



## Bylaws of the Association of Ship Brokers & Agents (USA) Inc.

### ARTICLE I: Membership

**Section 1** Company Member. Company membership of this Association shall be restricted to business establishments that

- a. are actively and regularly engaged in business as ship brokers or agents in the United States or Canada,
- b. meet the qualifications for membership established in the Bylaws of this Association, and
- c. are duly elected to membership in accordance with the Bylaws.

Only those business concerns who are engaged in business as ship brokers or agents, which apply and are approved for Company Membership pursuant to the requirements in these Bylaws or any reasonable procedures established by the Association from time to time, shall be designated a Company Member and entitled to full privileges, including voting.

**Section 2** Honorary Member. An individual may be elected an Honorary Member of the Association at a meeting of the Board of Directors (the "Board") by a two-thirds vote of the entire Board and thereafter ratified by a two-thirds vote of the members present at any subsequent meeting of the Association. Honorary Members shall have the full privileges of the Association, except the right to vote, and shall be exempt from the payment of any dues or assessments.

**Section 3** Application Process.

- a. Applicants for Company and Associate Membership in the Association shall file a written application with the Executive Director. Such application must include the following:
  - i. an opening paragraph wherein the applicant applies for company membership, states that he or she has read the Bylaws and Code of Ethics of the Association, and specifically agrees, if admitted to membership, to abide by the Bylaws and Code of Ethics of this Association;
  - ii. specific statements as to the dates between which and places at which the applicant has engaged in business in the United States or Canada as a ship broker or agent, such statements clearly evidencing at least one year's activity as a ship broker or agent immediately preceding the date of the application unless excepted by the Board due to special considerations; and
  - iii. detailed statement of the citizenship, ownership, affiliates, types of business and experience of the applicant.
- b. The application must be accompanied by written sponsorship by two Company Members of this Association wherein the sponsors certify that they:
  - i. have read the application in full,
  - ii. consider the applicant a desirable member, and
  - iii. believe the applicant if elected, will abide by and foster the ideals and standards of the Association.

**Section 4** Approval Process. The Board of Directors shall consider each application for Company and Associate membership submitted in accordance with the Bylaws and approved by the Membership Committee. The Board of Directors shall determine whether to recommend admission of the applicant to the membership or to instruct the Executive Director to advise the applicant of the Board's failure to so recommend. A two-thirds majority of the Board shall be required before the application of a proposed member is announced to the membership. The Executive Director shall forward to each member a notice advising whether the Board of Directors recommends the admission to membership of the applicant. The Executive Director will forward to each Company

member a form for registering approval or disapproval of the proposed Company or Associate Members recommended for admission and containing space for any comments, favorable or unfavorable, which the member wishes to make. The recommendation of a two-thirds majority of the entire Company Membership will be required before the application of a proposed member has been approved. Once this approval has been confirmed by the membership as above, the applicant will be considered elected to Company or Associate Membership, as applicable.

**Section 5** Company Member Representatives. Representation at all meetings of the Association shall be by duly authorized representatives of the Company Members. **Representatives must be individuals who are employed by the Member.** Each Company Member shall have one vote on any one question or matter that comes before the members. The action of any individual in participating and voting in this Association shall commit only his or her business establishment. The vote of each member in good standing may be cast in person or by proxy, by letter or by email, in any matter before the Association.

**Section 6** Associate Member.

- a. Individuals who qualify as shipbrokers and ship agents may become "Associate Members" of the Association. As such, they shall pay dues as set annually by the Board of Directors.
- b. Such Associate Members have no vote but the body of Associate Members may be convened as an Advisory Council at the pleasure of the President.
- c. Associate Members shall have such other rights and privileges as the Association shall establish from time to time.

**Section 7** Affiliate Member. There shall be a class of members designated as "Affiliate Members" which shall encompass persons and business concerns not actually or regularly engaged in the business of shipbrokers or ship agents, but who are engaged in business related to transportation or international trade services. The acceptance and tenure of Affiliate Members shall be at the pleasure of, and in the sole discretion of, the Board of Directors.

Such Affiliated Members shall:

- a. Pay dues as determined by the Board of Directors;
- b. Attend general membership meetings but may not vote or hold office;
- c. Be required to use the word "Affiliate" to describe their membership in the Association in all their printed material, advertisements and/or publications.
- d. Have such other rights and privileges as the Association shall establish from time to time.

