THEODORE PORT FACILITY

SCHEDULE AND TARIFF

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

EFFECTIVE DATE: OCTOBER 6, 2005

FOR QUESTIONS CONTACT:
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SECTION ONE – DEFINITIONS

100.00 Millard Refrigerated Services Theodore Port Facility – Referred to herein as "the Facility," "Millard Port Facility," and/or "MPF."

101.00 MPF Port Operations Director – Referred to herein as "Director," or "POD;" said individual shall be responsible for the implementation and interpretation of the Rules, Regulations and Rates contained herein.

102.00 MPF Schedule – These "Rules, Regulations and Operating Procedures" published by MPF which shall govern equally the Users of the MPF from the effective date thereof, although contractual variations may occur. This "Schedule" may also be referred to from time to time as MPF's "Tariff" or "Schedule/Tariff."

103.00 Arrival at Berth – Shall be the time when the vessel arrives alongside the wharf with two lines made fast.

104.00 The terms "vessel, carrier or owner" as used herein shall be interchangeable and include their respective authorized or contractual agents.

105.00 "User" – A User of the facilities owned, leased and/or controlled by the MPF, shall include any vessel or person using any MPF properties, facilities, or equipment, or to whom or for whom any service, work or labor is furnished, performed, done or made available by the MPF, or any person owning or having custody of cargo moving over such facilities.

106.00 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.

107.00 Demurrage – the charge assessed against the cargo remaining in or on the terminal facilities after the expiration of free time.

108.00 Departure from Berth – Shall be the time the last line is let go.

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

110.00 Free time – the period specified in the terminal schedule during which cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel.

111.00 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.

112.00 Heavy lift – the service of providing heavy lift cranes and equipment for lifting cargo.

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

114.00 Package – Shall also include any van, container or other form of cargo unitization; said term shall also include pieces, unpackaged customary freight units and all articles of any description except goods shipped in bulk.

115.00 Storage and Storage Charges – Storage is the service of provided terminal facilities for the storing of inbound or outbound cargo after the expiration of free time (if any). Storage rates will be assessed for storage of cargo following expiration of free time (if any), as set forth in this Schedule/Tariff and/or as otherwise noted herein.

116.00 Terminal services – includes checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined in this section. The definitions of terminal services set forth in this section shall be set forth in the terminal schedules, except that other definitions of terminal services may be used if they are correlated by footnote, or other appropriate method, to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefore shall be shown in the terminal schedule.

117.00 Ton – Shall be a net metric ton (NMT) of 1,000 kg (2,240 lbs), unless otherwise indicated.

118.00 Warehouse Receipt – Refers to the Millard Refrigerated Services Warehouse Receipt issued by Millard Refrigerated Services, Inc. ("Millard") for all goods received by Millard, its Warehouse facility at the MPF. A copy of the Warehouse Receipt is available upon request from the MPF Port Operations Director.

119.00 Warehouse Tariff – refers to the Millard Refrigerated Services public warehouse tariff, as published from time to time by Millard Refrigerated Services, Inc., which tariff is applicable to all of its public warehouses. A copy of the Warehouse Tariff is available upon request from the MPF Port Operations Director.

120.00 Wharf demurrage – a charge assessed against cargo or vessel remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage.

121.00 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.

122.00 To the extent not inconsistent with the definitions contained here, MPF adopts and incorporates by reference those "Definitions" found in 46 CFR § 525.1(c) (as amended).

SECTION TWO – APPLICATION OF RULES/LIABILITY AND LIMITATION OF DAMAGES

200.00 **Use of MPF Constitutes Acceptance of Rules and Regulations**

Rates, rules and regulations contained in this Schedule/Tariff (or as amended) are applicable at the MPF located in Theodore, Alabama, and shall apply equally to Users of the Facility on the effective date as shown on this Schedule/Tariff (or as amended); however, contractual variations may occur. MPF, through its POD or his/her designated representative, shall have the sole responsibility to interpret and determine the applicability of any of the rules, regulations, rates and services provided for herein.

The use of MPF constitutes acceptance by the User of all rules and regulations contained in this, the MPF Schedule/Tariff, and the User agrees to be governed by all rules and regulations published in this Schedule/Tariff, per 46 CFR § 525.2(a)(2) (as amended).

