

# **MARINE TERMINAL OPERATOR**

## **SCHEDULE OF RATES, REGULATIONS AND PRACTICES**

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## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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### 1. BASIC AGREEMENT

This Schedule sets forth the rates, regulations and practices, and contractual terms and conditions, which shall apply whenever a Customer requests, is provided with and/or receives any access to and/or use of a terminal facility and/or terminal service of Operator whatsoever, as such terms are defined in section 3, below, including any providing of, access to and/or use of any personnel, labor, services, materials, supplies, tools, equipment, personal property or real property at and/or associated with a terminal facility of Operator and whether provided at such a terminal facility or elsewhere.

This Schedule is published and made available to the public pursuant to the United States Shipping Act, as amended, and 46 U.S.C. §1707(f), and shall at all times be legally enforceable as an implied contract between Customer and Operator. All references to a tariff, schedule, service directory, service guide, etc. of Operator shall be deemed to refer to this Schedule and the rates, regulations and practices, and contractual terms and conditions, set forth herein. This Schedule may be changed by Operator from time to time without notice. The current version of this Schedule is available at each terminal facility main office and on the internet at the address identified below.

<http://www.northstarak.com>



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### 3. DEFINITIONS

Act means the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, the Coast Guard Authorization Act of 1998 and subsequent legislation.

Bulk cargo means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics.

Checking means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same.

Commission means the Federal Maritime Commission.

Customer refers to any vessel, vehicle, conveyance, person and/or business entity who requests, is provided with and/or receives any terminal services whatsoever.

Dockage means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed.

Effective date means the date a schedule or an element of a schedule becomes effective. Where there are multiple publications on the same day, the last schedule or element of a schedule published with the same effective date is the one effective for that day.

Expiration date means the last day, after which the entire schedule or a single element of the schedule, is no longer in effect.

Forest products means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular by-products derived from pulping and papermaking, and engineering wood products.

Goods refers to all cargo and other personal property items with respect to which Operator is requested to and/or does perform any terminal services, and all packing, packaging, crates, cradles, pallets, tanks, platforms, flatbeds, trailers, containers and other items, materials and supplies associated therewith.

Handling means the terminal service of physically moving goods.

Heavy lift means the service of providing heavy lift cranes and equipment for lifting goods.

Loading and unloading means the service of loading or unloading goods between a place of rest at the terminal facility and any vessel, rail car, trucks/motor vehicle or other conveyance.

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Marine terminal operator means a person engaged in the United States or a commonwealth, territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine terminal operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators.

Operator refers to the marine terminal operator(s) subscribing to this Schedule which owns and/or operates the relevant terminal facility as well as all other companies and/or facilities subscribing to this Schedule, as identified in section 2, above, and the respective owners, shareholders, members, directors, officers, employees and agents of each of the foregoing, all of whom shall be entitled to all benefits, defenses, exceptions, immunities and limitations upon liability available to Operator hereunder, by law, at equity or otherwise.

Organization name means an entity's name on file with the Commission and for which the Commission assigns an organizational number.

Package refers to the largest single unit used to transport the goods, such as a single container, flatbed, or trailer, etc., or a single machine or item of equipment, etc., and not the individual contents, pieces, boxes, parts or components thereon, therein or thereof.

Person includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

Rate means a price quoted by Operator in a schedule or otherwise for providing a specified level of marine terminal service or facility for a stated cargo quantity, on and after a stated effective date or within a definite time frame.

Terminal facility means one or more structures comprising a terminal unit owned and/or operated by Operator, including, but not limited to, docks, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators or other bulk cargo loading/unloading structures, landings and receiving stations used for the handling, transmission, care and convenience of cargo or passengers in the receipt, interchange and/or delivery of the same between shippers, carriers and/or consignees.

Terminal services includes checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined herein, as well as any other providing of, use of and/or access to a terminal facility whatsoever, including any providing of, use of and/or access to personnel, labor, services, materials, supplies, tools, equipment, personal property and real property at and/or associated with such terminal facility, and whether provided at such terminal facility or elsewhere.

Terminal storage means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage.

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### 4. RATES, CHARGES, INVOICING AND PAYMENT

- A. Rates and Charges. Customer shall pay for terminal services upon the rates and charges on Operator's written quotation or other document, which quotation or other document from Operator shall be deemed accepted by Customer upon commencement of any performance by either party, including without limitation any access to and/or use of the terminal facility and/or terminal services of Operator whatsoever by or on behalf of Customer. Upon any such acceptance, Operator's written quotation or other document shall be deemed fully incorporated herein and binding upon the parties. If no rate or charge was quoted or otherwise identified to Customer for a particular terminal service, the applicable rate/charge shall be Operator's standard rate/charge therefor, which standard rate/charge shall be provided to Customer upon request.
- B. Other Charges. Customer shall also be responsible for paying/reimbursing Operator for any advances made respecting the goods, expenses incurred due to any act, omission and/or failure to perform by or on behalf of Customer, and expenses incurred with respect to the goods resulting in whole or part from any unforeseen or extraordinary circumstance.
- C. Recalculation. Rates/charges based on inaccurate or incomplete descriptions, instructions or particulars may be recalculated at any time and without notice to Customer. Operator shall have the right to inspect the goods and any manifests, bills of lading, receipts, cargo lists and other documents relating thereto in order to check, recalculate and/or confirm rates/charges hereunder, and Customer agrees to fully cooperate with Operator to that end.
- D. Invoice, Payment and Interest. Rates/charges hereunder shall be due and payable to Operator upon completion of the relevant terminal services and presentation of invoice. All payments shall be made in U.S. currency without deduction or offset; in no event may amounts due Operator hereunder be withheld to offset any claim of Customer against Operator. Sums which are due Operator but which have not been paid for thirty (30) days or more shall accrue interest at the rate of one percent (1.5%) per month from the date due until paid in full.
- E. Invoice Disputes. Questions regarding the validity of any invoice from Operator must be submitted to Operator in writing within ten (10) days of presentation, failing which such invoice shall be deemed accurate, valid and accepted by Customer.
- F. Collection. Should Operator engage a collection agent and/or attorney to collect amounts due hereunder, Customer shall be responsible for paying/reimbursing Operator for all fees and costs relating thereto, including legal fees and costs, in litigation or otherwise.

### 5. OPERATOR'S LIEN RIGHTS

Customer grants Operator a lien on the goods while in the possession of Operator and a lien against any vessel, container, chassis, etc. respecting such goods to provide security for the payment of amounts due Operator hereunder. As additional security for said amounts due Operator, Customer grants Operator a consensual lien on all other goods, cargo and personal property of Customer subsequently in Operator's possession. Operator may assert its lien rights at any time, and in furtherance thereof may hold and/or store such goods, cargo and personal property until payment is received and/or sell such goods, cargo and personal property publicly or privately; in the event of sale, proceeds shall first be applied to sale costs, then to amounts due Operator, with the balance, if any, to be remitted to Customer.

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#### **6. INDEPENDENT CONTRACTOR**

Operator shall at all times perform as, and shall for all purposes hereunder be deemed, an independent contractor. Operator is not a common carrier, contract carrier, freight forwarder, freight broker or vessel charterer, nor an agent, employee, partner, joint venturer or landlord of Customer.

#### **7. LIBERTIES AND PERFORMANCE**

Operator shall perform services hereunder with due diligence but does not guaranty any particular speed or starting or completion dates or times. Operator shall have liberty with respect to selection of equipment, procedures and methods utilized for its performance, except to the extent such matters have been specifically agreed otherwise. Operator reserves the right to control and perform all weighing, sampling, measuring, loading, handling and discharging of goods at the terminal facility, but shall not be obligated to receive, handle or deliver goods unless and until all proper documentation has been presented. Operator may, at its option and without notice, refuse, reject, move within and/or remove from the terminal facility any goods which it believes may present a risk to persons or property, at Operator's sole discretion and Customer's sole risk and expense.

#### **8. SUBCONTRACTING AND EXTENSION OF BENEFITS**

Operator may subcontract all or any portion of the terminal services at its discretion and without notice, including without limitation to related/affiliated entities, with all benefits, defenses, exceptions, immunities and limitations upon liability set forth in this Schedule to remain applicable whenever claim is made against Operator and/or any servant, agent, contractor or any other whose services have been used to perform terminal services or otherwise respecting the goods.

#### **9. COORDINATION ASSISTANCE**

Upon request from Customer and with Operator's consent, Operator may assist Customer with the coordination between Customer and federal, state and/or local governmental authorities, and/or between Customer and carriers, vessels, trucks and railcars, etc. involved in the handling or transportation of Customer's goods, to expedite the performance of terminal services and transportation of Customer's goods as contemplated, with any additional charges/expenses incurred with respect thereto to be paid/reimbursed to Operator by Customer pursuant to section 4, above, if not otherwise specifically identified on Operator's written quotation. No such assistance from Operator shall increase Operator's responsibilities or liabilities as set forth in this Schedule.

#### **10. GOVERNMENT INSPECTION ASSISTANCE**

Unless otherwise specifically agreed by Operator in its written quotation, any assistance with government inspections (Customs, USDA, Coast Guard etc.) from Operator will be billed to Customer on a time, equipment and materials plus Operator's standard overhead percentage basis, which standard overhead percentage shall be provided to Customer upon request. Customer shall be solely responsible for scheduling, paying/reimbursing all costs/expenses, and preparing, processing, completing, submitting and filing all documents associated with any such government inspection.



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#### **11. EXCEPTIONS FROM PERFORMANCE**

Operator shall not be responsible for any delay or failure to perform resulting from any cause which is beyond Operator's reasonable ability to control and/or which arises without the actual fault and privity of Operator, including without limitation any delay and/or failure to perform caused by any one or more of the following: act of God; weather conditions; fire; war; act of public enemies; terrorism; arrest or restraint of princes, rulers or people; seizure under legal process; quarantine restrictions; act or omission of Customer or its agent or representative; strike, lockout, stoppage or restraint of labor from whatever cause and whether partial or general; riot or other civil commotion; insufficiency or inadequacy of markings applicable to the goods; and/or terminal congestion.

#### **12. CUSTOMER'S DESCRIPTION AND TENDER OF GOODS**

Customer shall be solely responsible for providing Operator with, and hereby warrants the completeness and accuracy of, all information, descriptions, particulars and instructions relating to the goods, including as to their nature, characteristics, markings, number, count, weight, dimensions, volume and quantity, as well as any special instructions or conditions applicable to the goods, their handling and/or transportation, upon all of which Operator shall be entitled to rely. Customer shall be responsible for, and agrees to indemnify and hold Operator harmless (including legal fees and costs) from and against, any loss, damage, expense, claim, liability, suit, fine and/or penalty resulting from any false, inaccurate and/or incomplete information, descriptions, particulars and/or instructions respecting the goods.

Customer shall tender goods to Operator at the date, time and place agreed by Operator in good order, count and condition, and packaged, protected, packed and stowed sufficiently to withstand the contemplated terminal services, handling and subsequent transportation, including by vessel, rail car, motor vehicle and/or airplane, as applicable.

#### **13. BILLS OF LADING**

Customer specifically agrees that Operator's liability for loss/damage to or in connection with the goods shall at all times be subject to and limited by section 20, below, that the forum identified in section 37, below, shall apply to any dispute involving Operator, and that Operator does not and will not consent to the jurisdiction of any court or arbitration proceeding identified in, nor shall Operator otherwise be bound by, any forum selection clause in any bill of lading or transportation agreement applicable to the goods.

