

**PCI FAIRLESS HILLS, LLC  
REVISED MARINE TERMINAL OPERATOR'S SCHEDULE NO. 1G**

**GOVERNING CHARGES, RULES AND REGULATIONS AT  
PCI FAIRLESS HILLS TERMINAL  
1513 Bordentown Road  
Morrisville, Pennsylvania**



ISSUED BY:  
PCI FAIRLESS HILLS, LLC  
1513 BORDENTOWN ROAD  
MORRISVILLE, PA 19067

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

This tariff is notice to the public that the provisions of this Tariff, including, but not limited to, the rates, charges, rules, and regulations contained herein, apply to all Facility Users, and are enforceable by an appropriate court as an implied contract without proof of actual knowledge of the provisions contained herein. The term “Facility User” shall mean any cargo interest, vessel owner or operator, ocean carrier (whether vessel operating or non-vessel operating), freight forwarder, broker, motor carrier, rail carrier, container lessor, or any other person or entity who use or benefit from use of the Terminal. Each Facility User shall be liable for noncompliance with the terms of this tariff by such Facility User's partners, officers, directors, agents, employees, invitees, contractors and/or subcontractors. The rules, regulations, terms, conditions, commodity rates and other charges set forth in this schedule apply to the PCI Fairless Hills Terminal, operated by PCI Fairless Hills, LLC.

**SECTION II – ABBREVIATIONS AND DEFINITIONS**

ITEM 200: ABBREVIATIONS

ABBREVIATION	DEFINITION
APHIS	Animal Plant Health Inspection Service
CFR	Code of Federal Regulations
CBM	Cubic Meter
CWT	Hundred weight per one hundred pounds
DOT	United States Department of Transportation
EPA	United States Environmental Protection Agency
FSO	Facility Security Officer
GRT	Gross Registered Ton
IMO	International Maritime Organization
LBS	Pounds
LOA	Length Overall
MT	Metric Ton (2204.6 lbs)
MTSA	Maritime Transportation Security Act
MTO	Marine Terminal Operator
NOS	Not Otherwise Specified
NT	Net Ton (2000 lbs)
OSHA	Occupational Safety and Health Administration

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.

**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, its owners or operators for berthing at a wharf, pier, bulkhead structure or bank or for mooring to a vessel so berthed. Dockage will be assessed on the basis of the highest net registered tonnage of the vessel for the period that the vessel remains at the berth.

**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.

**EXCLUSIVE STORAGE AREA:** Any area of the Terminal where a Facility User, with the permission of the MTO, exercises exclusive control for use by Facility User in its activities at the Terminal.

**FACILITY USER:** any cargo interest, vessel owner or operator, ocean carrier (whether vessel operating or non-vessel operating), freight forwarder, broker, motor carrier, rail carrier, container lessor, or any other person or entity who uses or benefit from use of the Terminal.

**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, 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 Years Day  
Memorial Day  
July 4<sup>th</sup>  
Labor Day  
Thanksgiving Day  
Christmas Day

**INCOMPATIBLE CARGO:** Any two cargos that cannot be loaded, unloaded or handled from their respective vessels in proximity of each other (which may include any two berths at Terminal) because one or both cargos may damage, affect or otherwise alter the other cargo for any reason, including effects that exist solely due to the prevailing weather patterns at the time. Shall also be defined as any concurrent vessel operations concerning two separate cargos, which may cause the MTO or Facility User(s) to be liable for a claim for damages to the cargo or increases the risk of a claim for damages to the cargo by the mere fact that the cargos were loaded, unloaded or handled concurrently.

**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. For the purposes of this Schedule, the MTO shall be deemed to be PCI Fairless Hills, LLC as the term applies to the PCI Fairless Hills Terminal.

**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.

**RAIL FACILITY USE FEE:** Means a charge assessed against the cargo on all rail cargo transloaded to or from railcars. The rail facility use fee is solely the charge for the use of the rail system and does not include charges for any other service.

**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 effect, determine or change the rates, charges or services provided by an MTO.

