



# **MEMORANDUM OF AGREEMENT (MOA)**

**BETWEEN**

**THE UNITED STATES OF AMERICA**

**DEPARTMENT OF TRANSPORTATION**

**MARITIME ADMINISTRATION**

**AND**

**MASSACHUSETTS MARITIME ACADEMY**



**EFFECTIVE DATE: 01 JANUARY, 2021**

Agreement to set forth the mutual covenants and agreements the Academy  
has made as a condition for the receipt of Federal assistance.

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# MARAD – Massachusetts Maritime Academy MOA

## TABLE of CONTENTS

TABLE of CONTENTS .....	i
ARTICLE 1. Authority and Purpose .....	1
ARTICLE 2. Annual Payments .....	3
ARTICLE 3. Student Incentive Payment (SIP) Program.....	5
ARTICLE 4. Fuel Payments and Donations .....	5
ARTICLE 5. Academy Requirements.....	6
ARTICLE 6. Training Ship .....	14
(A) Designation, Legal Status and Delivery of Training Ship:.....	14
(1) Authority and Location for Delivery: .....	14
(2) Property of the United States: .....	14
(3) Substitute or Interim Vessel:.....	14
(B) Use and Operation: .....	15
(1) Suitable Homeport Berth and Course of Instruction:.....	15
(2) Training Voyages and Sovereign Immune Status:.....	15
(3) Cruises Other Than the Annual Training Cruise: .....	16
(4) Ancillary Uses of the Training Ship: .....	17
(5) Operation and Maintenance: .....	17
(6) Compliance with Administration’s Training Ship Custodial Care Guidance (as amended): .....	17
(7) Available for Emergency and Priority Use: .....	18
(8) Prohibition on Carrying Cargo and/or Passengers for Revenue: .....	18
(9) Use for Public Service or Donated Cargo Carriage: .....	18
(10) Use for State Trade Promotion:.....	19
(11) Berthing Cadets at Homeport: .....	19

## MARAD – Massachusetts Maritime Academy MOA

(C) Covenants of the Academy during the Period the Training Ship is Under Custody of the Academy:.....	20
(1) Used for Maritime Training:.....	20
(2) Control of Access to the Training Ship:.....	20
(3) Safety, Security, and Supervision of Personnel:.....	20
(D) Permitted and Prohibited Personnel: .....	20
(E) Academy Requests for Approval and Correspondence:.....	20
(F) Risk of Loss of the Training Ship:.....	21
(G) General Provisions for Use:.....	21
(1) Institute Continuous Program of Ship Maintenance.....	21
(2) Safeguard Interests of the Administration .....	21
(3) Develop and Implement Safety Management System:.....	22
(4) Develop and Implement Lay-up Procedures.....	22
(5) Submit Voyage Reports .....	22
(6) Submit Incident Reports.....	23
(7) Defense of Claims.....	23
(8) Berth and Mooring.....	24
(9) No Liens.....	24
(10) Certificate of Ownership .....	25
(11) Administration Approval for Changes to Vessel .....	25
(12) Report Regulatory Non-Compliance or Alleged Violation.....	26
(H) Termination of Use:.....	26
(I) Use of Property Aboard the Training Ship:.....	27
(J) Condition Surveys: .....	27
(K) Maintenance and Repair (M&R) Program: .....	28

## MARAD – Massachusetts Maritime Academy MOA

(L) Administration’s Payment for Repairs: .....	29
(M) State Payment: .....	31
(N) Hospitalization and Maintenance and Cure:.....	31
(O) Repatriation and Return to Home Port: .....	32
(P) Salvage.....	32
(Q) Insurance and Indemnity.....	33
(R) Training Ship Capacity Sharing.....	37
(S) Administration’s Appointment of a General Agent.....	38
ARTICLE 7. Public Information.....	39
ARTICLE 8. Regulations .....	39
ARTICLE 9. Officials Not to Benefit or be Employed.....	39
ARTICLE 10. Disputes .....	39
ARTICLE 11. Duration of Agreement and Automatic Renewal .....	41
ARTICLE 12. Termination of Agreement .....	42
ARTICLE 13. Assignment Prohibited .....	42
ARTICLE 14. Availability of Funds .....	42
ARTICLE 15. Prior Agreement .....	43
ARTICLE 16. Covenants and Agreements Regarding Delegation of Authority .....	43
ARTICLE 17. Notices.....	44
ARTICLE 18. Execution in Counterparts .....	45
ARTICLE 19. Amendment and Waiver.....	45
ARTICLE 20. No Third-Party Beneficiaries .....	46
ARTICLE 21. Applicable Law .....	46
Signatures .....	47
Appendix 1 - Permitted and Prohibited Personnel .....	48

# **MARAD – Massachusetts Maritime Academy MOA**

**MEMORANDUM OF AGREEMENT (MOA)  
BETWEEN THE  
UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION  
AND  
MASSACHUSETTS MARITIME ACADEMY**

This Memorandum of Agreement (hereinafter called “Agreement”), effective as of the 1st day of January, 2021, by and between the United States of America, acting through the Department of Transportation, Maritime Administration (hereinafter called “Administration” or “MARAD”) and the State of Massachusetts (hereinafter called the “State”), acting by and through the Massachusetts Maritime Academy (hereinafter called the “Academy”), as the Massachusetts Maritime Academy is one of the six Federally recognized State Maritime Academies (collectively called either the “Academies” or SMAs”) per Chapter 515 of Title 46 U.S.C., hereby agree as follows:

**ARTICLE 1. Authority and Purpose**

(A) Chapter 515 of Title 46 of the United States Code (hereinafter referred to as the “Act”)

provides for the State Maritime Academy Support Program;

(B) 46 U.S.C. § 51503 and the Administration’s implementing regulations currently 46 CFR Part

310, provides authority for Federal assistance to the Academy;

## MARAD – Massachusetts Maritime Academy MOA

- (C) 46 U.S.C. § 51504 and the Administration's implementing regulations provides authority to the Secretary of Transportation to provide a Training Ship to the Academy and services and support (including, but not limited to, payments for fuel subject to the availability of appropriations) with respect to such Training Ship;
- (D) 46 U.S.C. § 51505 provides for annual payments to the Academy and requires an agreement between the Administration and the Academy not to exceed four years. The amount of these payments is subject to the availability of appropriations and dependent on the Academy meeting the general requirements of 46 U.S.C. § 51506(a), the specific requirements of 46 U.S.C. § 51506(b), and the Administration's implementing regulations;
- (E) 46 U.S.C. § 51509 and the Administration's implementing regulations provides an opportunity for student incentive payments (SIP) to be made to students attending the Academy, if the Academy has an agreement with the Administration;
- (F) Under 46 U.S.C. § 51509, SIP students are required to enter into a service obligation agreement with the Administration as a condition for receiving SIP;
- (G) Chapter 515, as well as other Federal laws, provides for certain requirements regarding courses of instruction and educational standards which the Academy must meet in order to receive the benefits set forth herein;
- (H) The purpose of this Agreement is to set forth the mutual covenants and agreements the Academy has made as a condition for the receipt of such Federal assistance;
- (I) The authorities of the Administration to make decisions under the terms of this Agreement have been delegated to the positions as set forth in Article 16 of this Agreement. If any MARAD position title listed in this MOA is eliminated or changed for any reason, including but not

## **MARAD – Massachusetts Maritime Academy MOA**

limited to MARAD reorganization, it is understood that this MOA will reference the former position title's successor in authority; and

- (J) The Administration has determined that, as of the date hereof, the Academy is qualified to enter into this Agreement and perform conditions hereinafter outlined, and is entering into this Agreement to amend and restate its existing agreement with the Academy.

### **ARTICLE 2. Annual Payments**

- (A) The Administration, subject to the availability of appropriations and subject to the provisions of Article 5 of this Agreement, agrees to make annual payments to the Academy to be used for the maintenance and support of the Academy. Subject to the terms of the preceding sentence, the amount of each such annual payment shall be at least equal to the amount given to the Academy for its maintenance and support by the State in which it is located, or, if a regional Academy, by all States or territories cooperating to sponsor the Academy. The Academy agrees, pursuant to article 5, to submit documentation annually of the support provided to the Academy by the State(s) to the MARAD Director of the Office of Maritime Labor and Training (hereinafter called the "Training Director") as outlined in (F) of this section.
- (B) As a condition to receiving further payments as a regional maritime academy, the Academy shall provide documentation, in form and substance satisfactory to the Maritime Administrator or the Maritime Administrator's designee, demonstrating that it is a regional academy within the meaning of 46 U.S.C. § 51503. One aspect of this requirement is that the Governors of the States cooperating to sponsor a regional maritime academy shall designate such regional maritime academy in writing, in form and substance satisfactory to the Maritime Administrator and designee, designating its sponsorship of the Academy and noting the State responsible to conduct the affairs of that regional maritime academy. When such documentation is sufficient,



## MARAD – Massachusetts Maritime Academy MOA

the Administration shall issue a letter to the Academy to that effect. Any change in this status shall be reported to the Training Director immediately. As a condition for receiving new payments during each fiscal year, a senior official of the Academy shall also certify in writing that “the factual conditions under which the Academy was designated a regional maritime academy have not changed since the date of Certification of Regional Maritime Academy Status” or “that the factual conditions have changed”, attaching documentation relating to the change, and seeking a new determination from the Maritime Administration.

