Discount. Carrier shall be eligible during the term hereof for discounts to PHA's regular throughput and empty handling charges for loaded and empty containers moving through the Terminals, on the terms provided in this Agreement (the "*Commitment Discount*"), notwithstanding the provisions of Section 2.

b. Initial Base Rates.

i. The Base Rates that are in effect for each loaded and empty container on the Effective Date for Barbours Cut Terminal are stated in Tariff No. 14 and are:

| Loaded Throughput | Empty Handling Charge |
|---|---|
| $106.74 | $42.70 |

ii. The Base Rates that are in effect for each loaded and empty container, and the Gate Charge, on the Effective Date for Bayport Terminal are stated in Tariff No. 15 and are:

| Loaded Throughput | Empty Handling Charge | Gate Charge |
|---|---|---|
| $106.74 | $36.27 | $6.43 |

c. Base Rates Adjustments.

i. On or after January 1, 2019 and continuing each year thereafter during the Term, each Base Rate applicable to carrier shall be adjusted not more than once per calendar year (the "*Adjustment Date[s]*"), to an amount equal to the product of (a) the applicable Base Rate for the calendar year immediately preceding the Adjustment Date ("*Base Rate Year*") multiplied by (b) a fraction the numerator of which is the CPI (as defined below) published for the month of July preceding the applicable Adjustment Date (the "*Adjustment Index Date*") and the denominator of which shall be the CPI in effect for the month of July of the Base Rate Year immediately preceding the Adjustment Index Date, provided that in no event shall any Base Rate be decreased. If an adjustment of any Base Rate results in a decrease of that Base Rate, the Base Rate in effect immediately prior to the Adjustment Date shall



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remain in effect until the next Adjustment Date. When adjusted, the new rates shall be the new Tariff rates as well as the new Base Rates until further adjustments, if any, are made.

ii. The term "*CPI*" shall mean the Consumer Price Index for all urban consumers, U.S. City Average, [1982-1984=100], all items index, published by the U.S. Department of Labor, Bureau of Labor Statistics, as modified from time to time. If the CPI is discontinued during the Term of this Agreement, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued.

d. Limited Rates.

i. "*Limited Rate*" is defined as each rate established pursuant to the following Subrules of Tariff No. 14, or subsections thereof, or their equivalents in Tariff No. 15:

I. Subrule No. 092 Equipment Rental - Subsection "Wharf Cranes;"

II. Subrule No. 093 Free Time; Demurrage; and Booking Roll / Storage Charges - Subsections "Demurrage Rates for Loaded Import Containers," "Booking Roll/Storage Fee for Export Containers," and "Booking Roll/Storage Fee for Transhipped Containers;"

III. Subrule No. 095 Shed and/or Wharf Use Hire; Dockage Rates on Vessels Engaged in All Trades; and

IV. Subrule No. 154 Loading, Unloading and Wharfage Charges Subsections "Containers, Loaded," and "Containers, Empty."

ii. On the Effective Date, the Limited Rates applicable to Carrier shall be the Limited Rates published in the Tariffs that are in effect on the Effective Date. On or after <Limited Rate Adjustment Date> and continuing each year thereafter during the Term, the Limited Rates applicable to Carrier shall be adjusted not more than once per calendar year in accordance with the CPI as set forth in Section 3.c.i above, provided that in no event shall any Limited Rate be decreased. If an adjustment of any Limited Rate results in a decrease of that Limited Rate, the Limited Rate in effect immediately prior to the Adjustment Date shall remain in effect until the next Adjustment Date. When adjusted, the new rates shall be the new Tariff rates as well as the new Limited Rates until further adjustments, if any, are made.

iii. The reduction in charges hereunder resulting from such limitation of the Base Rate and Limited Rates otherwise applicable to the Carrier under the Tariffs shall be deemed to comprise a portion of the Commitment Discount provided to Carrier.

e. Limitation of New Tariff Rates or Charges. Except for any (i) new tariff rates or charges the imposition of which is required or made necessary by law or circumstances



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reasonably beyond the control of PHA, and (ii) changes in the Port Security Fee currently set forth in Tariff Nos. 14 and 15 as Subrule Nos. 061 and 063 respectively, if such changes apply uniformly to all "common carriers" as defined in the Shipping Act, after the date hereof PHA shall not be permitted to impose any new types of tariff rates or charges applicable to Carrier without Carrier's prior consent unless such charges are reflected in the versions of the Tariffs in effect on the Effective Date.