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

201.00 **Liability and Limitation of Damages**

a. Except as may be caused by its sole negligent acts or omissions, the MPF shall not be responsible nor liable for any loss, damage or destruction to goods or cargo at its facility. User and MPF agree that MPF'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, MPF shall not be required to store goods in humidity or darkness controlled environments nor be responsible for tempering goods.

b. All goods and cargo loaded, unloaded, handled or stored at the MPF shall be loaded, unloaded, handled or stored at the user's risk of loss, damage or delay due to Acts of God, 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, involving employees of MPF or others, regardless of the cause. MPF assumes no responsibility for concealed damages, leakage from packages, variations in weight, shrinkage in weights, odor, rot, taint, or other inherent qualities of goods or cargo, whether occurring while goods are loaded, unloaded, handled or in storage, or for failure to detect or remedy the same. MPF assumes no responsibility for losses arising from sprinkler leakage, fire, smoke, windstorm (includes tornado and hurricane), earthquake, earth movement, mudslides, mudflows, storm, flood or the influx of rising or surface water, Acts of God, or any other cause beyond the control of MPF in the exercise of its duty of reasonable care under the circumstances.

c. Cargo or goods for which the Warehouse Receipt has been issued: In the event of loss, damage or destruction to goods or cargo for which MPF is legally liable, the limitation of liability and limitation of damages contained in the Warehouse Receipt issued by MPF (or its related entities) shall govern the Facility's liability for loss, damage or destruction of such cargo or goods.

d. Package unit limitation: As to any cargo or goods for which no warehouse receipt has been issued by MPF (or any of its related entities), in the event of loss, damage or destruction to goods or cargo for which MPF is legally liable, MPF shall in no event be or become liable for any loss, damage or destruction to goods or cargo at its facility, for damages in excess of $500.00 (Five Hundred and NO/100 Dollars) per package or customary freight unit (or, in the case of bulk cargo, it will be $500.00 per ton) unless the vessel owner, vessel charterer, cargo shipper, cargo consignee, cargo owner, trucker, railroad or other inland carrier or their representative declares the nature and value of such goods in writing prior to the commencement of such service or use of facilities and pays to MPF, in addition to the other charges for services as set forth herein, a premium computed at twenty-five percent (25 %) of the declared value of each package or customary freight unit and in that event MPF shall only be responsible if found to be legally liable under these rules and regulations for such declared value. In no event will such liability exceed the actual value of the goods as of the date of the alleged loss, damage, non-delivery, mis-delivery or cross-delivery.

e. The limitation of liability referred to in paragraphs (c) and (d) shall be the User's exclusive remedy against MPF or any of the Parties, as that terms is defined in SECTION THREE – RULES AND REGULATIONS, Item No. 311.00(c) ("Indemnification by User") for any claim or cause of action whatsoever relating to loss, damage and/or destruction of goods or cargo at the Facility and shall apply to all claims including inventory shortage and mysterious disappearance claims unless User proves by affirmative evidence that MPF converted the goods to its own use. User waives any rights to rely upon any presumption of conversion imposed by law. In no event shall User be entitled to incidental, special, punitive or consequential damages.

f. User does hereby release MPF, its related or affiliated entities, from any liability or responsibility to anyone claiming through or under User, by subrogation or otherwise for loss or damage to property of the User covered by any casualty against which the User is insured, irrespective of whether such loss or damage shall have been caused by the fault or negligence of MPF or anyone for whom it may be responsible, and the User does hereby agree to save and hold harmless the MPF, its related or affiliated entities, for or in respect to any claim for loss or damage to the property of use by any insurance company insuring property of the User.

202.00 **Notice of Claim and Filing of Suit**

a. MPF shall, in no event, be liable or responsible for any claim of any type whatsoever with respect to cargo or goods loaded, unloaded, handled or stored at the Facility unless such claim is presented, in writing within a reasonable time not exceeding: (i) with respect to loss, damage or destruction to goods or cargo loaded, unloaded, handled, or stored at the MPF Facility, sixty (60) days after user learns, or in the exercise of reasonable care, should have learned of the loss, damage or destruction thereto; or (ii) with respect to shortages of the cargo or goods occurring during or arising out of loading, unloading, storage or handling of goods at the MPF, forty-eight (48) hours after the goods or cargo are received at their final destination as shown on the Bill of Lading.

b. As a condition to making any claim for damage or destruction of the goods or cargo, and as a condition precedent to filing any suit or having any cause of action, User shall provide MPF with a reasonable opportunity to inspect the goods which are the basis of the User's claim.

c. No action may be maintained by User or others against MPF with respect to cargo or goods loaded, unloaded, handled or stored at the MPF facility unless a timely written claim has been made as provided in paragraph (a) of this Section, and unless User has provided MPF with a reasonable opportunity to inspect goods as provided in paragraph (b) of this Section and unless such action is commenced within nine (9) months after the expiration of the sixty-day or forty-eight hour period referred to in paragraph (a) hereof.