- (C) The payments provided for in paragraph (A) of this section shall not exceed \$25,000, unless the Academy meets the requirements of Article 5 (B) of this Agreement.
- (D) If the Academy satisfies the requirements of Article 5 (B) (see 46 U.S.C. § 51506(b)) and Congress appropriates monies for that purpose, the amount paid to the Academy shall be the amount appropriated in a fiscal year as direct payments for maritime academies, applied and divided equally among all regional maritime academies, unless otherwise provided by law. Unless otherwise provided by law, if the Academy satisfies both Articles 5(A) and 5(B), the Academy shall be deemed a regional maritime academy and entitled to its proportionate share of direct payments appropriated.
- (E) In any fiscal year, if appropriations are insufficient to satisfy the provisions of paragraphs (C) or (D) of this section, the Administration, may adjust the payments in paragraphs (C) or (D) to a lower amount, in accordance with available funding and applicable law.
- (F) The Academy, shall submit to the Training Director annually, at the time and in the form prescribed by the Training Director, a voucher for the annual payment. Each voucher for an annual payment under the Act shall be supported by certified statements of: operating expenses for the preceding year, an estimate of operating expenses for the year with respect to which the

## **MARAD – Massachusetts Maritime Academy MOA**

voucher is submitted, amounts furnished by the State(s) to the Academy for maintenance and support, and evidence of compliance with the requirements of Article 5 of this Agreement.

Upon approval of such a voucher by the Training Director, payment shall be made by the Administration to the Academy.

### **ARTICLE 3. Student Incentive Payment (SIP) Program**

- (A) The Administration and the Academy agree to cooperate in the effective administration and operation of the SIP Program in accordance with the implementing regulations of this Administration, currently 46 CFR § 310.7, and Federal law.
- (B) Regarding the allocation of SIP billets among the Academies, the Administration shall allocate these SIP billets in an equitable manner in accordance with 46 CFR § 310.7 following consultation with the Academies on their preferred SIP allocations. The Administration may withdraw any unutilized SIP billets existing on February 1 and reallocate them to other state maritime academies at the Administration's discretion in consultation with the SMAs to ensure full utilization of the Federal appropriations dedicated for this purpose.

### **ARTICLE 4. Fuel Payments and Donations**

- (A) The Administration may, subject to the availability of appropriation, pay to any of the Academies the costs of fuel consumed by a Training Ship furnished under the provisions of 46 U.S.C. § 51504 while such vessel is being used for training purposes by such an Academy, if such funds have been appropriated and are available for that purpose. Under current law, the Administration's payment to the Academy under this paragraph shall not exceed \$300,000 for a fiscal year unless the law directs otherwise.
- (B) Upon notice from the Administration that appropriated funds are available for fuel payments, the Academy shall submit, in the form prescribed by the Training Director, a voucher for the

## **MARAD – Massachusetts Maritime Academy MOA**

cost of fuel consumed by a Government-owned Training Ship, supported by copies of all billings representing fuel purchases, a statement of fuel consumed while such ship was being used for training purposes, copies of appropriate fuel consumption entries in the engineering log, and such other information as the Administration may require. The Administration will prepare the necessary paperwork to make payment to the Academy.

- (C) On such conditions as the Administration may determine, the Administration may provide for the donation of fuel from non-retention vessels in the National Defense Reserve Fleet (NDRF) to the Academy.

### **ARTICLE 5. Academy Requirements**

- (A) In consideration of the payments to be made to the Academy pursuant to Articles 2 and 4 of this Agreement, and of the payments to designated students enrolled in the Academy pursuant to Article 3 of this Agreement as well as the availability of a training vessel for use in accordance with Article 6, the Academy shall, and as a condition of the Agreement agrees to:
- (1) Provide courses of instruction in navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new vessels and equipment, and innovations being introduced to the merchant marine of the United States, as approved by the U.S. Coast Guard (USCG) and the Administration; and
  - (2) Conform to such standards in such courses, training facilities, entrance requirements, and instruction in a merchant marine officer preparation program, that the Administration may establish after consultation with the Superintendents or Presidents of the State Maritime Academies; and
  - (3) Require, as a condition for graduation, that each individual who is a citizen of the United States and who is attending the Academy in a merchant marine officer preparation program shall pass the examination administered by the USCG required for issuance of a

## MARAD – Massachusetts Maritime Academy MOA

Merchant Mariner Credential with a license endorsement under 46 U.S.C. § 7101. With the approval of the Maritime Administration, an individual who is not allowed to take the licensing examination only because of physical or medical disqualification, or who is unable to pass the licensing examination only because of physical or medical disqualification, may be allowed by the Academy to obtain a degree; and

- (4) Require that, any individual enrolled at the Academy in a merchant marine officer preparation program on or after January 1, 2017:
  - (i) shall, not later than nine (9) months after the date of such individual's enrollment at the Academy, pass an examination, in form and substance satisfactory to the Deputy Associate Administrator for Maritime Education and Training, that demonstrates that such individual meets the medical and physical standards required for the issuance of an Merchant Mariner Credential with a license endorsement under 46 U.S.C. § 7101 or set by the United States Coast Guard for issuing merchant mariners' documentation under 46 U.S.C. § 7302, with no limit to the individual's operational authority; and
  - (ii) shall, following passage of the examination required under subparagraph (i), continue to meet the requirements described in (i) throughout the remainder of such individual's enrollment in a merchant mariner officer preparation program at the Academy; and
  - (iii) if the individual has a medical or physical condition that disqualifies the individual from meeting the requirements set forth in (i) above, the individual shall be transferred by the Academy to a program other than a merchant marine officer preparation program until such time as the individual demonstrates to the Deputy Associate Administrator for Maritime Education and Training that such individual meets the

## **MARAD – Massachusetts Maritime Academy MOA**

medical and physical standards set forth in (i) above or is otherwise appropriately disenrolled from the Academy.; and

(5) The Deputy Associate Administrator for Maritime Education and Training may modify or waive any of the terms set forth in subarticle 5(A)(4) with respect to any individual or the Academy.

(B) In addition to the condition provided in paragraph (A) of this Article 5 and as an express condition to receiving payments of any amount in excess of \$25,000 for any one year under Article 2 of this Agreement, the Academy hereby agrees to admit to its courses of instruction otherwise qualified students resident in any other State than that in which the Academy is located in such numbers as the Administration shall prescribe, except that the number so prescribed shall not, at any time, exceed one third of the total number of students attending the Academy. The Academy may elect to admit more out-of-state residents than the minimum number prescribed by the Administration.

(C) The Academy agrees, with respect to all Academy programs and activities, including its training program for merchant marine officers under Chapter 515 of Title 46 and to this Agreement, that illegal discrimination in any form will not be tolerated and that it will comply with the following provisions of law and implementing regulations duly promulgated thereunder including, but not limited to Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.) (hereinafter cited to as “Title VI”); 49 C.F.R. Part 21; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (hereafter cited as “Section 504 of the Rehab Act”); 49 C.F.R. Part 27; Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.) (hereinafter cited to as the “ADA”); 28 C.F.R. Part 35; the Age Discrimination Act of 1975 (42 U.S.C. § 6101) (hereafter cited as the “Age Act”, and

## **MARAD – Massachusetts Maritime Academy MOA**

46 C.F.R. § 310.2. These statutes and regulations prohibit discrimination on the basis of race, color, national origin, disability, and age in programs and activities receiving Federal financial assistance. In accordance with the preceding statutes and regulations, DOT Order 1050.2A, DOT Standard Title VI Assurances and Non-Discrimination Provisions, including any future updates of this Order, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Academy hereby gives assurance that it will promptly take any and all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Academy receives Federal financial assistance from the U.S. Department of Transportation, including the Administration. The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Act and Section 504 of the Rehab Act) by restoring the broad, institutional-wide scope, and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted. As a further condition to receiving payments, the extension of financial assistance to its students, or the use of any Training Ship, the Academy also agrees to give assurance that it will promptly take any and all measures to ensure that no person shall, on the basis of sex, be excluded from participation in, and be denied the benefits of, or be subject to discrimination at the Academy. Nothing contained herein shall mean that the Academy cannot comply with additional legal civil rights requirements.

- (D) The Academy hereby covenants and agrees that the Academy will carry out the following to effectuate subparagraph (C):

## **MARAD – Massachusetts Maritime Academy MOA**

- (1) Adopt the standard DOT Title VI/Nondiscrimination clauses and provisions under DOT Order 1050.2A in their contracts, leases, deeds, and other applicable instruments and require these provisions in subcontracts, subleases, and other similar instruments.
- (2) Make site selections and other program decisions that do not have the purpose or effect of discriminating against persons on the basis of race, color, national origin, disability, age, or sex.
- (3) Notify applicants, students, employees, communities, and others about programs, services, projects, and business opportunities on a nondiscriminatory basis. The Academy shall include its policy on sexual harassment and sexual assault and Academy complaint procedures in this notice.
- (4) Adopt prescribed methods for assuring nondiscrimination by contractors, lessees, and others.
- (5) Encourage the participation of minorities as members of planning or advisory bodies.

It is agreed that these assurances are given in consideration of and for the purpose of obtaining and continuing in effect any financial assistance extended after the date hereof to the Academy by the Administration including any payments to be rendered pursuant to agreements extending financial assistance which were approved prior to such date, and any violation by the Academy of any of the provisions of this assurance of nondiscrimination shall constitute a breach of this Agreement and of each of such prior agreements.

The Academy further recognizes and agrees that such financial assistance will be extended by the Administration in reliance upon the representations and agreements made in this assurance of nondiscrimination, and that the United States shall have the right (in addition to any of its other rights under its agreements with the Academy) to seek judicial enforcement of these assurances. These assurances are binding on the Academy, its principles, officers, employees, agents, successors, transferees, and assignees.

