

**USMX-ILA MASTER CONTRACT  
MEMORANDUM OF SETTLEMENT**

**BETWEEN**

**UNITED STATES MARITIME ALLIANCE, LTD.  
(For And On Behalf of Management)**

**AND**

**INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO  
(For And On Behalf of Itself And Each Of Its Affiliated Districts  
And Locals Representing Longshoremen, Clerks, Checkers And  
Maintenance Employees Working On Ships And Terminals In  
Ports On The East And Gulf Coasts Of The United States)**

This Memorandum of Settlement ("MOS") entered into this 16<sup>th</sup> day of October, 2009, extends the term and modifies the provisions of the USMX-ILA Master Contract covering the period from October 1, 2004, through September 30, 2010 ("2004 Master Contract"). Except as modified herein, all the terms and conditions of the 2004 Master Contract will remain in full force and effect.

**A. TERM OF AGREEMENT - Modifying Article XVI of the 2004 Master Contract**

1. The term of the Master Contract and of all local collective bargaining agreements covering employees engaged in work involving container and ro-ro

operations on the East and Gulf Coasts of the United States shall be extended through and including September 30, 2012.

**B. WAGES - Modifying Article II of the 2004 Master Contract**

**1. Wage Increases – Current Employees**

(a) Effective October 1, 2009, employees whose straight-time basic wage rate in effect on September 30, 2009, is \$30 per hour shall receive an increase of \$1.00 per hour in their straight-time basic wage rate as provided in Section 1(a) of Article II of the 2004 Master Contract.

(b) Effective October 1, 2011, employees whose straight-time basic wage rate in effect on September 30, 2011, is \$31.00 per hour shall receive an increase of \$1.00 per hour, so that their straight-time basic wage rate shall be \$32.00 per hour.

(c) Effective October 1, 2009, employees whose straight-time basic wage rate in effect on September 30, 2009, is less than \$30 per hour and whose straight-time basic wage rate in effect on September 30, 2004, was more than \$21 per hour shall receive an increase of \$1.00 per hour in their straight-time basic wage rate as provided in Section 1(a) of Article II of the 2004 Master Contract.

(d) Effective October 1, 2009, employees whose straight-time basic wage rate in effect on September 30, 2009, is less than \$30 per hour and whose straight-time basic wage rate in effect on September 30, 2004, was \$21.00 per hour or less shall receive an increase of \$1.50 per hour in their straight-time basic wage rate as provided in Section 1(b) of Article II of the 2004 Master Contract.

## **2. Starting Wage Rate**

(a) The starting straight-time basic wage rate for new employees who enter the industry on or after October 1, 2009, shall be \$20.00 per hour.

(b) Effective October 1, 2009, employees who after receiving the increase of \$1.50 per hour set forth in Section 1(b) of Article II of the 2004 Master Contract still have a straight-time basic wage rate that is less than \$20.00 per hour shall have their straight-time basic wage rate increased to \$20.00 per hour.

## **3. Tiered Wage Progression Formula**

(a) Effective April 1, 2012, all employees who are receiving a straight-time basic wage rate on September 30 of the prior Contract Year that is less than the highest straight-time basic wage rate will receive an increase in their straight-time basic wage rates in accordance with the following Tiered Wage Progression Formula:

- (i) On their third (3<sup>rd</sup>) Industry Employment Anniversary Date, twenty-five percent (25%) of the difference between the highest straight-time basic wage rate and the employee's straight-time basic wage rate on September 30 of the prior Contract Year;
- (ii) On their fifth (5<sup>th</sup>) Industry Employment Anniversary Date, fifty percent (50%) of the difference between the highest straight-time basic wage rate and the employee's straight-time basic wage rate in effect on September 30 of the prior Contract Year;
- (iii) On their seventh (7<sup>th</sup>) Industry Employment Anniversary Date, seventy-five percent (75%) of the difference between the highest straight-time basic wage rate and the employee's straight-time basic wage rate in effect on September 30 of the prior Contract Year; and
- (iv) On their ninth (9<sup>th</sup>) Industry Employment Anniversary Date, one hundred percent (100%) of the difference between the highest straight-time basic wage rate and the employee's straight-time basic wage rate in effect on September 30 of the prior Contract Year.

**(b) Initial Application of Tiered Wage Progression Formula.**

An employee who is eligible to receive an increase in the straight-time basic wage rate on April 1, 2012, pursuant to the Tiered Wage Progression Formula shall

receive the increase in two (2) installments: 50% on April 1, 2012, and 50% on July 1, 2012.

(c) **Definitions.** The following definitions shall apply to the Tiered Wage Progression Formula:

- (i) An employee's Industry Employment Anniversary Date will be based upon the number of Qualified Anniversary Years with which the employee has been credited as of September 30 of the prior Contract Year;
- (ii) A Qualified Anniversary Year for all Contract Years prior to October 1, 2009, is one in which the employee is credited with at least one (1) hour of service. A Qualified Anniversary Year for all Contract Years after September 30, 2009, is one in which the employee is credited with at least 700 hours of service.
- (iii) When applying the Tiered Wage Progression Formula, the highest straight-time basic wage rate shall be the rate in effect on the date the Formula is applied.

(d) **Future Application of Tiered Wage Progression Formula.**

After the expiration of this MOS, the Tiered Wage Progression Formula shall continue in full force and effect in subsequent Master Contracts commencing October 1, 2012, including any extension of this MOS. On October 1, 2012, and on each October 1 thereafter while the Tiered Wage Progression Formula remains

in effect, employees shall be entitled to receive an increase in their straight-time basic wage rate pursuant to the Tiered Wage Progression Formula payable on that date.

**C. MILA - Modifying Article XII of the 2004 Master Contract**

Section 2(a) of Article XII of the 2004 Master Contract is modified as follows:

- (a) The increase of \$0.25 per ton in the CR-4 tonnage contribution scheduled to take effect on October 1, 2009, is rescinded.
- (b) Effective October 1, 2009, the \$1.20 per ton CR-4 tonnage contribution rate that was in effect as of September 30, 2009, shall be reduced to \$1.00 per ton.
- (c) Effective October 1, 2011, the CR-4 tonnage contribution rate shall be increased by \$0.15 per ton, thus raising the CR-4 tonnage contribution rate from \$1.00 per ton to \$1.15 per ton.

**D. CONTAINER ROYALTY CAP - Modifying Article XI of the 2004 Master Contract**

1. Effective October 1, 2009, Section 1 of Article XI of the 2004 Master Contract is amended to delete the reference to the Container Royalty Cap as provided in Section 4 of Article XI of the 2004 Master Contract.

2. Effective October 1, 2009, the Carriers shall have the right to suspend temporarily the payment of the First and Third Container Royalties set forth in Section 1 of Article XI of the 2004 Master Contract until the Carriers have recouped the sum of \$42 million. USMX shall determine the period of the suspension and the manner in which each Carrier shall share in the recoupment of the \$42 million. USMX shall have the obligation to inform the ILA when the suspension has commenced and when it has expired.

3. Effective October 1, 2009, Sections 3 and 4 of Article XI of the 2004 Master Contract, which impose caps on container royalty contributions and benefit payments, are deleted in their entirety.

4. Effective October 1, 2009, the \$0.30 per ton contribution rate to the Carrier-ILA Container Freight Station Trust Fund (“CFS”) set forth in Section 5 of Article XI of the 2004 Master Contract is rescinded in its entirety.

5. Effective October 1, 2010, the contribution rate to the CFS shall be at \$0.05 per ton, which shall be paid until the expiration of the term of the Master Contract as defined in Section A of this MOS.

**E. CARRIER-ILA CONTAINER ROYALTY FUND NO. 5**

The following new provisions shall be added to Article XI of the 2004 Master Contract:

1. A new Carrier-ILA Container Royalty Fund No. 5 (“CR-5 Fund”) shall be established as of October 1, 2009. The CR-5 Fund shall be administered by a board of trustees comprised of an equal number of trustees appointed by the ILA and by USMX.

2. Effective October 1, 2009, a tonnage contribution rate of \$0.60 per ton shall be paid for the funding of the CR-5 Fund. Effective October 1, 2010, the CR-5 Fund tonnage contribution rate shall be increased by \$0.10 per ton, raising the CR-5 Fund tonnage contribution to \$0.70 per ton, which shall be paid until the expiration of the term of the Master Contract as defined in Section A of this MOS.

3. The sole and exclusive purpose of the CR-5 Fund shall be to provide financial assistance to joint Management-ILA employee benefit plans (other than pension plans) in the local ports or districts. Applications for financial assistance will be granted to local employee benefit plans that are in need due to shortfalls in funding provided the plans meet the criteria for assistance established by the CR-5



Fund trustees, except for the following payments which the CR-5 Fund will distribute without the necessity of any showing of need:

- (a) Commencing with the Contract Year ending September 30, 2010, each local port shall be entitled for each Contract Year during the term of the Master Contract as defined in Section A of this MOS to receive from the CR-5 Fund an amount equal to the CAP excess distribution paid to that port for the Contract Year ending September 30, 2009, calculated in accordance with the provisions of Section 4 of Article XI of the 2004 Master Contract that were in effect until October 1, 2009.
  
- (b) Commencing with the Contract Year ending September 30, 2010, the South Atlantic District Escrow Fund (SADEF) and the West Gulf's Maritime-ILA Pension, Retirement, Welfare & Vacation Fund (PRW&VF) shall each be entitled for each Contract Year during the term of the Master Contract as defined in Section A of this MOS to receive an amount from the CR-5 Fund to fund vacation and holiday benefits calculated in accordance with the terms and provisions of the letter agreements between USMX and the South Atlantic & Gulf Coast District, ILA, dated April 6, 2005 (relating to the West Gulf vacation and holiday benefits) and April 12, 2005 (relating to the South Atlantic vacation and holiday benefits) (hereinafter the "Letter Agreements"). This amount shall not exceed what the SADEF and the PRW&VF will receive from the carriers' CAP excess distribution for the Contract Year ending September 30, 2009. The obligations imposed on the Carriers in the Letter Agreements will be assumed by the CR-5 Fund, as provided herein, for the Contract Years ending September 30, 2010, September 30, 2011, and September

30, 2012, and neither USMX nor the Carriers shall have any further obligations under the Letter Agreements.

**F. NEW TECHNOLOGY - Modifying Appendix G of the 2004 Master Contract**

Effective October 1, 2009, the following new provision shall be added as Paragraph 5 to Appendix G of the 2004 Master Contract:

USMX and the ILA will create a standing Technology Committee in accordance with the provisions of Paragraph 3 of this letter. Members will be appointed shortly after ratification by both USMX and the ILA of the Memorandum of Settlement dated October 16, 2009.

The Committee is charged with developing a mission statement that will include:

- (a) Performing an analysis of any economic impact on wages and benefits;
- (b) Performing an additional analysis on how an automated facility or operation may affect any craft jurisdiction;
- (c) Analyzing possible reassignment, retraining, severance, and/or assignment to the ILA of all employment positions resulting from technological changes in accordance with the provisions of Article X, Section 1 of the Master Contract, after evaluating productivity, tonnage levels and any additional work created by technology;

Following completion of this analysis, the parties shall convene for the purpose of negotiating a final resolution of these issues.

**G. ILA JURISDICTION - Modifying Article VII of the 2004 Master Contract**

Effective October 1, 2009, the following new provision shall be added as Section 11 to Article VII of the 2004 Master Contract:

Management reaffirms the ILA's jurisdiction as set forth in Articles VII, VIII and IX of the 2004 Master Contract and in particular, that such jurisdiction applies from the point at which the container/cargo comes within the control of ILA-represented bargaining unit members. If necessary, issues arising over interpretation of these articles will be adjudicated by the Jurisdiction Committee.