203.00 **Severability**

The terms and conditions set forth in this Schedule/Tariff shall be separable and if any part or provision or portion of any provision is held invalid or unenforceable such holding shall not impact the validity or enforceability of any other part or provisions or any remaining portion of any such provisions.

SECTION THREE – GENERAL RULES AND REGULATIONS

300.00 **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), and reference to ASPA Tariff No. 1 E (as amended) should be made and adhered to with regard to the transit of these waterways.

301.00 **Access to MPF Property and Facilities**

a. Entry Deemed to Be Consent. The MPF 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 MPF and its property. All Users of the MPF, including

employees, agents, representatives, contractors, vendors, etc., are required to adhere to the security measures governing access control. Entry and/or use of the MPF 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 MPF property. Failure to consent or submit to screening, inspection or search shall result in the denial or revocation of authorization to enter MPF or its property.

b. Identification Badge System. MPF employees, regular contract and temporary labor, as well as longshoremen working at the Facility, will be issued MPF Identification (ID) Badges upon application and approval by the MPF Facility Security Officer (FSO). Additionally, frequent or long-term visitors shall be issued MPF ID Badges, contingent upon application and approval by the MPF FSO. Once issued, ID Badges must be produced to gain entry to the Facility and shall be worn/displayed in an easily visible manner at all times.

All MPF ID Badges are the sole property of Millard Refrigerated Services, Inc., and are issued by MPF and/or Millard only. Issuance and administration of the ID Badges is the sole responsibility of the FSO who may, at his/her discretion, delegate authority and responsibility for their issuance to appropriate personnel.

c. Facility Access.

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

(ii) Visitors to the Facility must present to the Main Guard House and explain the purpose of their visit, including identification of the personnel they will meet and purpose of visit (e.g. sales call). 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 MPF 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 shall 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 any time without a MPF Employee Escort.

(v) Vessel crew and passengers must be identified on a crew list and passenger list furnished to the Millard FSO by the vessel or its agent at least 96 hours before the vessel's arrival. This list will be furnished to the Main Guard House and posted while said vessel is at MPF. 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 MPF property.

d. Vehicle Control. Valid and current vehicle registration and proof of insurance is required for all vehicles entering MPF property. All vehicles are subject to search by MPF at any time.

Privately owned vehicles driven by MPF employees, regular contract and temporary labor, as well as longshoremen working at the Facility, may pass through the Main Gate by presenting their MPF 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.

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

Delivering tractor trailers that have been granted access to the Facility are directed 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 MPF 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 and/or designation by the FSO or security personnel.

302.00 **MPF Not Public Thoroughfare**

MPF's property is not a public thoroughfare and all persons, equipment or vehicles entering thereon do so at their own risk. MPF reserves the right to refuse admittance to its property and to require removal from the premises of any person, equipment or vehicle at any time and for any reason whatsoever.

303.00 **Advance Notice for Processing Trucks and Railcar**

Advance notification shall be given to MPF 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 unloading will be coordinated with the MPF POD or his/her designated representative to ensure availability of labor and equipment.

304.00 **Alcoholic Beverages/Illegal Drugs Prohibited**

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

305.00 **Berth Application**

All vessels or other watercraft, their owners or agents, desiring a berth at the MPF shall, as far as possible but not later than forty-eight (48) hours in advance of the date of docking, make application therefore to MPF in writing and on forms prescribed (found in "Appendix" to this Schedule/Tariff), specifying the date of docking, sailing, and the nature and quantity of cargo to be handled. The completed "Berth Application" should be faxed to 251/443-6135, "Attention: Port Operations Director."

No vessels shall enter or depart the MPF until such time as the vessel has received authorization and written approval of this application by the POD or his/her designated representative. Vessels and/or their owners or agents shall be held liable for the payment of all charges incurred by the vessel, its owners, operators, or charterers including liability for the payment of all charges incurred by the vessel's cargo, disclosure of principals to the contrary notwithstanding. Applications for berth made by agents of the vessel and requests made by agents acting for the owners, shippers or receivers of the cargo for performance of any service under this Schedule/Tariff shall constitute an agreement by said agents, as the case may be, to be held separately bound and ultimately liable for the payment of all or any part of the charges incurred by the vessel and/or its owners or by the cargo and/or its owners, shippers or receivers, as their respective interests may appear.

Application for berth will constitute an agreement between the applicant and the MPF that all charges will be promptly paid upon presentation of invoice therefore, and that applicant will comply with all rules and regulations of the MPF, including without limitation, the rules and regulations set forth in this MPF Tariff, as amended from time to time.

A penalty charge equal to one day's dockage shall be assessed against the vessel, its owners, charterers, operators or agent for any vessel, barge or other watercraft that occupies a berth at the MPF for which a Berth Application in writing has not been received by the MPF in advance of the vessel's arrival as provided herein.

