

## CLAIMS ARBITRATION AGREEMENT

WHEREAS, **Dannie Eiland** was employed as a seaman on the **Tug Niolo** and was allegedly injured on **September 6, 2011**. **K-Sea Hawaii, Inc.** and/or one or more affiliated, related, predecessor or subsidiary corporations (hereinafter **K-Sea**) have a duty to pay maintenance and cure because **K-Sea** was the owner and/or operator of the vessel and/or the employer of **Dannie Eiland**.

It is the position of **K-Sea** that **K-Sea** is responsible only for maintenance and cure and is not responsible or liable for any other damages in regard to **Dannie Eiland** alleged injuries under the doctrine of unseaworthiness, the Jones Act or any other applicable law. Nonetheless, **K-Sea** is prepared to make advances against settlement, arbitration award or judgment of any claim that could arise under the doctrine of unseaworthiness, the Jones Act, or any other applicable law provided **Dannie Eiland** agrees to arbitrate these claims.

Therefore, in consideration of **Dannie Eiland** agreeing to arbitrate all claims against **K-Sea** and its affiliated, related, predecessor and subsidiary companies, arising under the theory of unseaworthiness, Jones Act or any other applicable law, in Honolulu, Hawaii, under the Arbitration Rules, Procedures & Protocols of Dispute Prevention & Resolution, Inc. (hereinafter **DPR**), **K-Sea** agrees to pay **Dannie Eiland** two-thirds of his average net weekly wage, (\$232.39 per day to be paid in biweekly installments of \$3,253.50), in addition to \$31.00 per day in maintenance, as an advance against settlement, arbitration award or judgment, until he has been declared fit for duty, and/or at maximum medical improvement, and/or **March 15, 2012**, whichever occurs first.

Either party may call for the arbitration by a notice to the other sent by registered mail. The arbitration shall be conducted by a sole arbitrator selected in accordance with **DPR's** rules provided that **DPR** shall not have the power to appoint arbitrators stricken by either party. Any filing fees, case management fees and any deposit for the compensation of the arbitrators shall be advanced by **K-Sea**, subject to subsequent allocation. The decision of the arbitrators shall be final and binding on the parties and any United States District or other court of competent jurisdiction shall have the jurisdiction to enforce this agreement, to enter judgment on the award and to grant any remedy provided by law in respect of the arbitration proceedings.

### **READ THE FOLLOWING EIGHT NUMBERED STATEMENTS CAREFULLY:**

(1) I understand that by signing this agreement, I am waiving my right to have my claim decided by a jury. My claim will be decided by an arbitrator.

(2) I understand that I am agreeing to arbitrate all claims arising out of the incident described above, including any claims for medical conditions that develop after I sign this agreement.

(3) I understand that I am not obligated to sign this agreement and that I will continue to receive \$31.00 per day as maintenance and that my medical bills relating to my injuries will be paid, until I am fit for duty and/or reach maximum medical improvement, even if I don't sign this agreement.

(4) I have been given the opportunity to consult with an attorney of my own choosing before signing this agreement.

(5) I understand that my eligibility for future employment with **K-Sea** does not depend on whether I sign this agreement.

(6) I understand that **K-Sea** will receive a credit in the amount of the advances made to me under this agreement toward any settlement, arbitration award or judgment that I may receive regarding my claim.

(7) Other than the promises contained in this agreement, I have been given no other promises to induce me to sign this Claims Arbitration Agreement.

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**(8) There has been no coercion used to make me sign this agreement. I have signed this agreement knowingly and willingly.**

**The Following Is To Be Filled In By The Claimant In His Own Handwriting.**

- A. Have you read this paper from beginning to end? A \_\_\_\_\_
- B. Do you know what this paper is that you are signing? A \_\_\_\_\_
- C. What is this paper which you are signing?  
A \_\_\_\_\_
- D. Have you been given the opportunity to consult with an attorney of your own choosing before signing this Claims Arbitration Agreement?  
A \_\_\_\_\_
- E. Have you consulted with an attorney before signing this agreement?  
A. \_\_\_\_\_
- F. Do you make the eight numbered statements printed above and do you intend that K-Sea Transportation, Inc. shall rely on the statements as the truth?  
A \_\_\_\_\_
- G. In order to show that you know what you are doing please copy in your own handwriting, in the space immediately following, the first and eighth numbered statements above.

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Signature of Dannie Eiland \_\_\_\_\_

Date \_\_\_\_\_


**Acknowledgement before Notary Public**

STATE OF \_\_\_\_\_

ss.:

COUNTY OF \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_ known to me to be the individual described in and who executed this document, and acknowledge that (he/she) \_\_\_\_\_ fully understood its contents and that it was a Claims Arbitration Agreement that (he/she) \_\_\_\_\_ duly executed the same as (his/her) \_\_\_\_\_ free act and deed and for the sole consideration therein expressed.  
**(NOTARIAL SEAL REQUIRED)**

  
\_\_\_\_\_  
R-Sea Hawaii, Inc.  
By Afon M.A. Peralta

\_\_\_\_\_  
Date 11/02/11



Safe and Sound ■ Transportation Services

November 10, 2011

Mr. Dannie Eiland  
26175 Highway 90  
Robertsdale, AL 36567

Dear Mr. Eiland: ~~Mr. Eiland~~ **DANNIE**

Please find the enclosed Claims Arbitration Agreement. If you agree to the terms of the Claims Arbitration Agreement, K-Sea Hawaii Inc. will pay the settlement advances indicated in the agreement. In exchange for settlement advances, you agree to submit any claims you may have against K-Sea to binding arbitration. The arbitration is a private process, and the outcome will be decided by a sole arbitrator selected under the Comprehensive Arbitration Rules and Procedures of Dispute Prevention & Resolution, Inc. (DPR), not by a jury. If you elect to participate in K-Sea Hawaii Inc.'s Claims Arbitration Program, please complete the form in the presence of a notary public and return it to me.

**You are not obligated to sign the Agreement. You will continue to receive \$31/day as maintenance, and medical cure at the Company's expense until you are fit for duty and/or reach maximum medical improvement, whether you sign the Agreement or not. If you have any questions, or require further information, please feel free to call**

Very truly yours,  
K-Sea HAWAII INC.

  
Alton Peralta  
Risk Manager



The American Waterways Operators  
RESPONSIBLE  
CARRIER  
PROGRAM

**EXHIBIT 'A' PAGE 4**

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