**H. JURISDICTION COMMITTEE - Modifying Section 4 of Article VII of the 2004 Master Contract**

The following new provision shall be added as subsection (c) to Section 4 of Article VII of the 2004 Master Contract:

Decisions of the Jurisdiction Committee are to be implemented by a port immediately unless the Jurisdiction Committee establishes an alternate time schedule. Decisions of the Jurisdiction Committee are final and binding and shall have the force and effect of an arbitration award that may be enforced in a court of law. In addition, the parties shall establish a procedure to resolve a deadlock of the Jurisdiction Committee by selecting in advance a panel of arbitrators that are mutually acceptable and use the next available arbitrator to resolve the

deadlock on a set time schedule. The parties agree that the award is final and binding.

**I. PORT OF DISCOVERY – Modifying Article IX of the 2004 Master Contract**

Effective October 1, 2009, the following new provision shall be added as

Section 5 in Article IX of the 2004 Master Contract:

It is necessary to implement a system to monitor compliance of repair of major damage in accordance with the Master Contract. For this purpose, it shall be the responsibility of each port to establish a procedure that will verify that all parties are complying with the provisions of the Master Contract in that port. Each port shall provide to the Jurisdiction Committee the procedure established in that port.

**J. CONTINUATION OF EXISTING TERMS AND CONDITIONS**

1. All terms and conditions of the 2004 Master Contract in effect on September 30, 2009, except as modified herein, and all terms and conditions of all current local contracts in effect on September 30, 2009, that apply to container and ro-ro operations shall remain in effect through September 30, 2012.

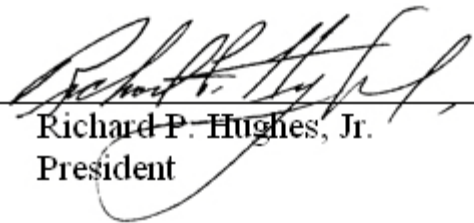
2. This Agreement satisfies all issues between the Parties and shall go into full force and effect upon ratification by the Parties.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on  
the day and year first above written.

UNITED STATES MARITIME  
ALLIANCE, LTD.

INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, AFL-CIO

By   
James A. Capo  
Chairman/CEO

By   
Richard P. Hughes, Jr.  
President

# **MASTER CONTRACT**

between

**UNITED STATES  
MARITIME ALLIANCE, LTD.**  
(For and on Behalf of Management)

and

**INTERNATIONAL  
LONGSHOREMEN'S  
ASSOCIATION, AFL-CIO**  
(For and on Behalf of Itself and Each of Its  
Affiliated Districts and Locals Representing  
Longshoremen, Clerks, Checkers and  
Maintenance Employees Working On Ships  
and Terminals in Ports on the East and  
Gulf Coasts of the United States)

Effective October 1, 2004 For The Six-Year Term  
Expiring on September 30, 2010

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## **P R E A M B L E**

**THIS COLLECTIVE BARGAINING AGREEMENT** made and entered into on the 28th day of June, 2004, by and between **UNITED STATES MARITIME ALLIANCE, LTD. (“USMX”)** for and on behalf of its members and any stevedores, marine terminal operators and carriers which may hereafter become members of USMX or which may hereafter subscribe to this Agreement (hereinafter sometimes collectively referred to as “Management”) and the **INTERNATIONAL LONGSHOREMEN’S ASSOCIATION, AFL-CIO (“ILA”)** for and on behalf of itself and each of its affiliated districts and locals representing longshoremen, clerks, checkers, and maintenance employees working on ships and terminals in ports on the East and Gulf Coasts of the United States constitutes the Master Contract establishing the terms and conditions of employment for longshoremen, clerks, checkers, and maintenance employees employed in container and roll-on/roll-off (“ro-ro”) operations at ports on the East and Gulf Coasts of the United States.

## **ARTICLE I SCOPE OF AGREEMENT**

### **Section 1. Management.**

The multiemployer Management group bound to the Master Contract consists of the carriers, stevedores, marine terminal operators, and port associations that are members of USMX; the carriers, stevedores, and marine terminal operators that are members of the port associations that are members of USMX; and the carriers, stevedores, and marine terminal operators that hereafter become members of USMX or hereafter subscribe to this Master Contract as well as those carriers and other employers bound hereto by operation of law.

**Section 2. Recognition.**

Management recognizes the ILA as the exclusive bargaining representative of longshoremen, clerks, checkers, and maintenance employees who are employed on ships and terminals in all ports on the East and Gulf Coasts of the United States, inclusive from Maine to Texas, and the ILA recognizes USMX as the exclusive employer representative in such ports on Master Contract issues.

**Section 3. Complete Labor Agreement.**

This Master Contract is a full and complete agreement on all Master Contract issues relating to the employment of longshore employees on container and ro-ro vessels and container and ro-ro terminals in all ports from Maine to Texas at which ships of USMX carriers and carriers that are subscribers to this Master Contract may call. This Master Contract as supplemented by local bargaining constitutes a complete and operative labor agreement.

**Section 4. Local Bargaining.**

The port associations which are bound by this Master Contract will engage in local negotiations on those bargaining subjects left open to local negotiations by USMX and ILA. Local agreements must be consistent with and will supplement the terms and conditions of the Master Contract in the local ports covered by this Master Contract.

**ARTICLE II  
WAGES**

**Section 1. Wage Increases - Current Employees.**

(a) Employees whose straight-time basic wage rate in effect on September 30, 2004, is more than \$21.00 per hour shall receive the following increases in their straight-time basic wage rate:

<b><u>Effective Date</u></b>	<b><u>Increase</u></b>
October 1, 2004	\$1.00 per hour
October 1, 2006	\$1.00 per hour
October 1, 2008	\$1.00 per hour
October 1, 2009	\$1.00 per hour

(b) Employees whose straight-time basic wage rate in effect on September 30, 2004, is \$21.00 per hour or less shall receive the following increases in their straight-time basic wage rate:

<b>Effective Date</b>	<b>Increase</b>
October 1, 2004	\$2.00 per hour
October 1, 2006	\$2.00 per hour
October 1, 2008	\$1.50 per hour
October 1, 2009	\$1.50 per hour

**Section 2. New Employees.**

The starting straight-time basic wage rate for new employees who enter the industry on or after October 1, 2004, shall be \$16.00 per hour. New employees shall include any former employee who did not work at least one (1) hour under the prior Master Contract during the period from October 1, 2000, through and including September 30, 2004. New employees hired during the term of this Master Contract shall be entitled to receive the increases set forth in Article II, Section 1(b) of this Master Contract that go into effect after the date of their hire.

### **ARTICLE III HOURS OF WORK**

**Section 1. Working Days.**

The regular or normal working day shall consist of eight (8) hours from 8:00 A.M. to 12:00 Noon and from 1:00 P.M. to 5:00 P.M., and the regular or normal working week shall consist of forty (40) hours made up of five (5) regular or normal working days from Monday to Friday, inclusive.

**Section 2. Nights, Weekends, and Holidays.**

Employees covered by this Master Contract when required by Management shall work Saturdays, Sundays, and legal holidays and any night during the entire seven (7) day week.

**Section 3. Meal Hours.**

Meal hours shall be from 6:00 A.M. to 7:00 A.M., from 12:00 Noon to 1:00 P.M., from 6:00 P.M. to 7:00 P.M., and from 12:00

Midnight to 1:00 A.M. Work shall be performed during meal hours on arrival or sailing days to complete discharging or loading a hatch, or by mutual agreement of the local ILA and port association in the ports or districts covered by this Master Contract.

**ARTICLE IV  
LOCAL FRINGE BENEFIT CONTRIBUTIONS**

**Section 1. Contributions.**

Contributions for local pension, welfare, and other employee fringe benefits shall be increased as follows:

<b><u>Effective Date</u></b>	<b><u>Increase</u></b>
October 1, 2004	\$1.00 per hour, raising the total rate from \$11.00 to \$12.00 per hour, of which \$5.00 per hour shall be paid to the Management-ILA Managed Health Care Trust Fund (hereinafter "MILA").
October 1, 2006	\$0.50 per hour, raising the total rate from \$12.00 to \$12.50 per hour, of which \$5.00 per hour shall be paid to MILA.
October 1, 2008	\$0.50 per hour raising the total rate from \$12.50 to \$13.00 per hour, of which \$5.00 per hour shall be paid to MILA.

**Section 2. Guarantee of Contributions.**

Management guarantees that during the term of this Master Contract the additional contributions made pursuant to Article IV, Section 1 of this Master Contract shall be not less than \$124.4 million.

**Section 3. Allocation of Contributions.**

The contributions set forth in Article IV, Section 1 of this Master Contract may be allocated to fund not only pension and welfare

benefits but also any other fringe benefits as agreed to by the local ILA and port association in each of the ports or districts covered by this Master Contract, except that \$5.00 per hour worked in each port or district shall be paid to MILA.

**Section 4. Limitation on Contributions.**

No man-hour contributions other than those set forth in Article IV, Section 1 of this Master Contract shall be imposed in any port or district except existing contributions in effect on September 30, 2004, which may not be increased during the term of this Master Contract. No tonnage assessment (not in effect on the effective date of this Master Contract) shall be imposed on containerization or ro-ro operations by any local ILA or port association in any port or district covered by this Master Contract during the life of this Master Contract.

**ARTICLE V  
UTILIZATION OF WORK FORCE**

**Section 1. New Employees.**

(a) New employees shall be required to pass a mandatory physical examination and a drug test as established by Management and the ILA after they are offered employment and before they engage in any services.

(b) New employees shall also be required to pass ability and proficiency tests approved by Management and the ILA and shall also be required to be recertified every two (2) years in the case of equipment operators, clerical employees, and maintenance employees.

**Section 2. Training.**

Employees who operate or otherwise handle, or are selected to operate or otherwise handle, wheeled equipment, cranes or other moving equipment or who perform maintenance or clerical work shall receive such training as may be required from time-to-time by Management and shall be subject to such recertification requirements as shall be established by Management and the ILA, including a



physical examination designed by Management and the ILA to demonstrate the employee's ability to perform the essential functions of the employee's job.

**Section 3. Flex-Time.**

(a) **Terminals.** Each local port or district must institute a flex-time system at waterfront terminals for the receiving and delivery of containers and chassis and for work associated with these functions with the details of flex-time to be worked out on a local basis in accordance with the following basic principles:

- (i) For all hours worked before 8:00 A.M. and after 5:00 P.M., the wage rate shall be 1 and 1/4 times the straight-time basic hourly rate except on Saturdays, Sundays and holidays, when the wage rate of 1 and 1/2 times the straight-time basic hourly rate shall apply.
- (ii) The minimum hourly guarantees shall begin at the time the employees begin work.
- (iii) After eight (8) hours worked in any day, the overtime rate of 1 and 1/2 times the straight-time basic hourly rate shall apply.
- (iv) Starting times and meal hours are local issues.

(b) **Ship Operations.** Any port or district may implement a ship or barge operation flex-time system which shall provide for flexible starting times and shift operations. The minimum hourly guarantees shall begin at the time the employees begin work. Starting times and meal hours are local issues.

**Section 4. Gang Size.**

(a) **Longshore Gang.** A two-employee reduction in the total operation of the longshore gang for container and ro-ro ships went into effect on October 1, 1996, and an additional one-employee reduction went into effect on October 1, 1998. These reductions had to be made from other than drivers and/or crane operators. These reductions shall remain in effect during the term of this Master Contract.