306.00 **Cargo Statements Required; Access to Records**

All steamship lines, rail, truck or barge lines, importers, exporters, shippers and their agents including customs house brokers and freight forwarders, using port facilities, shall furnish MPF with copy of bills of lading, freight bills, manifests and such other data as is necessary to develop and insure correct assessment of terminal charges. The documents and information referred to

shall be furnished within seven (7) days after the arrival of vessel at berth in the case of inbound cargo or within seven (7) days after departure of vessel from berth in the case of outbound cargo.

Failure, by those listed above, to provide statements, documents, or other information as set forth above, within the time limit specified may be assed a late fee of $50.00 for each seven (7) day period or fraction thereof until such documents or information is provided. MPF may also place those responsible on the delinquent list.

307.00 **Charges – Payment Obligations**

All charges for services performed and/or incurred by reason of use of the MPF become earned when performed or furnished, and invoices therefore are due and payable in full net funds within 30 (thirty) calendar days from the date of issue. Material errors or discrepancies on an invoice shall be specifically reported in writing to MPF's Accounts Receivable within 10 (ten) days after receipt thereof. If not received within 10 (ten) days, the invoice shall be considered valid and due.

Any invoice remaining unpaid after 30 days will be considered delinquent. Delinquent accounts will be assessed a late fee of 1.5% per month, calculated from the date of the invoice. In case suit shall be brought by MPF, its assigns or related entities, to collect any monies due, enforce any provision, or remedy any default under this Schedule/Tariff by a person using the Facility, such person shall pay all expenses incurred by MPF, its assigns or related entities, in connection with such suit, including a reasonable attorney's fee and all legal and other litigation costs and expenses.

All requests for credit terms must be made in advance and in writing to the MPF. The requesting party should contact the POD for further information and details regarding such requests. The decision to grant credit terms shall be at the sole discretion of MPF.

308.00 **Clause Paramount – Ultimate Liability for Payment of Charges**

Vessel and/or owners, operators or charterers shall be held liable for the payment of all charges incurred or guaranteed by the vessel, and owners of the cargo shall be held liable for the payment of all charges incurred by the cargo, provided that (disclosure of principals to the contrary notwithstanding) application for berth made by agents of the vessel and request made by agents acting for the owners, shippers or receivers of the cargo for performance of any service under this Tariff shall constitute an agreement by said agents, as the case may be, to be held separately bound and ultimately liable for the payment of all or any part of the charges incurred or guaranteed by the vessel and/or its owners, or by the cargo and/or its owners, shippers or receivers, as the case may be, for which the vessel and/or its owners or the cargo and/or its owners are in default thirty (30) days following departure of the vessel.

309.00 **Certificate of Financial Responsibility for Oil Spills**

In the event of an oil spill from any source while utilizing MPF and adjacent waters thereto immediate notice must be given to:

DUTY OFFICER
NATIONAL RESPONSE CENTER
TELEPHONE: 1-800-424-8802

Notice must also be immediately given to the POD at the MPF, or his/her designated representative, giving location and possible extent of the spill. The required notices shall be given by any person having knowledge of or receiving information relative to oil spills.

All vessels of 300 GRT or more entering the Port of Mobile waterways and MPF, their owners, charter or operators, shall maintain and have available for inspection by the POD of the MPF, 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). See also SECTION THREE – RULES AND REGULATIONS, Item No. 311.00 ("Environmental Notice"), and Item No. 319.00 ("Indemnification and Insurance Requirements").

Any person, persons, firm or corporation, vessel or other entity (not limited to vessels of 300 GRT or more) shall indemnify and hold harmless the MPF and all Parties, as such term is defined in SECTION THREE – RULES and REGULATIONS, Item No. 311.00(c) ("Indemnification by User"), for any and all damages, expenses, costs, and attorney fees incurred by MPF as a result of a violation of this Schedule/Tariff, including but not limited to the clean up or remediation required by any government agency or otherwise.

310.00 **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 MPF, written reports providing all pertinent details of such collision or allision shall immediately, and in no event later than 12 (twelve) hours, be provided to the MPF POD, or his designated representative, by the pilots, masters, owners, operators, charterers or agents of each vessel involved in such incident.

311.00 **Environmental Notice**

Any User operating on or using the MPF, and any employee or agent of such User, including any person performing any service on the property of the MPF by such User's operation, use, or performance on the MPF or MPF's property, agrees, warrants and covenants that it shall comply at all times with the following provisions relating to environmental matters:

(a) Compliance With Environmental Statutes and Regulations:

User shall conduct all of its activities at the MPF in compliance with all federal, state and local statutes, ordinances, regulations, orders ("Environmental Statutes") and requirements of common law concerning 1) those activities; 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 Facilities. User shall not cause or allow its employees, contractors, agents or invitees to cause contamination of the MPF or, to property, including adjacent waterways and/or groundwater below the surface of MPF.