**Section 8** Divisional Groups. The Divisional Groups of the Association, for the purposes of representation on the Board as specified in Article IV, Section 1, and for other purposes mentioned in the Bylaws, including specifying the types of ship brokers or agents eligible for Company membership, shall be the following:

Dry cargo brokers;  
Tanker brokers;  
Ship agents;  
Sale and purchase brokers.

## **ARTICLE II: Termination of Membership**

If the Board of Directors has reason to believe that a member is in violation of the Bylaws or any other rules or policies of the Association, the President shall convene the Ethics & Grievance Committee to determine whether such violation is sufficient to merit a determination that a member company is no longer eligible for membership. Said committee shall hear and determine in their sole discretion whether grounds exist for declaring a member company no longer eligible for membership. Any determination by the committee shall be final and binding.

By agreeing in Article I, Section 3(a)(i), of the Bylaws, to abide by the Bylaws and Code of Ethics of the Association, the said member company, if found to be no longer eligible for membership, agrees

that the determination of the committee shall be binding and that said member company has no recourse of whatsoever nature to appeal or question said determination.

### **ARTICLE III: Meetings of the Members**

**Section 1** Annual Meeting. The annual meeting of the Association shall be held within ninety days after the end of the Association's fiscal year in each year, or as soon thereafter as practicable. Notice of the annual meeting shall be given to every member at least three weeks prior to, but not more than fifty (50) days prior to, the date thereof. Notice may be given by first class mail, personal delivery, fax, or email.

**Section 2** Special Meetings. Upon the written request of the lesser of (a) any ten members of the Association or (2) the members entitled to cast ten per cent of the total number of votes entitled to be cast at such meeting, the President or Executive Director shall call a special meeting of the members to consider the specific subject or subjects. The written request of the members shall specify the date and month thereof, and shall not be less than two (2) nor more than three (3) months from the date of such written demand. The President or Executive Director of the Association upon receiving the written demand shall promptly give notice of such meeting, or if he/she fails to do so within five business days thereafter, any member signing such demand may give such notice. The meeting shall be held at the place fixed in the Bylaws or, if not so fixed, at the office of the Association. The notice of any special meeting shall include a statement of the time and place of such special meeting and the subjects to be considered.

**Section 3** Quorum. A majority of the members in good standing entitled to vote, present in person or by proxy, shall constitute a quorum for the transaction of business, including at the annual or any regular or special meeting of the Association, unless otherwise required by these Bylaws, the Association's Certificate of Incorporation, or applicable law.

**Section 4** Actions Requiring Member Approval. The following corporate actions may not be taken without approval of the members, with the voting requirements as described:

- a. a majority of the votes cast at a meeting of the members is required for (1) any amendment of the Certificate of Incorporation, (2) any amendment of these Bylaws, or (3) a petition for judicial dissolution;
- b. two-thirds of the votes cast at a meeting of the members is required for (1) disposing of all, or substantially all, of the assets of the Association, (2) approval of a plan of merger, (3) authorization of a plan of non-judicial dissolution, or (4) revocation of a voluntary dissolution proceeding, provided, however, that the affirmative votes cast in favor of any action described in this subsection (b) shall be at least equal to the minimum number of votes necessary to constitute a quorum. Blank votes or abstentions shall not be counted in the number of votes cast.

**Section 5** Proxy. Every member entitled to vote at a meeting of members or to express consent or dissent without a meeting may authorize another voting member or members to act for such member by proxy. Every proxy must be in writing and signed by the member or the member's duly authorized officer, director, employee or agent, or by email and set forth information from which it can be reasonably determined that the proxy was authorized by that member. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it, except as otherwise provided by law. For the purposes of conducting meetings, all proxies shall be delivered to the Executive Director or, upon the absence of the Executive Director, the presiding member appointed to act as secretary of the meeting.

### **ARTICLE IV Board of Directors**

**Section 1** The governing body of the Association shall be a Board of Directors consisting of a President, First Vice-President, Second Vice-President, Immediate Past President, Executive Director, Treasurer, and not less than seven additional non-Officer Directors. As used in these Bylaws, "entire Board" means either (1) the specific number of directors within such range adopted by majority vote of the Board as constituting the "entire Board," or (2) if no such number within such

range has been set by majority vote of the Board, the number of directors within such range that were elected or appointed as of the most recently held election of directors, as well as any directors whose term has not yet expired. As far as practicable, at least one Director shall be elected from each Divisional Group, as enumerated and described in Article 1, Section 8, of the Bylaws.