(b) **Feeder Barge Gang.** The same reductions in the minimum gang size set forth in Article V, Section 4(a) of this Master Contract went into effect for a feeder barge gang under the Feeder Barge Agreement, which is limited to barges with a capacity of up to 350 containers. These reductions shall remain in effect during the term of this Master Contract.

(c) **Small Boat Gang.** The same reductions in the gang size set forth in Article V, Section 4(a) of this Master Contract went into effect under the Small Boat Agreement, which is limited to ships with a capacity of up to 500 TEUs. These reductions shall remain in effect during the term of this Master Contract.

**Section 5. Staffing.**

(a) **Checker.** One (1) checker shall be assigned to a longshore gang.

(b) **LTL Staffing.** The minimum stuffing and stripping gang for loading and unloading containers shall consist of one (1) longshoreman and one (1) checker, who shall work as directed on one or more containers or trucks simultaneously.

**Section 6. Local Bargaining.**

Subject to the provisions of Article V of this Master Contract, manning, staffing, and the number and use of employees in all crafts shall be the subjects of local bargaining for the purposes of improving port productivity.

## **ARTICLE VI DRUG AND ALCOHOL PROGRAMS**

**Section 1. Local Plans.**

The drug and alcohol program now in effect in each port and district should include the following provisions:

- (a) Every test shall allow for the splitting of the sample. In a positive test the employee would have the right to request a retest done at another approved laboratory.

- (b) The cost of performing drug and alcohol tests will be paid by the employer or the local employer port association.
- (c) Every plan may have mandatory random testing of all crafts. The terms and conditions of such random testing will be determined by the local parties pursuant to applicable law.

**Section 2. Reinstatement.**

The drug and alcohol program now in effect in each port and district shall continue in effect during the term of this Master Contract. The parties recognize that each port has a drug and alcohol policy which provides that an employee who is found in possession of, use of, or other dealings in narcotics, alcohol or other prohibited substances (other than drugs which have been prescribed by a licensed physician, and only while working under the conditions permitted by the employer) while in the course of his employment under the terms of any collective bargaining agreement between the ILA and Management shall be immediately suspended from employment for a period of sixty (60) days and, furthermore, that any second offense, shall result in termination from employment subject to the following rules. In those circumstances where an employee has been terminated from the industry in accordance with any such program and has remained drug-free for one (1) year, such individual will be eligible for a third and final chance for reinstatement in the industry subject to the following terms and conditions which must be determined locally:

- (a) The former employee must provide proof of successful completion of a rehabilitation program resulting in the individual being drug-free for the last twelve (12) months prior to application for reinstatement.
- (b) Reasonable criteria in each port or district shall be established under which the individual shall prove the individual's drug-free status, including periodic testing.
- (c) Application for reinstatement after the second offense must be made within sixty (60) days from the date of termination.

- (d) Once reinstated, the individual will be subject to random testing, and any further violation shall ban the employee for life.

**Section 3. Fresh Start After First Offense.**

If after a first offense, the employee remains drug-free for a period of three (3) years from the date of the first offense, the employee shall be entitled to the rescission of the first offense for the purposes of applying the reinstatement provisions set forth in Section 2 of Article VI of this Master Contract. If the employee commits a second offense before the employee has remained drug-free for three (3) years after the first offense, the employee is not entitled to have the first offense rescinded. An employee is entitled to only one (1) rescission.

**ARTICLE VII  
ILA JURISDICTION GENERALLY**

**Section 1. Containerization Agreement.**

Management hereby reaffirms that employees covered by this Master Contract have jurisdiction over longshore, checker, maintenance, and other craft work conferred on such workers by the Containerization Agreement, a copy of which is appended to this Master Contract as Appendix A.

**Section 2. Rules On Containers.**

The Rules On Containers that were in effect on September 30, 2004, a copy of which is appended to this Master Contract as Appendix B, shall remain in effect during the term of this Master Contract.

**Section 3. Maine to Texas.**

The ILA's Master Contract jurisdiction continues on a multi-port bargaining unit basis covering all ports from Maine to Texas at which ships of USMX carriers and subscribers may call.

**Section 4. Jurisdiction Committee.**

- (a) **Fact Finding.** The Jurisdiction Committee will visit every

port that raises an issue concerning any violation of the Master Contract's jurisdiction provisions. The Jurisdiction Committee will render a report within thirty (30) days of each visit. The Jurisdiction Committee can use an independent third party to perform fact-finding whenever the Committee agrees that such action is necessary.

(b) **Labor Adjustor System.** After October 1, 2004, Management and the ILA will set up a labor adjustor system to hear and resolve Master Contract jurisdictional disputes within thirty (30) days of the dispute being presented. Part of this system will permit the labor adjustors, on an as-needed basis, to use an independent third party to perform fact-finding whenever the labor adjustors agree that such action is necessary.

**Section 5. Supervision and Management.**

The ILA work described in the jurisdiction provisions of this Master Contract is to be performed by ILA-represented workers on the waterfront facility and not by supervision or other non-bargaining unit employees.

**Section 6. Reefer Containers.**

Except where other unions now have jurisdiction, the work of plugging and unplugging reefer containers aboard vessels is not to be performed by other outside persons, such as ship's crew, provided that agreement can be reached regarding minimal manning and agreed hours of the ILA labor.

**Section 7. Port Authorities.**

USMX and the ILA agree to the creation of a joint committee for the purpose of meeting with representatives of port authorities on issues of jurisdiction in accordance with the letter dated August 29, 1996, from Management's Chairman to the ILA's President, a copy of which is appended to this Master Contract as Appendix C.

**Section 8. Marine Terminal Work.**

It is recognized that the marine terminal work of the ILA crafts has traditionally been performed on pier and waterfront facilities. When such marine terminal work is moved off the marine terminal by the terminal operator or by a signatory carrier to facilities in the

port area, the ILA shall retain its work jurisdiction where the work is the work that would have been performed in the marine terminal or port area.

**Section 9. Work Opportunities.**

The parties agree that any chance of reacquiring the work of stuffing and stripping containers requires a dedicated work force of trained, productive workers hired at compensation commensurate with the local competition and without any restrictive rules. The parties should examine into this subject and all of its conditions.

**Section 10. Space Charters.**

The ILA has the same jurisdiction over a signatory space chartered vessel as it has over any vessel operated by a USMX member or by a signatory to this Master Contract. Vessels and containers owned or leased by USMX members or by signatories to this Master Contract shall be subject to ILA jurisdiction in each and every port where their vessels may call from Maine to Texas not only on signatory ships but also on non-signatory ships on which their containers may be carried. Containers of non-signatory carriers carried on signatory ships also shall be subject to ILA jurisdiction.

**ARTICLE VIII**

**ILA JURISDICTION OVER CLERICAL WORK**

**Section 1. Clerical Work.**

Clerks shall perform all clerical work on container waterfront facilities which traditionally and regularly has been performed by them, including but not limited to work related to the receipt and delivery of cargo, hatchchecking, prestow, hatch sequence sheet, plan clerking, recording of receipt and delivery of containers received or delivered at waterfront facilities, timekeeping, location and yard work, and demurrage recording, which work shall not be removed from the waterfront facility. The input and output of information by computers related to the foregoing work functions shall also be performed by Checkers and Clerks.

**Section 2. Guidelines.**

(a) **Framework.** The members of the Jurisdiction Committee, in order to provide a framework to resolve outstanding issues regarding the jurisdiction of the ILA Clerks and Checkers, have agreed upon the following definitions and the statement of principle that will be used to define and identify the specific functions that fall within the ILA's jurisdiction.

(b) **Statement of Principle.** In applying Article VIII, Section 1 of the Master Contract, members of the Jurisdiction Committee shall be bound by the following principle: Management and the ILA agree that the ILA Clerks and Checkers shall have jurisdiction over each and every function set forth in Article VIII, Section 1 of this Master Contract which is performed on container waterfront facilities on behalf of signatory employers in each and every port covered by the Master Contract, provided that such function was at any time in the past performed by the ILA Clerks and Checkers in that port. It is further understood that clerical work currently performed by state port authorities or government agencies, if discontinued, will fall under the ILA's jurisdiction.

(c) **No Waiver.** Unless there is agreement between the ILA in a local port and an employer in the local port, any deviation from the jurisdiction provisions of the Master Contract shall not constitute a waiver, amendment or rescission of the jurisdiction provisions of the Master Contract.

**Section 3. Glossary of Terms.**

The following basic list of terms are intended to be descriptive and not all encompassing and are not intended to limit the jurisdiction or functions of the ILA Clerks and Checkers as they exist under local agreements in the various ports covered by the Master Contract:

(a) **Receiving and Delivery** of cargo shall mean checking and/or clerking of all cargo received into and/or out of a container terminal operated and controlled by a USMX member company. The input and output of information related to change of status (*e.g.*, change of vessel, change of discharge port, etc.) once the container is received at the waterfront facility shall also be performed by the

Checkers and Clerks. Management and the ILA agree that they will develop a methodology to confirm who is performing computer input work that falls within the ILA's jurisdiction. Both Management and the ILA agree that the methodology will vary from one terminal to another because of the different computer systems utilized in various ports and terminals.

- (b) **Hatchchecking** shall mean the checking, tallying, verification and recording of all containers and/or cargo loaded, discharged or restowed to/from a vessel or barge at a container terminal operated and controlled by a USMX member company.
- (c) **Prestow and Plan Clerking** shall mean the making of sequence sheets and/or the making of a prestow plan that would be used in loading and discharging vessels and barges in accordance with Management instructions. Such work shall include but not be limited to all work relating to the bay plan. The use of a computer in the performance of the above function falls within the ILA's jurisdiction.
- (d) **Timekeeping** shall mean the timekeeper's duties and functions, which shall include, at the discretion of Management, but not be limited to, keeping longshore time and the preparation of time sheets and payroll information. If a computer is used to perform this function, this will fall under the ILA's jurisdiction.
- (e) **Location and Yard Work** shall mean the identification, location and control of all containers, chassis, and/or cargo to be loaded, discharged or restowed to or from the vessel or barge. Necessary paperwork and computer utilization required to perform these clerical functions, as required by Management's direction and planning, shall fall within the ILA's jurisdiction.
- (f) **Demurrage Recording** shall mean the preparation, computation, and checking of container demurrage receipts.



**ARTICLE IX  
ILA JURISDICTION OVER  
MAINTENANCE AND REPAIR WORK**

**Section 1. Maintenance and Repair Work.**

It is agreed that the jurisdiction of the ILA shall cover the maintenance and repair of equipment (which term includes containers and chassis) and such equipment as its members have historically maintained and which is owned, controlled, operated, or interchanged by USMX members including, but not limited to (a) container cranes, (b) container handling equipment and (c) container cranes and container handling equipment which are acquired for new deep-sea terminal facilities. The ILA's jurisdiction remains in effect at waterfront container facilities and/or off-pier premises used for servicing and repair of equipment covered by this Master Contract in accordance with the Containerization Agreement. Further, all said equipment, be it owned, leased or controlled by USMX members and/or signatories to the Master Contract, etc., once it is presented at waterfront facilities, shall be covered by this Master Contract. Furthermore, it is recognized that the marine terminal work of all ILA crafts has been traditionally performed on piers and waterfront facilities. When such marine terminal work is moved off the marine terminal by the terminal operator or by a signatory carrier to facilities in the port area, the ILA shall retain its work jurisdiction, where the work is the work that would have been performed in the marine terminal or port area.