(b) 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 MPF in accordance with all Environmental Statutes. User shall under no circumstances store, treat or dispose of any hazardous, toxic or regulated material, substance, or waste at the MPF or its property.

(c) Indemnification by User:

By its use of the MPF hereunder, User agrees to indemnify, defend and hold the MPF without limitation, MPF, Millard Refrigerated Services, Inc. or any of their respective related and affiliated entities and each of their respective officers, employees, shareholders, directors, agents, legal representatives, successors and assigns (hereinafter referred to as the "Parties") harmless of, from, and against any and all expenses, loss, or liability suffered by such Parties by reason of (i) User's generation, manufacture, introduction, use, handling, transportation or disposal of hazardous substances, or (ii) User's breach of any of the provisions of this Section including (but not limited to) 1) any and all additional expenses that the Parties, including their respective officers, employees, and agents, may incur to comply with any Environmental Statutes; 2) any and all costs that such Parties may incur in studying or remedying any contamination at or arising from the MPF; 3) any and all costs that such Parties may incur in studying, removing, disposing, or otherwise addressing any materials which are the subject of this Section; 4) any and all fines, penalties, judgments or other sanctions assessed upon such Parties, by reason of a failure of User to have ensured compliance with Environmental Statutes; 5) any and all loss of value of the MPF or its property; and 6) any and all legal and professional fees and costs incurred by MPF in connection with the foregoing.

(d) Survival:

The provisions of this Section shall survive the termination of User's use of, or operation or provision of services by or to the MPF.

312.00 **Electrical Power**

Before any electrical equipment, including lights (either privately owned or rented from the MPF) is connected at any MPF location (where connections are available) application must be made to the POD at the MPF.

313.00 **Facilities – User's Responsibility for Damage**

All vessels, their owners, their charterers, their agents and all other Users of the MPF shall be held responsible for any damage to or destruction of the property owned by MPF (including, but not limited to, expenses of damage to or destruction of or repair or replacement of any structures located thereon) resulting from their use or arising from any acts, omission, neglect or default of vessels, owners, charterers and their agents or of all other Users. MPF may detain any vessel or water craft responsible for any damage to the Facility until sufficient security has been given for the amount of damage.

314.00 **Facility Inspection and User's Warranty**

Housekeeping, Maintenance and Repairs: Each person using a facility of the MPF shall not permit 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 MPF and upon completion of such use, shall return the property to the MPF in good order, broom cleaned. Each MPF User shall notify the POD of any damage to such facility and other property of the MPF resulting in whole or in part, directly or indirectly from the use of such facility or property caused in whole or in part by such person, or the employees (including loaned employees), agent's contractors and invitees of such person, regardless of fault.

Default: Any MPF User who fails to leave their area in good order or repair and broom clean will pay to the MPF an assessed cost to include cost for repairs and/or cleanup plus fifteen percent (15%).

Facilities Inspection and Warranty: The MPF shall not be liable for the failure or inability of any person to utilize any or all of the facilities of the MPF. Nothing herein contained shall be construed as warranty that the facilities are in good condition or are fit or suitable for any proposed uses.

315.00 **Fire Fighting Apparatus**

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

316.00 **Fire Signal**

In the event of fire occurring on board any vessel docked at the MPF vessel should sound 5 (five) 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 may be used in addition to other means of reporting a fire. The words "Prolonged Blast" used in this rule shall mean a blast of from 4 (four) to 6 (six) seconds.

317.00 **Firearms**

The possession and/or use of firearms at the MPF or on its property is prohibited. Armed guards serving as vessel watchman, and/or guard services furnishing the same, must comply with the terms and conditions set forth herein, specifically SECTION THREE – RULES AND REGULATIONS, Item No. 319.00 ("Indemnification and Insurance Requirements") and No. 323.00 ("Vessel Watchman and Armed Guards").

318.00 **Fresh Water**

Rate of charge for water supplied to vessels by MPF at its wharves where the service is available will be $ 1.00 (One Dollar and No/100) per net metric ton (NMT), subject to the following rates and procedures:

1. Hookup Fee:

- Regular hours: 8:00 a.m. – 5:00 p.m., Monday through Friday; except Holidays) - $50.00
- Overtime hours: Outside of "Regular Hours," as well as Holidays) - $150.00

2. Minimum Invoice - $75.00

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

NOTE:
(a) If agent/vessel representative fails to sign water ticket upon the completion of watering, then the agent/vessel agrees to accept the MPF reading charges for the connection.
(b) agent/vessel assumes responsibility for water meter while connected to the vessel. If meter is lost, replacement cost plus estimated water usage based on 200 gallons per minute during time of hookup until disconnection of the vessel will be assessed.
(c) Prior to requesting hookup for fresh water, the vessel will be "made ready", i.e., hose with appropriate fittings will be available for connection to be made when the MPF personnel arrive shipside. If additional trips or standby time is necessary, due to vessel not being prepared, assessment will be cost plus fifteen percent (15%).