**Section 2** Election of Board. The Directors, who must be representatives of Company Members, shall be elected by the Association at its annual meeting as follows:

At each annual meeting, Directors shall be elected in accordance with the number of present Directors whose terms are expiring. The Immediate Past President shall be *ex-officio* a member of the Board, having equal rights with other members, including the right to make motions and to vote.

**Section 3** Election of Honorary Directors. The Board of Directors may elect not more than two individuals as Honorary Directors for the current year by a two-thirds vote of the entire Board. Honorary Directors shall have the full privileges of the Association, but shall be exempt from the payment of any dues or assessments, and shall not have the right to vote.

**Section 4** Term. All Directors shall be elected for a term of two years, beginning at the conclusion of the meeting at which elected and continuing until their successors are elected and installed or until their earlier resignation, removal, or incapacitation.

**Section 5** The Board of Directors of the Association shall be charged with the duty of doing whatever may be necessary for the furtherance of the purposes and the attainment of the objectives of the Association.

**Section 6** The Board of Directors shall constitute the governing administrative body of the Association and its action shall be final.

**Section 7** The Board of Directors, with the approval of the membership, shall define rules of fair practice for the purpose of maintaining uniform and equitable usages, customs and practices.

**Section 8** Quorum. A majority of the members of the Board of Directors in office shall constitute a quorum for the transaction of all business, except in cases where a larger vote is required under these Bylaws or applicable law.

**Section 9** Board Meetings. The Board of Directors shall convene at least quarterly, and also at any time at the call of the President or any two (2) Directors.

**Section 10** Board Meeting Participation. A member of the Board of Directors may participate in a meeting by phone or other electronic means so long as the member can hear and be heard by the other members throughout the meeting. Participation by phone shall be deemed equivalent to attendance in-person and the member shall be counted towards quorum.

**Section 11** Director Resignation or Removal. Any Director may resign at any time by giving written notice to the President or the Executive Director. Such resignation shall take effect at the time specified therein or, if no time be specified, then on delivery. Any Director may be removed, with cause, at any time by an affirmative vote of a majority of the entire Board of Directors.

**Section 12** Board Vacancy. Whenever a vacancy shall occur among the Directors, the Board of Directors shall designate a member of the Association to fill such vacancy until the next annual election of the Association, at which time a Director shall be elected for the full balance of the unexpired term of the Director originally elected to such vacated directorship.

## **ARTICLE V Officers**

**Section 1** The Officers of the Association shall be a President, First Vice-President, Second Vice-President, Executive Director, and Treasurer. The authority and duty of each Officer shall be defined herein.

**Section 2** Each Officer, except the Executive Director, must be a representative of a Company Member in good standing of the Association.

**Section 3** Nominating Committee. All Officers, except the Executive Director, shall be elected annually by the members of the Association at its annual meeting called for the purpose. The nomination of Officers shall take place in the following manner: A Nominating Committee of five individuals representing Company Members, one to be appointed as Chairman, shall be named by the President and approved by the Board of Directors each year. Each Divisional Group, as enumerated in the Bylaws, shall as far as practical be represented on this Nominating Committee.

Elected Officers and Directors shall not be eligible to serve on the Nominating Committee and vice-versa.

As promptly as possible after its appointment, and not later than December 15th each year, the Nominating Committee shall report in writing to the President, giving a list of its nominees, one for each officer and director to be elected at the ensuing annual meeting. Notice of such nominees shall be conveyed by the Executive Director to the members of the Association not less than three weeks prior to the annual meeting.

Notwithstanding the foregoing, Company Members may make independent nomination or nominations for such Officers and Directors, by presenting, in writing, such nomination or nominations to the Executive Director at least two weeks prior to the date of annual meeting. If at least ten members shall have endorsed such nomination or nominations, notice of such shall be conveyed to the members of the Association one week prior to the date of the annual meeting. All nominations duly made in accordance with the foregoing procedure are to be submitted to the members for balloting at the annual meeting.

**Section 4** Elections. Each Officer, except the Executive Director, shall be elected by a majority vote of all members, either in person or by proxy, at the annual meeting held for that purpose.

**Section 5** Compensation. All Officers, except the Executive Director, shall serve without compensation. The Executive Director shall be appointed by the Board of Directors which, through the Executive Committee, shall fix his or her compensation and that of such administrative personnel as in the Board's discretion may become necessary.

