

the Member's beneficiary, but in no case will any payment be made to an assignee or pledgee.

#### Article XI. Forfeiture of Benefits

Section 1. **Non-Forfeiture.** Upon the termination of the Fund or upon the complete discontinuance under the Fund, the rights of each Member to benefits accrued to the date of such termination or discontinuance to the extent then funded, or the rights of each Member to the amounts credited to his/her account at such time are nonforfeitable except as provided under Articles VII and X.

Section 2. **Forfeiture.** Forfeitures arising from severance from employment, or for any other reason, must not be applied to increase the benefits any employee would otherwise receive under the Fund. The amounts so forfeited shall be used for purposes or projects which the Board of Trustees, in its sole discretion, shall deem to be for the benefit or interest of the qualified members of the Fund.

#### Article XII. Rights of Members

Section 1. **Rights of Members.** Except as specifically provided in this Fund, no person, other than the Board of Trustees of the Fund, shall have any right, title or interest in any of the income or property of any character received or held by or for the account of the Fund, and no person shall have any vested rights in any income or property in the Fund.

Moreover, nothing herein contained shall be deemed to give any Member the right to be retained in the service of any of the Participating Companies or to interfere with the rights of any Participating Company to discharge such Member at any time, nor shall it give the Participating Companies the right to require a Member to remain in their service nor shall it interfere with the Member's right to terminate his/her service at any time.

#### Article XIII. Modification/Termination of Fund, Withdrawal of Participation in the Fund, Non-Diversion of Fund

Section 1. **Modification/Termination of Fund.** No obligation of any kind is undertaken or assumed by any of the Participating Companies under or by reason of its participation in the installation of this Fund, which cannot be altered or amended, whether retroactively or prospectively, at the will of such Participating Company, or entirely discontinued in its discretion, except that in no event can any Participating Company alter, modify, amend or discontinue its participation in this Fund, nor can this Fund be altered, modified, amended or discontinued in contravention of any Collective Bargaining Agreement existing or the in force and/or to revert to all or any of the Participating Companies title to any part of the corpus or income be diverted to any other purpose than for the exclusive benefit of the Members or their beneficiaries in

this Fund, subject to the rules of the Fund in force.

#### Section 2. Withdrawal of Participation in the Fund.

In the event that a participating Company withdraws its participation in the Fund, which withdrawal in effect constitutes a termination of its own Fund, the liability of such withdrawing Company to contribute to the Fund ceases. Its contributions to the fund prior to its withdrawal, however, shall remain in the Fund for the payments of benefits to the Members in the Fund, in accordance with the rules of this Fund; provided, further, that the withdrawing Company shall forthwith accelerate or update any contributions to the Fund which may then be outstanding and due from such withdrawing Company.

Section 3. **Distribution of Assets of Fund.** In the event of discontinuance or termination of the Fund, the liability of all the Companies then participating in this Fund to make contributions to the Fund shall cease, and assets of the Fund shall be allocated to provisions for the expenses of administration or liquidation, for the following benefits payment and on the following manner and order to the extent of the sufficiency of such assets:

- a) A sum to provide for the payment, in full or pro-rata to Members or their beneficiaries, who are eligible for normal or late availment, or for death and disability benefits, but who have not resolved their benefit payments on the date of termination of the Fund.
- b) If any amount remains (a) above, a sum to provide for the payment, full or pro-rata to Members who remain and who have or may have a contingent interest as may be determined by the Board of Trustees on the termination of the Fund.

#### Article XIV. Effects of Social Legislation

Section 1. **Social Security Act/Employees Compensation Law.** Whatever benefits may be due to the Members on account of the Social Security Act or the Employees Compensation Law existing as of the effective date of this Fund shall not be deducted from the benefits granted under this Fund.

Section 2. **Similar benefits.** Except only as provided in the above paragraph the benefits provided in this Fund shall be reduced by the amount similar or analogous to those already provided in this Fund that a Participating Company may be required to give to the Members, by virtue of any present or future contracts other than the CBA's or other Laws, or awful order of competent authority.

#### Article XV. Governing Laws.

Section 1. **Application Laws.** The validity, effect and interpretation of this Fund shall, in every instance, be governed by the laws of the Republic of the Philippines.