319.00 **Indemnification and Insurance Requirements**

INDEMNIFICATION

Indemnity: Each person using the MPF and each person performing any service on the property of the MPF shall indemnify, save and hold harmless all Parties, as such term is defined in SECTION THREE – RULES AND REGULATIONS, Item No. 311.00(c) ("Indemnification by User"), from and against any and all claims, suits, actions, damages, liabilities, penalties, judgments, cost and expenses, including without limitation reasonable attorney's fees and litigation cost and expenses, incurred or asserted in connection with and loss of life, personal injury, damage to any vessel, cargo or any other property (including the property of any such person using a facility or performing a service on the property of MPF), or violation of any federal, state, or local law, rule, or regulation, which is caused in whole or in part by such person using the Facility or performing a service on the property of the MPF, or such person's employees (including loaned employees), agents, contractors or invitees, except that such person shall not be responsible for any damage, loss or injury occasioned solely by reason of the MPF's negligence or willful misconduct.

Environmental Indemnity: The indemnity provided in the proceeding paragraph shall include and extend to any and all claims, suits, actions, damages, liabilities, penalties judgments, cost and expenses, including without limitation reasonable attorney's fees and litigation expenses, incurred or asserted in connection with any environmental damage, clean-up, removal, response, assessment, or remediation requires by or resulting from, any environmental condition or violation of any federal or state Environmental Law (as defined herein) occurring in connection with any person's use of the MPF or the performance of any service on the property of the MPF. As used herein, "Environmental Law" means any statute administered by, or rule or regulation promulgated by, the U.S. Environmental Protection Agency or the Alabama Department of Environmental Management, or any successor thereof.

Waiver of Subrogation: Each person using MPF and each person performing any service on the property of the MPF waives any and all claims it may have against the MPF for injury, loss or damage covered under any insurance policy and each such person shall cause its insurance carriers to waive any right of subrogation with respect thereto and to so notify the MPF.

Legal Expense: In case suit shall be brought by the MPF to collect and monies due, enforce any provision, or remedy any default, under this Schedule/Tariff against a person using the MPF or performing any service on the property of the MPF and the MPF prevails, such person shall pay all expenses incurred by the MPF in connection with such suit, including reasonable attorneys' fees, costs and expenses.

Limits of Liability: No provisions contained in this Schedule/Tariff shall limit or relieve the MPF from liability for its sole negligence nor require any person, vessel, or lessee to indemnify or hold harmless MPF from liability for its sole negligence.

INSURANCE

Users of the MPF shall maintain such insurance as will protect MPF and all Parties, as such term is defined in SECTION THREE – RULES AND REGULATIONS, Item No. 311(c) ("Indemnification by User"), at the limits and coverages set out below.

General Requirements: All policies of insurance must be written with companies acceptable to the MPF. Original certificates of insurance, signed by the licensed agent and evidencing that the coverages are current and in place, shall be provided to: Millard Port Facility ATTN: Risk Manager, 4715 South 132nd Street, Omaha, NE 68137; 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 facilities use. The MPF reserves the right to require complete certified copies of any and all policies of insurance at any time.

At the sole discretion of MPF, a User may be required to obtain appropriate endorsements to the User's insurance policies so as to provide that the MPF, its officers, officials, employees, and volunteers be covered as primary and non-contributory additional insureds, with respect to liability arising out of use of the facilities. Except for the proven negligence of the MPF, the coverage shall contain no special limitations on the scope of protection afforded.

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

The MPF User's insurance certificate shall include a provision that at least 30 days notice will be given to the MPF before limits and scope of coverage are materially altered or insurance protection is cancelled. The MPF User's insurance policies shall include waiver of all rights of subrogation against the MPF, its officers, officials, employees, volunteers and insurers for loses arising from its use of the MPF.

The MPF User agrees that none of its subcontractors will be allowed to commence work on the MPF property until (a) the subcontractor has obtained all similar insurance, or (b) the MPF User has provided coverage for the subcontractor.

The MPF 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.

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. (To provide coverage under the Alabama workers Compensation Act in an amount not less that 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 MPF User pursuant to this Tariff.