**Section 6** Term of Office. All elective Officers shall serve for a term of one (1) year, beginning at the conclusion of the meeting at which elected and continuing until their successors are elected and installed or until the Officer's earlier resignation, removal, or incapacitation. All elective Officers shall serve a maximum of two (2) consecutive terms in such capacity, except the Treasurer, who may serve without any limit on the number of terms of service.

**Section 7** President. The President shall preside at all meetings and shall perform such other duties as usually pertain to the office of President, including a report at the annual meeting of the Association: he or she shall be ex-officio voting member of all Committees of the Board. The President shall make recommendations to the Board of Directors on the members of all Committees of the Board, which shall be subject to the Board's approval as set forth in Article VI, Section 2 of these Bylaws.

**Section 8** First Vice-President. The First Vice-President shall act in the President's place at the meetings, perform the duties of the President's office during his or her absence, and carry out such other duties as may be assigned to him or her from time to time by the President.

**Section 9** Second Vice-President. The Second Vice-President shall act in the First Vice-President's place during his or her absence and shall carry out such duties as may be assigned to him or her from time to time by the President.

**Section 10** Executive Director. The Executive Director shall be the Acting Administrative Officer of the Association, under the supervision and direction of the President and the Board of Directors, in conducting the business of the Association and shall perform such duties as are specified or implied in the Bylaws, or as may be assigned to him or her by the Board of Directors. He or she shall attend all meetings of the Association and of the Board of Directors and shall be an ex-officio non-voting member of all committees.

**Section 11** Ex-Officio Committee Members. The President, when serving as an ex-officio member of any committee, shall have equal rights with other committee members, including the right to make motions and to vote.

**Section 12** Treasurer. The Treasurer shall, subject to the direction and control of the Board of Directors, have general oversight of the financial affairs of the Association, and shall oversee the Association's books of account. The Treasurer shall have such other powers and duties as are usually incident to that office and as may be vested in that office by these Bylaws or by the Board of Directors, including overseeing vendor procurement and the approval of vendor accounts. The accounts and books of the Association shall be at all times open to the inspection of any member of the Association upon reasonable notice.

He shall make an annual report at the annual meeting of the Association and at such other times as the President or the Board of Directors may require.

**Section 13** Vacancy. Whenever a vacancy shall occur among the Officers, the Board of Directors shall designate a member of the Association to serve for the balance of the term of the Officer originally elected to such vacated office.

**Section 14** Resignation and Removal. Any Officer may resign by written notice to the Association and may be removed with or without cause by a majority vote of the entire Board. Any such resignation shall take effect at the time specified therein or, if no time be specified, then on delivery. If the office of any Officer becomes vacant for any reason, the vacancy may be filled by the Board as provided above.

## **ARTICLE VI Committees**

**Section 1** Limitation on Committee Powers. The Board of Directors shall have the power to create committees, each of which shall have such authority as the Board shall by resolution provide, except that no committee shall have authority as to the following matters:

- a. The submission to members of any action requiring members' approval under the N-PCL.
- b. The filling of vacancies in the Board or any committee.
- c. The fixing of compensation of the directors for serving on the Board or on any committee.
- d. The amendment or repeal of the Bylaws, or the adoption of new Bylaws.
- e. The amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable.
- f. The election or removal of officers and directors.
- g. The approval of a merger or plan of dissolution.
- h. The adoption of a resolution recommending to the members action on the sale, lease, exchange or other disposition of all or substantially all the assets of the Association or, if there are no members entitled to vote, the authorization of such transaction.
- i. The approval of amendments to the certificate of incorporation.

**Section 2** Committees of the Board. Committees of the Board shall consist of three or more Directors, as the business of the Association may require, and each such committee shall have the authority of the Board to the extent provided in a board resolution or in the certificate of incorporation or these Bylaws. The President shall recommend, and the Board shall appoint the members of each Committee of the Board, except as may otherwise be provided herein, following the affirmative vote of a majority of the Board at a duly called meeting. The Chair of each Committee of the Board shall

be selected by the President, unless otherwise chosen by the Board of Directors at the time of the appointment of the Committee's members. A majority of the members of each Committee of the Board shall constitute a quorum for the transaction of business, unless otherwise established pursuant to committee rules of procedure approved by the Board. Each Committee of the Board shall keep minutes of its meetings to submit to the Board prior to the next Board meeting and report to the full Board at the next Board meeting regarding any significant action which it takes or decisions that it makes.

