



Port Contractors-Southeast, LLC

PORT CONTRACTORS - SOUTHEAST, LLC MARINE TERMINAL OPERATOR'S SCHEDULE NO. 1A

**GOVERNING CHARGES, RULES AND REGULATIONS AT
PORT CONTRACTORS – SOUTHEAST, LLC'S OPERATIONS IN THE PORTS OF: CHARLESTON, SC; PALM
BEACH, FL; PORT CANAVERAL, FL; PORT EVERGLADES, FL; PORT MANATEE, FL; AND OTHERS UPON
INDUCEMENT OR CONTRACT.**

ISSUED BY:
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This electronically published document is issued solely for the convenience of our customers.

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SECTION I – PURPOSE AND SCOPE

ITEM 100: PURPOSE

This schedule adheres to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998.

ITEM 102: SCOPE

The rules, regulations, terms, conditions, commodity rates and other charges set forth in this schedule apply to all Port Contractors – Southeast, LLC’s operations, irrespective of geographic location.

SECTION II – ABBREVIATIONS AND DEFINITIONS

ITEM 200: ABBREVIATIONS

ABBREVIATION	DEFINITION
APHIS	Animal Plant Health Inspection Service
CFR	Code of Federal Regulations
DOT	United States Department of Transportation
EPA	United States Environmental Protection Agency
FSO	Facility Security Officer
IMO	International Maritime Organization
MTO	Marine Terminal Operator
OSHA	Occupational Safety and Health Administration
PCI	Port Contractors – Southeast, LLC
SCR	Stevedoring Commodity Rate
ST	Short Ton
THC	Terminal Handling Charge
TWIC	Transportation Worker's Identification Credential
USCG	United States Coast Guard
USDA	United States Department of Agriculture

ITEM 202: DEFINITIONS

ACT: Means the Shipping act of 1984, as amended by the Ocean Shipping Reform Act of 1998.

AGENCY SERVICES: Shall have the meaning indicated in Item 502.

BULK CARGO: Means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics.

CHASSIS: Means the chassis, frame, bogie, flatbed trailer or other wheeled unit, normally used in the over the road conveyance of standard seagoing containers.

CHECKING: Means the service of counting and checking cargo against appropriate documents for the account of the cargo or vessel or other person requesting same.

COMMISSION: Means the Federal Maritime Commission.

DOCKAGE: Means the charge assessed against 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 element of a schedule becomes effective.

EXPIRATION DATE: Means the last day, after which the entire schedule or single element of the schedule, is no longer effective.

FREE TIME: Means the period specified in the terminal schedule during which cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharging of the vessel.

HOLIDAYS: The terminal will be closed for receiving and delivering containers, and other services unless prior arrangements for overtime are made. In the event a holiday falls on either a Saturday or a Sunday, either the preceding Friday or the following Monday will be observed as the holiday. Holidays are as follows:

New Year's Day

Memorial Day

July 4th

Labor Day

Thanksgiving Day

Friday after Thanksgiving

Christmas Day

MARINE TERMINAL OPERATOR (MTO): Means a person engaged in the United States or commonwealth territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49 United States Code.

RATE: Means a price quoted in a schedule 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 defined time frame.

SCHEDULE: Means a publication containing the actual rates, charges, classification, regulations and practices of an MTO. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the rates, charges or services provided by an MTO.

VESSEL PARTY: Shall have the meaning indicated in Item 500(a).

WHARFAGE: Means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels when berthed at a wharf or when moored in a slip adjacent to the wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

SECTION III – GENERAL RULES, TERMS & CONDITIONS

ITEM 300: GENERAL APPLICATION

Charges published in this MTO Schedule may be assessed and collected by the MTO on cargo delivered to or received from water, rail or motor carriers and shall be in addition to rates for transportation to or from the ports where PCI offers service. Cargo will not be received or delivered unless proper documents are furnished and credit has been established.

The berths and facility operated by the MTO must be kept open and fluid. The MTO does not obligate itself to provide dockage, wharfage, storage, equipment, labor or other form of service beyond the capacity of its facilities.

MTO's duty of care does not extend to providing a sprinkler system at the terminal/warehouse complex or any portion thereof and unless specifically agreed to in writing, MTO shall not be required to store goods in a humidity controlled environment or be responsible for tempering goods.

Cargo held on the wharf, in storage yards and in warehouses in excess of Free Time allowed is subject to wharf demurrage.

Charges, rates, rules and regulations published in this MTO Schedule shall apply on and after the effective date of this MTO Schedule or amended pages or special supplements thereto.

ITEM 302: CONSENT TO TERMS OF THE MTO SCHEDULE

Use of the wharf, storage yards, warehouses and other facilities of the Port or under the jurisdiction of the MTO shall constitute a consent to the terms and conditions of this MTO Schedule and evidences an agreement on the part of all vessels, their owners and agents, Foreign Freight Forwarders and Customhouse Brokers, Agents, an all other users of the facility, to pay all applicable charges and be governed by all rules and regulations published herein.

ITEM 304: TERMINAL RIGHTS

The MTO reserves the right to control and perform the loading, unloading, handling, reconditioning, weighing and sampling of all freight and cargo at yards, warehouses and facilities, where PCI has operational control.

ITEM 306: PORT SECURITY

PCI operates under the auspices of, and is subject to the security regulations promulgated by the respective port authorities, at ports where PCI operates. In general, entering the facility is deemed valid consent to screening or inspection of your personal effects and/or vehicle. Failure to consent to screening procedures will result in denial of entry. Individuals seeking access to the facilities where PCI operates, who are in possession of a valid Transportation Worker's Identification Credential (TWIC), may, at the sole discretion of the respective Port Authority Facility Security Officer (FSO), be granted unescorted access to the facility. Individuals who do not possess a valid TWIC will not be granted access. Escorts may be available for an additional fee, and must be arranged 24-hours in advance by contacting the FSO.

ITEM 308: SAFETY

Parties using the Terminal are required to conform with any and all municipal, state and federal law, codes or regulations, including but not limited to OSHA, USCG, EPA, Department of Homeland Security, DOT and will be held responsible for any violations of same.

ITEM 310: REQUESTS AND COMPLAINTS

Requests, complaints, and inquiries on matters relating to rates, rules, and regulations in this Schedule should first be addressed to the Terminal Manager. Requests or complaints not resolved by the Terminal Manager may then be referred to the Director of Operations, 529 Terminal Avenue, New Castle, DE 19720.

