



**MASTER PROCUREMENT AGREEMENT  
(the "Agreement")**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by and between the parties herein named "UMG" and "Contractor."

"UMG": **UNITED MARITIME GROUP, LLC  
601 South Harbour Island Boulevard, Suite 230  
Tampa, Florida 33602**

"Contractor": \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITNESSETH**

WHEREAS, UMG and its subsidiary and affiliated companies, whether now in existence or hereafter formed (herein collectively referred to as the "UMG Companies," and each, individually, a "UMG Company") are engaged in the business of marine transportation and the handling of certain dry bulk materials, and in the course of their business, or activities preparatory or relating thereto, regularly and customarily enter into contracts with independent contractors for the performance of service or the provision of equipment and goods;

WHEREAS, the UMG Companies desire to establish and maintain an approved list of contractors and to acquire equipment, goods and services only from those contractors who are included on such approved list; and

WHEREAS, Contractor represents that it and its subsidiary and affiliated companies, whether now in existence or hereafter formed shall be subject to all of the terms and conditions of this Agreement, and shall have adequate equipment and goods (including materials and supplies) in good working order and condition and/or services of a nature and of such quality, fully trained personnel capable of efficiently operating such equipment and performing services (such labor, equipment, goods, materials, supplies and services being collectively referred to herein as the "Work") that they may be utilized by the UMG Companies in connection with the business of the UMG Companies.

NOW THEREFORE, in consideration of the mutual promises, conditions and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, including their subsidiary and affiliated companies, mutually agree as follows:

**1.0 Scope of Agreement.** Upon execution of this Agreement and compliance with its terms, UMG agrees that the name of Contractor and the affiliated and subsidiary companies of Contractor as may provide Work to any UMG Company shall be added to UMG's approved list of contractors. This Agreement shall remain in force and effect until canceled by either party by giving the other party ten (10) business days' notice in writing; provided, however, cancellation by Contractor shall not be effective until Work in progress or goods in transit at the time notice of cancellation is given is completed.

The purpose of this Agreement is to set forth the general obligations and responsibilities applicable to the parties hereto in the event Contractor provides Work for any UMG Company pursuant to a Purchase Order (hereinafter referred to as a "PO"). In the absence of a mutually agreed to PO, this Agreement does not obligate the UMG Companies to order Work from Contractor, nor does it obligate or authorize Contractor to provide Work to the UMG Companies, but in the event any UMG Company requests Contractor to provide Work, then the terms and conditions of this Agreement, together with the terms and conditions of the applicable PO shall control and govern the respective rights and obligations of both Contractor and the UMG Companies.

The terms and conditions of this Agreement shall govern, control and prevail at all times over any preprinted terms, if any, but not any typewritten or handwritten terms of any UMG Company PO which may be used to engage specific Work from Contractor. Each Company PO shall be deemed a separate transaction.

**2.0 The Work.** Contractor shall perform or provide, or cause to be performed or provided, all Work for any of the UMG Companies in a good and workmanlike manner, using competent and experienced workmen and supervisors in accordance with good

industry practices. Contractor shall insure that all goods, materials, equipment, or supplies furnished by Contractor or any of its affiliated or subsidiary entities shall be free from defects. Contractor agrees to inspect, or cause to be inspected all materials, supplies, goods, and equipment furnished by any UMG Company that Contractor intends to employ in the course of performing or providing Work hereunder and shall notify UMG of any apparent defects therein before using such materials and equipment. Should Contractor use such materials, supplies, goods, or equipment with knowledge of any defect without notifying UMG thereof and receiving authorization from UMG to use such materials, supplies, goods, or equipment, Contractor shall be deemed to have assumed all risk of and liability for any loss, damage or liability that may result from the Work performed or provided by reason of failure or defects in such materials, supplies, goods, and equipment.

**3.0 Independent Contractor.** It is mutually understood and agreed that Contractor shall act as an independent contractor and not as a subcontractor, agent, or employee of the UMG Companies; and Contractor shall have and maintain complete control, direction and responsibility over its own employees and subcontractors and over the Work, including the Work of its subcontractors. Subject to the provisions of this Agreement, the means and methods employed for performing any of the Work under this Agreement shall be at the option of Contractor, with the UMG Companies being entitled to inspect the Work to reasonably assure the results are in accordance with the terms and conditions of the terms and conditions of this Agreement and the corresponding PO. The UMG Companies shall have no liability for and Contractor agrees that it is responsible for the payment of all required federal taxes pursuant to the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act and responsible for all federal and state income tax withholding. Further the parties agree that the UMG Companies shall not provide to Contractor or any of Contractor's subcontractors, agents and/or employees any employee benefits pursuant to any federal or state law or regulation.

