



**RATES, RULES AND REGULATIONS  
GOVERNING USE AND SERVICES AT  
MILLARD MARITIME PORT  
FACILITY LOCATED ON THE THEODORE SHIP  
CHANNEL IN THEODORE, ALABAMA  
(PORT OF MOBILE)**

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## I. DEFINITIONS

1.1 Arrival (at berth) – The time when a Vessel (as such term is defined in Section 1.21 below) arrives alongside the wharf with two lines made fast.

1.2 Checking – The service of counting and checking cargo against appropriate documents for the account of the cargo or the Vessel, or other person requesting same.

1.3 Departure (from berth) – The time the last line holding a Vessel is let go.

1.4 Director – The MMPF Port Operations Director, who is responsible for the implementation and interpretation of this MMPF Tariff, on behalf of the MMPF. The Director may also be referred to as the “POD.” The Director may delegate any of his or her powers and duties to designated representatives, but the Director retains ultimate responsibility and authority for all such powers and duties.

1.5 Dockage– The charge assessed against a Vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a Vessel so berthed.

1.6 Free time– The period, if any, specified in this MMPF Tariff during which cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of wharf demurrage or terminal storage charges immediately before the loading or immediately after the discharge of such cargo on or off the Vessel.

1.7 Handling – The service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship’s tackle. Handling includes the ordinary labor involved in receiving goods at the warehouse door or other access point for any storage area at the Facility, placing goods in storage, and returning goods to the warehouse door or other access point for removal from the Facility storage area.

1.8 Heavy lift – The service of providing heavy lift cranes and equipment for lifting cargo.

1.9 Loading and unloading– The service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters, barges or any other means of conveyance to or from the terminal facility.

1.10 Millard – Millard Maritime

1.11 MMPF – The Millard Maritime Port Facility. The MMPF may also be referred to herein as the “Facility” or the “Millard Maritime Port Facility.”

1.12 MMPF Tariff – This Millard Maritime Port Facility’s “Rates, Rules and Regulations” (sometimes referred to as MMPF’s “Schedule and Tariff”), as published by the MMPF and in effect at any given time.

1.13 Package – Any van, container or other form of cargo unitization, including pieces, unpackaged customary freight units and all articles of any description except goods shipped in bulk.

1.14 Person – Any individual, firm, partnership, association, company, corporation, joint stock association, trustee, receiver, agent, assignee or personal representative.

1.15 Storage – The service of providing terminal facilities for the storing of inbound or outbound cargo after the expiration of free time (if any).

1.16 Terminal Services – Checking, dockage, free time, handling, heavy lift, loading and unloading, storage, usage, wharfage, and wharf demurrage, all as defined in this section.

1.17 Third Party Service Provider – Any Person, other than MMPF or other Indemnified Party, that performs any services for Users, their Vessels or cargo or for the MMPF.

1.18 Ton – 2,000 lbs.

1.19 Usage – The use of a the Facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of the Facility for any other gainful purpose for which a charge is not otherwise specified.

1.20 User – Any Vessel or person using any facilities, equipment or other property owned, leased or controlled by the MMPF, or to whom or for whom any service, work or labor is performed or made available by the MMPF, or any person owning or having custody of cargo moving over such facilities.

1.21 Vessel – Any watercraft arriving at, berthed at, departing from, or otherwise using or being serviced by the MMPF, or any watercraft that could do any one or more of the foregoing. As used herein, the term “Vessel” includes its owner(s) and authorized agent(s).

1.22 Warehouse Receipt – The nonnegotiable warehouse receipt issued by Millard for all goods and services received and held by Millard in its care, custody and control at its warehouse facility and all other storage facilities owned and operated by Millard at the MMPF. A copy of the form of Warehouse Receipt is available upon request from the Director.

1.23 Warehouse Tariff – The public warehouse tariff published by Millard and in effect at any given time, which tariff is applicable to all of Millard’s public warehouses, including the warehouse facility and all other storage facilities owned and operated by Millard at the MMPF. A copy of the Warehouse Tariff is available upon request from the Director.

1.24 Wharfage – A charge assessed against the cargo on all cargo passing or conveyed over, onto, or under wharves or between Vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to a wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

1.25 Wharf Demurrage – A charge assessed against cargo or Vessel remaining in or on terminal facilities after the expiration of free time, if any, unless arrangements have been made for storage.

1.26 Other Defined Terms – To the extent not inconsistent with the definitions contained here, MMPF adopts and incorporates by reference those “Definitions” found in 46 CFR § 525.1(c) (as amended).

## II. APPLICATION OF RULES

2.1 Effectiveness and Applicability. The rates, rules and regulations contained in this MMPF Tariff (the “Rules”) are applicable as of the effective date hereof and apply to all Persons, all Vessels, land vehicles and other traffic, and all cargo and other goods without specific notice, quotation or arrangement. MMPF reserves the right, at its discretion, to agree to variations of the Rules with respect to particular Persons, Vessels, traffic or cargo.

2.2 Authority to Implement. The Director shall have the sole authority to interpret, implement and determine the applicability of the Rules.

2.3 Deemed Acceptance. Any entry upon or use of the Facility (which, for purposes of this MMPF Tariff, includes any use of MMPF wharves, facilities and equipment, and any receipt of any services performed or made available by the MMPF) constitutes acceptance of and agreement to be bound by this MMPF Tariff, as amended and in effect from time to time. Without limiting the foregoing, any entry upon or labor at the Facility by a Third Party Service Provider constitutes its acceptance of and agreement to be bound by the provisions of this MMPF Tariff.

2.4 Amendments. MMPF reserves the right, at its discretion, to amend this MMPF Tariff, and such amendments or revisions shall be effective the date they are published by MMPF.

## III. GENERAL RULES AND REGULATIONS

### 3.1 ASPA Harbor Rules

Use of the waterways of the Mobile Bay and Theodore Ship Channel falls under the Jurisdiction of the Alabama State Port Authority (“ASPA”). Users should review and adhere to the ASPA Tariff 1-E (as amended from time to time) with regard to the transit of these waterways.