f. Commitment Discount Level.

i. "*Container Volume*" means the total number of Carrier's loaded containers handled in a calendar year at the Terminals, as determined by PHA hereunder.

ii. A "*Commitment Discount Level*" means the annualized Container Volume as determined hereunder from time to time, and corresponding Commitment Discounts applied to loaded throughput and empty handling charges.

iii. The initial Commitment Discount Level for Carrier hereunder is:

| Container Volume | Loaded Throughput Discount (%) | Empty Handling Charge Discount (%) |
|---|---|---|
| 200,001 – 250,000 | 42.7% | 42.7% |

Carrier's initial Commitment Discount Level shall be in effect until June 30, 2018.

iv. PHA shall review and adjust Carrier's Commitment Discount Level on January 1 and July 1 of each year, for the prospective six-month period. The new Commitment Discount Level shall be determined from the annualized number of loaded containers handled through the Terminals by Carrier during the previous six-month determination period (the "*Determination Period*"), as shown in the accounting records of PHA, provided that the parties shall cooperate to resolve any differences between such records and the records of Carrier. The Determination Period shall run from May 1 through October 31 for calculating the Commitment Discount Level in effect for the following January 1 through June 30; the Determination Period shall run from November 1 through April 30 for calculating the Commitment Discount Level in effect for the following July 1 through December 31.

v. In the event the first Determination Period hereunder totals less than six (6) months, Carrier's Container Volume for such Commitment Period shall be annualized, as determined by PHA, to establish the Container Volume for such Determination Period, and the Commitment Discount Level next in effect for Carrier.

g. Calculation of Throughput and Empty Handling Charges.

i. Following expiration of Carrier's initial Commitment Discount Level, the throughput and empty handling charges payable by the Carrier for each half-year period



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shall be calculated by reducing the Base Rate then in effect under this Agreement by the discount for Carrier's Commitment Discount Level then in effect.

ii. These discounts are as follows:

| Container Volume | Loaded Throughput Discount | Empty Handling Charge Discount |
|---|---|---|
| 10,001 to 15,000 | 5.8% | 5.8% |
| 15,001 to 25,000 | 11.7% | 11.7% |
| 25,001 to 35,000 | 17.5% | 17.5% |
| 35,001 to 50,000 | 22.2% | 22.2% |
| 50,001 to 75,000 | 28.7% | 28.7% |
| 75,001 to 110,000 | 33.9% | 33.9% |
| 110,001 to 150,000 | 35.7% | 35.7% |
| 150,001 to 175,000 | 38.0% | 38.0% |
| 175,001 to 200,000 | 40.4% | 40.4% |
| 200,001 to 250,000 | 42.7% | 42.7% |
| 250,001 or more | 44.7% | 44.7% |

In calculating the percentage discount, fractions of $0.01 shall be rounded to the nearest penny, provided that fractions of $0.005 shall be rounded up to $0.01.

iii. No credits shall be granted by PHA, nor additional charges assessed by PHA, in the event the Container Volume actually experienced during a six-month period is more or less than the Container Volume for such period as determined in Section 3(f)(iv) or 3(f)(v).

iv. The reduction in throughput and empty charges hereunder resulting from application of Commitment Discounts to loaded throughput and empty handling charges, based on annualized Container Volume, shall be deemed to comprise an additional portion of the Commitment Discount provided to Carrier.

v. If during the Term of this Agreement, PHA enters into a lease agreement with a third party terminal operator for operation of a container terminal facility ("*Future PHA-Third Party Leased Facility*") within the Terminal Region (as hereinafter defined), Carrier's loaded containers that are moved through such terminal facility may be counted toward Carrier's Container Volume for the applicable Determination Period in determining Carrier's Commitment Discount under this Agreement.

vi. The "*Terminal Region*" means destinations served by all ports along the Texas coast, including Galveston Bay, beginning with the port of Beaumont, to and including the port of Freeport.



