FENIX MARINE SERVICES, LTD

PoLA PIER 300 MARINE TERMINAL OPERATOR SCHEDULE

RULES/REGULATIONS/RATES

This marine terminal operator rate schedule ("Schedule") is issued by Fenix Marine Services, Ltd in accordance with section 8 (f) of the Shipping Act of 1984, as amended (46 U.S.C. § 40101 *et seq*.) (hereinafter, "the Shipping Act, as amended"), including 46 U.S.C. § 40501 (General rate and tariff requirements), and the regulations of the Federal Maritime Commission (Title 46 Code of Federal Regulations Subchapter B), including 46 C.F.R. Part 525 (Marine Terminal Operator Schedules).

The Effective Date of this Schedule unless otherwise indicated herein is April 28, 2021. There is no expiration date.

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1. SCHEDULE

In the event that an executed agreement for Rates does not exist between a CUSTOMER and OPERATOR for any specific item in this Schedule, or an executed agreement between a CUSTOMER and OPERATOR does not specifically address rules, regulations, charges, services and/or fees contained herein, the provisions of this Schedule shall apply, in accordance with Section 32 below.

Use of the Terminal, wharves, other facilities, or property of, or receipt of Services under the jurisdiction of or provided by, OPERATOR shall constitute a consent to and acceptance of the terms and conditions of this Schedule and shall evidence an agreement on the part of all vessels, their owners, charterers and agents, or other users or recipients of Services—including but not limited to Beneficial Cargo Owners (BCOs), Non-Vessel-Operating Common Carriers (NVOCCs), Rail Carriers, Intermodal Equipment Providers (IEPs), Truckers, and Chassis Providers—to pay all applicable charges and abide by all rules and regulations of OPERATOR and to abide by the rules and regulations of this Schedule.

Except as otherwise provided in this Schedule, the applicable Rates, charges and fees shall be those in effect at the time Services are rendered, plus any applicable interest or additional charges or fees.

Except as otherwise provided in this Schedule, the applicable rules and regulations shall be those in effect at the time the rule or regulation is applied and enforced.

OPERATOR reserves to itself the right to interpret and determine the applicability of any of the Rates, charges, or fees provided for in this Schedule and to assess charges or fees in accordance with any such interpretation and determination. OPERATOR reserves to itself the right to determine the applicability of any rule or regulation of this Schedule and to enforce any such rule or regulation in accordance with any such interpretation or determination.

This Schedule does not include an expiration date.

This Schedule is published and made available to the public pursuant to the Shipping Act, as amended, and shall at all times be legally enforceable as between CUSTOMER and OPERATOR. All references to a tariff, schedule, Service, *etc*. of OPERATOR not otherwise specified shall be deemed to refer to this Schedule and the Rates, regulations and practices, and terms and conditions, set forth herein.

This Schedule may be changed by OPERATOR from time to time without notice.

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2. DEFINITIONS

"CUSTOMER" means any alliance, alliance member, vessel, vessel owner, carrier, agent, vessel operator, vehicle, conveyance, consignor, consignee, beneficial Cargo owner, freight forwarder, NVOCC, person, Cargo, equipment, chassis, or any other person or entity, including but not limited to the agents, other providers, and other subcontractors (at any level) of any of the foregoing, who is provided with, benefits from, or receives any Services whatsoever, or person or business entity who owns or claims an interest in, right to, attachment, or lien regarding any vessel, vessel equipment, equipment, or Cargo.

"GOODS" or **"CARGO"** means all cargo, goods, and other personal property items, including any equipment associated with or utilized by the foregoing, with respect to which OPERATOR is requested to and/or does perform any Services, and all packing, packaging, crates, cradles, pallets, tanks, platforms, flatbeds, trailers, containers, chassis, other equipment, and other items, materials, and supplies associated therewith, and any goods or cargo that benefits from Services at the Terminal or utilizes the Terminal. The capitalized and non-capitalized words "Goods" and "Cargo", as well as both the singular and plural versions of each, shall have the same meaning as Goods and Cargo in this definition.

"OPERATOR" means Fenix Marine Services, Ltd as applicable to the Service(s) to be provided. Fenix Marine Services, Ltd is a "Marine Terminal Operator" as defined by FMC Regulation, 46 C.F.R. § 525.1(13).

"HANDLING" means the Service of physically moving Goods at the Terminal.

"FMS" means Fenix Marine Services, Ltd.

"**LOADING**" or "**DISCHARGING**" means the service of loading or unloading Goods between a place of rest at the Terminal and any vessel, rail car, trucks/motor vehicle, or other Conveyance.

"PoLA" or **"PORT"** means Port of Los Angeles. All the navigable waters within the City of Los Angeles included within, or northerly of, the Los Angeles Harbor Breakwater and the easterly prolongation thereof in a straight line to its intersection with the easterly boundary line of the City of Los Angeles are herein designated

"PORT OF LOS ANGELES TARIFF" or "**PORT TARIFF**" means The Port of Los Angeles Tariff No. 4 or its successor.

"RATE" means a price that OPERATOR will charge for providing a Service in or around the Terminal.

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"TERMINAL" means a facility with one or more structures comprising a terminal unit owned and/or operated by OPERATOR, including, but not limited to, docks, wharves, warehouses, covered and/or open storage spaces, cranes, buildings, other structures, property, and any equipment.

"SERVICE" or **"SERVICES"** means checking Cargo, dockage, free time, Handling, rehandling, loading and unloading, Storage, terminal usage, wharfage, and wharf demurrage, as defined herein, as well as any other providing of, use of and/or access to a Terminal whatsoever, including any providing of, use of and/or access to personnel, labor, services, materials, supplies, tools, equipment, personal property and real property, water, electricity, and other service, supplies, or materials, and whether provided at such Terminal or elsewhere.

"STORAGE" means the service of providing yard space, warehouse or other terminal facilities for the storage of inbound or outbound Cargo including related equipment after the expiration of free time, if applicable, including wharf storage, shipside storage, closed or covered storage, open or ground storage, and bonded storage.

"CITY" means the City of Los Angeles.

"CEO" means the Chief Executive Officer of Pier 300 and shall also include his duly authorized agent or representative.

"PRIVATE PREMISES" means and includes all premises, wharves, docks, or areas other than municipal.

"WHARF" means and includes any wharf, pier, quay, or other structure to which a vessel may make fast or which may be utilized in the transit or handling of goods and merchandise, and shall also include all of the area between pier head and bulkhead lines; excepting, however, such locations as may be designated and set apart as public landings or for private use.

"WHARF PREMISES" means and includes , in addition to the area included in the term "WHARF," other port terminal facility areas, alongside of which vessels may lie or which are suitable for and are used in the direct loading, unloading, assembling, distribution or handling of merchandise under, over, or onto a wharf.

"VESSEL" means steam boats, motor boats, sailing vessels, barges, lighters, ferry boats, pleasure craft and any and all other water craft.

"MERCHANDISE" means and includes but is not limited to commodities, goods, wares, freight, liquids, articles and materials of every kind whatsoever, including bulk materials, cargo containers when empty, live animals, vessel's stores and supplies.

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"MERCHANDISE IN BULK" means merchandise which, by nature of its unsegregated mass, is usually handled by shovels, scoops, buckets, forks, or mechanical conveyors, and which is not loaded or unloaded and carried in a "Package", as defined below, and is received and delivered by carrier without transportation mark or count. (Will not apply when subject to piece count.)

"DIRECT" means a continuous operation between barge, car, or truck and vessel when performed by vessel's stevedores, pipeline, or any mechanical means.

"CARGO UNITS" mean, excluding "Merchandise in Bulk" as defined above, the package containing merchandise or the method of waterborne conveyance of such merchandise and are defined as follows:

(1) **"PACKAGE"** is defined as the producer's or manufacturer's type of packaging containing merchandise. The package may be a carton, bag, barrel, drum, crate, bale, box, bundle, pail, flask, or basket. Merchandise may be conveyed in its Package or Packages in a "Unitized Load," "Cargo Van," or "Container" as defined below.

(2) **"UNITIZED LOADS"** are defined as that merchandise which is secured to pallets or skids by banding or otherwise being securely held together to form a single shipping unit to permit handling by mechanical equipment. The term does not include merchandise temporarily palletized for the purpose of terminal handling or for loading or unloading vessels.

(3) **"CARGO VAN"** is defined as any type of cargo conveyance, which is non-disposable, having a cargo capacity of not less than 2 cubic meters and having dimensions smaller than those of a "Container", defined below.

(4) **"CONTAINER"** is defined as any type of cargo conveyance which is non-disposable, having an outside length of not less than 6.04 meters, and which is primarily designed, constructed, certified and approved by an ocean carrier for the ongoing use and transport of commodities aboard its vessels.

"CONTAINER FREIGHT STATION (CFS)" means a location designated by the water carrier for receiving and delivery of merchandise in connection with the stuffing and unstuffing of containers.

"BUNKERS" means those petroleum products which are utilized by a vessel as fuel for its own power.

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3. LEGAL HOLIDAYS

The following are legal holidays for purposes of this Schedule:

A. New Years Eve, December 31st- Limited
B. New Years Day, January 1st – Terminal Closed
C. Martin Luther King's Birthday, the third Monday in January - Limited
D. Lincoln's Birthday, February 12th - Limited
E. President Day, the third Monday in February - Limited
F. Cesar Chavez' Birthday, March 31st- Limited
G. Memorial Day, the last Monday in May - Limited
H. Independence Day, July 4th–Terminal Closed
I. Bloody Thursday, July 5th – Terminal Closed
J. Harry Bridges Day, July 28th - Limited
K. Labor Day, the first Monday in September – Terminal Closed
L. Columbus Day, second Monday in October - Limited
M. Veteran's Day, November 11th - Limited
N. Thanksgiving Day, the fourth Thursday in November – Terminal Closed
O. Christmas Eve, December 24th - Limited
P. Christmas Day, December 25th – Terminal Closed
Q. Every day proclaimed by the President of the United States or Governor of the State of California to be a legal holiday.

Unless designated as "Terminal Closed", a Holiday that is listed above as "Limited" shall have limited operating hours and or charges for services will be on an overtime basis.

If any of the holidays listed in this item falls upon a Sunday, the Monday following shall be observed as a "LEGAL HOLIDAY".

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4. OPERATOR'S RULES/OBLIGATIONS - STEVEDORING

4.1 GENERAL

OPERATOR shall:

A. Provide and perform at its respective Terminal the Services as hereinafter described for the CUSTOMER'S full and empty 20', 40' and 45' sea freight containers Loaded to or Discharged from container vessels with fitted lashing equipment. Stevedoring Services for CUSTOMER's full and empty 53' or non-20'/40' sea freight containers as well as non-containerized Cargo shall be subject to a surcharge and, if necessary, Extra Labor per the Schedule of Rates.

B. Supply all necessary employees, labor, supervision, and necessary equipment based on I.S.O. standards and non-containerized stevedoring and Terminal Services.

C. Perform stevedoring Services in accordance with the ILWU/PMA Collective Bargaining Agreement. Third shift work will be performed only if requested by CUSTOMER and accepted by OPERATOR, at CUSTOMER's expense.

D. Perform yard and gate Services 0700-1200 and 1300-1700, Monday through Friday and 1800-2200, 2300-0300 Monday through Thursday (exclusive of weekends/holidays). Yard and gate Services outside these hours may be performed, if requested in writing by CUSTOMER and accepted by OPERATOR, at CUSTOMER's expense.

4.2 VESSEL STEVEDORING

OPERATOR shall:

A. Plan Discharging and Loading sequences of containers, as well as non-containerized Cargo, in accordance with the inbound stowage plan and the pre-stow instructions of CUSTOMER.

All or part of CUSTOMER's outbound containers may be mix-stowed with

any other containers, for the same discharging port.

For export receiving, gate cut-off for specific vessel will be 24 hours prior to vessel arrival or last 2nd shift worked prior to vessel arrival, whichever is earliest.

Master or CUSTOMER's agent shall approve the loading plan prior to commencement of Loading.

B. Prepare and furnish to CUSTOMER appropriate outbound container stowage plan.

C. Lash or unlash containers, as well as non-containerized Cargo, stowed on or under deck of vessels.

D. Discharge inbound containers from vessels and deck them in the Terminal or keep them on wheels per OPERATOR's operational requirements. Inbound intermodal train containers may be decked or wheeled, at OPERATOR's discretion, at an area in the Terminal designated by OPERATOR for special release.