Without limitation upon the foregoing, Customer shall be responsible for ensuring that all bills of lading and transportation agreements applicable to the goods incorporate the United States Carriage of Goods by Sea Act (COGSA), 46 U.S.C. §1300 et seq., as amended, or if COGSA is not applicable the Hague Rules of 1921, 51 Stat. 233, as amended, and that all the benefits, defenses, exceptions, immunities and limitations upon liability granted under such regime for benefit of the carrier are extended to the periods of time prior to and during the loading of the goods, and during and following the discharging of the goods, and otherwise to and for the benefit of Operator. In addition, whenever any such benefits, defenses, exceptions, immunities and limitations have been waived, limited and/or omitted, as in the case of ad valorem or dangerous goods, for example, Customer shall be responsible for providing Operator with written notice thereof prior to tender of the goods to Operator.

Customer agrees to indemnify and hold Operator harmless (including legal fees and costs) of and from its failure, in whole or part, to meet the requirements of this section 13.

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#### 14. RULES FOR PARTICULAR GOODS

- A. Containers: Customer shall be responsible for assuring that all goods in containers are prepared, packaged, packed and secured so they do not shift or become damaged during handling and performance of other terminal services, and otherwise prepared, packaged, packed and secured sufficiently for safe transportation by motor vehicle, railcar and/or vessel, as applicable.
- (1). No Duty to Inspect: Operator shall have no responsibility or duty to inspect the contents of containers from Customer, and no such inspection, or request to inspect, shall increase Operator's responsibilities or liabilities hereunder.
  - (2). Loading/Unloading to/from Vessels: Unless specified otherwise in Operator's written quotation, container crane terminal services for vessels includes the following:
    - (a). booming up container crane over vessel gear and house;
    - (b). movement of containers between vessel and point-of-rest ashore;
    - (c). lashing/unlashing and coning/unconing; and
    - (d). routine checking and tallying of containers, including checking of seals, and notification of evident discrepancies and container damage.
  - (3). Load Lists and Stowage Plans: Upon request from Customer, Operator may assist with the completion of load lists and/or stowage plans, in which event additional charges may apply if not otherwise identified on Operator's written quotation. Stowage of containers aboard vessels shall be in accordance with the instructions and stability calculations from the vessel or carrier, and subject to Customer's review and approval.
  - (4). Non-Vessel Container Services: Operator shall receive and/or deliver containers to/from the terminal facility and other-than-vessels as requested by Customer and agreed by Operator, including but not limited to mounting/dismounting to/from motor vehicles, trailers, chassis and/or railcars, etc.
  - (5). Weighing: Upon request from Customer, Operator may assist with the weighing of containers and reporting to Customer, carrier or vessel, in which event additional charges may apply if not otherwise identified on Operator's written quotation.
  - (6). Equipment Inspection Reports and Interchange Documents: Upon request from Customer, Operator may assist with the completion of equipment inspection reports or equipment interchange documents with respect to containers, in which event additional charges may apply if not otherwise identified on Operator's written quotation.
  - (7). Overheight, Over width, Over length Containers: If the goods are in a container which is not ISO fitted, overheight, over width or over length, Operator may use special rigging and/or equipment to handle it, at its discretion, in which event additional charges may apply if not otherwise identified on Operator's written quotation.

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- B. Refrigerated Goods and Containers: Customer shall give advance notice of any perishable, chilled, frozen or other goods requiring refrigeration, and shall be responsible for tendering such goods in appropriate refrigerated containers, properly stowed with thermostat set, and for providing Operator with appropriate instructions and temperature settings relating thereto. Operator shall not be responsible for freezing down or reducing the core temperature, nor for the long term storage, of any such goods. Operator shall plug/unplug refrigerated containers and/or check temperature settings to the extent specifically requested by Customer and agreed by Operator. In the event of discrepancy between the temperature setting provided to Operator and that observed on a given refrigerated container, Operator may request that Customer verify the correct setting but has no obligation to do so. If no request for verification is given, or if Customer does not respond to such request, Operator may set the unit according to information which has been provided to it or, if no information has been provided, Operator may leave the unit at its current setting or adjust the setting to correlate with its setting upon arrival, at Operator's sole discretion. Operator shall not be liable, under any circumstances whatsoever, for any loss, damage, expense, claim, liability or suit relating to such goods when incorrect or inadequate information was provided to it, and/or when such goods were tendered with improper or inadequate temperature protection, or with improper or inadequate wrapping, packing, packaging, and/or with improper or inadequate stowage within the container.
- C. Forest Products: If the goods include logs, wood or forest products, Customer agrees as follows.
- (1). Customer acknowledges that there are certain risks involved when a vessel is involved with the handling of such goods. It is necessary, therefore, that certain precautions be undertaken by Customer and the vessel.
  - (2). Customer and the vessel shall protect and/or remove any vessel equipment, gear, fitting or other item or appurtenance which may be exposed to damage by virtue of the nature of such goods and/or their handling. In consideration of Operator loading/unloading a vessel which is not so protected, it is agreed that Operator shall not be liable for any loss/damages to such vessel, or any consequential damages arising from or occasioned by such loading/discharging, which loss or damages may have been avoided if such protected had been afforded as required herein, and that Customer shall indemnify and hold Operator harmless (including legal fees and costs) from and against any and all claims for such loss or damage, including without limitation those from Customer, the vessel or any other person or entity.
  - (3). Operator shall be responsible for damage to the vessel during the handling of such goods only to the extent caused both solely and directly by its negligence. In such an event, Customer shall notify Operator immediately upon discovery, in writing or otherwise, and shall within eight (8) hours after such occurrence provide Operator with a full description of the occurrence and an explanation of why it believes Operator may be responsible.
  - (4). Operator shall not be responsible for any damage to the vessel if the goods exceed the maximum lifting capacity of the vessel's gear, unless the excessive weight is specifically brought to the attention of Operator prior to attaching the loading slings.

Operator may request that Customer sign a separate, written **Responsibility For Damage - Logs** agreement stating the above, as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

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- D. Metal Goods: If the goods include metal, scrap or otherwise, Customer shall be responsible for assuring the vessel is fully protected as required by Thomas' Stowage Guide and otherwise, including without limitation that the vessel is provided with dunnage boards or similar adequate protection for each of the following items: the hull structure; all fittings and appliances; all hatch covers and/or pontoons; the main deck; all ventilators; all winches, blocks and other tackle; all sounding pipes; all water lines; all electronic cable runs; all deck house windows/portholes; all ladders and stairways; all stanchions and accessories thereon; all handrails and guard rails; ballast tanks and fittings; any coils in deep tanks which are to be loaded; and all other components, appliances and appurtenances which may be effected by the use of magnetic cranes and/or damaged by the goods and/or their handling.

Operator shall not be responsible for, and Customer shall indemnify and hold Operator harmless (including legal fees and costs) from and against, any loss, damage, expense, claim, liability and/or suit resulting from its failure to provide such protection.

Operator may request that Customer sign a separate, written **Responsibility For Damage – Metal** agreement stating the above, as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

- E. Specialty Goods: Customer must secure Operator's assent before tendering for any goods transported in other than conventional, ISO fitted, dry containers and/or which require any special protection, services or other measures (including but not limited to temperature and humidity control). Customer shall be solely responsible for providing complete and accurate information with respect to any such goods, including safety procedures and contact information, etc., prior to commencement of terminal services.
- F. Animals/Livestock: The handling of livestock and animals shall be subject to Operator's advance written consent, and in such event Customer shall be solely responsible for compliance with applicable federal, state and local laws, regulations, rules and customs relating thereto.
- G. Breakbulk and/or Unitized Goods: The receiving and/or delivering of breakbulk and other goods not in containers shall be performed during normal working hours and does not include the costs of truck/railcar loading/unloading unless specifically agreed by Operator in its written quotation. All terminal services applicable to breakbulk and/or unitized goods, including the packing of such goods into containers if requested by Customer and agreed by Operator, shall be performed at the rates/charges contained in Operator's written quotation or, if no rates/charges were included, at Operator's current standard rates/charges therefor, which rates/charges shall be provided upon request. If materials such as skids, pallets, bands, etc., and/or special lift equipment for handling such goods, becomes necessary, at the discretion of Operator, additional charges may be incurred without prior notice to Customer.

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- H. Yachts: Unless otherwise agreed by Operator in advance and in writing, if the goods include a boat, yacht or other vessel, the single boat, yacht or vessel shall be deemed a single "package," as defined in section 3, above, and referenced in section 20, below. Operator may require additional shoring/bracing/lashing to handle such goods, at its discretion, in which event additional charges may apply if not otherwise identified on Operator's written quotation. In addition, the following provisions shall be applicable.
- (1). Customer acknowledges that the presence of others during handling operations may increase safety hazards and/or interfere with handling operations. Customer's guests, visitors, friends and/or relatives are not allowed on the boat or at the terminal facility at any time during such operations without Operator's prior permission; any such individuals allowed at the terminal facility must wear hard hats, safety vests and other personal protective equipment as required by Operator.
  - (2). Boats being discharged directly to the docks in their cradles do not need to be specially prepared by Customer, and any inspection by or on behalf of Customer shall be performed after handling operations have been completed.
  - (3). Boats being discharged to the water may require prior preparation by Customer.
    - (a). Any preparation work by Customer must be completed before handling operations have commenced. Operator recommends that all Customer preparation work be coordinated in advance to prevent unnecessary delay.
    - (b). Those assisting Customer with preparation work must depart before handling operations begin, and shall not attempt to assist Operator.
    - (c). No one will be allowed to ride the boat down to the water, as that is a direct violation of applicable federal regulations.
    - (d). Customer must arrange for a tender vessel to be present to accept the boat upon being placed in the water, and that tender vessel must be available to assist in removing the boat from the slings. Tender vessels are strongly recommended for the safety of the boat as well as people on/about the boat and/or terminal facility. Customer may request and approve of alternative means of handling boats being discharged to the water, such as using a Jacob's ladder or ship's companionway, in which event Operator shall not provide any such equipment or be involved with any such decisions. Operator's responsibilities respecting the boat ends when the boat hits the water; after that, Customer may put a person or persons aboard and/or arrange for towage, at its sole discretion and expense.
  - (4). All access to and/or use of Operator's facility or services by or on behalf of Customer shall be subject to the provisions of this Schedule, including without limitation the security provisions of section 15, below, and the access and use provisions of section 28, below.