### 3.2 Access to MMPF Property and Facilities

(a) Right to Refuse Access. MMPF reserves the right to refuse admittance to the Facility or any of its property to, and to require removal from its property of or by, any

Person, any Vessel, land vehicle or other traffic, or any cargo or other goods at any time, and for any reason in the best interests of the MMPF.

(b) Entry Deemed to Be Consent. The MMPF is subject to, and has taken appropriate steps to comply with, “Maritime Security: Facilities,” 33 CFR § 105, et seq. Security measures are in place for controlling access to the MMPF and its property. All Users of the MMPF, including employees, agents, representatives, contractors, vendors, etc., are required to adhere to the security measures governing access control. Entry upon or use of the MMPF is deemed to be (i) valid agreement to be subject to these security measures, and (ii) consent to screening, inspection or search of baggage, vehicles, property and/or individuals upon MMPF property. Failure to consent or submit to screening, inspection or search may result in the denial or revocation of authorization to enter MMPF or its property.

(c) Facility Security Officer

MMPF has a Facility Security Officer (“FSO”), who is responsible for the development, implementation, revision and maintenance of the facility security plan for MMPF. The FSO may assign security duties to other facility personnel; however, the FSO retains the responsibility for these duties, including the issuance and administration of the ID Badges.

(d) Identification Badge System

(i) All MMPF employees, regular contract and temporary labor, as well as longshoremen working at the Facility, will be issued MMPF Identification Badges (“ID Badges”) upon application to and approval by the FSO. Additionally, frequent or long-term visitors shall be issued ID Badges, upon application to and approval by the FSO. Once issued, ID Badges must be produced to gain entry to the Facility and shall be worn and displayed in an easily visible manner at all times.

(ii) All ID Badges are the sole and exclusive property of Millard.

(e) Access Procedures.

(i) MMPF employees, regular contract and temporary labor, as well as longshoremen working at the Facility, must present valid ID Badges for entry into the Facility.

(ii) Visitors to the Facility must present to the main guard house at the entrance of the Facility (“Main Guard House”) and explain the purpose of their visit (e.g. sales call), including identification of the personnel they will meet. The visitor will sign the visitor’s log and be issued a temporary ID Badge which must be returned when the visitor departs. The visitor shall wait until a MMPF employee escort arrives to escort the visitor to the appropriate area. Whenever possible, all visits should be scheduled in advance.

(iii) Government employees and emergency responders may enter the Facility upon presentation of valid government organization photo ID prior to entry. The security guard at the Main Guard House will direct government employees where to park their



vehicles. Emergency responders in clearly marked emergency vehicles are authorized to enter the Facility without delay; a security guard shall accompany them and will verify identity as time permits.

(iv) Truck drivers must provide photo ID to the security guard at the Main Guard House. The security guard will verify the validity of the request for entry, and issue a gate pass to the driver and then direct the drivers to the Millard traffic desk for truck control procedures. The gate pass shall be displayed on the dash of the truck at all times. The driver must wait in his truck or in the truck waiting area until business is completed. Exit from the facility must be confirmed by the Main Guard House where the gate pass shall be returned. Truck drivers are NOT allowed to enter the warehouse area at the Facility at any time without a MMPF employee escort.

(v) Vessel crew and passengers must be identified on a crew list and passenger list furnished to the FSO by the Vessel or its agent at least 48 hours before the Vessel's arrival. This list will be furnished to the Main Guard House and posted while said Vessel is at MMPF. Crew and passengers should, if otherwise permitted to do so, depart the Vessel and proceed directly to their destination so as to avoid the cargo-handling areas of the Facility. A photo ID must be displayed at the Main Guard House to re-enter MMPF property.

(f) Vehicle Control.

(i) Valid and current vehicle registration and proof of insurance is required for all vehicles entering MMPF property. All vehicles are subject to search by MMPF at any time.

(ii) Privately owned vehicles driven by MMPF employees, regular contract and temporary labor, as well as longshoremen working at the Facility, may pass through the main gate by presenting their ID Badges. Clearly marked government vehicles may enter the Facility after clearance from the Main Gate House. Clearly marked emergency vehicles may enter the facility after clearance from the Main Gate House. A security guard will follow or accompany the emergency vehicle to verify identity of emergency personnel as time permits. Visitors shall display a visitor's vehicle pass, issued by the Main Gate House, on the dash of their vehicle.

(iii) Parking for vehicles will be limited to designated areas or by specific direction of the FSO and/or security personnel.

(iv) Delivering tractor trailers that have been granted access to the Facility will receive directions to specific doors or locations for loading/unloading or staging. The driver should not deviate from these directions or access to the Facility will be revoked. Delivery companies which have regularly scheduled and authorized calls at the MMPF will be authorized by the FSO to bring vehicles into the Facility. Application for such permission shall be made to the FSO. No deliveries will be allowed to any area identified as a "Restricted Area" by signage or other designation by the FSO or security personnel.

(v) Without unlawful discrimination, the MMPF reserves the right to control and set the rates for the loading and unloading of all cargo handled at the Facility, with respect to all Vessels, railcars, trucks and other traffic.

### 3.3 MMPF Not Public Thoroughfare

MMPF's property is not a public thoroughfare and all persons, equipment or vehicles entering thereon do so at their own risk.

### 3.4 Advance Notice for Processing Trucks and Railcar

Advance notification shall be given to MMPF prior to 4:00 p.m. each work day for the following day's requirements. Advance information should include the number of trucks or cars, weight, commodity, approximate time of arrival, and type handling required. All loading, unloading and handling will be coordinated with the Director to ensure availability of labor and equipment.

### 3.5 Berth Application

(a) All Vessels desiring a berth at the MMPF shall, as far in advance as possible but in no event later than 48 hours before the date of docking, make written application for berthing to MMPF on forms prescribed by MMPF (found in Item No. 1 of the "Appendix" to this MMPF Tariff), specifying the date of arrival, departure, and the nature and quantity of cargo to be handled (the "Berth Application"). The completed Berth Application should be faxed to (251) 443-6135, to the attention of: "Port Operations Director."