ITEM 312: CREDIT AND PAYMENT OF INVOICES

- 1) On each inbound or outbound shipment moving over the MTO's facilities, the responsibility for the payment of Terminal charges shall rest with those who perform the forwarding functions on such shipments unless other arrangements have been made.
- 2) Users of the MTO's facilities shall be required to permit the MTO access to manifests, loading or discharge lists, rail or motor carrier freight bills or other pertinent documents for the purpose of audit to determine the correctness of reports filed and to secure necessary data to permit correct billing of charges.
- 3) Invoices rendered in accordance with this schedule are due on presentation. Failure to pay within thirty (30) calendar days may cause the name of the responsible party to be placed on a delinquent list and such party may be denied further use of the facilities until all outstanding charges have been paid. Invoices not paid within thirty (30) calendar days are subject to a one and one-half percent (1-1/2%) service charge per month and legal action may be instituted. The MTO reserves the right to estimate and collect in advance all charges which may accrue against cargo or container if credit has not been established with the MTO or if parties representing such cargo or container have regularly been on the delinquent list. Use of the facilities may be denied until such advance charges have been paid. The MTO reserves the right to apply any payment received against the oldest undisputed outstanding invoices.
- 4) The MTO may extend credit to any user of the facilities upon application for credit and demonstration of financial responsibility. Credit worthiness may be established through current financial statements (certified by an independent certified public accountant) or other acceptable evidence of financial responsibility and by furnishing at least three satisfactory credit references; including a bank reference.

The MTO may extend credit to new users or those users not granted credit who will post and maintain a Letter of Credit or Indemnity Bond in the form and content, and with a company acceptable to the MTO in an amount equal to the maximum liability for a period of time or as determined by the MTO.

Letters of Credit and Indemnity Bonds are required to insure the MTO against the loss of funds and indemnify the MTO in full payment of bills that accrue for the use of facilities or services rendered by the MTO.

Extension and continuation of existing lines of credit shall be conditioned upon the prompt payment of bills as specified above.

ITEM 314: WORKING HOURS

- 1) The recognized working hours of the MTO are from 8:00 a.m. until noon, and from 1:00 until 5:00 p.m., Monday through Friday. Holidays excepted.
- 2) When the MTO performs work at other than regular working hours for the convenience of cargo interests, the applicable overtime charges shall be applied.

ITEM 316: TERMINAL HANDLING SERVICES

- 1) The MTO's handling services commence at the end of ship's tackle, unless stevedoring services are provided. The normal terminal handling services provided by the MTO shall be considered to mean:
 - a) The delivery of cargo by bills of lading as described in the ship's manifest.
 - b) The responsibility of custodianship of all cargo.
 - c) The obligation to deliver all cargo in the same condition as received.
- 2) For the foregoing services, a Terminal Handling Charge is assessed. All other services, which are performed by the MTO are subject to special services charges.
- 3) The MTO may negotiate THC for volume lots of cargo and such rates will supersede rates named in this MTO Schedule.
- 4) Charges for the performance of special services will be for the account of the party ordering the services performed.
- 5) Nothing contained herein shall be construed as requiring the MTO to perform, without charges, any service not specifically provided for herein. The charge for any such service shall be mutually agreed upon.
- 6) The MTO has no temperature or humidity control under cover in sheds. Goods which are subject to damage through temperature or humidity conditions or changes, climatological causes of any nature whatsoever, or other causes incidental to storage will be received solely at the risk of the party receiving the MTO services.

ITEM 318: VESSEL AND STEVEDORING SERVICES

- 1) Stevedoring services performed by the MTO shall be considered to mean:
 - a) Loading of cargo from place of rest in the terminal and stowing into the vessel as directed by the vessel's Master and/or party receiving the MTO services. Special stowing not included.
 - b) Unloading cargo from the vessel and delivering to an agreed place of rest in the terminal in bill of lading lots to be readily available for delivery.

- 2) Labor and Equipment: In performing the Work, the MTO will provide:
 - a) All normal gear and equipment deemed necessary by the MTO.
 - b) Sufficient labor, and such supervision necessary for the due execution of the work, but always contingent upon labor being available to the MTO thereunder.
 - c) The MTO shall provide dunnage board placement as required during loading, for proper stowage of cargo, except where full platforms must be laid on cargo for the carriage of general cargo or where dunnage is carried as cargo.
 - d) Provide number of gangs as practicable in consideration of safety, efficiency, and customary practice at the Port of Richmond.

- 3) For the foregoing services, a Stevedoring Commodity Rate (SCR) is assessed. All other stevedoring services that are performed by the MTO are subject to special service charges.
 - a) Any SCR provided applies only to cargo vessels suitable to the type of cargo being handled by the MTO.
 - b) Rates for stevedoring services are available upon request.
 - c) All SCR's apply to the specific job quoted unless otherwise stated.

- 4) Extra labor, material and equipment services (referred to above as "special service charges"). When required to supply extra labor, material and equipment, the MTO will render its charges therefore at cost including fringe benefits plus a service charge. Extra labor services include, but are not limited to the following:
 - a) The removing and replacing of hatch covers and beams and the rigging necessary to work cargo in each respective hatch when such work is performed by the MTO.
 - b) Handling ship's lines and gangways.
 - c) Discharging dunnage or debris and disposing of such.
 - d) Loading or discharging ship's stores, dunnage, material or equipment other than vessel's cargo.
 - e) Carpenter or coopering work of any nature.
 - f) Handling or placing of floor timbers for heavy lifts or for use by carpenters.
 - g) Bolting and unbolting tank lids.
 - h) Battening down hatches when called upon to do so at the completion of the vessel.
 - i) Rigging and unrigging heavy lift booms and hatch tents.
 - j) Lashing and Securing: Unless otherwise agreed between the Parties, where the party receiving the MTO services requires lashing or securing of cargo on board the vessel, on deck, or elsewhere, all labor and materials shall be for the account of the party receiving the MTO services. The services shall be performed under the direction, control and supervision of the vessel's Master and/or other authorized personnel who shall have ultimate responsibility for the sufficiency of

such lashing and securing. The party receiving the MTO services expressly agrees to hold the MTO harmless from and indemnify them against any claims, demands or suits whatsoever relating to the insufficiency or alleged insufficiency of such lashing and/or securing of cargo.

