



## MEMBERSHIP SERVICES AGREEMENT

This Membership Services Agreement (the "Agreement") is entered into between American Maritime Safety, Inc., a non-profit maritime trade association with its principal place of business located at 199 Main Street, 7<sup>th</sup> Floor, White Plains, New York 10601-1833 (hereinafter referred to as "AMS"), and the Member Company Subscriber (hereinafter referred to as "SUBSCRIBER").

AMS was established in 1987 to facilitate the maritime industry's compliance with the U.S. Department of Transportation's ("DOT") and U.S. Coast Guard's drug and alcohol testing regulations, 49 CFR Part 40 and 46 CFR Parts 4, 5 and 16.

In furtherance of the objectives listed above, AMS has received commitments from a qualified professional laboratory, a medical review officer, and from various specimen collection agencies and clinics, to make their services available to subscribers under this Agreement.

SUBSCRIBER, in the course of its business, employs or contracts with individuals who are subject to chemical testing pursuant to the federal regulations listed above, and/or its own Company Chemical Testing Policy.

SUBSCRIBER desires AMS to facilitate performance of testing of its employees and/or subcontractors as required by the federal regulations listed above, and/or its own Company Chemical Testing Policy.

In consideration of the promises in this Agreement, and intending to be legally bound hereby, AMS and SUBSCRIBER agree as follows:

1. Compliance with Requirements and Regulations:

AMS will make all efforts in good faith to perform such services in order to enhance compliance on the part of SUBSCRIBER with the requirements of the applicable regulations regarding drug and alcohol testing and enforcement by specific DOT agencies, as set forth in applicable federal laws and regulations, as the same may be amended from time to time.

2. Exclusivity:

SUBSCRIBER agrees that, while this Agreement is effective, AMS shall be the exclusive provider to SUBSCRIBER of drug and alcohol testing services, and SUBSCRIBER shall not use any provider of drug and alcohol testing services other than AMS, except with the prior written consent of AMS.

3. Payment:

SUBSCRIBER shall pay AMS membership dues in accordance with the applicable rate schedule attached hereto.

4. Right to audit:

AMS reserves the right to perform an audit at any time of all books and records of SUBSCRIBER as they may relate to the calculation of SUBSCRIBER's membership dues under this Agreement. SUBSCRIBER shall maintain accurate records at all times. Upon three (3) days' notice, SUBSCRIBER shall provide AMS reasonable access to SUBSCRIBER's records to verify the calculation of the SUBSCRIBER's membership dues under this Agreement. AMS shall be permitted to conduct audits with any or all of its own internal resources or by securing the services of a third party accounting/auditing firm, solely at AMS's election. AMS shall have the right to copy, at its own expense, any record related to the basis for the calculation of SUBSCRIBER's membership dues under this Agreement.

5. Limitation of Liability:

- a. SUBSCRIBER agrees and acknowledges that, except as specifically set forth herein, AMS has made no representation, promise, guarantee, statement or warranty, directly or indirectly, expressed or implied, written or oral, with respect to the services to be provided by AMS hereunder.
- b. SUBSCRIBER agrees and acknowledges that AMS shall not be liable for any damage or any penalty incurred of any kind whatsoever, or for failure to give notice of, delay in delivery or transportation of specimens, delay in delivery of test results, actions by vendors of AMS beyond the control of AMS, strikes, errors in collection of specimens by vendor's employees or agents or by SUBSCRIBER, or any other causes beyond the control of AMS.

- c. SUBSCRIBER agrees to indemnify and hold free and harmless AMS, from and against all manner of loss, damage and liability (including court costs and attorneys' fees) arising from any claim made against AMS or loss incurred by AMS as a result of, or in any way arising from, relating to, or connected with, AMS's obligations identified within this Agreement.
- d. SUBSCRIBER agrees to indemnify and hold AMS harmless from any and all claims brought against any subcontractor of AMS for any reason, including, but not limited to, any violation of federal or state law, errors and omissions in the services performed, or for monies allegedly owing, liens asserted, or otherwise, for which liability is or could be asserted against AMS, either directly or indirectly or by operation of law. These obligations to hold harmless and indemnify, set forth herein, shall survive any termination of this Agreement.

6. Duration:

This Agreement shall be effective for a period of one (1) year from the date of execution and will automatically be renewed each year for an additional one (1) year period unless either party gives written notice of termination sixty (60) days prior to that year of expiration.