- a. The Board shall have the following Committees of the Board, each of which shall have the responsibilities set forth herein, as follows:
  - i. Executive Committee. The Executive Committee shall consist of the President, the First and Second Vice Presidents, the Treasurer, the Immediate Past President, and the Executive Director, and such other members as the Board may elect from time to time. Except as otherwise provided by law and in these Bylaws, the Executive Committee may exercise all the powers of the Board between meetings of the Board of Directors. The Executive Committee shall report its actions to the full Board of Directors at the next meeting of the Board of Directors. The Executive Committee shall be responsible for establishing an agenda for the meetings of the Association and Board of Directors and for managing the human resources of the Association including reviewing the performance and approving compensation for salaried employees and making recommendations to the full Board of Directors regarding the Association's staffing requirements. The Executive Director may make recommendations for compensation of administrative personnel, but shall be recused from deliberations and voting related to any compensation in which the Executive Director has an interest.

**Section 3** Committees of the Association. Committees of the Association may be established by the Board, each of which shall consist of such persons, and shall have such authority, as is provided in the Board resolution establishing the Committee. Committees of the Association shall act in an advisory capacity or shall conduct events or activities of the Association, but shall not have authority to bind the Board. Members of Committees of the Association (who do not need to be directors) may be appointed by the Board Chair, or by any other means used to appoint officers of the Association.

**Section 4** Membership Committee. The President, with the advice of the Board of Directors, shall appoint a Membership Committee which shall review the qualifications of company, associate, and affiliate applicants and make its recommendations to the Board of Directors.

## **ARTICLE VII Ethics & Grievance Committee - Code of Ethics**

**Section 1** The President shall appoint a Committee of five (5) individuals, which may include authorized representatives of current or former Company Members or Associate Members, to be known as the Ethics & Grievance Committee. This Committee shall from time to time recommend to the Board of Directors and the members, amendments to the Code of Ethics of this Association. Such amendments shall become effective only after approval by the Board, and adoption by the membership.

**Section 2** Complaints concerning the conduct of members shall be referred to the Ethics & Grievance Committee within 1 year from the date that the conduct complained about occurred or became known or should have become known to the complainant. The Ethics & Grievance Committee shall investigate said complaints and, where in the discretion of the Committee it appears advisable, request written submissions or conduct hearings pursuant to a schedule established by the Committee. At least five days' notice of any such hearings shall be given to the member against whom the complaint has been made.

**Section 3** The Committee shall report to the Board of Directors of this Association its findings on each complaint together with the Committee's recommendation for action by the membership.

**Section 4** The Executive Director of this Association shall be an ex-officio non-voting member of the Ethics & Grievance Committee and shall keep records of the meetings, investigations, hearings, findings and recommendations of the Committee.

**Section 5** The members of the Ethics & Grievance Committee shall continue to serve on the Committee until such member resigns, or is asked by the Board of Directors to resign.

**Section 6** The Ethics & Grievance Committee shall be available at any time to all members upon request to assist in resolving broker and agency problems relating to ethics. The Committee shall report to the Board of Directors of this Association its findings on each complaint together with the Committee's recommendations.

**Section 7** The Ethics & Grievance Committee shall have jurisdiction to consider a complaint against certified Ship Agent Company Members brought by their principals or by another member and in such instance the complaint shall be investigated in the manner set forth in this Article.

**Section 8** Any recommendation by the Ethics & Grievance Committee to the Board of Directors in response to a complaint shall be limited to a formal reprimand or the member's continued eligibility for membership. The Ethics & Grievance Committee shall not be entitled to award damages or costs.

#### **ARTICLE VIII Amendments To Bylaws**

No amendment to the Bylaws of this Association shall be valid unless the proposed amendment has first been submitted to the Board of Directors, and approved by a two-thirds vote of said Board, and thereafter ratified by a two-thirds vote of the members present in person or by proxy at any duly called meeting of the Association, subsequent to the adoption of such amendment by the Board of Directors.

The proposed amendment so adopted by the Board of Directors shall be placed in discussion at such meeting and approved or rejected as submitted or returned to the Board of Directors with instructions for further action.

Notwithstanding the foregoing, on presentation of a petition signed by the lesser of (a) at least fifteen members or (b) ten percent (10%) of the Company Members, the President shall call a meeting, at which the proposed amendment to the Bylaws shall be submitted to the membership for their action.