(b) No Vessels shall arrive at the MMPF until such time as the Vessel has received authorization and written approval of its Berth Application by the Director. Dockage shall be assessed at twice the daily rate for each day that any Vessel occupies a berth at the MMPF without having submitted a Berth Application and received approval from the Director in advance of the Vessel's arrival as provided herein. The Director reserves the right to assign berths for the best utilization of MMPF Facility, and to order the shifting of any Vessel (at the risk and expense of the Vessel) to facilitate navigation and commerce or to protect other Vessels or property. ALL DECISIONS OF THE DIRECTOR ARE FINAL.

(c) A Berth Application will constitute an agreement between the applicant and the MMPF that all charges will be promptly paid upon presentation of invoice therefore, and that applicant will comply with all rules and regulations of the MMPF, including without limitation, the Rules hereunder, as amended from time to time.

### 3.6 Cargo Statements Required; Access to Records

(a) All steamship lines, rail, truck or barge lines, importers, exporters, shippers and their agents, including customs house brokers and freight forwarders using the Facility shall furnish MMPF with a copy of bills of lading, freight bills, manifests and such other documents and information as is necessary to develop and insure correct assessment of terminal charges on the cargo, no later than (i) seven days after the arrival of the Vessel at berth, in the

case of inbound cargo, or (ii) within seven days after departure of the Vessel from berth, in the case of outbound cargo.

(b) If requested by MMPF, Users shall furnish information to MMPF regarding health, safety and/or environmental issues associated with Vessels, cargo, goods or other materials moving through or using the Facility. This includes, but is not limited to, any information required for cargos subject to the International Maritime Solid Bulk Cargos Code (IMSBC Code), such as cargo declaration forms and certificates demonstrating compliance with transportable moisture limits. This information must be furnished prior to commencement of receipt, handling and/or loading or unloading of the cargo, goods or other materials at issue. Failure to comply with a request for such information may result in direction from MMPF that the Vessels, cargo, goods or other materials moving through or using the Facility to immediately vacate the Facility; all cost, risk and expense to be borne by User which fails to furnish the requested information.

(c) Failure to provide such documents and information as set forth above, within the time limit specified, will entitle MMPF to assess a late fee of \$50.00 per day after the expiration of the applicable seven-day period, until such documents and information are provided. MMPF may also place those responsible for such failure on the MMPF's delinquency list.

### 3.7 Collisions

In the event of collision or allision involving contact between two or more Vessels or between a Vessel and any wharf, dock, pier or other property of the MMPF, written reports providing all pertinent details of such collision or allision shall immediately, and in no event later than 12 hours after the incident, be provided to the Director, by the pilots, masters, operators, or charterers of each Vessel involved in such incident.

### 3.8 Electrical Power

No electrical equipment, including privately owned lights and lights rented from the MMPF, shall be connected anywhere at the MMPF without the prior consent of the Director.

### 3.9 Facilities – User's Responsibility for Damage

All Vessels, their operators and charterers, and all other Users of the MMPF shall be held responsible for any loss, damage or destruction of any property of MMPF (including, but not limited to, costs to repair or replace any structures located thereon) resulting directly or indirectly from their use of the Facility or any other acts, omissions, negligence or default of such Users or their employees (including leased employees), agents, contractors and invitees, regardless of fault. MMPF may detain any Vessel responsible for any damage to the Facility until the amount of such damage has been paid or sufficient security has been given for the amount of damage. Each User shall promptly notify the Director of any such loss, damage or destruction of any property of the MMPF.

### 3.10 Facility Inspection and User's Warranty

(a) Housekeeping, Maintenance and Repairs: Each User shall prevent any undue accumulation of dunnage, trash, or rubbish or other refuse; shall keep all such refuse in proper containers and periodically shall cause such refuse to be removed from the property of the Facility; and upon completion of such use, shall return its area to the MMPF in good order and repair, broom cleaned. Default: Any User who fails to leave its area in good order or repair and broom cleaned will pay to the MMPF the cost incurred by MMPF for repairs and/or cleanup, plus twenty percent (20%).

(b) Disclaimer: The MMPF shall not be liable for the failure or inability of any person to utilize any or all of the facilities of the MMPF. Nothing in this MMPF Tariff shall be construed as warranty that the facilities (including equipment and structures) are in good condition or are fit or suitable for any particular or proposed uses.

### 3.11 Fire Fighting Apparatus

No person shall remove, disturb, obstruct or interfere with the free and easy access to any fire extinguisher, fire hose, fire hydrant or any other firefighting apparatus or watchmen's key station installed in and/or upon any property of the MMPF.

### 3.12 Fire Signal

In the event of fire on board any Vessel berthed at the MMPF, the Vessel should sound five (5) PROLONGED BLASTS of the whistle or siren as an alarm indicating fire on board or at the dock to which the Vessel is moored. Such signal shall be repeated at intervals to attract attention, and is not a substitute for but shall be used in addition to all other available means for reporting the fire. The words "Prolonged Blast" used in this rule shall mean a blast of four to six seconds.

### 3.13 Vessel to Vacate

(a) The Director may order any Vessel to vacate any berth when the Director deems that the continued presence of such Vessels at berth would be a potential hazard to the Vessel, the berth, MMPF property, facilities, structures, employees and contractors or Third Party Service Providers of MMPF, or the rights or property or safety of others, or would unreasonably interfere with the use of the Facility by others. Such situations include, but are not limited to, the following: When a potential natural disaster such as a hurricane, tornado, earthquake or flooding makes the continued presence of the Vessel such a potential hazard; when the berth is committed to others by contractual or other agreement; when the Vessel's cargo or other items present such a potential hazard; when the Vessel refuses to work continuously to completion of its loading and/or discharge; when a Vessel is performing shipyard type maintenance or repair; and when the Vessel poses any other unreasonable risk, in the reasonable determination of the MMPF.

(b) The Director shall provide written notice, at least four hours before the time that the berth must be vacated, to the steamship line or the Vessel's agent advising of the requirement to vacate.

(c) If a Vessel fails to promptly vacate as ordered, it shall be responsible for any Losses which may be incurred by the MMPF or others as a result of such failure to vacate, and shall the Vessel shall indemnify and hold MMPF and all other Indemnified Parties harmless against such Losses.