7. Dispute Resolution:

This Agreement shall be governed by and construed under the laws of the State of New York and any question arising hereunder shall be construed or determined according to such laws. Any claim, dispute or controversy arising out of, related to, or in connection with, directly or indirectly, this Agreement, or the performance, enforcement, breach, termination, validity or interpretation (including, without limitation, settlement and resolution of the scope of these arbitration provisions) or the subject matter comprised and settled therein shall be settled by final and binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The arbitration shall be conducted in White Plains, New York. Judgment by the arbitrator may be entered by any New York state or federal court having jurisdiction thereof.

8. Miscellaneous:

This Agreement contains the entire understating between AMS and SUBSCRIBER. No agent, employee or other representative of either party is empowered to alter any of its terms unless done so in writing and signed by the SUBSCRIBER and AMS. All prior understandings, terms or conditions are deemed merged into this Agreement. This Agreement shall inure to the benefit of and be binding upon the heirs, successors, administrators, and executors of the respective parties hereto. It is agreed by both SUBSCRIBER and AMS that, should the SUBSCRIBER withdraw any vessel or vessels from the program, SUBSCRIBER will not receive a full, partial or prorated refund of annual membership dues.

AMS and SUBSCRIBER, intending to be legally bound by this Agreement, have set their respective hands and seals as of the date listed below.

Date of Contract Execution: \_\_\_\_\_

Check one:       Renewal       New Member

**AMERICAN MARITIME SAFETY, INC.**

AMS

**199 Main Street, 7<sup>th</sup> Floor  
White Plains, NY 10601**

Address of AMS

**Lee Seham, Esq.**

President of AMS

\_\_\_\_\_  
Name of Member Company Subscriber

\_\_\_\_\_  
Address of Member Company Subscriber

\_\_\_\_\_  
Name of Designated Employer Representative ("DER")

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of DER

## CONTACT INFORMATION DESIGNATED EMPLOYER REPRESENTATIVE (“DER”

<b>Company Name:</b>	
<b>Company Street Address:</b>	
<b>City, State, Zip:</b>	

**The U.S. Coast Guard requires that all selected crewmembers report for testing within twenty-four (24) hours of being notified.** It is for this reason that AMS is now requesting that if the Designated Employee Representative (“DER”) is on the roster, that you please add an alternative DER. This will ensure that testing is done within the allowed timeframe. Please assign an individual who will comply with the attached “Designated Employee Representative Acknowledgement of Role and Responsibilities.”

<b>*Primary DER:</b>		<b>*Alternate DER:</b>	
<b>*Title:</b>		<b>*Title:</b>	
<b>*Telephone:</b>		<b>*Telephone:</b>	
<b>Fax:</b>		<b>Fax:</b>	
<b>*E-mail Address:</b>		<b>*E-mail Address:</b>	

\*Required fields

**PLEASE ATTACH AN ADDITIONAL SHEET OF PAPER WHEN LISTING MORE THAN 2 DERS.**

### Months of Operation:

Year round operator

Seasonal operator – please specify months of operations below:

January

April

July

October

February

May

August

November

March

June

September

December

# DESIGNATED EMPLOYER REPRESENTATIVE (“DER”) ACKNOWLEDGEMENT OF DUTIES AND RESPONSIBILITIES

I, \_\_\_\_\_, on behalf of \_\_\_\_\_, assume  
Name Company Name

the role of Designated Employer Representative<sup>1</sup> and agree to accept and fulfill the DER responsibilities set forth in 49 CFR Part 40 and 46 CFR Part 16, including but not limited to:

- Ensuring that an adequate supply of chain of custody forms is available at all times.
- Receiving selection notices via E-mail (fax or mail upon request).
- Confirming receipt of each selection notice within twenty-four (24) hours (via phone, E-mail or fax).
- Keeping the selection notice confidential from the selected crewmember(s) and **NOT** notifying said crewmember(s) until collection site hours and crewmember availability ensures that the crewmember(s) can **complete testing within two to four hours of notification**.
- Once notified, I will ensure that testing is completed within the aforementioned time limit.
- I will notify American Maritime Safety (“AMS”) (via phone, E-mail or fax) once testing has been completed.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

<sup>1</sup> Designated Employer Representative (“DER”) is defined by federal regulation as an “employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part.” See 49 CFR § 40.3.