E. Dray outbound containers from a point of rest in the Terminal to the berth, load to and stow them onboard vessels.

F. Discharge non-containerized Cargo from vessels or load to and stow non-containerized Cargo onboard vessels. Additional expenses related to such Service shall be billed per the Schedule of Rates.

G. Shift containers from a cell to another cell or on-land containers and re-load them on board vessels as per CUSTOMER's instruction. A surcharge shall apply for such activities.

Change of discharging port, optional stowage, *etc.*, shall be for CUSTOMER's account. Expenses for shifting and/or rehandling, including but not limited to set-asides of each related container, shall be for CUSTOMER's account.

H. Check and record the movement of containers and non-containerized Cargo on and off vessels and shifted onboard vessels, taking damage exceptions where apparent. When damage exceptions are noted, OPERATOR will notify CUSTOMER within a reasonable period of time.

4.3 GANG ORDERING AND BERTHING OF VESSELS

A. OPERATOR shall assign a berth as available upon the arrival of CUSTOMER'S container vessel and, unless otherwise agreed between OPERATOR and CUSTOMER, start vessel's operation at the commencement of the next 1st or 2nd shift succeeding the vessel's arrival at the Terminal.

B. OPERATOR shall, unless otherwise agreed between OPERATOR and CUSTOMER, decide the number of gangs to order after consulting with CUSTOMER in advance.

C. Labor gang(s) will be ordered by OPERATOR on the basis of the latest ETA given by CUSTOMER before closing time to file and/or cancel labor gang orders for the anticipated working shift.

D. If requested by CUSTOMER, OPERATOR will order gangs for a vessel known to be arriving after beginning the work shift, provided that CUSTOMER is responsible for standby costs associated with a delayed Arrival.

E. CUSTOMER may request OPERATOR to arrange gang(s) for 3rd shift. OPERATOR has the right to accept or refuse request at their discretion for any reason. Any labor standby, detentions (except those caused by OPERATOR or his equipment), and/or deadtime incurred on 3rd shifts, shall be for CUSTOMER's account.

F. Extra labor will be for CUSTOMER'S account.

G. OPERATOR shall not be responsible for shortage of, or inability to obtain, labor gang(s) or labor.

4.4 CONTAINER YARD ACTIVITY

A. OPERATOR shall:

1. Provide that all full outbound and inbound containers, as well as empty containers, will be decked in the container yard, except for those the OPERATOR chooses to be keep on wheels, including but not limited to

hazardous Cargo, live reefers and over-dimensional Cargo, flat racks, and tanks, at OPERATOR's discretion.

2. Deliver containers to be released to truckers and deck containers received from truckers, except those to be kept on wheels per OPERATOR's operational requirements and as described in Section 4.4.A.1.

3. Plug and unplug (or the reverse) each reefer container entering (Export) or exiting (Import) the yard.

   A minimum of two (2) charges shall apply for each container. OPERATOR shall monitor temperatures and ventilation settings on the reefer units approximately every twelve (12) hours, and report to CUSTOMER any discrepancies found as soon as practicable. The documentation shall be kept by the OPERATOR and provided to the CUSTOMER upon request. OPERATOR shall check temperatures of export (outbound) reefer containers received through the gate per the receiving procedure as mutually agreed upon between OPERATOR and CUSTOMER.

   a. At CUSTOMER's option, OPERATOR may file necessary documentation to CARB for carrier credits. In such cases, OPERATOR shall collect said fees and reimburse CUSTOMER less 65% of total.

   b. If CUSTOMER chooses to file for credits to CARB directly, OPERATOR may provide necessary supporting documentation to CUSTOMER at a cost of $35 per reefer per day.

B. Release of Local Delivery Containers. Containers will become available to pick up at the start of the next working shift subsequent to 3:00 a.m. after each container has been discharged from the working vessel, provided that all release criteria contained in the system of the OPERATOR have been met and import pick-up appointment has been secured.

C. Release of Empty Containers. Empty containers will be decked for delivery to truckers or for loading to vessels by container type and size. OPERATOR will not release empty containers by number for off-leasing or any other purpose.

In the event the release of specific empty container(s) is requested and granted by OPERATOR,

CUSTOMER shall be accountable for all shifting and/or rehandling fees to/from for each related container to access target empty container(s).

D. Live Reefer Containers, Hazardous Containers, Over-Dimension Containers, Late and Early Received Outbound Containers. Live reefer containers, containers with certain classes of hazardous materials, over-dimension containers, outbound containers received after cut-off and outbound containers received for other than the immediate vessel, may be kept on wheels on the Terminal per OPERATOR's operational requirements.

If CUSTOMER's reefers require halide testing per PMA/ILWU-established reefer halide testing procedures, CUSTOMER shall be responsible for all costs. Daily Storage fees for failed halide test container shall be applicable and for the account of CUSTOMER. In the event halide testing delays and causes standby and/or rehandling in the yard and/or against the vessel, CUSTOMER shall be accountable and billed at the Extra Labor Rate, in addition to the halide test and Storage fees, if any.

E. Receiving of Outbound (Export) Containers. In order for OPERATOR to receive an outbound loaded container prior to the free time for a scheduled vessel, CUSTOMER must consent to the applicable demurrage charges. Free time allowed and wharf demurrage charges are set forth in the Port of Los Angeles Tariff and may be changed from time to time at the discretion of the Port of Los Angeles.

Bare chassis drayed out of the Terminal after the decking of an outbound full or empty container are subject to the normal gate processing, equipment interchange receipt ("EIR") issuing and fees, if applicable.

F. In Yard Shifting/Rehandling. If CUSTOMER requests that a container be shifted or rehandled for whatever reason, including but not limited to rolls, vessel change, or return to shipper, the applicable Rate shall be applied to the target container and each non-target container move to/from its location.

G. In-Yard Drayage of Container. OPERATOR will perform in-yard drayage of containers per CUSTOMER's request, per the requirement of any government agency, or per maintenance and repair needs, at CUSTOMER's expense. Charges for additional drayage regarding the same equipment shall be for CUSTOMER's account.

H. Chassis Switch/Flip. OPERATOR will perform billable chassis switches for Terminal wheeled Cargo, including but not limited to out of gauge ("OOG"), hazardous, reefer, flat racks, tanks and trucker requested switches due to trucker owned chassis or CUSTOMER-owned or -

leased chassis, damaged chassis or shortage of genset chassis. OPERATOR will bill CUSTOMER for all switches. CUSTOMER shall not be released of any chassis switch responsibility and fees due to the use of third-party chassis pools. Any chassis switch caused by the negligence/fault of OPERATOR or Terminal convenience shall be for OPERATOR's account.

I. Storage of Containers and Chassis.

1. CONTAINER STORAGE

Inbound and outbound full containers shall be stored in the Terminal subject to the Rates, rules, and regulations of wharf demurrage, wharf Storage and free time in the Port of Long Angeles Tariff. If CUSTOMER requests OPERATOR to collect port demurrage above and beyond that specified in PoLA Tariff, OPERATOR shall forward CUSTOMER's demurrage fees, less the Port Tariff fees and less 10% of CUSTOMER's total demurrage collected. If CUSTOMER waives, guarantees, or extends demurrage, CUSTOMER remains responsible and will be invoiced the Port Tariff fee by OPERATOR.

CUSTOMER will work with OPERATOR in good faith to minimize empty container Storage at the Terminal. In the event that storage exceeds the allowance, OPERATOR shall invoice CUSTOMER per the Schedule of Rates. Once the allowance is exceeded, OPERATOR may ask the CUSTOMER to redirect empty containers to other facilities. OPERATOR will have the right to cut off empty returns if the allowance is exceeded after prior notification to CUSTOMER. In special circumstances, including but not limited to construction, crane moves, and when empty container volume is negatively impacting operation, OPERATOR may require CUSTOMER to mitigate empty container returns to the Terminal or redirect empty containers to other facilities.

2. CHASSIS STORAGE

CUSTOMER shall ensure that the third-party chassis provider will have the necessary quantity of chassis available for CUSTOMER's Cargo and Cargo which is required to be on wheels, including but not limited to reefers, hazardous, non-containerized Cargo, flat racks, and tanks. In the event that the chassis provider does not supply the chassis and CUSTOMER Cargo is mounted on another chassis provider's equipment, CUSTOMER shall be subject to any applicable daily fees. CUSTOMER will also be responsible for switching to the correct chassis as soon as possible and at CUSTOMER's expense. In no case shall OPERATOR be

responsible for any chassis usage fees.

Any unidentified chassis remaining on the Terminal and linked to CUSTOMER by yard and gate transaction history shall be the responsibility of CUSTOMER, regardless of chassis ownership.

3. CHASSIS - POOL OF POOLS (POPs)

Unless OPERATOR has a separate hosting agreement with an IEP, the following terms shall apply:

a. OPERATOR will gate PoP chassis in and out of terminal. FMS will maintain a daily inventory of chassis on terminal. EDI of chassis number will be provided for all chassis read by Optical Character Recognition (OCR). Chassis not read by OCR will not be corrected by hand. Inventory will be performed by a clerk to include chassis counts by size, but not specific chassis numbers. A daily report of containers on wheels by shipping line and by usage type will be provided.

b. OPERATOR will receive, store and stack chassis in the container yard.

c. OPERATOR may limit inventory to 1.3 times the trailing three weeks average wheeled container throughput. FMS may limit bobtail transactions for grounded containers.

d. OPERATOR will provide, either directly or indirectly, chassis maintenance and roadability services at individual IEP or Trucker direction, per the Schedule of Rates.

e. OPERATOR will not provide inspection services at gate, storage or stacking area. If chassis inspection is required by an IEP, Government Regulation or due to union jurisdiction, additional fees will apply per the Schedule of Rates.

f. OPERATOR will provide the services described in items (a) through (e) during normal operating hours which includes Monday through Friday First shift and Monday through Thursday Second shift; subject to change based on demand. Opening gate services during any other shift is at the discretion of OPERATOR or at an additional charge.

g. Maintenance and Repair Services per Schedule of Rates. Damaged chassis which have been provided a repair estimate; however, not authorized for repair will be considered abandoned after 90 days if not authorized for repair or removed from terminal.

J. Government / Carrier Inspections

CUSTOMER shall be accountable for expenses related to inspections conducted by OPERATOR, including but not limited to Customs and Border Patrol ("CBP") inspection guidelines and any inspections that CUSTOMER requests.

CUSTOMER guarantees all inspection fees, as stated in the Schedule of Rates, and will be invoiced directly by OPERATOR.

OPERATOR will make reasonable commercial efforts to notify the CUSTOMER of pre-notified CBP inspections, but, whether notified or not, CUSTOMER shall remain accountable for these inspection fees.

Government fees are based on straight time (ST). Any additional costs, including but not limited to CBP overtime differentials, additional manning, materials, or equipment required to complete the inspection to move CUSTOMER cargo, shall be for the account of the CUSTOMER.

4.5 GATE ACTIVITY

OPERATOR shall:

A. Receive full or empty containers on chassis, as well as bare chassis at in-gates, per CUSTOMER's instructions. No physical inspection of containers or chassis will be performed at in-gates. OPERATOR shall make a cursory remote visual inspection of appearance of the containers and chassis and shall take exception notations on the interchange receipt for obvious damages or defects found through such cursory visual inspection in accordance with the following criteria:

1. In case of containers, if such damage or defects affects:

a. Basic structural integrity;

b. Normal Handling and transportation due to a decrease in structural strength or a deformation in excess of ISO external dimension tolerances; or

c. Substantial decrease of the inside cubic volume due to a deformation.

2. In case of chassis:

a. Major structural damage.

Whether noted or not, OPERATOR will not be responsible for damages or defects to containers or chassis.