Operator may request that separate, written **Discharging Instructions** agreement stating the above be signed by Customer (including the consignee and/or its agents and representatives), as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

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- I. Motor Vehicles: Unless otherwise agreed by Operator in advance and in writing, if the goods include one or more motor vehicle(s), a single motor vehicle shall be deemed a single "package," as defined in section 3, above, and referenced in section 20, below. Operator may require additional shoring/bracing/lashing to handle such goods, at its discretion, in which event additional charges may apply if not otherwise identified on Operator's written quotation.
- J. Machinery: Unless otherwise agreed by Operator in advance and in writing, if the goods include machine(s) or machinery(ies), the entire composite machine shall be deemed a single "package," as defined in section 3, above, and referenced in section 20, below, rather than the various parts and/or components thereof, regardless of how shipped and/or received. Operator may require additional shoring/bracing/lashing to handle such goods, at its discretion, in which event additional charges may apply if not otherwise identified on Operator's written quotation.
- K. Hazardous Goods:
- (1). Definitions: As used herein, the term "hazardous goods" refers to any goods which have any hazardous, dangerous, explosive, flammable, poisonous, infectious, noxious, spontaneously combustible, radioactive, corrosive or oxidizing character or effect whatsoever, including without limitation any material or substance listed on the U.S. federal Hazardous Material Table (49 C.F.R. §172.101), as amended, or otherwise identified by any HazMat law as being a marine or other pollutant, an explosive, a dangerous or hazardous material, or a hazardous waste. The term "HazMat laws" refers to any international, federal, state, provincial, local, tribal or other treaty, law, statute, regulation, rule or ordinance relative to the transportation of hazardous goods.
  - (2). Information: For information on HazMat laws and the responsibilities of those offering hazardous goods for handling and transportation, Operator suggests that Customers refer to the U.S. Department of Transportation's HazMat website on the internet.
  - (3). Availability and Right of Refusal: The handling of hazardous goods shall at all times be subject to availability of equipment deemed sufficient and appropriate by Operator in its sole discretion. Operator may refuse to handle any hazardous goods which it believes, in its sole discretion, may present an unreasonable risk of damage to any vessel, vehicle, equipment or property, and/or unreasonable risk of injury or illness to any person; in such an event, Operator shall notify Customer, and Customer shall promptly thereafter, at its risk and expense, alleviate Operator's concerns to Operator's satisfaction or promptly retrieve and remove the hazardous goods from the terminal facility.
  - (4). Offeror Responsibility: Customer shall be solely responsible for offering, describing, identifying, naming, classifying, documenting, packing, packaging, marking and labeling all hazardous goods tendered in strict compliance with HazMat laws. Each bill of lading respecting the goods must contain a shipper certification as required by HazMat laws.
  - (5). Shipping Papers: Customer shall be solely responsible for providing Operator with complete, comprehensive and approved shipping papers with respect to any hazardous goods tendered hereunder, which papers shall include all information, descriptions, instructions, disclosures and documentation required by HazMat laws and a full description and identification of the hazardous goods, including their type, quantity, proper shipping name, classification, packing group, chemical group, identification number(s) and hazardous and subsidiary hazardous nature(s).

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Without limiting the foregoing, Customer shall obtain and provide the following to Operator prior to the performance of any terminal services whatsoever: registration under 49 U.S.C. §5108 as an offeror of hazardous goods for interstate transportation (or an applicable federal approval/exemption); full name and street address, telephone and contact name for the owner, shipper/consignor and consignee of the hazardous goods; a full description of the hazardous goods, as above; booking confirmation number(s); complete and clear written instructions for the loading, handling, storing, movement, transportation and unloading of the hazardous goods as well as for response, clean-up, mitigation, remediation, alleviation, removal and restoration in the event of a spill or release; and the full name, address and telephone number for a contact person who has comprehensive knowledge with respect to the hazardous goods, including their hazardous nature and emergency incident response requirements. The contact person must be immediately available at all times during the performance of terminal services; his/her telephone number must be available and monitored at all times, and must not be a beeper number or otherwise involve any answering or call-back service.

- (6). Hazardous Waste. If the hazardous goods include hazardous waste, Customer must give prior written notice to Operator and obtain express authorization from Operator at least thirty (30) days in advance of tender of such hazardous waste goods. In addition, the shipping papers must include original Manifest(s) and all other paperwork required by HazMat laws and/or any government, terminal and/or port agency or authority applicable to the transportation of hazardous waste. Customer shall be solely responsible for the ultimate disposal/destination of any hazardous waste shipment.
- (7). Permits, etc.: Customer shall be responsible for obtaining and providing any and all transit or movement notices, permits, authorizations and confirmations for the hazardous goods and/or their handling and transportation, in accordance with and as required by applicable HazMat laws and/or any government, terminal and/or port agency or authority.
- (8). Security Plans: If the hazardous goods include those enumerated in 49 C.F.R. §172.800 or otherwise requiring a security plan, the shipping papers must also include a security plan conforming with 49 C.F.R. §172.802 and other applicable HazMat laws.
- (9). Liability and Indemnity: Operator shall be liable only for physical loss/damage occurring to the hazardous goods themselves, to the extent set forth in section 20, below, and elsewhere herein, and Customer agrees to be responsible for, and to indemnify and hold Operator harmless (including legal fees and costs) from and against, any and all other loss, damage, expense, claim, liability, suit, fine and/or penalty resulting from or in any way relating to such hazardous goods and/or their handling and/or transportation, including without limitation any loss, damage, expense, claim, liability, suit, fine and/or penalty resulting from or in any way relating to Customer's failure to comply with the requirements and responsibilities allocated to it above and/or under HazMat laws. The foregoing allocation of responsibility and agreement to indemnify specifically includes, but is not limited to, property damage and bodily injury, illness and/or death claims as well as all pollution and/or environmental matters such as response, clean-up, mitigation, remediation, alleviation, removal and restoration.

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#### 15. FACILITY SECURITY PLAN

- A. Facility Security Plan: The terminal facility has a facility security plan as required by the Marine Transportation Safety Act of 2002, to ensure the application of security measures designed to protect the terminal facility at the various maritime security (MARSEC) levels. Customer understands and acknowledges the importance of such matters, and agrees to fully cooperate with all MARSEC, Coast Guard and/or Operator security directives as well as all training, drills, exercises, screenings, sweepings, surveys, examinations and assessments of Operator, the Coast Guard and/or any law enforcement official at the terminal facility designed to identify, protect against, alleviate and/or eliminate threats to security.
- B. Facility Security Officer: The name and contact information for Operator's facility security officer (FSO), or officers, shall be provided upon request from Customer. Operator's FSO(s) shall be responsible for the development, maintenance and implementation of the terminal facility's security plan and shall act as Operator's liaison with the Coast Guard area commander, the captain of the port and all vessel security officers. Operator's FSO(s) shall cooperate with vessel security officers in the development of procedures for issuing and approving vessel-to-facility declarations of security, as applicable. Any deviation from Operator's facility security plan requested by or on behalf of Customer must be approved in advance by Operator's FSO(s).

#### 16. VESSEL RULES

Any vessel having business at the terminal facility, including its owner, operator, master and crew, shall be considered a Customer receiving access to and/or use of the terminal facility and/or terminal services of Operator subject to the provisions of this Schedule, including without limitation the security provisions set forth in section 15, above, and the access and use provisions set forth in section 28, below. In addition, all such vessels must abide by the following rules.

- A. Charts/Maps and Safety of Berth: Operator shall not be responsible for providing charts or maps, nor does Operator warrant the safety of any berth. Customer shall be solely responsible for all such matters, and all vessels shall proceed to berth solely at their own option, risk and expense.
- B. Pilots and Assist Vessels: Vessels may be required to utilize pilots and/or assist tugs, in accordance with vessel type and as required by applicable laws or local custom. Customer is solely responsible for inquiring as to all such matters prior to arrival of the vessel and any failure to do so may result in a denial of berth and/or penalty charges, at Operator's discretion.
- C. Prior Arrangements: All berthing arrangements must be made in advance and shall be subject to availability. Operator does not guaranty berthing availability generally or the availability of any particular berth. Vessels arriving without prior arrangements may incur extra charges.
- D. Cancellation of Berth: Any Customer request for cancellation of berth must be given to Operator in writing at least twenty four (24) hours in advance of when the vessel was expected to arrive; any failure to do so may result in extra charges.
- E. Automatic Identification System and Notice of Arrival: All vessels required to utilize an automatic identification system (AIS) under 49 U.S.C. §70114 or otherwise shall be so equipped, and all vessels required to give notice of arrival (NOA) under 33 C.F.R. Part 160 or otherwise, including information as to the vessel, cargo and persons on board, shall provide notice as required.



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- F. U.S. Vessel Security Plans: All United States vessels required to have a security plan under the Marine Transportation Safety Act of 2002 shall confirm compliance with applicable Department of Homeland Security and United States Coast Guard regulations upon request by providing Operator with a copy of its letter of approval from the Commanding Officer, Marine Safety Center, United States Coast Guard. All foreign vessels subject to the International Convention for Safety of Life at Sea, 1974 (SOLAS) Chapter XI, must have onboard and available for inspection by Operator a valid International Ship Security Certificate (ISSC) certifying the vessel's compliance with part A, section 19.1 of the International Ship and Port Facility Security (ISPS) Code.
- G. Non-U.S. Vessel Security Plans: All foreign vessels not subject to SOLAS Chapter XI must evidence security compliance through an alternative security program or a bilateral arrangement specifically approved by the United States Coast Guard in writing. See 46 U.S.C. §70103(c) and 33 C.F.R. Chapter I, Subchapter H, Parts 101 and 104. All vessel security plans must generally ensure the implementation of security measures to deter the unauthorized introduction of dangerous substances and devices, secure dangerous substances and devices that are authorized to be onboard and generally control access to the vessel. See 33 C.F.R. §104.265.
- H. Vessel Security Officers: The vessel's nominated vessel security officer (VSO), or officers, shall be identified to Operator, including to Operator's FSO(s), prior to arrival of the vessel at the terminal facility. The VSO(s) shall liaison and cooperate with Operator's FSO(s) in the development of procedures for issuing and approving vessel-to-facility declarations of security, as applicable. Any plan deviations, security concerns and/or security incidents shall be reported fully and immediately by the vessel's VSO(s) to Operator's FSO(s).
- I. Coast Guard Compliance: All vessels must be in compliance with United States Coast Guard rules and regulations. If at any time the vessel is determined by the Coast Guard to be nonstandard and/or not in compliance, and/or if terminal services are interrupted, delayed or cancelled by the Coast Guard and/or Captain of the Port, Customer shall be liable for, and agrees to indemnify and hold harmless Operator from and against (including legal fees and costs) any resulting delay, loss, damage, expense, claim, liability, suit, fine and/or penalty.
- J. Crewmembers: Vessel crewmembers must be ready to show valid identification including appropriate evidence of citizenship as required by Operator, Operator's facility security plan, the Department of Homeland Security, the United States Coast Guard and/or the United States Customs Service. Any shore leave or crew change-out at the terminal facility shall be subject to Operator's advance approval and the access and use provisions of section 28, below.
- K. Ready to Load/Discharge: Unless otherwise agreed in writing by Operator, all vessels shall, upon arrival, be fully prepared for loading and/or discharging, as applicable, without delay.
- L. Instructions and Information: Customer shall provide to Operator prior to arrival of the vessel all information and instructions necessary for Operator's performance, including without limitation pre-stow plans, dock receipts and similar documents, information and instructions covering vessel loading, discharging, stowage and lashing, and information and instructions respecting the condition of any goods which require any special care and/or handling whatsoever.

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- M. Safety Rules and Guidelines: In addition, Customer and the vessel shall abide by the following safety rules and guidelines of Operator.
- (1). All cargo gear certificates, including wire rope certificates, must be current, valid and available for inspection. (See subsection 16.N, below.)
  - (2). The vessel's standing and running gear shall be inspected by Customer or the vessel's officers before Operator's performance of any terminal services, to insure that all such gear, including safety limit switches and alarms, is in safe and proper working order.
  - (3). Wire safety straps of not less than  $\frac{3}{4}$ " (three quarters of an inch) diameter shall be in place where required on swinging booms.
  - (4). A safe gangway equipped with stanchions and handrails and a safety net shall be maintained at all times. If approach steps are needed, they shall be fitted with rope stanchions or handrails a minimum of 33" (thirty three inches) high.
  - (5). Lighting must be adequate in all work and walking areas, including gangways.
  - (6). Decks and walkways must be kept unobstructed and free of debris, dunnage, oil, grease and all other potential slipping or tripping hazards.
  - (7). Pontoons or hatch covers left in place must be properly secured. When stacked on deck, they shall have dunnage or other suitable material placed between tiers and be properly lashed with a 3' (three foot) clearance from hatch coamings.
  - (8). Folding hatch covers must be securely locked when open.
  - (9). All hatch and escape ladders must be in good condition with no bent or missing rungs or abnormal space between ladder sections.