Section 2. **Situs of the Plan/Trust.** The situs of the Fund and the Trust is in the Philippines.



### Amendments of Rules and Regulations for SMBF Provident Fund Association Inc.

#### Article I.

Section 1. **Name.** SMBF PROVIDENT FUND ASSOCIATION INC. hereby establishes a provident benefit plan to be known as **SMBF PROVIDENT FUND.**

Section 2. **Objective.** The objective to this fund is to attract and to keep devoted, honest and competent personnel in the service on board, as much as possible, the participating vessels owned or managed by any or all Participating Companies and to recognize and reward the continued and diligent service of such personnel by providing through a provident fund for the payment of benefits to their employees when these employees retire subject to the conditions and limitations hereinafter set forth.

Section 3. **Effectivity.** This fund, as well as the rules and regulations governing the same shall become effective from 1st of January 2014 and shall not cover past service liabilities prior the said effectivity date.

#### Article II. Definition of Terms

The following words and phrases, as used herein, shall have the meaning indicated, unless a different meaning is plainly required by the text.

1. **"Fund"** shall mean **SMBF Provident Fund** as established herein and in accordance with **Article V** hereof.
2. **"Company"** shall mean any of the Participating Companies, particularly as a point of reference for purpose of determining provisions on transfer of employment.
3. **"Participating Company/ies"** shall mean the company or companies maintaining and/or participating in this provident fund.
4. **"Member"** shall mean any person who is employed on a Participating vessel/ as defined and has qualified for membership under Article III.
5. **"Beneficiary"** shall mean a Member of the Fund and shall include any person legally entitled to a claim in accordance with these rules and regulations.
6. **"Participating Vessel/s"** shall mean any vessel owned or managed by any of the Participating Companies.
7. **"Non-Participating Vessel/s"** shall mean any vessel/s owned or managed by any of the Participating Companies which are not reported as Participating Vessel/s.
8. **"Service"** shall mean service on board any participating vessel.
9. **"Length of Service"** shall mean the number of years and completed months as determined by the Participating

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Companies.

10. **"Trustee"** or **"Board of Trustees"** shall mean the entity who, at any time, is managing the assets of the Fund and who will administer the Fund in accordance with Article V hereof.

11. **"Provident Fund Office"** or **"Office"** shall mean the office organized by the Board of Trustees to run the day to day operations of the Fund, particularly the maintenance of records, communications with Participating Companies and processing of Members' claims, among others.

12. **"Disability"** shall mean permanent physical or mental disability which justifies the availment of a Member. The Board of Trustees shall be the sole judge as to whether a Member shall have suffered a disability for the purpose of availment.

#### Article III. Membership

Section 1. **Eligibility for Membership.** Eligibility for membership under this Fund is limited to employees who are serving on board any Participating Vessel. Said employees shall be covered by an employment contract and have signed the Shipping Articles and for whom the Participating Company/ies has contributed into the Fund the amount required as provided herein.

Section 2. **The Fund.** The contributions to the Fund shall constitute the trust fund of the Fund and shall be administered and invested by the Board of Trustees in accordance with the terms and conditions of the governing Trust Agreement. All questions relating to the operation and administration of the Fund, including but not limited to, the power to interpret, construe and administer the Fund, to determine the rights of members and their beneficiaries to the Fund, and all such powers necessary or useful in the discharge of its duties, shall be resolved by the Board of Trustees.

#### Article IV. Contributions

Section 1. **Non-Contributory Plan.** No member shall be required to make any contribution to the Fund.

Section 2. **Contribution to the Fund.** Contribution to the Fund by the Participating Company shall start from the date of commencement of the Member's employment. No contribution shall be made for the account of said Member during the period he/she is on sick or vacation leave whether the leave is approved or not.

The fixed amount or percentage of monthly contribution as the case may be, shall be in accordance with the amount agreed by the Participating Company and the Fund.