B. In case of gate receipt of OOG containers, OPERATOR shall report discrepancies noted with respect to the CUSTOMER-provided booking information, such as:

1. Any over-height, over-width and over-length information not included in the booking information;

2. Any obstacles obstructing the safe loading of the OOG containers such as corner castings not accessible, no cell-guide clearance, *etc*.;

3. Any loose lashing or shifting of the Cargo; or

4. Any other requirements for the safe loading of OOG containers.

C. OPERATOR shall take the following additional actions regarding OOG containers:

1. Advise CUSTOMER of above discrepancies to prevent delays in loading to vessel;

2. Provide vessel with prestow information indicating vessel load locations of OOG containers; and

3. Make a good faith attempt to measure the oversize (over-height, over-width and over-length) dimensions after receipt of each OOG container and list the same on the Exception List and departure Baplie File (attachments to the bay plans).

D. OPERATOR, however, shall not receive the following containers:

1. Overweight containers exceeding the max-gross weight of the container as marked on the container;

2. Hazardous containers with the presence or release (including a threatened release) of hazardous substances inside and/or outside of the container in violation of any laws, statutes, ordinances, regulations, rules or other governmental requirements;

3. Hazardous containers without accompanying proper documentation mutually agreed upon;

4. Hazardous containers without proper placards, unless OPERATOR is authorized to affix placards at CUSTOMER's expense;

5. Flat rack or open-side containers with the Cargo not properly stowed and/or secured for ocean going carriage; or

6. Empty containers having placards for hazardous material remaining on the container, unless OPERATOR is authorized to remove placards for hazardous materials at CUSTOMER's expense.

E. OPERATOR shall release full or empty containers at out-gates per CUSTOMER's instructions, in accordance with the following guidelines:

1. Import (inbound) containers shall only be released upon receipt of electronic release authorization from CUSTOMER or its agent.

2. Empty containers to cover export bookings may be released from the Terminal.

3. Dray carriers shall be responsible to take exceptions upon leaving the Terminal for damages or defects found to CUSTOMER's equipment, which OPERATOR will note on the interchange receipt.

4. OPERATOR shall provide an Equipment Interchange Receipt (EIR).

G. OPERATOR shall weigh all export full containers received through Gate.

H. OPERATOR shall receive and deliver non-containerized Cargo at an area in the Terminal designated by OPERATOR. Charges shall be billed as Extra Labor to the CUSTOMER.

I. OPERATOR shall require full payment of the wharf demurrage/Storage for each inbound or outbound container, as applicable, prior to said container's release from the Terminal.

J. OPERATOR shall offer voluntary roadability. In the event that roadability is regulated or mandated, OPERATOR shall promptly advise CUSTOMER of such changes and the applicable rates shall, by consequence, be established and assessed by OPERATOR, payment for which shall not be unreasonably withheld by CUSTOMER. CUSTOMER's truck turn times will be impacted by these repairs. OPERATOR shall not be held responsible for any costs related to the Cargo delays resulting from roadability repairs.

K. OPERATOR shall identify all 3rd gate moves or non-vessel related gate moves, including but not limited to empty repositioning, gate to train, train to gate, gate in/out without vessel move. Such moves shall be for the account of the CUSTOMER and be invoiced periodically, per the Schedule of Rates.

4.6 MAINTENANCE AND REPAIR OF CUSTOMER'S EQUIPMENT

At OPERATOR's discretion, OPERATOR may provide maintenance and repair services at the Terminal for CUSTOMER'S equipment, in accordance with the below.

A. CUSTOMER will pre-authorize OPERATOR an automatic repair limit of $500 per Container, Chassis or Genset (together, "Equipment" for purposes of Section 4.6). Repairs exceeding $500 shall require specific authorization from the CUSTOMER, excluding reefer live loads.

B. When CUSTOMER requests and OPERATOR agrees to perform maintenance and repair services at a cost in excess of Section 4.6.A. above, CUSTOMER shall make decisions on the repair status of equipment within 48 hours after CUSTOMER receipt of the estimate from OPERATOR. If authorization to repair is not received by the expiration of this time, CUSTOMER must immediately dray off dock the damaged equipment at CUSTOMER's expense. Notwithstanding the aforementioned, any heavily damaged container or chassis exceeding 7 days within the Terminal shall be drayed off-dock immediately by and at the expense of CUSTOMER. OPERATOR shall not charge for estimates and drayage if CUSTOMER authorizes work. If estimated work is not authorized to be performed by OPERATOR, per the above conditions, OPERATOR shall charge CUSTOMER for the cost of estimates, any photos and drayage incurred.

C. If CUSTOMER utilizes roadability, an 8-point inspection shall be completed on the chassis and billed to the CUSTOMER. Any container repairs shall be for the account of the

CUSTOMER.

D. Due to the significance and value of reefer live loads, repairs of such reefers shall be completed automatically regardless of automatic repair limits outlined in Section 4.6.A above.

E. When required by PMA/ILWU, halide testing shall be performed and billed to CUSTOMER per the Schedule of Rates. In the event halide testing delays and causes standby in the yard and/or against the vessel, such costs and delay shall be for CUSTOMER's account.

F. Any loading/unloading of CUSTOMER'S equipment to and from flatbeds shall be for CUSTOMER's account.

G. Mechanic hourly rate is based on 1st/2nd/1st&2nd OT shifts, excluding Shorepower or Cold Ironing hourly rates. Repairs completed on third shift shall be billed per the Schedule of Rates.

H. All other maintenance or repairs not mentioned above or on the M&R Schedule of Rates shall be billed at Extra Man Hour rates + equipment at scheduled rate and other materials at cost plus 30%.

4.7 ON-DOCK DST (DOUBLE STACK TRAIN)

OPERATOR, if requested by CUSTOMER, may provide on-dock train loading and discharging services for CUSTOMER's dedicated on-dock train service, of which terms and conditions shall be set forth in this Schedule at Section 35.2.

4.8 SPECIAL CONTAINER SERVICE

Charges for Special Container Service shall be issued in accordance with those categories listed within the Schedule of Rates, inclusive of additional Services, including but not limited to inspections of containers and Cargo, except as otherwise provided, at Rates per the Schedule of Rates. The receiving and delivery of breakbulk Cargo, not directly discharged from a truck to the vessels or loaded directly to the vessel from a truck, shall be charged to CUSTOMER per the Schedule of Rates.

Fenix Marine Services, Ltd
Marine Terminal Operator Schedule
Identification No. [012360]
Effective Date: [April 18, 2021]

5. CUSTOMER'S OBLIGATIONS - STEVEDORING OPERATIONS

5.1 CUSTOMER shall provide OPERATOR with all information and instructions necessary to allow OPERATOR to provide efficient Services, including but not limited to:

A. Inbound (Import)

1. Stowage Plan and Special Instructions.

2. Reefer and Dangerous Cargo Manifests.

3. Awkward Cargo List, including details of awkward containers and non-containerized Cargoes.

4. A list of double stack train ("DST") containers and particulars of truckers, destination, scheduling, *etc*. as agreed to between CUSTOMER and OPERATOR.

CUSTOMER shall transmit all U.S. import stowage plan data along with all container and U.S. import Cargo manifest data to OPERATOR via an EDI format acceptable to OPERATOR. Such transmission of data shall be received by OPERATOR no later than 72 hours prior to the ETA of each applicable arriving vessel.

B. Outbound (Export)

1. Booking information regularly updated, inclusive of written instructions for dangerous Cargoes.

   CUSTOMER and OPERATOR shall close-out all booking information on a weekday (Mondays through Fridays, exclusive of holidays) at the time mutually agreed to by OPERATOR and CUSTOMER. OPERATOR shall follow the agreed upon close-out times and will be advised of such by CUSTOMER.

2. Details of dangerous Cargo, awkward containers and non-containerized Cargo.

3. Outbound pre-stow plan as soon as available and at least twenty-four (24) hours prior to vessel arrival.

4. A list of all DST containers and requirements, if applicable.

C. General

1. CUSTOMER shall advise OPERATOR of vessel schedules and Estimated Time of Arrivals (ETAs) in advance and shall notify OPERATOR of any changes to said schedules and/or ETAs, as they occur and with sufficient time that OPERATOR can properly plan the yard and berthing space.

2. CUSTOMER shall coordinate with OPERATOR regarding information on delivery and receiving schedules in advance and shall maintain cut-off times to allow for OPERATOR's preparation for container Handling.

3. CUSTOMER shall provide OPERATOR, reasonably in advance, with any other special instructions for yard and/or gate operations, to enable OPERATOR to prepare its operation plan to comply with such instructions.

4. CUSTOMER shall provide OPERATOR, via EDI, fleet file transmission of its owned and leased containers and chassis to be handled on the Terminal, specifying numbers, types and sizes of equipment.

5. CUSTOMER shall maintain its ship, gear, and equipment in a safe condition in full compliance with all the requirements of Pacific Coast Marine Safety Code (PCMSC), United States Public Law 85-742, O.S.H.A. regulations, and any other applicable laws and regulations.

6. CUSTOMER shall adhere to all local, state and federal Environmental Regulations and/or the Terminal's environmental requirements as set forth by the Port, City, State or Federal agencies, including but not limited to full compliance with the following:

    a. CERCLA and its implementing regulations;
    b. RCRA and its implementing regulations;
    c. The federal Clean Water Act (33 U.S.C. §§ 1251-1376, *et seq*.) and its implementing regulations;
    d. The California Porter Cologne Water Quality Control Act (California Water Code, Division 7) and its implementing regulations;
    e. The federal Clean Air Act (42 U.S.C. §§ 7401-7601) and its implementing regulations;
    f. The California Clean Air Act of 1988 and its implementing regulations;
    g. The state Lewis Air Quality Act of 1976 and its implementing regulations;
    h. The California Environmental Quality Act;

i. The National Environmental Policy Act; and
j. Any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standards of conduct) now or hereinafter in effect which concerns hazardous materials;
k. OGV Engine NOx limit of 3.4 g/kW-hr;
l. Vessel Speed Reduction Program; and
m. Alternative Maritime Power or other Cold Ironing Alternatives.

7. CUSTOMER shall advise OPERATOR of its intent to plug CUSTOMER's shorepower equipped vessel to wharf side Terminal Shorepower Outlets (SPO), for which terms and conditions shall be set forth under separate agreement.

8. If CUSTOMER chooses an alternative strategy instead of Terminal Shorepower Outlets, CUSTOMER shall notify OPERATOR in advance, in order to properly coordinate alternative operation with Terminal. If CUSTOMER's alternative strategy requires Terminal to provide space, labor, equipment and management, costs shall be for the account of the CUSTOMER and billed under Extra Labor, unless otherwise agreed to between OPERATOR and CUSTOMER.

5.2 CHASSIS

A Vessel Operating CUSTOMER shall arrange for sufficient chassis to be provided for their cargo which requires chassis. OPERATOR shall not be held responsible for any costs incurred by Vessel Operators caused by inadequate chassis supply or OPERATOR's use of chassis on the Terminal.

CUSTOMER shall be responsible and accountable for certain chassis-related Services provided by the OPERATOR, including:

A. Chassis switches/flips;

B. Repositioning and control of chassis, including but not limited to bare chassis terminal drayage, bare chassis out gate release, and bare chassis holds;

C. Chassis Storage on terminal; and

D. Provision of bare chassis to truckers for grounded containers.

5.3 ELECTRONIC DATA INTERCHANGE (EDI) for VOCCs

Each Vessel Operating Common Carrier CUSTOMER ("VOCC CUSTOMER", for purposes of Section 5.3) shall establish EDI access to OPERATOR's computer system for transmitting Outbound booking information and releases of inbound containers, as well as receiving gate activity data. OPERATOR and VOCC CUSTOMER agree to transmit activity messages, principally terminal operations activity messages, within two (2) hours of the occurrence of the event. This two-hour requirement is to be met by OPERATOR and VOCC CUSTOMER throughout the week including weekends and public holidays.

Computer services beyond normal terminal operator's functions may be provided by OPERATOR at VOCC CUSTOMER's expense.

5.4 GOVERNMENT REGULATIONS/REQUIREMENTS/PROGRAMS

CUSTOMER shall satisfy, abide and follow all applicable ocean vessel and/or container ship-related regulations, requirements and programs implemented by the Port, as well as City, State, and Federal regulatory agencies. Unless otherwise stated, such costs shall be the sole burden of CUSTOMER.

CUSTOMER shall also be responsible for any additional government costs assessed to the Terminal to clear the Cargo for out gate. In addition to inspections and exams, such costs could be for additional manning, government equipment leasing costs, overtime, *etc*. If billed to OPERATOR, OPERATOR shall pass through the costs to CUSTOMER unless special administrative steps are required, in which case, invoicing shall be completed on an Extra Labor basis.