In addition, Customer and the vessel shall comply with all applicable requirements and regulations of the U.S. Department of Labor (including without limitation 29 CFR Parts 1917 and 1918) and/or applicable labor contract provisions, copies of which shall be provided upon request.

An officer of the vessel shall be in attendance at all times during operations to monitor vessel trim and stability and to observe and/or be notified of any accident or damage. Customer shall be responsible for reporting any claim for Operator damage to the Operator's attending supervisor immediately and for acknowledging receipt of reports. If Operator has additional requirements for the vessel to improve working conditions, Customer and the vessel shall fully cooperate.

Operator may request that Customer sign a separate, written **Safety Rules and Guidelines** agreement stating the above, as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

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- N. Vessel Gear Certifications: The vessel shall maintain and offer for inspection by Operator prior to the commencement of terminal services current and valid registrations and certificates for the vessel's gear, including without limitation forklifts, spreader bars, cranes, slings, etc., as required by federal and state occupational health and safety regulations, including without limitation Code of Federal Regulations Title 49, Chapter XVII, Part 1918 (Longshoring), Subpart B (Gear Certification). In addition, Customer and the vessel agree as follows.
- (1). Crane booms must be raised to the recommended safe working position, placed in OPERATE mode and have all BY-PASS keys removed.
  - (2). If it is necessary to use BY-PASS mode to obtain stowage required for safety to the vessel or goods, only the superintendent or head foreman will be given BY-PASS keys.
  - (3). A vessel officer must be in attendance while any crane is operated in BY-PASS mode, to avert improper use of the crane.
  - (4). Operator will not be responsible or held liable for any loss/damage to the vessel or cargo gear while the cranes are in BY-PASS mode.

Operator may request that Customer sign a separate, written **Statement of Crane/Gear Responsibility** agreement stating the above, as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

- O. Gangways Provided by Operator: In consideration of Operator providing to Customer or the vessel a gangway for its/their use, Customer and the vessel agree as follows.
- (1). The equipment rental terms and conditions set forth in section 31, below, shall be applicable to the gangway(s) provided by Operator.
  - (2). Customer shall be responsible for compliance with applicable laws and regulations, including without limitation OSHA Regulations set forth at 29 C.F.R. Part 1918 Subpart C.
  - (3). Customer shall be responsible for all loss/damage to the gangway while being rented to and/or used by Customer, except to the extent such loss/damage is caused both solely and directly by the negligence of Operator, and shall promptly pay/reimburse Operator for the actual costs of repair/replacement.
  - (4). Customer agrees to indemnify Operator (including legal fees and costs) from and against any loss, damage, expense, claim, liability and/or suit which in any way relates to and/or arises out of its rental and/or use of the gangway.

Operator may request that Customer sign a separate, written **Statement of Gangway Responsibility** agreement stating the above, as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

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- P. Demurrage: Customer shall be allowed free time and charged demurrage as set forth on Operator's written quotation or, if no free time or wharf demurrage was given, at Operator's standard amounts and rates applicable thereto, which shall be provided upon request.
- Q. Utilities/Services: Operator does not guarantee the providing and/or continuity of any utilities or services to the vessel, nor their characteristics or compatibility with the vessel. Owner disclaims all liability arising from electrical service, including electrolytic action on the vessel.
- R. Work on Vessel: Customer may perform minor maintenance work on the vessel while moored at the terminal facility, including through contractors upon consent from Operator, provided that all such work shall consist only of minor maintenance normally performed by the vessel's crew. No other work, including no "hot work," may be done on the vessel without Operator's prior written permission and Customer's full compliance with applicable permits, regulations and laws.
- S. Oils, Noxious Substances and Garbage: The discharge of ballast, bilge or oil contaminated water, or any noxious liquid, sewage, garbage or debris, into slips, channels, rivers or other waters, or on land, at or around the terminal facility is strictly prohibited. Violators shall be subject to charges, penalties and fines, and in the event of a violation Customer shall be solely responsible for coordination with the Coast Guard and any other federal and state agencies and for all removal, clean-up and restoration in a manner consistent with applicable laws.
- T. Damage from Other Vessels/Fire: Customer acknowledges that other vessels may be moored at the terminal facility and that Customer's vessel, goods and other personal property may become damaged thereby. Fire may originate on other vessels and/or at the terminal facility and spread to Customer's vessel, goods and other personal property. Customer shall be solely responsible for providing fire fighting equipment and for protecting its vessel, goods and personal property from any damage that might occur from fire, including from other vessels or the terminal facility. Notwithstanding anything herein to the contrary, it is specifically agreed that Operator shall not be responsible or liable for any loss/damage to the vessel caused by fire.
- U. Loss/Damage to Vessel: Operator is not responsible for inspecting or caring for any vessel at the terminal facility, nor for securing or watching any such vessel. Operator is not responsible for providing any tie ropes, bumpers, fenders or other gear used for berthing, does not accept the vessel for storage and shall not otherwise be held responsible for the vessel under bailment or any other legal theory. All responsibility for watching, securing and protecting the vessel, and all liability for any loss/damage to the vessel, shall rest solely with Customer, except to the extent such loss/damage is caused both solely and directly by the negligence of Operator.
- V. Reporting: Customer shall notify Operator of any instance of property damage or bodily injury relating in any manner to the berthing/moorage of any vessel and/or otherwise relating to Customer's access to and/or use of the terminal facility and/or terminal services of Operator. Customer shall promptly provide written accident reports and cooperate fully with Operator as to any investigation, including allowing the inspection of property and access to personnel.
- W. Orders to Complete Loading/Discharging: Operator may order any vessel to work continuously and complete loading/discharging promptly in order to alleviate current or prospective congestion at the terminal facility. Reassignment of berth, if any, shall be subject at Operator's discretion.

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- X. Orders to Vacate Berth and Removal of Vessel: Operator may order any vessel to vacate its berth if it fails to cooperate with an order to complete loading/discharging and/or if Operator, in its sole discretion, believes such vessel presents a risk to persons or property at the terminal facility. In such an event, Operator shall provide written notice to Customer, including by e-mail or facsimile, setting forth the date and time the berth must be vacated. Such notice shall be given at least four (4) hours in advance of the date and time the vessel is to vacate, unless an emergency circumstance requires the vessel to vacate immediately. If the vessel fails to vacate when and as ordered by Operator, Customer shall be responsible for, and agrees to indemnify and hold harmless Operator from and against (including legal fees and costs), any loss, damage, expense, claim, liability, suit, fine and/or penalty resulting from such delay and/or failure to vacate.

Upon completion of terminal services for the vessel or an order to vacate as identified above, Customer shall immediately remove the vessel from the terminal facility at its risk and expense. If Customer fails to do so, Customer hereby designates Operator as its agent for the limited purpose of removing the vessel and mooring it elsewhere, at Customer's risk and expense.

- Y. Particular Types of Vessels:

- (1). Ro-Ro Vessels: The parties agree that the loading/unloading of roll-on-roll-off vessels requires special experience, training and expertise, and that all such loading/unloading shall be performed under the direction and control of Customer, in accordance with instructions, stability information, stow plans and cargo stability plans furnished by Customer, and subject to Customer's final review and approval. Customer shall be responsible for the fitness/suitability of all equipment rolling on and off the vessel and the setting, shifting and removal of loading/unloading ramps to/from the vessel. No act, comment or recommendation with respect thereto from Operator shall increase Operator's responsibilities or liabilities hereunder.
- (2). Passenger Vessels: All access to and/or use of Operator's terminal facility shall be subject to the provisions of this Schedule, including the security provisions of section 15, above, and the access and use provisions of section 28, above. Without limiting the foregoing, Customer, including the passenger vessel owner/operator, shall be responsible for assuring that all passengers stay within designated areas at the terminal facility and have been made aware of and obey Operator safety and other rules at all times. In addition, Customer, including the passenger vessel owner/operator as well as any passenger, specifically agrees that all benefits, defenses, exceptions, immunities and limitations upon liability available to the passenger vessel and/or its owner/operator with respect to any passenger baggage/luggage and/or injury, illness and/or death claims shall be extended to and for the benefit of Operator.
- (3). Other Vessel Types: Tugs, barges, lighter aboard ships, scows, lighters, fishing vessels, rafts, river craft, pleasure boats and yachts, etc. may not moor at the terminal facility without advance notice and the permission of Operator.

After completion of loading a vessel and Customer's inspection of the loading, stowing, lashing, securing, etc., Operator may request that Customer sign a separate, written **Statement of Satisfactory Loading** as identified in section 38, below, in which event such statement shall be deemed incorporated herein and applicable concurrently with this Schedule.

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### 17. MOTOR VEHICLE RULES

Any truck/motor vehicle having business at the terminal facility, including its owner, operator and driver, shall be considered a Customer requesting and/or receiving access to and/or use of the terminal facility subject to the provisions of this Schedule, including without limitation the security provisions set forth in section 15, above, and the access and use provisions set forth in section 28, below. In addition, all such trucks/motor vehicles must abide by the following rules:

- A. Registration, License and Insurance: All trucks/motor vehicles, and their drivers, must be properly registered, licensed and insured as required by federal, state and local authorities, including without limitation the Department of Transportation, Federal Highway Safety Administration and Federal Motor Carrier Safety Administration, as applicable.
- B. Safety Rules: All trucks/motor vehicles, and their drivers, must abide by the following safety rules at all times while at the terminal facility:
- (1). the speed limit within the terminal facility is 15 MPH, unless posted otherwise;
  - (2). come to a complete stop at all crossings and yield at unmarked crossings/intersections;
  - (3). yard equipment has the right of way at all times;
  - (4). do not try to pass behind yard equipment that is backing up;
  - (5). do not drive immediately next to containers in stacking rows;
  - (6). do not cut through container stacking rows;
  - (7). do not drive on the waterway apron and stay clear of vessel operations;
  - (8). stay back at least one container length when toppick/sidepick is in stacking row retrieving the container, and move forward only after toppick/sidepick backs out of the row;
  - (9). absolutely no passengers allowed in the vehicle;
  - (10). be aware of and yield to all train traffic;
  - (11). do not use electronic devices while driving, i.e. cellular phones, walkmans, etc.; and
  - (12). if you experience any problems or have any questions, seek assistance at the office or maintenance building, as applicable.
- C. Loss/Damage to Equipment and Property: Customer shall be responsible for, and shall indemnify and hold Operator harmless (including legal fees and costs) from and against, all loss/damage to Customer's owned/leased equipment and personal property, including all of its owned/leased materials, supplies, tools, equipment, tractors, trucks, motor vehicles, trailers, containers, chassis, flatbeds and other equipment and/or personal property, howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other fault of Operator.
- D. Loading/Unloading: Customer shall be responsible for assuring that all trucks/motor vehicles, and chassis, trailers, etc., are fit and suited for safe loading and unloading, and that the goods are situated such that loading/unloading can be performed continuously and without interruption. Unless otherwise agreed by Operator in advance and in writing, all loading/unloading shall be performed by Operator with the assistance and under the supervision of the driver/motor carrier. If the driver/motor carrier does not so assist and supervise, additional charges may be incurred.