## **MARAD – Massachusetts Maritime Academy MOA**

(E) The Administration is hereby authorized to examine and audit the books, records and accounts, documents, information, facilities, and staff of the Academy, and any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees, whenever it is deemed necessary or desirable. Further, the Academy agrees to permit the making of scanned or hard copies of any such books, records, papers, memoranda or other documents and to furnish without charge, adequate office space and other facilities reasonably required by such auditors of the Administration or other persons designated by the Administration in the performance of their duties in administering the provisions of the payments provided under this Agreement, and by Administration personnel designated to conduct any program or compliance reviews and any complaint investigations to determine the Academy's compliance with the nondiscrimination assurances. For financial issues, this provision complies with Federal Management Circular 736 providing for a single audit for educational institutions and assigning one Federal agency with the audit responsibility for the Academy receiving Federal aid.

(F) Program Data and Statistics:

(1) The Academy agrees to collect appropriate data and statistics to demonstrate institutional effectiveness of the Academy's Merchant Mariner Officer Preparation programs to support justification for federal funding. The Academy agrees to submit the data to the Training Director, or designee, in accordance with timelines established by the Administration. Such data shall include, but not be limited to, the following:

- (i) Recruitment Data, including Past/Current Enrollment (trends);
- (ii) Student program completion data, including attrition rate;
- (iii) Program outcomes:

1. The number of graduates from the Academy for the previous 5 years.



## **MARAD – Massachusetts Maritime Academy MOA**

2. The number of graduates from the Academy for the previous 5 years who have become employed in, or whose status qualifies under, each of the following categories:
    - a. Maritime Afloat.
    - b. Maritime Ashore.
    - c. Armed Forces of the United States.
    - d. Non-maritime.
    - e. Graduate studies.
    - f. Unknown.
  3. The number of students at each Academy class receiving or who have received for the previous 5 years, funds under the student incentive payment program under section 51509 of title 46, United States Code.
  4. The number of students described under paragraph (3) who used partial student incentive payments who graduated without an obligation under the program.
  5. The number of students described under paragraph (3) who graduated with an obligation under the program.
- (iv) Any other specific data requirements mandated by Congress.
- (2) The Administration and the Academy agree to cooperate on the collection and statistical analysis of data to demonstrate the effectiveness of the Academy's Merchant Marine Officer Preparation Program and to support justification for federal funding. The Administration and Academy further agree to cooperate on data collection required to respond to Congressional, Office of Management and Budget and DOT if such data is available. The Administration agrees to obtain the Academy's recommendations before establishing the

## MARAD – Massachusetts Maritime Academy MOA

data requirements and submission timelines. The collection and analysis methodology will be jointly developed and agreed to by the Administration and Academy.

### (G) Academy support to Administration’s Student Incentive Program (SIP)

The Academy agrees to:

1. Conduct sufficient outreach, marketing and promotional activities to all students in the Academy’s Merchant Mariner Preparation Program that supports continuity and growth of SIP enrollments annually to fill the Administration’s annual SIP allocations.
2. Provide sufficient resources to support the Academy’s administrative activities associated with their annual execution of the SIP Program.

### (H) Student orientation about MARAD programs

(1) The Academy agrees to cooperate with the Administration and provide orientation to all students about the various MARAD programs to assist various segments of the U.S. maritime industry.

(2) The Administration agrees to develop briefing materials to assist such efforts.

(I) The parties acknowledge that the loan of the training vessel to the Academy, and any funds when provided to the Academy for direct payments, fuel assistance and ship-sharing expenses, constitute “federal financial assistance” in the form of non-cash contributions or donations of property, direct appropriations, and other financial assistance under the Uniform Administrative Requirements, Cost Principles, and audit Requirements for Federal Awards (Title 2, Part 200 of the Code of Federal Regulations). With respect to such “federal financial assistance”, the Academy shall comply with all applicable requirements set forth in the following sections of 2 CFR Part 200: Subpart A—Acronyms and Definitions; Subpart B—General Provisions (except for §§200.111 English Language, 200.112 Conflict of Interest, and 200.113 Mandatory

## MARAD – Massachusetts Maritime Academy MOA

Disclosures); §§200.303 Internal controls and 200.330-332 Subrecipient Monitoring and Management; and Subpart F—Audit Requirements.

### **ARTICLE 6. Training Ship**

#### **(A) Designation, Legal Status and Delivery of Training Ship:**

- (1) **Authority and Location for Delivery:** Pursuant to the provisions of 46 U.S.C. § 51504, the Administration may provide to the State, acting by and through the Academy, a vessel suitable for training purposes under its jurisdiction to be used for training. A training ship (hereinafter referred to as “Training Ship” or “Training Vessel” or “Vessel”) designated for use by the Academy for the purpose of conducting at sea and pier side merchant marine officer preparation program training will be delivered to the Academy at a location determined by the Administration, in condition found to be in class by the American Bureau of Shipping (ABS) and with a valid USCG Certificate of Inspection as a public nautical school ship, pursuant to the provisions of 46 CFR Part 167 – Public Nautical School Ships.
- (2) **Property of the United States:** A Training Ship remains property of the United States Government as a component of the NDRF, and under the terms of 46 U.S.C. § 57100 retains the legal status as a “Public Vessel” of the United States during its operation by the Academy and otherwise.
- (3) **Substitute or Interim Vessel:** The Administration may provide a temporary vessel or a vessel for future conversion to a Training Ship. This vessel may be adequate for pier side training but not for at sea training. Where an original request has been made by the Governor of the State, a further written request by the Governor is not necessary for a substitute or interim vessel.

## MARAD – Massachusetts Maritime Academy MOA

### (B) Use and Operation:

- (1) **Suitable Homeport Berth and Course of Instruction:** A suitable homeport berth, as approved by the Administration, will be made available by the Academy for the safe mooring of the Training Ship while it is under the custody of the Academy. The Academy further agrees that it will comply with the conditions of 46 U.S.C. § 51506(a) relating to the course of instruction and Administration training standards. The Training Ship shall be used to its maximum potential in meeting the training and sea time requirements of their USCG approved program.
- (2) **Training Voyages and Sovereign Immune Status:** The Academy shall submit the training voyage itinerary of the Training Ship including a listing of foreign ports to be visited, for approval of the Deputy Associate Administrator and National Coordinator for Maritime Education and Training or designee at least sixty (60) days in advance of the date such voyage is scheduled to begin. The Deputy Associate Administrator and National Coordinator for Maritime Education and Training or designee shall arrange with the Department of State for diplomatic clearance of the Training Ship to visit foreign ports. Except in an emergency where the security and/or safety of the ship is at risk or a person/s on board are at risk of death or serious bodily harm (e.g., a medical emergency), absent the express permission of the Administrator, training ships will not enter foreign ports without first obtaining diplomatic clearance (or functional equivalent for port states that may reserve the use of this term for naval vessels) from the port state recognizing the Training Ship's sovereign immune status such that the Training Ship will be granted the privileges and immunities customarily given to sovereign immune vessels. As a matter of customary international law, U.S. Training Ships as ships owned or operated by a state

## **MARAD – Massachusetts Maritime Academy MOA**

and used, for the time being, only on government non-commercial service, are entitled to sovereign immunity. This means that such ships are immune from arrest or search (whether in foreign internal or territorial seas or international waters); immune from foreign taxation; exempt from any foreign state regulation requiring flying the flag of such foreign state (either in its ports or while passing through its territorial seas); and entitled to exclusive control over persons on board such vessels with respect to acts performed on board. The privilege of sovereign immunity includes protecting the identity of personnel, stores, or other property on board the Training Ship. Actions taken or requested by foreign officials inconsistent with the sovereign immune status of the Training Ship shall be reported as soon as possible to the Deputy Associate Administrator and National Coordinator for Maritime Education and Training and/or designee and to appropriate U.S. Embassy or Consulate officials. During non-business hours, the MARAD Coordination Center (MCC) should be contacted.

- (3) **Cruises Other Than the Annual Training Cruise:** Cruises other than the annual training cruise may be conducted with the prior written approval of the Administration. The Academy agrees to submit requests for such additional cruises to the Deputy Associate Administrator and National Coordinator for Maritime Education and Training and/or designee at least 60 days prior to the departure of the Training Ship from the Academy and should describe in detail the value of the event or trip for the further training purposes of the Academy, as well as all other factors the Academy may deem appropriate relating to the request for approval. Approval requests may be submitted based upon tentative cruise schedule(s) during an approximate range of dates. The Administration agrees to provide response within thirty (30) days of receipt of the Academy request. If it

## MARAD – Massachusetts Maritime Academy MOA

is not feasible to submit the request sixty (60) days in advance, the Deputy Associate Administrator and National Coordinator for Maritime Education and Training or designee will make a determination as to whether sufficient time is available to process and approve the request.