5.5 HAZARDOUS SUBSTANCES

"Hazardous Substances", as used in Section 5.5, shall mean any hazardous, toxic, dangerous, or extremely dangerous substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local governmental authority. The term includes, without limitation, any substances containing constituents regulated as specified above.

CUSTOMER shall notify OPERATOR of any container with Cargo containing any Hazardous Substances and CUSTOMER shall be fully responsible for the proper and lawful transportation of said Cargo. CUSTOMER shall be responsible for misdeclarations of any cargo containing Hazardous Substances, and will be subject to a Misdeclared hazardous charge, as set forth in Schedule of Rates.

In the case of outbound containers, OPERATOR shall make commercially reasonable efforts to detect and

reject receiving such containers with the presence or release (including the threatened release) of Hazardous Substances in violation of any laws, statutes, ordinances, regulations, rules and other governmental requirements.

5.6 HAZARDOUS AND NON-HAZARDOUS MATERIAL RESPONSE

CUSTOMER shall have the full and sole responsibility, at CUSTOMER's expense, to manage and prepare all arrangements for the immediate remediation and removal of leaking, damaged or exposed hazardous or non-hazardous Cargo from the Terminal and for damaged (including leaking) non-hazardous Cargo remediation, transloading and/or removal from the Terminal. Such arrangements shall include but are not limited to discussions with shippers, consignees or other responsible parties; contracting with all required vendors to complete the process described above; providing consistent status updates to OPERATOR; and providing all applicable and/or required documentation of container and compensation to OPERATOR for all labor, equipment rental and materials provided during OPERATOR's assistance with remediation efforts as may be agreed to by and at the sole discretion of OPERATOR.

While responsibility always remains with CUSTOMER, if and when OPERATOR detects and/or determines that (1) there is a leak or spill of a hazardous or non-hazardous chemical or substance; (2) a container is giving off a suspect or potentially problematic odor; or (3) a container has significant damage or has been involved in an incident that poses a risk or threat to the Terminal, environment, or employees, OPERATOR shall notify CUSTOMER and promptly take such action as is necessary and possible by OPERATOR to mitigate and correct the violation. CUSTOMER shall be solely responsible for the cost of these actions, plus 30% for OPERATOR's administration.

CUSTOMER shall be fully responsible for the treatment, Handling and disposal of such hazardous and non-hazardous containers and shall indemnify and hold OPERATOR harmless from and against all liabilities, expenses, governmental agency fines, citations and/or violations, losses or claims resulting from the release and/or disposal of hazardous substances, except in any case whereby OPERATOR, or its employees, agents or sub-contractors, is deemed negligent by competent independent authority.

5.7 QUALITY / HAZARDOUS MATERIALS PROCEDURES / REQUIREMENTS

A. OPERATOR may require CUSTOMER, including its subcontractors and agents, to confirm and describe in writing how CUSTOMER will comply with assigned responsibility as set forth in government safety-related codes or standards as they specifically apply to CUSTOMER and/or its Cargo.

B. CUSTOMER agrees, with respect to shipments of hazardous materials and/or dangerous Goods transported pursuant to CUSTOMER's bill of lading, that CUSTOMER will review booking information supplied by CUSTOMER's individual customers for compliance with current applicable IMDG Code / 49 CFR Parts 100 to 199 provisions.

6. EXTRA WORK/LABOR

When requested by CUSTOMER, OPERATOR may perform extra work not mentioned within this Schedule at terms and conditions acceptable to OPERATOR and in accordance with applicable union collective bargaining agreements, the ILWU/PMA rules and governing regulations, including the Port of Los Angeles Tariff. Extra Work or Extra Labor will be billed at Extra Man Hour rates + equipment at scheduled rate and other materials at cost, plus 30%.

7. TRAFFIC MITIGATION FEE

Each piece of Equipment that enters or leaves the Terminal shall be subject to all of the Schedules published from time to time by West Coast MTO Agreement on behalf of its marine terminal operator members under authority of Federal Maritime Commission Agreement No. 201143, *see* https://www.pierpass-tmf.org/, including but not limited to the assessment, as applicable, of a traffic mitigation fee (the "TMF") as per the Schedule of Rates. For purposes of this Section 7, "Equipment" is defined to include a container, laden or unladen, including dry cargo, ventilated, insulated, and refrigerated; flat racks; vehicle racks; liquid tanks; open top containers without chassis; vans; and any bare chassis.

8. LABOR STANDBY, DETENTIONS AND DEADTIME

Any labor standby, detention, and deadtime in vessel stevedoring shall be for the account of CUSTOMER, unless caused by specific fault or negligence of OPERATOR or separately agreed to between OPERATOR and CUSTOMER, per the Schedule of Rates.

9. CONTAINER STACK TRAIN SERVICE - OPERATOR RESPONSIBILITIES

9.1 GENERAL

OPERATOR shall:

A. Provide and perform rail services and related terminal services, for dedicated trains operated or controlled by CUSTOMER, at the Terminal for I.S.O. standard containers. The number of trains, the number of railcars per train and the standard weekly schedule for the trains of CUSTOMER shall be subject to mutual agreement between CUSTOMER and OPERATOR of which the handling volumes shall be directly applicable to CUSTOMER's cargo calling at the Terminal.

B. Provide rail tracks and adequate yard space, as mutually agreed, for efficient rail and directly-related terminal operations.

C. Provide all necessary employees, labor, supervision, and necessary container handling equipment based on I.S.O. standard containers.

D. Perform rail and directly associated services on 1st and 2nd shifts in accordance with the ILWU/PMA Collective Bargaining Agreement, with the customs and practices of the Port.

E. Rail services on 3rd shifts will be considered only on an emergency basis and shall be subject to provision at the sole discretion of OPERATOR. 3rd Shift work shall be billed as Extra Labor, per the Schedule of Rates.

9.2 RAIL SERVICES - OPERATOR'S RESPONSIBILITIES

OPERATOR shall:

A. Assign rail tracks within the Terminal, as available, for rail cars that are owned, leased or otherwise controlled by CUSTOMER or by CUSTOMER's third party intermodal vendor.

B. Provide train stowage planning and the discharging and/or loading sequencing of containers from/to railcars in accordance with westbound car plans and in accordance with any special pre-stow instructions, as furnished by CUSTOMER, for eastbound car plans.

1. OPERATOR will advise CUSTOMER of containers deemed not likely to load the train by virtue of either vessel stowage position or loading sequence, if applicable.

2. OPERATOR will provide CUSTOMER with all "FINAL" train car plans no later than one (1) hour after the completion of train operations.

C. Coordinate with railroad or third party intermodal vendor with regard to the movement, scheduling and disposition of E/B and W/B DST cars, as well as car inspections and Bad Order disposition of cars, subject to instruction received from CUSTOMER regarding the requirements of CUSTOMER with each such regard.

D. Dray full or empty containers within the Terminal and load them onto rail cars per the pre-stowed eastbound car plans.

Discharge full or empty containers from rail cars and dray them directly to pre-designated areas or rows within the Terminal.

E. Fit inter-box connectors ("IBC"), where required, and collect IBC's into gear boxes, as provided on rail cars, when required.

F. Check and tally the movement of containers on and off rail cars and note damages, where apparent.

G. Check seals on full train containers when loading onto or discharging from rail cars (without affecting production) to ensure that the seal is intact.

OPERATOR shall not be responsible solely on the basis of missing or breached seals that are not detected at the time of discharge from or loading on rail cars. Seal numbers will not be recorded, but notations will be made if seals are noticed as not intact. In such cases, new standard seals will be applied, and the new seal numbers will be recorded at scheduled rate.

H. Make a reasonable effort to complete loading or discharging operations within the standard schedule or time frame.

I. Supply to CUSTOMER copies of the records of all rail cars handled, containers/chassis received or delivered, of cursory visual inspections for damages, and of "seal intact" status exceptions upon completion of each shift of train operations.

9.3 LABOR ASSIGNMENT

A. OPERATOR shall decide the number of labor units or personnel to use in the most

economical manner to meet CUSTOMER's train schedule, subject to and considerate of conditions set forth within Section 9.1 above.

B. In accordance with Section 9.3.A. above, OPERATOR shall arrange labor for the next 1st or 2nd shift succeeding the train's ETA at Terminal. Any time lost by labor not working the train by reason of its failure to arrive at the ETA shall be for the account of CUSTOMER. Deadtime or guarantee time at the end of scheduled 1st or 2nd shifts shall be for account of CUSTOMER.

C. CUSTOMER shall remove empty cars unloaded at the Terminal and full cars loaded at the Terminal, such that subsequent car movements for other trains may promptly occur, whether or not CUSTOMER's normally-contracted railroad is available for such movement.

D. CUSTOMER shall have 12 hours to remove empty cars unloaded at the Terminal and full cars loaded at the Terminal. Should the time extend beyond 12 hours, CUSTOMER shall be responsible for a railcar storage fee, as set out in the Schedule of Rates.

E. If requested by CUSTOMER, and if agreeable with OPERATOR, OPERATOR will order labor for the train pre-determined to arrive after the beginning of the applicable work shift, provided CUSTOMER is responsible for labor standby time and deadtime after completion of rail services, if completed either on the original working shift, on an extension of that shift or on a subsequent working shift.

F. OPERATOR shall not be responsible for the shortage of, or delays caused by the shortage of, labor or the inability to obtain labor through reasonable efforts.

9.4 RECEIVING AND RELEASE OF THE TRAIN

A. OPERATOR shall receive rail cars from CUSTOMER upon completion of the switching-in and spotting at Terminal by CUSTOMER's contracted railroad.

B. For export receiving via rail, all containers must arrive within OPERATOR's working yard either 24 hours prior to vessel arrival or by last 2nd shift worked prior to vessel arrival, whichever is earlier.

The initial switching-in of rail cars shall be made by CUSTOMER's contracted railroad and such rail cars shall be spotted per the requirements of OPERATOR. Operational delays

resulting from failure of railroad to properly spot cars shall be for the account of CUSTOMER, provided the special conditions set forth within Section 9.3.B. and 9.3.C. are not achieved.

1. Additional switching and spotting within the Terminal, as required for setting-up proper hubbing orders for eastbound movements, shall be made by the OPERATOR at its operational convenience.

2. OPERATOR will separate known or identified bad order railcars from the hubbing arrangement for immediate removal from Terminal by CUSTOMER or its contracted railroad. Any Port Tariff demurrage shall be for account of CUSTOMER.

C. Rail cars will be released to CUSTOMER as spotted at the Terminal, upon completion of loading or discharging, for the making-up of the train and switching-out by CUSTOMER's contracted railroad.

D. CUSTOMER shall be responsible to coordinate all train communications and movements with its contracted railroad, the PHL and the OPERATOR. OPERATOR may assist with coordination of certain activities directly with the contracted railroad, given proper instruction and authorization to do so from CUSTOMER.

1. Any rail car inspections or maintenance required by CUSTOMER or its contracted railroad shall be accomplished by CUSTOMER without affecting train operations or productivity of OPERATOR. Any operational delays of OPERATOR, as generated by rail car inspections or repairs, shall be for the account of CUSTOMER, again provided the special conditions set forth within Section 9.3.B. and 9.3.C. are not achieved.

2. CUSTOMER shall arrange to remove any bad order cars not available for use during the immediate on-going train operation.

3. All costs resulting from any delays in the movement of CUSTOMER's trains, at the times specified and required by OPERATOR, by CUSTOMER's contracted railroad, causing labor standby at the Terminal or causing delays to other trains handled by OPERATOR at the Terminal, shall be for the account of CUSTOMER.

4. Should railroad or third party vendor fail to pull train within 12 hours of scheduled release, railcar storage shall apply per the Schedule of Rates.

E. OPERATOR shall not be responsible for delays in the completion of CUSTOMER's trains later than each train's mutually-agreed weekly completion schedule, if such delays were caused or contributed by late vessel arrival, delay in the departure of a preceding train, lack of availability of empty cars for CUSTOMER's train, late arrival of CUSTOMER's train or empty cars, late availability of containers for loading to CUSTOMER's train, compliance with governmental or regulatory inspections, late availability of labor, no labor available, health and safety of personnel at the Terminal, concerted labor efforts or activities, civil commotion, natural disasters or inclement weather.