**Section 3. Updating of Contributions.** In the event that on the date on which a Member makes a full claim for the withdrawal or payment of his/her provident fund benefits under the Fund, and there exists a deficiency in the total contribution for which the member is entitled to receive, the Participating Company concerned who is in arrears shall immediately make a single payment to the fund to make up for the deficiency. The determination of the amount which the Member is entitled to receive as provided herein as well as the amount of the deficiency in the total contribution to be updated by the Participating Company concerned shall be established by the Provident Fund Office.

#### **Article V. Administration**

**Section 1. The Board of Trustees.** Subject to the Rules and Regulations of the Fund, the Board of Trustees shall have complete control over the management and investment and reinvestment of the Fund and shall be vested with all powers, authorities and discretions necessary or expedient for the purpose.

The Board of Trustees shall not be liable for any loss incurred to the investments or reinvestments of the Fund, nor for any diminution in the value of the Fund, in the absence of bad faith, fraud or gross negligence.

The investments of the Fund shall be subject to periodic review.

**Section 2. The Fund.** The contributions to the Fund shall constitute the trust fund of the Fund and shall be administered and invested by the Board of Trustees. All questions relating to the operation and administration of the Fund, including but not limited to, the power to interpret, construe and administer the Fund, to determine the right of Members and their beneficiaries to the Fund, and all such powers necessary or useful in the discharge of its duties, shall be resolved by the Board of Trustees.

**Section 3. Report to Participating Companies.** The Participating Companies shall be furnished by the Board of Trustees an annual statement at the close of the Fund's fiscal year, showing the amount contributed by the Participating Companies.

**Section 4. Other Powers of the Board of Trustees.** The Board of Trustees may adopt and promulgate from time to time supplementary and complementary rules and regulations concerning the administration and the disposition of the Fund, which are not hereto inconsistent.

The Board of Trustees may seek the advice of a legal counsel and may appoint an independent accountant or consultant to periodically audit or review the Fund, investment managers to assist in the investment of the Fund, and a full-time Provident Fund Administrator who shall be re-

sponsible for the overall management and supervisions of the operations of the Provident Fund Office, with required staff complementation it deems fit to effectively function, the professional fees and expenses thereof to be charged to the Fund. All other expenses incidental to or necessary in the administration of the Fund shall be charged by the Board of Trustees to the Fund.

#### **Article VI. Availment Dates of Benefits**

Availment of benefits as provided under **Article VII** shall be guided by, and be subject to, the following:

**Section 1. Normal availment.** The normal availment date of each Member shall be the last day of the month during which the Member attains his/her fifty-fifth (55th) birthday.

**Section 2. Late availment.** A member may, with the consent of any Participating Company, defer his/her availment beyond his normal availment. The consenting Participating Company shall continue to contribute to the Fund with respect to such members until his/her actual availment from the consenting Participating Company or the Fund, whichever comes earlier.

#### **Article VII. Payment of Benefits**

**Section 1. Computation of benefits.** The benefits payable under this Fund shall be computed based on the total amount standing to the credit of the Member in the books of the Fund, consisting of the contributions of the Participating Companies in his favor plus the income credited thereto determined as of the last valuation date.

**Section 2. Normal Availment Benefits.** A member who reaches his normal availment date shall be entitled to and shall be paid the whole amount standing to his credit including 100% of the earning thereof. The membership of a member who remains in the employ of any Participating Company after the normal availment date shall continue to be operative in accordance with this Fund until his/her late availment whereupon all contributions to his/her account in the Funds shall cease and the amount standing to his credit shall be paid him hereunder.

**Section 3.** A member who resign from the Company prior to availment shall only be entitled to the full amount of the total contribution, including 100 % of the earnings thereof, the same to be payable only two (2) years after the normal availment age.

**Section 4.** A member who had been separated from the service of the Participating Companies for any cause shall be entitled to the full amount of the total contributions, including 100% of the earnings thereof, the same to be payable only two (2) years after the normal availment age.

**Section 5. Death benefits.** In the event of death of any Member while in the employ of any Participating Company, there shall be paid to his/her designated beneficiary

or, in the absence thereof, to the duly qualified representative of his/her estate, the amount of benefit granted under normal availment the same to be payable only two (2) years after the event of death.

**Section 6. Disability Benefit.** A Member whose employment is terminated due to a permanent physical or mental disability certified by a physician to the satisfaction of the Board of Trustees, shall be paid the same benefit as in normal availment.