- (4) **Ancillary Uses of the Training Ship:** Any use of the Vessel shall not compete with or impede training. In particular, ancillary uses of the Training Ship during cruises may be accommodated subject to the prior written approval of the Administration, but only after the training cruise itinerary, including port visits, has been developed to maximize merchant marine officer training. The Academy agrees to submit any request for ancillary use of the Vessel to the Deputy Associate Administrator and National Coordinator for Maritime Education and Training and/or designee as far in advance as possible.
- (5) **Operation and Maintenance:** The State, acting through the Academy, agrees that it is the responsibility of the State, acting through the Academy, to operate the Training Ship in a safe manner and to see that the Vessel is maintained in a seaworthy condition during its operations. The Training Ship is to be operated and maintained always, both at sea and while pier side, in full compliance with all applicable Federal, State, local and tribal laws and regulations. (Refer to Article 6 (L) for the Administration's responsibility to maintain the Training Ship in good repair).
- (6) **Compliance with Administration's Training Ship Custodial Care Guidance (as amended):** The State, acting through the Academy, agrees to comply with the Administration's Training Ship Custodial Care Guidance (as amended) regarding the use and operation of a Training Ship, the current copy of which is attached hereto and

## MARAD – Massachusetts Maritime Academy MOA

incorporated by reference herein. The Training Ship Custodial Care Guidance as amended in the future shall be posted on the Administration's website at <http://www.marad.gov>.

- (7) **Available for Emergency and Priority Use:** Training Ships shall be available for emergency and other priority uses whenever deemed necessary by the Administration without liability by the United States to the Academy for such emergency and priority use. The Administration, in coordination with the Academy, shall evaluate the impact to the Academy's ability to meet the course of instruction required by 46 U.S.C. § 51506 if the Training Ship is removed. If the removal of the Training Ship impacts the Academy's ability to obtain the necessary sea time required under their USCG approval, the Administration shall assist in identifying alternative means of obtaining sea time.
- (8) **Prohibition on Carrying Cargo and/or Passengers for Revenue:** The carriage of any cargo and/or passengers on a revenue basis is strictly prohibited. This restriction does not apply to cadets enrolled at the Academy or other State Maritime Academies and onboard the Training Ship primarily for the purpose of maritime training and/or to obtain sea service towards a USCG Merchant Mariner Credential.
- (9) **Use for Public Service or Donated Cargo Carriage:** The carriage of nominal amounts of public service or donated cargo may be permitted subject to the prior written approval of the Administration, provided the costs of its carriage are borne exclusively by the Academy and carriage does not compete with or impede training. The Academy agrees to submit any request for public service or donated cargo carriage to the Deputy Associate Administrator and National Coordinator for Maritime Education and Training and/or designee as far in advance as possible.

## **MARAD – Massachusetts Maritime Academy MOA**

- (10) **Use for State Trade Promotion:** State trade promotion programs, including exhibits and State trade promotion employees, may be permitted on board the Training Ship, provided it does not compete with or impede training and subject to the prior written approval of the Administration. The Academy agrees to submit any request for State trade promotions programs to the Deputy Associate Administrator and National Coordinator for Maritime Education and Training and/or designee at least thirty (30) days prior to the event. The carriage of items for sale as part of a trade promotion program is prohibited.
- (11) **Berthing Cadets at Homeport:** Berthing of ship’s crew, cadets, and other Academy personnel is permissible where the berthing is deemed relevant to the training program and is approved by the Director, Office of Ship Operations, MARAD (hereinafter called the “Operations Director”). Berthing of cadets may be permitted in accordance with 46 CFR Part 310 (currently 46 CFR § 310.3 (b) (1)), provided it does not compete with or impede training and vessel operation, maintenance, and repair. The Academy shall ensure appropriate safeguards, oversight, and operational policies and procedures are maintained while personnel are berthed aboard the Training Ship in accordance with all applicable regulations. The Academy shall ensure the Vessel Security Plan is developed and executed to reflect the berthing of personnel aboard. At least ninety (90) days prior to the commencement of berthing of personnel aboard, the Academy shall submit to the Operations Director for approval a plan detailing the quantities of personnel to be berthed (crew, cadets, and/or Academy personnel), justification for their berthing aboard, what safeguards and operational procedures will be implemented to ensure the safety of personnel and regulatory compliance, and the periods of time the personnel will be berthed aboard. The plan shall be submitted for approval annually along with the



## **MARAD – Massachusetts Maritime Academy MOA**

Academy's submission of the Training Ship's Annual Business Plan. Should the Administration require the use of the Training Ship for any reason (reference Article 6 (B) (7)), the Academy will be responsible for relocating all personnel berthed aboard the Vessel. The Administration may work with the Academy to assist with relocation.

### **(C) Covenants of the Academy during the Period the Training Ship is Under Custody of the Academy:**

- (1) **Used for Maritime Training:** While the Training Ship is in the custody of the Academy, the Vessel shall always be used for training and for Academy sponsored or sanctioned activities related to the furtherance of that maritime training.
- (2) **Control of Access to the Training Ship:** The Academy is responsible for establishing appropriate controls and conditions for access to the Vessel in accordance with the Vessel's USCG approved Vessel Security Plan, and will provide a copy of the Vessel Security Plan to the Operations Director.
- (3) **Safety, Security, and Supervision of Personnel:** The Academy is responsible for the safety, security, and supervision of all personnel permitted access to the Vessel.

### **(D) Permitted and Prohibited Personnel:**

While the Vessel is in the custody of the Academy, the Academy is responsible to ensure that only the permitted personnel in accordance with Appendix 1 – Permitted and Prohibited Personnel are permitted aboard the Training Ship, under controls and conditions established by the Academy in accordance with the USCG approved Vessel Security Plan.

### **(E) Academy Requests for Approval and Correspondence:**

All requests for approval by the Administration under this Article must demonstrate no cost to the Administration and the Federal Government or set forth an estimate and basis of that estimate of such additional costs as well as provide an affirmation, and explanation of that

## MARAD – Massachusetts Maritime Academy MOA

affirmation, that the action being approved will not interfere with the merchant marine officer preparation training program.

### **(F) Risk of Loss of the Training Ship:**

With respect to the loss of a Training Ship to the State and Academy, the Administration assumes the risk of physical loss or damage to any part of the Vessel, its machinery, equipment, stores, and other property, including cargo, if owned by the Government, except to the extent that such loss or damage is caused by the negligence, fault, error, act or omission of the State, Academy, their officers, subcontractors, agents, or employees. The burden of proving freedom from fault and assessing responsibility shall be borne equally by the State or Academy and the Administration.

Regardless of fault, the Administration does not guarantee replacement or substitution of the Training Ship should the Vessel be deemed unseaworthy or unsafe for its intended mission in accordance with Article 6 (A) (3).

### **(G) General Provisions for Use:**

- (1) **Institute Continuous Program of Ship Maintenance:** The Training Ships are owned by the U.S. Government and therefore their material condition, operational reliability, and appearance reflects on the United States. To the extent not otherwise described herein, the State, acting through the Academy, shall at all times while the Training Ship is in their custody institute a continuous program of ship maintenance in accordance with the Administration's Training Ship Custodial Care Guidance attached herewith and as amended.
- (2) **Safeguard Interests of the Administration:** The State, acting through the Academy, shall exercise reasonable care to safeguard the interests of the Administration and avoid:
  - (a) Injury or death to any person aboard the Training Ship;

## MARAD – Massachusetts Maritime Academy MOA

- (b) Loss and damage of every nature with respect to the Training Ship;
  - (c) Damage to the marine environment through spills of oil, chemicals or hazardous materials from the Training Ship into the water, unnecessary exhaust or other gas emissions to the atmosphere, or any other unlawful discharge, such as garbage or sewage, from the Training Ship in restricted waters;
  - (d) Breach(es) of vessel security;
  - (e) Activities that would involve the Training Ship in or create disturbances in the host nation or with local or regional governments.
  - (f) Any incidence or matter that might negatively impact the continued use of the training ship for its assigned purpose.
- (3) **Develop and Implement Safety Management System:** The Academy shall develop and implement a Safety Management System in accordance with the Administration’s Training Ship Custodial Care Guidance.
- (4) **Develop and Implement Lay-up Procedures:** The State, acting through the Academy, shall develop and implement reasonable lay-up procedures, consistent with the requirements of the Administration’s Training Ship Custodial Care Guidance, to the satisfaction of the Administration, to be applied during non-cruise status of the Training Ship. As outlined in the Administration’s Training Ship Custodial Care Guidance, such lay-up procedures shall be submitted to the Operations Director and/or designees for approval, and shall be updated as necessary and required.
- (5) **Submit Voyage Reports:** The State, acting through the Academy shall submit Voyage Reports, consistent with the requirements of the Administration’s Training Ship Custodial Care Guidance and in a form prescribed by the Administration, to the Operations Director and designees within the number of days of the completion of any training cruise as listed

## MARAD – Massachusetts Maritime Academy MOA

in the Administration's Training Ship Custodial Care Guidance. Excerpts from log books and reports shall be submitted as requested or directed by Operations Director or designees.

- (6) **Submit Incident Reports:** The State, acting through the Academy shall promptly report to the Operations Director and designees in the event of any accident or incident causing:
- (a) Serious injury or death to any person; and/or
  - (b) Damage to the Training Ship; and/or
  - (c) Damage inflicted by the Training Ship upon any other ship or other property; and/or
  - (d) Damage to the marine environment;
  - (e) Non-compliance or alleged violation of Federal, State, or International law, statute, or regulation.

Such reports shall be followed by complete written details of the occurrence, including copies of any and all accident or incident reports filed with the USCG, witness statements, emails, correspondence from the injured parties, and/or foreign counterparts if the incident occurs while in foreign waters.

- (7) **Defense of Claims:** The State, acting through the Academy, shall cooperate with the Administration in the defense of any action or claim arising out of or relating to the operation of the Training Ship, including allowing its officers and cadets to be interviewed by representatives of the Federal Government approved by the Administration and to testify in any proceeding requested by the Administration, and shall provide the Administration with any requested documents and other information in connection with any investigation of the claim or action.