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4. Empty Container Yard.

a. Subject to the limitations set forth in Section 4.c below, PHA assumes the responsibility and expense for the expeditious movement of Carrier's empty containers between their assigned point of rest at Barbours Cut Terminal and the private lessee-operated empty container facility on PHA property within Barbours Cut Terminal ("*Empty Container Facility*") as designated by Carrier, to meet vessel movements as reasonably designated by Carrier, subject to the ability of the Empty Container Facility to accommodate such movements. Except for such empty handling charges (and discounts) specifically provided for herein, all rates and services to be provided in connection with the Empty Container Facility shall be negotiated and contracted separately between Carrier and the Empty Container Facility operator, provided that the terms of such rates and services shall be subject to the restrictions contained in PHA's lease with the Empty Container Facility operator ("*Empty Container Facility Lease*"), including without limitation the permitted capacity of the Empty Container Facility. PHA shall not require any increase in such rates in excess of amounts required to adequately provide empty container yard services. The Empty Container Facility Lease provides that the annual increase in any Miscellaneous Fee rate (as defined therein) for Empty Container Facility services shall not exceed five percent (5%) of the Miscellaneous Fee rate then in effect or the Cost Adjustment (as defined therein) applied to the Miscellaneous Fee rate then in effect.

b. Carrier may at its option obtain services for depot services and maintenance and repair work for empty refrigerated containers and tanks outside of the designated Empty Container Facility on PHA property, provided such vendor meets required labor standards as outlined in the International Longshoremen's Association, AFL-CIO master contracts. Carrier may dispatch empty refrigerated containers and tanks directly from Barbours Cut Terminal and exempt such empty refrigerated containers and tanks from being moved to and from the designated Empty Container Facility on PHA property, as reasonably requested.

c. The term of the current lease between PHA and the lessee of the Empty Container Facility shall expire on April 30, 2021. Notwithstanding the provisions of Section 4.a and b above, PHA shall have no obligation after April 30, 2021 to lease the Empty Container Facility to the current tenant or any other entity or to assume the responsibility or expense for moving Carrier's empty containers between their assigned point of rest at Barbours Cut Terminal and any lessee-operated empty container facility on PHA property within Barbours Cut Terminal.

5. Cargo Commitment.

a. Movement of Loaded Containers. During the term hereof, no less than 90% of Carrier's loaded containers in ocean transportation in the foreign commerce of the United States and Carrier's loaded containers transshipped at United States ports, that are to be delivered to or loaded at the Terminal Region, shall be moved by Carrier exclusively through the Terminals (the "*Cargo Commitment*"). The Cargo Commitment shall include without limitation Carrier's loaded containers in ocean transportation in the foreign commerce of the



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United States and Carrier's loaded containers transshipped at United States ports that are moved through any Future PHA-Third Party Leased Facility. Carrier shall submit to PHA by the tenth calendar day of each month during the Term, manifests showing any and all cargo carried in loaded containers to or from the Terminal Region that was not loaded or discharged at the Terminals during the immediately preceding month. Except as provided in Section 5.b below, Carrier's failure to meet the Cargo Commitment shall be an Event of Default.

b. Shortfall Amount.

i. In the event that during any Determination Period Carrier fails to meet the Cargo Commitment, it shall not be an Event of Default hereunder (and PHA shall have no remedies other than its right to payment of the Shortfall) if Carrier pays to PHA the "Shortfall Amount" as hereinafter provided. If Carrier fails to pay the Shortfall as hereinafter provided, such failure shall constitute an Event of Default affording PHA all rights and remedies set forth herein. PHA shall determine and bill Carrier the Shortfall Amount for the previous Determination Period on or after January 1 and July 1 of each year and Carrier shall pay the Shortfall Amount by no later than thirty (30) days from the date of invoice.

ii. The Shortfall Amount shall equal the Base Rate in effect for the applicable Determination Period reduced by the applicable Commitment Discount Level for the applicable Determination Period multiplied by the difference between 90% of the loaded containers delivered to or loaded at the Terminal Region during such Determination Period less the number of Carrier's loaded containers moved through the Terminals during such Determination Period.

iii. If Carrier requests PHA to allow a new waterborne service ("*New Service*") carrying Carrier's cargo to call Bayport Terminal or Barbours Cut Terminal and PHA denies such request due to a decision, condition, or circumstance under the control of PHA, Carrier's loaded containers that are moved by the New Service and delivered to or loaded at the Terminal Region shall be included in the Cargo Commitment but shall not be counted toward Carrier's Container Volume in determining Carrier's Commitment Discount. If PHA later consents in writing to Carrier's request and Carrier fails to begin the New Service at either Terminal within sixty (60) days of PHA's consent, Carrier's loaded containers that are moved by the New Service and delivered to or loaded at the Terminal Region shall no longer be included in the Cargo Commitment and shall not be counted toward Carrier's Container Volume in determining Carrier's Commitment Discount.