**TERMINAL:** Means –PCI Fairless Hills Terminal, including the pier, wharves, docks storage areas (whether within or outside the gates of the TWIC required area of the facility), and all roads / area within the facility.

**VESSEL OPERATIONS:** loading cargo onto a vessel or discharging cargo from a vessel at Terminal.

**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 PCI Fairless Hills Terminal. 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

- 1) Use of the wharf, storage yards, warehouses and other facilities 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, and all other Facility Users, to pay all applicable charges and be governed by all rules and regulations published herein.
- 2) The MTO reserves the right to enter into agreements with common carriers, shippers, Facility Users and/or their agents concerning rates and services. To the extent such agreements conflict with the terms of this MTO Schedule, the terms of the agreement shall apply.

#### ITEM 304: TERMINAL RIGHTS

- 1) The MTO reserves the right to control and perform the loading, unloading, handling, reconditioning, weighing and sampling of all freight and cargo on the PCI Fairless Hills Terminal.
- 2) No Facility User or other party shall perform any service described herein without prior express written permission from the MTO. Those permitted to perform service shall apply, as well as adhere to, this MTO Schedule and any additions, revisions or supplements.

#### ITEM 306: PORT SECURITY

- 1) Entering the Terminal 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 PCI Fairless Hills Terminal, who are in possession of a valid Transportation Worker's Identification Credential (TWIC), may, at the sole discretion of the Facility Security Officer (FSO), be granted unescorted access to the Terminal. Individuals who do not possess a valid TWIC will not be granted access. Possession of a TWIC does not guarantee access to the Terminal. Escorts may be available for an additional fee, and must be arranged 24-hours in advance by contacting the FSO.

- 2) A Port Security fee will be assessed against all cargo discharged or loaded at the Port. Unless prior arrangements are made with PCI Fairless Hills, LLC the parties responsible for the Port Security fee will be the same parties responsible for wharfage.
- 3) No vehicles or equipment, regardless of whether for personal or operational use, shall be parked outside the designated areas (as determined by the MTO from time to time) of Terminal without the prior approval of the MTO.
- 4) All Facility Users shall comply with instructions and directives of the FSO as it related to security at the Terminal, including without limitation requiring the Facility User's employees attend security related trainings, distribute security related documentation and communications to the Facility User's affected employees and report a lost or stolen TWIC to the Department of Homeland Security and the FSO to the extent a Facility User is aware of the loss of a TWIC.
- 5) Firearms, weapons, explosives, controlled substances and any substance or device deemed suspicious by the FSO are prohibited.
- 6) Facility Users shall comply with enhanced security procedures as directed by the FSO or as directed by the USCG from time to time or pursuant to MARSEC directives.
- 7) Facility Users shall promptly report suspicious activity or breaches of security at the Terminal to the FSO.
- 8) Facility Users shall maintain and secure appropriate documentation for its cargo (such as inventory control numbers, bills of lading, etc.) at all times, subject to inspection by the FSO or the USCG.
- 9) Facility Users shall conduct periodic visual inspections of their cargo and shall promptly report any missing cargo or any cargo tampering. The FSO may conduct cargo inspections.
- 10) Facility Users conduct periodic visual inspection of its cargo. Licensee shall promptly report any cargo tampering. Licensee shall permit the FSO to conduct physical inspection of its cargo.

#### ITEM 308: SAFETY AND COMPLIANCE WITH LAW

- 1) All Facility Users are required to conform to any and all municipal, state and federal laws, codes or regulations, including but not limited to OSHA, USCG, EPA, MTSA, Department of Homeland Security, and DOT and will be held responsible for any violations of same.
- 2) All Facility Users, their employees, agents, contractors and invitees shall obey all posted signs, including signs and markings concerning the flow of vehicle, equipment and foot traffic. The MTO reserves the right to direct the movement of equipment, including but not limited to hoppers and other machinery from the dock, berths, roadways or other common areas to other areas of the Terminal or outside the Terminal as the MTO deems necessary in its sole and absolute discretion. The MTO reserves the right to make changes to signage and traffic patterns. Facility Users, their employees, agents, contractors and invitees agree to follow new traffic patterns when published by the MTO (whether by signage, markings, oral or written notice).