This provision shall not be deemed to shorten the time which now is, or may hereafter be provided for the calling of annual meetings.

#### **ARTICLE IX Dues**

For the purpose of paying dues Company membership shall be divided into two categories: 1. for companies with more than two brokers or agents, and 2. for companies with only one or two brokers or agents.

The Board of Directors shall determine dues for the forthcoming year at a meeting in the last quarter of the calendar year, and such dues shall be assessed on January 1st to Company, Associate, and Affiliate Members. Dues are payable not later than March 1st, and any members who have not paid by this date are to be so advised by the Executive Director. If payment is not received within fourteen days after such notice from the Executive Director, the member will be subject to suspension by the Board of Directors.

New members accepted during the Association year shall pay dues for the year of acceptance into membership on the following basis:

Accepted prior to July 1st 100%

Accepted on and after July 1st 50%



## **ARTICLE X Order of Business**

**Section 1** The following order of business shall be observed at all meetings:

1. Roll Call.
2. Minutes of previous meeting.
3. Report of President.
4. Report of Executive Director.
5. Report of Treasurer.
6. Reports of Committees.
7. Unfinished Business.
8. Election.
9. New Business.
10. Adjournment.

Any questions as to the priority of business shall be decided by the Chair without debate.

**Section 2** "Robert's Rules of Order" may be used to guide the conduct of this Association and its meetings in the event a dispute arises in the proceedings of the Board or of the members that cannot be resolved by a consensus of the Board or members present at that meeting.

## **ARTICLE XI Arbitration**

### **Section 1**

- a. Claims less than \$10,000 between members: Any claim between members where the amount claimed is \$10,000 or less shall be settled by binding arbitration in accordance with these rules.
- b. Claims greater than \$10,000 between members: Any claim greater than \$10,000 between members shall be settled by binding arbitration in accordance with these rules, if so agreed by all parties involved.
- c. All other claims between members and non-members may be settled by binding arbitration in accordance with these rules if so agreed by all parties involved and provided further that the Association agrees to hear and determine such dispute.
- d. Unless the parties agree otherwise, the place of arbitration shall be at the office of the Association and the laws of the State of New York shall apply. The award may be made a judgment of any court of competent jurisdiction.

**Section 2** A member desiring to invoke the provisions of this Article (the "Claimant"), shall within six months of the time that such claim arose, notify the Association, in writing, with a copy, by registered or certified mail, or by email with "read receipt" option to the member or members against whom the claim is being asserted. This notification shall specify the nature and substance of the claim, the relief being requested and the factual and legal basis of the claim.

Upon receipt of such notification, the Association shall promptly forward a copy of the claim to all parties.

The member against whom the claim is being made (the "Respondent") shall, within thirty (30) days of receipt of the Claimant's notification, file with the Association, with a copy to the Claimant, an answering statement and any related counterclaim.

The Association shall send a copy of the notification and the answering statement to the President. The President shall thereupon appoint three disinterested members of the arbitration committee to hear and determine the dispute; selecting one of the appointees as chair.

The chair of the panel shall notify all parties of the appointments. Any party objecting to any or all members of the panel shall notify the President, in writing, within twenty (20) days after receiving notice of the appointments, of such objection and the reasons therefore. The President shall then determine whether such objections are valid and make any changes in the composition of the panel that may be appropriate.

The panel shall conduct the arbitration in a prompt manner and render its written, signed award within thirty (30) days after the hearings are closed.

The award of at least a majority of the arbitrators shall be final and binding on the parties.

To the extent not inconsistent with the foregoing, the arbitration shall be conducted in accordance with the Rules of the Society of Maritime Arbitrators.

**Section 3** The President shall appoint an arbitration committee of not less than six individuals, each of whom is a representative of a Company Member. The members of this committee shall be fairly evenly distributed among the dry, tanker and agency members and shall continue to serve on the committee until such member resigns, or is asked by the Board of Directors to resign.

**Section 4** There shall be no fee for claims of \$10,000 or less. Where the parties agree to submit claims in excess of \$10,000, the claimant shall pay a fee to the Association of 5% of the amount claimed and the respondent shall pay the same for any counterclaim. The Association, in its sole discretion, shall decide how the fees will be allocated.