6. Applicability of Agreement.

The rights of Carrier to obtain the Commitment Discount and obligation of Carrier to perform the Cargo Commitment shall apply to Carrier's cargo carried in ocean transportation in the foreign commerce of the United States and Carrier's cargo transshipped at United States ports, subject to the terms of Section 5.b.

7. Events of Default.



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Notwithstanding any provision to the contrary in the Tariffs, each of the following occurrences shall constitute an "Event of Default" by a party under this Agreement:

a. The failure of such party to pay any undisputed amounts, including the Shortfall, due and owing to the other party as and when due and the continuance of such failure for a period of thirty (30) days after written notice to such other party specifying the failure.

b. The failure of such party to perform, comply with, or observe any material agreement, obligation, or undertaking of such party, or any other material term, condition or provision, in this Agreement, and the continuance of such failure for a period of thirty (30) days after written notice to such party from the other party specifying the failure.

c. The filing of a petition in bankruptcy, insolvency, similar debtor relief or business reorganization of by or against such party (i) in any bankruptcy or other insolvency proceeding, (ii) seeking any relief under the Code or any similar debtor relief law, (iii) for the appointment of a liquidator or receiver for all or substantially all of such party's property or for such party's interest in this Agreement; or (iv) to reorganize or modify such party's capital structure.

d. The admission by such party in writing that it cannot meet its obligations as they become due or the making by such party of an assignment for the benefit of its creditors.

8. Remedies on Event of Default.

a. Upon any Event of Default, the non-defaulting party may, at its option and in addition to all other rights, remedies, and recourses afforded under the Agreement or by law or equity, terminate this Agreement by the giving of written notice to the other, in which event the defaulting party shall pay to the non-defaulting party upon demand the sum of:

i. All amounts due the non-defaulting party under this Agreement or the Tariffs accrued to the date of termination; and

ii. All amounts due under Section 9 of this Agreement (as applicable).

b. Either party may restrain or enjoin any Event of Default or threatened Event of Default by the other without the necessity of proving the inadequacy of any legal remedy or irreparable harm.

c. The rights, remedies, and recourses of either party for an Event of Default shall be cumulative and no right, remedy or recourse of the non-defaulting party, whether exercised by the non-defaulting party or not, shall be deemed to be in exclusion of any other. Notwithstanding the foregoing, the rights, remedies, and recourses of either party for an Event of Default shall not include entitlement to punitive, indirect, or consequential damages.



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9. Payments by Carrier.

Upon an Event of Default resulting from the failure of Carrier to perform, comply with, or observe its agreements, obligations, and undertakings in Section 5 of this Agreement, including without limitation its failure to pay the Shortfall by no later than thirty (30) days from the date of invoice, and the continuance of such failure for a period of thirty (30) days after written notice from PHA to Carrier specifying the failure, Carrier shall pay and refund to PHA the total amount of the Commitment Discount provided to Carrier for those five (5) years of the term during which Carrier's Container Volume was the highest, or such shorter period during which this Agreement has been in effect. Carrier understands and agrees that the exact amount of damages to PHA as a result of an Event of Default under Section 5 hereof is and will be difficult to determine. PHA and Carrier recognize the delays, expense, and difficulties involved in proving the actual loss suffered by PHA upon such Event of Default. Accordingly, instead of requiring any such proof, PHA and Carrier agree that as liquidated damages (but not as a penalty), the Carrier shall pay such amount. Carrier agrees that such amount is a fair and reasonable estimate of the amount of damages PHA will incur upon an Event of Default under Section 5 hereof. Carrier specially binds and obligates itself to pay such damages to PHA. No statute of limitation or other time bar limitation shall apply to the obligations and liability under this Section 9 and Carrier hereby waives the same and similar defenses with respect to such obligations and liability.

