# SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Korkyra Shipping Ltd. (hereinafter "KSL"), ACI-Marina POB 88, 20260, Korcula, Croatia

## I. RECITALS

(1) Health and Safety Code (*H&SC*) Section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board (ARB) identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant.

(2) Title13 CCR section 2299.2 (b) provides that the regulation applies to any person who own, operates, charters, rents, or leases any ocean-going vessel that operates in Regulated California Waters (RCW).

(3) Title13 CCR section 2299.2 (e) (1), sets forth the operational requirements for fuel sulfur content limits for Auxiliary Diesel Engines, Main Engines and Auxiliary Boilers.

(4) Title13 CCR, section 2299.2 (e) (2) sets forth the recordkeeping, reporting, and monitoring requirements.

(5) The ARB, with the cooperation of KSL, has documented that KSL failed to properly complete the operational requirements of the regulation. On November 6, 2011, the vessel Lady Racisce operated within RCW on heavy fuel oil in violation of this regulation. Also, on November 6, 2011 the vessel Lady Racisce visited the Port of Hueneme.

(6) Failure to properly complete the operational requirements of the regulation is a violation of state law resulting in penalties. *H&SC*, Sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410, authorize civil or administrative penalties not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000) for each day that the violation occurs.

(7) Any person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in RCW, can elect to pay a Non-Compliance Fee. Persons shall pay the applicable fees prior to leaving the California port or at a later date approved by the Executive Officer. The Non-Compliance Fee for a 1st Port Visited is $45,500.

(8) In order to resolve these violations, KSL has taken, or agrees to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

(9) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and KSL agree as follows:

## II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against KSL for the violations referred to above, the ARB and KSL agree as follows:

1) Upon execution of this Agreement, the sum of fifty five thousand five hundred dollars ($55,500.00) shall be paid on behalf of KSL within seven (7) business days following the execution of this agreement as follows: **$55,500.00** to the **California Air Pollution Control Fund**. Checks shall be made payable to the "Air Pollution Control Fund". If wireless payment is needed contact Mr. Alex Barber at abarber@arb.ca.gov for this information. Checks with the signed agreement shall be sent to:

   Alex Barber, Air Pollution Specialist/Investigator
   Air Resources Board /Enforcement Division
   9480 Telstar Ave. No. 4
   El Monte, Ca 91731

(2) KSL shall not violate CCR, Title 13, Section 2299.2 nor Title 17, Section 93118.2 (ATCM).

(3) KSL shall accurately comply with fuel switchover and keep accurate records.

(4) This Agreement constitutes the entire agreement and understanding between ARB and KSL concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and KSL concerning the subject matter hereof.

(5) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(6) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and

effect.

(7) This agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

(8) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

(9) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

**The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of $10,000.00 per unit per day for strict liability violations pursuant to Health and Safety Code section 39674. Alternatively, instead of performing the fuel switchover, the person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in RCW, can elect to pay the Non-Compliance Fees (NCF) for each port visit. For example, the NCF for a 1st Port Visited is a $45,500 Per-Port Visit Fee. Persons must pay the applicable fees prior to leaving the California port or at a later date approved by the Executive Officer. The penalty obtained in this case is $10,000.00 per unit plus the $45,500 NCF, for a total penalty of $55,500.00 after considering all factors specified in Health and Safety Code section 43024. In particular, the penalty reflects penalties obtained in other ocean going vessel fuels violation cases and Korkyra Shipping Ltd. cooperation with the investigation.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provision being applied in this case is Health and Safety Code section 39674 because CSC failed to comply with the Air Toxic Control Measure adopted under Health and Safety Code section 39600 et seq.

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

Since the fuel used did not meet regulatory requirements, all of the emissions from it were excess and illegal. Without information on engine usage and emission rates, however, quantifying these excess emissions is not practicable

(10) KSL acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC sections 42403 and 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the exact hours of non-compliant operation, and the individual emission rates of the engines in violation are not known, it is not practical to quantify the excess emissions.

(11) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases negotiation, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

(12) The penalty reflects ARB's assessment of the relative strength of its case against KSL, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that KSL may have secured from its actions.

(13) Now therefore, in consideration of the payment on behalf of KSL to the California Air Pollution Control Fund, the ARB hereby releases KSL and its principals, officers, agents, predecessors and successors from any and all claims for past violations of Health and Safety Code Sections 39650-39675 and CCR, title 13, section 2477, the ARB may have based on the circumstances described in paragraph (3) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

By: Ellen M. Peter

Name: Ellen M. Peter
Title: Chief Counsel
Date: 1/6/2012

**Korkyra Shipping Ltd.**

By: ____________________

Name: FRANICA MATIĆ
Title: AUTHORIZED REPRESENTATIVE
Date: 24 NOVEMBER 2011