#### 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) All Facility Users 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. Any and all additional collection expenses necessary to collect delinquent funds, may also be assessed. In the event that legal action is initiated, the delinquent party shall pay MTO's court costs and reasonable attorney's fees and expenses. 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 Facility User 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 Facility Users or those Facility Users not granted credit that 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 AM until Noon, and from 1:00 PM until 5:00 PM, 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 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
- 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 in accordance with prevailing practice, 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 Terminal.
- 3) For the foregoing services, a Stevedoring Commodity Rate (SCR) or hourly rate is assessed. All other stevedoring services that are performed by the MTO are subject to special service charges.
- a) Any SCR or hourly rate 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 10 minutes duration occur, the MTO will make no charge for reimbursement thereof. Should detention time exceed 10 minutes duration, the MTO will charge for the full detention time at cost including fringe benefits. When labor is employed and unable to work for reasons beyond the MTO's control, or when labor is to be paid for a minimum working period in accordance with the labor practice. The cost of such waiting time or guarantee will be charged by the MTO at cost including fringe benefits.
- 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 labor is 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 gear destroyed and the cost of the equipment for the protection of labor 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, recoopering, shoring, lashing, protecting or bulkheading of cargo.
  - b) Pumping ballast or discharging garbage, sewage, 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) Shipboard welding and/or burning of any type is strictly prohibited while vessels are berthed at the PCI Fairless Hills Terminal 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 twenty-four (24) 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, acts 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 PCI Fairless Hills, LLC.

14) Vessel Berthing and Operations (Ships & Barges):

- a) The MTO retains sole and absolute discretion to assign berths and direct Vessel Operations at the PCI Fairless Hills Terminal and wharves, to ensure the safe, practical and efficient use of the Terminal.
- b) Vessels may be required to move or shift at the MTO's discretion, in order to load/unload other ships, for efficient use of the MTO facilities, or for other good cause, and the incurred expenses shall be for the account of the vessel.
- 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 may require a vessel to work overtime to completion when, in the opinion of the MTO, it is deemed necessary for the overall Terminal operation, and the incurred expenses shall be for the account of the vessel.
- e) In order to alleviate current or prospective congestion the MTO may require any vessel already in berth, or about to berth, to work continuously to completion of loading/discharging at the vessel's expense, weather permitting. Reassignment to a berth for completion of loading/discharging will be at the MTO's convenience. Any vessel refusing to vacate the berth, after being so notified, may be subject to removal by the MTO at the vessel's risk and expense, including any damage, as it may accrue, to the Terminal or MTO. Or, at the MTO's option, penalty dockage of \$550.00 per hour, or fraction thereof, commencing two (2) hours after notice to vacate is given, will be assessed in addition to dockage charges published elsewhere in this MTO Schedule.
- f) Berthing shall proceed on a first come/first served basis with respect to non-perishable cargo, subject to MTO's sole and absolute discretion.
  - i) The vessel that is first to reach the pilot station with respect to any other vessels destined for the Terminal shall be considered the vessel that arrives first, assuming no undue delays in transit to the Terminal.

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 performed 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 practice, shall be for the account of the party receiving the MTO services

17) Lien on Cargo:

- a) All goods/cargo shall remain subject to a lien for any port charge or other charge due under this schedule and may be wholly or partly detained until all such charges have been paid



18) Incompatible Cargo:

- a) The following berthing and Vessel Operation procedures shall apply to Incompatible Cargo, subject to the MTO's sole and absolute discretion.
  - i) The vessel that arrives first may begin Vessel Operations and operate in accordance with Item 318(14).
  - ii) If MTO is or becomes aware that a vessel will arrive during the expected duration of the Vessel Operations of another vessel, where the vessel that is yet to arrive will work a cargo that would be considered an Incompatible Cargo if worked concurrently with a cargo involved in current Vessel Operations, then in its sole and absolute discretion, the MTO may require the first arriving vessel to work around the clock, subject to Item 318(14)(d)(i) and weather permitting.
  - iii) Upon the arrival of a second vessel working a cargo that would be considered an Incompatible Cargo, if worked concurrently with the cargo of a vessel already working or that has arrived before the second vessel, in order to expedite Vessel Operations of both vessels, the MTO may (weather permitting):
    - (1) Direct the vessels to work staggered schedules such that both vessels are not working at the same time,
    - (2) Direct the first arriving vessel to work around the clock until completion, or
    - (3) Some combination thereof.
- b) If the use of any device, procedure, other measure or combination thereof ("Mitigation Measures"), shall completely or substantially mitigate the risk of actual damage or prima facie liability for any claims concerning Incompatible Cargo, then such devices, procedures or other measures may be used with the express written permission of the MTO. Any Facility User wishing to expedite their discharge with respect to Incompatible Cargo by using Mitigation Measures shall bear all the costs of implementing those measures and reimburse the MTO or Facility User as appropriate. Costs of implementing Mitigation Measures shall include any costs of production slowdown or decreased productivity caused by the use of Mitigation Measures.

ITEM 319: TERMINAL CLEANUP RESPONSIBILITIES

- 1) Each Facility User is responsible to keep all areas where it is working or traveling within Terminal, including but not limited to the dock, berths and common roadways free from rubbish, debris, equipment, equipment parts, trash, refuse, cargo and cargo remnants/residue ("Debris"). Facility User shall clean up any Terminal areas where Debris exists or remains at the completion of Vessel Operations and other Facility User activity at Terminal, except that any Debris that falls, for any reason, onto common roadways or areas being worked in common with the MTO or another Facility User, shall be removed by Facility User immediately, with or without notice by MTO or another Facility User (except that de minimis amounts of road salt are not required to be removed from common roadways). The dock and all Terminal areas Facility User used in the course of Vessel Operations are to be broom clean and otherwise left in the same condition as when Facility User began Vessel Operations or any other activities.

- 2) If a Facility User does not immediately commence cleanup upon written or oral notice, the MTO may undertake clean up operations, and the Facility User will reimburse the MTO for all such costs within thirty (30) days of written demand by the MTO.
  - a. If MTO commences cleanup due to Facility User's failure to do so, the MTO shall not be liable for any act or omission on account of Debris that remains at Terminal subsequent to MTO's clean up, including damages to any third party.
  - b. Facility User agrees to defend, hold harmless and indemnify the MTO for all claims arising out of any Facility User's acts or omissions regarding its clean up obligations, in accordance with Item 334.
- 3) If Debris becomes hidden or unreachable due to sinkage in soil, weather patterns or any other reason which makes it impossible or impractical to remove such material at the completion of Vessel Operations or other Facility User activities at Terminal, the Facility User shall remain responsible and liable for any damages caused by the hidden Debris.
  - a. If subsequent to Facility Users completion of operations and cleanup, said debris becomes visible, such that it may cause damage to MTO or any Facility User property or would be a hindrance to current or future operations, the Facility User responsible for such Debris shall remain liable for the cleanup of such Debris.
    - i. This section shall apply even if the Terminal area is subsequently used by the MTO or any other Facility User(s).
    - ii. The Facility User shall commence cleanup of previously hidden Debris upon written or oral notice by the MTO or another Facility User.
    - iii. The MTO may undertake clean up operations of previously hidden Debris, if the Facility User fails to commence cleanup, in accordance with Item 319(2).
- 4) All Facility Users shall dispose of trash, refuse and other debris in a proper receptacle that the Facility User will furnish for itself, at its own expense.
  - a. The receptacle should not be filled beyond its capacity and in any event, should be emptied at least once per week, at Facility User's expense.

#### ITEM 320: HAZARDOUS MATERIALS

Articles defined as hazardous materials or of an otherwise objectionable or hazardous nature, or of uncertain value, including without limitation articles defined as such under 33 CFR 126.10, 33 CFR160.202 or U.S. Coast Guard regulations handling division 1.1, 1.2 and 1.5 explosives, or considered radioactive will not come under this tariff or be provided with Terminal services except under a written agreement signed in advance with the MTO.