- k) Supplying extra labor for any other services when authorized.
- l) If the condition of the cargo or packages is other than in customary good order, thereby delaying prompt handling, special arrangements shall be agreed to in lieu of the SCR.
- m) When material (i.e. dunnage, banding, lashing chains, other port's cargo, etc.) becomes an obstacle during cargo operations, said material will be moved/removed at the MTO's discretion. Costs for the aforementioned service will be charged at the prevailing "Stand-by" rate and standard disposal costs and will be for the account of the party receiving the MTO services.

5) Re-handling, sorting and shifting of cargo:

- a) A SCR applies to one handling of cargo. When re-handling, sorting or shifting of cargo is necessary through no fault of the MTO, the time required for such work will be charged for by the MTO at cost including fringe benefits plus a service charge.

6) Detention, stand-by time, lay time:

- a) Whenever work is interrupted after starting and detentions not over 15 minutes duration occur, the MTO will make no charge for reimbursement thereof. Should detention time exceed 15 minutes duration, the MTO will charge for the full detention time at cost including fringes. When men are employed and unable to work for reasons beyond the MTO's control, or when men are to be paid for a minimum working period in accordance with the labor agreement, the cost of such waiting time or guarantee will be charged by the MTO at cost including fringes.

7) Damaged Cargo:

- a) When handling cargo damaged by fire, water, oil, etc., and where such damage causes distress or obnoxious conditions, or in all cases where the men are called upon to handle cargo under distress conditions, the MTO's charges can be based on the cost in accordance with the labor agreement, including fringe benefits, plus a service charge, plus the SCR, together with the cost of the gear destroyed and the cost of the equipment for the protection of the men as may be required.

8) Vessel Requirements:

- a) Unless otherwise agreed, the party receiving the MTO services shall ensure that the vessel will supply booms hoisted in position and automatic hatches are opened and ready to work; adequate winches and/or ship's cranes with sufficient steam and/or current for their efficient operation; blocks, guys, preventers and wire or rope in good condition and of sufficient strength for falls; dunnage, hatch tents and gantlines; adequate lighting for night operations, tugs; derricks or cranes and slings for any cargo which cannot safely be handled by vessel's gear, or when vessel's gear is not adequate to handle cargo in a normal safe manner according to the custom of the port; all materials required for dunnaging, bracing, re-coopering, shoring, lashing, protecting or bulkheading of cargo.
- b) Pumping ballast or discharging garbage, dunnage or any rubbish or garbage debris into slips or channels or on the MTO facility is strictly prohibited. Violators will be subject to penalty charges.

Direct contact must be made with the approved contractor on pumping oil and sludge for offload and disposal, under Marpol 73/78 Annex I and V (33 CFR Parts 151 and 158), respectively.

- c) Discharging of victual garbage and all other U.S. Department of Agriculture (APHIS) regulated waste is governed by the respective port authorities. . Vessels requiring discharge of APHIS-regulated garbage/waste must make advance arrangements with the MTO for lightering of APHIS-regulated garbage to an APHIS-approved reception facility. All APHIS-regulated waste must be disposed of in accordance with 7 CFR 300, 400 and 9 CFR 94.5, and in compliance with any applicable port authority regulations.
- d) Discharging or pumping of sewage into the waters of the State of Florida is strictly prohibited by Federal and State law.
- e) Shipboard welding and/or burning of any type is strictly prohibited while vessels are berthed at the MTO's facilities without express written consent of the MTO.

9) Safety and health regulations:

- a) The party receiving the MTO services warrants that each of its vessels and all equipment is maintained in such condition as to comply with United States Department of Labor Safety and Health Regulations for Longshoring, as published in the Federal Register, which became effective on July 1, 1998, and all amendments thereto and all regulations adopted and orders issued pursuant thereto and all state statues, regulations and orders for safety and health, and all amendments thereto. The party receiving the MTO services agrees to reimburse the MTO for any and all fines assessed to the MTO pursuant to citation, warrant or order from any federal, state or local court, tribunal or agency where such fines are the result of the party receiving the MTO services failing to comply with the applicable act, regulations, statues or orders immediately upon notification thereof in writing by the MTO.
- b) Smoking in the warehouses bulkheads, docks or on vessels handling flammable cargo or fueling is strictly prohibited.

10) Stowage plans:

- a) Inbound stowage plan and manifest must be in the MTO's possession twenty-four (24) hours prior to arrival of the vessel, and provisional stowage plan for outbound cargo must be in the office of the MTO superintendent thirty-six (36) hours prior to the start of loading operations.

11) Merchandise information and manifest:

- a) Merchandise of any kind arriving at the MTO's docks must be adequately marked and the MTO's office must previously have been advised of such cargo; otherwise, it need not be accepted at the dock.
- b) The party receiving the MTO services, in all cases is to furnish the MTO with cargo manifest showing weights and measures of cargo as manifested.
- c) Sorting within bills of lading will only be performed by special agreement, and only when complete packing list information is provided and where cargo is adequately marked to match packing list data.
- d) Manifest on outbound cargo must be in the MTO's possession within seven (7) days after completion of the vessel. In the event a manifest is not received within that time, the MTO will invoice by dock receipt information.

- e) Manifests for all inbound as well as outbound cargo must clearly indicate whether said cargo was freighted on either a weight or measurement basis and, if not, the MTO will invoice on whichever basis will give the highest return.

12) Railroad, truck, barge or ship demurrage for delays beyond its physical capacity or control:

- a) The MTO shall not be liable for railroad car, truck, barge or ship demurrage resulting from strikes, weather conditions, Act of God, or for delays beyond its control, including the failure of the railroad to spot or remove equipment in a timely manner. When cargo does not lend itself to being unloaded from railroad equipment or trucks to dock or shed awaiting arrival of ship, the MTO shall not be liable for such demurrage.

13) Consignments:

- a) Outbound shipments must be consigned to the appropriate person and/or vessel c/o Port Contractors – Southeast, LLC.

14) Vessel Berthing (Ships & Barges):

- a) The MTO and the respective port authority, where applicable, shall have exclusive rights to assign berths at the facilities where the MTO operates.
- b) Vessels may be required to move or shift at the MTO's/port authority's discretion, in order to load/unload other ships, for efficient use of the MTO/port's facilities, or for other good cause.
- c) All vessels assigned to berths shall be responsible and liable for any damage to such property by reason of such occupancy or use.
- d) The MTO and/or the respective port authority may require a vessel to work overtime to completion when, in the opinion of the MTO or port authority, it is deemed necessary for the overall port operation, and the incurred expenses shall be for the account of the vessel.
- e) In order to alleviate current or prospective congestion the MTO and/or the respective port authority may require any vessel already in berth, or about to berth, to work continuously to completion of loading/discharging at the vessel's expense. Reassignment to a berth for completion of loading/discharging will be at the respective port authority / MTO's convenience. Any vessel refusing to vacate the berth, after being so notified, may be subject to removal by the respective port authority / MTO at the vessel's risk and expense, including any damage, as it may accrue, to the terminal facility or MTO.