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#### **18. RAILCAR RULES**

The loading/unloading of rail cars means the movement of goods between railcar and point of rest at the terminal facility. Upon arrival of goods for loading/unloading to/from railcars at the terminal facility, Operator shall coordinate with the rail carrier or delivering entity to spot railcars and/or containers and shall review manifests and other shipping documents and notify Customer of any discrepancy which it finds. Operator shall load/unload the railcar according to Customer's instructions by hand or use of equipment, at Operator's discretion. Demurrage charges incurred due to unavailability of railcars and/or containers for any reason beyond the ability of Operator to control shall be Customer's responsibility. Railcars which, in the judgment of Operator, are unsafe, improperly loaded or unable to be safely loaded, may be rejected and/or subject to additional charges, at Operator's discretion. Trash, fastening, dunnage, paper and refuse will not be cleaned from railcars unless specifically agreed by Operator in advance.

#### **19. NO INSURANCE FOR THE BENEFIT OF CUSTOMER**

Operator does not provide any insurance whatsoever for the benefit of Customer, nor any insurance whatsoever covering Customer's goods, property or personnel.

#### **20. LOSS/DAMAGE TO GOODS (CLAUSE PARAMOUNT)**

The United States Carriage of Goods By Sea Act (46 U.S.C. §1300 et seq.) is fully incorporated into this Schedule and shall be applicable at all times the goods are, or are deemed, in the care, custody and/or control of Operator. Operator shall not be liable for any loss/damage to or in connection with the goods in an amount exceeding \$500 U.S. per package (as defined in section 3, above), or in the event of goods not in such packages per customary freight unit, unless a higher value for the goods has been declared in writing to Operator prior to the commencement of any terminal services whatsoever and Customer has paid increased rates/charges resulting from such declaration of higher value. Operator shall not be responsible in any event for any loss/damage to or in connection with the goods if the nature or value thereof has been knowingly and fraudulently misstated. Operator shall not be liable to Customer or any other respecting the goods except as set forth in this section 20, whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, and/or in tort, contract or other theory.

#### **21. UNCONTROLLABLE CAUSES OF LOSS/DAMAGE**

Operator shall not be liable for any loss/damage to or in connection with the goods which arises and/or results from any of the following: unseaworthiness, unless caused by want of due diligence; act, neglect or default of master, mariner or pilot in the navigation or management of a vessel; fire, unless caused by the actual fault and privity of Operator; perils, dangers and accidents of the sea or other navigable waters; act of God; act of war; act of public enemies (including terrorism); arrest or restraint of princes, rulers or people, or seizure under legal process; quarantine restrictions; act or omission of Customer, its agent or representative; strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general; riots and civil commotions; saving or attempting to save life or property at sea; wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods; insufficiency of packing; insufficiency or inadequacy of marks; latent defects not discoverable by due diligence; and any other cause arising without the actual fault and privity of Operator.

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#### **22. NO CONSEQUENTIAL DAMAGES**

Operator shall not under any circumstances be liable to Customer or any other for any indirect, consequential or special damages of any type or nature whatsoever, including, without limitation, any damages consisting of lost profits, lost income, lost business, lost business opportunity, interruption of business, loss or use and/or loss of ability to use undamaged component or system parts, regardless of whether such damages may have been foreseeable.

#### **23. LOSS/DAMAGE CLAIMS**

The following are agreed to be conditions precedent to any recovery from Customer for loss/damage to or in connection with the goods.

- A. There shall be no right to recover until all amounts due Operator have been paid in full.
- B. The goods must be carefully inspected by Customer immediately upon completion of terminal services and delivery from Operator, and any loss/damage evident at such time must be identified to Operator in writing and with particularity.
- C. Unless written notice of loss/damage and the general nature thereof is given to Operator upon completion of terminal services and delivery of the goods from Operator, or within three (3) days thereafter if the loss/damage is not apparent at such time, delivery of goods from Operator shall be prima facie evidence of delivery from Operator in good order, count and condition.
- D. In the event of goods which have been delayed, lost or otherwise not delivered by Operator as contemplated, Operator must be given written notice of such delay, loss or non-delivery within fifteen (15) days from the date upon which the goods should have been so delivered.
- E. Operator shall have a reasonable opportunity to inspect the goods, including their packing, packaging, etc., in the same condition as upon completion of terminal services and before any repair, alteration or destruction.

In any event, Operator shall be forever discharged from liability for any loss/damage to or in connection with the goods unless suit is filed in the forum identified in section 37, below, within one (1) year after the date of delivery from Operator or the date on which the goods should have been so delivered.

#### **24. CLAIM DOCUMENTATION**

Customer's written notice of loss/damage to or in connection with the goods, as referenced in section 23, above, must include and attach copies of the following, as applicable: all bill(s) of lading, transportation agreement(s), receipt(s) and other document(s) identifying the goods, consignor, consignee, vessel, voyage, shipping date, etc.; all manifests, packing lists, stow plans, loading/discharge reports, tally/count sheets, cargo receipts, etc.; all agreements, invoices and receipts respecting any sale of the goods; all correspondence respecting the goods and/or their transportation; all inspections, surveys, photographs, claim bills, invoices and statement of losses respecting the goods and/or the loss/damage being claimed, including documents supportive of any mitigation, salvage, market analysis and disposition efforts; and all other documents, instruments, records, data, drawings, photographs and information of any kind or nature whatsoever which may be pertinent or helpful to an understanding of the nature of the goods, the particulars of their transportation and/or the loss/damage being claimed.



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#### 25. DUTY TO ACCEPT GOODS

Customer shall be responsible for accepting the goods, or having the goods accepted, from Operator upon completion of services and any inspection thereof requested by Operator, even if such goods are claimed to have suffered loss/damage. Customer shall not abandon any goods at the terminal facility or otherwise with Operator for any purpose or under any circumstances whatsoever.

#### 26. REFUSED/ABANDONED GOODS

Operator reserves the right to hold, lien, store, warehouse, sell (publicly or privately) and/or dispose of any goods which are abandoned and/or refused by Customer or any shippers, carriers, consignees, etc., after due notice has been sent to relevant persons known to Operator and time for pick-up has passed, without further notice, at Operator's discretion and Customer's sole risk and expense.

#### 27. ASSUMPTION OF RISK AND INDEMNITY

Customer specifically understands, acknowledges and agrees that any and all providing of, access to and/or use of the terminal facility and/or terminal services of Operator by or on behalf of Customer shall be at Customer's sole risk and expense. Aside from loss/damage to the goods themselves, as addressed in section 20, above, and elsewhere herein, Customer assumes sole responsibility for, and agrees to indemnify and hold Operator harmless from and against (including legal fees and costs), all other loss, damage, expense, claim, liability, suit, fine and/or penalty of any type or nature whatsoever which in any way arises out of and/or relates to any providing of, access to and/or use of the terminal facility and/or terminal services of Operator by or on behalf of Customer, including, without limitation, those respecting any loss/damage to the property of Operator, Customer or any other as well as those respecting the personal injury, illness and/or death claims of any person, including without limitation of any agent, employee, representative, guest, invitee, vendor and/or subcontractor of Operator, Customer or any other, howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other legal fault of Operator. In furtherance of the foregoing, Customer shall waive any immunity from suit, exclusivity of remedy and limitation upon liability which would have otherwise been afforded pursuant to any workers compensation act or similar law.

#### 28. ACCESS AND USE

Any access to and/or use of the terminal facility and/or terminal services of Operator whatsoever by or on behalf of Customer shall be deemed Customer's express agreement with the provisions set forth in this Schedule, including without limitation the security provisions of section 15, above, and the access and use provisions of this section 28. Operator may request that Customer sign a separate, written **Access Agreement** as identified in section 38, below, prior to such access/use or otherwise, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

- A. Non-Exclusive: All access to and/or use of the terminal facility and/or terminal services of Operator by or on behalf of Customer is agreed to be non-exclusive and for the limited purpose requested by Customer and agreed by Operator. Customer understands and acknowledges that activities by Operator and others will be on-going at the terminal facility, and that such activities may be dangerous to those participating and others. Customer, including its employees, subcontractors, agents and invitees, agrees to not interfere with any operations being conducted at the terminal facility and to not create any danger or safety hazard whatsoever at the terminal facility. Unless otherwise specifically agreed by Operator in advance, all access and use of the terminal facility shall be restricted to normal working hours.

## MARINE TERMINAL OPERATOR

### SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- B. Inspection: Operator makes no warranties whatsoever with respect to the terminal facility or Customer's access or use thereof. Prior to access, on at least a daily basis, Customer shall conduct a thorough inspection of the terminal facility and the areas which it intends to access or use, including areas adjacent thereto, for the purpose of determining their safety and suitability for Customer's intended access and use. If Customer believes there is any problem as to safety or suitability, and/or if any such problem develops during Customer's access or use, Customer shall immediately cease all of its operations and notify Operator. If the condition cannot be changed by mutual agreement so as to assure safety and suitability to Customer's satisfaction, Customer shall promptly withdraw its materials, supplies, tools, equipment, personal property, employees and subcontractors and its requested access/use shall be deemed voluntarily terminated. Once Customer begins any access or use of the terminal facility whatsoever, or continues to conduct operations at the terminal facility, it shall be irrevocably presumed that the terminal facility was inspected and accepted by Customer as both safe and suitable for its operations.
- C. Compliance: Customer, including its employees, subcontractors and invitees, shall conform with all local, port, municipal, county, state and federal laws and regulations applicable to Customer's operations, including without limitation those promulgated by the EPA, OSHA, WISHA, DOT, FMCSA, DHS and/or USCG, and shall be responsible for any violation of the same.
- D. Safety and Other Rules: Customer shall be responsible for assuring that all of its employees, subcontractors and invitees learn and obey Operator's safety and other rules, whether posted, given in writing, set forth herein and/or advised verbally, and that all such persons otherwise wear hard hats, safety vests and other personal protective equipment as required by Operator.
- E. Clean-up: Customer shall remove all of its materials, supplies, tools, equipment, personal property, employees and subcontractors from the terminal facility daily, and shall otherwise keep all areas used by Customer clean and free of debris.
- F. No Security: Operator does not provide any security for the materials, supplies, tools, equipment or personal property of Customer or any others at the terminal facility. Customer shall be solely responsible for the security of all such items, including those of its employees, subcontractors, agents and invitees, and is cautioned to watch the same carefully and remove all such items on at least a daily basis and store them safely elsewhere.
- G. Damage to Property: Customer shall be responsible for, and shall indemnify and hold Operator harmless (including legal fees and costs) from and against, all loss/damage to Customer's owned/leased equipment and personal property, including all of its owned/leased materials, supplies, tools, equipment, tractors, trucks, motor vehicles, trailers, containers, chassis, flatbeds and other equipment and/or personal property (but not the "goods" as defined in section 3, above, the loss/damage of which goods is addressed in section 19, above, and elsewhere herein), howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other fault of Operator. In addition, Customer shall be responsible for, and shall indemnify and hold Operator harmless (including legal fees and costs) from and against, any loss/damage to the personal property of others at the terminal facility, including the personal property of Operator, which in any way arises out of and/or relates to Customer's access and/or use of the terminal facility or terminal services. Customer agrees that in the event such loss/damage to the property of Operator or others occurs, it shall immediately notify Operator and, after obtaining Operator's consent to proceed, repair/restore the damaged property to its pre-existing condition with no reduction for depreciation. If Customer fails to do so, Operator may, in which event Customer shall pay/reimburse actual costs to accomplish this plus fifteen percent (15%).

## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- H. Personal Injury: Customer assumes responsibility for any bodily/personal injury, illness and/or death of its employees (including those of its subcontractors), and agrees to indemnify and hold Operator harmless (including legal fees and costs) of and from the same. In addition, Customer assumes responsibility for, and agrees to indemnify and hold Operator harmless (including legal fees and costs) of and from, any bodily/personal injury, illness and/or death of any other person at the facility which arises out of or is in any way connected with Customer's access and/or use of the terminal facility or terminal services. The foregoing indemnification shall be deemed to include any claim or suit by any employee (present or former) of Customer, and in furtherance thereof Customer waives any immunity from suit, exclusivity of remedy and limitation of liability under any workers compensation act or similar law.
- I. Notification: Customer shall notify Operator immediately of any bodily and/or personal injury, illness and/or death, or of any property damage, related in any way to its access to or use of the terminal facility or terminal services. Customer shall promptly provide Operator with written accident reports and shall cooperate fully with Operator with respect to any investigation, including allowing inspection of personal property and access to personnel.
- J. Workers Compensation Insurance: Customer shall be responsible for maintaining workers compensation insurance, including coverage under the Longshore Act, on all of its employees (including those of its subcontractors and upon himself or herself if Customer is an individual), but neither Customer nor its workers compensation insurer shall have any right of action against Operator for subrogation or reimbursement of any payments made pursuant to that policy (including within any policy deductible).
- K. Public Liability Insurance: Customer shall also be responsible for procuring and maintaining public liability insurance for personal injuries and property damage with respect to Customer's access to or use of the terminal facility and/or terminal services, including contractual liability coverage for Customer's liabilities and obligations as set forth above. Such insurance must have limits of at least \$5,000,000 per occurrence, shall name Operator as an additional insured and be endorsed to waive subrogation against Operator and to be primary to any insurance of Operator. Customer shall evidence this insurance by providing Operator with a certificate of insurance prior to any access to or use of the terminal facility and/or terminal services.
- L. Waiver of Sovereign Immunity: Customer, in partial consideration for the terminal services being performed, agrees to waive any right to claim and/or defense of sovereign immunity with respect to any monetary amount, loss, damage, expense, claim, liability, suit, fine and/or penalty due from Customer to Operator hereunder.

## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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### 29. HEAVY LIFT

The following terms and conditions shall apply with respect to all heavy lift services provided by Operator. Operator may request that Customer sign a separate, written **Heavy Lift Agreement** as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

- A. Port Captain/Supervision: It is a condition precedent to Operator assisting with any heavy lift project that Customer provides, at its expense, a port captain or other representative with knowledge and expertise regarding the items to be lifted as well as any vessel involved and its equipment/gear and stevedoring practices respecting the loading/unloading of such heavy and/or unique items. Customer's representative shall inspect all equipment and gear to be used for the lift (including those from Operator), shall ascertain whether or not all such equipment and gear is safe and suitable, shall direct the placement of all lifting bars, spreaders and slings, shall inform Operator in advance of any special requirements applicable to such items and/or their handling, and shall be present at all times during the lift.

If Operator makes any recommendations, suggestions or proposals regarding the lift, Customer understands and agrees that Customer and its representative shall nonetheless be responsible for reviewing all such recommendations, suggestions and proposals of Customer and otherwise for the inspection and approval of all equipment, gear and procedures being used. Customer shall be solely responsible for the final selection of all equipment, gear and procedures, for identifying all weights, lifting points, balances and centers of gravity, and for giving final approval upon all such matters before commencement of the lift.

- B. Access/Use: All Customer access to and/or use of Operator's facility or services, for purposes of heavy lift or otherwise, shall be subject to the provisions of this Schedule, including without limitation the security provisions of section 15, above, and the access and use provisions of section 28, above.
- C. Rates and Charges. Customer shall pay for heavy lift services as identified on Operator's written quotation or other document, which quotation or other document from Operator shall be deemed accepted by Customer upon commencement of any performance by either party, including without limitation any access to and/or use of the terminal facility and/or terminal services of Operator whatsoever by or on behalf of Customer. Upon any such acceptance, Operator's written quotation or other document shall be deemed fully incorporated herein and binding upon the parties. If no rate or charge was quoted or otherwise identified to Customer for a particular terminal service, the applicable rate/charge shall be Operator's standard rate/charge therefor, which standard rate/charge shall be provided to Customer upon request.

## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- D. Personnel, Labor, Equipment and Gear: Operator shall provide personnel, equipment and gear as requested by Customer and agreed by Operator on its written quotation or otherwise. The charges set forth on Operator's written quotation are based upon information provided by Customer; if any such information proves to be inaccurate or incomplete, if Customer's actions cause delay and/or if the project otherwise requires additional time, personnel or equipment to be safely or efficiently accomplished, Operator shall have the right to take additional time and/or employ such additional personnel, equipment and/or gear as Operator deems necessary, and Customer shall pay for such additional time, equipment, gear and/or personnel at Operator's current standard charges for the same. In addition, Customer may request additional equipment, gear and/or personnel from Operator at any time, with all such additional equipment, gear and personnel to be provided subject to the terms and conditions set forth herein.
- E. Invoice, Payment and Interest: Unless otherwise agreed by Operator, payment shall be made in U.S. currency without deduction or setoff thirty (30) days from the date of Operator's invoice. Sums which are due Operator but which have not been paid shall accrue interest at the rate of one percent (1.5%) per month from date due until paid to Operator in full.
- F. Operator's Warranties: Customer acknowledges that all equipment and gear provided shall be used and provided strictly on an as-is basis. Operator warrants only that the equipment and gear it provides shall be in good working order and condition at the commencement of the project. Customer specifically waives all other warranties respecting the equipment and gear of Operator and agrees that Operator shall not be held to any other warranty whatsoever regarding its equipment and gear, express or implied, including, without limitation, any warranty that the equipment and gear is free from latent defect and/or any warranty of merchantability, fitness/suitability for any particular purpose/use and/or workmanlike service.
- G. Liability and Indemnity: Operator shall be liable only for the following matters:
- (1). loss/damage to its owned/leased crane(s) to the main hook up but not down;
  - (2). bodily injury, illness and/or death of its employees to whom it issues paychecks; and
  - (3). loss/damage to the goods being lifted/handled hereunder, as set forth in section 20, above, and elsewhere herein.

Other than (1), (2) and (3), directly above, Customer shall be liable for, and agrees to indemnify and hold Operator harmless (including legal fees and costs) from and against, any loss, damage, expense, claim, liability, suit, fine and/or penalty in any fashion arising out of or relating to the lift regardless of how caused. The foregoing specifically includes but is not limited to indemnification for the bodily injury, illness and/or death claims of Customer's employees and the employees of Customer's subcontractors, and to that end Customer agrees to waive any immunity from suit and/or exclusivity of remedy afforded under any workers compensation act or similar law. In no event shall Operator be responsible for special or consequential damages of any type or nature whatsoever, even if the possibility of such damages may have been foreseeable.

## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- H. Insurance: It is a further condition precedent to this agreement and a direct factor in the rates being charged that Customer provides, at its expense including deductibles, the following insurances from commencement until completion of the project, to cover the allocation of liability set forth above and to otherwise protect the parties:
- (1). first party property/cargo or cargo legal liability upon the item(s) being lifted to its/their full actual market value plus freight and insurance, with such policy to be specifically endorsed to provide a waiver of subrogation in favor of Operator;
  - (2). public liability/marine general liability insuring against bodily injury and property damage and including contractual liability coverage for Customer's obligations hereunder, with minimum limits of \$10,000,000 and waiver of subrogation in favor of Operator; and
  - (3). workers compensation and employers liability insurance upon its employees and the employees of its subcontractors, if any.

In addition, Customer shall also arrange for the owner/operator of any vessel utilized to receive, transport and/or delivery goods to provide a waiver of subrogation in favor of Operator on the vessel's hull and machinery and protection & indemnity insurances. Customer shall indemnify and hold Operator harmless (including legal fees and costs) from and against any loss, damage, expense, claim, liability and/or suit resulting from Customer's failure to provide an insurance as required and/or resulting from the failure of any such insurance, including without limitation exposure to loss, damage, expense, claim, liability and/or suit which would have been covered had insurances been procured and maintained as required.

### 30. EQUIPMENT INTERCHANGE

The following terms and conditions shall apply with respect to all equipment interchange services provided by Operator. Operator may request that Customer sign a separate, written **Equipment Interchange Agreement** as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

- A. Basic Agreement: Operator owns/leases containers, platforms, flatracks, chassis, trailers and other such equipment used in the transportation of cargoes with respect to its business, and from time to time has the need to exchange such equipment to the care, custody and control of motor and other carriers. Operator shall release to Customer, and Customer shall accept from Operator, full care, custody and control over such equipment as identified on the relevant interchange certificate, inspection report, equipment receipt or other, similar, written instrument executed by the parties pursuant to the terms and conditions set forth herein.
- B. Access/Use: All Customer access to and/or use of Operator's facility or services, for purposes of equipment interchange or otherwise, shall be subject to the provisions of this Schedule, including without limitation the security provisions of section 15, above, and the access and use provisions of section 28, above.

## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- C. Rates and Charges. Customer shall pay for use of the equipment upon the rates and charges on Operator's written quotation or other document, which quotation or other document from Operator shall be deemed accepted by Customer upon commencement of any performance by either party, including without limitation any access to and/or use of the terminal facility and/or terminal services of Operator whatsoever by or on behalf of Customer. Upon any such acceptance, Operator's written quotation or other document shall be deemed fully incorporated herein and binding upon the parties. If no rate or charge was quoted or otherwise identified to Customer for a particular terminal service, the applicable rate/charge shall be Operator's standard rate/charge therefor, which standard rate/charge shall be provided to Customer upon request.
- D. Other Charges; Penalties, Fines, Etc.: Customer shall be responsible for all charges, penalties, fines, tax and any other amounts accruing subsequent to delivery of equipment from Operator and prior to redelivery, which in any way relate to and/or arise out of Customer's use or operation of such equipment.
- E. Title and Ownership: Equipment exchanged hereunder shall at all times remain the property of Operator, and Customer shall not acquire any ownership right, title or interest to the equipment.
- F. Inspection and Waiver of Warranties: CUSTOMER ACKNOWLEDGES THAT ALL EQUIPMENT FROM OPERATOR IS USED AND EXCHANGED STRICTLY ON AN "AS-IS" BASIS. Customer shall have full opportunity to inspect the equipment (or have equipment inspected by a technician of its choice) prior to delivery, and shall be solely responsible for determining its fitness and suitability for Customer's intended use and operation. Any comment, recommendation or advice from Operator with respect to the equipment or its use, written or oral, is agreed to be informal and shall not create any responsibility or warranty of Operator other than as set forth herein.
- CUSTOMER SPECIFICALLY WAIVES ALL WARRANTIES RESPECTING THE EQUIPMENT AND OPERATOR SHALL NOT BE HELD TO ANY WARRANTY WHATSOEVER REGARDING THE EQUIPMENT, ITS CONDITION AND/OR USE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE EQUIPMENT IS FREE FROM LATENT DEFECT AS WELL AS ANY WARRANTY OF SEAWORTHINESS, MERCHANTABILITY AND FITNESS/SUITABILITY FOR ANY PARTICULAR PURPOSE/USE.
- G. Delivery: After inspection and upon acceptance of equipment by Customer, the parties shall execute the delivery portion of a interchange certificate, inspection report, equipment receipt or other, similar, written instrument (a "Certificate") with such Certificate to thereafter be deemed fully incorporated herein. By execution of such a Certificate, Customer specifically acknowledges acceptance of equipment in good and safe condition, and waives any right it may have to claim against Operator thereafter in any way relating to the condition or suitability of delivered equipment. Equipment shall be deemed delivered on the date and time and at the place set forth on the Certificate, with full care, custody, control and responsibility for the equipment and associated liabilities to pass from Operator to Customer on said date and time.
- H. Redelivery: Customer shall return equipment in the same good condition as when received and at the place designated on the Certificate, less normal wear and tear. Upon return, the parties shall jointly inspect the equipment and note deficiencies in condition and/or damages which may have occurred subsequent to delivery. Upon acceptance of returned equipment by Operator, the parties shall execute the redelivery portion of the Certificate, with equipment deemed redelivered on the date, time and at the place set forth on the Certificate once executed by both parties.

## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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### I. Operational Responsibilities:

- (1). Care, Custody and Control. Immediately upon delivery, full responsibility, care, custody and control of the equipment, including without limitation duty to insure and responsibility for associated liabilities, losses and claims as set forth herein, shall pass from Operator to Customer. Thereafter, Customer shall maintain complete care, custody and control over equipment until Operator has accepted the equipment at redelivery by execution of the redelivery portion of the Certificate.
- (2). Maintenance. Customer shall be responsible for the maintenance and repair of the equipment delivered to it, and shall redeliver equipment in the same good condition as when received, less normal wear and tear.
- (3). Compliance. Customer shall at all time comply with all applicable laws and regulations with respect to equipment provided hereunder, and, further, shall operate/use equipment in accordance with applicable principals of carrier responsibility to the public and government authority.
- (4). Notification. Immediately following any casualty, accident, damage and/or loss relating in any way with equipment exchanged hereunder, Customer shall furnish Operator with the full particulars thereof, including copies of reports available.
- (5). Hazardous Cargo. Customer shall not use equipment for the transportation of cargoes hazardous or dangerous in nature without the prior consent of Operator.
- (6). Tires and Tubes. Operator shall provide equipment with tires and tubes of proper size at the time of delivery, subject to subsection F, above. Thereafter and until redelivery has occurred, all tires and tubes shall be provided by Customer, at its sole expense. In the event of blowout or failure of a tire and/or tube, Customer shall furnish a replacement tire and/or tube at its expense and for its purposes, and shall be entitled to keep the replacement tire and/or tube upon redelivery; in such event, Customer shall return the blown or unserviceable tire and/or tube to Operator at redelivery, with the same make and type of rim that was on the equipment when the blowout or failure occurred. If Customer fails to so return the blown or failed tire and/or tube, it shall pay Operator the actual cost to replace the same. If tires are ruined as a result of being run flat, Customer shall replace/pay for the tire and/or tube so ruined along with the repair of any other damages to the equipment caused thereby within thirty (30) days following redelivery.
- (7). Lost or Destroyed Equipment. In the event equipment is lost or destroyed following delivery thereof to Customer, Customer shall immediately inform Operator in writing of the incident, including all details relating thereto. Operator shall advise Customer as to the equipment's replacement value and charges accrued hereunder, with such charges to run up until redelivery or acceptable replacement/reimbursement. Any failure of Operator to so advise shall not lessen Customers responsibilities hereunder.
- (8). Passing On. Customer shall not permit equipment to go out of its care, custody and control without the prior written permission of Operator, and then only to the extent so allowed. Customer shall be fully and solely responsible for equipment provided hereunder, regardless of whether it passes equipment to others.



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### SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- J. Liability and Indemnity. Customer shall be responsible for, and shall indemnify and hold Operator harmless of and from (including legal fees and costs), any loss, damage, expense, claim, liability, suit, fine and/or penalty caused by or in any way arising out of and/or relating to Customer's use, operation, maintenance, storage, repair, care, custody, control and/or possession of equipment provided to Customer hereunder, including, without limitation, any damage to or loss of property (including, without limitation, the equipment and any cargoes being transported therein or therewith) and any personal injury, illness and/or death relating in any way to such equipment. The foregoing shall include, without limitation, Customer's obligation to indemnify Operator of and from personal injury, illness and/or death claims of Customer's employees (including former employees and employees of its subcontractors); in furtherance of the foregoing, Customer agrees to waive any exclusivity of remedy or limitation of liability provided under any workers compensation act or similar law.
- K. Required Insurances: Unless waived by Operator in writing (and then only to the extent so waived), Customer shall procure and maintain the insurances set forth below to adequately cover the liabilities allocated to it above, with such insurances to be primary to any insurance of Operator. Customer shall provide Operator with certificates of insurance and/or complete copies of policies, as requested, and each policy of insurance shall be specifically endorsed to provide Operator with twenty (20) days written notice of any cancellation or change in policy terms.
- (1). all risk direct property insurance upon the equipment to its full actual market value(s), providing coverage while on land, afloat, in transit or at rest anywhere in the world, and for general average risks;
  - (2). broad form public liability insurance covering bodily injury and property damage risks, with such insurance to be specifically endorsed to name Operator as an additional insured, to include contractual liability coverage for this agreement and to have minimum limits of \$1,000,000;
  - (3). automobile liability insurance covering claims for bodily injury and property damage, with interchanged equipment endorsement and limits of at least \$1,000,000 per occurrence; and
  - (4). workers compensation insurance covering its employees and subcontractors, with limits as required by applicable law.
- Each insurance shall name Operator as an insured and be endorsed to waive subrogation against Operator and to be primary to any insurance of Operator. The insurance identified at (1), above, shall name Operator as co-loss payee and sole loss payee in the event of a total or constructive total loss. Customer shall provide Operator with certificates confirming its compliance with the foregoing prior to delivery of the equipment.
- L. No Liens: Customer shall place or allow any lien whatsoever upon the equipment, and shall indemnify and hold Operator harmless (including legal fees and costs) of and from any lien upon the equipment arising out of the acts or omissions of Operator.

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### 31. EQUIPMENT RENTAL

The following terms and conditions shall apply with respect to the rental of any equipment to Customer, other than equipment interchange as addressed in section 30, above. Operator may request that Customer sign a separate, written **Equipment Rental Agreement** as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

- A. Access/Use: All Customer access to and/or use of Operator's terminal facility and/or services, whether for delivery, use, redelivery of the equipment or otherwise, shall be subject to the provisions of this Schedule, including without limitation the security provisions of section 15, above, and the access and use provisions of section 28, above.
- B. Rates and Charges. Customer shall pay rent for the equipment as identified on Operator's written quotation or other document, which quotation or other document from Operator shall be deemed accepted by Customer upon commencement of any performance by either party, including without limitation any access to and/or use of the terminal facility and/or terminal services of Operator whatsoever by or on behalf of Customer. Upon any such acceptance, Operator's written quotation or other document shall be deemed fully incorporated herein and binding upon the parties. If no rate or charge was quoted or otherwise identified to Customer for a particular terminal service, the applicable rate/charge shall be Operator's standard rate/charge therefor, which standard rate/charge shall be provided to Customer upon request.
- C. Inspection: CUSTOMER ACKNOWLEDGES THAT ALL EQUIPMENT RENTED FROM OPERATOR IS USED AND RENTED STRICTLY ON AN "AS-IS" BASIS. Customer shall have full opportunity to inspect the equipment (or have equipment inspected by a technician of its choice) prior to delivery, and shall be solely responsible for determining its fitness and suitability for Customer's intended use and operation. Any comment, recommendation or advice from Operator with respect to the equipment or its use, written or oral, is agreed to be informal and shall not create any responsibility or warranty of Operator other than as set forth herein.

CUSTOMER SPECIFICALLY WAIVES ALL WARRANTIES RESPECTING THE EQUIPMENT AND OPERATOR SHALL NOT BE HELD TO ANY WARRANTY WHATSOEVER REGARDING THE EQUIPMENT, ITS CONDITION AND/OR USE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE EQUIPMENT IS FREE FROM LATENT DEFECT AS WELL AS ANY WARRANTY OF SEAWORTHINESS, MERCHANTABILITY AND FITNESS/SUITABILITY FOR ANY PARTICULAR PURPOSE/USE.

- D. Delivery: The equipment shall be deemed delivered to Customer, and the rental term shall commence, upon any use of the equipment whatsoever by Customer, wherever it shall be. Customer shall be solely responsible for arranging, supervising and paying for any loading, transportation and/or unloading of the equipment, and during all such periods of time the equipment shall be deemed used by Customer and in Customer's care, custody and control. All transportation and related services arising during the rental term shall be deemed for Customer's benefit, regardless of whether provided and/or arranged by Operator, in which event it is agreed that Operator is acting as Customer's agent. All risk of loss and damage arising during and/or related to such transportation and related services (including stowage, securing and transit) shall be deemed included within the risk of loss/damage transferred to Customer upon delivery.

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- E. Risk of Loss: Upon delivery of the equipment to Customer, all risk of loss of and/or damage to the equipment and all liabilities arising from the use and/or operation of the equipment shall pass to Customer and shall thereafter remain with Customer until the equipment is redelivered to Owner as set forth herein, regardless of how such loss and/or damage arises or occurs.
- F. Redelivery: The equipment shall be returned to Operator for redelivery at the redelivery location identified by Operator, at Customer's sole risk and expense, including loading, transportation and unloading, etc., as applicable. Redelivery shall not be deemed to have occurred, and the rental term and accrual of rent shall continue, until the equipment is redelivered to Operator in the same condition as upon delivery, less ordinary wear and tear not correctible through routine maintenance; routine maintenance shall include inspection, corrosion protection, lubrication, repair and replacement of worn parts with new parts of like kind. Should Customer fail to redeliver the equipment or any part thereof as required, Customer shall be obligated to immediately pay Operator the full actual market value for such equipment.
- G. Operation and Maintenance: At all times during the rental term and until redelivery, Customer shall be solely responsible for providing trained operators for the equipment and assuring that the equipment is at all times operated properly and is not subjected to any careless, rough or improper use whatsoever. Customer shall be solely responsible for maintaining the equipment and all parts thereof during the rental term at its sole risk and expense and in conformity with factory recommendations as well as good industry practice. Customer shall not alter or modify the equipment without Operator's prior written consent.
- H. Ownership and Liens: Title to and ownership of the equipment shall remain with Operator at all times. Customer shall not impair such title, shall not represent to any person that it owns or has ownership rights to the equipment, nor shall Customer attempt to mortgage, pledge or use the equipment as collateral under any circumstance. Customer shall not remove, deface or conceal any signs or markings which identify the equipment as being owned by Operator, and Customer shall maintain any such signs and markings on the equipment at the time of delivery at its expense. Customer shall not allow any levy, lien or encumbrance upon the equipment and shall immediately notify Operator if any levy or seizure is threatened or occurs; in such an event, Customer shall also, at its expense, either promptly cause any such levy or seizure to be released and/or shall cooperate with Operator to effect such prompt release, at Operator's option but Customer's expense including legal fees and costs.
- I. Insurance: Customer shall, at its expense including deductibles, procure and maintain the following insurances for the full rental term:
- (1). all risk direct property insurance upon the equipment to its full actual market value(s), providing coverage while on land, afloat, in transit or at rest anywhere in the world, and for particular and general average risks; and
  - (2). broad form public liability insurance covering bodily injury and property damage risks, with such insurance to be specifically endorsed to include contractual liability coverage for this agreement and to have minimum limits of \$1,000,000.