**4.0 Contractor Responsible for Work Until Accepted.** Contractor agrees that it will continue to perform work and/or services until the Work is fully completed and accepted by the relevant UMG Company; and in the case of any accident, destruction or injury to the Work before the final completion and acceptance of said Work, Contractor will repair or replace the Work so injured, damaged or destroyed at his own expense, in a timely manner (with repair/replacement beginning immediately at the first opportunity following the loss), and to the satisfaction of the relevant UMG Company for which the Work is being provided.

**5.0 Insurance.** Without prejudice to or otherwise diminishing Contractor's obligations under the indemnification provisions as set forth in this Agreement, Contractor, at its sole cost and expense, shall procure and maintain throughout the term of this Agreement the following insurance policies on forms and with good and solvent insurers satisfactory to UMG (UMG's approval of said forms and/or insurers not to be unreasonably withheld), and shall require each such insurance policy to provide for thirty (30) days prior written notice of material changes or termination of coverage except ten (10) days prior written notice shall be provided in the event of cancellation due to the non-payment of premium:

- |  |  |
|--|--|
| A. Workers Compensation /<br>Employers Liability | <ol style="list-style-type: none"><li>1. Statutory workmen's compensation in compliance with the laws of the state in which the Work may be performed by the Contractor hereunder, with a minimum Employer's Liability policy limit of USD \$1,000,000.00 each person and each occurrence.</li><li>2. Include United States Longshore and Harbor Workers' Compensation Act coverage where applicable.</li><li>3. Include voluntary compensation coverage.</li><li>4. Include occupational disease coverage.</li><li>5. Include borrowed servant or alternate employer endorsement naming the relevant UMG Company(ies) for which Work shall be provided as the alternate employer and stating that an action brought against any UMG Company under the theory of "borrowed servant" or "alternate employer" or any similar theory will be treated as a claim against Contractor.</li><li>6. Include maritime employers liability endorsement, including transportation, wages, maintenance and cure.</li></ol> |
| B. Comprehensive<br>General Liability            | <ol style="list-style-type: none"><li>1. Minimum policy limit of USD \$5,000,000.00 per occurrence/aggregate.</li><li>2. Include coverage for explosion, collapse, and underground hazards.</li><li>3. Include products hazard coverage.</li><li>4. Include completed operations hazard coverage.</li><li>5. Include broad form property damage coverage.</li><li>6. Deletion of all watercraft exclusions.</li><li>7. Blanket contractual liability coverage applicable to all liability,</li></ol>   |

indemnity and hold harmless provisions assumed under this Agreement.

8. Include independent contractors coverage.

C. Automobile

1. Minimum policy limit of USD \$5,000,000.00 combined single limit per occurrence or accident.
2. Covering all owned, non-owned, hired and/or rented automotive equipment for bodily injury and/or property damage.

D. Hull, Protection & Indemnity and Pollution

\*(This coverage is only required if Contractor may operate or otherwise utilize any waterborne craft or vessel in providing the Work)

1. Primary hull insurance subject to not less than the terms and conditions of the Tailor Hull Form (Rev. 70) or its equivalent including S.R. & C.C.
2. Primary protection and indemnity insurance, including contractual liability, collision/tower's liability and pollution buy-back endorsement subject to the terms and conditions of not less than the P&I SP-23 (Revised 1/56) form of policy or its equivalent with limit of \$1,000,000.00 applicable to any one accident or occurrence.
3. Pollution insurance subject to an amount not less than \$5,000,000.00 and conditions available through the Water Quality Insurance Syndicate for OPA, CERCLA and other substances coverages.
4. Excess liability insurance, including excess protection and indemnity, excess tower's, excess collision, excess pollution, excess employer's liability and maritime employer's liability, excess comprehensive general liability, and excess automobile liability insurance with limits of not less than the highest maximum levels of a combination of primary and excess insurance maintained by Contractor and any of its parent, subsidiary or affiliated entities, but in no event in combinations of primary and excess coverage which would be less than \$10,000,000.00 per occurrence.