**Section 2. Major Damaged Equipment.**

Major damaged equipment must be repaired in the port where the major damage is discovered provided, however, that where a carrier needs to reposition empties or where it is otherwise necessary to its operations, a carrier shall notify the ILA maintenance local of the repositioning and the equipment numbers of the major damaged equipment. Thereafter, it shall also report the time, place and nature of the repairs performed by ILA labor in an ILA port on such damaged equipment. Such notification shall be subject to the audit procedure. In fulfilling the above objectives, it is agreed that:

- (a) No damaged equipment shall be loaded aboard ship for export except under the procedures provided below.
- (b) No employer or carrier shall permit damaged equipment to leave the compound except under the procedures provided herein.
- (c) The employers and carriers shall not enter into any leasing agreement that circumvents the work jurisdiction of the ILA covered under this Master Contract.

**Section 3. Determination Procedure.**

(a) An ILA/Carrier Master Contract Committee has established amended criteria, which are appended to this Master Contract as Appendix D, for a container with major damage in accordance with uniform criteria which relate to safety, structural soundness, roadability and seaworthiness of the various types of containers. These criteria shall be distributed to the ILA maintenance employees in the inspection (or roadability) lanes at each container terminal.

(b) In accordance with the criteria established in subparagraph (a) of Article IX, Section 3 of this Master Contract, ILA employees may designate a container or chassis which they examine and find damaged (as defined in such subparagraph (a) criteria) as out of service on a T.I.R. form and such container shall be placed in a deadline status in accordance with the procedures of the terminal involved.

(c) The carrier shall be notified of such designation as soon as possible and shall have the right to determine that such container or chassis shall either be repaired (in an ILA port of its choosing) or if it disagrees with the ILA determination that such container was damaged within the subparagraph (a) criteria, the container in question shall be placed back into service or repositioned as an empty.

**Section 4. Grievance and Audit.**

The ILA shall have the right to be informed of the action so taken and to grieve the matter, if it so desires, under the terms and

conditions of the grievance procedures agreed to by the parties in this Master Contract. If it is determined under such grievance procedure that the container in question should have been repaired, the carrier shall pay liquidated damages of \$1,000 per container (\$2,000 per container for willful violations), as ruled in such determination. Fact-finding and audit under the grievance procedure shall be provided by an independent auditor selected by the parties who shall have the right to audit all applicable documentation of a carrier to determine compliance with this Master Contract. Such audit shall be available to the grievance procedure and may be used to establish compliance or the lack thereof.

## **ARTICLE X NEW TECHNOLOGY**

### **Section 1. Impact on Employees.**

Where new devices and new methods are utilized, it is recognized that these make the ILA more competitive and their employers more able to provide continued employment. Management also agrees that the impact on employees of any new technology shall be the basis for prior discussions with the ILA. It is agreed that all affected employees who held the positions which have become impacted and discontinued by technology will be afforded the opportunity for retraining at Management's expense to acquire the necessary skills for employment in this industry. Employment positions within the ILA work jurisdiction resulting from technological changes will be offered to ILA employees affected by such changes to the extent that they are able to perform such work with reasonable training. Persons trained under such a program must accept jobs so offered.

### **Section 2. Notification.**

Management shall discuss the impact of the new technology on the workforce with ILA representatives. An employer shall be required to notify in writing the ILA International President and representatives in the local port area of the employer's intended introduction of new technology no later than one hundred eighty (180) days prior to the scheduled date of the employer's implementation of the new technology.

**Section 3. Grievance.**

On failure to reach agreement, the new technology shall not be placed in effect but held in abeyance for a maximum period of sixty (60) days after either side has filed a grievance provided the grievance is filed no later than the sixtieth (60th) day after the issuance by the employer of the notice to ILA representatives in the local port area. The grievance shall be heard and resolved by a three-person panel. The panel shall consist of one (1) person selected by the ILA, one (1) person selected by Management, and an arbitrator selected pursuant to the procedures set forth in Article XIII, Section 6 of this Master Contract. A grievance may be filed only as to the impact of new technology on the workforce including any workers who may be displaced.

**Section 4. Time Limits.**

The following time limits shall be applicable:

- (a) Filing of the grievance, and discussion thereafter for a maximum of twenty (20) days.
- (b) On failure to agree, an expedited arbitration will be held and a determination to be issued by the panel on or before the sixtieth (60th) day after the filing of the grievance.
- (c) The panel shall issue its decision within such 60-day period and the new technology may not be placed in effect by Management until after the panel's decision which shall have only prospective effect.

**ARTICLE XI  
CONTAINER ROYALTIES**

**Section 1. First and Third Container Royalties.**

The First and Third Container Royalties (effective in 1960 and 1977) each in the amount of \$1.00 per weight ton of containerized cargo not stuffed or stripped by ILA-represented labor (with lesser amounts for containerized cargo carried on vessels that are not full container vessels as determined in the Stein Award, a copy of which

is appended to this Master Contract as Appendix E) shall continue to be paid to the various local port and district container royalty funds until the Container Royalty Cap is reached as provided in Section 4 of this Article XI. The First and Third Container Royalties, which are subject to the provisions of the Stein Award and any accommodation approved pursuant to Article XIV of this Master Contract, shall be used by the various local port and district container royalty funds to provide supplemental wage benefits to eligible employees covered by this Master Contract.

**Section 2. Second Container Royalty.**

The Second Container Royalty (effective in 1971) in the amount of \$1.00 per weight ton of containerized cargo not stuffed or stripped by ILA-represented labor (with lesser amounts for containerized cargo carried on vessels that are not full container vessels as determined in the Stein Award, which is attached to this Master Contract as Appendix E) shall continue to be paid during the term of this Master Contract to MILA to be used exclusively for the purpose of funding the managed healthcare program administered by MILA in accordance with the provisions of Article XII of this Master Contract. The Second Container Royalty is subject to the provisions of the Stein Award but not to the provisions of any accommodation approved pursuant to Article XIV of this Master Contract.

**Section 3. Limitation on Supplemental Wage Benefit.**

The supplemental wage container royalty benefit paid to eligible employees shall not exceed a maximum payout of \$16,500 per eligible employee per year. Employees who enter the industry on or after October 1, 1996, will not be entitled to receive supplemental wage container royalty benefits until they have at least three (3) qualifying years and shall not receive more than \$7,500 in any year in which they receive a benefit, as such benefits are determined to be payable by the local container royalty fund trustees. Any excess remaining in a local container royalty fund each year after application of the \$16,500 and \$7,500 limitations to the payment of benefits shall be distributed to employees other than those who have been paid the maximum benefits as determined by the local port or district container royalty fund trustees, who shall adopt appropriate trust amendments as may be required.

**Section 4. Container Royalty Cap.**

(a) **Cap Levels.** The maximum contributions of the First and Third Container Royalties in any contract year shall not exceed the Container Royalty Cap level. During the term of this Master Contract the Container Royalty Cap shall be at the following levels:

<u>Effective Date</u>	<u>Cap Level</u>
October 1, 2004	58 million tons
October 1, 2006	63 million tons
October 1, 2008	68 million tons
October 1, 2009	73 million tons

The Container Royalty Cap levels exclude containerized tons in the Port of Miami/Port Everglades upon which First and Third Container Royalties are each paid at the rate of 55 cents per weight ton.

(b) **Port Benchmarks.** The port benchmarks shall be determined as follows:

- (i) During the term of this Master Contract for each Contract Year in which the Cap Level changes the port benchmarks for the ports of New York/New Jersey, Hampton Roads, Charleston, Savannah, Miami/Port Everglades, and the West Gulf will be recalculated using the tons reported to the local container royalty funds in the “Base Contract Year.” The “Base Contract Year” is the year which commences two (2) years prior to the contract year in which the Cap changes (*e.g.*, the port benchmarks for the contract year commencing October 1, 2004, will be calculated based on the container royalty tons reported in the Base Contract Year beginning October 1, 2002, and ending September 30, 2003). Individual port benchmarks for the ports of New York/New Jersey, Hampton Roads, Charleston, Savannah, Miami/Port Everglades, and the West Gulf will be calculated using the following formula:

$$\frac{\text{Base Year Local CR Tons}}{\text{Base Year CR Tons In All Master Contract Ports}} \times \text{Applicable CR Cap Level}$$

(ii) During the term of this Master Contract with respect to the ports of Boston, Philadelphia, Baltimore, Wilmington, NC, Jacksonville and New Orleans, the port benchmark for each of these ports shall be the lesser of (a) the port's benchmark as of September 30, 2004, or (b) the tons reported in the port for container royalty purposes in the Contract Year ending September 30, 2003.

(c) **Distribution of Cap Excess.** The payment of First and Third Container Royalty assessments shall cease in every port when the number of tons reported to the local container royalty fund in the port exceeds the benchmark determined using the formula set forth in Section 4(b)(i) of this Article XI as if that formula were applicable to all Master Contract ports, and First and Third Container Royalty assessments in excess of such benchmarks shall be paid to CCC Service Corporation for distribution as follows:

- (i) Forty (40) percent shall be refunded to the carriers;
- (ii) Twenty (20) percent shall be paid to MILA; and
- (iii) Forty (40) percent shall be paid to an escrow fund established by a single local port or by a group of ports ("Local Escrow Fund") to pay local benefits.

(d) **Benchmark Payments in Excess of Cap Level.** In the event the application of the provision in Section 4(b)(ii) of this Article XI results in an obligation to pay Container Royalty Dollars Nos. 1 and 3 on tons in excess of the agreed upon Cap Level set forth in Section 4(a) of this Article XI, such obligation shall be satisfied solely from that portion of the container royalties in excess of the benchmarks collected and set aside for distribution to the Local Escrow Funds pursuant to Section 4(c) of this Article XI without any allocation of the amount of that obligation to any particular port.

(e) **Adjustment of Benchmarks.** During the term of this Master Contract, a port's existing benchmark may be reviewed and adjusted prospectively at the beginning of a Contract Year by the parties to this Master Contract if such port experiences a dramatic annual decrease in the tons reported for container royalty purposes.

(f) **Limitation on Use of Cap Refund to Local Escrow Fund.** The portion of the Cap refund paid to a Local Escrow Fund pursuant to Section 4(c) of this Article XI shall not be used for supplemental cash benefits (except as provided in Section 4(d) of this Article XI), nor shall the use of this portion of the Cap refund result in any carrier being considered an employer in relation to any local port employee pension benefit plan within the meaning of the Employee Retirement Income Security Act ("ERISA") except in any port where the carrier already is an employer under ERISA.

(g) **Interest Charges.** Any carrier failing to pay to CCC Service Corporation container royalty assessments in excess of the benchmark in any port as required by Section 4(c) of this Article XI shall become liable to pay interest thereon at an annualized rate of eighteen (18) percent for each month or part thereof for which payment is not received by CCC Service Corporation. With respect to carriers continuing to pay to any local port or container royalty fund assessments in excess of the benchmark in that port, any such local port container royalty fund shall pay such excess to CCC Service Corporation. Any port or district container royalty fund failing to pay such excess to CCC Service Corporation shall pay interest thereon at an annualized rate of eighteen (18) percent for each month or part thereof for which payment is not received by CCC Service Corporation. If all payments due in a Contract Year from any local port container royalty fund for container royalty assessments in excess of the benchmark in that port are not received by CCC Service Corporation by the succeeding March 1, then all carriers that are members of USMX or signatories to this Master Contract can cease to make further First and Third Container Royalty contributions to that port container royalty fund until the full amount due and owing from the fund has been paid to CCC Service Corporation with interest. Thereafter, all payments of container royalties, including monies withheld, shall be resumed. Each port and district container royalty fund shall be obligated to forward to CCC Service Corporation the fund's tonnages, payments, and all other information required by CCC Service Corporation for each fund's plan year not later than sixty (60) days following the close of the plan year.