## **Article XII Indemnification**

**Section 1** Unless clearly prohibited by law or Section 3 of this Article, the Association shall indemnify any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by or in the right of the Association, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this Section, (a) is or was a director or officer of the Association, or (b) in addition is serving or served, in any capacity, at the request of the Association, as a director or officer of any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Association shall have consented to such settlement) and reasonable expenses, including attorneys' fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

**Section 2** Unless clearly prohibited by law or Section 3 of this Article, the Board of Directors may approve indemnification as set forth in Section 1 of this Article or advancement of expenses as set forth in Section 3 of this Article, to a person (or the testator or intestate of a person) who is or was employed by the Association or who is or was a volunteer for the Association, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken at the request of the Association for any other corporation, partnership, joint venture, trust employee benefit plan or other enterprise.

**Section 3** The Association may not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board of Directors in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. In determining whether and to what extent indemnification is proper, no director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in such determination. If a quorum of disinterested directors is not obtainable, the Board of Directors shall act only after receiving the opinion in writing of independent

legal counsel that indemnification is proper in the circumstances under then applicable law and these Bylaws.

**Section 4** The Association shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Association, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Association, with interest, for any amount advanced in connection with a claim for which it is ultimately determined that he or she is not entitled to indemnification.

**Section 5** The Association may, but is not required to, purchase directors and officers' liability insurance if authorized by the Board of Directors. To the extent permitted by law, such insurance may insure the Association for any obligation it incurs as a result of this Article or operation of law and it may insure directly the directors, officers, employees or volunteers of the Association for liabilities against which they are not entitled to indemnification under this Article as well as for liabilities against which they are entitled to be indemnified by the Association.

**Section 6** The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board of Directors is authorized to enter into agreements on behalf of the Association with any director, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article, subject in all cases to the limitations of Section 3 of this Article.

#### **Article XIII Criteria for Certification of ASBA Ship Agent Members**

**Section 1** All Ship Agent Members ("Ship Agents") must abide by the ASBA Code of Ethics.

**Section 2** All Ship Agents must comply with the following standards of Financial Responsibility.

- a. Attestation by an external CPA that company accounting practices are as per generally accepted accounting practices.
- b. External CPA review for issuance of an "Agreed Upon Procedure Report" submitted to ASBA annually.

The following procedures, based on random sampling, must be attested to:

- Amounts due from/to principals in company's general ledger are supported by detailed accounting and reporting for principals which agrees in total to the general ledger.
- Detailed accounting/reporting for principals includes a listing of cash receipts and disbursements (by invoice) for sample voyages with total amounts due to/from the principal for each selected voyage and in total at end of reporting period.
- Maintain separate files for principals to include supporting documentation
- All transactions for principals must be supported by invoices and/or receipts.
  - c. Certification by Ship Agent's management that undisputed accounts are settled in accordance to agent's agreement with principals and vendors.
  - d. Ship Agents must demonstrate adequate insurance coverage, submit proof annually and name ASBA as a notify party.
    - i. Automobile Coverage (owned and non-owned vehicles)
    - ii. Workmen's Compensation for USL&H as required.
    - iii. Liability Coverage – minimum of 1 million dollars per event.

- e. Company in good standing as certified annually by the Department of State of the State in which the Ship Agent is incorporated.

**Section 3** Industry Experience

- a. At least one year in the business.

**Section 4** Each Ship Agent must ensure that its Employees are Trained and Professional

- a. Ship Agents must provide on the job training or participate in member or ASBA provided training seminars.
- b. Ship Agents must successfully complete the ASBA Ship Agent Exam.

**Section 5** In consideration of being ASBA-certified, Ship Agent Members agree:

- a. that the ASBA Ethics & Grievance Committee will be the governing body to consider complaints or other issues raised by their principals regarding noncompliance with this Article (provided such complaints or issues are brought as provided in Article VII Sec. 2 hereof)
- b. to abide by the rulings of the Committee.

Ship Agents deemed by the ASBA Ethics & Grievance Committee to be acting in non-compliance with this Article shall be subject to a formal reprimand and/or suspension or expulsion from membership.

**ARTICLE XIV Conflict of Interest Policy**

The Board shall adopt a conflict of interest policy, which shall define related party transactions and the circumstances that constitute a conflict of interest, as well as appropriate procedures for disclosure. The Board shall evaluate related party transactions and potential conflicts of interest in accordance with the conflict of interest policy.

Revised January 30, 2020