INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT
(As amended May 1984)

Preamble

(1) Application and interpretation of the Agreement
Subject to the undermentioned conditions the formula as set forth in Clause 2 shall apply in respect of Charters on the New York Produce Exchange form entered into after the 1st. June 1984.

(i) It shall be a condition precedent to settlement under the Agreement that the cargo claim, including any legal costs incurred thereon, shall have been properly settled or compromised and the cargo carried under a bill or bills of lading incorporating the Hague or Hague/Visby Rules or containing terms no less favourable. Ex gratia settlements made for business or other reasons where there is no legal liability to pay the claim shall be borne in full by the party by whom the payment is made and for the purpose of this Agreement no regard shall be had to such payments.

(ii) (a) For the Agreement to apply, the cargo responsibility clauses in the New York Produce Exchange Charter must not be materially amended. A material amendment is one which makes the liability for cargo claims, as between Owners and Charterers, clear. In particular the addition of the words “and discharge” in Clause 8 shall not be deemed to be a material amendment.

(b) However the addition of the words “and responsibility” with reference to the words “under the supervision” in Clause 8 together with the addition of the words “cargo claims” in the second sentence of Clause 26 shall render the Agreement inoperative. The addition of these two amendments, or the addition only of the words “cargo claims” in Clause 26, without any other material provision in the Charter shall mean that Owners shall bear all cargo claims subject to Charterers’ contribution under the Berth Standard of Average Clause/Charterers’ Contribution Clause (1971), if applicable.

(c) If the only material amendment is the addition of the words “and responsibility” with reference to the words “under the supervision” in Clause 8, it is agreed by the parties hereto that it shall mean that the apportionment of cargo claims as set out in Clause 2 shall be varied in the following manner:-

Claims for loss of or damage to cargo due to
useaworthiness and claims for condensation
damage resulting solely from improper
ventilation 100% Owners
Claims for damage (including slackage/ullage)
due to bad stowage or handling, and claims
for condensation damage resulting otherwise
than improper ventilation  - - - - - - - - - -  50% Owners
      50% Charterers

Except as provided in the second paragraph of
Clause (2), short delivery claims (including
pilferage) and claims for overcarriage.   - - - -   50% Owners
      50% Charterers

(iii) The Agreement shall apply regardless of the place of Arbitration or the legal
forum and whether or not the Charter contains a Clause Paramount incorporating
therein the Hague or Hague - Visby Rules and/or the Berth Standard of Average
Clause (otherwise known as the General Standard of Claim Clause/Charterers’
Contribution Clause (1971)).

(iv) Any claims pursued under this Agreement by or on behalf of either Charterers or
Owners should be notified to the other party in writing as soon as possible but in
any event within two years from the date of discharge or the date when the goods
should have been discharged, failing which any recovery shall be deemed to be
waived and time barred. Such notification should record bill of lading details and
the nature and amount of the claim.

(v) Where the Charter contains the Berth Standard of Average Clause/Charterers’
Contribution Clause (1971) such clause is to be applied after liability has been
apportioned in accordance with Clause (2) or Clause (1)(iii)(c) as the case may be
and Charterers’ contribution under such clause shall be per cargo voyage and not
per bill of lading or parcel of cargo notwithstanding anything to the contrary
contained therein.

(vi) Where Sub-Charters are involved the Agreement, unless the parties hereto
otherwise agree in any specific case, shall be applied in stages starting with the
party who first settles the cargo claims. For example in the case of a single sub-
charter, if the cargo claims are settle by the Sub-Charterers, the said claims shall
first be apportioned between the Sub-Charterers and the Charterers in
accordance with the Agreement, the Charterers being treated for the purpose as
if they were the “Owners”, the balance falling to Charterers’ account thereafter
being apportioned between the Charterers and Owners in accordance with the
Agreement.

(vii) The Agreement is not binding on Members but in all cases the parties will
recommend without qualification its acceptance to Members.

(2) Apportionment of cargo claims
In all cases where the Agreement applies cargo claims shall be apportioned as hereunder: -

Claims for loss of or damage to cargo due to
Unseaworthiness  - - - - - - - - - - - - - - - -  100% Owners
Claims for damage (including slackage / ullage)
due to bad stowage or handling  - - - - - - - -  100% Charterers
Except as provided in the succeeding paragraphs
of this clause, short delivery claims (including
pilferage), claims for overcarriage, and claims
for condensation damage  - - - - - - - - - -  50% Owners
      50% Charterers
As regards short delivery and overcarriage claims, where there is clear and irregutable evidence that the shortage or overcarriage, as the case may be, was due to act, neglect or default on the part of Owners’ or Charterers’ servants, then the party whose servants or agents were at fault shall bear the claim in full. Thus if there is corroborated eyewitness evidence that the shortage was due to pilferage by a stevedore, the claim will fall 100% to the account of Charterers, but if by a crewmember, then 100% to Owners, subject in the latter case to Charterers’ contribution under the Berth Standard of Average Clause / Charterers’ Contribution Clause (1971).

Claims for condensation damage shall be apportioned as provided in the first paragraph of this clause, except where there is clear evidence that the damage was due solely to bad stowage in which event such claims shall fall 100% to Charterers’ account but where there is clear evidence that the damage resulted solely from improper ventilation, such claims shall be borne 100% by Owners.

(3) Extension of agreement
It shall be open to the parties to apply in whole or in part the Agreement if they so desire notwithstanding that it is not strictly applicable by reason of any of the matters set forth in Clause 1.

(4) Duration
The Agreement shall continue in force until varied or terminated. Any variation to be effective must be approved in writing by all the parties but it is open to any Association to withdraw from the Agreement on giving to all the other parties not less than three months’ written notice thereof, such withdrawal to take effect at the expiration of that period. After the expiry of such notice the Agreement shall nevertheless continue as between all the parties, other than the party giving such notice who shall remain bound by and be entitled to the benefit of this Agreement in respect of all cargo claims arising out of charters commenced prior to the expiration of such notice.

For example if the Standard Association gave written notice of withdrawal form the Agreement on the 1st January 1985, it would be bound to apply the Agreement in respect of cargo claims arising out of charters commenced at any time on or before the 31st March 1985.

(5) Operation
Nothing herein contained shall affect any settlement already concluded between the parties to this Agreement.