**Section 5. Carrier-ILA Container Freight Station Trust Fund.**

The Carrier-ILA Container Freight Station Trust Fund ("CFS Fund") shall continue in effect during the term of this Master Contract. The contribution to the CFS Fund shall be 30 cents per weight ton during the term of this Master Contract. The periodic distribution of the amounts to be paid from the CFS Fund and the purposes thereof shall be determined solely by the trustees of the CFS Fund. The CFS Fund shall continue to provide funding for training purposes to the extent that any funds remain after payment for the support of container freight stations. Training programs in each port or district shall be operated under guidelines approved by the trustees of the CFS Fund and shall be funded primarily by funds generated in each local port or district before application is made to the trustees of the CFS Fund.

**Section 6. Carrier-ILA Container Royalty Fund.**

The 75 cents per weight ton Container Royalty No. 4 was eliminated, effective October 1, 1996, and shall not be resumed during the term of this Master Contract. USMX and the ILA shall amend the Agreement and Declaration of Trust of the Carrier-ILA Container Royalty Fund ("CR-4 Fund") to provide that the sole and exclusive purpose of the CR-4 Fund shall be to provide funding for MILA. Each port or district container royalty fund shall be required to report to the trustees of the CR-4 Fund on a basis of not less than once each quarter the total income from each port's or district's collection of First and Third Container Royalty assessments on a tonnage and dollar basis. Such information shall be supplied on uniform forms made available by the trustees of the CR-4 Fund to each local port or district container royalty fund. The required reports shall be supported by annual certified public accountant reports in the form now issued by such local fund's certified public accountant.

## ARTICLE XII

### MILA

#### **Section 1. Management-ILA Managed Health Care Trust Fund.**

The Management-ILA Managed Health Care Trust Fund (“MILA”) is a joint labor-management, Taft-Hartley trust fund managed by an equal number of Management and Union trustees to administer an employee welfare benefit healthcare plan covering active and retired dockworkers covered by this Master Contract and their dependents in all ports except the port of Miami/Port Everglades.

#### **Section 2. Funding.**

MILA is a defined contribution welfare plan that is funded by the following contributions:

(a) **CR-4 Tonnage Contributions.** During the term of this Master Contract tonnage contributions to the CR-4 Fund for the funding of MILA shall be increased as follows:

<b><u>Effective Date</u></b>	<b><u>Increase</u></b>
October 1, 2004	\$0.25 per ton, raising the contribution rate from \$0.20 to \$0.45 per ton.
October 1, 2005	\$0.75 per ton, raising the contribution rate from \$0.45 to \$1.20 per ton.
October 1, 2009	\$0.25 per ton, raising the contribution rate from \$1.20 to \$1.45 per ton.

(b) **Second Container Royalty Contributions.** During the term of this Master Contract, the Second Container Royalty assessment in the amount of \$1.00 per weight ton of containerized cargo not stuffed or stripped by ILA-represented labor (or such lesser amount as may be required under the Stein Award, which is attached to this Master Contract as Appendix E, for containerized cargo carried on vessels that are not full container vessels) shall be paid to MILA to be used exclusively to fund the managed healthcare program administered by MILA. The Container Royalty Cap provisions set forth in Article XI, Section 4 of this Master Contract shall not apply to the Second Container Royalty contributions to MILA.

(c) **Hourly Contributions.** During the term of this Master Contract, \$5.00 of the hourly contributions for local pension, welfare, and other employee fringe benefits set forth in Article IV, Section 1 of this Master Contract shall be paid to MILA.

**Section 3. Second Container Royalty Contributions.**

The Second Container Royalty contributions shall be used exclusively for the funding of MILA healthcare benefits in all ports and districts covered by this Master Contract that participate in the MILA healthcare plan. If the South Atlantic or the West Gulf continue to use the Second Container Royalty contributions for other purposes, then, either or both such areas must pay to the trustees of MILA the equivalent of said Second Container Royalty contributions in total dollars out of the 1993 dollar contributions, if they are being used for welfare purposes, as well as out of other fringe benefit contributions, such as the local fringe benefit contributions set forth in Article IV, Section 1 of this Master Contract and the portion of the container royalties in excess of the benchmarks distributed to the Local Escrow Fund in accordance with Article XI, Section 4(c) of this Master Contract. The trustees in these areas shall remit monthly payments so that MILA has received the same amount that it would have received had the Second Container Royalty contributions been made to the MILA plan.

**Section 4. Eligibility of Active Employees.**

The MILA plan in effect on September 30, 2004, shall be amended to incorporate the following eligibility provisions for active employees:

- (a) To be eligible to be a participant entitled to coverage under MILA's Premier Plan for the calendar year commencing January 1, 2006, and for each of the succeeding calendar years during the term of this Master Contract, an employee must work or be credited with at least 1,300 hours of service in the immediately preceding contract year.
- (b) To be eligible to be a participant entitled to coverage under MILA's Basic Plan, for the calendar year commencing January 1, 2006, and for each of the succeeding calendar

years during the term of this Master Contract, an employee must work or be credited with at least 1,000 hours of service in the immediately preceding contract year.

- (c) To be eligible to be a participant entitled to coverage under MILA's Core Plan for the calendar year commencing January 1, 2006, and for each of the succeeding calendar years during the term of this Master Contract, an employee must work or be credited with at least 700 hours of service in the immediately preceding contract year.

**Section 5. Eligibility of Retirees.**

The MILA plan in effect on September 30, 2004, shall be amended to incorporate the following eligibility provisions for retirees:

- (a) During the term of this Master Contract any retiree who is covered under MILA's Premier Plan as a non-Medicare eligible retiree on September 30, 2004, shall continue to be covered under MILA's Premier Plan, as may be modified, until the retiree becomes eligible for Medicare at which time the retiree's MILA benefits will be limited to Medicare wraparound benefits.
- (b) Any active employee who during a six-month window period, commencing October 1, 2004, and ending on March 31, 2005, elects early retirement under the terms of the local pension plan in effect as of September 30, 2004, and actually retires on or before March 31, 2005, shall be eligible during the term of this Master Contract to be covered by MILA's Premier Plan, as may be modified, until the retiree becomes eligible for Medicare at which time the retiree's MILA benefits will be limited to Medicare wraparound benefits.
- (c) After the window closes on March 31, 2005, until the expiration of the term of this Master Contract, to be eligible for MILA benefits as a non-Medicare eligible retiree, a retiree must be fifty-eight (58) years of age with twenty-five (25) or more years of service, as defined by the local

pension plan, and such retiree will qualify for coverage under MILA's Basic Plan, as may be modified, until such retiree becomes sixty-two (62) years of age, when the retiree will become eligible to be covered under MILA's Premier Plan, as may be modified, until such retiree becomes eligible for Medicare, at which time such retiree's MILA benefits will be limited to Medicare wraparound benefits.

- (d) Any former employee who no later than September 30, 2004, is no longer in the industry but has sufficient service to qualify for a vested pension benefit upon the attainment of the age of sixty-five (65) and who is also entitled to receive MILA benefits as of September 30, 2004, shall be eligible to receive MILA Medicare wraparound benefits when he attains the age of sixty-five (65). Any individual employee who leaves the industry after September 30, 2004, without retiring and who is eligible for a vested pension benefit when he leaves the industry shall not be eligible to receive any MILA benefits when he retires.

**Section 6. Plan Amendments.**

The MILA plan in effect on September 30, 2004, shall be amended to adopt the following plan provisions:

- (a) The co-pay shall be \$15.00 per visit to a primary care physician ("PCP") and \$30.00 per visit to a specialist in the Premier Plan and \$25.00 per visit to a PCP and \$40.00 per visit to a specialist in the Basic Plan, but there shall be no co-pay for an annual physical.
- (b) The payment rate for out-of-network services shall be sixty (60) percent of reasonable and customary eligible charges, and the out-of-pocket annual benefit limits that apply to out-of-network charges shall be \$6,500 per individual and \$13,000 per family.
- (c) There shall be a \$500 annual pharmacy family deductible for all active employees and all retirees (including Medicare-eligible retirees) for brand-name drugs only

except for those brand-name drugs for which there is no comparable generic substitute as determined by the MILA trustees. This deductible replaces the \$500 pharmacy deductible that is currently in place in the MILA plan.

**Section 7. Creation of Core Plan.**

The MILA trustees shall place in effect by January 1, 2006, MILA's Core Plan, which shall provide lesser benefits than those provided by MILA's Basic Plan.

**ARTICLE XIII  
GRIEVANCE PROCEDURE**

**Section 1. Local Level.**

All disputes under this Master Contract involving containerization and ro-ro, including interpretations of this Master Contract, shall be heard initially by the Local Industry Grievance Committee ("LIGC"), which shall consist of the following: three (3) Management representatives (a representative of USMX; a representative of the local port association where the dispute arose; and a local stevedore or terminal operator) and three (3) representatives appointed by the ILA. Requests for interpretations may be brought at any time. The LIGC shall reach a decision within ten (10) days after either a charge has been filed of an alleged violation or a request filed seeking an interpretation.

**Section 2. Appellate Level.**

Where there is a failure to render a decision on the local level or where a party desires to appeal any decision rendered on the local level, such cases may be referred to the Industry Appellate Committee ("IAC").

**Section 3. Appeals From a Decision of the LIGC.**

Appeals from a decision of the LIGC must be taken within twenty (20) days after a decision has been reached and the parties notified or within twenty (20) days from the deadline referred to in Section 1 of this Article XIII for the LIGC to reach a decision.

**Section 4. Appeals Form.**

All appeals must be taken on an appellate form prepared by USMX and the ILA.

**Section 5. Industry Appellate Committee.**

(a) **Number of IAC Members.** The IAC shall be comprised of sixteen (16) representatives of Management and sixteen (16) representatives of the ILA.

(b) **Co-Chairmen.** The President of the ILA shall be Co-Chairman of the Union members of the IAC and the Chairman/CEO of USMX shall be the Co-Chairman of the Management members of the IAC.

(c) **Telephonic Notice.** Either Co-Chairman may call the IAC into session on short notice by telephone with fax confirmation to the other Co-Chairman and Executive Secretary.

(d) **Quorum.** The Co-Chairmen may agree between themselves in special cases to call into session an IAC meeting with less than sixteen (16) members on each side provided that not less than six (6) such members on each side including the Co-Chairmen are convened to hear and determine a dispute. The IAC may hear and determine a dispute by telephone or video-telephone conference on the request of either Co-Chairman.

(e) **Majority Vote.** Decisions by the LIGC and the IAC shall be rendered by a majority vote thereof. Decisions by the IAC shall be final and binding and shall constitute an enforceable award.

(f) **Multi-Port Charges.** Charges of alleged violations of this Master Contract involving more than one (1) port shall be referred directly to the IAC for a final determination.

(g) **Failure to Appear.** If after due and timely notice, either party fails to appear at a meeting of the LIGC or IAC, then the other party may proceed and hear the matter and issue a decision unilaterally.

**Section 6. Arbitration.**

(a) **Panel of Arbitrators.** The Co-Chairmen shall provide for

a panel of at least five (5) and no more than ten (10) named arbitrators who shall serve as the permanent arbitrators of the IAC during the term of this Master Contract. The Labor Arbitration Rules of the American Arbitration Association then in effect shall be utilized in such selection process.