*The MPF reserves the right to increase the required limits, when necessary, due to increased exposure on the part of a facility User.

320.00 **Jurisdiction**

Jurisdiction for any action – whether in law, equity or admiralty – and whether founded in contract or tort, brought by any User of the MPF arising from or incidental to the User's operations at the Facility or its property and/or use of MPF'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. Use of the MPF or receipt of its services by any User shall constitute that User's consent to jurisdiction and venue, and shall further constitute that User's waiver or jurisdiction or venue in any other location or forum.

321.00 **Oily Waste/Ship's Waste Disposal**

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 MPF regulations, laws and ordinances.

If desiring to discharge oily waste ANY VESSEL, her owners or agents are responsible for selecting an inspected and approved which that meets Unites States Coast Guard requirements for receipt of oily waste and further are responsible for making the necessary arrangements for

discharging the oily waste. Such discharge operations are to be reported to the POD at the MPF or his/her designated representative.

The firms listed below have indicated to the Captain of the Port of Mobile that they are interested in contracting their services in this regard. Their listing herein does not indicate a preferential recommendation on the part of the Millard Port Facility but merely reflects the listed companies' desire to function in the above capacity as regarded by the Captain of the Port. All inquires should be directed to the Captain of the Port, United States Coast Guard.

Aaron Oil Company, Inc.
P.O. Box 2304
Mobile, Alabama 36652
PH: 251-479-1616

Oil Recovery Company, Inc. of Alabama
P.O. Box 1803
Mobile, Alabama 36633
PH: 251-690-9010

Under the provisions of Annex V of MARPOL 73/78 PORT RECEPTION FACILITIES FOR SHIP'S GARBAGE and separation on board vessel of various waste is required. Garbage is defined as "all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically."

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 the Department of Agriculture, Animal and Plant Health Inspection Service. The listing below does not indicate a preferential recommendation on the part of the Millard Port Authority but merely reflects the listed companies' desire to function in the above capacity. If desiring to discharge regulated food waste and/or garbage, the vessel, her owners, operators or charterers or agents are responsible for selecting an approved company and coordinating with the same for such activities.

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

322.00 **Smoking/Open Flame Prohibited**

No person shall smoke or have in their possession any fire or lighted material in or around the MPF wharves, warehouses, freezers or freezing units, transfer areas or other structures set apart

for the loading or unloading of vessels, or warehousing of their cargos, or other materials (including ship's stores). Smoking shall be permitted in designated areas only.

323.00 **Vessel to Vacate**

The POD for the MPF, or his/her designated representative, may order any vessel to vacate any berth when the POD deems that the continued presence of such vessels at berth would be a potential hazard to the vessel, the berth, MPF property and structures, 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 a threat to the vessel and/or MPF property and structures; when the berth is committed to others by contractual or other agreement; when the vessel's cargo or other items present a hazard to other vessels, cargo or facilities; 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 to MPF property and structures, in the reasonable determination of the MPF.

The POD for the MPF, or his designated representative, shall provide written notice to the steamship line or the vessel's agent advising of the requirement to vacate. The notice shall state the time that the berth must be vacated and shall be presented at least 4 (four) hours prior to said time.

If a vessel promptly fails to vacate as ordered, it shall be responsible for any damage or expense which may be incurred by the MPF or others as a result of such failure to vacate and shall indemnify and hold MPF and its affiliated and related entities harmless therefrom. The MPF shall have the option, but not the duty, of moving the vessel to another location at the risk and expense of the vessel. If such movement occurs, except for damage or liability caused by MPF's own negligence, the vessel shall hold the MPF harmless for any damages or liability it may incur as a result of such movement. 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.

324.00 **Vessel Watchman and Armed Guards**

Any vessel or other watercraft lying at the wharves, docks or piers at the MPF 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 POD or his/her designated representative.

Firearms and the use thereof are prohibited at the MPF. In the event that posting or use of armed guards is required, prior notice and approval thereof must be given and obtained by the POD. ***Only those Guard Service(s) which have been authorized by MPF to perform such work will be allowed to post armed guards at vessels located at MPF.***

325.00 **Welding and Hot Work**

It is not the MPF's intent to provide berth space for ship repairs or maintenance. Under no circumstances are shipyard type maintenance or repairs allowed to any vessel during dockage without prior written consent of the POD for the MPF, or his designated representative. Vessels at berth performing shipyard type maintenance or repairs without approval of the POD may be ordered to vacate berth.

Oxyacetylene, electric, or any other welding or burning, or other "hot work" at the MPF is prohibited. In the event that the vessel must utilize such efforts, prior permission from the POD of the MFP is required. The POD, or his designated representative, will determine at his sole discretion if the requested work will proceed and under what circumstances, limitations and precautions. Any expense associated therewith to be for the vessel's account.