Each insurance shall name Operator as an insured and be endorsed to waive subrogation against Operator and to be primary to any insurance of Operator. The insurance identified at (1), above, shall name Operator as co-loss payee and sole loss payee in the event of a total or constructive total loss. Customer shall provide Operator with certificates confirming its compliance with the foregoing prior to delivery of the equipment.

## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- J. Liability and Indemnity: Customer shall be responsible for, and shall indemnify and hold Operator harmless (including legal fees and costs) from and against, any loss, damage, expense, claim, liability and/or suit of any nature whatsoever and howsoever caused relating to the equipment and/or its use and/or operation during the rental term or otherwise as a result of Customer's obligations hereunder. In furtherance thereof, Customer shall waive any immunity from suit and exclusivity of remedy afforded by any workers compensation or similar law.
- K. Default: Customer shall be deemed in default hereunder if any one or more of the following occur: Customer fails to pay rent when and as due; the equipment or any part thereof is damaged and not promptly repaired/restored/replaced as required; Customer files or has filed against it any sort of bankruptcy, enters into any general assignment for the benefit of creditors or has a receiver appointed for it; and/or Customer breaches any term or condition hereof. In the event of default, Customer shall be obligated to immediately redeliver the equipment. If Customer fails to do so, Owner may retake the equipment wherever it shall be, as Customer's agent and at Customer expense, and Customer shall cooperate fully with respect thereto.

### 32. STORAGE AND WAREHOUSING

The following terms and conditions shall apply with respect to any storage or warehousing terminal services. Operator may request that Customer sign a separate, written **Warehouse Receipt** as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

- A. Access/Use: All Customer access to and/or use of Operator's facility or services, for purposes of storage/warehousing or otherwise, shall be subject to the provisions of this Schedule, including without limitation the security provisions of section 15, above, and the access and use provisions of section 28, above.
- B. Rates and Charges. Customer shall pay for storage and/or warehousing services upon the rates and charges on Operator's written quotation or other document, which quotation or other document from Operator shall be deemed accepted by Customer upon commencement of any performance by either party, including without limitation any access to and/or use of the terminal facility and/or terminal services of Operator whatsoever by or on behalf of Customer. Upon any such acceptance, Operator's written quotation or other document shall be deemed fully incorporated herein and binding upon the parties. If no rate or charge was quoted or otherwise identified to Customer for a particular terminal service, the applicable rate/charge shall be Operator's standard rate/charge therefor, which standard rate/charge shall be provided to Customer upon request.
- C. Warranties: Customer warrants that it is the owner and/or has lawful possession of the goods and that it has sole legal right to store and thereafter direct the release and/or delivery of the goods. Customer agrees to indemnify and hold harmless (including legal fees and costs) Operator of and from any claim by others relating to the ownership, storage and release of the goods, and/or any other services provided by Operator.

## MARINE TERMINAL OPERATOR SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- D. Lien. Operator shall have a lien upon all goods and property deposited with it by Customer hereunder and upon the proceeds from the sale thereof for all charges provided herein, including charges for storage, handling, processing, transportation and/or labor and all other charges and expenses relating to all lots of the Customer's goods stored any time in the terminal facility, and also for all reasonable charges and expenses for notice, advertisement and sale of the goods where default has been made, and for all costs, including legal fees and costs, incurred in enforcing such lien, collecting charges or defending itself in the event Operator is made party to any litigation concerning such goods and/or property. This lien may be enforced at any time.

In addition, Customer grants a security interest to Operator in the goods and all proceeds derived from the goods in a maximum amount of \$1,000,000 for all charges and expenses other than described above (including money advanced and interest), whether incurred before or after delivery, and Customer agrees to execute and deliver all such documents as may be required to perfect such security interest. If goods are transferred from one party to another, and should the charges relating to such goods not be paid in full on the date of such transfer, the lien for such charges shall attach to the goods retained by the transferor AND to goods transferred to the transferee. Operator may require a transferee to acknowledge such lien rights prior to such transfer. In the event a proceeding is brought by one party against the other to enforce any provisions herein, the substantially prevailing party shall be entitled to legal fees and costs.

- E. Termination. Operator may, upon thirty (30) days notice to Customer, with or without cause, require removal of the goods or any portion thereof and payment of all charges, whether or not there has been default. If the goods are not removed, Operator may sell the goods and exercise any other rights it may have by law. Without limiting the foregoing, Operator may require the removal of the goods or any portion thereof upon ten (10) days notice if in its opinion the goods have or may have deteriorated in value to less than the amount of Operator's lien on such goods.
- F. Liability of Operator. Operator shall be responsible for exercising reasonable care under the circumstances with respect to stored/warehoused goods, and shall not be liable for any loss, damage or injury to the goods that could not have been avoided by the exercise of such reasonable care. In the event of loss, damage, shortage, failure to deliver and/or misdelivery involving any such goods for which Operator is liable, Operator shall be responsible only to the extent of the actual cost to repair, restore and/or replace such goods or fifty cents (50¢) per pound for such goods, whichever is less. If Customer has declared a higher value in writing, on the warehouse receipt or otherwise, and Customer has accepted the same, Operator shall be responsible only to the extent of such declared higher value for such goods or the actual cost to repair, restore and/or replace such goods, whichever is less. An excess valuation charge shall be assessed in the event a higher value is declared by Customer. Customer agrees that the foregoing shall be its exclusive remedy against Operator for any claim or cause of action whatsoever relating to the goods or services hereunder. In no event shall Customer be entitled to receive any special, incidental or consequential damages of any type or nature.
- G. Insurance. Stored goods are not and shall not at any time be insured by Operator. Charges do not include any insurance coverage for goods stored or warehoused at the terminal facility.

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### SCHEDULE OF RATES, REGULATIONS AND PRACTICES

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- H. Delivery. The goods shall be ready for delivery upon forty-eight (48) hours notice to Customer upon presentation of a release order executed by Customer, provided that all charges have been paid in full. Operator shall not be responsible for any delay in delivery caused by conditions beyond its control. An additional charge will also be assessed for any access to or partial delivery of goods. If Operator has been unable to remove/deliver the goods due to causes beyond its control, the goods shall be automatically subject to storage charges for the next succeeding storage period. Customer shall be responsible for all shipping, handling and other charges assessed by carriers and/or third parties in connection with the delivery and/or other shipment of the goods, and Customer agrees to indemnify and hold harmless (including legal fees and costs) Operator of and from any liability, expenses and cost arising out of and/or relating to any claim made by any such carrier and/or third party.

### 33. SALE OF USED EQUIPMENT

The following terms and conditions shall apply to the sale of any equipment by Operator. Operator may request that Customer sign a separate, written **Sale Agreement** for such equipment as identified in section 38, below, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

- A. Customer shall, at its sole risk and expense, pick up and remove the equipment at the agreed pick-up location on or before the agreed pick-up date. Customer shall be fully responsible for all arrangements, costs, risks and/or liabilities in any way arising out of and/or relating to Customer's pick-up of the equipment, including without limitation any disassembly, loading, transportation and unloading as well as any and all other procedures related thereto.
- B. The equipment shall be deemed delivered to Customer, and Customer shall be deemed to have accepted delivery of the equipment from Operator, regardless of the status of payment, when Customer (or its agent/representative) enters the pick-up location to commence such pick-up. All risk of loss/damage to the equipment and all liabilities associated with or arising out of the equipment shall pass to Customer upon said delivery.
- C. Customer shall pay the purchase price for the equipment without deduction or setoff at or prior to said delivery. Without waiver of any remedies available to Operator, the parties agree that in the event Customer fails to pay for the equipment when and as do hereunder, Operator may, at its option, terminate the sale agreement and refuse to allow Customer to pick-up the equipment or allow pick-up subject to a consensual lien which Customer hereby grants upon the equipment for the full amount of the purchase price and all other amounts due with respect thereto, including interest. Interest on amounts due but not paid to Operator shall accrue at the rate of one percent (1%) per month from date due until paid in full.
- D. Customer shall be responsible for all taxes applicable to its purchase of the equipment.
- E. Customer understands and agrees that any equipment sold by Operator is used, may have parts which are worn or damaged, may have exceeded its useful life expectancy and is sold strictly on an "as-is, where-is" basis. Operator warrants only that it has the right to sell the equipment.

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CUSTOMER HEREBY WAIVES ALL OTHER WARRANTIES AND AGREES THAT OPERATOR SHALL NOT BE HELD TO ANY OTHER WARRANTY WHATSOEVER REGARDING THE EQUIPMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF SEAWORTHINESS, MERCHANTABILITY AND/OR FITNESS/SUITABILITY FOR ANY PARTICULAR PURPOSE/USE, WHETHER EXPRESS OR IMPLIED.

- F. All Customer access to and/or use of Operator's facility or services, whether for pick-up, removal or otherwise, shall be subject to the provisions of this Schedule, including without limitation the security provisions of section 15, above, and the access and use provisions of section 28, above.
- G. Customer shall indemnify and hold Operator harmless (including legal fees and costs) from and against any loss, damage, expense, claim, liability and/or suit in any way relating to or arising out of Customer's responsibilities and liabilities assumed hereunder; in furtherance thereof, Customer agrees to waive any immunity from suit and/or exclusivity of remedy afforded by any workers compensation act or similar law.

#### **34. EEOC COMPLIANCE AND NON-DISCRIMINATION**

Operator does not discriminate based upon race, color, religion, sex, age, national origin or any sensory, mental or physical disability, or upon any other basis prohibited by applicable law.

#### **35. QUALITY CONTROL**

Operator will understand and conform to the requirements of its customers, and will utilize work processes which are the most efficient methods in the industry. This commitment is one of our key business strategies. It is aimed at further strengthening our ability to satisfy customer requirements and to continually improve our operations. We intend to be the leader in our industry. The fulfillment of that vision depends on continual efforts to improve our work processes and understand the needs of our customers. It also depends on everyone's effort and participation. To Operator, quality is not a program, it is an ongoing process.

#### **36. ELECTRONIC DATA INTERCHANGE**

Operator and Customer agree to cooperate and use their best efforts to utilize electronic data, documentation and interchange to the extent feasible and allowable under law.

#### **37. LAW, VENUE AND LEGAL FEES**

This Schedule shall be governed by the general maritime law of the United States, or in the event no United States general maritime rule of law applies in accordance with the laws of the state in which the terminal facility is located. Any dispute arising out of or in any way relating to this Schedule must be brought in a court with appropriate subject matter jurisdiction located nearest to the terminal facility, with the substantially prevailing party entitled to recover legal fees and costs.

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**38. CONSTRUCTION AND INTEGRATION**

This Schedule shall be construed neutrally, and for the mutual benefit of the parties, rather than for or against a party. If any provision of this Schedule is found to be legally unenforceable, it is agreed that such provision shall be deemed deleted from this Schedule as if never made a part hereof, with the remaining provisions of this Schedule to not be effected thereby and to remain in full force and effect. Any failure of Operator to enforce a provision of this Schedule shall not be deemed to waive such provision or any other provision in this Schedule.

Operator may request that Customer sign a separate, written agreement for any one or more terminal services, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

This Schedule, together with Operator's written quotation and any separate, written agreements between Operator and Customer as identified directly above, represents the entire agreement between Operator and Customer and supersedes all prior and contemporaneous agreements, written or oral.

**END**