10. RAIL SERVICES - CUSTOMER'S OBLIGATIONS

10.1 GENERAL

CUSTOMER shall provide OPERATOR with all necessary information and instructions, in order to allow OPERATOR to provide efficient services, as set forth below.

A. GENERAL:

1. CUSTOMER shall advise OPERATOR of its train schedules and ETA well in advance and notify OPERATOR of any changes as they occur in sufficient time in order that OPERATOR can properly plan yard and track assignments as well as labor arrangements.

   CUSTOMER shall notify OPERATOR of each container candidate to be discharged from each applicable vessel, calling the Terminal at least 48 hours prior to commencement of vessel's discharge operations.

   Any containers on governmental hold or not released for loading to trains on-dock shall be pre-advised by CUSTOMER to OPERATOR, of which such containers may be separated upon discharge from the vessel into a pending DST decking bay or remain wheeled, at the sole discretion of the OPERATOR.

   CUSTOMER, and no other designated party, shall notify OPERATOR of the "released" status of any such containers originally discharged as "hold" or "not released" for loading.

CUSTOMER shall have the responsibility of authorizing and authority to authorize OPERATOR to cut or eliminate containers from planned train loading operations at the Terminal at scheduled fee.

2. CUSTOMER shall notify OPERATOR in sufficient time, and in writing, whenever extra labor is required such that labor may be properly arranged per normal ILWU-PMA labor ordering windows.

3. CUSTOMER shall notify OPERATOR of CUSTOMER's policies on train car loading, hubbing or weight distributions, if different from standard handling practice or from registry information on car capacities and limitations.

4. CUSTOMER shall supply sufficient IBC's for the efficient operations of loading trains.

B. WESTBOUND DATA

1. Railcar numbers and types.

2. Car plans for each train and hubbed order on arrival.

3. Container data by:

    a. Number, size, type, height, seal number, and gross weight.

    b. Export vessel and destination.

    c. Hazardous information.

    d. Special handling instructions.

    e. Details of awkward containers.

4. Data contained within Items #1 through #3 above shall be EDI transmitted by CUSTOMER to OPERATOR no later than 24 hours prior to the applicable labor shift start time for each train operation.

5. CUSTOMER shall follow the International Convention for the Safety of Life at Sea ("SOLAS") Ch VI/2 VGM regulations that require shippers to provide via EDI

a signed VGM document to the Terminal. OPERATOR shall assume that CUSTOMER and shipper have made arrangements for the shipper to provide a shipper-signed VGM for each container delivered to the Terminal facility for loading. In no event shall cargo arriving by rail without a SOLAS compliant VGM be received by the Terminal or loaded to a vessel by OPERATOR.

C. EASTBOUND DATA

1. Container Data By:

    a. Number, size, type, height, seal number and gross weight.

    b. Train loading hub or destination per container.

    c. Hazardous and reefer information.

    d. Special handling instructions.

    e. Details of awkward containers.

2. Data contained in Section 10.1.C.1 shall be EDI transmitted by CUSTOMER to OPERATOR no later than 24 hours prior to commencement of vessel operations.

10.2 EXTRA WORK AND OVERTIME WORK

Additional expenses incurred for performing any extra work and overtime ordered by CUSTOMER shall be paid by CUSTOMER on the basis of extra labor rates, plus rental of equipment and cost of material used at applicable markup, unless otherwise stipulated in this Schedule including the Schedule of Rates.

11. SHORE POWER SERVICES - OPERATOR'S SERVICES AND OBLIGATIONS

11.1 GENERAL

OPERATOR shall:

A. Provide and perform Shore Power Services, as described below in Section 35 ("SPS" for purposes of Section 11.1), and other related terminal services as needed, for vessels operated or controlled by CUSTOMER at Terminal.

B. Provide access to Shore Power Outlets ("SPOs") and electrical power as made available and as supplied by the local utility provider, as mutually agreed between the parties hereto from time to time, for efficient terminal operations.

C. Provide all necessary employees and/or labor, supervision and land-based equipment to the best of OPERATOR's ability to assist CUSTOMER in its use of land-based SPOs and Vessel Circuit Breakers ("VCBs").

D. Be available to perform SPS 24 hours per day and 7 days per week in accordance with the ILWU/PMA Collective Bargaining Agreement within the customs and practices of the Port at rates set forth in the Schedule of Rates.

E. If CUSTOMER requires and OPERATOR agrees in a separate writing, provide adequate space to store CUSTOMER's owned/leased mobile Shore Power container that houses the necessary CUSTOMER-owned and -maintained transformer and cable management system ("SPC") and the Carrier owned/dedicated SPC roadworthy chassis at rates set forth in the Schedule of Rates.

F. Comply with vessel commissioning requirements as set forth and required from time to time by the Port, Air Quality Management District ("AQMD") and California Air Resources Board ("CARB") and any other authority having jurisdiction therefore as applicable.

G. All AMP services will be charged at extra labor rate.

H. Vessels which are supplied electrical current at the Port of Los Angeles through facilities of the Harbor department will be invoiced to the CUSTOMER by the OPERATOR, including a 25% service charge.

11.2 OBLIGATIONS

OPERATOR shall:

A. Comply with CARB terminal requirements imposed upon terminal operators within the state regulations for "Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on

Ocean-Going Vessels At-Berth in a California Port" pursuant to section 93118.3, title 17, chapter 1, subchapter 7.5, California Code of Regulations (CCR), as amended, or other regulations promulgated from time to time by CARB or any other governmental authority having jurisdiction over the subject matter hereof;

B. Observe and record the date, time and reading of the Shore Power utility meter located within the substation at the Terminal;

C. Notify CUSTOMER within a reasonable period of time when there is any apparent malfunction of the utility equipment which feeds the Shore Power infrastructure; and

D. Have ultimate authority to initiate SPS upon vessel arrival.

11.3 LABOR ASSIGNMENT

Unless otherwise agreed, OPERATOR shall decide the number of personnel to use in the most economical manner to meet CUSTOMER's Shore Power requirements.

11.4 DOCUMENTATION

A. OPERATOR shall prepare documents and reports associated with the regulations described within Section 11.1 above.

B. OPERATOR shall provide necessary documentation as required by CUSTOMER to settle associated Shore Power expenses.

12. SHORE POWER - CUSTOMER'S OBLIGATIONS

12.1. CUSTOMER shall:

A. Comply with CARB vessel reporting requirements, schedules, targets, *etc*. as described within the state regulations "Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port" pursuant to section 93118.3, title 17, chapter 1, subchapter 7.5, CCR, as amended, or other regulations promulgated from time to time by CARB or any other governmental authority having jurisdiction over the subject matter hereof .

B. Make every effort to coordinate the necessary CUSTOMER employees, crew members, agents, vendors, *etc*. to comply with Section 12.1 herein.

C. Be responsible for lining up vessel along berth and in line with the SPO marker. Any delays or costs associated with CUSTOMER's inability to properly line up vessel with the SPO shall be for the account of the CUSTOMER.

D. Maintain a dedicated SPC position on vessel that must be void of any cargo or container prior to berth arrival.

E. Regularly train ship's crew on CUSTOMER's Shore Power procedures and obligations.

F. Provide SPC a dedicated roadworthy chassis. Both of which shall be stored on Terminal at OPERATOR's discretion and subject to the fees set forth in the Schedule of Rates.

G. In the event the SPC requires power during storage, configure SPC plug to meet Terminal's refrigerated (reefer) outlet standards. CUSTOMER shall be responsible for daily fees.

H. Upon loading of SPC:

1. Provide to OPERATOR shore side personnel de-energized vessel Shore Power cables upon completion of vessel mooring.

2. Supply sufficient cable length to allow vessel Shore Power cables to be safely connected by OPERATOR and remain connected to land-side SPO for the duration of the visit.

3. Allow OPERATOR to board each vessel in order to properly complete conditions set forth above.

4. Assure that energizing and/or de-energizing of Shore Power is coordinated with OPERATOR in order to maintain the safety of all persons and equipment involved.

I. Assume financial responsibility for and reimburse OPERATOR on demand for any costs attributable to any operational delays resulting from failure of vessel personnel, employees, agents, vendors, subcontractors and/or vessel equipment to act or to provide service when required and any fines, penalties or assessments howsoever imposed upon OPERATOR for any such delays.

J. Comply with vessel commissioning requirements as set forth and required from time to time by the Port, AQMD and CARB and any other authority having jurisdiction therefore.

K. Advise OPERATOR of vessel ETA well in advance of vessel arrival and notify OPERATOR of any changes within sufficient time such that OPERATOR can properly arrange for labor and prepare wharf-side Shore Power equipment.

L. Notify OPERATOR of CUSTOMER's Shore Power procedures and requirements, if different from the standard handling practices described above.

M. Designate as an Emergency Event, as defined in subsection (c)(14)(B) or (c)(14)(C) of 93118.3, title 17, chapter 1, subchapter 7.5, CCR, as amended, within CUSTOMER's log book, any instance whereby SPS are not feasible due to inclement weather or the like. If CARB determines such event does not qualify as an "Emergency Event" as defined in the citation above, then any fines and/or penalties derived from such event will be for the account of CUSTOMER.

N. Have the ultimate authority to terminate SPS in order to secure the safety of the vessel crew and its assets.

12.2. DOCUMENTATION

CUSTOMER will prepare documents and reports required by CARB as applicable to the regulation described within section 12.1.A herein above.

12.3. EXCEPTIONS

Any and all exceptions to limits on hours of operation shall apply and are incorporated herein to this Schedule as referenced in section 93118.3, title 17, chapter 1, subchapter 7.5., CCR, as amended, or other regulations promulgated from time to time by CARB or any other governmental authority having jurisdiction over the subject matter hereof, shall also apply and relieve OPERATOR from any obligation hereunder to connect such Shore Power.

12.4 MAINTENANCE AND REPAIR OF SHORE POWER CONTAINER

CUSTOMER shall be solely responsible for the maintenance and repair ("M&R") of the CUSTOMER SPC housed at Terminal. CUSTOMER shall dray the SPC off dock for all M&R related activities related thereto.

OPERATOR assumes no responsibility for the condition, loss or damage of and safekeeping of the Shore Power container, chassis or SPC beyond providing storage space therefor. CUSTOMER shall be solely responsible for any action such as fines and/or penalties by the Port, CARB, AQMD, *etc*. imposed upon CUSTOMER or OPERATOR in the event that M&R work prevents CUSTOMER Shore Power-qualified ships from connecting to Shore Power at the Terminal and/or meeting any targets.

12.5 EXTRA WORK AND OVERTIME WORK

Additional expenses incurred for performing any extra work and overtime otherwise required or ordered by CUSTOMER shall be paid by CUSTOMER on the basis of extra labor rates, plus rental of equipment and cost of material used, plus 25% mark up, unless otherwise stipulated in this Schedule inclusive of its Schedule of Rates or unless mutually agreed to by OPERATOR and CUSTOMER.

Extra labor charges shall be determined by the applicable Man-Hour Billing Rates (as noted in the Schedule of Rates) per applicable working shift, plus cost of equipment rental, cost of materials, if applicable, and mark up.

13. SAFETY - ALL OPERATIONS

13.1 OPERATOR'S RIGHTS

Prior to commencing, during and until the completion of its work, OPERATOR shall be allowed to inspect and determine the safety of all work areas and of all gear and equipment which will be utilized by OPERATOR.

13.2 CUSTOMER'S OBLIGATIONS

CUSTOMER shall immediately notify OPERATOR and OPERATOR shall immediately notify CUSTOMER of any property damaged and of any illness, injury or death of any person which occurs during OPERATOR's and/or CUSTOMER's operations. Each shall cooperate fully with the other in developing full and complete information about the facts and circumstances of the occurrence and the nature and extent of the damages or injuries which resulted therefrom.