15) Valuable or special cargo:

- a) In the event that the party receiving the MTO services delivers or authorizes delivery of valuable or special cargo to the MTO for terminal services and such cargo requires particular security or special handling, the party receiving the MTO services must notify the MTO expressly of the cargo's value or special nature in advance, in default of which the MTO will have no responsibility whatsoever in the event of loss or damage to the cargo, howsoever caused.
- b) Unusual cargo – perishable, bulk, loose lumber, unpackaged goods, obnoxious and other unusual cargo will be handled by special arrangement and special rates.

16) Work to be done by MTO:

- a) All stevedoring and terminal services required by the vessels of the party receiving the MTO services shall be done by or arranged through the MTO, when working at the MTO facilities.
- b) Any penalty or compensation payment arising due to vessel's crew's actions in contravention of prevailing labor agreements, shall be for the account of the party receiving the MTO services.

ITEM 320: HAZARDOUS MATERIALS

Articles defined as hazardous materials or of an otherwise objectionable or hazardous nature, or of uncertain value will not come under this tariff or be provided with Terminal services except under advance arrangement with the MTO.

- 1) IMPORT - Complete Department of Transportation (DOT) hazardous cargo documentation must be received by the MTO prior to arrival of the cargo.
- 2) EXPORT - Complete Department of Transportation (DOT) and International Maritime Organization (IMO) hazardous cargo documentation must accompany each shipment of hazardous cargo or be pre-logged with the MTO prior to cargo arrival at the terminal.
- 3) Articles considered as cargo of a particular hazard (33 CFR 126.10) or of an otherwise objectionable nature, or of uncertain value shall not come under this Schedule of Rates or be provided with MTO services.

Due in part to changes in U.S. Coast Guard regulations for handling division 1.1, 1.2 and 1.5 explosives, the MTO shall not load or discharge such cargo. Vessels with such cargo may berth at MTO's terminals but may not discharge such cargo or have such cargo relocated onboard while on berth.

Certain Dangerous Cargo (CDC) to include route controlled radioactive cargo is currently regulated by the U.S. Coast Guard. All CDC materials are defined in 33 CFR 160.204. Notification of all CDC shipments must be made to the MTO at a minimum of ten (10) days prior to arrival. Notification shall be made to the MTO's Terminal Manager, pbagency@portcontractors.com.

Transshipment of CDC containers is not permitted without prior approval from the MTO.

Radioactive containers require specific safety and security precautions. Radioactive containers require thirty (30) days advance notice. Notification shall be made to the MTO's Terminal Manager, pbagency@portcontractors.com. Additional charges for specific safety and security measures as required per U.S. Coast Guard regulations to handle radioactive shipments will be quoted and accessed based on actual requirements.

ITEM 322: RECEIPT OF EXPORT CARGO / RELEASE OF CARGO

- 1) The following information is required for acceptance of export cargo by the MTO:
 - a) For containerized cargo:
 - i) Container Number
 - ii) Exporting Ocean Carrier / Vessel / Voyage
 - iii) Vessel Booking Number
 - iv) Foreign Port of Discharge
 - v) Commodity
 - vi) Exporter / Shipper / Freight Forwarder
 - vii) Weight
 - viii) DOT and IMO Hazardous Documentation and Certificate (When Required)
 - b) For all other (non-containerized) export cargo:
 - i) Exporter / Shipper / Freight Forwarder
 - ii) Commodity
 - iii) Number of Pieces
 - iv) Weights and Measurements
 - v) Identifying Marks
 - vi) Vessel Booking Number
 - vii) Foreign Port of Discharge
 - viii) DOT and IMO Hazardous Documentation and Certificate (When Required)
- 2) Proper documentation proving ownership must be presented to the MTO prior to the delivery of any and all cargo, including empty containers.
 - a) For containerized shipments:
 - i) Copy of Import Container pick-up/delivery order including the following information:
 - (1) Name of Inland Carrier
 - (2) Container Number
 - (3) Bill of Lading Number
 - (4) Consignee Address
 - ii) For empty container dispatch, copy of pick-up/delivery order including the following information:
 - (1) Shipline
 - (2) Name of Inland Carrier
 - (3) Size and type of equipment to be picked up
 - (4) Export Booking Number or Pool Booking Number
 - (5) Expected Container Quality: Paper Grade, Tobacco Grade, General
 - (6) Delivery address
 - b) For all other (non-containerized) shipments:
 - i) Copies of pick-up/delivery orders must be presented to the MTO at least seventy-two (72) hours prior to the arrival of a vessel and must include the following:
 - (1) Name of Inland Carrier
 - (2) Description of the Cargo including bill of lading number, all identifying marks and numbers, quantity and weights per bill of lading.
 - ii) Any shipping variations from the original pick-up/delivery order received subsequent to the seventy-two (72) hour requirement may necessitate additional handling charges. These charges will be for the account of the party receiving the MTO services.

- iii) The MTO will not be responsible for mis-deliveries of individual packages within a bill of lading unless a packing list is provided a minimum of seventy-two (72) hours prior to the vessel's arrival.
- iv) The MTO will not be responsible for mis-deliveries if cargo is insufficiently marked.

ITEM 324: CONTAINERS LOADED IN EXCESS OF RATED CAPACITY

The rates, rules, regulations, and charges published in this tariff are not applicable to Standard seagoing containers loaded in excess of their rated capacity. The MTO will not permit its mechanical equipment designed for movement or carriage of containers to be used in any way to lift, move or transport a container which is loaded in excess of the container's rated capacity. Should the MTO's equipment or crane be used to lift, move or transport a container which is loaded in excess of the rated capacity, the party or parties, causing such unauthorized use shall be held liable for all losses, claims, demands, and suits for damages, including death and personal injury, and including court costs and attorney's fees, incident to or resulting from such unauthorized use.

ITEM 326: REMOVAL / DISPOSITION OF UNDELIVERED, UNWANTED OR OBJECTIONABLE CARGO

- 1) The MTO reserves the right to sell, for accrued charges, any cargo or merchandise which is unclaimed or refused by consignees, shippers, owners, or agents after due notice has been mailed or delivered to such known parties. The MTO reserves the right to charge the beneficial owner for all costs incurred in disposing of abandoned cargo which is unclaimed, refused or unwanted.
- 2) The MTO reserves the right to move to another location, at the risk and expense of the owner any cargo, container or other material, which in their judgment, is likely to damage other property.