(d) The MMPF shall have the right, but not the duty, to move any Vessel to another location at the risk and expense of the Vessel, if the Vessel fails to vacate as ordered or in the event of an emergency regardless of whether an order to vacate has been made. If MMPF elects to move the Vessel, the Vessel shall hold the MMPF harmless for any damages or liability that may be incurred as a result of such movement, except for damage or liability caused by MMPF's sole negligence or willful misconduct. Failure to comply with an order to vacate will result in a penalty to the Vessel of twice the daily dockage rate per hour for each hour of non-compliance. Refusal to vacate may result in denial of future berthing privileges.

### 3.14 Alcoholic Beverages/Illegal Drugs Prohibited

The possession and/or consumption of alcoholic beverages at the MMPF or on its property is strictly prohibited except by specific written consent and authorization of the Director. The possession and/or use of illegal drugs at the MMPF or on its property is strictly prohibited.

### 3.15 Smoking/Open Flame Prohibited

No person shall smoke or have in their possession any fire or lighted material in or around the MMPF wharves, facilities, warehouses, transfer areas or other structures set apart for the loading or unloading of Vessels or for the warehousing or storage of their cargos or other materials (including ship's stores). Smoking is permitted in specifically designated areas only.

### 3.16 Vessel Watchman and Armed Guards

(a) Any Vessel lying at the wharves, docks or piers at the MMPF shall at all times have on board at least one person in charge of such Vessel who has the authority to take action in any emergency as may be required, or as may be directed by the Director.

(b) Firearms and the use thereof are prohibited at the MMPF, except that United States federal and state government agents required to carry firearms in their official capacity may do so at the Facility, and except that armed guards may be posted or otherwise used if (a) the Director has given prior written approval of the proposed use of armed guards, and (b) the proposed guard service has been authorized by MMPF to perform such work at the MMPF. Guard services, as such Third Party Service Providers, are bound by the obligations and subject to the remedy limitations set forth in Article VI.

### 3.17 Repairs, Welding and Hot Work

(a) It is not the MMPF's intent to provide berth space for ship repairs or maintenance. Users shall not perform or have performed any shipyard type maintenance or repairs to any Vessel during the time berthed at the MMPF without prior written consent of the Director and pursuant to the strict compliance with all directions of the Director. Vessels at berth

performing shipyard type maintenance or repairs without the aforementioned approval of the Director may be ordered to vacate berth.

(b) Welding or burning of any type (including oxyacetylene and electric), and all other “hot work” at the MMPF is prohibited without the prior written consent of the Director, in his or her sole discretion as to the circumstances, limitations and precautions imposed. The Vessel shall bear sole responsibility for any expense associated with such work.

### 3.18 Anchorage

No Vessel may be anchored in waters adjacent to the MMPF except in cases of emergency.

## IV. CHARGES FOR TERMINAL SERVICES

### 4.1 Line Handling Charges

Each Vessel will be charged a flat line handling fee of \$600 for arrival and another \$600 for departure.

### 4.2 Dockage Charges

(a) Dockage charges will be computed according to the Vessel’s length overall (“LOA”) in feet, or the Vessel’s Gross Register Tonnage (“GRT”), as published in Lloyd’s Register of Shipping, and the duration of the Vessel’s berth. Dockage will be charged for an initial 24 (twenty-four) hour period, after which a prorated charge will be assessed for each 6 (six) hour period of continued berth at the MMPF. Special Lay Berth rates will be provided upon request.

(b) Payment of dockage is the responsibility of the Vessel and its charterers and operators, and payment (or other arrangements for payment acceptable to MMPF) must be made prior to departure from MMPF to avoid any delay in sailing. In the event the Vessel and its operators and charterers fail or are unable to pay the dockage charges, MMPF reserves the right to seek and collect same from the agent which made berthing application for the Vessel, any disclosure of principals notwithstanding, as set forth in Section 4.9(a).

(c) Vessels delivering or receiving liquid or dry bulk cargoes will be charged per the Vessel’s GRT at the rate of \$0.36/GRT per day or fraction thereof.

(d) Vessels delivering or receiving breakbulk/general cargoes will be charged per the Vessel’s LOA in accordance with the following rate schedule per day or fraction thereof.

< 200 ft	\$2.88
200 – 399.9 ft	\$3.78

400 – 499.9 ft	\$5.14
500 – 599.9 ft	\$6.91
600 – 699.9 ft	\$8.02
700 – 799.9 ft	\$10.17
800 – 899.9 ft	\$12.26
> 900 ft	\$14.66

(e) Barges with an LOA of less than 200 feet will be billed at \$92.00 per barge per 24 hour period. Barges with an LOA of greater than 200 feet will be billed per the rate schedule set forth in section 4.2(c) or 4.2(d), whichever is applicable to the cargo being delivered or received.

#### 4.3 Wharfage Charges

(a) A schedule of wharfage rates is available upon request from the Director.

(b) Wharfage charges shall be assessed on all cargo, whether of foreign or domestic origin, (a) which is placed onto, transferred over or under wharves for handling to or from Vessel; or (b) which is delivered to or received from Vessels by other watercraft when said Vessels are occupying berths or moored outside other Vessels occupying a berth. When cargo is placed on the wharf or other watercraft for outbound movement and is not subsequently loaded aboard a Vessel but is removed from the wharf or other watercraft, the applicable wharfage shall be assessed. Wharfage is solely the charge assessed against the cargo for use of the wharf or other watercraft as set forth above, and does not include charges for any other service.

(c) Notwithstanding the foregoing, wharfage charges shall not apply to: (1) ship's stores and fuel intended for a Vessel's own use; or (2) restowed cargo discharged and subsequently reloaded upon the same Vessel. No wharfage shall be assessed on the tare weight of cargo containers when loaded or partially loaded. Cargo discharged from Vessels at MMPF and transshipped on second Vessel berthed at the MMPF shall not be subject to the payment of a second wharfage charge provided said cargo does not leave MMPF's premises.

(d) Payment of wharfage is the responsibility of the owners of the cargo on which wharfage is assessed. The collection and payment of wharfage must be guaranteed by the Vessel and its charterers and operators, and the use of a wharf or other watercraft for such purposes shall be deemed the acknowledgment and delivery of that guarantee.