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14. LIEN PROVISIONS AND SECURITY INTEREST

14.1 LIEN

CUSTOMER grants OPERATOR a lien on the Cargo while in the possession of OPERATOR and a lien against any vessel, container, chassis, Cargo, and any Equipment (individually and collectively, "Available Security" for purposes of Section 14.1) to provide security for the payment of amounts due OPERATOR hereunder. As additional security for said amounts due OPERATOR, CUSTOMER grants OPERATOR a consensual lien on all Available Security of CUSTOMER concurrently or subsequently in OPERATOR's possession. OPERATOR may assert its lien rights at any time, and in furtherance thereof may hold and/or store such Available Security until payment is received and/or sell such Available Security publicly or privately; in the event of sale, proceeds shall first be applied to sale costs, then to amounts due to OPERATOR, with the balance, if any, to be remitted to CUSTOMER.

14.2 STORAGE AND WAREHOUSING

The following terms and conditions shall apply with respect to any storage or warehousing terminal services:

A. Access/Use. All CUSTOMER access to and/or use of OPERATOR's facility or services, for purposes of storage/warehousing or otherwise, shall be subject to the provisions of this Schedule:

B. Rates and Charges. CUSTOMER shall pay for storage and/or warehousing services upon the rates and charges on OPERATOR's written quotation, Schedule of Rates, or other document that is approved by OPERATOR's senior management in writing (collectively, "Applicable Rate" for purposes of Section 14.2), which Applicable Rate from OPERATOR shall be deemed accepted by CUSTOMER upon commencement of any performance by either party. Upon any such acceptance, OPERATOR's Applicable Rate shall be deemed fully incorporated herein and binding upon the parties. If no rate or charge was quoted or otherwise identified to OPERATOR for a particular terminal service, the rate/charge to be applied shall be OPERATOR's rates and charges specified herein.

C. Warranties. CUSTOMER warrants that it is the owner and/or has lawful possession of the Cargo and that it has sole legal right to store and thereafter direct the release and/or delivery of the Cargo. CUSTOMER agrees to indemnify, defend, and hold harmless, including with respect to attorney's fees, OPERATOR of and from any claim by others relating to the

ownership, storage and release of the Available Security, and/or any other services provided by OPERATOR.

D. Lien. OPERATOR shall have a lien on all Available Security in its possession for any charges for services rendered, storage, demurrage and any other charges due, including but not limited to all costs and legal fees associated with collection of amounts due and enforcing this lien, or any other sums whatsoever payable by or chargeable to or for the account of Available Security under any bailment, receipt or other document issued by OPERATOR, and any contract preliminary hereto and any sums owed to OPERATOR by the person responsible for the account of Available Security or any affiliates thereof on prior accounts or shipments, and the cost and expenses of recovering the same (for purposes of this Section 14.2, all such charges, fees and costs, collectively, the "Charges and Costs"), and may hold any or all of the Available Security until all such Charges and Costs are fully settled.

If the Charges and Costs are not fully settled by the time of the Cargo release, or if the Available Security is otherwise unclaimed, after a reasonable time not to exceed thirty (30) days after arrival at the Terminal, or the time set forth in any Applicable Rate provision, OPERATOR may sell the Available Security privately or by public auction, or otherwise dispose of such Available Security, ten (10) days after sending the owner of record notice, via letter (U.S. Mail, postage prepaid, return receipt requested) or by actual notice by any appropriate means, of the amount of Charges and Costs owed, the date of sale and a statement informing the registered owner that if the Charges and Costs are not fully settled by the date of sale any or all of the Available Security will be sold and the proceeds of such sale will be used to settle the Charges and Costs owed, plus the costs of the sale. If the owner of record does not fully settle the outstanding Charges and Costs within ten (10) days of the mailing of the notice letter or giving actual notice, the sale will proceed as described in the notice. If the sale proceeds fail to cover the outstanding Charges and Costs, OPERATOR may recover the deficit from the party responsible for such Charges and Costs, or its affiliates owing any unsatisfied portion thereof. Sale proceeds beyond the Charges and Costs owed will be returned to the registered owner if claimed within one (1) year of the mailed notice.

E. Security. CUSTOMER grants a security interest to OPERATOR in the Available Security and all proceeds derived from the Available Security for all charges and expenses, including money advanced and interest, whether incurred before or after delivery, and CUSTOMER agrees to execute and deliver all such documents as may be required to perfect such security interest. If Available Security is transferred from one party to another, and should the charges relating to such Available Security not be paid in full on the date of such transfer, the lien for such charges shall attach to the Available Security retained by the transferor and to Available Security

transferred to the transferee. In the event a proceeding is brought by one party against the other to enforce any provisions herein, the prevailing party shall be entitled to legal fees and costs.

F. Removal. OPERATOR may, upon thirty (30) days' notice to CUSTOMER, with or without cause, require removal of the Available Security or any portion thereof and payment of all charges, whether or not there has been default. If the Available Security is not removed, OPERATOR may sell the Available Security and exercise any other rights it may have by law. Without limiting the foregoing, OPERATOR may require the removal of the Available Security or any portion thereof upon ten (10) days' notice if, in its opinion, the Available Security has or may have deteriorated in value to less than the amount of OPERATOR's lien on such Available Security.

G. Liability. Liability for loss or damage to Cargo resulting from our failure to exercise due and proper care in performing the services provided for herein, incurred during the handling, loading, unloading, receipt, delivery, or storage of such Cargo on the terminal at any time, including applicable free time, shall not exceed $500.00 per package or customary freight unit, unless the value of the Cargo has been declared and other arrangements made with OPERATOR prior to its taking custody of, or assuming responsibility for, the Cargo.

No provision contained in this schedule shall relieve OPERATOR from liability for its own negligence nor require any user to indemnify or hold harmless OPERATOR for liability for its own negligence.

OPERATOR shall be liable only for damage resulting from its failure to exercise due and proper care in performing the services provided for herein. In no case shall OPERATOR be liable for a sum in excess of $500.00 per package or per customary freight unit unless the trucker, shipper, Cargo owner or consignee or their representatives, prior to the commencement of such services, declares in writing a higher value and OPERATOR has agreed to accept such increased limits prior to OPERATOR taking custody of, or assuming responsibility for, the Cargo, or other arrangements are made in writing with OPERATOR prior to its taking custody of or assuming responsibility for, the Cargo.

In no event shall CUSTOMER be entitled to receive any special, incidental or consequential damages of any type or nature.

H. Insurance. Stored Available Security is not and shall not at any time be insured by OPERATOR. Charges do not include any insurance coverage for Available Security stored or warehoused at the terminal facility.

I. Application. In the event of any inconsistency between the foregoing provisions and any Applicable Rate provision, the foregoing provisions shall govern and apply in full.

15. INDEMNITY

15.1 USE AT CUSTOMER'S RISK AND EXPENSE

CUSTOMER specifically understands, acknowledges and agrees that any and all providing of, access to and/or use of the Terminal and/or Services of OPERATOR by or on behalf of CUSTOMER shall be at CUSTOMER's sole risk and expense. Aside from loss and/or damage to the Cargo itself, as addressed in Section 23 and elsewhere herein, CUSTOMER assumes sole responsibility for, and agrees to indemnify, defend, and hold OPERATOR, and its respective successors, assigns, parent companies, members, managers, officials, directors, officers, employees, agents, representatives, and other persons or entities acting for or on behalf of OPERATOR, harmless from and against all other loss, damage, expense, claim, liability, suit, fine and/or penalty of any type or nature whatsoever which in any way arises out of and/or relates to any providing of, access to and/or use of the Services, including attorney's fees and legal costs of OPERATOR incurred by or on behalf of CUSTOMER, including, without limitation, those respecting any loss/damage to the property of OPERATOR, CUSTOMER or any other person or entity, including any other CUSTOMER of OPERATOR, as well as those respecting the personal injury, illness and/or death claims of any person, including without limitation of any agent, employee, representative, guest, invitee, vendor and/or subcontractor of OPERATOR, CUSTOMER or any other person, including any other CUSTOMER of OPERATOR, howsoever caused and even if resulting in whole or part from the negligence (active or passive) or fault of OPERATOR. The foregoing indemnification shall be deemed to include any claim or suit by any employee (present or former) of CUSTOMER, and in furtherance of the foregoing, CUSTOMER shall waive any immunity from suit, exclusivity of remedy and limitation upon liability which would have otherwise been afforded pursuant to any workers compensation act or similar law.

15.2 NOTIFICATION OF INJURY AND/OR DAMAGE

CUSTOMER shall notify OPERATOR immediately of any bodily and/or personal injury, illness and/or death, or of any property damage, related in any way to its access to or use of the Services. CUSTOMER shall promptly provide OPERATOR with written accident reports and shall cooperate fully with OPERATOR with respect to any investigation, including allowing inspection of personal property and access to personnel.

15.3 LIMITATION OF LIABILITY

CUSTOMER shall incorporate in any agreements entered into for OPERATOR's provision of Services under this Schedule a provision extending to independent servants, agents and subcontractors of CUSTOMER (including OPERATOR and each of its subcontractors), the benefits and limitations upon liability of CUSTOMER thereunder. Any waiver by CUSTOMER of such limitation of liability provisions shall not be effective against OPERATOR.

For any Vessel Operating Common Carrier CUSTOMER ("VOCC CUSTOMER", for purpose of Section 15.3), this includes, but is not limited to, the provisions of the U. S. Carriage of Goods by Sea Act (COGSA), incorporated and extended to apply throughout the time during which OPERATOR performs Services under this Schedule. It is expressly agreed by the VOCC CUSTOMER that, should a bill of lading provision not extend the application of the COGSA defenses to the OPERATOR, VOCC CUSTOMER shall indemnify OPERATOR for those sums that it is liable for over and above the COGSA limitation of liability defenses. When VOCC CUSTOMER accepts Cargo on an *ad valorem* basis, OPERATOR shall not be responsible for increased liability unless VOCC CUSTOMER gives written notice in advance to the OPERATOR in sufficient time for the OPERATOR to provide special Handling and/or supervision; and extra charges therefore shall be agreed upon between OPERATOR and VOCC CUSTOMER at the time such notice is given. Such confidential notice shall include a description of the quantity, nature and location of the Goods.

15.4 CAUSES OF ACTION FOR LOSS/DAMAGE

In order for CUSTOMER to bring a cause of action against OPERATOR arising out of Cargo loss/damage caused by OPERATOR, CUSTOMER must: (1) have given written notice to OPERATOR of any damage or loss within one year after the CUSTOMER first receives notice, written or otherwise, of the damage or loss; and (2) file suit within one year of the date of settlement by CUSTOMER of any claim for such Cargo loss or damage or the date a judgment is entered against CUSTOMER in any action for such Cargo loss or damage. Moreover, any unilateral waiver of rights or extension of obligations by CUSTOMER, including COGSA, shall result in the discharge of any obligation of OPERATOR to CUSTOMER to the extent of such waiver or extension.

15.5 CONCEALED DAMAGE/LOSS

OPERATOR will not accept any liability for concealed damage/loss or the condition of the contents of containers received in damaged condition from vessel or inland carrier.

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16. INSURANCE

16.1 OPERATOR does not provide any insurance whatsoever for the benefit of CUSTOMER, nor any insurance whatsoever covering CUSTOMER'S Cargo, property or personnel.

16.2 In addition to any legally mandated insurance, any Vessel Operating Common Carrier CUSTOMER ("VOCC CUSTOMER", for purposes of Section 16.2) shall carry the following minimum insurance:

A. Comprehensive General Liability Insurance with limits of at least Ten Million USD ($10,000,000) per accident, including contractual liability coverage for CUSTOMER's liabilities and obligations as set forth herein. Such insurance shall name OPERATOR, and its respective successors, assigns, parent companies, members, managers, officials, directors, officers, employees, agents, representatives, and other persons or entities acting for or on behalf of OPERATOR, as an additional insured; be endorsed to waive subrogation against OPERATOR; and be primary to any insurance of OPERATOR. CUSTOMER shall evidence this insurance by providing OPERATOR with a certificate of insurance prior to any access to or use of the Services. However, failure to provide the certificate of insurance will not waive the obligation of VOCC CUSTOMER to obtain the insurance; and

B. Auto Liability Insurance with limits of at least Ten Million USD ($10,000,000) per accident;

C. Customary Marine Insurances in respect of its operations and vessels, including, without limitation, protection and indemnity placed with the International Group of P&I Clubs, hull and machinery, and wreck removal insurances, and such other insurances as may be reasonably required by OPERATOR from time to time, if any. In addition, to the extent that VOCC CUSTOMER maintains an office and/or personnel and/or shore-side operations at the Terminal, VOCC CUSTOMER shall further secure and maintain, while receiving services at the terminal facility workers' Compensation Insurance as required by applicable federal and state laws.