ITEM 328: FREE TIME POLICY

Free time is regulated by the respective port authorities at the facilities where PCI operates. Refer to the Tariff on file at the port authority in question to determine allowable free time, storage charges, wharf demurrage and the like.

ITEM 330: RESPONSIBILITY FOR DAMAGES TO FACILITIES

Users of the MTO's property and facilities, including vehicles, common carriers, etc., their owners, agents and operators, shall be responsible for all damage resulting from the use of such property and facilities. The MTO reserves the right to repair, replace, or contract for the same, or otherwise cause to be replaced or repaired, any and all damages to the MTO property and facilities including but not limited to damages to warehouses, transit sheds, equipment, rail, shop facilities, water, heat, light, etc., and hold the user or users, their vehicles, common carriers, etc., their owners, agents and operators, or any other party or parties that may be in any way considered responsible for the damages, liable for payment of damages, together with all interests, costs and attorney's fees that may be incurred in the collection of the damages. The MTO may detain any vehicle, common carrier, etc., that it may consider responsible for any damage to the facilities until sufficient security has been given to cover all damages, interest, costs and attorney's fees. This item is not to be construed as holding a MTO user liable for any portion of damages caused solely by the MTO's negligence.

ITEM 332: INSURANCE

Charges published in this Schedule do not include any expense of fire, storm, or other cargo insurance covering the owner's interest in the cargo nor will such insurance be provided by the MTO under its policies.

ITEM 334: LIMITATION OF LIABILITY

- 1) The MTO, for the services performed under this Schedule, assumes no liability for any losses, injury or damage or non-delivery or mis-delivery or cross-delivery to freight or cargo handled or transshipped through the Terminal, including, but not limited to loss or damage caused in whole or in part by strike, fire, water, actions of the elements and weather, theft, force majeure, act of public authority, act of public enemy, riot, civil commotion, war or act of war or any other similar cause, or for any loss from causes beyond its control. Under such conditions, MTO may suspend or reduce services without responsibility for any claim by vessel or others arising out of such circumstances.

The MTO makes no warranty of any kind, express or implied (including warranty of workmanlike performance or service) and specifically disclaims the application to it, its employees or agents of any duty or theory of strict liability or absolute liability for loss or damage to vessels, lighters, barges, trucks, vehicles, cargo or goods, or for services performed.

MTO expressly disclaims that it is a common carrier or the application to it, its employees or agents of any duty applicable to a common carrier or based upon any theory of strict liability.

The MTO in any event shall be liable only for damage resulting from its failure to exercise due and proper care in performing the services and affording the facilities provided for herein. In no case shall the MTO be liable for a sum in excess of \$500 per package or non-packaged object, and in the case of bulk cargo, \$300 per long ton, for any loss, damage, non-delivery, mis-delivery, or cross-delivery, unless the shipper, consignee, cargo owner, trucker, railroad, or other inland carrier, or their representatives, (hereinafter "Customer"), prior to the commencement of such services or use of such facilities, declares a higher value and pays to the MTO, in addition to the other charges for such services as herein set forth, a premium computed at one percent (1%) of the declared value of each package or non-packaged object. In such event, the MTO shall be liable for the full declared value of each such package or non-packaged object for damages resulting from its failure to exercise due care in performing the services or affording the facilities provided for herein. The word "package" shall include any van, container, or other form or cargo unitization.

Since no attempt is made by the MTO to supply any protection from the elements, the MTO accepts no liability or responsibility for any loss or damage that may occur to the cargo remaining on the Terminal at any time, nor for injuries, damages, or delays caused by equipment, cranes, and/or operators of same leased by the MTO.

At the port facilities where PCI operates, this limitation provision applies only to the MTO designated herein and does not affect the liability of any party other than the said MTO. The limitations herein are also applicable to other MTO's of associated ownership or operation, who incorporates such terms in their contracts or agreements, or which are entitled to enforce the terms hereof as an implied contract, in accordance with applicable laws and regulations.

- 2) In instances where the MTO is acting as a warehouseman and/or is storing or handling the goods, other when engaged in stevedoring, notwithstanding, the \$500.00 per package limitation referenced above, this Schedule shall act as the handling/storage agreement for the goods and in the event of loss, damage or destruction to goods for which the MTO is legally liable, the MTO's liability shall be limited to the lesser of the following: (1) the actual cost of replacing, or reproducing the lost, damaged, and /or destroyed goods together with transportation costs to warehouse, (2) the fair market value of the lost, damaged and/or destroyed goods on the date of the loss or the date notification of the loss, damage or destruction is made, whichever is less, (3) 100 times the monthly storage charge applicable to such lost, damaged and/or destroyed goods, (4) \$0.50 per pound for said lost, damaged, and/or destroyed goods; or (5) \$100 per package or non packaged unit. Provided, however that if the customer, shipper, consignee, trucker, railroad, or other inland carrier, or their representatives, prior to the commencement of such services, or within a reasonable time from when the goods are delivered to or received by MTO, declares a higher value and pays to the MTO, in addition to the other charges for such services as herein set forth, a premium computed at one percent (1%) of the declared value of each package or non-packaged object, the MTO shall be liable for the full declared value of each such package or non-packaged object for damage resulting from its failure to exercise due care in performing the services or affording the facilities provided for herein. The word "package" shall include any van, container or other form of cargo unitization.
- 3) The MTO's liability referred to in this Schedule shall be the exclusive remedy against MTO for any claim or cause of action whatsoever relating to loss, damage and/or destruction of freight, cargo and/or goods, and shall apply to all claims including inventory shortage and mysterious disappearance unless the Customer and/or others making claim, proves by affirmative evidence that the MTO converted the freight, cargo or goods to its own use. Those making claim, for such loss waive any rights to rely upon any presumption of conversion or negligence imposed by law. In no event shall those making claim be entitled to incidental, special, punitive, or consequential damages.
- 4) In addition to any other defenses which the MTO may have, the MTO shall also be entitled to the benefit of all the rights, immunities and defenses available or stated to be available to the carrier under its bill of lading or contract or carriage. The party receiving the MTO services undertakes that any bill of lading or other contract of carriage for cargo to be handled by the MTO will contain an express provision stating that the MTO is to be deemed a servant of the carrier and as such to be entitled to rely on all of the rights, immunities and defenses available to the carrier under such bill of lading or other contract of carriage, and that this express provision and entitlement will extend to cover all services provided by the MTO, including services provided after the discharge of the cargo; and any party receiving the MTO services shall indemnify and hold harmless the MTO against any failure to comply with this undertaking. In the event that the additional defenses available to the carrier under its bill of lading or other contract of carriage conflict with any other defenses available to the MTO, the MTO shall have sole discretion to choose which defense it will assert or be entitled to.
- 5) With respect to cargo carried by truck; the loading and unloading of cargo shall be under the supervision of the driver of the truck. It shall be a primary duty of the trucking company and/or its drivers to take delivery of the cargo for which the trucking company entered the MTO's premises. The MTO shall not be responsible for any trucking costs resulting from the trucker taking other than their intended cargo from the MTO's premises.