## MARAD – Massachusetts Maritime Academy MOA

- (8) **Berth and Mooring:** The Administration shall determine whether or not the berth and mooring arrangement of the Training Ship at the base in its homeport is suitable from the standpoint of safe mooring and physical security. When the Training Ship is not on cruise, the Master of the Training Ship and the President or Superintendent of the Academy shall keep the Operations Director and designees informed of the location and condition of the Training Ship, and any contemplated change of berth.
- (9) **No Liens:** The State, acting through the Academy, agrees that neither the State, the Master, nor any other person acting for the Academy has any right, power or authority to create, incur, or permit to be imposed upon this vessel any lien whatsoever or to take actions that allow actions against the Training Ship or the United States based on *in rem* or *quasi in rem* principles. The State and the Academy agree that neither shall be considered to be an agent of the United States for purposes of the Contracts Disputes Act, Suits in Admiralty Act, Public Vessels Act, Federal Torts Claims Act, or any other waiver of the sovereign immunity of the United States. The liability of the United States and the State for claims arising out of or relating to the operation of this vessel to third parties or between the United States and the State shall be governed by the applicable laws and rules governing the liability of the United States and the State. Nothing contained herein shall be deemed to be a waiver of the privileges and requirements associated with the sovereign immunity of the United States or the State. The State, acting through the Academy, agrees that if it causes such rights to arise, either in contract or tort, it will be liable to discharge such liens or rights and actions based on *in rem* and *quasi in rem* principles against the United States.

## MARAD – Massachusetts Maritime Academy MOA

- (10) **Certificate of Ownership:** The Administration shall provide to each Training Ship a minimum of two (2) raised seal copies of a Certificate of Ownership for that Training Ship. The Academy shall post one copy of the certificate on the Training Ship's navigation bridge, and one in a conspicuous location near the gangway. The Certificate of Ownership will read approximately as follows:

### *Certificate of Ownership*

*This certifies that the United States Training Ship [Insert VESSEL NAME] is owned by the United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator. This vessel is a Public Vessel of the United States and is engaged solely in non-commercial public service. This vessel has the legal status of a Public Vessel of the United States and is entitled to all the immunities and privileges accorded to such a Public Vessel.*

*This training ship is the property of the United States of America. It is furnished to the State of Massachusetts by the Department of Transportation, Maritime Administration for the purpose of training men and women to become officers in the Merchant Marine of the United States. Neither the State, the Commanding Officer, nor any other person has any right, power or authority to create, incur or permit to be imposed upon this vessel, any lien whatsoever.*

- (11) **Administration Approval for Changes to Vessel:** No changes requiring USCG or ABS approval shall be made by the Academy to the Training Ship's compartments, structure, machinery, equipment, and electrical or mechanical systems without the prior written approval of the Operations Director or designee, except in emergency situations. Where

## **MARAD – Massachusetts Maritime Academy MOA**

changes are made due to emergencies, the Operations Director and designees shall be notified of such changes as soon as safely possible.

**(12) Report Regulatory Non-Compliance or Alleged Violation:** The State, acting through the Academy, shall promptly report to the Operations Director and designees in the event of any report of non-compliance or alleged violation of Federal, State, or International law, statute, or regulation, including, but not limited to, the Vessel General Permit (VGP), Vessel Security Plan (VSP), and the Training Ship's Safety Management System.

### **(H) Termination of Use:**

The Administration may terminate the use of a Training Ship upon such reasonable notice to the State as the circumstances may permit in the judgment of the Administration. In the event of the termination of the use of a Training Ship by the State or by the Administration, the State shall return, to the State homeport, the Training Ship and all property whatsoever owned by the Administration. Title to all additions, replacements, and renewals made by the State shall vest in the Administration without charge. State owned equipment and consumable property purchased by the State as controlled property, not considered part of the ship's outfit, remains the property of the State in the event the ship is removed from service as a Training Ship, is transferred or decommissioned. If use of the Training Ship is terminated by the Administration, the Administration may substitute another Training Ship, to the extent permitted by applicable law, so as to optimize its utility to the training program, or may cooperate with the Academy in arranging for training time aboard a substitute vessel and/or commercial vessels for its cadets.

## **MARAD – Massachusetts Maritime Academy MOA**

### **(I) Use of Property Aboard the Training Ship:**

The State shall have the complete use of a Training Ship as defined, subject to the following terms and conditions:

- (1) All property, or its equivalent, furnished by the Administration shall be returned to the Administration when use of the Training Ship is terminated. The only exceptions are: spare and replacement parts consumed and losses due to ordinary wear and tear, unavoidable accident, and perils of the sea. All other property otherwise lost or destroyed shall be replaced at the expense of the State;
- (2) Administration property shall not be permanently removed from the Training Ship to the shore base without the prior written approval of the Operations Director or designee. Removals authorized for the purposes of shore-side education and training, donation, loan or display, shall be documented in accordance with the Administration's established procedures;
- (3) The Administration shall take and maintain inventories of all accountable property and spare and repair parts aboard the Training Ship in accordance with the Administration's Training Ship Custodial Care Guidance and the Administration's established logistics management procedures. The State, acting through the Academy, in the course of its routine maintenance and operation of the Training Ship, shall maintain the shipboard inventory of accountable property and spare and repair parts in accordance with the Administration-provided logistics management system.

### **(J) Condition Surveys:**

Before a Training Ship is released to an Academy and crewed by USCG Merchant Mariner Credentialed officers under State control, a joint condition survey shall be made by duly authorized representatives of the Academy and the Administration. If the Training Ship is



## **MARAD – Massachusetts Maritime Academy MOA**

found in order, the Academy representative shall sign a receipt for the Training Ship. Subsequently, periodic joint condition surveys shall be made of the Training Ship upon completion of a training voyage and whenever deemed advisable by the Administration or the Academy, and, in any event, upon redelivery of the Training Ship by the State to the Administration. A joint condition survey shall be performed within three years from the date of the last joint condition survey or at such times as determined by the Administration after reasonable notice to the Academy. The Administration agrees to ensure that a joint condition survey is scheduled whenever required by this Agreement.

### **(K) Maintenance and Repair (M&R) Program:**

- (1) The Administration shall prescribe and promulgate such guidance, policies, directions, and procedures to enable the Academy to carry out the annual and long-term Training Ship M&R Program and Preventative Maintenance Procedures as outlined in the Administration's Training Ship Custodial Care Guidance. The Administration shall perform periodic quality assurance to validate the maintenance of each Training Ship to at least the minimum standards, rules, and regulations for ships of its type, as promulgated by the USCG, the ABS, and such other regulatory bodies as may be applicable. The Administration shall be responsible for all industrial ship-work and commercial shipyard contracts including dry dockings and major topside repairs. If jointly deemed necessary, temporary Custody Transfer of the Training Ship to the Administration shall be executed whenever repair contracts require the Training Ship to be removed from the Academy.
- (2) Notwithstanding the foregoing, and in accordance with the Administration's Ship Custodial Care Guidance, the State, acting through the Academy, shall be responsible for adherence to standards for configuration, the performance of all maintenance and upkeep that can be performed aboard the Training Ship and shall employ adequate personnel to

## **MARAD – Massachusetts Maritime Academy MOA**

maintain the ship in accordance with the minimum requirements of this Agreement while the Training Ship remains in its custody.

- (3) The State, acting through the Academy, shall be responsible for promptly investigating and implementing appropriate corrective action for any deficiencies in its compliance with the Administration's Training Ship Custodial Care Guidance. The Academy's designated Person-in Charge of the Training Vessel shall respond timely with the Academy's corrective action plan to any deficiency notice from the Administration's Marine Surveyor or another higher-level Administration official. The Administration and the Academy shall attempt to address and resolve any such deficiency at the lowest level possible. If the deficiency continues uncorrected for more than sixty (60) days, the issue will be progressively elevated to each party's next supervisory level for timely resolution.
- (4) If the deficiency remains uncorrected for more than one hundred and twenty (120) days, the issue will be referred to the Academy President and the Operations Director for resolution in accordance with Article 10, Disputes.

### **(L) Administration's Payment for Repairs:**

A Training Ship shall be maintained in good repair by the Administration as provided by the law, the regulations, and this Agreement. Expenses for materials and equipment, repairs, changes and alterations, repairs to equipment and replacements of equipment in accordance with the Administration's approved allowance lists for the Training Ship (i.e. authorized under the law and to the extent that funds are available), shall be borne by the Administration under the following terms and conditions:

- (1) When it is necessary to repair or dry dock the Training Ship because of damage, either the Ship's Master or the Academy Superintendent or President shall immediately notify the

## **MARAD – Massachusetts Maritime Academy MOA**

Operations Director and designees in order to enable a representative of the Administration, if available, to be present, when the survey of the damage is made;

- (2) The State, acting through the Academy, shall, on an annual basis, provide an updated Preventive Maintenance Plan and Annual Business Plan input data to the assigned MARAD Marine Surveyor for approval in accordance with the Administration's Training Ship Custodial Care Guidance. This plan shall be updated as necessary and if required by the Administration. All maintenance actions and repairs shall be performed, if such actions are consistent with good health and safety practices, by the cadets, to the maximum extent possible and practicable, under the supervision of the Training Ship officers and crew;
- (3) Unless increased by amendment to the regulations, the State, acting through the Academy, is authorized to expend up to \$5,000, per incident, for emergency repairs which become necessary while the Training Ship is on a training cruise. However, without the written approval of the Operations Director, such expenditures shall not exceed \$50,000 per fiscal year. The Administration shall reimburse the State upon submission of vouchers to, and approval by, the Operations Director or designee. To obtain reimbursement for emergency repairs estimated to cost in excess of \$5,000, or at any dollar amount which causes the aggregate total to exceed the total amount obligated for emergency repairs, authorization must be obtained by the State from the assigned MARAD Marine Surveyor prior to undertaking such repairs. The Training Ship's Master shall be responsible for all necessary filings with the U.S. Customs and Border Protection Service to avoid duties upon all emergency repairs performed outside the United States. If penalties are imposed, for non-filing or improper filing, they shall be solely the responsibility of the State.