(b) **Selection of Arbitrator.** If the IAC shall be unable to resolve matters referred to it, the Co-Chairmen shall seek to select an arbitrator immediately after the IAC deadlocks. If no such selection is made immediately (on the same day as the deadlock), within a ten (10) day period either party may refer the matter to the arbitrator next in line who is available in accordance with the selection system.

(c) **Selection System.** An arbitrator shall be selected by the Executive Secretary pulling the name of the arbitrator by lottery. This first available arbitrator shall hear and determine the first dispute. After the first selection and thereafter, the lottery shall only include the names of the remaining arbitrators until all arbitrators have been selected in order of their being drawn. For each selection, arbitrators shall be listed in the order of drawing so that the arbitrator first indicating his availability shall be given the assignment. The Co-Chairmen are hereby authorized to oversee such selection and to exercise their discretion in such selection process.

(d) **Expedited Arbitration.** Any party to this Master Contract may, with respect to any grievance, dispute, complaint or claim arising out of or relating to the Master Contract at any point waive any and all preliminary steps of the grievance machinery and submit the matter to arbitration (“expedited arbitration”) at any time after a matter has been considered by the Co-Chairmen. Such requests shall be made in writing by the President of the ILA or the Chairman/CEO of USMX, as the case may be, or their designees. Such writing may be by telegram or a letter hand delivered to the office of the other party. Telephonic or telegraphic notice shall be given at the same time to a member of the arbitration panel who shall immediately thereafter (and not later than twenty-four (24) hours after receipt of such notice) convene an arbitration hearing at such place as the arbitrator shall determine, including the work place where the dispute arose.



(e) **Failure to Appear.** In the event any party fails to appear at any arbitration, including an expedited arbitration hearing, the party failing to appear shall be deemed to have waived its right to contest its non-participation, and the arbitrator shall proceed forthwith to determine the issue.

(f) **Award.** In an expedited arbitration the arbitrator shall issue a short form award at the end of the hearing unless the time to render an award is extended by mutual consent. The arbitrator shall have the right to issue a more detailed decision within thirty (30) days after the rendition of such short form award setting forth the reasons for his award. As to all other arbitrations, the arbitrator shall issue his award as expeditiously as possible. If an award is not rendered within thirty (30) days (unless both parties agree to extend such time period) either party shall have the right to terminate the services of that arbitrator who shall be replaced in accordance with the procedures set forth in Section 6(c) of this Article XIII. If the arbitrator is disabled and is thereby prevented from rendering a decision within thirty (30) days, or if the arbitrator fails to render a decision within thirty (30) days, the parties shall refer the record and briefs to the next arbitrator for decision unless either party objects to such procedure, in which event a new and expedited hearing shall be held.

(g) **Right to Strike.** The ILA shall have the right to refuse to render service to any carrier or direct employer who fails or refuses to abide by the final decisions of the LIGC (if not appealed) or IAC after having been found to have violated any provisions of the Master Contract until said carrier or direct employer comes into full compliance with said decision. The provisions of any “no-strike” clause shall not be applicable in any such situation.

**Section 7. Regular IAC Meetings.**

The IAC shall meet regularly at least three (3) times per year to review the implementation of the Master Contract and the objectives of both parties to develop a dynamic, growth-oriented industry that addresses job opportunities for the work force through competitive and efficient utilization of manpower to meet the needs of the industry. The Co-Chairmen shall fix the date, place, and time of such regular meetings.

**Section 8. Industry Resource Committee.**

The Management-ILA Industry Resource Committee consisting of the Co-Chairmen and seven (7) representatives on each side appointed by each Co-Chairman shall continue in effect for the purpose of considering major industry problems which require consideration for the benefit of Management, the ILA and the employees and which shall serve as a Master Contract planning committee to consider such agendas as may be brought before them by agreement of the Co-Chairmen.

**Section 9. Disputes Among Fund Trustees.**

Any dispute arising among the trustees of the CFS Fund, the CR-4 Fund, MILA, or any other fund whose trustees are appointed pursuant to any of the trusts created under this Master Contract shall be referred and determined in accordance with the arbitration procedures created under the terms of the applicable trust agreement. The trustees of these Master Contract funds shall also enforce the collection of any and all assessments provided under this Master Contract, and all carriers, employers, ILA locals and officials, port associations, local fund trustees, beneficiaries, and other persons claiming any rights or benefits under the Master Contract funds shall be bound by the terms of any directives or awards issued by the trustees of these Master Contract funds, which shall have the full force and effect of arbitration awards and shall be enforceable in the same manner as arbitration awards.

**ARTICLE XIV  
ACCOMMODATIONS**

**Section 1. Existing Accommodations.**

Every accommodation in effect on September 30, 2004, shall continue in effect during the term of this Master Contract. The accommodations in effect as of October 1, 1996, are found in the Appendix attached to the Agreement on Master Contract Issues that was executed by the parties on November 21, 1996, and became effective as of October 1, 1996. The accommodations that went into effect after October 1, 1996, and remained in effect as of September 30, 2004, are found in the March 22, 2002 Memorandum To All

USMX Members from James A. Capo, Chairman/CEO of USMX  
Re: Master Contract Amendments and Accommodations. An  
additional accommodation pertaining to the Puerto Rican trade dated  
December 23, 2003, is attached hereto as Appendix F.

**Section 2. Future Accommodations.**

On and after the effective date of this Master Contract any further accommodation relating to containerization and ro-ro shall be placed in effect only if it is agreed to by the Co-Chairmen of the IAC and such action has been ratified by a meeting of the IAC first held immediately following the agreement between the Co-Chairmen. Each new accommodation must meet the following principles:

- (a) The accommodation must be one which is absolutely essential to the preservation of the existence of the ILA workforce in the port or district involved.
- (b) The accommodation does not impact any of the benefit funds unless the parties at the same time agree to a reduction of benefits. In no event may such regional accommodation prevent the port or MILA from making required contributions to MILA.
- (c) Such regional accommodation may be adopted by the port or district immediately adjacent to the port or district in which the accommodation has been made only upon the approval of the Co-Chairmen and the IAC.
- (d) Such accommodations shall be available to employers and carriers in other ports similarly situated only with the approval of the Co-Chairmen and the IAC.
- (e) In the event any new accommodation is placed into effect without following the procedure set forth in this document, then and in that event, the guilty party or parties shall be subject to the payment of liquidated damages which shall be determined by the IAC, or on failure to agree by the IAC, by an arbitrator acting pursuant to the terms of this Master Contract.
- (f) Any accommodations given by the ILA to any employer or carrier may be placed in effect by any employer or carrier similarly situated.

- (g) The Co-Chairmen and the IAC shall have full power and jurisdiction to enforce and interpret the provisions of this Article XIV.

## **ARTICLE XV NO-STRIKE CLAUSE**

### **Section 1. No Strikes or Lockouts.**

During the life of this Master Contract, Management agrees that there shall be no lockouts or work stoppages by the employers, but this shall not be construed to mean a lay-off of employees due to business conditions, and the ILA agrees that there shall be no strikes or work stoppages by the employees, except as permitted in the Containerization Agreement and in Article XIII, Section 6(g) of this Master Contract.

### **Section 2. Bona Fide Picket Line.**

The right of employees not to cross a bona fide picket line is recognized by Management.

## **ARTICLE XVI TERM OF AGREEMENT**

The term of this Master Contract shall be for six (6) years, from October 1, 2004, through and including September 30, 2010.

## **ARTICLE XVII SUBSCRIPTION AND SIGNATORIES**

### **Section 1. Refusal to Work.**

If any carriers do not subscribe to this Master Contract, the ILA shall have the right not to work on the loading and discharging of their ships or any work ancillary thereto.

### **Section 2. Non-Subscribers.**

If any employers of employees covered by this Master Contract do not so subscribe, the ILA shall have the right not to engage in any

work for them at facilities operated by them. No persons or entities shall have any right to any part of any benefit flowing from this Master Contract unless they or any entities or local unions that represent them have subscribed to and agreed to be bound by this Master Contract. Such subscription shall be accomplished only with the joint consent of USMX and the ILA as to persons who are not members of USMX or of any port association member of USMX.

**Section 3. Fringe Benefit Assessment.**

No assessment for fringe benefits or any other expense shall be imposed upon the carrier members of USMX or carrier signatories to this Master Contract, or any of them, by any entity, whether Management, Labor or Joint, which is not a named party to this Master Contract without the prior written authorization of USMX. No change in any fringe benefit assessment by any port or district shall be made without prior consultation with USMX and the ILA.

**ARTICLE XVIII  
MISCELLANEOUS**

**Section 1. Headings.**

The article and section headings contained in this Master Contract are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Master Contract.

**Section 2. Severability.**

Should any provision of this Master Contract or any trust agreement created hereunder be voided or otherwise held to be unenforceable by any tribunal of any kind, then USMX and the ILA shall immediately meet for the purpose of substituting provisions designed to accomplish the same purposes. Any disagreement under this provision shall be arbitrable in accordance with the provisions of Section 6 of Article XIII of this Master Contract.

**Section 3. Ratification.**

This Master Contract settles all issues between the parties and has been ratified by the members of USMX and by the members of the ILA.

**Section 4. Amendments.**

No amendment of any provision of this Master Contract shall be valid unless the same shall be in writing and signed by the parties.

**IN WITNESS WHEREOF** the parties hereto have executed this Master Contract as of the date first above written.

UNITED STATES  
MARITIME ALLIANCE, LTD.

INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, AFL-CIO

S / James A. Capo

S / John Bowers

\_\_\_\_\_  
James A. Capo,  
Chairman/CEO

\_\_\_\_\_  
John Bowers,  
President

**APPENDIX A**  
**CONTAINERIZATION AGREEMENT**

1. The Agreements of "Management" shall set forth the work jurisdiction of employees covered by the said Agreements in the following terms:

Management and the Carriers recognize the existing work jurisdiction of ILA employees covered by their agreements with the ILA over all container work which historically has been performed by longshoremen and all other ILA crafts at container waterfront facilities. Carriers, direct employers and their agents covered by such agreements agree to employ employees covered by their agreements to perform such work which includes, but which is not limited to:

- (a) the loading and discharging of containers on and off ships
- (b) the receipt of cargo
- (c) the delivery of cargo
- (d) the loading and discharging of cargo into and out of containers
- (e) the maintenance and repair of containers
- (f) the inspection of containers at waterfront facilities (TIR men).

As pertains to (e) above, the Carriers Container Council is and shall remain party to the Charleston Container Maintenance and Repair Contract, effective October 1, 1980 on behalf of all of its members and agrees that an identical contract binds its members as to container maintenance and repair in each South Atlantic port. It is further agreed that the Carriers shall only use vendors who have subscribed to such agreements. Fringe benefit coverage shall be under the South Atlantic Funds including GAI, Vacation, Holiday, Container

Royalty and local deepsea Welfare and Pension Funds. It is further agreed that each Carrier shall subscribe to the foregoing.

2. Management, the Carriers, the direct employers and their agents shall not contract out any work covered by this agreement. Any violations of this provision shall be considered a breach of this agreement.

3. Management and the Carriers agree that the payment of container royalties, as [hereinafter] provided in their agreements, is of the essence to this agreement and, if for any reason during the term of this agreement such payments cannot be made in their present form, then Management and the Carriers shall provide, by some other form of assessment, for the payment of equivalent amounts to be used for the same purposes as said container royalties are presently used.