D. Heavy Lift Insurance, if applicable, while such heavy lift services are being provided:

1. First party property/cargo or cargo legal liability upon the item(s) being lifted to its/their full actual market value plus freight and insurance, with such policy to be specifically endorsed to provide a waiver of subrogation in favor of OPERATOR;

2. Public liability/marine general liability insuring against bodily injury and property damage and including contractual liability coverage for VOCC CUSTOMER'S

obligations hereunder, with minimum limits of $10,000,000 and waiver of subrogation in favor of OPERATOR; and

3. Workers compensation and employers liability insurance upon its employees and the employees of its subcontractors, if any.

E. VOCC CUSTOMER shall further indemnify, defend and hold OPERATOR harmless (including legal fees and costs) from and against any loss, damage, expense, claim, liability and/or suit resulting from VOCC CUSTOMER's failure to provide any insurance as required and/or resulting from the failure of any such insurance, including without limitation exposure to loss, damage, expense, claim, liability and/or suit which would have been covered had insurances been procured and maintained as required.

16.3. In addition to any legally mandated insurance, any other CUSTOMER not subject to Section 16.2 above shall carry the following minimum insurance:

A. Comprehensive General Liability Insurance with limits of at least Five Million USD ($5,000,000) per accident, including contractual liability coverage for CUSTOMER's liabilities and obligations as set forth herein. Such insurance shall name OPERATOR, and its respective successors, assigns, parent companies, members, managers, officials, directors, officers, employees, agents, representatives, and other persons or entities acting for or on behalf of OPERATOR, as an additional insured; be endorsed to waive subrogation against OPERATOR; and be primary to any insurance of OPERATOR. CUSTOMER shall evidence this insurance by providing OPERATOR with a certificate of insurance prior to any access to or use of the Services. However, failure to provide the certificate of insurance will not waive the obligation of CUSTOMER to obtain the insurance; and

B. Auto Liability Insurance with limits of at least Five Million USD ($5,000,000) per accident;

C. CUSTOMER shall further indemnify, defend and hold OPERATOR harmless (including legal fees and costs) from and against any loss, damage, expense, claim, liability and/or suit resulting from CUSTOMER's failure to provide an insurance as required and/or resulting from the failure of any such insurance, including without limitation exposure to loss, damage, expense, claim, liability and/or suit which would have been covered had insurances been procured and maintained as required.

17. INDEPENDENT CONTRACTOR

It is hereby understood that OPERATOR shall be an independent contractor and not an agent or employee of the CUSTOMER and all employees or laborers employed in the performance of Services under this Schedule shall be employees of the OPERATOR, or its subcontractors, at all times and not of CUSTOMER.

18. APPLICABLE LAW

It is agreed by OPERATOR and CUSTOMER that this Schedule shall be governed by the federal laws and regulations of the United States, or in the event no federal laws or regulations apply, governed by the laws of the State of California as applied to contracts that are executed and performed entirely in California, and that, to the extent that the laws of the State of California are applicable, the Federal and State Courts located in the State of California shall have jurisdiction over all claims, disputes and actions arising under this Schedule, notwithstanding any conflicts of law principles under the laws of the State of California or any other state. Nothing herein contained shall be construed to deprive either OPERATOR or CUSTOMER of any rights which each party may have against the other or its property in law, in admiralty or in equity as a result of any breach of the respective obligations set forth in this Schedule.

19. FORCE MAJEURE

Should unusual conditions occur, including without limitation, damage or destruction to premises or facilities (including vessels or containers) by fire, flood, riot, earthquakes, tidal wave, heavy rains, high wind or windstorm, severe storm or other weather conditions or circumstances creating unsafe work conditions, explosion, force majeure, acts of God, the public enemy or other casualty, or should the operation by OPERATOR be suspended, abated, prevented or impaired by reason of war, war-like operations, seizure, marine casualty, governmental decree or regulation, stoppage of public power supply, curtailment of fuel supply, strikes, picketing, slow-downs or other labor disputes or negotiations, lockout or other work stoppage, or by reasons of any other conditions or occurrences beyond the control of the OPERATOR (such condition being a “Force Majeure Event” for purposes of Section 19), including any such condition that may render the Terminal wholly or partially untenable, unsafe, or unfit for use, or so as to make it impractical for OPERATOR to make reasonable or full use thereof, then OPERATOR may be excused for its obligations without responsibility for any claim by another party to this Schedule arising out of such excused obligation, to the extent and duration of such Force Majeure Event.

20. ATTORNEY'S FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this Schedule, OPERATOR shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.

21. PARTIAL INVALIDITY; SEVERABILITY

If any provision of this Schedule is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in force without being impaired or invalidated in any way.

22. LOSS/DAMAGE TO GOODS (CLAUSE PARAMOUNT)

The Carriage of Goods At Sea (COGSA) (46 U.S.C. §1300 *et seq*.) is fully incorporated into this Schedule and shall be applicable at all times the Goods are, or are deemed, in the care, custody and/or control of OPERATOR. OPERATOR shall not be liable for any loss and/or damage to or in connection with the Goods in an amount exceeding $500 U.S. per package, or in the event of Goods not in such packages per customary freight unit, unless a higher value for the Goods has been declared in writing to OPERATOR prior to the commencement of any Services whatsoever and CUSTOMER has paid the increased Rates and/or charges resulting from such declaration of higher value. OPERATOR shall not be responsible in any event for any loss/damage to or in connection with the Goods if the nature or value thereof has been misstated. OPERATOR shall not be liable to CUSTOMER or any other respecting the Goods except as set forth in this Section 22, whether for loss, damage, delay, shortage, misdelivery, failure to deliver or otherwise, and/or in tort, contract or any other theory.

In the event any damage/loss could have occurred during some other mode of transportation or while in the care, custody, or control of any other provider, including CUSTOMER, such loss or damage shall be deemed to have occurred while in the care, custody, or control of CUSTOMER.

23. UNCONTROLLABLE CAUSES OF LOSS/DAMAGE

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

24. NO CONSEQUENTIAL DAMAGES

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

25. LOSS/DAMAGE CLAIMS

The following are agreed to by OPERATOR and CUSTOMER to be conditions precedent to any recovery from CUSTOMER for loss/damage to or in connection with the Goods.

A. There shall be no right to recover until all amounts due OPERATOR have been paid in full.

B. The Goods must be carefully inspected by CUSTOMER immediately upon completion of the Services and delivery from OPERATOR, and any loss/damage evident at such time must be identified to OPERATOR in writing and with particularity, including photographs of the damages.

C. Unless written notice of loss/damage and the general nature thereof is given to OPERATOR upon completion of the Services and delivery of the Goods from OPERATOR, or within three (3) days thereafter if the loss/damage is not apparent at such time, delivery of Goods from OPERATOR shall be prima facie evidence of delivery from OPERATOR in good order, count and condition.

D. In the event of Goods which have been delayed, lost or otherwise not delivered by OPERATOR as contemplated, OPERATOR must be given written notice of such delay, loss or non-delivery within fifteen (15) days from the date upon which the Goods should have been so delivered.

E. OPERATOR shall have a reasonable opportunity to inspect the Goods, including their packing, packaging, *etc*., in the same condition as upon completion of the Services and before any repair, alteration, salvage, or destruction.

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

OPERATOR shall be entitled to set-off any amounts owed or due by CUSTOMER or Goods against any claim.

26. CLAIM DOCUMENTATION

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

27. DUTY TO ACCEPT GOODS

CUSTOMER shall be responsible for accepting the Goods, or having the Goods accepted, from OPERATOR upon completion of Services and any inspection thereof requested by OPERATOR, even if such Goods are claimed to have suffered loss/damage. CUSTOMER shall not abandon any Goods at the Terminal or otherwise with OPERATOR for any purpose or under any circumstances whatsoever.

28. REFUSED OR ABANDONED GOODS

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

29. ACCESS AND USE

Any access to and/or use of the Terminal and/or the Services of OPERATOR whatsoever by or on behalf of CUSTOMER shall be deemed CUSTOMER's express agreement with the provisions set forth in this Schedule, including without limitation the security provisions contained herein, and the access and use provisions of this Section. OPERATOR may request that CUSTOMER sign a separate, written Access Agreement, prior to such access/use or otherwise, in which event the signed, written agreement shall be deemed incorporated herein and applicable concurrently with this Schedule, with the provisions of the signed, written agreement to supersede the provisions of this Schedule to the extent of any direct conflict but no further.

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

B. Inspection. OPERATOR makes no warranties whatsoever with respect to the Terminal or CUSTOMER's access or use thereof. Prior to access, on at least a daily basis, CUSTOMER shall conduct a thorough inspection of the Terminal and the areas which it intends to access or use, including areas adjacent thereto, for the purpose of determining their safety and suitability for CUSTOMER's intended access and use. If CUSTOMER believes there is any problem as to safety or suitability, and/or if any such problem develops during CUSTOMER's access or use, CUSTOMER shall immediately cease all of its operations

and notify OPERATOR. If the condition cannot be changed by mutual agreement so as to assure safety and suitability to CUSTOMER's satisfaction, CUSTOMER shall promptly withdraw its materials, supplies, tools, equipment, personal property, employees and subcontractors and its requested access/use shall be deemed voluntarily terminated. Once CUSTOMER begins any access or use of the Terminal whatsoever, or continues to conduct operations at the Terminal, it shall be irrevocably presumed that the Terminal was inspected and accepted by CUSTOMER as both safe and suitable for its operations.

C. Compliance. CUSTOMER, including its employees, subcontractors and invitees, shall conform with all local, port, municipal, county, state and federal laws and regulations applicable to CUSTOMER's operations, including without limitation those promulgated by the EPA, OSHA, WISHA, DOT, FMCSA, DHS and/or USCG, and shall be responsible for any violation of the same.

D. Safety and Other Rules. CUSTOMER shall be responsible for assuring that all of its employees, subcontractors and invitees learn and obey OPERATOR's safety and other rules, whether posted, given in writing, set forth herein and/or advised verbally, and that all such persons otherwise wear hard hats, safety vests and other personal protective equipment as required by OPERATOR.

E. Clean-up. CUSTOMER shall remove all of its materials, supplies, tools, equipment, personal property, employees and subcontractors from the Terminal daily, and shall otherwise keep all areas used by CUSTOMER clean and free of debris.

F. No Security. OPERATOR does not provide any security for the materials, supplies, tools, equipment or personal property of CUSTOMER or any others at the Terminal. CUSTOMER shall be solely responsible for the security of all such items, including those of its employees, subcontractors, agents and invitees, and is cautioned to watch the same carefully and remove all such items on at least a daily basis and store them safely elsewhere.

G. Damage to Property. CUSTOMER shall be responsible for, and shall indemnify and hold OPERATOR harmless (including legal fees and costs) from and against, all loss/damage to CUSTOMER's owned/leased equipment and personal property, including but not limited to all of its owned/leased materials, supplies, tools, equipment, tractors, trucks, motor vehicles, trailers, containers, chassis, flatbeds and other equipment and/or personal property (but not the "Goods" the loss/damage of which Goods is addressed herein), howsoever caused and even if resulting in whole or part from the negligence (active or passive) or other fault of OPERATOR. In addition, CUSTOMER shall be responsible for,

and shall indemnify and hold OPERATOR harmless (including legal fees and costs) from and against, any loss/damage to the personal property of others at the Terminal, including but not limited to the personal property of OPERATOR, which in any way arises out of and/or relates to CUSTOMER's access and/or use of the Terminal or Terminal Services. CUSTOMER agrees that, in the event such loss/damage to the property of OPERATOR or others occurs, it shall immediately notify OPERATOR and, after obtaining OPERATOR's consent to proceed, repair/restore the damaged property to its pre-existing condition with no reduction for depreciation. If CUSTOMER fails to do so, OPERATOR may do so, in which event CUSTOMER shall pay and/or reimburse actual costs to accomplish this, plus fifteen percent (15%).