E. Professional Liability / Errors & Omissions

\*(This coverage is only required if Contractor will provide any professional services which may subject it to liability under this Agreement or a PO, and for which none of the other insurance as required herein would provide coverage)

1. Minimum policy limit of USD \$1,000,000.00 per occurrence.

Prior to any Contractor commencing Work hereunder for any UMG Company, Contractor shall obtain from each of its insurers a waiver of subrogation in favor of each of the "UMG Indemnitees" (defined below) and, with the exception of Workers' Compensation Coverage, name each of the UMG Indemnitees as additional insureds in each insurance policy as set forth above. No "other insurance" provision shall be applicable to the UMG Indemnitees by virtue of having been named an additional insured or loss payee under any policy of insurance and Contractor's insurance shall be primary and non-contributory with respect to the UMG Indemnitees. Contractor shall ensure that any endorsement naming the UMG Indemnitees as additional insureds shall not exclude from coverage the sole negligence of the additional insureds. Contractor shall be responsible for payment of all deductibles, premiums, retentions and payment for all expenditures incurred under any sue and labor provision. The foregoing insurance policies shall each provide that there shall be no recourse against the UMG Companies for payment of premiums, commissions, club calls, assessments, or advances.

IN THE EVENT THAT LIABILITY FOR ANY "COVERED LOSSES" (DEFINED BELOW) IS DENIED BY THE CONTRACTOR'S INSURERS, IN WHOLE OR IN PART, BECAUSE OF BREACH BY CONTRACTOR OF ITS CONTRACT OF INSURANCE OR FOR ANY OTHER REASON, OR IF CONTRACTOR'S INSURERS FAIL TO DEFEND OR PAY CONTRACTOR'S CLAIMS, OR IF CONTRACTOR FAILS TO MAINTAIN ANY OF THE INSURANCES HEREIN REQUIRED, CONTRACTOR SHALL PERSONNALLY "INDEMNIFY" (DEFINED BELOW) EACH OF THE UMG INDEMNITEES FOR ANY SUCH LOSS OR LOSSES.

**6.0 Indemnification.** CONTRACTOR WILL INDEMNIFY, DEFEND (INCLUDING THE PAYMENT OF ALL REASONABLE ATTORNEYS' FEES, COURT COSTS, EXPERT WITNESS FEES AND ALL OTHER LITIGATION FEES REGARDLESS OF TYPE) AND HOLD HARMLESS (COLLECTIVELY, "INDEMNIFY") THE UMG COMPANIES AND THEIR OTHER CONTRACTORS AND SUBCONTRACTORS OF ANY TIER AND INVITEES FOR EACH OF THE FOREGOING, AND THE RESPECTIVE PARENTS, SUBSIDIARIES, AFFILIATES, JOINT VENTURES OF SAME, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONSULTANTS, AGENTS AND REPRESENTATIVES, AND ANY AND ALL VESSELS OWNED, CHARTERED, HIRED, MANAGED OR OPERATED BY ANY OF THE FOREGOING, AND THE INSURERS OF EACH OF THE FOREGOING (COLLECTIVELY, THE "UMG INDEMNITEES") FROM ANY AND ALL CLAIMS, LOSSES AND DAMAGES, INCLUDING BUT NOT LIMITED TO, ANY CLAIMS, LOSSES AND DAMAGES FOR ILLNESSES, OCCUPATIONAL DISEASES, INJURIES, DEATHS OR PROPERTY DAMAGES, OTHER LOSSES OR DAMAGES OR EXPENSES ("COVERED LOSSES"), ARISING OUT OF OR RELATING IN ANY WAY TO: (1) THE BREACH OF ANY DUTY THAT CONTRACTOR HAS AGREED TO PERFORM PURSUANT TO THIS AGREEMENT AND/OR ANY PO; OR (2) ANY COVERED LOSSES THAT ARE INCURRED BY ANY OF CONTRACTOR'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, TRESPASSERS OR AGENTS, EVEN IF SUCH COVERED LOSSES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF THE UMG INDEMNITEES OR THE UNSEAWORTHINESS OF ANY VESSELS OWNED, OPERATED OR OTHERWISE UNDER THE CONTROL OF ANY UMG INDEMNITEE. THE INDEMNITY OBLIGATIONS OF CONTRACTOR SHALL BE CONSIDERED PRIMARY TO ANY OBLIGATION OF ANY INSURER OF A UMG INDEMNITEE TO AFFORD COVERAGE TO CONTRACTOR IN ANY POLICY OF INSURANCE OF A UMG INDEMNITEE IN WHICH CONTRACTOR IS NAMED AS AN ADDITIONAL ASSURED. CONTRACTOR'S OBLIGATION TO PROVIDE INDEMNITY PURSUANT TO THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**7.0 Patent Indemnification.** Contractor warrants that both the Work performed hereunder and any equipment or materials used to perform the Work do not infringe on any United States or foreign patents, copyrights, or other intellectual property rights. CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY THE UMG INDEMNITEES FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, LIABILITY, OR EXPENSE WHICH MAY BE INCURRED ON ACCOUNT OF ANY SUIT, CLAIM, JUDGMENT, OR DEMAND INVOLVING INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT INVOLVING IN ANY MANNER THE WORK PROVIDED HEREUNDER AND/OR IN ACCORDANCE WITH A PO.