## MARAD – Massachusetts Maritime Academy MOA

### **(M) State Payment:**

Except as otherwise provided in this section, the State, acting through the Academy, shall, at its own expense, accomplish the following:

- (1) Undertake usual preventive maintenance of the Training Ship, adhere to minimum levels of preventive maintenance as prescribed by the Administration, and keep the Training Ship clean and the hull (above rail), decks, deckhouses and all appurtenances (above rail) painted, according to good maritime practices and the Training Ship Custodial Care Guidance;
- (2) Cause the Training Ship to be fumigated if required by the Administration and forward to the Operations Director and designee a copy of the fumigation certificate;
- (3) Pay for all consumable stores, freshwater and costs incidental to the operation of the Training Ship;
- (4) Pay for fuel of the Training Ship except that the Administration may provide or assist in paying the cost of fuel consumed on the Training Ship while being used for training purposes if funds are appropriated and available for such purposes;
- (5) Pay and discharge any liens or lien-related claims or rights based on *in rem* or *quasi in rem* principles incurred with respect to the use of the Training Ship other than those expenses that are the responsibility of the Administration.

### **(N) Hospitalization and Maintenance and Cure:**

The State, acting through the Academy, shall be responsible for all medical treatment and hospitalization of all persons permitted aboard the Training Ship at all times, including, but not limited to, officers, crew, faculty, and cadets. The Administration, the Federal Government, and the Training Ship shall not be responsible for the payment of maintenance and cure for any of the individuals listed or contemplated in the preceding sentence.

## **MARAD – Massachusetts Maritime Academy MOA**

### **(O) Repatriation and Return to Home Port:**

The State, acting through the Academy, shall be responsible for the return to the home port of the Training Ship of all persons, including officers, crew, faculty, and cadets, who originally embarked on a training cruise and who are left behind, after the departure of the Training Ship from any port, foreign or domestic, or who are to be brought home from the ship at any time or for any reason except if the Administration takes control of the vessel during the cruise. The Administration will be responsible for the repatriation and return to the home port or otherwise agreed to location of any person left behind at a port if the Administration takes control of the Vessel during the annual training cruise. Otherwise, the State, acting through the Academy, shall be solely responsible for all expenses of repatriation and return to home port.

### **(P) Salvage**

- (1) The Academy shall provide support to the Administration as required during any salvage operations for the Training Ship. The Academy shall promptly furnish the Administration with full reports and information on all salvage services rendered or received.
- (2) The Academy shall obtain the Operations Director's concurrence before entering into any salvage agreements for the Training Ship.
- (3) Settlements for salvage services rendered to other vessels, including those owned or controlled by the United States, shall be handled by, and are under the control of the Administration. All salvage monies earned, excluding recovery fuel consumed and operating costs during the salvage operation, by any Training Vessel shall issue to and be for the account of the Administration after deducting Master's, Crew's and Academy's share. It is mutually understood and agreed that the State or Academy shall not be entitled to nor participate in any salvage or salvage awards hereunder except for reimbursement of fuel consumed, crew costs and other vessel operating costs incurred by the Academy.

## MARAD – Massachusetts Maritime Academy MOA

### (Q) Insurance and Indemnity

- (1) Insurance Requirement. Protection and Indemnity Insurance (P&I) is required for the operation by the Academy of a Training Ship provided by the Administration on a 365/7 basis.
- (2) Entry into Club. P&I for the Training Ship will be obtained by the Administration using a marine insurance broker. The P&I policy will include standard P&I insurance coverage for Academy cadets, crew, faculty, passengers, and third parties who may make claims for injuries involving the Training Ship. Under the P&I Policy, the Administration and the Academies that operate training ships will be joint members. The Academy assumes responsibility for providing, both to the P&I Club and to the Administration's Office of Marine Insurance, the Academy's legal name as a joint member in such insurance.
- (3) Responsibility for Deductible. P&I will indemnify the members for claims with the deductible being paid by the party with custody of the Training Ship responsible or the party responsible for the individual(s) making a claim.
- (4) Certificate of Entry. The Administration will provide a copy of the current Certificate of Entry, which shows the inception date, to the Academy. The Academy may also request a copy of the current Certificate from the Club. The P&I Club rules applicable to all members are located at <https://www.american-club.com/page/rules>.
- (5) Extent of Coverage. This policy covers traditional P&I marine risks. Workers' compensation claims are not covered or recoverable under this policy and neither the Club nor the Administration are liable for workers' compensation claims for Academy personnel. The Academy should review the Certificate of Entry and the Club Rules to determine for itself the extent of its coverage.
- (6) Availability of Funds to Pay Premium. Subject to the availability of appropriated funds for insurance, the Administration shall continue to procure for members such protection

## MARAD – Massachusetts Maritime Academy MOA

and indemnity insurance coverage for the Training Ship and name the Academy as a joint member under an insurance policy.

- a. Responsibility of Academy. The Administration agrees to use its best efforts with the insurance broker to notify the Academy's point of contact for insurance matters of any material change in the policy as well as any material change in the Academy's responsibilities under the insurance policy for the Training Vessel when the Academy has custody of the Training Ship. However, the foregoing shall not absolve the Academy from determining and complying with its duties under the policy by reviewing the Certificate of Entry, the Club rules, and the provisions of the insurance policy.
- b. The Academy agrees to comply with the requirements of the Club to ensure continued coverage of the Academy's actions while the Training Ship is in the custody of the Academy and for maintaining the Training Ship to the extent required by such insurance.
- c. The Academy shall promptly notify the P&I Club, with a copy to the Administration's Office of Marine Insurance, of all notifications or claims received or suits filed that may give rise to claims under this policy. The Academy shall comply timely with the notice requirements in the Club Rule #1, Section 4.17. Club Managers are experienced claims executives who are available 24 hours a day, seven days a week (24/7)—365 days a year—to assist the membership. The American Club 24/7 Managers' Phone Number is 212-847-4590.
- d. All of the Academy's claims and related correspondence under this policy should be filed by the Academy with the Club with a copy to the Administration's Office of Marine Insurance.

## MARAD – Massachusetts Maritime Academy MOA

- e. The Academy agrees to provide all information to respond to any enquiry from the insurer and fully cooperate in any defense of claims relating to the policy.

(7) Lapse in Federal Funding. Both the Administration and Academy agree that it is important that the Training Ship be covered by P&I insurance to mutually protect the Administration and Academy from any personal injury, environmental, or other liabilities that may arise with respect to crew, cadets, passengers or third parties. If appropriated funds for insurance are not provided to the Administration, the Administration shall provide written notice to the Academy that the federal funds cannot pay the insurance annual premium.

- a. If no appropriated funds are available to fund the annual P&I premium, the Academy may fund the premium by paying one-sixth of the annual premium and then continue to operate the training ship.
- b. If there are no appropriated funds for Training Ship P&I premium, and the Academy chooses not to fund the P&I Premium as described in (7a), and at-sea training is desired, the Administration may in its discretion appoint a general agent with its P&I coverage to operate the Training Ship for an approximate 60-day cruise.

If there are no appropriated funds for the Training Ship P&I premium, and the Academy chooses not to fund the P&I Premium, as described in (7a), to allow training to continue, the Administration or its general agent will base determinations about training-ship operational constraints on a risk-management procedure.

(8) Mandatory Policy Term Requirement. P&I policies must name the Administration as a joint member under the insurance policy and the insurance policy should include language to the effect of the following:

SPECIAL TERMS STATEMENT REGARDING THE COVER PROVIDED TO THE UNITED STATES GOVERNMENT. The P&I Club Underwriters (and its



## MARAD – Massachusetts Maritime Academy MOA

Managers) and/or Insurance Policy Underwriters agree that the terms or conditions of this SPECIAL TERMS STATEMENT shall govern and shall be controlling in the event that there are any inconsistent terms or conditions in the Certificate of Entry, insurance policy or document, applicable P&I Club Rules, or insurance provider's rules. The United States and State Maritime Academies have full insurance cover and benefits that are equivalent to a regular P&I Club Member, Entrant, or insured (other than voting rights). Underwriters agree to waive any rights of subrogation against the United States Government and State Maritime Academies (USG/SMA) in all cases, regardless of cause. The USG/SMA shall not be liable for (and there shall be no recourse against the United States for) deductibles, premiums, supplementary premiums, additional premiums, calls, additional calls, commissions, advancements, assessments, overspill calls, overspill claims, and other costs, claims, expenses, or fees. It is understood that the entered/covered vessel or vessels do not have Hull & Machinery insurance. It is understood that any disputes between the Underwriters and the United States will be governed by U.S. law, and will be adjudicated in a U.S. Federal Court. The United States has not consented to the arbitration (either domestic or foreign) of any disputes. It is understood that the Underwriters are not granted a lien on the covered/entered vessel(s) under any circumstances. It is understood that the U.S. Department of Justice has the right to fully control the conduct of any litigation or legal action in any forum, including control of litigation decisions and legal representation, wherein the United States, State Maritime Academies, or agency who had or has the custody and control of its training vessels, or other entity of the U. S. Government is a named party or is a proper party defendant under the law (to include without limitation, the Public Vessels Act and any provisions).