- 6) Under no circumstances will the MTO be liable for any type or truck demurrage, rail demurrage, barge demurrage, detention, or waiting time.
- 7) Under no circumstances shall the MTO be liable for spoilage of cargo within a reefer container which is in the care, custody and/or control of the MTO caused by an electrical shortage/outage or the failure or malfunctioning of the reefer container itself or its refrigeration systems, as well as any failure of the electrical plug located at the MTO's facility.
- 8) Any vessel owner, vessel charterer, cargo shipper, cargo consignee, cargo owner, trucker, rail carrier, and/or other user of the terminal facility agrees that the MTO shall have no liability whatsoever for injuries, damages, or delays caused by equipment, cranes and/or operators of same leased by the MTO to others, except that caused by the MTO's own actual negligence.
- 9) Use of an open pier and/or berth by a stevedore, vessel owner, vessel charterer, cargo shipper, cargo consignee, cargo owner, trucker, rail carrier, or any other user of the Terminal, is an express acceptance and recognition of all responsibility and any potential liability arising out of such use by the above mentioned parties relating to the protection, placement, transportation or any damage arising out of the use of an open pier and/or berth. No attempt is made by the MTO to supply any protection to such cargo from the elements and the vessel owner, vessel charterer, cargo shipper, cargo consignee, cargo owner, trucker, rail carrier and/or any other user assumes the risk of any such open pier and/or berth from any loss or damage resulting therefrom.

10) (a) In any event, MTO shall not be liable for any claim of any type whatsoever for loss, injury or damage or non-delivery or mis-delivery or cross-delivery to freight or cargo handled or transshipped through the Terminal, and shall be discharged from all liability in respect of said loss, injury or damage or non-delivery or mis-delivery or cross-delivery, unless such claim is presented to MTO, in writing, within a reasonable time, not exceeding 60 days after the Customer learns or, in the exercise of reasonable care, should have learned of such loss, injury, or damage or non-delivery or mis-delivery or cross-delivery.

(b) As a condition precedent to making any claim and/or filing any suit, Customer shall provide MTO with a reasonable opportunity to inspect the goods which are the basis of the claim.

(c) NO LAWSUIT OR OTHER ACTION MAY BE MAINTAINED BY CUSTOMER OR OTHERS AGAINST MTO WITH RESPECT TO THE GOODS UNLESS A TIMELY WRITTEN CLAIM HAS BEEN MADE AS PROVIDED IN PARAGRAPH (a) OF THIS SECTION AND UNLESS CUSTOMER HAS PROVIDED MTO WITH A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AS PROVIDED IN PARAGRAPH (b) OF THIS SECTION AND UNLESS SUCH LAWSUIT OR OTHER ACTION IS COMMENCED WITHIN NINE (9) MONTHS AFTER CUSTOMER LEARNS OF, OR IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF THE LOSS, INJURY, OR DAMAGE OR NON-DELIVERY OR MIS-DELIVERY OR CROSS-DELIVERY TO THE GOODS.

(d) Unless an express notice of loss, non-delivery, mis-delivery, cross-delivery and/or damage, along with a description of the general nature of such loss, non-delivery, mis-delivery, cross-delivery or damage is given in writing to the MTO at the time of the removal of the goods, or at the time the goods should have been removed into the custody of the person entitled to delivery thereof, the removal shall be prima facie evidence of delivery of the goods by the MTO in good order and condition, or in the order and condition as noted on the delivery documents. Should the loss, non-delivery, mis-delivery, cross-delivery or damage not be apparent, the above notice must be given in writing to the MTO within three (3) days of the date of delivery or the date the goods should have been delivered.

11) No provision contained in this Schedule shall limit or relive MTO from liability for its own negligence nor require any person, vessel, or lessee to indemnify or hold harmless MTO from liability for its own negligence. This provision does not waive MTO's right to limit its liability as set out in this Schedule.

ITEM 336: LIMITATION OF LIABILITY TO VESSELS AND INDEMNITY FROM VESSELS AND CARGO INTERESTS

For purposes of this Item, "vessel(s)" shall mean ships, boats, barges or water craft of any kind or description. All vessels delivered to the MTO for loading and/or unloading are subject to the following terms and conditions. Delivery of a vessel to the MTO constitutes acceptance of these terms and conditions by the owner, charterer and/or operator of the vessel, the party delivering the vessel, the party ordering its delivery and/or the party ordering its loading/unloading by the MTO.

1) Limitation of Liability as to all Vessels and Indemnity from Cargo Interests for Damages Caused by Insufficiency of Packing:

a) In no event shall the MTO be liable for any damage to vessels in the loading, off-loading and/or unloading of cargo and all handling incident thereto that is caused directly, or indirectly, in whole or in part, by insufficiency in packing of the cargo and/or failure to supply proper handling instructions for the cargo. The shipper, consignor, consignee and cargo owner shall defend,

indemnify and hold harmless the MTO, its officers, agents and employees and all related entities and their officers, agents and employees from and against any and all claims, demands, actions, losses, and damages, including, but not limited to, claims for personal injury or death, claims for loss of or damage to vessels, and claims for property loss or damage of any kind or description, including, but not limited to, pollution or environmental damage, and all expenses, including attorney's fees and costs, arising from or in any matter related to any such claims, demands, actions, losses, and damages caused by or related to insufficiency of packing of the goods for loading, off-loading and/or unloading and all handling incident thereto and failure to supply proper handling instructions for the cargo.