**8.0 Safety Precautions.** Contractor agrees prior to the commencement of the Work to make all necessary inspections and to ascertain the existence and extent of any actual or potential hazardous or dangerous or unsafe conditions, and to instruct its employees and all others working under Contractor's supervision as to said conditions and as to the safety measures and precautions to be taken in connection therewith. Contractor further agrees to take all necessary safety precautions, and to otherwise fully comply with all laws, rules and regulations pertaining to safety and accident prevention. Contractor agrees that it will require its employees to abide by the provisions of Company's "Contractor Safety Manual" policies regarding safe working practices.

**9.0 Compliance with Applicable Law.** Contractor and the UMG Companies respectively agree to comply with all laws, rules, and regulations, which are now or may become applicable to the Work. IF ANY UMG COMPANY IS REQUIRED TO PAY ANY FINE OR PENALTY RESULTING FROM THE FAILURE OF CONTRACTOR TO COMPLY WITH SUCH LAWS, RULES OR REGULATIONS, CONTRACTOR SHALL IMMEDIATELY INDEMNIFY SUCH UMG COMPANY FOR ANY SUCH PAYMENT. LIKEWISE, IF CONTRACTOR IS REQUIRED TO PAY ANY FINE OR PENALTY RESULTING FROM THE FAILURE OF ANY UMG COMPANY TO COMPLY WITH SUCH LAWS, RULES OR REGULATIONS, THE UMG COMPANY SHALL IMMEDIATELY INDEMNIFY CONTRACTOR FOR ANY SUCH PAYMENT.

**10.0 Choice of Law and Venue Selection.** Contractor and the UMG Companies agree that this Agreement shall be governed, construed, enforced, litigated, interpreted and the relations between the parties determined in accordance the General Maritime Laws of the United States of America, and, to the extent not in consistent therewith, the laws of the following states depending on the UMG Company made subject to the dispute or difference:

U.S. United Barge Line, LLC	The Laws of the State of Illinois
U.S. United Bulk Terminal, LLC	The Laws of the State of Louisiana
U.S. United Inland Services, LLC	The Laws of the State of Louisiana
U.S. United Ocean Services, LLC	The Laws of the State of Florida

Any controversy, claim, dispute or litigation pertaining to any UMG Company, Contractor, this Agreement or any PO shall be resolved in the following venues depending on the UMG Company made subject to such dispute or difference:

U.S. United Barge Line, LLC	U.S. District Court for the Southern District of Illinois (Benton, Illinois Division), or Illinois First Judicial Circuit Court (Massac County, Illinois)
U.S. United Bulk Terminal, LLC	U.S. District Court for the Eastern District of Louisiana (New Orleans, Louisiana Division), or Louisiana Twenty-Fifth Judicial District Court (Plaquemines Parish)
U.S. United Inland Services, LLC	U.S. District Court for the Eastern District of Louisiana (New Orleans, Louisiana Division), or Louisiana Twenty-Fifth Judicial District Court (Plaquemines Parish)
U.S. United Ocean Services, LLC	U.S. District Court for the Middle District of Florida (Tampa, Florida Division), or Florida Thirteenth Judicial Circuit Court (Hillsborough County, Florida)

**11.0 Confidential Information.** Contractor understands and acknowledges that Contractor will have access to confidential information (“Confidential Information”) of the UMG Companies and that Contractor has a duty at all times: (i) not to use such Confidential Information for any purpose other than as directed by a UMG Company; and (ii) not to disclose such Confidential Information or permit such information to be disclosed to any other person, firm, corporation, or other third party during the term of this Agreement or at any time thereafter except with UMG's prior written consent. For purposes of this Agreement, Confidential Information shall include, without limitation, any and all trade secrets, undisclosed technology, proprietary information, customer lists, unpublished patent applications, business records, notes, memoranda, data, ideas, processes, methods, techniques, systems, formulas, models, devices, programs, computer software, writings, research, personnel information, customer information, plans, or any other information of whatever nature in the possession or control of any UMG Company that is not generally known or available to members of the general public, including any copies, worksheets, or extracts from any of the above. Contractor further agrees that if this Agreement is terminated for any reason, Contractor will neither take nor retain, without prior authorization from a UMG Company, originals or copies of anything that contains Confidential Information.