#### ITEM 322: RECEIPT OF EXPORT CARGO / RELEASE OF CARGO

- 1) The following information is required for acceptance of export cargo by the MTO:
  - 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.
- 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 misdeliveries 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 misdeliveries 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

- 1) Free time may be allowed for a party receiving MTO services to assemble cargo on the pier prior to export and to schedule delivery of import cargo to an inland carrier.
- 2) Free time will be allowed for the delivery of general, heavy lift, breakbulk, and vehicle cargoes inbound by water, from the wharves or transit shed of the MTO, after which storage charges will be assessed as provided in this schedule. Free time will begin the first 0800 AM after vessel has finished discharging the cargo. Saturdays, Sunday and Holidays will not be counted when computing the start of free time. For the avoidance of doubt, other than instances where free time starts on a Saturday, Sunday or Holiday as described above; all other Saturdays, Sundays, and Holidays shall be counted towards the computation of free time.
- 3) For the purpose of assembling outbound waterborne general, heavy lift, bulk, breakbulk, and vehicle cargoes, free time will be allowed, as provided in this schedule, including Saturdays, Sundays, and Holidays. This applies only to cargo unloaded from railcars and trucks. Time starts on arrival of the freight at the MTO facilities and includes time held in cars until demurrage rules.
- 4) Any cargo remaining on the MTO's facilities beyond the above specified free time, without agreement to extend free time or commencement of delivery to a vessel or inland carrier, shall be subject to an into storage charge, as per the storage rate schedule herein.

The following Free Time will be provided:

- |   |                  |
|---|------------------|
| • General Cargo / Heavy Lift              | 10 Calendar Days |
| • Bulk (including steel scrap) – Inbound  | 0 Calendar Days  |
| • Bulk (including steel scrap) – Outbound | 15 Calendar Days |
| • Plywood and Dimensional Lumber          | 15 Calendar Days |
| • Steel and Aluminum                      | 30 Calendar Days |
| • Supersacks                              | 0 Calendar Days  |
| • Exclusive Storage Area                  | 0 Calendar Days  |

#### ITEM 330: RESPONSIBILITY FOR DAMAGES TO FACILITIES AND OTHER PROPERTY

- 1) 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 pilings, 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. Damages to berths or pilings identified during or after a vessels departure will be deemed to have occurred during the vessel's berthage unless the MTO is notified by the vessel's agent in writing prior to tie-up or any pre-existing damage. 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 Facility User liable for any portion of damages caused solely by the MTO's negligence.

- 2) Each Facility User and tenant will be responsible for any damage caused by that Facility User or tenant, by either act or omission, to the property of the MTO, tenant, or other Facility User, and shall reimburse the MTO, tenant or other Facility User for any such damage within thirty (30) calendar days of written demand.
  - a. Under no circumstances shall the MTO be liable for the acts or omissions of a Facility User that results in any damage to a tenant's or other Facility User's property.