H. Personal Injury. CUSTOMER assumes responsibility for any bodily/personal injury, illness and/or death of its employees (including those of its subcontractors), and agrees to indemnify and hold OPERATOR harmless (including legal fees and costs) of and from the same. In addition, CUSTOMER assumes responsibility for, and agrees to indemnify and hold OPERATOR harmless (including legal fees and costs) of and from, any bodily/personal injury, illness and/or death of any other person at the facility which arises out of or is in any way connected with CUSTOMER's access and/or use of the Terminal or the Services. The foregoing indemnification shall be deemed to include any claim or suit by any employee (present or former) of CUSTOMER, and in furtherance thereof CUSTOMER waives any immunity from suit, exclusivity of remedy and limitation of liability under any workers compensation act or similar law.

I. Notification. CUSTOMER shall notify OPERATOR immediately of any bodily and/or personal injury, illness and/or death, or of any property damage, related in any way to its access to or use of the Terminal or the Services. CUSTOMER shall promptly provide OPERATOR with written accident reports and shall cooperate fully with OPERATOR with respect to any investigation, including allowing inspection of personal property and access to personnel.

J. Workers Compensation Insurance. CUSTOMER shall be responsible for maintaining workers compensation insurance, including coverage under the Longshore Act, on all of its employees (including those of its subcontractors and upon himself or herself if CUSTOMER is an individual), but neither CUSTOMER nor its workers compensation insurer shall have any right of action against OPERATOR for subrogation or reimbursement of any payments made pursuant to that policy (including within any policy deductible).

K. Public Liability Insurance. CUSTOMER shall also be responsible for procuring and maintaining public liability insurance for personal injuries and property damage with respect to CUSTOMER's access to or use of the Terminal and/or the Services, including contractual liability coverage for CUSTOMER's liabilities and obligations as set forth above. Such insurance must have limits of at least $10,000,000 per occurrence, shall name OPERATOR and each of its respective successors, assigns, parent companies, members, managers, officials, directors, officers, employees, agents, representatives, commissioners and other persons or entities acting for or on behalf of OPERATOR as an additional insured, and be endorsed to waive subrogation against OPERATOR and be primary to any insurance of OPERATOR. CUSTOMER shall evidence this insurance by providing OPERATOR with a certificate of insurance prior to any access to or use of the Terminal and/or the Services.

L. Waiver of Sovereign Immunity. CUSTOMER, in partial consideration for the Services being performed, agrees to waive any right to claim and/or defense of sovereign immunity with respect to any monetary amount, loss, damage, expense, claim, liability, suit, fine and/or penalty due from CUSTOMER to OPERATOR hereunder.

30. EOC COMPLIANCE AND NON-DISCRIMINATION

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

31. ELECTRONIC DATA INTERCHANGE

OPERATOR and CUSTOMER agree to cooperate and use their reasonable commercial efforts to utilize electronic data, documentation and interchange to the extent feasible and allowable under law.

32. CONSTRUCTION AND INTEGRATION

This Schedule shall be construed neutrally, and for the mutual benefit of OPERATOR and CUSTOMER, rather than for or against a party. If any provision of this Schedule is found to be legally unenforceable, it is agreed that such provision shall be deemed deleted from this Schedule as if never made a part hereof,

with the remaining provisions of this Schedule to not be affected thereby and to remain in full force and effect.

Any failure of OPERATOR to enforce a provision of this Schedule shall not be deemed to waive such provision or any other provision in this Schedule.

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

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

33. (RESERVED FOR FUTURE USE)

34. COMPENSATION

CUSTOMER shall compensate OPERATOR for the performance of the Services described herein in accordance with this Schedule and the Schedule of Rates attached hereto and will reimburse OPERATOR for documented charges paid on its behalf. CUSTOMER may request credit from FMS but FMS has sole discretion to extend such credit. If credit is not extended all services must be prepaid prior to any services rendered in accordance to this Schedule and the Schedule of Rates attached.

For CUSTOMER who has been extended credit, payments shall be made in U.S. funds via wire transfer with advance notice of invoice details, not later than thirty (30) days after receiving the undisputed invoice. Invoices shall be forwarded to CUSTOMER via electronic mail. If CUSTOMER disputes any invoices, then CUSTOMER shall notify, in writing, OPERATOR within 15 days after receiving such invoices. While the disputed item is under review, CUSTOMER shall continue to pay the undisputed balance within the 30-day terms. In the event that payment against any undisputed invoice occurs after 30 days, CUSTOMER agrees to pay interest of 2% per month on any outstanding sums. Port of Los Angeles Tariff items, such as Wharf Storage and demurrage, are to be settled per Port of Los Angeles Tariff rules and regulations.

OPERATOR at its discretion, may temporarily discontinue or cut-off certain services, including withholding demurrage refunds or collections to the CUSTOMER, based on the age of unpaid invoices. In addition, OPERATOR at its discretion may require advance payment for all future services. OPERATOR may exercise these options if OPERATOR has forwarded multiple invoice copies to the appropriate CUSTOMER personnel with no progress made toward payment, if CUSTOMER has not disputed invoices in writing with specific details or if a balance remains over 30 days for two (2) consecutive months. Further, OPERATOR shall have the right to take or set-off any or all sums held on CUSTOMER's behalf for direct, indirect and acquired obligations, including debts that CUSTOMER owes to OPERATOR, regardless of the source of funds held by OPERATOR on CUSTOMER's behalf. OPERATOR shall not be required to provide CUSTOMER with any prior notice to exercise this right of set-off.

35. RATES

35.1 STEVEDORE RATES

A. The Rates specified in the Schedule of Rates shall, unless otherwise provided, cover all costs of the following items:

1. Shoreside container gantry cranes for Handling of containers within capacity of cranes, as well as other equipment required for normal vessel's operation and terminal work for Handling of containers.

2. The cost of longshore, clerk, mechanic labor, and supervision in the yard and at the gate (except for maintenance and repair of CUSTOMER's equipment). Such cost shall include Worker's Compensation, insurance and taxes, all Pacific Maritime Association ("PMA") man-hour assessments, car fares, as well as time contractually or customarily guaranteed to personnel on a normal shift. Any Services outside of the regular working hours on day shifts (Mondays through Fridays, exclusive of holidays), upon request of CUSTOMER and acceptance of OPERATOR, shall be performed subject to shift differentials in the Schedule of Rates.

3. All Services performed for containers in connection with a normal vessel's operation during the first, second and third shifts, including Saturday, Sunday and holidays. Such costs to include Worker's Compensation, insurance and taxes, all PMA man-hour assessments, car fares, as well as time contractually or customarily guaranteed to personnel on a normal shift.

4. All chargeable stevedoring labor delays, deadtime, extra labor, and Services.

B. The following items are expressly understood to be EXCLUDED from the Rate listed in the Schedule of Rates:

1. Wharf Storage and demurrage charges to be billed to CUSTOMER according to the Port of Los Angeles Tariff.

2. Dockage.

3. PMA tonnage assessments, for which CUSTOMER shall be fully responsible and pay assessments directly to the PMA.

4. OPERATOR's computer services beyond normal terminal functions.

5. Cargo penalties and fees as assessed.

B. All charges contained herein shall be invoiced only to CUSTOMER, unless otherwise stated, shall be the sole responsibility of CUSTOMER and shall not be subject to pro ration or assignment, either all or in part, to any other party. Invoices shall be paid in full under the conditions set forth herein under Section 34 only by CUSTOMER.

35.2 RAIL

A. The lift charges specified in the Schedule of Rates shall, unless otherwise provided, cover:

1. The cost of labor, supervision, and equipment for normal rail services during 1st, 2nd, and 1st/2nd OT shifts, seven days (7) days a week (exclusive of overtime, holidays and weekends) in accordance with the ILWU/PMA collective bargaining agreement.

2. Detentions caused by specific actions or fault of OPERATOR.

B. The following items are not included within the Lift Charges in the Schedule of Rates:

1. Any delays to OPERATOR's operations generated by late vessel arrivals, late spotting of empty railcars, late train arrivals or late train departures, failure of CUSTOMER to advise OPERATOR for timely labor cancellation of labor

ordered, unavailability of containers for loading to the train, compliance with governmental or regulatory inspections, concerted labor efforts or inclement weather are subject to standby and/or overtime charges and are for CUSTOMER's account.

2. Train services performed on 3rd shifts.

3. Handling damaged containers requiring jury rigging, as well as non-containerized cargo to be billed as per Section 31, Article 3.0.

4. Rehandling of containers due to CUSTOMER's change of instruction:

    A. Containers once loaded, but discharged for rolling over to the next train, to another railcar on the same train, or for local delivery, *etc*. to count as two (2) moves.

    B. Containers once loaded, but shifted to another spot on the same rail car to count as two (2) moves.

5. Any additional charges assessed as cargo penalties to be billed at actual cost.

6. Extra work, not otherwise mentioned herein, to be billed to CUSTOMER in accordance with Section 10.2.

7. Labor standby and deadtime or guarantee time, if caused through no specific action or fault of OPERATOR, as reasonably determined by OPERATOR.

8. Materials, if furnished, such as lumber, shoring materials, IBC's, *etc*. for rail services, to be invoiced to the CUSTOMER's account at actual cost.

35.3 SHORE POWER SERVICES

A. Shore Power Services will be billed at the Extra Labor rates specified in the Schedule of Rates.

B. The following items are not included within the Extra Labor Rates for Shore Power Services:

a. The cost of supplying electrical power to CUSTOMER's vessels, including but not limited to delivery charges, generation charges, city and state taxes, and added facility fees as invoiced to OPERATOR by the local utility company, the Port of Los Angeles, City of Los Angeles or other municipal entity or its vendor(s), shall be for the account of CUSTOMER as applicable, as reasonably determined by OPERATOR.

   The total monthly cost of electricity and all associated fees, taxes and charges of any kind as invoiced to OPERATOR by the local utility company shall be for the account of CUSTOMER as applicable, as reasonably determined by OPERATOR, plus 25% markup on said costs.

b. Any delays to OPERATOR's operations generated by late vessel arrivals, delays caused by the CUSTOMER's SPC/cable management system or vessel's inability to line up to the SPO marker, failure of CUSTOMER to advise OPERATOR for timely cancellation of labor ordered, and CUSTOMER's compliance with governmental or regulatory inspections are for the account of CUSTOMER as applicable, as reasonably determined by OPERATOR. Labor disputes caused through the actions or fault of CUSTOMER are subject to Extra Labor charges and are for CUSTOMER's account as applicable, as reasonably determined by OPERATOR.

c. Extra work, not otherwise mentioned herein, to be billed to CUSTOMER, as applicable, as reasonably determined by OPERATOR, as per the Schedule of Rates.

d. Materials, if furnished, such as lumber, shoring materials, *etc*. for SPS to be invoiced to the CUSTOMER or CUSTOMERS as applicable, as reasonably determined by OPERATOR, at actual cost.

36. DOCKAGE

A. Definition of "Dockage" shall be defined as the charge, calculated in accordance with the dockage rates named in the Schedule of Rates, assessed against a vessel for berthing at or making fast to a municipal wharf, pier, bulkhead structure, or bank (inside berth), or for mooring to another vessel so berthed (outside berth).

B. Basis for Computing Dockage Charges. The rates for Dockage shall apply according to the overall length of the vessel, except as otherwise specifically provided in this . United States Custom House, Lloyd's Register, or American Bureau of Shipping measurements, when available, will be used in determining the size of vessels, but OPERATOR reserves the right to measure vessels when necessary to obtain measurements for use as the basis for its charge.

C. Dockage To Be Paid by Vessels. Dockage, at the rates named in the Schedule of Rates, shall be assessed against all vessels subject to the payment of Dockage under these rules, and shall be paid by the vessel so assessed, through its master, owner, agent or other person duly authorized so to do, per terms outlined in Section 34.

D. Time Period for Assessment of Dockage. The period of time for which Dockage shall be assessed against a vessel shall commence when such vessel is made fast to a wharf, pier, bulkhead, structure, or bank or to another vessel so berthed, and shall continue until such vessel is completely freed from and has vacated such berth.

E. Penalty for Failure to Pay When Due. Refusal or failure to pay dockage in accordance, or otherwise upon presentation of bill therefore, shall subject the vessel to any and all penalties provided by law and this Tariff. No vessel, which has refused or failed to pay demurrage, shall be permitted to Pier 300 without first paying double the dockage incurred and not paid, and $100.00 in addition thereto.

37. SCHEDULE OF RATES