Contractor specifically acknowledges and agrees to the following: (a) that Contractor's covenants as set forth in this provision are of a special, unique, and extraordinary nature; (b) that irreparable injury will result to the UMG Companies and their businesses and properties in the event of any breach by Contractor of any of the provisions as set forth in this provision; (c) that such injury cannot easily be compensated by money damages; and (d) that Contractor’s continued relationship with the UMG Companies hereunder is predicated in part upon the covenants of Contractor as set forth in this provision. In the event of any breach of these covenants by Contractor, the UMG Companies shall be entitled, in addition to any other remedies and damages available, to injunctive relief to restrain the violation of such covenants by Contractor or by any person or persons acting for or with Contractor in any capacity. The UMG Companies shall be entitled to such injunctive relief without the necessity of posting a bond of cash or otherwise and without actual proof of irreparable harm. The obligations set forth in this provision shall survive the termination of this Agreement.

**12.0 Audit Rights.** Contractor will maintain complete and accurate financial and other records for any PO as agreed to between the parties for at least three (3) calendar years after the year during which the Work has been provided under the PO. Upon a UMG Company’s written request and at a UMG Company's expense, a UMG Company will be entitled to audit Contractor’s records, during reasonable business hours, for the purpose of verifying the accuracy of all billings made by Contractor to a UMG Company hereunder; and Contractor shall fully cooperate with such UMG Company's reasonable requests for documentation pursuant to any such audit. If the results of an audit show over billing, Contractor will promptly issue a credit invoice to the relevant UMG Company and promptly refund such overcharges. In addition, if the UMG Company's audit reveals an over billing of 5% or more, Contractor will reimburse the UMG Company for its reasonable audit costs.

**13.0 Prohibition Against Liens.** CONTRACTOR SHALL NOT HAVE THE RIGHT, POWER OR AUTHORITY TO CREATE, INCUR OR PERMIT TO BE PLACED OR IMPOSED UPON ANY UMG COMPANY VESSEL(S) ANY LIEN OR ENCUMBRANCE WHATSOEVER, AND CONTRACTOR SPECIFICALLY AND IRREVOCABLY WAIVES ANY LIEN THAT IT HAS OR MAY HAVE AGAINST ANY VESSEL OR VESSELS OWNED, CHARTERED, MANAGED OR OPERATED RESULTING FROM OR ARISING OUT OF THIS AGREEMENT OR ANY PO. IN ADDITION, CONTRACTOR AGREES TO PAY AND SATISFY ALL CLAIMS FOR LABOR AND MATERIALS EMPLOYED OR USED IN CONNECTION WITH THE

WORK PERFORMED HEREUNDER; AND CONTRACTOR AGREES TO PERMIT NO LIENS OR ENCUMBRANCES OF ANY KIND TO BE FIXED UPON OR AGAINST THE PROPERTY OF ANY UMG COMPANY OR ANY PROPERTY WHICH IS THE SUBJECT OF THE WORK REGARDLESS OF OWNERSHIP. WITHOUT WAIVING OR MODIFYING ANY OF THE INDEMNITY OBLIGATIONS OWED BY CONTRACTOR TO THE UMG COMPANIES AS OTHERWISE REQUIRED HEREIN, CONTRACTOR AGREES TO INDEMNIFY THE UMG INDEMNITEES AGAINST ALL SUCH LIENS AND ENCUMBRANCES.

**14.0 Miscellaneous.** The parties acknowledge that each has had an opportunity to have this Agreement reviewed by an attorney of its choice and the parties therefore waive the benefit of any presumption that might arise out of the preparation of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of Contractor, the UMG Companies and their respective successors, and permitted assignees. No failure or delay on the part of any party in exercising any of its respective rights hereunder upon any failure by the other party to perform or observe any condition, covenant, or provision herein contained shall operate as a waiver thereof, nor shall any single or partial exercise of any of such rights preclude any other or further exercise thereof or the exercise of any other right hereunder. Clause headings contained herein are inserted for the convenience of the parties only and shall have no substantive effect. Time is of the essence in the performance of the terms of this Agreement and any corresponding PO. This Agreement, together with any UMG Company PO(s) (including attachments to same) contain the entire agreement of the parties which may not be modified orally or by past or future conduct or representations, but only may be modified by a writing signed by each of the parties that is made and signed after the date of the signing of this Agreement. In the event that any provision of this Agreement shall be held unconscionable, unenforceable or void for any reason by any tribunal of competent jurisdiction, it is agreed that the provision in question shall be modified to eliminate the elements of concern to the tribunal and shall then be binding on the parties hereto. The remaining provisions of this Agreement shall not be affected by the action of any tribunal or modification of such provision and shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**UNITED MARITIME GROUP, LLC**

\_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_