SECTION FOUR – VESSEL CHARGES/CARGO CHARGES

400.00 **No Free Time for Inbound or Outbound Cargo**

There shall be no allowance for "free time" for inbound or outbound cargo.

401.00 **Wharfage Charges**

Wharfage charges shall be assessed on all cargo or freight 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 water craft when said vessels are occupying berths or moored outside other vessels occupying a berth.

Wharfage is solely the charge assessed against the cargo for use of the wharf and does not include charges for any other service.

When cargo is placed on the wharf for outbound movement and is not subsequently loaded aboard a vessel but is removed from the wharf, the applicable wharfage shall be assessed.

EXCEPTIONS - 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.

402.00 **Wharfage Rates**

Schedule of wharfage rates is available upon request from the POD.

No wharfage shall be assessed on the tare weight of cargo containers when loaded or partially loaded.

Cargo discharged from vessels at MPF and transshipped on second vessel berthed at the MPF shall not be subject to the payment of a second wharfage charge provided said cargo does not leave MPF's premises.

403.00 **Collection and Payment of Wharfage**

Wharfage is due by the owners of the commodities on which wharfage is assessed. The collection and payment of same must be guaranteed by the vessel, its owners, charterers and agents, and the use of a wharf shall be deemed an acceptance and acknowledgment of this guarantee.

404.00 **Dockage Charges**

Dockage charges will be computed on LOA of vessel as published in Lloyd's Register of Shipping per the following schedule of vessels; dockage will be based on an initial 24 (twenty-four) hour period, after which a prorated charge will be assessed based on a 6 (six) hour period. Charges per linear foot of vessel, at the rate of $2.50 (Two and 50/100 Dollars) per foot, per day.

405.00 **Payment of Dockage Charges**

Dockage charges are the responsibility of the vessel and payment therefore, or arrangements acceptable to MPF for payment therefore, must be paid prior to departure from MPF to avoid any delay in sailing. MPF claims a maritime lien against the vessel, freight and appurtenances as security and for payment of dockage charges. In the event the vessel, its owners, operators, charterers fail or are unable to pay the dockage charges, MPF reserves the right to seek and collect same from the agent which made berthing application for the vessel, disclosures of principle notwithstanding.

406.00 **Line Handling Charges**

Flat rate, in and out, for all vessels: $ 500.00 (Five hundred and No/100 Dollars).

500.00 **Right to Load and Unload at MPF**

MPF shall have the exclusive right to control the loading, unloading and handling of all freight and cargo on the MPF premises and facilities under its control. No others will be allowed to perform loading, unloading and handling without prior written permission from the MPF POD.

501.00 **Right to Stevedore Vessels at MPF**

MPF shall have the exclusive right to stevedore all vessels berthed at, calling on, loading or discharging cargo at MPF and facilities under its control. No others will be allowed to perform such stevedoring without prior written permission from the MPF POD.

Labor rates for stevedoring of vessels by MPF are available upon request. Contact the MPF POD for schedule.

502.00 **Notice Regarding Rates Listed**

MPF may enter into contracts with shippers, receivers or carriers providing rates for storage and services other than as provided herein. Further, separate wharfage, and handling rates, terms and conditions may be negotiated on request from other parties for large volume movements through MPF.

Rates are subject to change at any time without notice.

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

All rates and charges are US Dollars per net metric ton (1,000 kgs) except as noted in individual items.

503.00 **Handling Charges**

The handling charge covers the ordinary labor involved in receiving goods at the warehouse door/access point for storage area at the Facility, placing goods in storage and returning goods to warehouse door/access point for storage area at the Facility. Schedule of handling charges is available upon request from the POD.

504.00 **Holidays**

The following are considered holidays which wages are to be paid at time and one-half the straight time rates when work is performed:

1. New Year's Day
2. Memorial Day
3. July 4
4. Labor Day
5. Thanksgiving Day
6. Christmas Day

505.00 **Warehousing Services**

Reference is made to the Millard Refrigerated Services Public Warehouse Tariff, as published from time to time by Millard Refrigerated Services, Inc., which tariff is applicable to all of its public warehouses (the "Warehouse Tariff") and which is incorporated herein by this reference and in its entirety and which shall be applicable to all goods and cargo stored at MPF, including but not limited to frozen and refrigerated cold storage warehousing services at the MPF. In the event that the terms and conditions Warehouse Tariff conflicts with this MPF Schedule/Tariff, then the terms of the MPF Schedule/Tariff shall control and be binding on all Users of the MPF.

APPENDIX

1. Berth Application

2. Declaration of Security (Between Vessel and Facility)