#### 4.4 Charges for Loading, Unloading and Handling Cargo and other Goods

(a) Schedules of MMPF's charges for loading and unloading cargo and charges for handling cargo and other goods are available upon request from the Director. Labor rates will be billed on Holidays (as designated in Section 4.11) at 1.5 times the regular rates.

(b) MMPF shall have the exclusive right to control the loading, unloading, stevedoring and handling of all cargo and other goods at the Facility. No other person will be allowed to perform loading, unloading or handling at the Facility without prior express written permission from the Director.

#### 4.5 Heavy Lift Charges

Any single unit of cargo exceeding 30,000 pounds shall be considered a heavy lift cargo and shall be assessed costs associated with each project at rates quoted and determined by the Director on a case by case basis and in Director's sole discretion.

#### 4.6 Wharf Demurrage, Storage and Warehousing Charges

(a) There shall be no allowance for "free time" for inbound or outbound cargo. Wharf Demurrage charges will be assessed against the Vessel, shipper or consignee (or agents thereof) on a case by case basis by the Director. MMPF is not responsible for any delays, detention or demurrage on railcars, trucks, Vessels or other traffic.

(b) Storage and other charges for warehousing services will be assessed for storage handling, warehousing of and related services pertaining to cargo or other goods stored or held at the MMPF as set forth in the Warehouse Tariff. The Warehouse Tariff: (a) is applicable to all of Millard's public warehouses; (b) is incorporated into this MMPF Tariff in its entirety by this reference; and (c) is applicable to all goods and cargo stored, handled or warehoused at MMPF or any facilities at the MMPF, including but not limited to dry, ambient or frozen and refrigerated cold storage warehousing services at the MMPF. In the event that the terms and conditions of the Warehouse Tariff conflict with this MMPF Tariff, then the terms of this MMPF Tariff shall control and be binding.

#### 4.7 Fresh Water Charges

The rate of charge for fresh water supplied to Vessels by MMPF at its wharves, if and where that service is available, will be \$1.25 per Net Ton, subject to the following additional rates and procedures:

1. Hookup Fee:
  - Regular hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except Holidays) – \$65.00
  - Overtime hours (all hours other than regular hours) – \$150.00
2. Minimum Invoice (including hookup fee and water usage) – \$75.00

MMPF does not guarantee that fresh water service will be available. Further, MMPF makes no representations or guarantees as to the quality of water provided.



**NOTE:**

(a) If a Vessel representative fails to sign the water ticket upon the completion of watering, then the Vessel agrees to accept the MMPF reading charges for the connection.

(b) The Vessel assumes responsibility for the water meter while connected to the Vessel. If the meter is lost, the Vessel will be charged the cost to replace the water meter, plus the charge for water usage based on 200 U.S. gallons (i.e., 0.757 Tons) per minute from Vessel hookup to disconnection.

(c) Prior to requesting hookup for fresh water, the Vessel will be “made ready”, i.e., a hose with appropriate fittings will be available for connection when the MMPF personnel arrive shipside. If additional trips or standby time is necessary due to Vessel not being prepared, an additional assessment equal 15% of the total cost (hookup fee plus water usage) will be levied against the Vessel.

4.8 Notice Regarding Rates Listed

(a) Rates provided herein are subject to change at any time without notice.

(b) MMPF may, at its discretion, agree to provide rates, terms and conditions other than as provided herein.

(c) Noting contained herein shall be construed as requiring MMPF to perform, without charge, any service not specifically provided for herein.

4.9 Charges – Payment Obligations

(a) Subject to any express provisions herein to the contrary, each Vessel shall be liable for the payment of all charges incurred or guaranteed by that Vessel, and owners of the cargo shall be liable for the payment of all charges incurred by the Vessel’s cargo. A Berth Application made by an agent of the Vessel, and any service request made by an agent for the owners, shippers or receivers of the Vessel’s cargo, shall constitute an agreement by said agent, to be held separately bound and ultimately liable, notwithstanding any disclosure of the agent’s principal, for the payment of all or any part of the charges incurred or guaranteed by the Vessel or by the cargo and/or its owners, shippers or receivers for which the Vessel or the cargo and its owners, shippers or receivers are in default thirty (30) days following departure of the Vessel.

(b) All charges for terminal services or other use of the MMPF become earned when performed or furnished, and invoices therefore are due and payable in full no later than 30 calendar days from the date of invoice issuance. Material errors or discrepancies on any invoice must be specifically reported in writing to MMPF’s Accounts Receivable department within ten days after receipt of the invoice, or else any claim arising in connection with such errors or discrepancies will be waived, and the invoice will remain valid and all amounts due as initially set forth.

(c) Any charges remaining unpaid after 30 days following invoice issuance will be considered delinquent. Delinquent accounts will be assessed a late fee of 1.5% per

month, calculated from the date of the invoice. If MMPF or its assigns or related entities file suit to collect any monies due, enforce any provision, or remedy any default under this MMPF Tariff by any User, such User shall pay all expenses incurred by MMPF and its assigns and related entities in connection with such suit, including reasonable attorneys' fees and all legal and other litigation costs and expenses.

(d) All requests for credit terms must be made in advance and in writing to the MMPF. The requesting party should contact the Director for further information regarding such requests. The decision to grant credit terms shall be at the sole discretion of MMPF.

4.10 Lien; Disposition of Cargo. MMPF claims a maritime lien against the Vessel, cargo and other goods, and all appurtenances as security for payment of all charges. MMPF reserves the right (a) to withhold delivery of cargo or other goods until all accrued charges on those goods have been paid in full, (b) to pile, repile, and transfer within the Facility any cargo or other goods shut out from a Vessel and to remove such goods to warehouses apart from the Facility, all at the expense and risk of loss of the owner, shipper, consignee, Vessel or inland carrier of the goods, as responsibility may appear, and (c) to sell any cargo and other goods located at the Facility whenever payment for charges on those goods are delinquent or the items are unclaimed for more than three (3) months. MMPF will give notice to the Person last known by the MMPF to claim an interest in such goods, describing the goods, demanding payment within a specified time, and indicating when and where the goods will be sold if payment is not timely made.