10. Force Majeure.

a. In the event that PHA's premises are damaged or destroyed by acts of God including but not limited to flood, earthquake, volcanic eruption, tidal wave, windstorm, hail, or should they be seized, or operation of or full utilization thereof be suspended, abated, prevented or impaired by reason of war, warlike operations, acts of terrorism, governmental decree, strikes, or other labor disputes, lockouts or other work stoppages (provided such are bona fide labor / management disputes) or by reason of any other condition beyond the control of the parties (but excluding the failure of either party to pay amounts owing hereunder or to third parties when due), so as to render the premises wholly or partially untenable or unfit for use, PHA's obligations hereunder and Carrier's Cargo Commitment in Section 5 hereof shall be reduced on a pro-rata basis commensurate with the period of force majeure.

b. In the event of any of the aforementioned force majeure events affecting Carrier's operations, including without limitation a seamen's strike, which prevents or impairs the movement of vessels, containers, or cargo by Carrier to the Terminals, upon written notification from Carrier to PHA indicating the effective date of such force majeure event, Carrier's Cargo Commitment in Section 5 hereof shall be reduced for Carrier on a pro-rata basis for the period of force majeure.

c. Any party asserting force majeure under this Section 10 shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence



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which would justify such an assertion, to permit prudent actions to be taken to address the circumstances.

11. Assignments.

a. Neither party may assign its rights or delegate its obligations under this Agreement without the prior consent of the other party, which consent shall not be unreasonably withheld except that PHA's consent shall not be required for an assignment or transfer of this Agreement to an affiliate that is (i) another common carrier and (ii) by virtue of equity ownership, is under common control with Carrier. Any assignment or transfer of this Agreement to an affiliate that is not a common carrier shall be subject to the provisions of subparagraph (b) below. Carrier shall provide no less than thirty (30) days prior written notice to PHA of any assignment to an affiliate under this subpart (a).

b. In the event of a transfer by merger, consolidation, or dissolution, or by any change in ownership or power to vote a majority of the voting interests in Carrier, or in Carrier's direct and indirect parents, through direct or indirect ownership or power to control the other's equity interests outstanding at the time of execution of this Agreement (other than a change in ownership or power to vote among the existing equity holders of Carrier at the time of execution of this Agreement), PHA shall be entitled to terminate this Agreement on thirty (30) days written notice to Carrier, and no penalty or damages shall be payable by either party as a result of such termination.

12. Notices.

a. All notices and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by telephonic facsimile or registered or certified United States Mail, postage prepaid, if to:

| | |
|---|---|
| PHA: | Port of Houston Authority<br>111 East Loop North<br>Houston, Texas 77029<br>Attention: Chief Port Operations Officer<br>Fax No. (713) 670-2697 |
| With a copy to: | Port of Houston Authority<br>111 East Loop North<br>Houston, Texas 77029<br>Attention: Chief Legal Officer<br>Fax No. (713) 670-2611 |
| Carrier: | Mediterranean Shipping Company SA<br>12-14 Chemin Rieu<br>1208 Geneva<br>Switzerland |



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Attention: Captain Raffaele Porzio
Telephone: +41 22 703 8665
Mobile: +41 79 819 4126
E-mail: Raffaele.porzio@msc.com

With a copy to:

MSC (USA) Inc.
700 Watermark Blvd
Mount Pleasant, SC 29464
Attention: Christopher J. Parvin
Telephone: +1 843 654 6053
Mobile: +1 843 200 2890
E-mail: Christopher.parvin@msc.com

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner.

b. Mailing or Facsimile Effective. Notices, filings, consents, approvals and communications given by mail or facsimile shall be deemed delivered twenty-four (24) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above, or confirmation of facsimile delivery to the telephone number set forth above.