- b) The MTO shall not, in any event, be or become liable for any loss or damage to vessels in an amount exceeding the lesser of the amount charged by the MTO for the stevedoring services or the actual costs of repairs to the vessel. In no event shall the MTO be liable for any damage to vessels unless said damage results solely from the failure of the MTO to exercise due care in performing the services contracted for.
- c) The MTO shall not in any event be responsible for special or consequential damages, including without limitation damages for or arising from delay, extra expense, loss of sale(s), loss of contract(s), loss of charter, loss of hire, loss of profits, loss of market value, and loss of use whether resulting from negligence, breach of this Contract by the MTO, failure to discharge cargo, delay in discharge of cargo, damage to vessels, and any other cause, and even if the possibility of such special or consequential damages or damages from delay were foreseeable to the MTO or were made known to the MTO. Under no circumstances will the MTO be liable for any type of vessel demurrage, or waiting time.
- d) Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.

2) Indemnity from Vessels for Damages Caused by the Negligence of the Vessel:

- a) The vessel and her owner(s), charterer(s), and/or operator(s) shall defend, indemnify and hold harmless the MTO, its officers, agents and employees and all related entities and their officers, agents and employees from and against any and all claims, demands, actions, losses, and damages, including but not limited to, claims for personal injury or death, claims for loss of or damage to cargo, and claims for property loss or damage of any kind or description, including, but not limited to, pollution and/or environmental damage and damage to property of the MTO, and all expenses, including attorney's fees and costs, arising from or in any manner related to the negligence of the vessel and/or her crew and/or the failure of the equipment, machinery, appurtenances of the vessel.
- b) Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.

3) Additional Limitations of Liability Applicable to Barges:

The limitations of liability contained within this item are in addition to those limitations of liability for barges that are set forth in Item 336 (1) above. All barges delivered to the MTO for loading and/or unloading are subject to the following terms and conditions. Delivery of a barge to the MTO constitutes acceptance of these terms and conditions by the party delivering the barge, the party

ordering its delivery and/or the party ordering its loading/unloading by the MTO (collectively referred to as the “barge owner”).

- a) It is the responsibility of the barge owner to monitor the prevailing and expected weather conditions at all times when its barge is present at the MTO’s facilities, and to take all action necessary to safeguard, reposition or otherwise protect the barge at any time when the weather may pose a danger to barges. The MTO will not be responsible for any damages of whatsoever nature arising due to the barge owner failing to take such preventive action.
- b) All barges delivered to the MTO shall be moored at a location designated by the MTO. The barge owner is responsible for ensuring that the barge is properly moored at the designated location. Proper mooring includes, but is not limited to, ensuring that the barge is moored with sufficient lines in number and strength to withstand any reasonably anticipated or forecasted weather conditions that might arise at any time the barge is moored at the MTO’s facilities.
- c) In the event a condition develops that has the potential to jeopardize the safety of loaded barges or their cargo at the terminal, the MTO may in its sole discretion, and without prior consultation with the party receiving the MTO services, exercise any means necessary to unload any such barge and, in the event the MTO incurs additional expenses, including overtime, in unloading any such barge, the party receiving the MTO services shall be liable for all such additional expenses. Any party that delivers a loaded barge to the MTO for unloading does thereby consent to this provision and to the imposition of any such additional expenses. Nothing herein shall be construed as imposing upon the MTO any duty to take any additional measures to unload barges.
- d) The MTO will provide notice to the barge owner of the time when loading or unloading of the barge has been completed. Notice by fax or email will be deemed proper notice and the fax or email transmittal form or confirmation shall be conclusive evidence of the receipt of the notice by the party(ies) to whom it is addressed. The barge owner shall pick up the barge and remove it from the terminal within two (2) business days from receipt of such notice.
- e) At the conclusion of the two-day notice period stipulated above:
 - i) All duties or responsibilities of the MTO with respect to the barge or its cargo whether as wharfinger or bailee or otherwise shall terminate, and bailment shall be deemed to have ceased. The MTO will have no further duty or responsibility to monitor the condition of the barge or its mooring lines, to ensure that the barge is adequately moored or to take any action whatsoever to prevent the barge from breaking away from its moorings.
 - ii) The barge owner shall have sole and exclusive responsibility for the barge, including but not limited to, the duty to monitor the condition of the barge and its mooring lines, to ensure that the barge is adequately moored and to take all action necessary to prevent the barge from breaking away from its moorings.
 - iii) The MTO shall have no liability for any losses, expenses, damages or claims whatsoever related to the barge or its cargo or caused thereby, including but not limited to damage to vessels, to other barges or cargo or to any other property of any kind or description, pollution or environmental damage, personal injury or death. The barge owner shall defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees from and against any and all claims, demands, actions, losses, damages, including, but not limited to, claims for personal injury or death and claims for property loss or damage of any kind or description including pollution or environmental damage and all expenses, including attorney’s fees and costs, arising from or in any matter related to the presence of the barge at the terminal or its breaking away from its moorings after the conclusion of the two-day notice period.

- f) Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.

ITEM 338: VENUE

Venue of any suit in which the MTO is a named party shall be in the courts located in the city and/or county where the services were rendered, or in the United States District Court for the District in which the services were rendered, to the exclusion of the courts of any other county, state or country. Any user of the Terminal consents to and submits itself to the jurisdiction of said courts and service of process by registered mail, return receipt requested on their designated steamship agent within the United States or otherwise.

ITEM 340: SECURITY FOR MTO'S CLAIMS

Any vessel, vessel owner, or vessel charterer causing damage to a pier or property owned by the MTO shall, on demand by MTO, provide security to MTO by way of a standard form letter of undertaking by their P&I and/or Hull carrier, or give other security acceptable to MTO, in the amount of one and a half (1.5) times the estimated damage, as per an independent surveyor appointed by the MTO.

ITEM 342: HEADINGS

The section headings herein are for the convenience of reference only and are not a substantive part of the agreement.

ITEM 344: WAIVER-SEVERABILITY

- a) MTO's failure to insist upon strict compliance with any provision of this Schedule shall not constitute a waiver or estoppel to later demand strict compliance with all other provisions of this Schedule.
- b) In the event any section of this Schedule or part thereof shall be declared invalid, illegal and/or unenforceable, the validity, legality and enforceability of the remaining sections and parts shall not, in any way, be affected or impaired thereby.

SECTION IV – TERMINAL SERVICES AND COMMODITY RATES

Rates are available upon request by contacting the MTO via e-mail at marketing@portcontractors.com.

SECTION V – AGENCY SERVICES

ITEM 500: AGENCY SERVICES

- a) PCI may, upon the request of a vessel, vessel master, charterer, vessel owner, facility user or other appropriate party (**each, a "Vessel Party"**), act as the agent of a vessel seeking to call at any marine terminal where PCI may be authorized to act as a vessel agent.