**(NOTE: Sections 4, 5, 6 and 7 have been deleted.)**

8. **Termination of Agreement:** If any article, section, paragraph, clause or phrase of this Agreement shall, by any state, Federal or other law, or by any decision of any Court or Administrative Agency, be declared or held illegal, void or unenforceable, or be enjoined in any port where the Rules on Containers, hereinafter, are in effect the entire Agreement shall terminate upon sixty (60) days written notice to the other party hereto, in such event, the parties agree to enter into negotiations and either party shall have the right to renegotiate any and all terms of the Master Agreement. If no agreement is reached within the sixty (60) days notice period, the ILA shall have the right to strike and Management shall have the right to refuse to hire employees under this Agreement. The negotiations referred to above shall, under no condition, be subject to grievance or arbitration under this agreement or under any Local Agreement.

9. **Violations of Agreement:** This Agreement defines the work jurisdiction of employees and prohibits the subcontracting out of any of the work covered hereby. It is understood that the provisions of this Agreement are to be rigidly enforced in order to protect against the further reduction of the work force. Management believes that



there may have been violation of work jurisdiction, of subcontracting clauses, and of this Agreement, by steamship carriers and direct employers. The parties agree that the enforcement of these provisions is especially important and that any violation of such other provisions is of the essence of the Agreement. The Union shall have the right to insist that any such violations be remedied by money damages to compensate employees who have lost their work. Because of the difficulty of proving specific damages in such cases, it is agreed that, in place of any other damages, liquidated damages of \$1,000.00 for each violation shall be paid to the appropriate Welfare and Pension Funds. Liquidated damages shall be imposed by the Emergency Hearing Panel described below.

**APPENDIX B**  
**MANAGEMENT-ILA RULES ON CONTAINERS**  
(As amended by Agreement of May 27, 1980)

**PREAMBLE**

This Agreement made and entered into by and between the carrier and direct employer members of the Management Port Associations (hereinafter referred to collectively as "Management") and the International Longshoremen's Association, AFL-CIO ("ILA"), its Atlantic Coast District ("ACD"), its South Atlantic and Gulf Coast District ("SAGO") and its affiliated local unions in each Management port ("locals") covers all container work at a waterfront facility which includes but is not limited to the receiving and delivery of cargo, the loading and discharging of said cargo into and out of containers, the maintenance of containers, and the loading and discharging of containers on and off ships.

Management agrees that it will not directly perform work done on a container waterfront facility (as hereinafter defined) or contract out such work which historically and regularly has been and currently is performed by employees covered by Management-ILA Agreements, including Management-ILA craft agreements, unless such work on such container waterfront facility is performed by employees covered by Management-ILA Agreements.

**RULES**

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other ILA crafts which was performed at deepsea waterfront facilities. These rules do not have any effect on work which historically was not performed at a waterfront facility by deepsea ILA labor. To assure compliance with the collective bargaining provisions, the following rules and regulations shall be applied uniformly in all Management Ports to all import or export cargo in containers:

## **DEFINITIONS**

(a) **LOADING A CONTAINER** – means the act of placing cargo into a container.

(b) **DISCHARGING A CONTAINER** – means the act of removing cargo from a container.

(c) **LOADING CONTAINERS ON A VESSEL** – means the act of placing containers aboard a vessel.

(d) **DISCHARGING CONTAINERS FROM A VESSEL** – means the act of removing containers from a vessel.

(e) **WATERFRONT FACILITY** – means a pier or dock where vessels are normally worked including a container compound operated by a carrier or direct employer.

(f) **QUALIFIED SHIPPER** – means the manufacturer or seller having a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the export cargo being transported and who is named in the dock/cargo receipt.

(g) **QUALIFIED CONSIGNEE** – means the purchaser or one who otherwise has a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the import cargo being transported and who is named in the delivery order.

(h) **CONSOLIDATED CONTAINER LOAD** – means a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo.

## **RULE 3 – BATCHING**

When an employer-member or carrier uses a trucker to remove or deliver containers in batches, or in substantial number, from or to a terminal to another place of rest (outside of its terminal) where containers are stored pending their delivery to a consignee (or after being received from a shipper and while waiting the arrival of a

ship), for the purpose of reducing the work jurisdiction of the ILA or any of its crafts, such use is deemed to be batching and an evasion of these Rules in violation of the Management-ILA contracts.

#### **RULE 4 – HEADLOAD**

Where a single qualified shipper sends an export container which contains all of his own cargo to a waterfront facility and such container is not full, the carrier or direct employer may load this container with additional cargo at the waterfront facility. On import cargo, the carrier or direct employer may discharge any such additional cargo and send the remaining cargo in the container to the qualified consignee. The loading or discharging of cargo at ILA ports shall be performed at a waterfront facility by deepsea ILA labor.

#### **RULE 7 – NO AVOIDANCE OR EVASION**

The above rules are intended to be fairly and reasonably applied by the parties. To obtain non-discriminatory and fair implementation of the above, the following principles shall apply:

- (b) *Containers Owned, Leased or Used* – Containers owned, leased or used by companies which are affiliated either directly or through a holding company with a carrier or a direct employer shall be deemed to be containers owned, leased or used by a carrier or direct employer. Affiliations shall include subsidiaries and/or affiliates which are effectively controlled by the carrier or direct employer, its parent, or stockholders of either of them.
- (c) *Liquidated Damages* – Failure to load or discharge a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of Rule 1 and Rule 2 shall also be considered a violation of the contract. If for any reason a container is not longer at the waterfront facility at which it should have been loaded or discharged under the Rules, then the carrier or its agent or direct employer shall pay, to the joint

Container Royalty Fund, liquidated damages of \$1,000 per container which should have been loaded or discharged. If any carrier does not pay liquidated damages within 30 days after exhausting its right to appeal the imposition of liquidated damages to the Committee provided in Rule 9(1) below, the ILA shall have the right to stop working such carrier's containers until such damages are paid.

#### **RULE 10 – CONTAINER ROYALTY PAYMENTS**

The two Container Royalty payments, effective in 1960 and 1977 respectively, shall be continued and shall be used exclusively for supplemental cash payments to employees covered by the Management agreements, and for no other purpose. The remaining royalty payment effective in 1971, also shall be continued and shall be used for fringe benefit purposes only, other than supplemental cash benefits, which purposes are to be determined locally on a port-by-port basis. The Container Royalty payments shall be payable only once in the continental United States. They shall be paid in that ILA port where the container is first handled by ILA longshore labor, at longshore rates. Containers originating at a foreign port which are transshipped at a United States port for ultimate destination to another foreign port ("foreign-sea-to-foreign-sea containers") are exempt from the payment of container royalties. Container Royalty payments shall be asserted against all containers moving across the continental United States by rail or truck in the foreign-to-foreign "LANDBRIDGE" system.

Management and the Carriers agree that the payment of Container Royalties as provided in their agreements is of the essence to this agreement and, if for any reason during the term of this agreement such payments cannot be made in their present form, then Management and the Carriers shall provide by some other form of assessment for the payment of equivalent amounts to be used for the same purposes as said Container Royalties are presently used.

**APPENDIX C**  
**LETTER AGREEMENT**  
**RE: ILA JURISDICTION**



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**Carriers Container Council, Inc.**  
One Evertrust Plaza  
Jersey City, N.J. 07302  
(201) 333-8290 Fax: (201) 333-8666

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August 29, 1996

John Bowers, President  
International Longshoremen's Association, AFL-CIO  
17 Battery Place  
New York, New York 10004

Re: ILA Jurisdiction

Dear Mr. Bowers:

During the negotiation of the Master Contract, the parties have met and resolved all of the issues with respect to jurisdiction. Recognition was given to the fact that in certain ports the ILA's jurisdiction has not extended to all work on ships and terminals.

The parties have agreed to the creation of a joint committee for the purpose of meeting with representatives of port authorities on issues of jurisdiction.

You and I have agreed that during the course of these meetings we will seek to have the port authorities recognize ILA jurisdiction as set forth in paragraphs, 11 and 12, of the new Master Agreement covering the jurisdiction of ILA checkers and clerks, longshoremen and maintenance men. In these meetings we will emphasize the following tasks to be performed by ILA employees:

- a) All work on cargo received into the terminal, placed on the ships, loaded and unloaded from vessels and delivered

at other immediate pier area, shed, warehouse and terminal by any means of transportation.

- b) The preparation of vessel loading and discharge sequence lists.
- c) Cargo stowage in the vessel and reporting of such stowage including preparation of sequence sheets and prestow plans for the use of supervisors, foreman, clerks and checkers in loading and discharging the vessel in accordance with the employer's instructions.
- d) All location work performed by longshoremen, checkers and clerks involving locating of all containers, chassis and/or cargo to be loaded, discharged or restowed to or from the vessel.
- e) Physically handling cargo involved in the receipt and delivery of containers, chassis, equipment and cargo received and delivered by all ILA labor on the pier, shed, warehouse or terminal.
- f) Where directed by Management, the weighing of containers and cargo.
- g) Verification and recording of the loading of containers, chassis and/or cargo to and from vessels, barges or terminal.

The above is not intended to be a full and total description of the work of the ILA personnel in port areas where the ILA may have traditionally and regularly performed such work and is not intended to impinge on the work jurisdiction of other personnel or labor organizations whose employees now perform such work and services.

Sincerely,

S / David J. Tolan  

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David J. Tolan, Chairman

**APPENDIX D**  
**MAJOR DAMAGE CRITERIA**  
**FOR CONTAINERS**

As provided in paragraph 13 of the Master Agreement, the following is a definition of the criteria adopted by the ILA/Carrier Master Contract Committee for a container with major damage. Nothing herein contained shall be deemed to limit the work jurisdiction of the ILA in accordance with the Containerization Agreement.

The definition of a container having major damage shall be any container or container component which causes the loss of structural integrity to a point in which it creates an unsafe condition.

Major damage to the following critical component connections shall constitute loss of structural integrity and shall be considered an unsafe condition:

- 1) Bottom rail to corner post severed
- 2) Top rail to corner post severed
- 3) Top corner fitting to corner post severed
- 4) Bottom corner fitting to corner post severed

The above discernible major damage is supplemented by the following, any of which is considered major damage.

<b>Connection</b>	<b>Description</b>
Top rail to corner post	Bent, torn or cut so as not to fit into a container cell or so it cannot be lifted by a container spreader.
Bottom rail to corner post	Torn or cut or bent out of alignment to the extent that it cannot fit into a container cell.



<b>Connection</b>	<b>Description</b>
Top corner fitting	Cracked weld, cracked fitting or bent to not fit into a container cell.
Bottom corner fitting	Cracked weld, cracked fitting or bent to not fit into a container cell.
Side post to top rail (aluminum)	3 or more adjacent posts cut or missing from bottom rail, provided that posts are clear cut.
Side post to bottom rail (aluminum)	3 or more adjacent posts cut or missing from bottom rail, provided that posts are clear cut.
Sidewall to bottom rail (steel)	Horizontal cut more than 22" at one point or more than 15" at end frames.
Sidewall to top rail (steel)	Horizontal cut more than 22" at one point or more than 15" at end frames.
Sidewall to corner post	Cut more than 10" at any point, and out of alignment so as not to fit in a container cell.
Cross member to tee clip	4 or more adjacent severed at any point.
Tee clip to bottom rail	4 or more adjacent severed at any point.
Front wall to end frames	Cut more than 25" at any point.
Door lock rods	Bent rods only if door cannot close and stay closed properly.
Door hinges to end frames	Bent, loose, out of square, severely cracked or damaged preventing the door from closing properly.
Roof top to top rail	Cut or severed more than 48".