#### **Article VIII. Procedure/Manner of Benefit Payment**

**Section 1. Procedure of Payment.** Application for the payment of the benefits under Article VII must be made in writing in the form and manner prescribed by the Board of Trustees and must be filed by the Member with the Board of Trustee duly endorsed by all Participating Companies where the members was employed, at least thirty (30) days in advance of the date of actual availment, resignation or separation. The Board of Trustees shall be the sole judge of the sufficiency of the information submitted, the applications and the interpretations of the Fund and the entitlement to and the amount of the benefit. Decisions of the Board of Trustees shall be final and binding upon all parties.

**Section 2. Manner of Payment.** A Participant may elect at the time of his/her availment to have his/her benefits paid to him/her either in lump sum or in equal monthly installments over a period of not less than one (1) year but no more than five (5) years. The election must be made in the form prescribed in Section 1 of this Article, and should the Participant elect to have his benefits paid to him in installments, the actual period over which such installments will be paid to him shall be subject to the approval of the Board of Trustees. If the benefits are to be paid in installments, the unpaid balance remaining in the availed employee's name shall continue to participate in the investment and income of the Fund, and the availed Participant shall likewise be credited with his/her proportionate share of such net income should the availed participant die before completion of such installments, the entire unremitted balance shall immediately become due and payable to his/her beneficiaries or his estate, as the case may be.

#### **Article IX. Nomination of Beneficiaries**

**Section 1. Procedure.** Each employee, shall upon eligibility to participate in the Fund, forthwith nominate in writing, in such forms as shall be prescribed by the Board of Trustees, a person or persons entitled to succeed such member, by testate or intestate succession or donation under Philippine Laws, to receive the amount which may be due the member in case of his death or inability to receive in person any sum due to him from the Fund.

Every nomination or appointment shall remain in force until death of the nominee or appointee or until revoked

or amended by the Member making it by delivering to the Board of Trustees another nominee or appointment in the prescribed form.

In the event of death of a designated or appointed beneficiary during the lifetime of the designating or appointing Member, said Member shall forthwith nominate or appoint another person in the place of the deceased beneficiary, provided, however, that the person so appointed or nominated shall likewise be qualified or entitled to succeed such member, by testate or intestate succession or donation under Philippine Laws.

**Section 2. Failure to Nominate.** If at the death of the Member, there shall exist no valid nomination by him/her of a beneficiary, the existing laws of succession shall prevail.

If the person or persons from among those enumerated to the existing Philippine Laws on succession and donation do not exist at the time of a member's death, no death benefit shall be paid by the Fund. The death benefit, which should have been paid, shall be forfeited in favor of the Fund.

**Section 3. Minor/Incompetent Beneficiary.** In case the beneficiary is a minor or under any disability to give legal discharge for payment of the benefits, then payment of the benefits shall not be made until a legal guardian is appointed in behalf of the minor or person under disability, but the beneficiary shall not be entitled to any income on the amount of the accrued benefits during the period that the payment was deferred because of the absence of a legal guardian; provided, further, that if the amount of benefit is such that Philippine Laws would allow the payment thereof to the surviving parent of the minor or incompetent beneficiary, then benefit payments for the account of said beneficiary shall be made to the surviving parent of said beneficiary.

#### **Article X. Non-Alienation of Benefits**

**Section 1. Non-Alienation of benefits.** No Member of the Fund shall have any claim upon the amount standing to his/her credit other than in accordance with the rules of the Fund. Specifically, he/she shall have no right of alienation or assignment or pledge of any sum standing to his credit nor shall it be liable for or subject to any obligation or liability of such Member except as otherwise provided below or this Fund.

If a Member alienates, assigns, cedes, pledges or charges the whole or part of his/her interest under the Fund or any part thereof without written consent of the Board of Trustees, or if any Member shall be adjudged insolvent by a competent court, he/she shall forfeit all his/her rights and interests under the Fund. However, the Board of Trustees may, in its sole discretion, waive such forfeiture or revive the member's interest, wholly or in part, at a later date in such manner as it deems fit or pay directly the benefits to