- b) PCI reserves the right to accept or reject any request to act as a vessel agent and/or perform any Agency Services.
- c) Unless otherwise expressly provided, the terms and conditions contained in this MTO Schedule and this Section V shall govern the Agency Services provided by PCI to any Vessel Party at the marine terminals covered by this MTO Schedule.

ITEM 502: AGENCY SERVICES DEFINED

- a) If PCI acts as agent for any Vessel Party hereunder, PCI may provide the following services to a vessel in the capacity of vessel agent (**the "Agency Services"**):
 - 1. Entering and clearing vessels (Customs, Immigration, USDA) and supervising documentation of the same.
 - 2. Arrange berthing for arrival and departure.
 - 3. Ordering pilots and tugs (if required by vessel).
 - 4. Coordinate chandler requests.
 - 5. Process crew lists.
 - 6. When requested by a Vessel Party, arrange vessel bunkering, repairs, husbandry, crew changes, ship stores, spare parts, technical and nautical assistance and medical assistance.
 - i. The services indicated in Item 502(a)(3) & (6) above are only arranged by PCI on behalf of the Vessel Party. PCI makes no representation or warranty with respect to these services and all implied warranties are expressly disclaimed. Vessel Party shall bear all costs, expenses and liabilities of these services and shall be responsible for making all financial and contractual arrangements directly with the relevant third party. PCI shall not be responsible for the acts, omissions or defaults of any third party services arranged by PCI.
 - ii. From time to time, the Vessel Party may request that PCI make payment for third party services arranged by PCI hereunder. PCI may grant or deny such requests in its sole and absolute discretion. Any such payments by PCI shall not be construed as procuring the service on Vessel Party's behalf. The services shall be provided by the third party to Vessel Party, with PCI facilitating payment from time to time.
- b) PCI reserves the right to charge additional fees other than a standard agency fee which may be quoted, as determined from time to time, depending on the nature of the services required.
- c) Other additional services, with PCI acting as a vessel agent, may be performed from time to time as mutually agreed to by both parties.
- d) PCI shall only be required to provide the Agency Services during Working Hours identified in Item 314. If PCI and Vessel Party agree to temporarily fulfill their obligations hereunder outside of Working Hours, the parties will agree to an overtime adjustment for such Agency Services.

ITEM 504: OBLIGATIONS OF VESSEL PARTY FOR AGENCY SERVICES

- a) Vessel Party's Obligations. Vessel Party shall perform the obligations set forth below in a manner sufficient to permit PCI to perform its obligations hereunder.
1. Vessel Party shall provide true and accurate information, records, documentation, vessel particulars or any other materials necessary in order for PCI to provide the Agency Services.
 2. Vessel Party shall respond in a timely manner to requests for additional information or documentation needed in order for PCI to perform Agency Services.
 3. Vessel Party shall communicate vessel or crew needs, or if any third party services need to be arranged by PCI, all in a timely manner.
 4. Vessel Party shall advance all funds incidental to a vessel call, including without limitation fees, charges, wharfage and dockage to be paid to the port of call, customs fees, dues, duties, taxes and all other fees resulting from the port call to be paid by PCI on behalf of Vessel Party.
 - i. PCI may supply a *pro forma* to Vessel Party indicating estimated port charges for any port call.
 - ii. Unless otherwise arranged, Vessel Party must pay the amount indicated in the *pro forma* prior to the vessel call or PCI.
 5. Vessel Party shall provide access to the vessel, as required, to perform the Agency Services.
 6. Vessel Party shall pay for all third party services arranged by PCI hereunder, either directly to the third party or, in the event PCI makes payment on behalf of Vessel Party, then Vessel Party shall pay PCI for such third party services.
 7. Vessel Party shall pay directly or reimburse PCI for any penalties, fines, duties, charges, late fees, interest or other charges due to Vessel Party's or the vessel's account, as applicable.
- b) Vessel Party's Failure to Perform. In no event shall PCI be liable for any losses to Vessel Party as a result of PCI's inability to perform its obligations hereunder due to Vessel Party's failure to perform the Vessel Party's Obligations hereunder.

ITEM 506: INDEMNIFICATION BY VESSEL PARTY AND LIMITATION OF LIABILITY

- a) Vessel Party agrees to indemnify, hold harmless, and defend PCI, its respective affiliates, and each of its respective officers, directors, agents, employees, representatives, successors, and assigns (collectively, "PCI Indemnified Parties") from and against any and all claims, demands, damages, fines, penalties, losses, causes of action, liabilities, and judgments (collectively, "Claims") of every kind (including all expenses of litigation, court costs, and reasonable attorney's fees), for damage to any property or injury to or death of any person (including, but not limited to, employees of Vessel Party) resulting from, arising out of, or in any way connected with the acts or omissions to act, of Vessel Party, its officers, agents, employees, representatives, customers and contractors (collectively, the "Vessel Indemnifying Parties"), including to the extent any such Claims are based in part upon the joint or concurrent negligence or strict liability of PCI Indemnified Parties, or whether any such Claims are by way of tort or contract or otherwise. Vessel Party will not be required to indemnify PCI Indemnified

Parties for any Claims determined by final judgment of a court to have been caused by the willful misconduct or negligence of PCI Indemnified Parties. Vessel Party shall also indemnify, hold harmless, and defend PCI Indemnified Parties from and against any and all Claims resulting from, arising out of, or in any way connected with, any breach of this MTO Schedule by any of the Vessel Indemnifying Parties, including breaches of any representation or warranty made hereunder, or the failure of any of the Vessel Indemnifying Parties to comply with any third party requirements or with any laws including, but not limited to, fines, penalties, and monetary sanctions imposed by any governmental entity, or political subdivision or agency thereof, associated with any such failure.

- b) PCI shall not in any event be responsible for special or consequential damages, including without limitation damages for or arising from delay, extra expense, loss of sale(s), loss of contract(s), loss of charter, loss of hire, loss of profits, loss of market value, and loss of use whether resulting from negligence, breach of this Contract/MTO Schedule by PCI, failure to perform any Agency Services or arrange any third party services, delay in performing any Agency Services or arranging third party services, failure to discharge cargo, delay in discharge of cargo, damage to vessels, and any other cause, and even if the possibility of such special or consequential damages or damages from delay were foreseeable to PCI or were made known to PCI. Under no circumstances will PCI be liable for any type of vessel demurrage, or waiting time.