13. General Provisions.

a. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

b. Applicable Law/Dispute Resolution.

i. This Agreement, and all claims, disputes or disagreements arising out of or connected with this Agreement, its validity or any breach thereof, shall be governed by the laws in effect in the State of Texas (excluding conflicts of laws provisions), and to the extent applicable to maritime issues, the maritime laws of the United States (excluding conflict of laws provisions).

ii. PHA and Carrier desire to resolve any dispute, which may arise in connection with the Agreement in a timely and efficient manner. The parties therefore agree that the parties will attempt to resolve disputes arising hereunder in accordance with the following procedures.

iii. Either party may request the other to attend a meeting for the purpose of resolving any dispute or disagreement arising from the provisions specified in the Agreement. Said meeting shall be held either in person in Houston, Texas, or by telephone



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within five (5) business days of receipt of written request specifying a brief description of the dispute, the monetary amount involved if known, and the remedies sought.

iv. If the matter is not resolved in such meeting, or if such meeting is not held, either party may make written demand to attempt to resolve such dispute by non-binding mediation. Within seven (7) days after service of written notice on the other party demanding mediation, the parties in dispute shall jointly agree upon a mediator, and within thirty (30) days thereafter the parties shall undertake such mediation in Houston, Texas. In no event shall the parties be obligated to pursue mediation that does not resolve the issue within thirty (30) days after the mediation is initiated or sixty (60) days after mediation is requested.

v. The parties shall share the costs of the mediation equally.

c. Construction. Unless the context of this Agreement clearly requires otherwise, (i) pronouns, wherever used, and of whatever gender, shall include natural persons and corporations and associations of every kind and character; (ii) the singular shall include the plural wherever and as often as may be appropriate; (iii) the term "includes" or "including" shall mean "including without limitation;" (iv) the word "or" has the inclusive meaning represented by the phrase "and/or;" and (v) the words "hereof" or "herein" refer to this entire Agreement and not merely the section number in which such words appear. Section headings in this Agreement are for convenience of reference and shall not affect the construction or interpretation of this Agreement.

d. Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

e. Further Acts. Each of the parties hereto shall execute, acknowledge and deliver all such documents, instruments, stipulations, and affidavits and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

f. Third Parties. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

g. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

h. Amendments. No change or addition shall be made to this Agreement except by a written amendment executed by the parties hereto.



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i. Approvals. Each of the parties respectively represents and warrants to the other that all approvals or consents necessary to the effectiveness of this Agreement have been granted or obtained.

j. Authority. Each party hereby represents that:

i. Each party has complied or shall timely comply with all applicable laws and has taken or shall take all necessary steps, to enter into this Agreement and obligate itself hereunder.

ii. Each party has the authority to enter into this Agreement and comply with its requirements.

iii. The individuals executing this Agreement on behalf of the respective parties is authorized and empowered to bind the party on whose behalf each such individual is signing.

k. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect and this Agreement shall be deemed reformed to replace the void or unenforceable provision with a valid and enforceable provision as similar as possible in effect to the void or unenforceable provision. The parties shall meet and confer as soon as practicable for the purpose of drafting, in good faith, the substitute provision. If an applicable law or court of competent jurisdiction prohibits or excuses either party from undertaking any contractual commitment to perform an act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit such party to take such action at its discretion. If, however, such party fails to take the action required hereunder, the other shall be entitled (subject to, and in addition to the remedies provided herein) to terminate this Agreement.

l. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors and assigns; provided, however, that this subsection shall not negate, diminish, or alter the restrictions on transfers applicable to Carrier set forth elsewhere herein.

m. Time of Essence. Time is of the essence of this Agreement and each provision hereof.

n. Interpretation. Both parties and their respective legal counsel have reviewed and have participated in the preparation of this Agreement. Accordingly, no presumption will apply in favor of either party in the interpretation of this Agreement or in the resolution of the ambiguity of any provision in the Agreement.

o. Counterparts. This Agreement may be signed in counterparts, and the fully executed counterparts shall together constitute a single original Agreement.



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**[SIGNATURE PAGE FOLLOWS]**



RA

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IN WITNESS WHEREOF, the parties have executed this Agreement in multiple counterparts effective as of the Effective Date.

PHA:

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS

By: _____

Name: Jeff Davis

Title: CPOO

Date: 5-15-18

Authorized by PHA Minute No. 2018-0416-__

APPROVED AS TO SUBSTANCE:

_____
Jeff Davis, Chief Port Operations Officer

APPROVED AS TO FORM:

_____
Erik Eriksson, Chief Legal Officer

CARRIER:

_____

By: _____

Name: RAFFAELE BOTTO

Title: SVP OPERATION

Date: _____

MSC
MEDITERRANEAN SHIPPING COMPANY S.A.
12-14, CHEMIN RIEU
CH-1208 GENEVA / SWITZERLAND



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