<b>Connection</b>	<b>Description</b>
Roof to headers	Cut more than 12".
Roof bow to top rail	4 or more adjacent bows disconnected.
Corner posts	Dent at corner radius more than 2" deep by more than 10" long.
Top rails	Any vertical tears or cuts that are greater than 30% of the rails section.
Bottom rails	Any vertical tears or dents that are greater than 30% of the rails section.
Major structural damage	Container out of cube so as not to fit in slot or cannot be lifted by a container spreader.
J Bars	Bent, bow, dent so as to render the door not to be fully opened.

Normal wear and tear, holes and dents or compression lines do not cause a loss of structural integrity and, therefore, do not constitute major damage or an unsafe condition.

However, the above does not constitute the removal of roadability and FWHA inspections presently performed by ILA maintenance men or otherwise limit the work jurisdiction of the ILA in accordance with the Containerization Agreement of the Master Agreement.

#### **MAJOR DAMAGE CRITERIA FOR CHASSIS**

<b>Component Part</b>	<b>Type of Damage</b>
Brakes	Cracked or damaged air tanks and missing components including air lines and chambers, lining worn to 1/4" at centers and relay valves which are inoperative.

<b>Component Part</b>	<b>Type of Damage</b>
Broken wheel studs	More than one stud broken or missing.
Oil seals	Leaking and hub oil caps.
Seven way Plug	Receptacle missing, broken or inoperative.
Landing legs	Gear box and/or legs bent or bowed to the point of being inoperative.
Suspension	Cracked or components missing or damaged beyond useful function.
Axels	Loose radius rods and/or out of alignment as to cause unsafe tracking.
Twist locks	Bent so as to be inoperative or missing handles.
Front lock pins	Bent so as to be inoperative or missing pins or locking tab hold handle.
Bolsters/Goosenecks	Bent to the point of not accepting a container and allowing the container to be locked down.
Frame	Bent or cracked welds at critical points such as gooseneck to frame rails, frame to bolsters, cross members, frame to leg mounting boxes, and frame to suspension points so as not to allow the container to be locked down.
ICC Bumper	Missing, if required by original equipment manufacturer, or so severely damaged or bent so as not to function as a bumper. To comply with Federal regulations.

<b>Component Part</b>	<b>Type of Damage</b>
Wheel hubs	Loose, or missing so as to make chassis inoperative.
5th Wheel	Cracked at gooseneck. <b>Note:</b> this type of damage can only be ascertained during a PM.

All deadline chassis must have deadlining reason clearly stated on the TIR and the unit tagged before the carrier will accept it as a deadline.

When a refrigerated container cannot operate to carry refrigerated cargo due to a mechanical failure, the ILA shall retain its jurisdiction to repair such failures. However, it is understood that the Carriers retain their right to reposition refrigerated containers to accommodate cargo.

## APPENDIX E

### STEIN AWARD

*In the Matter of the Arbitration between*  
**NEW YORK SHIPPING ASSOCIATION**  
**and**  
**INTERNATIONAL LONGSHOREMEN'S**  
**ASSOCIATION**

#### AWARD

The Undersigned, constituting the Board of Arbitration created pursuant to Paragraph 13 of the Memorandum of Settlement entered into by the parties above-named on December 3, 1959, for the purpose of arbitrating disagreements between them as to Paragraph 8(b) of said Memorandum of Settlement, have heard the allegations and received the witnesses and proofs, and make the following Award:

1. The following is the action of a majority of the Board, Mr. Gleason dissenting: on containers which are loaded or unloaded away from the pier by non-ILA labor, the amounts set forth below shall be paid into a fund as provided by Paragraph 10 of said Memorandum of Settlement:

- a. On conventional ships, thirty-five (35) cents per gross ton.
- b. On partially-automated ships (conventional ships converted for handling vans and containers), where not more than two hatches have been converted for the handling of containers, seventy (70) cents per gross ton.
- c. On partially-automated ships (conventional ships converted for handling vans and containers), where not more than forty (40) percent of the ship's bale cube has been fitted for containers, seventy (70) cents per gross ton.
- d. On ships where more than two hatches have been converted or fitted for the handling of containers, or where more than

forty (40) percent of the ship's bale cube has been fitted for containers, one dollar (\$1.00) per gross ton.

2. The following is the action of a majority of the Board, Mr. McCarthy dissenting: The payments set forth in Paragraph 1 above shall be retroactive to July 1, 1960.

3. The following is the unanimous action of the Board. The payments set forth in Paragraph 1 shall continue for the duration of the current collective bargaining agreement between the parties. However, on or after October 1, 1961, the parties shall have the right to seek adjustments on the rates of payment upon the ground, in the case of the International Longshoremen's Association, that there has occurred a substantial increase in the impact of containers upon employment opportunities, or, in the case of the New York Shipping Association, upon the ground that there has been no or a substantially decreased impact of containers upon employment opportunities. In the event that the parties shall fail to agree upon a revision, if any, in the rates of payments, the matter shall be treated like a grievance arising under their collective bargaining agreement.

November 16, 1960  
EMANUEL STEIN, *Chairman*  
F. M. McCARTHY  
THOMAS W. GLEASON

**APPENDIX F**  
**PUERTO RICAN TRADE ACCOMMODATION**  
**FOR HORIZON LINES AND**  
**TRAILER BRIDGE, INC. (12/23/03)**

This Agreement made this \_\_\_\_ day of December, 2003 between the United States Maritime Alliance, Ltd. ("USMX"), the International Longshoremen's Association, AFL-CIO ("ILA"), Horizon Lines and Trailer Bridge, Inc.

1. The term of this Agreement shall be for twelve (12) months commencing October 1, 2003 through September 30, 2004. The parties agree that the obligations set forth in paragraph 6 of this Agreement extend beyond September 30, 2004.
2. This Agreement shall be applicable only to the Master Contract Ports of Jacksonville, Philadelphia, New York, Houston and New Orleans (if applicable in that port).
3. The Carrier-ILA Container Freight Station Trust Fund assessment of 30¢ per ton on Puerto Rican cargo shall be waived during the term of this Agreement.
4. The Carrier-ILA Container Royalty Fund assessment of 20¢ per ton on Puerto Rican cargo shall be waived during the term of this Agreement.
5. The ILA agrees that the Puerto Rican carriers will be required to pay the local Container Royalty Fund \$1.00 per ton in New York, Philadelphia, Houston, New Orleans and Jacksonville for tons handled between October 1, 2003 and September 30, 2004.
6. Trailer Bridge acknowledges that it is a party to the current Master Contract that will expire on September 30, 2004. Trailer Bridge further acknowledges and agrees that so long as the current local accommodation negotiated by the ILA in Jacksonville, Jacksonville Maritime Association and

Trailer Bridge provided to Trailer Bridge in the Port of Jacksonville continues in effect, Trailer Bridge in the future will use only ILA labor under the terms of the Master Contract at ports on the East and Gulf Coasts at which it calls.

7. All parties to this Agreement acknowledge that the Container Royalty CAP amount of tons in each port in which this accommodation applies shall not be reduced. In addition, the tons on which a reduced assessment is paid pursuant to this Agreement will be counted towards the CAP. Finally, both Horizon Lines and Trailer Bridge each acknowledges and agrees that they will not be entitled to receive any CAP refunds attributable to any port in which the companies receive a benefit under the terms of this Agreement.

S / James A. Capo

\_\_\_\_\_  
James A. Capo,  
Chairman/CEO, USMX

S / John Bowers

\_\_\_\_\_  
John Bowers, President, ILA

S / John Keenan

\_\_\_\_\_  
Horizon Lines

S / Ralph W. Heim

\_\_\_\_\_  
Trailer Bridge, Inc.



**AMENDMENT TO THE 12/23/03  
PUERTO RICAN TRADE ACCOMMODATION  
FOR HORIZON LINES AND  
TRAILER BRIDGE, INC.**

This Agreement made this 31st day of March, 2004 between the United States Maritime Alliance, Ltd. (“USMX”), the International Longshoremen’s Association, AFL-CIO (“ILA”), Horizon Lines and Trailer Bridge, Inc. (collectively the “Parties”) amends the Agreement made between the Parties entitled **Puerto Rican Trade Accommodation For Horizon Lines and Trailer Bridge, Inc. (12/23/03)** (the “**December 23, 2003 Agreement**”).

1. This Amendment shall take effect with respect to all cargo handled by ILA labor covered by the Master Contract on and after April 3, 2004.
2. This Amendment shall be applicable only to the Master Contract Port of Jacksonville.
3. The ILA agrees that Horizon Lines and Trailer Bridge, Inc. will be required to pay the local Container Royalty Fund 55 cents per ton in Jacksonville for tons handled in the Puerto Rican trade on and after April 3, 2004.
4. Trailer Bridge acknowledges that it is a party to the current Master Contract that will expire on September 30, 2004. Trailer Bridge further acknowledges and agrees that so long as the current local accommodation negotiated by the ILA in Jacksonville, Jacksonville Maritime Association and Trailer Bridge provided to Trailer Bridge in the Port of Jacksonville continues in effect, Trailer Bridge in the future will use only ILA labor under the terms of the Master Contract at ports on the East and Gulf Coasts at which it calls.

5. Except as modified by this Amendment, each and every term of the **December 23, 2003 Agreement** remains in full force.

S / James A. Capo

James A. Capo,  
Chairman/CEO, USMX

S / John Bowers

John Bowers, President, ILA

S / John Keenan

Horizon Lines

S / Ralph W. Heim

Trailer Bridge, Inc.

**APPENDIX G**  
**LETTER REGARDING**  
**NEW TECHNOLOGY**



June 6, 2006

James A. Capo, Chairman & CEO  
United States Maritime Alliance, Ltd.  
100 Wood Avenue South  
Suite 410  
Iselin, NJ 08830-2716

**Re: New Technology**

Dear Mr. Capo:

Pursuant to our discussion set forth below are the provisions we have agreed to for purposes of implementing the USMX-ILA Master Contract's New Technology provision.

1. Within ten (10) days after the ILA President receives the notice from the Management representatives required by Article X, Section 2 of the USMX-ILA Master Contract, the ILA must schedule a meeting of all interested parties in the Local Port or District who will be impacted by the proposed new technology;
2. Within twenty (20) days after the ILA President sends the notice described in No. 1 above, the meeting of all interested parties must be held before the New Technology Committee described in Paragraph No. 3 below;

3. A New Technology Committee comprised of up to five (5) USMX representatives and up to five (5) ILA representatives will review each notice to implement new technology. This Committee will be co-chaired by the Chairman/CEO of USMX and the President of the ILA. The purpose of the Committee is to review the nature and capabilities of the new technology, the timetable for implementation of the new technology, and the anticipated manner in which the new technology will affect the job functions of employees covered by the Master Contract so that the union can evaluate the impact of the new technology on the Master Contract workforce in the local port area.
4. Any grievance under Article X, Section 3 of the USMX-ILA Master Contract, shall be filed no later than the sixtieth (60th) day after the meeting held pursuant to Nos. 1 and 2 above. If that meeting is not held or adjourned pursuant to the agreement of USMX and the ILA, the grievance must be filed no later than ninety (90) days after the ILA President receives the notice from the Management representative indicating that the new technology is going to be implemented.

Very truly yours,

INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, AFL-CIO

S / John Bowers

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John Bowers, President

## NOTES

## NOTES