#### 4.11 Holidays

The following are designated holidays by the MMPF, for purposes of calculating labor and other rates and charges under this MMPF Tariff:

1. New Year's Day
2. Memorial Day
3. July 4
4. Labor Day
5. Thanksgiving Day
6. Christmas Eve Day
7. Christmas Day
8. All Saturdays and Sundays, unless otherwise expressly designated in writing by the MMPF.

4.12 Security Assessment Charges: There shall be a security assessment charge to each Vessel of 8% of total dockage fee.

## V. ENVIRONMENTAL MATTERS

Each User, on its own behalf and on behalf of all of its employees and agents, agrees, warrants and covenants that it shall take every practical precaution to prevent pollution of the environment, and shall comply at all times with the following provisions relating to environmental matters:

5.1 Compliance With Environmental Law. User shall conduct all of its activities at the MMPF in compliance with all federal, state and local statutes, ordinances, regulations, orders and requirements of common law (collectively, “Environmental Law”), concerning: 1) all such activities at the MMPF; 2) repairs or construction of any improvements; 3) handling of any materials; 4) discharges to the air, soil, waters of the State of Alabama, or other surface water or groundwater; and 5) storage, treatment or disposal of any waste at or connected with any activity at the Facility. User shall not cause or allow its employees, contractors, agents or invitees to cause contamination of the MMPF or any to property surrounding the MMPF, including adjacent waterways and groundwater below the surface of MMPF (“Surrounding Property”). Without limiting the foregoing, User must have prepared any hazardous cargoes for shipment in accordance with the applicable Department of Transportation regulations contained in Title 49 of the Code of Federal Regulations, as amended.

5.2 Disposal and Removal of Hazardous Substances. User shall, at its sole cost, contract with a reputable, private licensed refuse removal firm for the removal and disposal of any hazardous substances generated, manufactured, introduced or used by User, from the MMPF in accordance with all Environmental Law. User shall under no circumstances store, treat or dispose of any hazardous, toxic or regulated material, substance, or waste at the MMPF or Surrounding Property.

5.3 Disposal of Waste.

(a) The dumping of oil, oily waste, grease, trash or other objectionable matter into the waters of the inner harbor or other navigable water is prohibited by Federal, State, City and MMPF regulations, laws and ordinances.

(b) Any Vessel desiring to discharge oily waste is responsible for selecting and coordinating with an inspected and approved vendor that meets United States Coast Guard requirements for receipt of oily waste. Such discharge operations are to be reported to the Director. The firms listed below have indicated to the Captain of the Port of Mobile that they are interested in and qualified to contract their services in this regard. Their listing herein does not indicate a preferential recommendation on the part of the Facility but merely reflects the listed companies’ desire to function in the above capacity. All inquiries should be directed to the Captain of the Port, United States Coast Guard.

(c) Vessels must comply with the provisions of Annex V of the International Convention for the Prevention of Pollution from Ships, as amended and in effect from time to time (MARPOL), with respect to the disposal of garbage (as defined in MARPOL, Annex V).

(d) USDA Regulated food waste must be handled at a facility approved by the Animal and Plant Health Inspection Service (APHIS). Regulated garbage must be handled by a commercial, full-service solid waste firm. The firms listed below have indicated to the Captain of the Port of Mobile that they are approved by APHIS to perform such services. The listing below does not indicate a preferential recommendation on the part of the Millard Maritime Port Facility but merely reflects the listed companies' desire to function in the above capacity. Any Vessel desiring to discharge regulated food waste and/or garbage is responsible for selecting and coordinating with an approved company for such activities.

Dockside Services Inc.  
500 Beauregard Street  
Mobile, AL 36603  
PH: 251-438-2362

#### 5.4 Certificate of Financial Responsibility for Oil Spills

(a) Notice. In the event of an oil spill from any source while utilizing MMPF and waters adjacent thereto, any User with knowledge or information about the oil spill must give immediate notice, including the location and possible extent of the spill, to (i) the Director and (ii) the "Duty Officer" at the NATIONAL RESPONSE CENTER via telephone call to 1-800-424-8802.

(b) All Vessels with a gross register tonnage ("GRT") of 300 Tons or more entering the Port of Mobile waterways and MMPF, as well as their operators and charterers, shall maintain and have available for inspection by the Director, a Certificate of Financial Responsibility required to meet the liabilities prescribed in Title 33 of the Code of Federal Regulations, part 130 (33 CFR §130).

5.5 Prevention and Contingency Plan. All Vessels shall maintain adequate written ship-specific oil spill prevention and control contingency plans, as required by applicable regulations including, but not limited to 33 C.F.R. § 151, et seq. (as amended). Likewise, Vessels operating at the MMPF shall, at all times, adhere to appropriate ballast water management plans and shall make no discharges at or near the Facility not in compliance therewith.

5.6 Survival. The provisions of this Article V shall survive the termination of User's use of the MMPF or any other person's provision of services at the Facility.

## VI. INDEMNIFICATION AND LIMITATION OF LIABILITY

### 6.1 Indemnification

(a) Indemnification and Hold Harmless. Each User and each Third Party Service Provider shall indemnify, defend and hold harmless the MMPF, Millard, their related and affiliated entities, and each of their respective officials, officers, directors, managers, members, shareholders, employees, volunteers, agents, legal representatives, successors and assigns (hereinafter referred to as the “Indemnified Parties”) from and against any and all claims, actions, losses, liabilities, damages, and expenses, including attorneys’ fees and litigation costs (collectively, “Losses”), incurred by or asserted against any one or more of the Indemnified Parties as a result of or in connection with any one or more of the following, except to the extent that such Losses were caused by MMPF’s sole negligence or willful misconduct:

(i) any use of the MMPF by the User, including any requests or receipt of services performed or made available by the MMPF and any loading, unloading, handling or storing of the User’s cargo or other goods at the Facility;

(ii) the performance of services at the Facility by the Third Party Service Provider;

(iii) any violation of this MMPF Tariff by the User or Third Party Service Provider;

(iv) any violation by the User or Third Party Service Provider of any Environmental Law or other federal, state, or local law, rule, regulation or order, including but not limited to any environmental cleanup or remediation required by any government agency or otherwise;

(v) any generation, manufacture, introduction, use, handling, transportation or disposal of hazardous substances by the User or Third Party Service Provider; and

(vi) the negligence or willful misconduct of any User or Third Party Service Provider at the MMPF.