- (9) Status of Academy when Operating Training Ship. When the Academy is operating the vessel, the State, acting through the Academy is neither a time charterer nor a voyage charterer but is the Owner *pro hac vice* of the Training Ship, while the Academy has custody of the vessel at pier or at sea. Nothing contained in the foregoing sentence shall make the Academy liable for the actions of contractors hired by the Administration or the

## MARAD – Massachusetts Maritime Academy MOA

Administration's agents, servants and employees. The first sentence in this paragraph shall not apply during any periods in which the Administration has custody of the Training Ship. The question of who has custody of the Training Ship is determined by the Vessel Custody Transfer Form.

- (10) Maintenance. The parties recognize that significant responsibilities relating to the maintenance of the Training Vessel rests with the Administration. Nothing contained in this section shifts those responsibilities from the Administration to the Academy or from the Academy to the Administration.
- (11) Sovereign Immunity. Nothing contained herein shall be a waiver of the sovereign immunity rights of either the Administration or the State, acting through the Academy.

### **(R) Training Ship Capacity Sharing**

If the Administration determines it is necessary for the Academy to share its training ship with another academy, to facilitate that ship-sharing, the Administration may temporarily take over the custody of the Training Ship assigned to the Academy and, operate the vessel itself or temporarily reassign or charter the vessel to another academy for that academy's training cruise. The Academy agrees to fully cooperate with the Administration on the vessel custody transfer of their assigned Training Ship as planned to implement such ship and/or capacity sharing arrangements. The Administration shall work with the Academy as far as practicable to address the issues relating to any impact, including any effect on its ability to meet the USCG approved program required by 46 U.S.C. § 51506, arising from such removal of the Training Ship. The Academy and the Administration shall endeavor to have an agreement regarding the Academy-owned property that remains aboard such a Training Ship.

If it is the temporary recipient of a Training Ship ordinarily assigned to another institution, the Academy agrees to execute a separate supplemental agreement or charter with the Administration.

## MARAD – Massachusetts Maritime Academy MOA

### **(S) Administration's Appointment of a General Agent**

- (1) When the Administration takes over custody of the Training Ship, the Administration may appoint a general agent to perform all or certain duties relating to maintenance, repair and/or operation of the Training Ship. The State, acting through the Academy, and the Administration agree to cooperate to enable such general agent, at its sole discretion, to employ the Academy's permanent ship's officers and crew, subject to the Academy's concurrence, aboard the Training Ship during the vessel's operation by the general agent. The Parties recognize that during this period of time, such officers and crew will be employees of the general agent, acting for the Administration, depending on the specifics of the arrangement. It shall be the Academy's responsibility to address any State law issues relating to the employment status of these officers and crew and the Academy shall advise the Administration and such general agent of these issues and their resolution. This arrangement will benefit the Administration with availability of officers and crew having intimate working knowledge of the Training Ship. To the benefit of the Academy, its permanent officers and crew will continue to participate in the operation and maintenance of the Training Ship ensuring minimum disruptions upon the Training Ship's return to the Academy.
  
- (2) While the Training Ship is under the custody of the Academy and only pursuant to ~~at~~ the Academy's request to the Administration for assistance for maintaining and operating the Training Ship in accordance with the Administration's Training Ship Custodial Care Guidance, as amended (CCG), the Administration may appoint its general agent to execute some of the Academy's Training Ship responsibilities under the Agreement and the CCG. In these instances, the Operations Director will coordinate with the Academy and provide appropriate notice to the Academy delineating the Academy's specific Training Ship related responsibilities which will be performed by the Administration's general agent.
  
- (3) Nothing in this section restricts the Administration's rights under Article 6, Section (B)(7) of this Agreement.

# MARAD – Massachusetts Maritime Academy MOA

## **ARTICLE 7. Public Information**

It is agreed that the Academy shall include in its curriculum catalog, student information pamphlets, brochures, and other public information materials, a detailed description of the assistance available to the Academy and its students under the Act and this Agreement, including the service obligations of students and graduates.

## **ARTICLE 8. Regulations**

This Agreement is subject to all the provisions of part 310, Subpart A, Title 46, Code of Federal Regulations, and the Academy hereby agrees to conform to said provisions as they may be amended from time-to-time during the period this Agreement is in effect.

## **ARTICLE 9. Officials Not to Benefit or be Employed**

No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

## **ARTICLE 10. Disputes**

- (A) Except as otherwise provided in this Agreement or with respect to disputes relating to the maintenance and repair, safety, security, pollution prevention, and operation of the Training Ship, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Training Director, who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the Academy.
- (B) With respect to disputes relating to the maintenance and repair, safety, security, pollution prevention, and operation of the Training Ship, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Operations Director, who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the Academy.

## **MARAD – Massachusetts Maritime Academy MOA**

- (C) The foregoing decisions of the respective Director shall be final and conclusive unless within thirty (30) days from the date of receipt of such a copy, the Academy appeals by mailing or otherwise furnishing said applicable Director(s) a written appeal addressed to the Deputy Associate Administrator and National Coordinator for Maritime Education and Training. Such appeals shall list all grounds for such appeals and state the basis for each such ground and attach any relevant documents or other evidence deemed relevant by the Academy. The Deputy Associate Administrator and National Coordinator for Maritime Education and Training shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the Academy. In connection with any appeal, the Academy shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending the decision of the Deputy Associate Administrator and National Coordinator for Maritime Education and Training of a dispute hereunder, the Academy shall proceed diligently with performance of the Agreement in accordance with the decision of the respective Director.
- (D) The foregoing decisions of the Deputy Associate Administrator and National Coordinator for Maritime Education and Training shall be final and conclusive unless within thirty (30) days from the date of receipt of such a copy, the Academy appeals by mailing or otherwise furnishing the Deputy Associate Administrator and National Coordinator for Maritime Education and Training a written appeal addressed to the Associate Administrator for Strategic Sealift. Such appeals shall list all grounds for such appeals and state the basis for each such ground and attach any relevant documents or other evidence deemed relevant by the Academy. The Associate Administrator for Strategic Sealift shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the Academy. In connection with any appeal, the Academy shall be afforded an opportunity to be heard and to offer evidence in support of its

## **MARAD – Massachusetts Maritime Academy MOA**

appeal. Pending the decision of the Associate Administrator for Strategic Sealift of a dispute hereunder, the Academy shall proceed diligently with performance of the Agreement in accordance with the decision of the Deputy Associate Administrator and National Coordinator for Maritime Education and Training.

- (E) The foregoing decisions of the Associate Administrator for Strategic Sealift shall be final and conclusive unless within thirty (30) days from the date of receipt of such a copy, the Academy appeals by mailing or otherwise furnishing the Associate Administrator for Strategic Sealift a written appeal addressed to the Maritime Administrator. Such appeals shall list all grounds for such appeals and state the basis for each such ground and attach any relevant documents or other evidence deemed relevant by the Academy. The decision of the Maritime Administrator, or his or her duly authorized representative, shall be final and conclusive. In connection with any appeal, the Academy shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Academy shall proceed diligently with performance of the Agreement in accordance with the decision of the Associate Administrator for Strategic Sealift.

### **ARTICLE 11. Duration of Agreement and Automatic Renewal**

This Agreement is effective as of the day and year first set forth hereinabove and shall remain in full force and effect for a period of four (4) years after said date, unless sooner terminated by either party as herein provided in this Agreement. Unless a notice of termination is received by the State, Academy, and Administration in accordance with Article 12, this Agreement shall automatically renew for a new four (4) year period. The new renewed agreement shall commence on the day after the last day of this Agreement and shall include the provisions of Article 11 and be subject to further future renewals.

## **MARAD – Massachusetts Maritime Academy MOA**

### **ARTICLE 12. Termination of Agreement**

This Agreement may be terminated by either party upon sixty (60) days written notice to the other party, provided, however, that notwithstanding any such termination the parties hereto shall continue to be responsible for the faithful performance of all of the terms and provisions of this Agreement through the effective date of such termination. Termination or expiration of this Agreement shall neither affect nor relieve either party of any liability or obligation that may have arisen or accrued prior thereto.

### **ARTICLE 13. Assignment Prohibited**

It is hereby agreed by the State, acting through the Academy, that this Agreement, or any interest herein, shall not be assigned to any other person without the prior written consent of the Administration, which consent may be subject to such terms and conditions as the Administration deems appropriate.

### **ARTICLE 14. Availability of Funds**

It is understood and agreed by and between the parties hereto that the obligations under this Agreement shall be deemed executory to the extent of the monies available to said parties for the purpose thereof and no liability on account thereof shall be incurred beyond such available monies by either of said parties. As required by the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by Administration in this Agreement are subject to the availability of appropriated funds and budget priorities. Nothing in this Agreement, in and of itself, obligates the signatory parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations beyond their available appropriated funds and budget authorities.

## MARAD – Massachusetts Maritime Academy MOA

### **ARTICLE 15. Prior Agreement**

It is hereby understood and agreed by and between the parties hereto that the agreement in effect between the parties on the date prior to the effective date of this Agreement is superseded by this Agreement. However, obligations and responsibilities under prior law and agreements continue to be in full force and effect except to the extent they are expressly superseded by this Agreement.