#### ITEM 332: INSURANCE

- 1) 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.
- 2) Every Facility User and any other party using the Terminal shall obtain and maintain insurance in the type applicable to cover bodily injury and property damage arising out of their work at or upon the Terminal. The following is the minimum insurance coverage that must be secured:
  - a. Workers' Compensation Insurance (Including Longshoremen & Harbor Workers Act, if applicable). This coverage is required under federal and state statutes for all the Facility User's or other party's employees performing their work.
  - b. Employer's Liability and Maritime Employer's Liability (including Jones Act coverage for masters and members of crew), as applicable, in an amount not less than \$2,000,000 per occurrence.
  - c. Commercial General Liability including coverage for products/completed operations and personal and advertising injury and/or Comprehensive Marine General Liability, Stevedore's Liability, Protection and Indemnity, Charterer's Legal Liability, and any other insurance required by state and federal law, as applicable, with separate limits in an amount not less than \$5,000,000 for each coverage, on a per occurrence basis. Coverage should include liability assumed under contract; broad form property damage covering property in the insured's care, custody and control; and coverage for claims for bodily injury, personal injury, death or property damage occurring on, in or about any vessels being loaded or unloaded by a Facility User or other party at the Terminal and other adjoining areas.
  - d. Automobile Liability, including owned and non-owned vehicles with a \$2,000,000 per person limit for bodily injury, a \$2,000,000 limit per incident and a property damage limit of \$2,000,000 per incident.
  - e. Pollution Legal Liability of \$3,000,000 per loss and \$6,000,000 annual aggregate.
  - f. Any insurance not otherwise mentioned hereunder which is customary and/or reasonable in the Facility User's or other party's business, in amounts that are reasonable under the circumstances.
  - g. Every party shall submit to the MTO, upon request, certificates of insurance as evidence of the required coverage. Such insurance shall provide that the MTO is to be given thirty (30) days' prior written notice of any cancellation. Such insurance shall be primary, and shall not seek contribution from any insurance or self-insurance carried by the MTO. Failure of the MTO to request the proof of insurance as required herein, or to notice discrepancies in the evidence submitted, shall not excuse a party from the insurance requirements of this Tariff.

#### ITEM 334: LIMITATION OF LIABILITY

- 1) Every Facility User shall defend (using legal counsel acceptable to the MTO), indemnify, and hold harmless the MTO from and against, and reimburse the MTO for, any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against or incurred by the MTO and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following:
  - a. Any act, omission, or negligence of the Facility User;
  - b. any use, occupation, management, or control of any portion of the Terminal by the Facility User, whether or not due to the Facility User's own act or omission and whether or not occurring at the Terminal;
  - c. any breach, violation, or nonperformance of the regulations, rules, and terms of this tariff, including any Costs associated with claims that the Facility User hindered, delayed, disrupted, damaged or otherwise interfered with the operations or property of the MTO or any other Facility User;
  - d. any damage caused by the Facility User on or to the Terminal facility or other property within the Terminal; or
  - e. any spill, release, or discharge of pollution, invasive species, or hazardous materials into the air, land, groundwater, surface water or sediments at or in the vicinity of any of the Terminal that are associated with or relate to, or are caused by, the Facility User, including but not limited to the Facility User's vessels, equipment, or operations.

For purposes of this Item 334(1) only, "Facility User" shall be deemed to include Facility User and Facility User's respective affiliates, partners, officers, directors, agents, employees, invitees, contractors, and/or subcontractors, and the "MTO" shall be deemed to include the MTO and the owner of the Terminal, their respective affiliates, and each of their respective officers, directors, agents, employees, representatives, successors and assigns. 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) 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, \$10 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.

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.

3) In instances where the MTO is acting as a warehouseman and/or is storing or handling the goods, other than 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) 10 times the monthly storage charge applicable to such lost, damaged and/or destroyed goods, (4) \$0.10 per pound for said lost, damaged, and/or destroyed goods, not shipped or stored in bulk; (5) \$10 per long ton for bulk cargo, or (6) \$10 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.

- 4) 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.
- 5) 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.
- 6) With respect to cargo carried by truck; the loading and unloading of cargo shall be under the supervision of the driver of the truck, including but not limited to proper loading while not exceeding documented height, weight or length limitations. The MTO accepts no responsibility for consequences arising out of the improper loading of any vehicle to heights, weights or lengths in excess of capacity of the vehicle or in excess of local, state or federal regulations. Drivers shall be responsible for the safe operation of their vehicles. 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.
- 7) Under no circumstances will the MTO be liable for any type or truck demurrage, rail demurrage, barge demurrage, detention, or waiting time.
- 8) 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.
- 9) Any vessel owner, vessel charterer, cargo shipper, cargo consignee, cargo owner, trucker, rail carrier, and/or other Facility User 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.
- 10) 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 Facility User, 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 Facility User assumes the risk of any such open pier and/or berth from any loss or damage resulting therefrom.