Losses covered by this indemnification provision include, without limitation, (1) personal injury (including death) and property damage (including damage to Vessels, cargo or other goods, and vehicles present at the Facility); (2) any and all expenses that the Indemnified Parties may incur to comply with any Environmental Law; (3) any and all costs that the Indemnified Parties may incur in studying or remedying any contamination at or arising from User’s use of the MMPF; (4) any and all costs that such Indemnified Parties may incur in studying, removing, disposing, or otherwise addressing any materials which are the subject of this Section; (5) any and all fines, penalties, judgments or other sanctions assessed upon such Indemnified Parties, by reason of a failure of User to have ensured compliance with Environmental Law; (6) any and all loss of value of the MMPF or its property; and (7) any and all legal and professional fees and costs incurred by MMPF in connection with the foregoing. The indemnification, defense and hold harmless obligations set forth herein shall not be limited by or to any insurance coverage or by any provision in exclusion or omission from any insurance policy.

(b) Waiver of Insured Claims and Subrogation. Each User and Third Party Service Provider waives any and all claims that such person (or anyone claiming through or under such person) may have against any of the Indemnified Parties for personal injury, property damage or other loss or expense that is covered under any insurance policy of such person, regardless of whether such injury, damage, loss or expense was caused by the fault or negligence of any Indemnified Party. Each User shall cause each of its insurance carriers to waive any right of subrogation against the MMPF, all other Indemnified Parties, and MMPF's insurers, with respect to such injury, damage, loss or expense arising in connection with such person's use of or services at the MMPF.

(c) Sole Negligence or Willful Misconduct Exception to Limitation of Liability. Except with respect to any claims covered by an insurance policy of any User or Third Party Service Provider, no provisions in this MMPF Tariff shall limit or relieve the MMPF from liability for its sole negligence or willful misconduct, nor require any person or Vessel to indemnify or hold harmless MMPF from liability for MMPF's sole negligence or willful misconduct.

(d) Legal Expense. In the event that MMPF prevails in any action brought by the MMPF to collect monies due, enforce any provision, or remedy any default under this MMPF Tariff against any User or Third Party Service Provider, such person shall pay all expenses incurred by the MMPF in connection with the suit, including reasonable attorneys' fees, costs and expenses.

(e) Survival. The provisions of this Section shall survive the termination of User's use of the MMPF or any other person's provision of services at the Facility.

## 6.2 Liability and Limitation of Damages to Cargo and other Goods

(a) User shall hold harmless MMPF from and shall bear all risk of any loss, damage or destruction of cargo or other goods loaded, unloaded, handled or stored at the Facility or otherwise the object of MMPF's terminal services, except to the extent that such loss, damage or destruction is the result of MMPF's sole negligence. While at the MMPF, import cargo is in the care, custody and control of the Vessel, the consignee, or the importer (or agents of the foregoing), and export cargo is in the care, custody and control of its owner, shipper, or receiver (or agents of the foregoing).

(b) Without limiting the foregoing, the MMPF shall not be liable for any loss, damage or destruction arising from the User's negligence or willful misconduct, Acts of God, fire, smoke, windstorms (including tornadoes and hurricanes), earthquakes, earth movement, mudslides, mudflows, storm floods or the influx of rising or surface water, acts of military authority, war, nuclear hazard, riots or malicious acts of others, work stoppage, strikes, lockouts, picketing, boycotts, embargos or other labor disputes or industrial disturbances (whether involving employees of MMPF or others) regardless of the cause, sprinkler leakage or any other cause beyond the control of MMPF in the exercise of its duty of reasonable care under the circumstances. MMPF assumes no responsibility for concealed damages, leakage from packages, variations in weight, shrinkage in weights, odor, rot, taint, or other inherent qualities of cargo or other goods, whether occurring while such goods are loaded, unloaded, handled or in

storage, or for failure to detect or remedy the same. User and MMPF agree that MMPF's duty of care does not extend to providing fire protection or a sprinkler system at the facility or any portion thereof. Unless specifically agreed to in writing, MMPF shall not be required to store goods in humidity or darkness controlled environments nor be responsible for tempering goods.

(c) If any cargo or other goods are lost, damaged or destroyed as a result of MMPF's sole negligence, then:

(i) If a Warehouse Receipt has been issued for such cargo or other goods, then MMPF's liability for damages shall be limited as set forth in the Warehouse Receipt; or

(ii) If no Warehouse Receipt has been issued for such cargo or other goods, then MMPF's liability for damages shall not exceed \$500 per package or customary freight unit (or, in the case of bulk cargo, \$500 per Ton), unless (A) the nature and value of such cargo or other goods has been declared to MMPF in writing prior to MMPF's commencement of terminal services and (B) a premium fee has been paid to MMPF, in addition to the other charges for services as set forth herein, in the amount of twenty-five percent (25%) of the declared value of each package or customary freight unit, in which event MMPF's liability shall not exceed such declared value. In no event will MMPF's liability exceed the actual value of the cargo or other goods as of the date of the alleged loss, damage, non-delivery, mis-delivery or cross-delivery.

(d) This Section 6.2, together with Section 6.3 following, set forth the User's exclusive remedy against MMPF or any of the other Indemnified Parties for any claim or cause of action whatsoever relating to loss, damage or destruction of cargo or other goods at the Facility, including any claim of inventory shortage or mysterious disappearance, unless User proves by affirmative evidence that MMPF converted such goods to its own use. User waives any right to rely upon any presumption of conversion imposed by law. In no event shall User be entitled to incidental, special, punitive or consequential damages.

### 6.3 Notice of Claim and Dispute Resolution

MMPF shall not be liable for any claim, and no suit or other action on any claim may be commenced or maintained against MMPF, unless each of the following conditions has been satisfied:

(a) User must present its claim in writing to the Director within a reasonable time not exceeding: (i) with respect to loss, damage or destruction of cargo or other goods loaded, unloaded, handled or stored at the Facility, or any other property damage, 60 days after User learns, or in the exercise of reasonable care, should have learned of such loss, damage or destruction, or (ii) with respect to any shortages of the cargo or other goods occurring during or arising out of the loading, unloading, storage, handling or other servicing of such cargo or other goods at the MMPF, 48 hours after the cargo or other goods are received at their final destination as shown on the Bill of Lading.