### **ARTICLE 16. Covenants and Agreements Regarding Delegation of Authority**

- (A) With respect to the decisions set forth above for the Associate Administrator for Strategic Sealift, the Administration covenants, represents, warrants, and agrees that such authority to make decisions under this Agreement for the Administration has been delegated to the Associate Administrator for Strategic Sealift, MAR-600, Second Floor, 1200 New Jersey Ave. S.E., Washington, D.C. 20590.
- (B) The Administration has designated the Deputy Associate Administrator and National Coordinator for Maritime Education and Training as the Administration's primary representative and the primary point of contact to the Academy for all issues, except as specifically set forth above relating to other Administration officials. The Administration has designated the Deputy Associate Administrator and National Coordinator for Maritime Education and Training as the *Supervisor*, referenced in 46 CFR 310.1 (q), to supervise the Federal Government's interest in the Academy under the provisions of the Maritime Education and Training Act of 1980, Pub. L. 96-453, as amended, this Agreement, and the regulations at 46 CFR Part 310, Subpart A. The Deputy Associate Administrator and National Coordinator for Maritime Education and Training has delegated some of the *Supervisor's* specific functions to other Administration officials as set forth above. With respect to the decisions set forth above for the Deputy Associate Administrator and National Coordinator for Maritime



## **MARAD – Massachusetts Maritime Academy MOA**

Education and Training, the Administration covenants, represents, warrants, and agrees that such authority to make decisions under this Agreement for the Administration has been delegated to the Deputy Associate Administrator and National Coordinator for Maritime Education and Training, MAR-600.3, Second Floor, 1200 New Jersey Ave. S.E., Washington, D.C. 20590.

(C) With respect to the decisions set forth above for the Training Director, the Administration covenants, represents, warrants, and agrees that such authority to make decisions under this Agreement for the Administration has been delegated to the Director, Office of Maritime Labor and Training, MAR-650, Second Floor, 1200 New Jersey Ave. S.E., Washington, D.C. 20590.

(D) With respect to the decisions set forth above for the Operations Director, the Administration covenants, represents, warrants, and agrees that the authorities to make the decisions outlined above have been delegated to the Director, Office of Ship Operations, MAR-610, Second Floor, 1200 New Jersey Ave. S.E., Washington, D.C. 20590.

(E) With respect to the decisions set forth above for the Marine Surveyor, the Administration covenants, represents, warrants, and agrees that this authority has been delegated to the assigned Marine Surveyor. The Operations Director is authorized to provide the Marine Surveyor with such evidences in writing.

(F) The State covenants, represents, warrants, and agrees that the Academy has the authority to act on behalf of the State in carrying out the responsibilities set forth herein.

### **ARTICLE 17. Notices**

Unless changed by written notice to the other party, any notice to a party or document submissions and appeals to the Administration shall be delivered at the address listed below, either by first class mail or express mail and shall be effective upon receipt by the addressee thereof:

## **MARAD – Massachusetts Maritime Academy MOA**

For the Maritime Administration:

Attn: Director, Office of Ship Operation (MAR 610), or Director, Office of Maritime Labor and Training (MAR 650), or Deputy Associate Administrator and National Coordinator for Maritime Education and Training (MAR-600.3), or Associate Administrator for Strategic Sealift (MAR 600), Maritime Administration, 1200 N.J. Ave. S.E. Washington, D.C. 20590.

Termination notices under Article 12 shall be delivered to the Deputy Associate Administrator and National Coordinator for Maritime Education and Training (MAR-600.3).

For the Academy acting on behalf of the State:

President, Massachusetts Maritime Academy,  
101 Academy Drive, Buzzards Bay, MA 02532.

### **ARTICLE 18. Execution in Counterparts**

This Agreement may be executed in any number of counterparts. All of such counterparts shall be deemed to be originals and shall together constitute but one and the same instrument.

### **ARTICLE 19. Amendment and Waiver**

This Agreement may not be amended or supplemented orally, but may be amended or supplemented from time to time by an instrument in writing executed by authorized representatives of the State and the Administration. However, specific provisions of this Agreement may be waived by the Administration provided that such waiver is approved in writing by the Maritime Administrator, the Deputy Maritime Administrator, or the Executive Director of the Maritime Administration. The waiver requirements of the foregoing sentence do not apply to specific waiver provisions already set forth in this Agreement.

## **MARAD – Massachusetts Maritime Academy MOA**

### **ARTICLE 20. No Third-Party Beneficiaries**

This Agreement does not confer any rights or benefits on any third party.

### **ARTICLE 21. Applicable Law**

The applicable statutes, regulations, directives, and procedures of the Federal law and the Administration shall govern this Agreement.

**MARAD – Massachusetts Maritime Academy MOA**

**Signatures**

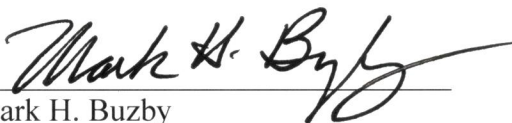
IN WITNESS WHEREOF, the UNITED STATES OF AMERICA, represented as aforesaid, and the State of Massachusetts, acting by and through the Academy, have caused this Agreement to be executed on its behalf in three counterparts effective as of the day and year first written herein above.

Signed on the 8<sup>th</sup> day of January, 2021.

ATTEST

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION

\_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
Mark H. Buzby  
Maritime Administrator

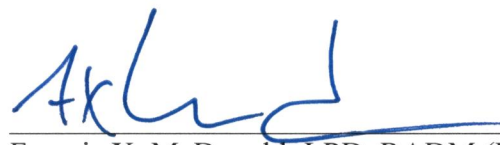
(Seal)

Signed on the 5<sup>th</sup> day of January, 2021.

ATTEST

STATE OF MASSACHUSETTS  
acting by and through the  
MASSACHUSETTS MARITIME ACADEMY

  
\_\_\_\_\_

  
\_\_\_\_\_  
Francis X. McDonald, LPD, RADM (USMS)  
President

(Seal)

# MARAD – Massachusetts Maritime Academy MOA

## Appendix 1 - Permitted and Prohibited Personnel

<u>PERSONNEL CATEGORY</u>	<u>PERMITTED PERSONNEL</u> (IAW Academy Controls and VSP)				<u>PROHIBITED AT SEA</u>
	Administration's Approval is <u>Not</u> Required			Requires prior approval from Administration for Sailing	
	At Home Port Pier	During Cruise			
		At Sea	In Port		
<b>Permitted Personnel:</b>					
The Training Ship's operating and maintenance crew (either Academy employees or contract personnel) and Academy faculty and administrative personnel.	X	X	X	-	-
MARAD personnel attending the Vessel.	X	X	X	-	-
All repair contractors, service personnel and regulatory officials, required to survey, inspect, maintain, repair and/or operate the Vessel.	X	X	X	-	-
Merchant marine officer preparation program cadets enrolled at the Academy.	X	X	X	-	-
Merchant marine officer preparation program cadets enrolled at another State Maritime Academy or the United States Merchant Marine Academy.	X	X	X	-	-
Other students enrolled at the Academy in a maritime related program.	X	X	X	-	-
Naval Sea Cadets, Explorer Scouts and members of similar organizations with which the Academy has an established relationship.	X	X	X	-	-
U. S. Navy Cadets, Midshipmen or Officer Candidates of any U.S. sea service academy, or Service, including US Naval Academy, USCG Academy, NOAA Corps, U.S. Army Corps of Engineers, or the US Public Health Service(USPHS), pursuant to an agreement between the Administration and the Department of Defense, Department of Homeland Security, NOAA, or USPHS as appropriate.	X	X	X	-	-
Federal, State, local, and foreign public or regulatory officials.	X	-	X	X (see below)	-
Guidance counselors.	X	-	X	X (see below)	-
Trade and maritime employment promotion program personnel.	X	-	X	X (see below)	-
Family of the ship's permanent crew, faculty and administrative staff, at their own expense.	X	-	X	-	X
Public visitors participating in Academy sanctioned and supervised guided tours and receptions.	X	-	X	-	X

## MARAD – Massachusetts Maritime Academy MOA

<u>PERSONNEL CATEGORY</u>	<b>PERMITTED PERSONNEL (IAW Academy Controls and VSP)</b>				<b>PROHIBITED AT SEA</b>
	<b>Administration Approval is <u>Not</u> Required</b>			<b>Requires prior approval from Administra tion for Sailing</b>	
	<b>At Home Port Pier</b>	<b>During Cruise</b>			
		<b>At Sea</b>	<b>In Port</b>		
<b>Additional Permitted Personnel At Sea:</b> After first giving precedence to maritime license training and the permitted personnel listed above, the following additional categories of personnel <u>may</u> be permitted on cruise, subject to prior written approval from the Operations Director:					
Students enrolled in State approved maritime related programs.	X	-	X	X	-
Academic, professional or student personnel involved in special research projects requiring extended sea time periods.	X	-	X	X	-
Academy Board members, Federal and State government personnel, guidance counselors, Trade and maritime employment promotion program personnel, and media representatives.	X	-	X	X	-
Other individuals specifically approved by the Administration.	-	-	-	X	-
<b>Prohibited Personnel:</b> The following categories of personnel are <u>specifically prohibited</u> on any part of the training cruise or Academy sponsored cruise unless specifically authorized in writing by the Operations Director:					
Passengers for hire or on any revenue generating basis.	-	-	-	-	X
Any persons not specifically required for the conduct of the Training Ship's business or the training mission of the Academy, except as authorized above under Permitted Personnel.	-	-	-	-	X
Dependents, spouses, and relatives of the Academy officials, faculty, cadets, and crew (except as authorized above as a permitted visitor in port).	-	-	-	-	X