11)

- 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.
- 12) Any Facility User which utilizes, occupies or operates upon an Exclusive Storage Area shall, at no expense to MTO whatsoever, be solely responsible for all maintenance and repair of such Exclusive Storage Area, less normal wear and tear, for all maintenance and repair required during the duration of the Facility User's utilization, occupancy or operation upon the Exclusive Storage Area unless such maintenance and repair is necessitated by damage caused by the MTO's negligence. The term "repairs" shall include replacements, restoration and/or renewals when necessary. Facility User waives the right to make repairs at the expense of MTO as may be provided for in any applicable statute or rule of law.

- 13) No provision contained in this Schedule shall limit or relieve 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 or which are berthed at the MTO's facility 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, manager 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 or Other Fault:
  - 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 or other negligence, fault, or breach of contract or warrants. 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 and any other fault, negligence, or responsibility of shipper, consignor, consignee and cargo owner.
  - 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), manager(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 or seaworthiness 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 in and around the port 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 Facility User 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**

<b>MISCELLANEOUS CHARGES</b>		
<b>ITEM</b>	<b>RATE</b>	<b>PER</b>
SCALING	\$ CALL	
FACILITY USE FEE	\$ 1.00	NT
PORT SECURITY CHARGE – BREAKBULK	\$ 0.23	ST
PORT SECURITY CHARGE – BULK / STEEL SCRAP	\$ 0.07	ST
LINE HANDLING - Straight Time	\$ 500.00	Tie Up
LINE HANDLING – Straight Time	\$ 500.00	Let Go
LINE HANDLING – Overtime	\$ 725.00	Tie Up
LINE HANDLING – Overtime	\$ 725.00	Let Go
NON-TWIC ESCORT CHARGE	\$ 50.00	Hour/Per escort
TWIC ESCORT TRAINING CHARGE*	\$ 25.00	Individual
TRANSFER OF CARGO OWNERSHIP	\$ 25.00	Transfer

\*TWIC Escort Training must be arranged in advance by contacting the FSO at (215) 295-7678 or via e-mail at [Ops-FairlessHills@portcontractors.com](mailto:Ops-FairlessHills@portcontractors.com).

<b>DOCKAGE</b>		
<b>ITEM</b>	<b>RATE</b>	<b>PER</b>
BARGE DOCKAGE	\$ 0.75	LINEAR FOOT PER DAY
SELF PROPELLED VESSEL DOCKAGE Per 24-Hour Period or Fraction	\$ 0.37	Net Registered Ton
MINIMUM CHARGE	\$ 1,400.00	DAY

<b>WHARFAGE</b>		
<b>ITEM</b>	<b>RATE</b>	<b>PER</b>
BULK SALT	\$ 1.44	ST
BULK SUGAR	\$ 1.48	ST
BULK COAL, COKE	\$ 1.55	ST
BULK SLAG, STONE, CEMENT, ALLOYS	\$ 1.73	ST
BULK – NOS	\$ 1.78	ST
CARGO – GENERAL/HEAVY LIFT UP TO 10 CUBIC FEET/ST	\$ 2.06	ST
CARGO – GENERAL/HEAVY LIFT >10 CUBIC FEET/ST UP TO 80 CUBIC FEET/ST	\$ 2.47	ST
CARGO – GENERAL/HEAVY LIFT EQUAL TO AND GREATER THAN 80 CUBIC FEET/ST	\$ 1.80	MEASUREMENT TON OF 40 CUBIC FEET
STEEL BULK - SCRAP	\$ 1.50	NT
STEEL – COIL, SKIDDED COIL, SLABS, PLATE, BAR, BILLET, BEAMS, CHANNELS, WIRE ROD, REBAR, PIPE	\$ 1.50	ST

PLYWOOD, DIMENSIONAL LUMBER IN BUNDLES	\$ 2.06	ST
ALUMINUM INGOTS, T-BARS, SOWS, BILLETS, COILS	\$ 1.80	ST
VEHICLES < 8,500 LBS. PER UNIT	\$ 6.17	VEHICLE
VEHICLES ≥8,500 LBS PER UNIT	\$ 12.34	ST
SUPERSACKS – NOS	\$ 1.80	ST
ALL OTHER CARGO CALL FOR QUOTE	\$ CALL	