(b) With respect to claims for loss, damage or destruction of goods, User must provide MMPF with a reasonable opportunity to inspect the goods which are the basis of the User's claim.

(c) In the event of any claims between User and MMPF, these entities agree that they will use an escalating dispute resolution procedure, using the following progression: (1) Good faith, face-to-face negotiations between principals of the parties; (2) informal mediation using a neutral mediator; and (3) judicial proceedings. With respect to this progression, the parties will negotiate amongst themselves until either side provides written notice of its desire to engage a neutral mediator. Selection of a mediator and mediation of the dispute shall conclude within sixty (60) days from the date of such notice, unless the parties agree to extend this time.

#### 6.4 Jury Waiver.

Each User knowingly, voluntarily and irrevocably waives any right to trial by jury of any claim arising from or relating to this MMPF Tariff.

#### 6.5 Cumulative Remedies.

The remedies available to MMPF under this MMPF Tariff are in addition to, and not exclusive of, any and all other remedies set forth herein or otherwise available at law or in equity.

### **VII. INSURANCE**

Users shall maintain such insurance as will protect MMPF and all other Indemnified Parties, in the amounts and according to the provisions set forth below:

#### 7.1 General Requirements:

(a) All policies of insurance must be written with companies acceptable to the MMPF.

(b) Each User shall provide original certificates of insurance, signed by the applicable licensed insurance agent or broker and evidencing that the coverages are current and in place, to: Millard Maritime Port Facility ATTN: Risk Manager, 13030 Pierce Street, Omaha, NE 68144; FAX NO. 402/891-2569. Failure to provide current certificates within 10 (ten) days following policy expirations shall render null and void any agreements for use of the Facility.

(c) Upon MMPF's request at any time, User shall: (A) provide complete certified copies of any and all policies of insurance; and (B) obtain appropriate endorsements to the User's insurance policies so as to provide that the MMPF, its officials, officers, managers, members, employees, agents and volunteers will be covered as primary and non-contributory additional insureds, with respect to any liability arising out of use of the Facility.

(d) Except for the proven sole negligence or willful misconduct of the MMPF, the coverage shall contain no special limitations on the scope of protection afforded.



(e) The User's insurance shall be primary insurance, regardless of policy language to the contrary. All premiums and deductibles are the responsibility of the User.

(f) The User's insurance policies and certificates shall include a provision that at least 30 days' notice will be given to the MMPF before limits and scope of coverage are materially altered or insurance protection is cancelled.

(g) The User's insurance policies shall include waiver of all rights of subrogation against the MMPF, all other Indemnified Parties, and the MMPF's insurers for any losses arising in connection with User's use of the MMPF.

(h) The User agrees that none of its subcontractors will be allowed to commence work on the MMPF property until either (A) the subcontractor has obtained insurance coverage meeting the requirements set forth herein, or (B) the User has provided such coverage for the subcontractor.

(i) The User may purchase an umbrella liability policy to provide the limits of coverage specified, so long as such umbrella provides coverage is at least as broad as specified for the individual policy and the umbrella applies directly above the individual policy, without gap in limit of liability.

## 7.2 Required Coverage Types and Minimum Limits:\*

(a) Commercial General Liability: \$5,000,000 combined single limit, for any one occurrence for bodily injury, including death, and property damage liability. Blanket Contractual Liability, Fire Legal Liability, Explosion/Collapse/Underground Property Damage Liability, coverages must be included.

(b) Pollution Liability: \$5,000,000 combined single limit, for any one occurrence, for onsite and offsite bodily injury and property damage, cleanup cost and the unloading and loading of product.

(c) Business Automobile Liability: \$2,000,000 each accident, for bodily injury, including death, and property damage liability. Coverage must extend to "any auto."

(d) Workers Compensation and Employers Liability: Statutory. User must have coverage under the Alabama Workers Compensation Act in an amount not less than that required by Alabama law.

(e) Coverage as Required by Federal Statutes (if applicable): Including but not limited to U.S. Longshoremen and Harbor Workers Act (USL&H), Jones Act, Railroad Federal Employers' Liability ACT (FELA).

(f) Terminal Operator's and Stevedore's Legal Liability Coverage: Terminal Operator's and Stevedore's Legal Liability Coverage in an amount to cover the potential liability of the MMPF User pursuant to this Tariff.

\*The MMPF reserves the right to increase the required limits, when necessary, due to increased exposure with respect to any User.

## VIII. MISCELLANEOUS

### 8.1 Severability

The terms and conditions set forth in this MMPF Tariff shall be severable, and if any provision is held invalid or unenforceable, that provision will be deemed to be severed from this MMPF Tariff to the extent of such invalidity or unenforceability, without affecting the validity or enforceability of the remainder of that provision or any other provisions herein, all of which will remain in full force and effect.

### 8.2 Jurisdiction

Subject to the dispute resolution procedures set forth herein, jurisdiction for any action, whether in law, equity or admiralty, and whether founded in contract or tort—arising from or incidental to the User’s operations at the Facility or other use of MMPF’s services, shall lie exclusively in the United States District Court for the Southern District of Alabama in Mobile, Alabama, or as to those lawsuits for which the federal courts lack subject matter jurisdiction, before the Mobile County Circuit Court (Thirteenth Judicial District), in Mobile, Alabama. Any use of the Facility constitutes the User’s consent to such jurisdiction and venue and the waiver of any defenses based on personal jurisdiction or improper venue (including but not limited to forum non conveniens and any assertion of jurisdiction or venue in any other location or forum).

### 8.3 Governing Law

As applicable, this MMPF Tariff shall be governed by and construed in accordance with the General Maritime Law of the United States or, to the extent such law should not apply, the laws of Alabama (excluding conflicts of law rules which might otherwise call for the application of the laws of a different jurisdiction).

## **APPENDIX**

1. Berth Application
2. Declaration of Security (Between Vessel and Facility)