<b>TERMINAL SERVICES: RECEIVING/LOAD-OUT COMMODITY RATES TO/FROM DUMP OR FLAT BED TRUCKS</b>		
<b>ITEM</b>	<b>RATE</b>	<b>PER</b>
BULK SALT	\$ 2.00	ST
BULK SUGAR	\$ 2.00	ST
BULK COAL, COKE	\$ 2.00	ST
BULK SLAG, STONE, CEMENT	\$ 2.00	ST
BULK ALLOYS	\$ 3.00	ST
CARGO – GENERAL/HEAVY LIFT UPTO 80 CUBIC FEET PER ST OR LESS	\$ 20.00	ST
CARGO – GENERAL/HEAVY LIFT OVER 80 CUBIC FEET PER ST	\$ 34.00	ST
STEEL SCRAP	\$ 3.00	ST
STEEL COILS: 2 ST UP TO 5 ST	\$ 6.00	ST
STEEL COILS > 5 ST	\$ 5.00	ST
STEEL SLABS	\$ 5.00	ST
STEEL COILS ON SKIDS	\$ 7.00	ST
STEEL PLATE, BAR, REBAR,BEAMS,CHANNELS,PIPE	\$ 11.75	ST
STEEL BILLET, BLOOMS, WIRE ROD, COILS < 2 ST	\$ 11.00	ST
PLYWOOD, DIMENSIONAL LUMBER IN BUNDLES	CALL	
ALUMINUM INGOTS, T-BARS, SOWS, BILLETS	\$ 11.75	ST
ALUMINUM SHEETS IN COILS	\$ 7.00	ST
VEHICLES <8,500 LBS. PER RUNNING UNIT, RECEIVING OR DELIVER, INCLUDES INSPECTION.	\$ 32.00	VEHICLE
VEHICLES ≥8,500 LBS. PER RUNNING UNIT, RECEIVING OR DELIVER, INCLUDES INSPECTION.	\$ 42.00	VEHICLE
SUPERSACKS - > 1 ST	\$ 7.00	ST
NOS ALL CARGO RATES – TO / FROM RAIL CARS OR VANS	CALL	
TRUCK LOADING MINIMUM CHARGE*	\$ 110.00	Bill of Lading (BOL)

\*Truck Loading Minimum Charge applies for each additional bill of lading loaded, except in the case where loading the last cargo of one BOL and moving to the next.

OPEN AREA STORAGE RATES*		
ITEM	RATE	
BULK SALT, COAL, COKE, SLAG, STONE, CEMENT	\$ 0.15	ST / WEEK
STEEL SCRAP	\$ 0.25	ST / WEEK
STEEL COILS, SLABS	\$ 0.40	ST / WEEK
STEEL PLATE, BAR, REBAR, BEAMS, CHANNELS, PIPE	\$ 0.60	ST / WEEK
ALUMINUM	\$ 0.60	ST / WEEK
CARGO – GENERAL/HEAVY LIFT UPTO 80 CUBIC FEET PER ST OR LESS	\$ 0.60	ST / WEEK
CARGO – GENERAL/HEAVY LIFT OVER 80 CUBIC FEET PER ST	\$ 1.00	ST / WEEK
VEHICLES < 8,500 LBS	\$ 6.00	UNIT / DAY
VEHICLES ≥8,500 LBS	\$ 12.00	UNIT / DAY
EXCLUSIVE STORAGE AREA**	\$ 3,500.00	ACRE/MONTH

COVERED AREA STORAGE RATES*		
ITEM	RATE	
ALL COMMODITIES	\$ CALL	

**\*After 16 weeks of storage with respect to a particular cargo, the applicable rate shall increase by 1.75% of the applicable rate and such increased rate shall increase by 1.75% ever 4 weeks on a rolling basis.**

**\*\*Facility User shall pay the greater of the applicable cargo commodity storage rate or the Exclusive Storage Area storage rate.**